Legislative & Administrative Processes

Times: MW 9:00–10:15 A.M. Room: 108

Instructor: Steven J. Macias Office: 234
Email: smacias@siu.edu Phone: 618-536-8464
Office Hours: MW 10:15–11:15 A.M.

Description
This first-year course is designed to introduce you to statutory law and help you to contextualize your common law courses (i.e., contracts, torts, criminal law, property) within the modern administrative state. The course is also designed to lay a framework that you will easily be able to call upon when you take upper-level statutory courses, such as environmental law, bankruptcy, tax, healthcare, intellectual property, etc. We begin the course with an introduction to the constitutional basis of the administrative state, then we turn to the art of statutory interpretation. In no sense is our introduction to administrative law a substitute for the upper-level Administrative Law course, which all students should seriously consider taking at some point in their final two years of law school.

Required Texts
John F. Manning & Matthew C. Stephenson, Legislation and Regulation, 3rd ed. (Foundation Press 2017) [West] [Amazon]
William N. Eskridge, Jr. & James Brudney, Documents Supplement (West 2011) [West] [Amazon]
Bryan A. Garner, Black’s Law Dictionary, Fifth Pocket Edition (Thomson Reuters 2016) [Thomson Reuters] [Amazon] (or a comparable dictionary that you can bring to class)
**Recommended Books**

Any good Constitutional Law supplement will be helpful for the first half of the course. In particular, I’d recommend [Chemerinsky, Constitutional Law](#), which you’ll also find helpful when you take Constitutional Law next year.

For the second half of the course, you will find the following helpful:


As you will soon learn, Justice Scalia was a driving force behind the recent focus on statutory interpretation in the law school curriculum. His book provides a clear explanation of the major canons of interpretation along with illustrative examples of the canons in action. One can profitably read the book without subscribing to any particular method of interpretation. I will frequently refer to the relevant sections during class discussions, so it will be in your interest either to obtain a copy for yourself or use the multiple copies that are on reserve in the library.

I have required the Jellum book in the past and think that it is a very useful resource. For those looking for more practice problems than are provided in the course materials, I suggest [Richard L. Hasen, Legislation, Statutory Interpretation, and Election Law: Examples and Explanations](#) (Wolters Kluwer 2014). In particular, Chapters 1 & 5–8 are directly relevant to our course of study.

**Goals**

At the conclusion of the course, you should:

- Understand the constitutional issues raised by the existence of executive agencies within the administrative state.
- Be able to explain how federal agencies are consistent with the constitutional principle of separation of powers.
- Be able to explain how the various branches of government exert control over executive agencies.
- Have a solid understanding of the dominant methods of statutory interpretation.
- Know how to uncover the purpose of a statute.
- Understand the role and place of canons of interpretations.
- Have a basic familiarity with legislative history, including the variety of sources and how to successfully make arguments therefrom.
- Understand the basics of *Chevron* deference.
- Be able to systematically approach a statutory interpretation problem from beginning to end.

**Webpage**

We will use the [SIU D2L](#) webpage for our course. You should check it often, as I will post course material, class slides, and announcements without any particular notice. I will also use the webpage to send out emails. You are responsible for reading those emails.
Not checking your email and not reading the posted announcements are \textit{not} valid excuses for missing important information.

\textbf{Administrative Assistant}
Susan McLaren  
Office: 243  
susanw@law.siu.edu  
Phone: 618-453-8738

Please contact Susan if I am unavailable and she will relay any messages to me.

\textbf{Evaluation}
The final exam is scheduled for \textbf{Monday, May 7, 8:15–11:15 A.M.} It will count for \textbf{70\%} of your course grade, with the remaining \textbf{30\%} attributed to the midterm exam.

If any student is, in the opinion of the instructor, not prepared for class on any particular day when called upon, he or she will be marked as absent. Students may “note out” of class for any particular day, but they must not sign the attendance sheet for that day. \textbf{NO STUDENT MAY “NOTE OUT” DURING THE FINAL TWO WEEKS OF CLASS!}

\textbf{Attendance Policy}
I do not recommend that you miss \textit{any} classes. However, you are permitted four absences in accordance with the Attendance Rules specified in the \textit{School of Law Rules III.5(f)–(g)}. Individual class sessions recordings will \textit{not} be distributed; thus, it is imperative that you be in regular attendance.

If you miss more than four classes, \textit{for whatever reason}, you will be withdrawn from the course. For purposes of this rule, there is no such thing as an “excused absence.” Upon your fourth absence being recorded by Susan McLaren, she will send an email to the associate dean indicating that you are withdrawn from the course.

