

An Introduction to Statutory Interpretation

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During our lifetimes, statutory law – rather than the common law – has been the primary source of law. As Professor Guido Calabresi has said, “We are in the age of statutes.”¹ And yet, most law schools do not require a class on statutory interpretation; this is a subject we are to somehow learn by osmosis. After law school, it is not a frequent topic for continuing education seminars. The subject is particularly important for transactional attorneys in general and for real estate lawyers in particular because our source of law is heavily statutory. There are statutory provisions that have very little appellate activity (*e.g.*, the mechanic’s lien chapter) because only a few cases are filed each year. By contrast, some areas have many actions filed, but relatively few appellate cases. For example, landlord-tenant law involves thousands of FED and money judgment actions each year, but few cases have enough money at stake to warrant an appeal. Statutory law plays an even greater role in the absence of case law.

The challenges to interpreting texts are obviously not limited to the law. Whether the Bible or Shakespeare, there should be a coherent and thoughtful approach to the text. *Hamlet* does not mean whatever you want it to mean: *there is an intended meaning*. There are other legal texts that we will not consider in this presentation, such as constitutions, agency rules, and contracts. Although they have parallel challenges, there are fundamental differences that warrant treating them separately.

This presentation addresses the following questions:

1. Why is it important to study statutory interpretation?
2. What are the basics of statutory interpretation?
3. What resources are recommended?

¹ A COMMON LAW FOR THE AGE OF STATUTES (Harvard University Press, 1982) at 181.

I. Why it is important to study statutory interpretation.

A. Legal education has not kept pace with the codification movement

In 1870, Christopher Columbus Langdell was appointed the Dean of the Harvard Law School. He set out to reform the school. If the applicant did not have a college degree, he had to pass an entrance exam that included translating from the Latin text of Virgil, Cicero, or Caesar, and he was tested on Blackstone's *Commentaries*. However, his most significant reform was the introduction of the case law method of teaching law.² Textbooks were replaced with casebooks; the lecturer was replaced with the Socratic guide. Cases were to be studied scientifically, "inductively through printed sources."³ It is because of Dean Langdell that all of us learned to study law through the case law approach.

Following the Civil War, an effort began to codify the common law. It was very controversial.⁴ The goal of the Codification movement was to gather the principles of law and assemble them in a simple code similar to the Napoleonic Code.⁵ This movement grew through the 20th Century, particularly with the addition of federal and state administrative codes. (The Code of Federal Registry is enormous.) Yet, the primary methodology for legal education has remained the case law method. Statutory interpretation is a rare topic for continuing legal education conferences.

B. To develop a personal judicial philosophy.

There is a sense in reading some opinions that the statutory or constitutional text does not matter. As an example from constitutional law, Justice Blackmun, writing for the majority in *J.E.B. v. Alabama ex rel. T.B.*, does not even attempt to ground the decision to extend the Batson challenge (precluding the use of race in jury selection) to gender on the Fourteenth Amendment.⁶ Justice Blackmun offers another precedent that

² LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 612 (Simon & Schuster, 2d ed. 1985).

³ *Id.* at 613.

⁴ *Id.* at 403-11 (history of Codification).

⁵ *Id.* at 403.

⁶ 511 U.S. 127 (1994).

untethers text and meaning, and thereby invites others to do the same. *One might agree with the outcome of a case, but the process matters.*

In other instances, it seems that the invocation of the right Latin incantation is enough to achieve the desired result. Justice Kavanaugh's opening paragraphs of a 2016 law review article summarize the frustration for many:

Statutory interpretation has improved dramatically over the last generation, thanks to the extraordinary influence of Justice Scalia. Statutory text matters much more than it once did. If the text is sufficiently clear, the text usually controls. The text of the law is the law. As Justice Kagan recently stated, "we're all textualists now." By emphasizing the centrality of the words of the statute, Justice Scalia brought about a massive and enduring change in American law.

But more work remains. As Justice Scalia's separate opinions in recent years suggest, certain aspects of statutory interpretation are still troubling. In my view, one primary problem stands out. Several substantive principles of interpretation — such as constitutional avoidance, use of legislative history, and *Chevron* — depend on an initial determination of whether a text is clear or ambiguous. But judges often cannot make that initial clarity versus ambiguity decision in a settled, principled, or evenhanded way.

