

INTERPREATION OF STATUTES

A. Course Introduction and Objectives

Introduction

When the oral dictates of the Rex¹ created confusions as to what exactly the law is, he decided to write it down. Nevertheless, written law was not the panacea for the kingdom for the very fact that it was written in words that have the inherent quality of indeterminacy. The written law led to the necessity of interpretation of law and multiple understandings.

Interpretation in the context of this course is the act of ascribing meaning to the written word. We do it all the time, mostly without even realizing it. The words get its meaning from the context in which it is used.

Let us try

“Exams are over; I am going to chill out”

“The spooky movie gave me a chill yaar”

“Hey don’t sulk, chill mate...”

In none have we used the word ‘chill’ with the ordinary dictionary meaning of the term. The meaning of ‘chill’ is derived from what the speaker has intended, the associated words supply, and the way and circumstances in which it is uttered. When law is written in words this problem of indeterminacy of language is sure to bother that someone in authority has to interpret what the law means. And we thought by making all laws written, we have untied a knot, perhaps, we were creating more complex knots. No illustration here can surpass the ‘no vehicles in the park’² dilemma.

The course on interpretation of statutes is right there to help you to understand the problem, search for solutions that have already occupied the field of interpretation of statutes and to generate better solutions with our creativity to navigate the labyrinthine process of understanding the meaning of law.

The exercise of interpretation of statutes is done at various planes. 1) By the object of the law; the people who are to abide by the law. We try to understand what the law requires us to do or refrain from doing and modulate our behaviour. 2) By the executive, who attempts to implement the law and 3) by the judiciary that enforces the law. It is the third level that authoritatively proclaims what a particular law means.

Different schools of thought occupy the field of statutory interpretation. They range from the conservative understanding of giving plain meaning to the words of the statutes, attributing meaning according to the intention of the legislature to the most

¹ The imaginary King Rex, who attempted to make perfect laws but failed in eight ways. See, Lon. L. Fuller, *The Morality of Law*, Yale University Press, 1977, Pp 33-94

² H.L.A Hart, *The Concept of Law*, OUP, 1961, Pp 123-26

radical of all, dynamically orienting the meaning to the current day needs even disregarding what might have been the intention of the legislature.

The course will cover a wide array of areas relating to interpretation. The first module will introduce the subject – Interpretation of Statutes. The second module details the basic principles of interpretation, which I am sure will be a rehash for you, who have been interpreting and applying statutes for the past three years of your law school life. If nothing else, just think how many times you have tried to interpret the hostel rules and give meaning to it to suit your convenience. (No pun intended)

The third module (I have confession to make here) is mostly not interpretation of statutes. The module is titled ‘Applied Principles of Interpretation’ (have you noticed how cleverly the word ‘statute’ is made missing from the module caption). It does involve application of the basic principles of statutory interpretation that we learned in the second module, for which we will be focusing on the interpretation of fiscal statute. Then we take a leap outside the realm of statutory interpretation and learn something about interpretation of contracts and treaties, which I consider vital for the kind of work most of you are likely to land up in.

The last module is the anchor of the interpretation business so far done in the course. We will moor the entire learning by far in certain theoretical premises. Don’t be put off by the word theory. I assure that it is exciting to find that in Interpretation of Statutes course, theory and practice just complement each other.

B. OBJECTIVES

1. Get you more closer to your career goals
2. Familiarization of the basic canons and principles of interpretation of statutes
3. Equip you with the practical knowhow of interpretation in selected fields of law
4. Generate a theoretical understanding of the subject that will develop skills to deal with areas that may not be taught in the course

C. COURSE STRUCTURE

Module I: *Introduction to Interpretation*

- Difference between Interpretation and Construction (?)
- The Language Problem in Interpretation
- Recent Trends in Interpretation

Readings

Books

1. P. St. J Langan, Maxwell on The Interpretation of Statutes, 12th edn., Tipathi, 1976
2. M.N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths 2007
3. G.P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa, 2010

