Modern Statutory Interpretation

Modern Statutory Interpretation

Problems, Theories, and Lawyering Strategies

Linda D. Jellum

David Charles Hricik

Carolina Academic Press
Durham, North Carolina

ISBN 1-59460-142-9
LCCN 2006923930

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Contents

Table of Cases **xiii**

Table of Authorities **xvii**

Introduction **xix**

A. Why Statutory Interpretation Matters More Than You Might Think and Requires Its Own Skill Set xix
B. How This Book Will Teach These New Skills xx

Chapter 1 An Overview **3**

A. The Statutorification of U.S. Law 3
B. The Sources for Statutory Interpretation 5
C. An Introduction to the Approaches to Statutory Interpretation 7
Notes and Questions 8
BEISWENGER v. PSYCHIATRIC SEC. REVIEW BD. 9
Notes and Questions 14
Problem 1-1 15
Problem Materials 15
D. Why Study Statutory Interpretation? 16

Chapter 2 An Overview of Legislative Process **19**

A. The Legislative Process 20
Notes and Questions 24
Problem 2-1 26
B. Judicial Deference to Internal Legislative Processes 27
DES MOINES REGISTER & TRIBUNE CO. v. DWYER 28
Notes and Questions 32

Chapter 3 Determining the Meaning of the Text: Words, Punctuation, and Grammar **35**

A. Determining the Meaning of Individual Words: The Plain Meaning Rule 35
1. When to Give Words Ordinary Meaning 35
PATRIE v. AREA COOP. EDUC. SERV. 35
Notes and Questions 37
DIXON v. FLORIDA 40
MADDOX v. FLORIDA 41
Notes and Questions 42
2. When to Give Words Technical or Contextual Meaning 43
ST. CLAIR v. COMMONWEALTH 43
Notes and Questions 46
Problem 3-1 47

Problem Materials 47
SMITH v. U.S. 48
BAILEY v. U.S. 49
Notes and Questions 50
B. Determining Meaning Through Punctuation and Grammar 51
1. The General Punctuation Rule 51
U.S. NAT'L BANK OF OR. v. INDEP. INS. AGENTS OF AM., INC. 54
Notes and Questions 55
2. Specific Rules: Commas and the Rule of Last Antecedent 56
a. Commas 56
PETERSON v. MIDWEST SECURITY INS. CO. 56
Notes and Questions 59
b. The Rule of Last Antecedent 60
IN RE FORFEITURE OF 1982 FORD BRONCO 61
STATE v. ONE 1990 CHEVROLET PICKUP 62
Notes and Questions 63
3. Grammar: Rules and Exceptions 64
a. Conjunctive or Disjunctive: "And" Versus "Or" 64
COMPTROLLER OF THE TREASURY v. FAIRCHILD INDUS., INC. 64
Notes and Questions 65
b. Singular and Plural, Masculine, Feminine, and Neuter Words 66
Notes and Questions 67
Problem 3-2 70
Problem Materials 70

Chapter 4 Beyond the Text: Absurdity & Ambiguity 73

A. Absurdity (The Golden Rule Exception) 74
ROBBINS v. CHRONISTER 75
Notes and Questions 78
B. Ambiguity 80
STATE ex rel. KALAL v. CIRCUIT COURT 81
Notes and Questions 85
C. Absurd or Ambiguous and Does It Matter? 86
GREEN v. BOCK LAUNDRY MACH. CO. 87
Notes and Questions 90
Problem 4-1 91
Problem Materials 92

Chapter 5 Approaches to Statutory Interpretation 93

A. The Three Dominant Approaches to Statutory Interpretation 95
1. Textualism 95
2. Intentionalism 97
3. Purposivism 99
B. Judicial Disagreement over the Competing Approaches 101
STATE v. COURCHESNE 103
Notes and Questions 107
Problem 5-1 109
Problem Materials 110
The Case of the Speluncean Explorers 110
Problem Questions 117

C. Legislative Efforts to Direct an Approach to Interpretation 118
1. Textualist Statutory Directives 118
2. Intentionalist and Purposivist Statutory Directives 119
Notes and Questions 120
Problem 5-2 121