The upshot is that judges sometimes decide (or appear to decide) high-profile and important statutory cases not by using settled, agreed-upon rules of the road, but instead by selectively picking from among a wealth of canons of construction. Those decisions leave the bar and the public understandably skeptical that courts are really acting as neutral, impartial umpires in certain statutory interpretation cases.⁷

Such skepticism can lead to cynicism as to the veracity of statutory interpretation. If the Court can just select a convenient means to its desired end, then it deflates the motive to study statutory interpretation. If the rules aren't followed, why study the rules?

⁷ Brett M. Kavanaugh, *Fixing Statutory Interpretations*, 129 HARV. L. REV. 2118, 2118 (2016) (reviewing ROBERT A. KATZMANN, *JUDGING STATUTES* 54 (Oxford Univ. Press 2016)). See Robert A. Katzmann, *Response to Judge Kavanaugh's Review of Judging Statutes*, 129 HARV. L. REV. 388 (2016). I have attached both articles at end of this presentation. (Dicta: A subscription to the Harvard Law Review is \$60 per year.)

C. Our clients need us to grasp the principles of statutory interpretation.

If the law is our life's work, we must develop a comfort level with statutory interpretation. Statutory interpretation is not just an exercise for judges.

II. Statutory interpretation basics.

A. Begin with the plain meaning.

1. *Why.*

Statutory interpretation begins with the plain meaning of a statute out of respect for the separation of powers. Alexander Hamilton, in speaking about the three branches of the federal government describes the relationship as follows:

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.⁸

(This is where the term “Least Dangerous Branch” comes from in describing the judicial branch.) Hamilton goes on to state:

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.⁹

⁸ THE FEDERALIST NO. 78.

⁹ *Id.*

This beautiful and thoughtful balance between the branches equally applies to state government.

In addition, in the event the courts interpret a statute in a manner that does not comport with what the legislature intended, the legislature has the ability to amend the statute. If the legislature does not respond to the court's interpretation, this leads to the argument of legislative acquiescence. For example, after *Standard Water Control Systems v. Jones*¹⁰ was first decided in 2016, the Iowa legislature soon unanimously passed an amendment to Iowa Code § 572.13A (the Mechanic's Lien and Notice Registration). However, no such legislative response followed *Baumhoefener Nursery, Inc. v. A & D Partnership, II* (2000).¹¹ After twenty years, it would be difficult to argue that the legislature has not acquiesced to the decision.

2. *How.*

Justice Frankfurter offered the following three steps in interpretation: "Read the statute; read the statute; read the statute!"¹² We begin with the statute. However, *what does this mean?* Two cases illustrate how the Iowa Supreme Court follows the plain meaning test.

a. *In re Erpelding* (2018).

In *In re Erpelding*, the Iowa Supreme Court considered whether a provision of the Iowa Uniform Premarital Act (IUPAA) prohibits pre-marital agreement provisions that waive the right to attorney fees when attorney fees are generated in litigating child support, child custody, and spousal support.¹³ The specific language in question in

¹⁰ 888 N.W.2d 673 (Iowa Ct. App. 2016) (constructing an ambiguous phrase by consideration of the purpose of the statute). If a real estate lawyer needed proof of the importance of understanding the basics of statutory interpretation, this case is Exhibit A.

¹¹ 618 N.W.2d 363 (Iowa 2000) (holding that there is no outer limit for how far removed from a property a mechanic's lien claimant need be in order to claim a lien).

¹² Henry J. Friendly, *BENCHMARKS 202* (1967), quoted in RONALD BENTON BROWN AND SHARON JACOBS BROWN, *STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENT* (National Institute for Trial Advocacy, 2d ed. 2011).