Articles

1. Peter M. Tiersma, The Ambiguity of Interpretation: Distinguishing Interpretation from Construction, 73. Wash. U. L. Q 1095
2. Jeremy Waldron, Vagueness in Law and Language: Some Philosophical Issues, 82 Cal.L.Rev.50
3. George Costello, Statutory Interpretation: General Principles and Recent Trends, Report for Congress, 2006, Congressional Research Service, available at <http://www.coherentbabble.com/signingstatements/CRS/CRS-ON-97-589.pdf>

Module II: *Basic Principles of Statutory Interpretation*

- Canons of Construction
- Basic Principles of Interpretation
 - a. Literal Construction
 - b. Mischief Rule
 - c. Intentionalist Construction
 - d. Purposive Construction
 - e. Harmonious Construction
 - f. Beneficial Construction
 - g. Restrictive Construction
- Internal Aids to Construction
 - a. Long Title
 - b. Preamble
 - c. Headings
 - d. Marginal Notes
 - e. Punctuation
 - f. Definition Clause

- g. Proviso
- h. Explanation
- i. Illustration
- j. Schedules
- External Aids to Construction
 - a. Parliamentary History
 - b. Context
 - c. Later Developments
 - d. Dictionaries
 - e. Foreign Judgments
- Subsidiary Rules of Interpretation
 - a. Non Obstante Clause
 - b. *Causus Omissus*
 - c. *Contemporanea Exposito*

Readings

Books

1. P. St. J Langan, Maxwell on The Interpretation of Statutes, 12th edn., Tipathi, 1976
2. G. P Singh, Principles of Statutory Interpretation, 10th edn., Butterworths Wadhwa, 2010
3. M. N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths, 2007

Articles

1. Jacob Scott, Codified Canons and the Common Law of Interpretation, available at <http://www.georgetownlawjournal.com/issues/pdf/98-2/Scott.PDF>
2. Nunez, Nature of Legislative Intent and the Use of Legislative Documents as Extrinsic Aids to Statutory Interpretation, Cal. WL. L. Rev., 1072 9: 128
3. Randolph, Dictionaries, Plain Meaning, and Context in Statutory Interpretation, Harv. JL& Pub Pol'y, 1994 17: 71
4. Schanck, An Essay on the Role of Legislative Histories in Statutory Interpretation, Law. Libr. J., 1988 90: 391

Module III: *Applied Principles of Interpretation*

- i. Fiscal Statutes
- ii. Interpretation of Contracts
- iii. Interpretation of Treaties

Readings

Books

1. Sukumar Mukhopadhyay, *Interpretation of Fiscal Statutes in India*, Centex Publications, 1999
2. G. P Singh, *Principles of Statutory Interpretation*, 12th edn., Butterworths Wadhwa, 2010
3. M. N Rao, Amita Dhanda, N.S Bindra's *Interpretation of Statutes*, 10th edn., Lexis Nexis Butterworths, 2007
4. Kim Lewison, *The Interpretation of Contracts*, 4th edn., Sweet & Maxwell, 2004

Module IV - *Theoretical Foundations of Statutory Interpretation*

- i. Intentionalist Theories
- ii. Textualist Theories
- iii. Dynamic Theories

Readings

Books

1. William N. Eskridge, *Legislation and Statutory Interpretation*, 2nd edn., Foundation Press, 2006
2. Aharon Barak, *Purposive Interpretation in Law*, Universal, 2007
3. Antonin Scalia (ed.), *A Matter of Interpretation*, Princeton University Press, 1998
4. Ronald Dworkin, *Laws Empire*, Harvard University Press, 1986

Articles

1. Daniel A. Farber, *Do Theories of Statutory Interpretation Matter? A Case Study*, 94 Nw. U.L. Rev. 1409
2. Harold P. Southerland, *Theory and Reality In Statutory Interpretation*, 15 St. Thomas L. Rev. 1 (2002)
3. Cheryl Boudreau, Mathew D. McCubbins, and Daniel B. Rodriguez, *Theories Of Statutory Interpretation: Statutory Interpretation and the Intentional(ist) Stance*, 38 Loy. L.A. L. Rev. 2131 (2005)
4. Richard Primus, *Limits of Interpretivism*, available at, <http://ssrn.com/abstract=1318640>
5. Daniel A. Farber, *Statutory Interpretation and Legislative Supremacy*, 78 Geo. L.J. 281
6. Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. Cin. L. Rev. 849 (1989)

