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# Mastering Legislation, Regulation, and Statutory Interpretation

THIRD EDITION

**Linda D. Jellum**

ELLISON CAPERS PALMER SR. PROFESSOR OF TAX LAW  
MERCER UNIVERSITY SCHOOL OF LAW



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We hope that you will enjoy studying with, and learning from, the Mastering Series.

Russell L. Weaver  
Professor of Law & Distinguished University Scholar  
University of Louisville, Louis D. Brandeis School of Law



# Dedication

This edition is dedicated to my husband and best friend, Lee Jellum. It's just us now, honey, and the dog, 3 cats, 8 chickens, and 13 ducks. (We need to get better at this empty-nester thing.)

This new edition would not have been possible without help. I am extremely grateful to my dean, Cathy Cox. Without research support, my work would have been much more difficult. I would also like to thank my research assistants, Maggie Cropp, Caitlin Wise, Carley Hawkins, Stephen Poydasheff, and Melissa Caroline Sport for their invaluable help and great senses of humor. They kept me laughing at every step of the way. I also had substantial help from other academics and would like to thank the following for their insightful comments and helpful suggestions, endless reviews of draft chapters, and other assistance: Professors Michael Dimino, Erica Bristol, Benjamin Bratman, Denise Gibson, and Jeremy Kidd.

## Dedication to the Second Edition

This edition is dedicated to all of my students during the last few years, but especially to the students in the Connecticut University Law School's 2012 externship program in Washington, D.C. With their help and Professor Bernard Bell's willingness to share a problem he crafted, I have added a section to each chapter called Mastering This Topic, which is based on a running hypothetical involving an ordinance prohibiting vehicles in the park. I believe the new section will greatly aid your mastery of the subject.

I would also like to thank my research assistants, Ashley Turner and Dianna Lee, for all their invaluable help and great senses of humor.

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Linda D. Jellum  
Bethesda, Maryland  
April 2013

## Dedication to the First Edition

This book is dedicated to my husband and children, who have not seen as much of me this year as they would have preferred, and to my parents, who have been there to guide and advise me for so many years.

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Linda D. Jellum  
Macon, Georgia  
April 2008

# Preface

When I graduated from law school, classes on statutory interpretation (or leg-reg) did not exist. When I started teaching at Mercer University School of Law, I was assigned to teach a mandatory course called Statutory Law and Analysis. I knew little about the topic at that time. I skimmed the books that existed but was unhappy with all of them (as law professors often are). Ultimately, I wrote my own. During that process, I learned that statutory interpretation is a skill, not doctrine. But in many schools, it is still taught like other first-year courses, using the case method and Socratic dialogue. And while cases surely do show how arguments about meaning can be made, the cases do not show how to identify the relevant language in a statute, how to explain what that language means using the various sources of meaning in a logical order, nor how to counter an opponent's arguments about meaning. Understanding these skills is essential for you to master this topic. And this book will help you do so.

Although Mercer was a pioneer in this area, after I wrote the first edition of this text, many law schools followed suit and added leg-reg courses to their curriculum. Typical leg-reg courses include a little bit of legislation, a little bit of statutory interpretation, and a little bit (often more) of administrative law. I have expanded this text during the last two editions to more comprehensively cover the administrative law piece of leg-reg so that this text will be useful to you, regardless of what your course is called.

This book is organized as follows. After an introduction, Chapter 2 describes the legislative process. Chapter 3 then explains the current approaches to separation of powers, both generally and as applied to interpretation issues. Next, Chapter 4 explains the various statutory interpretation theories and sources of meaning. Understanding theory is critical because judges approach the interpretive process in different ways (just think about Justices Ginsburg and Thomas). Then, Chapters 5 through 8 examine the various intrinsic sources of meaning, such as the text, the grammar, the punctuation, the linguistic canons, and the act's components. Chapters 9 through 11 explain the various extrinsic sources of meaning, including the legislative history and the statutory purpose. Chapter 12 surveys the policy-based sources: those based on the U.S.

Constitution and prudential considerations. The next two chapters, Chapter 13 through 14, introduce you to the administrative state. These chapters explain what federal agencies are, what they do, why they do it, and how they do it. Chapter 15 rounds out the administrative law chapters with a discussion of the standard of review a court will use to evaluate the legitimacy of an agency action, including an agency's interpretation of a statute. We have come full circle!

Finally, Chapter 16 identifies a step-by-step approach you can use to resolve questions about interpretation, whether to approach problems in class discussion, to answer questions on an exam, or to resolve a problem in practice. It is a checklist with footnoted citations you can use in your own work. I anticipate it will become your favorite chapter.

I hope you find this topic as fascinating as I do, but if not, this text will provide a blueprint for you to become a master of statutory interpretation, legislation, and regulation.

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