Chapter 6 The Role of Components 123

A. Long and Short Titles 124
1. The Differences Between Long and Short Titles 124
2. The Role of Long and Short Titles 124
CHURCH OF THE HOLY TRINITY v. U.S. 125
Notes and Questions 126
CAMINETTI v. U.S. 127
Notes and Questions 129
B. Preambles, Purpose Clauses, and Legislative Findings 130
1. The Role of Preambles 130
2. Judicial Treatment of Preambles 131
COMMONWEALTH v. BESCH 131
Notes and Questions 134
Problem 6-1 135
Problem Materials 136
C. The Purview: The Substantive Provisions 136
1. Definitions 137
PEOPLE v. LEAL 137
Notes and Questions 140
2. Responsibility, Administrative, and Enforcement Provisions 141
Problem 6-2 143
Problem Materials 143

Chapter 7 The Textual Canons 145

A. When Should the Textual Canons Affect Plain Meaning? 145
B. The Rule of Lenity: An Introduction 147
C. The Common Textual Canons 147
1. The Rule Against Surplusage 147
FELD v. ROBERT & CHARLES BEAUTY SALON 148
Notes and Questions 150
2. Noscitur a Sociis 151
People v. Vasquez 152
Notes and Questions 157
Problem 7-1 159
3. Ejusdem Generis 159
COMMONWEALTH v. PLOWMAN 160
Notes and Questions 164
4. Expressio (or Inclusio) Unius Est Exclusio Alterius 165
DICKENS v. PURYEAR 166
Notes and Questions 168
Problem 7-2 168
Problem Materials 168
5. The Presumption that Identical Words in the Same Statute Have Identical Meaning 169

JENSEN v. ELGIN, JOLIET & EASTERN RY. CO. (1961) 169
JENSEN v. ELGIN, JOLIET & EASTERN RY. CO. (1962) 171
Notes and Questions 172
6. In Pari Materia 172
a. The Whole Act Rule 173
RHYNE v. K-MART CORP. 173
Notes and Questions 175
b. The Same Word in Related Statutes Should Have the Same Meaning 175
COMMONWEALTH v. SMITH 176
Notes and Questions 180
7. Provisos 181
LEXINGTON EDUC. ASS'N. v. LEXINGTON 182
Notes and Questions 183
Problem 7-3 184
Problem Materials 185
D. The Textual Canons in Harmony 185
BABBITT v. SWEET HOME CHAPTER COMMUN. 186

Chapter 8 Legislative History 191

A. Legislative History: A Continuum 192
IN THE MATTER OF SINCLAIR 192
IN RE IDALSKI 196
Notes and Questions 200
Problem 8-1 203
Problem Materials 203
B. The Indeterminacy of Legislative History 205
Unlocking The Mysteries Of Holy Trinity: Spirit, Letter, and History in Statutory Interpretation 206
Notes and Questions 208
C. When Legislative History Conflicts 210
UNITED STEELWORKERS v. WEBER 210
Notes and Questions 219
Problem 8-2 221
Problem Materials 221
Legislative History 222

Chapter 9 The Impact on Meaning of Post-Interpretation Legislative Silence 225

A. Post-Interpretation Legislative Inaction 226
FLOOD v. KUHN 227
Notes and Questions 229
BOCCHINO v. NATIONWIDE MUT. FIRE INS. CO. 230
Notes and Questions 234
B. What, Exactly, Is "Silence"? 235
FOOD & DRUG ADMIN. v. BROWN & WILLIAMSON TOBACCO CORP. 237
Notes and Questions 242
Problem 9-1 243