7. Lawrence M. Solan, Theories Of Statutory Interpretation: The New Textualists' New Text, 38 Loy. L.A. L. Rev. 2027 (2005)
8. Andrei Marmor, Theories of Statutory Interpretation: The Immorality of Textualism, 38 Loy. L.A. L. Rev. 2063 (2005)
9. William N. Eskridge, Jr, Dynamic Statutory Interpretation, 135 U. Pa. L. Rev. 1479 (1987)
10. Anthony D'Amato, The Injustice of Dynamic Statutory Interpretation, 64 U. Cin. L. Rev. 911 (1996)

D. WEEKLY READING SCHEDULE

WEEK 1

Introduction to Interpretation

- Difference between Interpretation and Construction (?)
- The Language Problem in Interpretation
- Recent Trends in Interpretation

Readings

Books

1. P. St. J Langan, Maxwell on The Interpretation of Statutes, 12th edn., Tipathi, 1976, Pp 1- 27
2. M.N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths, Pp 4 - 22
3. G.P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa, Pp 1- 43

Articles

1. Peter M. Tiersma, The Ambiguity of Interpretation: Distinguishing Interpretation from Construction, 73. Wash. U. L. Q 1095
2. Jeremy Waldron Vagueness in Law and Language: Some Philosophical Issues, 82 Cal. L. Rev. 50
3. George Costello, Statutory Interpretation: General Principles and Recent Trends, Report for Congress, 2006, Congressional Research Service, <http://www.coherentbabble.com/signingstatements/CRS/CRS-ON-97-589.pdf>

WEEK 2 and 3

Basic Principles of Statutory Interpretation

- Canons of Construction
- Basic Principles of Interpretation
 - a. Literal Construction
 - b. Mischief Rule
 - c. Intentionalist Construction
 - d. Purposive Construction
 - e. Harmonious Construction
 - f. Beneficial Construction
 - g. Restrictive Construction

Readings

Books

1. P. St. J Langan, Maxwell on The Interpretation of Statutes, 12th edn., Tipathi, 1976 Pp 28-75, 76- 91, 92- 104, 105- 136, 264- 313
2. G. P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa 2006, Pp. 3-61, 85-152
3. M. N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths, 2007, Pp., 341- 345, 316- 372, 403- 431, 669- 684

Articles

1. Jacob Scott, Codified Canons and the Common Law of Interpretation, available at <http://www.georgetownlawjournal.com/issues/pdf/98-2/Scott.PDF>
2. Randolph, Dictionaries, Plain Meaning, and Context in Statutory Interpretation, Harv. JL& Pub Pol'y, 1994 17: 71

WEEK 4 and 5

- Internal Aids to Construction
 - a. Long Title
 - b. Preamble
 - c. Headings
 - d. Marginal Notes
 - e. Punctuation
 - f. Definition Clause
 - g. Proviso
 - h. Explanation

- i. Illustration
- j. Schedules

Readings

Books

1. G. P Singh, Principles of Statutory Interpretation, 12th edn., Butterwoths Wadhwa, 2010, Pp. 155- 218

WEEK 6 and 7

- External Aids to Construction
 - a. Parliamentary History
 - b. Context
 - c. Later Developments
 - d. Dictionaries
 - e. Foreign Judgments

Readings

Books

1. G. P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa, 2010, Pp. 219- 297, 349-355
2. M. N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths, 2007, Pp. 804- 858, 914- 934

Articles

1. Nunez, Nature of Legislative Intent and the Use of Legislative Documents as Extrinsic Aids to Statutory Interpretation, Cal. WL. L. Rev., 1072 9: 128
2. Randolph, Dictionaries, Plain Meaning, and Context in Statutory Interpretation, Harv. JL& Pub Pol'y, 1994 17: 71
3. Schanck, An Essay on the Role of Legislative Histories in Statutory Interpretation, Law. Libr. J., 1988 90: 391

WEEK 8

- Subsidiary Rules of Interpretation
 - a. Non Obstante Clause
 - b. *Casus Omissus*
 - c. *Contemporanea Exposito*