\textbf{Workload Expectations}
The American Bar Association (“ABA”) law-school-accreditation standards contain a formula for calculating the amount of work that constitutes one credit hour. According to the general requirement of Standard 310, “a ‘credit hour’ is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks (including one week for final exams) or the equivalent amount of work over a different amount of time.” Applying the ABA standard to this 3-credit hour class, you should plan on spending a total of \textbf{9 hours per week (3 in classroom instruction and 6 preparing on your own) on course-related work.}

\textbf{Laptops and Other Electronic Devices}
Laptop computers, smart phones, electronic tablet, etc., generally should \textit{not} be used in class for any purpose. Because we are learning a skill set, rather than a substantive area of law, you will likely find yourself not taking very many notes in class. Any notes you do need to make can easily be taken with pen and paper.
# Reading Assignments

(subject to change)

<table>
<thead>
<tr>
<th>CLASS</th>
<th>TOPIC</th>
<th>PAGES*</th>
<th>SUPPLEMENT†</th>
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<tr>
<td><strong>Part I: Constitutional Principles of the Administrative State</strong></td>
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<tr>
<td>Wed., Jan. 17</td>
<td>Introduction to Subject Matter</td>
<td>2–22</td>
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<tr>
<td>Mon., Jan. 22</td>
<td>Constitutional Background</td>
<td>434–58</td>
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<td>Mon., Jan. 29</td>
<td>Delegation II</td>
<td>472–502</td>
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<td>Wed., Jan. 31</td>
<td>Legislative Veto</td>
<td>528–52</td>
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<tr>
<td>Mon., Feb. 5</td>
<td>Appointments Clause</td>
<td>552–66</td>
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<tr>
<td>Wed., Feb. 7</td>
<td>Recess Appointments</td>
<td>566–605</td>
<td>Noel Canning</td>
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<td>Mon., Feb. 12</td>
<td>Removal Power I</td>
<td>606–605</td>
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<td>Mon., Feb. 19</td>
<td>Removal Power III</td>
<td>619–45</td>
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<td>Wed., Feb. 21</td>
<td>Removal Power IV</td>
<td>645–62</td>
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<tr>
<td>Mon., Feb. 26</td>
<td>Overview of the Regulatory Process</td>
<td>701–27</td>
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<tr>
<td>Wed., Feb. 28</td>
<td>Notice-and-Comment Rulemaking</td>
<td>728–53</td>
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<tr>
<td>Mar. 5–9</td>
<td>Midterm Week – No Classes</td>
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<td>Mar. 6</td>
<td>Midterm 10:00–11:30 A.M.</td>
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<tr>
<td><strong>Part II: Statutory Interpretation in and out of the Administrative State</strong></td>
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<td>Mar. 10–18</td>
<td>Spring Vacation</td>
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<tr>
<td>Mon., Mar. 19</td>
<td>Which “Textual” Meaning is the Right One?</td>
<td>146–63</td>
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<tr>
<td>Wed., Mar. 28</td>
<td><em>Chevron</em> and Textual Interpretation</td>
<td>991–1010</td>
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<tr>
<td>Mon., Apr. 2</td>
<td>Semantic Canons</td>
<td>272–79</td>
<td>Textual Canons (pp. 1–5 of handout)</td>
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<tr>
<td>Wed., Apr. 4</td>
<td>Semantic Canons, cont.</td>
<td>310–19</td>
<td>Textual Canons (pp. 6–13 of handout)</td>
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<tr>
<td>Mon., Apr. 9</td>
<td><em>Chevron</em>, Semantic Canons and Terms of Art</td>
<td>1010–26</td>
<td>209–24</td>
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<td>Wed., Apr. 11</td>
<td>Legislative History</td>
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<td>Weber</td>
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<td>Mon., Apr. 16</td>
<td>Legislative History, cont.</td>
<td>203–28, 1050–53</td>
<td>262–69</td>
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* All pages in this column refer to the Manning & Stephenson casebook. Always start or stop reading at the natural breaks on the listed initial and final pages.
† Numbers in the second column refer to pages in the *Documents Supplement*. All other supplements will be handed out in class.
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
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<tr>
<td>Mon., Apr. 23</td>
<td>Chevron &amp; Constitutional Avoidance</td>
<td>1054–68</td>
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<tr>
<td>Make-up class</td>
<td>Substantive Canons: Rule of Lenity</td>
<td>399–410</td>
<td>Yates &amp; Lockhart</td>
</tr>
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**FINAL EXAMINATION: Monday, May 7, 8:15 A.M.**
IMPORTANT DATES *
Semester Classes Begin: 01/16/2018
Last day to add full-term course (without Dean’s signature): 01/21/2018
Last day to withdraw from the University with a full refund: 01/26/2018
Last day to drop a full-term course for a credit/refund: 01/28/2018
Last day to drop a full-term course (W grade, no refund): 04/01/2018
Final examinations: 05/07–05/11/2018
The Final exam schedule will be posted the third week of class.