¹³ 917 N.W.2d 235, 237 (Iowa 2018).

dispute was Iowa Code § 596.5. This section regulates the matters about which parties may contract in a premarital agreement. It provides in relevant part:

1. Parties to a premarital agreement may contract with respect to the following:

....

g. Any other matter, including the personal rights and obligations of the parties, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a spouse or child to support shall not be *adversely affected* by a premarital agreement.¹⁴

The Appellee argued that § 596.5(2) does not limit the ability to seek child support even if attorney fees have been waived (as they had in their pre-marital agreement). The Appellant maintained that the ability to pursue child support was dependent on having legal counsel to pursue the support.¹⁵

The district court and court of appeals analyzed the question in terms of whether being able to waive attorney fees violates public policy.¹⁶ The Iowa Supreme rejected an analysis based on public policy as a method of statutory interpretation. “We rely, instead, on our well-established principles of statutory interpretation in discerning the meaning of “adversely affected” in section 596.5(2) and conclude a premarital-agreement waiver of attorney fees pertaining to child support or spousal support is unenforceable because it adversely affects a spouse’s or child’s right to support in contravention of section 596.5(2).”¹⁷

Justice Hecht, writing for the majority, began the analysis with a recital of the reliance on the plain meaning of the statute:

“When interpreting a statute, we seek to ascertain the legislature’s intent.” We begin with the text of the statute, construing “technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, ... according to such meaning,” and all others “according to the context and the

¹⁴ Emphasis added.

¹⁵ *Id.* at 239.

¹⁶ *Id.* at 238.

¹⁷ *Id.* at 238-39.

approved usage of the language.” Iowa Code § 4.1(38). After having done so, we determine whether the statute’s language is ambiguous.

A statute is ambiguous “if reasonable minds could differ or be uncertain as to the meaning of a statute.” Ambiguity may arise from the meaning of specific words used and “from the general scope and meaning of a statute when all its provisions are examined.”

If the statute is unambiguous, we do not search for meaning beyond the statute’s express terms. However, if the statute is ambiguous, we consider such concepts as the "object sought to be attained"; "circumstances under which the statute was enacted"; "legislative history"; "common law or former statutory provisions, including laws upon the same or similar subjects"; and "consequences of a particular construction." Iowa Code § 4.6. Additionally, we consider the overall structure and context of the statute, "not just isolated words or phrases."¹⁸

The Court found that because both the Appellant’s and Appellee’s interpretations of § 596.5(2) were reasonable, the statute is ambiguous. The Court then went on to apply tools of statutory construction. After its analysis, the Court held that the attorney fees for child-related issues should be awarded.¹⁹

b. *State v. Nall* (2017).

In *State v. Nall*, the Court considered whether the Defendant violated the theft-by-taking prohibition in Iowa Code § 714.1(1) by withdrawing money from her bank account after depositing counterfeit checks and money orders into her account.²⁰ The Defendant was convicted and the Court of Appeals confirmed the conviction.²¹

Iowa Code § 714.1(1) provides that a person commits “theft by taking” when he or she “[t]akes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.” The elements are therefore: “(1) the defendant took possession or control of property; (2) the defendant did so with the intent to deprive another of that property; and (3) the property belonged to, or was in the possession of, another at the time of the taking.”²² The only issue in dispute

¹⁸ *Id.* at 239 (citations omitted).

¹⁹ *Id.* at 247.

²⁰ 894 N.W.2d 514, 516 (2017).

²¹ *Id.* at 517.

²² *Id.* at 518.

was whether the Defendant took possession or control of property as required by § 714.1(1) “by presenting counterfeit financial instrument in exchange for property.”²³

The opinion was written by Justice Mansfield:

When we are asked to interpret a statute, we first consider the plain meaning of its language. If the statute is unambiguous, we will apply it as written. A statute is ambiguous “if reasonable minds can disagree on the meaning of particular words or the statute as a whole.” For purposes of this initial review for ambiguity, “we assess the statute in its entirety, not just isolated words or phrases.”

We conclude that reasonable minds can differ as to the proper interpretation of the statute, and therefore it is ambiguous. The phrase “[t]akes possession or control” conceivably could refer to *any* situation where the defendant wrongfully obtains possession of another person's property. Alternatively, it may refer only to situations where the defendant deprives another person *involuntarily* of his or her property.