Readings

Book

1. G. P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa, 2010, Pp. 364- 376, 67-75, 341- 348

WEEK 9

Applied Principles of Interpretation

Fiscal Statutes

Readings

Books

1. Sukumar Mukhopadhyay, Interpretation of Fiscal Statutes in India, Centex Publications, 1999, Pp. 75-80, 81-182
2. G. P Singh, Principles of Statutory Interpretation, 12th edn., Butterworths Wadhwa: 2010, Pp. 741- 790
3. M. N Rao, Amita Dhanda, N.S Bindra's Interpretation of Statutes, 10th edn., Lexis Nexis Butterworths, 2007, Pp. 1094-1145, 1261-1397

WEEK 10

Interpretation of Contracts

Readings

Book

1. Kim Lewison, The Interpretation of Contracts, 4th edn., Sweet & Maxwell (London:2004) Chapters 1, 2, 3, 5, 6 and 7

Articles

1. Stefan Vogenauer, Interpretation of Contracts: Concluding Comparative Observation, Working Paper No. 7/2007 May 2007, University of Oxford Faculty of Law Research Paper series, available at <http://www.ssrn.com/link/oxford-legal-studies.html>

WEEK 11

Interpretation of Treaties

Readings

Treaty

1. The Vienna Convention on the Law of the Treaties – Section 3

Book

1. Richard Gardiner, Treaty Interpretation, OUP, 2008

Articles

1. Curtis J. M., *Treaties as Contracts: Textualism, Contract Theory, and the Interpretation of Treaties*, 1. 116 Yale L.J. 824
2. Alex Glashauser, *What We Must Never forget When it is a Treaty We are Expounding*, 73 U. Cin. L. Rev. 1243
3. Michael P. Van Alstine, *Dynamic Treaty Interpretation*, 146 U. PA. L. REV. 687, (1998)
4. Dinah Shelton, *Reconcilable Differences? The Interpretation of Multilingual Treaties*, 20 HASTINGS INT'L & COMP. L. REV. 611, 635 (1997)

WEEK 12

Theoretical Foundations of Statutory Interpretation

Intentionalist Theories

Readings

Books

1. William N. Eskridge, *Legislation and Statutory Interpretation*, Second edn., Foundation Press, 2006, Pp. 219 – 256
2. Ronald Dworkin, *Laws Empire*, Harvard University Press (London: 1986) Pp. 45-86, 313- 354

Articles

1. Daniel A. Farber, *Do Theories of Statutory Interpretation Matter? A Case Study*, 94 Nw. U.L. Rev. 1409
2. Harold P. Southerland, *Theory and Reality In Statutory Interpretation*, 15 St. Thomas L. Rev. 1 (2002)
3. Cheryl Boudreau, Mathew D. McCubbins, and Daniel B. Rodriguez, *Theories Of Statutory Interpretation: Statutory Interpretation and the Intentional(ist) Stance*, 38 Loy. L.A. L. Rev. 2131 (2005)

WEEK 13

Textualist Theories

Readings

Books

1. Antonin Scalia (ed.), *A Matter of Interpretation*, Princeton University Press (1998) 3-48, 129-150

Articles

1. Daniel A. Farber, Statutory Interpretation and Legislative Supremacy, 78 Geo. L.J. 281
2. Andrei Marmor, Theories of Statutory Interpretation: The Immorality of Textualism, 38 Loy. L.A. L. Rev. 2063 (2005)
3. Antonin Scalia, Originalism: The Lesser Evil, 57 U. Cin. L. Rev. 849 (1989)
4. Lawrence M. Solan, Theories Of Statutory Interpretation: The New Textualists' New Text, 38 Loy. L.A. L. Rev. 2027 (2005)

WEEK 14

Dynamic Theories

Readings

Books

1. William N. Eskridge, Legislation and Statutory Interpretation, Second edn., Foundation Press (New York: 2006) Pp. 219 – 256
2. Aharon Barak, Purposive Interpretation in Law, Universal, 2007, Pp. 3-60, 61- 82

Articles

1. William N. Eskridge, Jr, Dynamic Statutory Interpretation, 135 U. Pa. L. Rev. 1479 (1987)
2. Anthony D'Amato, The Injustice of Dynamic Statutory Interpretation, 64 U. Cin. L. Rev. 911 (1996)