DYNAMIC STATUTORY INTERPRETATION pdf

1: The injustice of dynamic statutory interpretation â€" Northwestern Scholars

dynamic statutory interpretation The purpose of this Article is to explore the thesis that statutes, like the Constitution and the common law, should be interpreted dy-.

This section needs additional citations for verification. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. March Learn how and when to remove this template message The judiciary interprets how legislation should apply in a particular case as no legislation unambiguously and specifically addresses all matters. Legislation may contain uncertainties for a variety of reasons: Words are imperfect symbols to communicate intent. They are ambiguous and change in meaning over time. Therefore, the court must try to determine how a statute should be enforced. This requires statutory construction. It is a tenet of statutory construction that the legislature is supreme assuming constitutionality when creating law and that the court is merely an interpreter of the law. Nevertheless, in practice, by performing the construction the court can make sweeping changes in the operation of the law. Statutory interpretation refers to the process by which a court looks at a statute and determines what it means. A statute, which is a bill or law passed by the legislature, imposes obligations and rules on the people. Statutes, however, although they make the law, may be open to interpretation and have ambiguities. Statutory interpretation is the process of resolving those ambiguities and deciding how a particular bill or law will apply in a particular case. Assume, for example, that a statute mandates that all motor vehicles travelling on a public roadway must be registered with the Department of Motor Vehicles DMV. If the statute does not define the term "motor vehicles", then that term will have to be interpreted if questions arise in a court of law. A person driving a motorcycle might be pulled over and the police may try to fine him if his motorcycle is not registered with the DMV. If that individual argued to the court that a motorcycle is not a "motor vehicle," then the court would have to interpret the statute to determine what the legislature meant by "motor vehicle" and whether or not the motorcycle fell within that definition and was covered by the statute. There are numerous rules of statutory interpretation. This rule essentially states that the statute means what it says. If, for example, the statute says "motor vehicles", then the court is most likely to construe that the legislation is referring to the broad range of motorised vehicles normally required to travel along roadways and not "aeroplanes" or "bicycles" even though aeroplanes are vehicles propelled by a motor and bicycles may be used on a roadway. In Australia and in the United States, the courts have consistently stated that the text of the statute is used first, and it is read as it is written, using the ordinary meaning of the words of the statute. Below are various quotes on this topic from US courts: Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.: Indeed, "when the words of a statute are unambiguous, then, this first canon is also the last: In the dissent from en banc rehearing of Silveira v. Taylor , U. Supreme Court of Alaska: BP Exploration Alaska Inc. When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. When a statute is clear, however, it is given its plain meaning, and this court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used. This court is very hesitant to interpret a legislative act in a manner contrary to its express language, unless it is clear that a drafting error or omission has circumvented legislative intent. Jefferson 21 Cal. Because the statutory language is generally the most reliable indicator of that intent, we look first at the words themselves, giving them their usual and ordinary meaning. Lawrence 24 Cal. We do not, however, consider the statutory language in isolation, but rather examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts. Acosta 29 Cal. Superior Court People 29 Cal. Court of Appeals for the Second Circuit: The first step is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Court of Appeals of Maryland: Of course, the cardinal rule is to ascertain and effectuate legislative intent. To this end, we begin our inquiry with the words of the statute and, ordinarily, when the