Chapter 10 Finding and Using Purpose 245

A. The Evolving Role of Purpose 245

HEYDON'S CASE 246
Notes and Questions 247
B. Finding Purpose 248
KENTUCKY OFF-TRACK BETTING, INC. v. McBURNEY 249
Notes and Questions 250
Problem 10-1 251
Problem Materials 252
C. Using Purpose in Interpretation 253
1. Using Purpose to Resolve Ambiguity or Absurdity 253
HEPPNER v. ALYESKA PIPELINE SERV. CO. 254
Notes and Questions 256
2. Using Purpose to Confirm the Plain Meaning 257
CHURCH OF SCIENTOLOGY v. U.S. 257
Notes and Questions 263
3. Using Purpose to Defeat the Plain Meaning 264
CHURCH OF THE HOLY TRINITY v. U.S. 264
Notes and Questions 267
OHIO DIV. OF WILDLIFE v. CLIFTON 268
Notes and Questions 270
Problem 10-2 271

Chapter 11 Statutes and the Common Law 273

A. Statutes in Derogation of the Common Law 273
BEHRENS v. RALEIGH HILLS HOSPITAL, INC. 274
COHEN v. RUBIN 276
Notes and Questions 277
Problem 11-1 278
Problem Materials 278
ENGLE v. FINCH 279
B. Remedial Statutes 280
BURCH v. SECRETARY OF HEALTH & HUMAN SERV. 281
Notes and Questions 285
Problem 11-2 286

Chapter 12 Special Provisions 289

A. Severability Provisions 289
ELLIOTT v. VIRGINIA 290
Notes and Questions 291
B. Inseverability Provisions 293
LOUK v. CORMIER 293
Notes and Questions 298
Problem 12-1 299
C. Effective Date Provisions and Retroactivity 299
1. Effective Date Provisions 299
FOWLER v. STATE 300
Notes and Questions 303
2. Retroactivity 303
a. General Rule: Prospective Effect 303
McCLUNG v. EMPLOYMENT DEV. DEP'T 304
Notes and Questions 308

b. Defining Retroactivity 309
STATE ETHICS COMM'N v. EVANS 309
Notes and Questions 315
Problem 12-2 315
D. Statutes Directing *Specific Aspects* of Interpretation 316
TEX. NAT. RES. & CONSERV. COMM'N v. WHITE 317
Notes and Questions 318

Chapter 13 Conflicting Statutes and Similar Issues 319

A. Conflicting Statutes 319
1. Last-Enacted Rule: General v. Specific Statutes 319
WILLIAMS v. KENTUCKY 320
Notes and Questions 322
2. When Statutes Conflict: Implied Repeal 323
MORTON v. MANCARI 323
Notes and Questions 325
TENNESSEE VALLEY AUTH. v. HILL 326
Notes and Questions 334
Problem 13-1 335
B. The Clear Statement Rule 336
OREGON v. ASHCROFT 336
Notes and Questions 340

Chapter 14 Adopting Judicial Interpretations of Similar Statutes from Other Jurisdictions 343

A. Other Jurisdictions' Interpretation of Model or Uniform Acts 343
B. Adopting the Judicial Interpretations of a Borrowed Statute 344
VAN HORN v. WILLIAM BLANCHARD CO. 345
Notes and Questions 348
C. Interpretations of Similar Statutes from Other States 349
STATE v. GERMONTO 349
Notes and Questions 354
Problem 14-1 355
Problem Materials 355

Chapter 15 Remedies, Implied Causes of Action, and Related Issues 357

A. Statutory Remedies: Exclusive or Not? 357
ORLOFF v. LOS ANGELES TURF CLUB, INC. 357
Notes and Questions 359
B. Implied Causes of Action 360
OFFICE PLANNING GROUP, INC. v. BARAGA-HOUGHTON-KEWEENAW CHILD DEV. BD. 361
Notes and Questions 366
C. The Contours of Implied Actions 368
JACKSON v. BIRMINGHAM BD. OF EDUC. 368
Notes and Questions 373
Problem 15-1 374

Chapter 16 The Impact of Constitutions on Interpretation 375

A. Avoiding Conflicts Between Statutes and Constitutions 375
U.S. v. MARSHALL 376
Notes and Questions 380
Problem 16-1 382
Problem Materials 383
U.S. v. TAYLOR 383
U.S. v. RODRIGUEZ-RIOS 385
B. The Rule of Lenity 386
MODERN MUZZLELOADING, INC. v. MAGAW 387
Notes and Questions 390
Problem 16-2 392
Problem Materials 392
C. Ex Post Facto Laws 393
PEOPLE v. LEROY 394
Notes and Questions 401
PEOPLE OF THE STATE OF MICHIGAN v. SCHAEFER 402
Notes and Questions 406
Problem 16-3 406