Notably, Iowa Code section 714.1 prescribes ten different ways that a person can commit “theft.” Other theft offenses within the section embrace circumstances where the defendant gets property through a voluntary, but legally tainted, exchange. *See, e.g.*, Iowa Code § 714.1(3) (“Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception.”); *id.* § 714.1(6) (“Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person, or corporation, and obtains property, the use of property, including rental property, or service in exchange for such instrument, if the person knows that such check, share draft, draft, or written order will not be paid when presented.”). The presence of these alternatives suggests that “takes” in subsection 1 may mean something different from just “obtains.”²⁴

As a result of this determination, the Court could then go forward with tools of statutory interpretation. After its analysis, the Court held that the Defendant’s conduct did not constitute theft by taking and the conviction was reversed with instruction to dismiss.²⁵

²³ *Id.*

²⁴ *Id.* (citations omitted).

²⁵ *Id.* at 524.

B. Iowa Code Chapter 4 (Construction of Statutes).

Iowa Code Chapter 4 (attached at the end of this outline) contains fourteen default statutory rules of construction that are to be applied “unless such construction would be *inconsistent with the manifest intent* of the general assembly, or *repugnant to the context of the statute*.”²⁶ This is rightfully a high bar. In the case of the former, it conveys a sense of near unanimous support for a particular proposition; with respect to the latter, it conveys the sense of a scrivener’s error that offends the broad purpose of the statute. The following are some of the key provisions in this chapter.

1. Definitions (4.1 Rules). There are forty definitions in this section. Some are as obvious as “United States”²⁷ and “year,”²⁸ as well as some less obvious such as the definition of “livestock” includes ostrich, rhea, or emu.²⁹ Other definitions have more significance such as “shall, may, and must,”³⁰ and “written – in writing – signature.”³¹ You should familiarize yourself with this section.

2. Common law rule of construction (4.2). “The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.”

This code section has many cases in the annotation because it provides such broad direction for the posture of interpretation: liberal construction over strict construction. The Courts are invited into a gap-filling role with the goal of “obtaining justice.”

²⁶ Iowa Code § 4.1 (emphasis added).

²⁷ Iowa Code § 4.1(35) “includes all the states.”

²⁸ Iowa Code § 4.1(40) “twelve consecutive months.”

²⁹ Iowa Code § 4.1(13A).

³⁰ Iowa Code § 4.1(30).

³¹ Iowa Code § 4.1(39).

3. Presumptions of enactment (4.4). This section provides:

In enacting a statute, it is presumed that:

1. Compliance with the Constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

These presumptions create powerful starting points once language is presumed to be ambiguous. For example, regarding 4.4(1), if a statute could be interpreted in more than one way, the court should adopt the approach that does not violate the Constitution.³² Regarding 4.4(2), there is a presumption that an entire statute is to be effective.³³ As to 4.4(3), the Court will choose an interpretation that yields a reasonable result.³⁴ Finally, as to 4.4(4), Courts avoid construing statutory provisions in a manner that will lead to absurd results.³⁵

4. Ambiguous statutes – interpretation (4.6). If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble or statement of policy.

This is one of the most important provisions. On its face, the legislature is inviting the Court to utilize aids that are extrinsic (*i.e.*, extra-textual) as opposed to intrinsic aids. It is

³² *State v. Carter*, 733 N.W.2d 333 (Iowa 2007).

³³ *State v. McSorley*, 549 N.W.2d 807 (Iowa 1996).

³⁴ *State ex rel. Schuder v. Schuder* 578 N.W.2d 685 (Iowa 1998).

³⁵ *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759 (Iowa 2016).

beyond the scope of this presentation to properly assess the challenges associated with legislative history, but legislative history must be used with great caution to avoid selecting aspects of the history that favor a particular outcome – a judicial scavenger hunt. As Chief Justice Roberts has noted, “[a]ll legislative history is not created equal.”³⁶ The use of legislative history has been complicated by legislators who insert material into the legislative record that supports a particular interpretative result – giving a future judicial squirrel a nut to find. Between 2004 and 2013, the Iowa Supreme Court relied on legislative history in 11% of relevant cases.³⁷

5. Conflicts between general and special statutes (4.7). If the general and special provisions are irreconcilable, the special provision prevails as an exception to the general.