words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also. March Learn how and when to remove this template message Federal jurisdictions may presume that either federal or local government authority prevails in the absence of a defined rule. In Canada , there are areas of law where provincial governments and the federal government have concurrent jurisdiction. In these cases the federal law is held to be paramount. However, in areas where the Canadian constitution is silent, the federal government does not necessarily have superior jurisdiction. Internal and external consistency[edit] It is presumed that a statute will be interpreted so as to be internally consistent. A particular section of the statute shall not be divorced from the rest of the act. The ejusdem generis or eiusdem generis, Latin for "of the same kind" rule applies to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. The rule results that where "general words follow enumerations of particular classes or persons or things, the general words shall be construed as applicable only to persons or things of the same general nature or kind as those enumerated. A hypothetical court may have to determine whether a sword, a taser , or a Japanese throwing star would be properly included in the "other" category of the statute. Here, the term "other dangerous weapons" must be given a meaning of the "same kind genus " as the words of established meaning. A statute shall not be interpreted so as to be inconsistent with other statutes. Where there is an inconsistency, the judiciary will attempt to provide a harmonious interpretation. Statements of the legislature[edit] Legislative bodies themselves may try to influence or assist the courts in interpreting their laws by placing into the legislation itself statements to that effect. These provisions have many different names, but are typically noted as: Findings; Declarations, sometimes suffixed with of Policy or of Intent; or Sense of Congress, or of either house in multi-chamber bodies. Most canons emerge from the common law process through the choices of judges. Proponents of the use of canons argue that the canons constrain judges and limit the ability of the courts to legislate from the bench. Critics argue that a judge always has a choice between competing canons that lead to different results, so judicial discretion is only hidden through the use of canons, not reduced. Textual[edit] Textual canons are rules of thumb for understanding the words of the text. Some of the canons are still known by their traditional Latin names. Plain meaning When writing statutes, the legislature intends to use ordinary English words in their ordinary senses. United States, U. For example, where "cars, motor bikes, motor powered vehicles" are mentioned, the word "vehicles" would be interpreted in a limited sense therefore vehicles cannot be interpreted as including airplanes. Ejusdem generis in a composition of a statute assumes especially the form of: This is usually indicated by a word such as "includes" or "such as. Noscitur a sociis "a word is known by the company it keeps" When a word is ambiguous, its meaning may be determined by reference to the rest of the statute. Reddendo singula singulis or "referring each to each" "When a will says "I devise and bequeath all my real and personal property to A", the principle of reddendo singula singulis would apply as if it read "I devise all my real property, and bequeath all my personal property, to A", since the word devise is appropriate only to real property and the term bequeath is appropriate only to personal property. Lawmaking bodies usually need to be explicit if they intend to repeal an earlier law. Adequate application of law pertinent application of law It is a specific technique of composing canonical texts, which enables drafters to make such texts considerably shorter. It consists in stating in a statute that the set of specific statutory provisions should also be pertinently adequately applied to some other scope of circumstances â€” although these provisions literally do not address these circumstances. For instance, the provisions that regulate the contract of the sale of goods may be ordered to be pertinently applied to the contract of the exchange of goods. Owing to such statutory clauses, the provisions which have been primarily shaped for one legal institution regulate two different legal institutions. The first is this one which is directly regulated by such provisions and the second is this institution which is regulated by such provisions due to the statutory reference made for that purpose. The reference can be made here to one or several statutory provisions. It can, however, also refer to a larger number of such provisions or even refer to a statute as a whole. In consequence of pertinent application of law, in relation to the latter institution, particular provisions can be applied without any modification, with certain modifications they may concern a consequent as well as an antecedent , or even be denied any appllication. The Charming Betsy , 6 U. See, for example, Holy Trinity Church v. United States , [25] or Coco v The Queen. Avoidance of abrogation

of state sovereignty See Gregory v. Ashcroft; [30] see also Gonzales v. Oregon; [31] see also Nevada Dept. Hibbs , [32] except where such would deprive the defendant of bedrock, foundational rights that the Federal Government intended to be the minimum floor that the states were not allowed to fall beneath; Dombrowski v Pfister. See Chickasaw Nation v. United States , U. Deference[edit] Deference canons instruct the court to defer to the interpretation of another institution, such as an administrative agency or Congress. These canons reflect an understanding that the judiciary is not the only branch of government entrusted with constitutional responsibility. Natural Resources Defense Council , U. Avoidance Canon Canon of Constitutional Avoidance If a statute is susceptible to more than one reasonable construction, courts should choose an interpretation that avoids raising constitutional problems. In the US, this canon has grown stronger in recent history. The traditional avoidance canon required the court to choose a different interpretation only when one interpretation was actually unconstitutional. The modern avoidance canon tells the court to choose a different interpretation when another interpretation merely raises constitutional doubts. This rule is based on the assumption that the legislature would not make major changes in a vague or unclear way, and to ensure that voters are able to hold the appropriate legislators responsible for the modification. Leges posteriores priores contrarias abrogant Subsequent laws repeal those before enacted to the contrary, aka "Last in Time" When two statutes conflict, the one enacted last prevails.

2: William Eskridge - Wikipedia

Contrary to traditional theories of statutory interpretation, which ground statutes in the original legislative text or intent, legal scholar William Eskridge argues that statutory interpretation changes in response to new political alignments, new interpreters, and new ideologies. It does so, first.

3: "Dynamic Statutory Interpretation" by William N. Eskridge Jr.

Third, since statutory interpretation is as much agency-centered as judgecentered and since agency executives see their creativity as more legitimate than judges see theirs, statutory interpretation in the modern regulatory state is particularly dynamic.

4: Dynamic Statutory Interpretation â€" William N. Eskridge, Jr. | Harvard University Press

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While Eskridge contends that dynamic statutory interpretation is defensible under any of these theories (though particular interpretations are open to criticism), he concludes that critical pragmatism is the normative political theory he finds most congenial for dynamic interpretation.

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Contrary to traditional theories of statutory interpretation, which ground statutes in the original legislative text or intent, Yale Law School Professor William Eskridge argues that statutory interpretation changes in response to new political alignments, new interpreters, and new ideologies.

7: Statutory interpretation - Wikipedia

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Dynamic theories of legal interpretation can be exemplified by the theory presented by Eskridge () and a group of theories collectively known as 'living constitutionalism' (Strauss).

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