Please verify the above dates with the Registrar calendar and find more detailed information on deadlines at http://registrar.siu.edu/calendars. For add/drop dates that apply to shorter-than-full-term courses, please look at the Schedule of Classes search results at http://registrar.siu.edu/schedclass/index.php

SPRING SEMESTER HOLIDAYS
Martin Luther King, Jr.’s Birthday Holiday 01/15/2018
Spring Vacation 03/10—03/18/2018

WITHDRAWAL POLICY ~ Undergraduate only
Students who officially register for a session must officially withdraw from that registration in a timely manner to avoid being charged as well as receiving a failing grade for those classes. An official withdrawal must be initiated by the student, or on behalf of the student through the academic unit, and be processed by the Registrar’s office. For the proper procedures to follow when dropping courses and when withdrawing from SIU visit: http://registrar.siu.edu/students/withdrawal.php

INCOMPLETE POLICY ~ Undergraduate only
An INC grade may be assigned when, for reasons beyond their control, students engaged in passing work are unable to complete all class assignments for the course. An INC must be changed to a completed grade within one full semester (undergraduates), and one full year (graduate students), from the close of the term in which the course was taken or graduation, whichever occurs first. Should the student fail to complete the remaining course requirements within the time period designated, the incomplete will be converted to a grade of F and such grade will be computed in the student’s grade point average. For more information visit: http://registrar.siu.edu/grades/incomplete.php

REPEAT POLICY
An undergraduate student may, for the purpose of raising a grade, enroll in a course for credit more than once. For students receiving a letter grade of A, B, C, D, or F, the course repetition must occur at Southern Illinois University Carbondale. Effective for courses taken Summer 2013 or later, only the most recent (last) grade will be calculated in the overall GPA and count toward hours earned. This policy will be applied to all transferrable credit in that only the last grade will be used to calculate grade point average. Only those courses taken at the same institution are considered repeats under this policy. See full policy at http://registrar.siu.edu/students/repeatclasses.php

GRADUATE POLICIES
Graduate policies often vary from Undergraduate policies. To view the applicable policies for graduate students, please refer to the graduate catalog at http://gradschool.siu.edu/about-us/grad-catalog/

DISABILITY POLICY
Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must contact DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/

PLAGIARISM
See the Student Conduct Code http://srr.siu.edu/student-conduct-code/

ADVICEMENT: http://advisement.siu.edu/

SAFETY AWARENESS FACTS AND EDUCATION
Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: http://safe.siu.edu

SALUKI CARES
The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: call (618) 453-1492, email siucares@siu.edu, or http://salukicares.siu.edu/

SIU’S EARLY WARNING INTERVENTION PROGRAM (EWIP)
Students enrolled in courses participating in SIU’s Early Warning Intervention Program might be contacted by University staff during a semester. More information can be found at the Core Curriculum’s Overview webpage: http://corecurriculum.siu.edu/program-overview/

EMERGENCY PROCEDURES
We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts visit: http://emergency.siu.edu/

STUDENT MULTICULTURAL RESOURCE CENTER
The Student Multicultural Resource Center serves as a catalyst for inclusion, diversity and innovation. As the Center continues its work, we are here to ensure that you think, grow and succeed. We encourage you to stop by the Center, located in Grinnell Commons, to see the resources available and discover ways you can get involved on the campus. Visit us at http://inclusiveexcellence.siu.edu/

LEARNING AND SUPPORT SERVICES
Help is within reach. Learning support services offers free tutoring on campus and math labs. To find more information please visit the Center for Learning and Support Services website:
Tutoring: http://tutoring.siu.edu/
Math Labs http://math.siu.edu/courses/course-help.php

WRITING CENTER
The Writing Center offers free tutoring services to all SIU students and faculty. To find a Center or Schedule an appointment please visit: http://write.siu.edu/

DIVERSITY
Southern Illinois University Carbondale’s goal is to provide a welcoming campus where all of our students, faculty and staff can study and work in a respectful, positive environment free from racism and intimidation. For more information visit: http://diversity.siu.edu/

MILITARY COMMUNITY
There are complexities of being a member of the military community and also a student, and military and veteran related developments can complicate academic life. If you are a member of the military community and in need of accommodations please visit Veterans Services at http://veterans.siu.edu/

SIU ONLINE: https://online.siu.edu/

Need help with an issue? Please visit SALUKI SOLUTION FINDER at http://solutionfinder.siu.edu/

Syllabus Attachment
Spring 2018