6. Irreconcilable statutes (4.8). The last statute enacted prevails.

7. Acts or statutes that severable (4.12). As with the boilerplate contract provision, the invalidity of one provision does not affect other provisions that can still be given effect.

8. General savings provision (4.13).

1. The reenactment, revision, amendment, or repeal of a statute does not affect any of the following:

a. The prior operation of the statute or any prior action taken under the statute.

b. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the statute.

c. Any violation of the statute or penalty, forfeiture, or punishment incurred in respect to the statute, prior to the amendment or repeal.

³⁶ ROBERT A. KATZMANN, *JUDGING STATUTES* 54 (Oxford Univ. Press 2016).

³⁷ Karen L. Wallace, *Does the Past Predict the Future?: An Empirical Analysis of Recent Iowa Supreme Court Use of Legislative History as a Window into Statutory Construction in Iowa*, 63 *DRAKE L. REV.* 239 (2015).

d. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

2. If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment if not already imposed shall be imposed according to the statute as amended.

This section addresses the unintended consequences that result from amending or repealing a statute.

C. Court Imposed Rules

John Heggen, Legal Editor for the Iowa Legislative Services Agency, in a presentation entitled “Statutory Interpretation” has compiled a very helpful list of Court Imposed rules in Iowa:

1. Headnotes are not part of the law.³⁸ The exception is for the UCC.³⁹
2. Tax statutes are strictly construed against the taxing body.⁴⁰ Exemptions from tax are construed strictly against the taxpayer.⁴¹
3. Penal statutes are strictly construed, and if they are subject to different interpretations, the doubt will be resolved in favor of the defendant.⁴²
4. Expression of one excludes others.⁴³
5. Statues with the same subject matter must be considered together (*pari materia*).⁴⁴

³⁸ *State v. Chenoweth*, 284 N.W. 110, 112 (Iowa 1939).

³⁹ Iowa Code § 554.1107.

⁴⁰ *Dodgen Industries, Inc. v. Iowa State Tax Comm’n*, 160 N.W.2d 289, 296 (Iowa 1968).

⁴¹ *Iowa Auto Dealers Ass’n v. Iowa Dep’t of Rev.*, 301 N.W.2d 760, 765 (Iowa 1981).

⁴² *State v. Oldfather*, 306 N.W.2d 760, 764 (Iowa 1981).

⁴³ *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 446 (Iowa 1983).

⁴⁴ *State v. Harrison*, 325 N.W.770, 772 (Iowa Ct. App. 1982).

6. Rule of *ejusdem generis* (“of the same class”).⁴⁵ This canon is used when a list of specific items (*e.g.*, corn, soybeans, sorghum, hay, . . .) ends with a general term (*e.g.*, “. . . and others”) or such general term is applied. “This canon provides that the general term at the end (“. . . and others”) is to be limited to the class of specific items preceding it” (*i.e.*, corn, soybeans, sorghum, hay).⁴⁶

A more exhaustive list of Canons of Construction is attached to this outline. A thorough review of the Canons is beyond the scope of this presentation.

III. Recommended resources.

A. Essential books.

1. ANTONIN SCALIA AND BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (Thompson/West 2012). *See* the attached “Canons of Construction (Adapted from Scalia & Gardner)” prepared by the University of Houston Law Center.⁴⁷

2. RONALD BENTON BROWN AND SHARON JACOBS BROWN, *STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENT* (National Institute for Trial Advocacy, 2d ed. 2011).

B. Supplemental books.

1. LINDA D. JELLUM, *MASTERING STATUTORY INTERPRETATION* (Carolina Academic Press, 2d ed. 2013).

2. *2A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION* (Sands, 4th ed. 1984). Paperback reprints are available.

⁴⁵ *Fleur de Lis Motor Inns, Inc. v. Bair*, 301 N.W.2d 685, 690 (Iowa 1981).

⁴⁶ RONALD BENTON BROWN AND SHARON JACOBS BROWN, *STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENT* 94-94 (National Institute for Trial Advocacy, 2d ed. 2011).

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<https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf>