

Modern Statutory Interpretation

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Modern Statutory Interpretation

Problems, Theories, and Lawyering Strategies

Linda D. Jellum

David Charles Hricik

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Introduction

A. Why Statutory Interpretation Matters More Than You Might Think and Requires Its Own Skill Set

Why learn how to interpret statutes? Although you may not recognize it—in light of the focus on the common law in most of your other courses—most of the work lawyers do today centers on federal and state statutes or regulations. In the course of representing clients, every lawyer interprets and, sometimes, challenges statutes. Statutes and regulations are displacing the common law. Thus, understanding statutes is critical to your future career.

You may think you’ve already learned how to discern “the law,” at least if you’ve completed a semester or more of law school. After all, you’ve learned to analyze and brief cases. But learning to interpret statutes requires skills and knowledge different from those needed to interpret cases. To interpret cases, you analyze the findings, reasoning, and holding of a single court concerning a specific problem. The limited, relevant facts are identified in the opinion. The reason for the decision is explained. A limited number of authors are involved.

Statutory interpretation is remarkably different, and for many reasons more than we will summarize here. First, the *process* of judicial decision making is *never* relevant to a case’s meaning. In fact, the judicial decision-making process is shielded from public scrutiny: for example, drafts of opinions are not available for review. In contrast, the process of legislative decision making in large measure takes place in a public forum, and that process can be relevant to a statute’s meaning. Second, approaches and interpretive rules have been developed on how to interpret a statute. There are no similar rules or approaches regarding interpretation of the rule of law announced in a common law decision. Third, statutory interpretation routinely implicates separation-of-powers principles. When a court interprets a prior common-law decision, such issues are not raised. Finally (and partly as a consequence of the foregoing), there are functional and political consequences of the approach that a court takes to statutory interpretation. For example, if courts refuse to look past the statutory text to legislative history, the refusal may create incentives for legislatures to be clearer in their drafting, but it may also mean that statutes are given meaning that they clearly were not intended to have and may also result in increased costs as legislatures must too often undo what courts have done.

In sum, although they share analytical similarities, statutory interpretation is distinct from common law interpretation. It requires a different set of skills to answer the question, “What does the statute mean?” than it does to answer the question, “What does the case mean?”

B. How This Book Will Teach These New Skills

This book will teach you the art of statutory interpretation. It will not only help you develop the skills to advise a client how a statute will *likely* be interpreted but will also give you skills to convince a court that a statute *should* be interpreted in a way that will benefit your client. This book will help you understand the different approaches to statutory interpretation and methods to analyze and argue statutory meaning.

To accomplish these objectives, we have done several things.

First, this book is organized by process: we will learn the art of interpretation in a logical way. After some background (introducing the general subject matter and examining typical legislative processes), we examine the principles governing interpretation of the statutory text itself. Then we turn to what, if anything, courts consider beyond the text. In that part of the book, we begin with the sources that courts are most likely to consider (component parts of bills and the textual canons, for example) and then proceed to those sources that are less likely to be given explicit, controlling weight (legislative history and statutory purpose, for example). Finally, we turn to some particular problems and areas for further development.

Second, within each chapter we introduce a number of concepts with a concise statement of the principles to be examined. After the introduction, we include a case that illustrates the key concepts of the section. The cases almost invariably are close cases and typically include at least one dissenting opinion. Following each principal case are notes and questions. The questions are designed to help focus your thoughts on and understanding of the case and the concepts it raises, including its broader implications. The notes point out *possible* answers to issues related to the core concept. We have selected cases and other materials that are interesting and, whenever possible, modern and sometimes even funny. (Really!)

Third, we have heavily edited the cases and statutes, eliminating irrelevant information, to make them as easy as possible to read. While we have remained faithful to the text, we have omitted most extraneous citations and quotations without so noting; we have included ellipses to indicate all deletions except for deleted citations to legal authority, internal quotations, and internal brackets. The cases have been edited to clarify the issues and relevant analyses.

Fourth, we include problems for you to resolve. The problems take place in the hypothetical state of Mercer. Each problem will lend itself to at least two arguments, usually more, and will rely upon and require further inquiry into the concepts in the chapter. The problems are a central part of the book.

Our approach is unique. It provides a logical and practical view of statutory interpretation while also probing the theoretical and philosophical approaches to interpretation. When you are done, you should have a respect for the breadth of arguments that can be made to convince a court to interpret a statute in a way that favors your client's position. In sum, this book is intended to provide you with a thorough understanding of the modern approaches to statutory interpretation, their conceptual, doctrinal, and jurisprudential origins, and their implications for the future.

Your journey does not end with this course and this book; it is only beginning. We hope that you will acquire the skills you need to be an effective lawyer at a time when statutes will be critical to your practice. In writing this book—to which we both equally

contributed—we had the goal of making this important journey interesting and informative. We hope we have succeeded.

Whether or not we did so is our responsibility, solely. We had, however, tremendous support and assistance from, among others: Dean Daisy Floyd, Professor Dwight Aarons, Associate Dean Stephen Johnson, Professor Richard Creswell, Professor Glen Smith, Professor Mark Jones, Professor Alice Baker, Jenia Bacote, John Wannalista, Debra Boney, Courtney Dickey, Janet Guggemos Garza, Mercer University (for our research support), and the 2006 and 2007 graduating Mercer Law School students who test-drove this book as it was being drafted.

The book is dedicated to our families, who were supportive beyond belief, and to each other, for not killing each other during the process!

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