Chapter 17 The Impact of Agency Interpretations 409

A. Giving Deference to Agency Interpretations 409
1. Chevron's Two Step Test 409
CHEVRON U.S.A., INC. v. NATURAL RESOURCES DEF. COUNCIL, INC. 410
Notes and Questions 412
2. Examining Chevron's Step One 414
MISSISSIPPI POULTRY ASS'N, INC. v. MADIGAN 414
Notes and Questions 422
B. When Agencies and Courts Disagree 423
HAMILTON v. CATERPILLAR, INC. 423
GARRETT v. RUNYON 425
Notes and Questions 426
Problem 17-1 426
Problem Materials 427

Appendix A Canons of Construction 429

Appendix B The College Fire Prevention Act 433

Index 437

Table of Cases

Advantage Capital Mgmt. v. Northfield, 51
Alaska Airlines, Inc. v. Brock, 289
Alexander v. Sandoval, 360, 367, 372
Almendarez-Torres v. U.S., 380
Am. Meat Inst. v. Barnett, 220
Am. Online, Inc. v. U.S., 220
Atascadero State Hosp. v. Scanlon, 336
Atkins v. Deere & Co., 123
Atlantic Cleaners & Dryers v. U.S., 169, 418

Babbitt v. Sweet Home Chapter Commun., 186, 281, 388, 390
Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 281, 388
Bailey v. U.S., 49
Baker v. Carr, 28, 30
Bank One v. Midwest Bank & Trust Co., 143
Bautista v. Star Cruises, 137
Bd. of County Comm'rs v. Vail Assocs., Inc., 121
Bedrock Ltd., LLC., v. U.S., 40
Behrens v. Raleigh Hills Hospital, Inc., 274
Beiswenger v. Psychiatric Sec. Review Bd., 9, 14
Bellsouth Telecomm., Inc. v. MCI Metro Access Transmission Serv., Inc., 340
BFP v. Resolution Trust Corp., 336
Blanchard v. Bergeron, 98, 203
Blankfeld v. Richmond Health Care, Inc., 278
Bob Jones Univ. v. U.S., 270
Bocchino v. Nationwide Mut. Fire Ins. Co., 230
Borella v. Borden Co., 100
Bown v. Gwinnett County School Dist., 251
Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R., 136
Buckley v. Estate of Pirolo, 349
Burch v. Secretary of Health & Human Serv., 281, 340
Burns v. U.S., 79
Busch v. State, 120
Butterbaugh v. Dep't of Justice, 226

Cabatbat v. County of Hawai'i Dep't of Water Supply, 286
Cabell v. Markham, 245
Cal. Dep't of Corrections v. Morales, 394
Caminetti v. U.S., 127, 129, 195-196, 247
Cannon v. Univ. of Chicago, 363, 368, 371
Carmel Hollow Assoc. Ltd. Partnership v. Town of Bethlehem, 109
Chapman v. U.S., 376, 380
Chickasaw Nation v. U.S., 148
Chisom v. Roemer, 101
Church of Scientology v. U.S., 257
Church of the Holy Trinity, 74, 96, 125-127, 129, 198, 205-208, 212, 254, 264, 267, 333
Circuit City Stores, Inc. v. Adams, 97, 247
City of Columbiana v. J&J Car Wash, Inc., 180
Cleveland v. U.S., 169, 226
Clinton v. City of N.Y., 79
Cockrum v. Fox, 277
Cohen v. Comm'r of the Div. of Med. Assistance, 101
Cohen v. Rubin, 276
Collins v. Youngblood, 394
Commonwealth v. Baldwin, 135
Commonwealth v. Besch, 131
Commonwealth v. Gallant, 175-178
Commonwealth v. Henninger, 69
Commonwealth v. O'Keefe, 147, 386
Commonwealth v. Plowman, 160
Commonwealth v. Shedlock, 391
Commonwealth v. Smith, 176

Comptroller of the Treasury v. Fairchild Indus., Inc., 64
Corfan Banco Asuncion Paraguay v. Ocean Bank, 66
Corkill v. Knowles, 277
Correctional Servs. Corp. v. Malesko, 360
Cort v. Ash, 360, 362-363
Cotto v. Citibank, 17

Demchuk v. State Dep't of Health Servs., 64
Dep't of Labor & Indus. v. Gongyin, 280
Des Moines Register & Tribune Co. v. Dwyer, 28, 32
Dickens v. Puryear, 37, 166
Dist. of Columbia v. Thompson, 359
Dixon v. Florida, 40
Duncan v. Walker, 147
Durst v. Newby, 40

Edwards v. Aguillard, 23
Elliott v. Virginia, 290
Ernst v. Burdick, 367
Evans v. State, 121, 309
Ewing's Lessee v. Burnet, 55
Exxon Mobil Corp. v. Allapattah Serv. Inc., 206, 209-210

Fed. Election Comm'n v. Arlen Specter '96, 64
Feld v. Robert & Charles Beauty Salon, 148
Fletcher v. Coney Island, Inc., 359
Flood v. Kuhn, 227
Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 421, 427-428, 423
Fowler v. State, 300
Franklin v. Florida, 32-33, 124
Fust v. Attorney General, 33

G.C. Timmis & Co. v. Guardian Alarm Co., 157
Garcia v. U.S., 22, 193
Gay & Lesbian Law Students Ass'n v. Bd. of Trustees, 183
Gen. Dynamics Land Sys., Inc. v. Cline, 22
Green v. Bock Laundry Mach. Co., 79, 87
Gregory v. Ashcroft, 336
Guiterrez v. Ada, 169

Hanson v. Gass, 131
Harrisburg v. Franklin, 191
Harter v. North Dakota Dep't of Transp., 390
Heimbach v. State, 27
Helvering v. Gregory, 102
Heppner v. Alyeska Pipeline Serv. Co., 254
Heydon's Case, 246
Homebuilders Ass'n v. Scottsdale, 66

In re ADC Telecommunications, Inc. Sec. Litig., 315
In re Butler, 20
In re Carlson, 23
In re Compensation of Williams, 70
In re Duda, 21
In re Forfeiture of 1982 Ford Bronco, 61
In re Greg H., 141
In re Idalksi, 196
In re Silicon Graphics, Inc. Sec. Litig., 23
In re Tiney-Bey, 390
In re Virtual Network Serv. Corp., 203
In the Matter of Sinclair, 192
Indep. Ins. Agents of Am., Inc. v. Clarke, 56
Intermountain Slurry Seal v. Labor Comm'n, 247

J.I. Case Co. v. Borak, 360, 362
Jackson v. Birmingham Bd. of Educ., 368
Jensen v. Elgin, Joliet & Eastern Ry. Co., 169, 171
Jett v. Municipal Court, 40
John v. U.S., 197, 340
Johnson v. Transportation Agency, 235
Jones v. State, 159
JRS Builders, Inc. v. Neunsinger, 309
Jurgensen v. Fairfax County, 131

Kavolchyck v. Goldman, 131
Kentucky Off-Track Betting, Inc. v. McBurney, 249
Keup v. Wis. Dept. Health & Family Serv., 86
Keystone Ins. Co. v. Houghton, 317, 391
Klehr v. A. O. Smith, Corp., 317
Koons Buick Pontiac GMC, Inc. v. Nigh, 96, 201

Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 373
Landsgraf v. USI Film Prods.,, 303
Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 166
LeFever v. State, 102

Lexington Educ. Ass'n v. Lexington, 182
Limited, Inc. v. C.I.R., 151
Local Union No. 38 v. Pelella, 182
Lostritto v. Community Action Agency of New Haven, Inc., 273
Louk v. Cormier, 293

Maddox v. Florida, 42
Marbury v. Madison, 3, 28, 121, 304, 366, 375
Mayor of City of Lansing v. Mich. Pub. Serv. Comm'n, 79, 81
McClung v. Employment Dev. Dep't, 304
MCI Telecomms. Corp. v. Am. Tel. & Tel. Co., 38
McKinney v. Robbins, 164
McNally v. U.S., 391
Meade v. Freeman, 326
Modern Muzzleloading, Inc. v. Magaw, 387
Morton v. Mancari, 323, 330
Mun. of Anchorage v. Sisters of Providence in Wash., Inc., 102
Murray v. The Charming Betsy, 375
Myers v. Philip Morris Co., Inc., 304

Napoletano v. CIGNA Healthcare of Conn., Inc., 367
Nat'l Fire Ins. Co. v. Califinvest, 374
Nat'l Petroleum Refiners Ass'n v. FTC, 166
Neal v. Clark, 151
New Castle County, DE v. Nat'l Union Fire Ins. Co., 159
Nix v. Hedden, 46
NLRB v. Catholic Bishop, 375, 381
Nunnally v. State Dep't of Public Safety & Corrections, 390

O'Sullivan v. Rhode Island Hosp., 277
Ober United Travel Agency, Inc. v. U.S. Dep't of Labor, 286
Occhino v. Grover, 51
Oden v. Bd. of Admin., 22
Office Planning Group, Inc. v. Baraga-Houghton-Keweenaw Child Dev. Bd., 248, 361
Ohio Div. of Wildlife v. Clifton, 267-268
Olmsted v. Pruco Life Ins. Co. of N.J., 367
Oregon v. Ashcroft, 336
Orloff v. Los Angelese Turf Club, Inc., 357
Overseas Educ. Ass'n, Inc. v. Federal Labor Relations Auth., 203

Patrie v. Area Coop. Educ. Serv., 35, 40
Paul Dinto Elec. Contractors, Inc. v. City of Waterbury, 109
Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 33
People of the State of Michigan v. Schaefer, 402
People v. Avery, 387
People v. Ditta, 391
People v. Fields, 165
People v. Jacques, 165
People v. Leal, 137, 140
People v. Leroy, 394
People v. Superior Court, 391
People v. Valentine, 140
People v. Vasquez, 152
Peterson v. Midwest Security Ins. Co., 56
Pileri Indus., Inc. v. Consolidated Indus., Inc., 344
PRB Enterp., Inc. v. S. Brunswick Planning Bd., 130
Pub. Citizen v. U.S. Dep't of Justice, 74, 79

Reno v. Koray, 386
Republic of Austria v. Altmann, 315
Rhyne v. K-Mart Corp., 173
Robbins v. Chronister, 75

S.D.E.A. v. Barnett, 220
Samara Dev. Corp. v. Marlow, 182
Samish Indian Nation v. U.S., 281
Santa Fuel, Inc. v. Varga, 286
Sanzi v. Shetty, 277
Schultz v. Natwick, 303
Schwegmann Bros. v. Calvert Distillers Corp., 203
Seahorse Marine Supplies, Inc. v. Puerto Rico Sun Oil Co., 286
Silvers v. Sony Pictures Entertainment, Inc., 166
Silverstreak, Inc. v. Wash. St. Dep't of Labor & Indus., 159
Sloan v. Wilkins, 33, 292
Smith v. Doe, 394, 402
Smith v. U.S., 48, 317, 385, 394, 402
Smith v. Yurkovsky, 86
Spector v. Norwegian Cruise Line, Ltd., 340
St. Clair v. Commonwealth, 43
Stark v. Advanced Magnetics, Inc., 60
State Ethics Comm'n v. Evans, 309
State ex rel. Helman v. Gallegos, 102

State ex rel. Kalal v. Circuit Court, 80-82, 86, 101
State v. Bodden, 52
State v. Brown, 120
State v. Conyers, 322
State v. Courchesne, 8, 100-101, 103, 108-109, 118, 202, 209, 245, 247, 386
State v. Germonto, 349
State v. One 1990 Chevrolet Pickup, 62
State v. Phillips, 123
State v. Schluter, 394
State v. Simms, 182
State v. Stenklyft, 86
State v. Van Woerden, 165
Stebbens v. Wells, 159, 165
Stebbens v. Wells, 159, 165
Stratmeyer v. Stratmeyer, 235
Stryker Corp. v. Director, Div. of Taxation, 151
Sullivan v. Finkelstein, 241, 243
Sweeney v. Tucker, 32
Swierkiewicz v. Sorema, N.A., 166

Tello v. McMahon, 101
Tennessee Valley Auth. v. Hill, 326
Tex. Nat. Res. & Conserv. Comm'n v. White, 317-318, 340
Thornburgh v. Am. College of Obstetricians & Gynecologists, 148
Townes v. Commonwealth, 390
Train v. Colo. Pub. Interest Research Group, Inc., 103
Tuck v. Blackmon, 28, 33

U.S. ex rel. Attorney General v. Delaware & Hudson Co., 375
U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc., 52, 54
U.S. v. Am. Trucking Ass'ns, 103, 246, 270
U.S. v. Cleveland Indians Baseball, 169
U.S. v. Falvey, 202
U.S. v. Gonzalez, 386
U.S. v. Jackson, 203, 289
U.S. v. Laws, 126, 267, 366
U.S. v. Marshall, 125, 376, 380
U.S. v. Pabon-Cruz, 203
U.S. v. Rodriguez-Rios, 385
U.S. v. Ron Pair Enterps., Inc., 55
U.S. v. Salim, 203
U.S. v. Sproed, 40
U.S. v. Taylor, 383
U.S. v. Thompson/Center Arms Co., 386
U.S. v. X-Citement Video, Inc., 79
Union Bank v. Wolas, 96
United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Ass'n, 172
United Steelworkers v. Weber

Van Horn v. Blanchard Co., 67, 345
Van Reken v. Darden, Neef & Heitsch, 43
Village of Chatham v. County of Sangamon, 181
Washington Metro. Area Transit Auth. v. Johnson, 273
Watson v. California Fair Political Practices Comm'n, 32
Williams v. Kentucky, 320, 325
Wilt v. Brunswick Plaza L.L.C., 101
Wood v. Univ. of Utah Med. Ctr., 251

Table of Authorities

Barrett, Amy Coney, "Statutory Stare Decisis in the Courts of Appeals," 73 Geo. Wash. L. Rev. 317 (2005), 229

Bell, Bernard W., "Metademocratic Interpretation and Separation of Powers," 2 N.Y.U. J. Legis. & Pub. Pol'y 1 (1998), 99

Breyer, Stephen, "On the Uses of Legislative History in Interpreting Statutes," 65 Cal. L. Rev. 845 (1992), 23, 97-98, 165, 247

Calebresi, Guido, *A Common Law for the Age of Statutes,* (Harvard Univ. Press. 1982), 4, 225, 383

Chomsky, Carol, "Unlocking the Mysteries of Holy Trinity: Spirit, Letter, and History in Statutory Interpretation," 100 Colum. L. Rev. 901 (2000), 96, 206

Dougherty, Veronica M., "Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation," 44 Am. U.L. Rev. 127 (1994), 74

Easterbrook, Frank H., "Statutes' Domains," 50 U. Chi. L. Rev. 533 (1983), 35, 91, 95, 103, 160

Easterbrook, Frank H., "The Role of Original Intent in Statutory Construction," 95

Easterbrook, Frank H., "What Does Legislative History Tell Us?," 66 Chi.-Kent L. Rev. 441 (1991), 91, 103

Eskridge, William N. Jr. & Frickey, Philip P., "The Supreme Court, 1993, Term Foreword: Law as Equilibrium," 108 Harv. L. Rev. 26 (1994)

Eskridge, William N. Jr., "Legislative History Values," 66 Chi.-Kent L. Rev. 365 (1990), 5, 191, 236, 267

Farber, Daniel A & McDonnell, Brett H., "Is there a Text in this Class? The Conflict Between Textualism and Antitrust," 14 J. Contemp. Legal Issues 619 (2005), 99

Frankfurter, Felix, "Some Reflections on the Reading of Statutes," 47 Colum. L. Rev. 527 (1947), 247

Frickey, Philip P., "From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Interpretation," 77 Minn. L. Rev. 241 (1992), 5, 17, 264

Fuller, Lon, "Positivism and Fidelity to Law - A Reply to Professor Hart," 71 Harv. L. Rev. 630 (1958), 110, 247

Holmes, Oliver Wendell, "The Theory of Legal Interpretation," 12 Harv.L.Rev. 417 (1899), 195, 234

Johansen, Steven J., "What Does Ambiguous Mean? Making Sense of Statutory Analyis in Oregon," 34 Willamette L. Rev. 219 (1998), 38

Kameny, Fred, "Are Inseverability Clauses Unconstitutional?," 68 Alb. L. Rev. 997 (2005), 298

Llewellyn, Karl N., "Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to be Construed," 3 Vand. L. Rev. 395 (1950), 100, 185, 429

Mank, Bradford C., "Legal Context: Reading Statutes in Light of Prevailing Legal Precedent," 34 Ariz. St. L.J. 815 (2002), 367

Manning, John F., "Legal Realism & The Canons' Revival," 5 Green Bag 283 (2002), 97

Marcin, Raymond B., "Punctuation and the Interpretation of Statutes," 9 Conn. L. Rev. 227 (1977), 51

Marshall, Lawrence C., "Let Congress Do It: The Case for an Absolute Rule of Statutory Stare Decisis, 88 Mich. L. Rev. 177 (1989), 227, 243

McGreal, Paul E., "Slighting Context: On the Illogic of Ordinary Speech in Statutory Interpretation," 52 U. Kan. L. Rev. 352 (2004), 17, 21, 38, 50, 97, 192, 206

Mullins, Morell E. Sr., "Tools Not Rules: The Heuristic Nature of Statutory Interpretation," 30 J. Legis. 1 (2003), 5

Note, "Looking it Up: Dictionaries and Statutory Interpretation," 107 Harv. L. Rev. 1437 (1994), 38

Peters, Ellen Ash, "Common Law Judging in a Statutory World," 43 U. Pitt. L. Rev. 995 (1981), 3

Posner, Richard A., "Statutory Interpretation - In the Classroom and the Courtroom," 50 U. Chi. L. Rev. 800 (1983), 150

Radin, Max, "A Short Way with Statutes," 56 Harv. L. Rev. 388 (1942), 98, 208, 292

Radin, Max, "Statutory Interpretation," 43 Harv. L. Rev. 863 (1930), 98, 208, 292

Rosensaft, Michael, "The Role of Purposivism in the Delegation of Rulemaking Power to the Courts," 29 Vt. L. Rev. 611 (2005), 248

Scalia, Antonin, *A Matter of Interpretation* (Princeton University Press 1997), 95, 151, 209

Shumsky, Michael D., "Severability, Inseverability, and the Rule of Law," 41 Harv. J. on Legis. 227 (2004), 290, 293, 295

Singer, *Statutes and Statutory Construction,* (6th ed. 2000 Norman Singer ed.), 52, 124, 131, 137, 141, 294, 422

Sisk, Gregory C., "Interpretation of Statutory Modification of Joint and Several Liability: Resisting the Deconstruction of Tort Reform," 16 Puget Sound L. Rev. 1 (1992), 273

Solan, Lawrence, "When Judges Use the Dictionary," 68 Am. Speech 50 (1993), 35

Vermeule, Adrian, "Legislative History and the Limits of Judicial Competence: The Untold Story of Holy Trinity Church," 50 Stan. L. Rev. 1833 (1988), 206

Walker, John M., "Judicial Tendencies in Statutory Construction: Differing Views on the Role of the Judge," 58 N.Y.U. Ann. Surv. Am. L. 203 (2001), 3, 74, 91, 95, 100, 248

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!

David Hricik
Linda Jellum

Macon, GA
November 2005