

Statutory Interpretation - Law 216
Spring 2022
Hon. Jack L. Landau

What we will learn: Welcome to Statutory Interpretation! My goal is for you to become familiar with (1) the basics of the legislative process (including the initiative process) and the extent to which courts will enforce rules regarding that process; (2) the anatomy of a statute and its required components; (3) competing theories about the role of courts in statutory construction; and (4) state and federal rules of statutory construction in practice. By the end of the semester, you should be able to explain the meaning of such terms as “*ejusdem generis*,” and the “rule of the last antecedent,” as well as venture opinions about such matters as whether the United States Supreme Court was correct in holding that a fish is not a “tangible object.” (Curious? See *Yates v. United States*, in your text.)

Contact info and office hours: I am always reachable at jlandau@willamette.edu. I am also available in my office Tuesday and Thursday afternoons and Wednesday mornings. Or, if you would like to schedule a personal Zoom chat, I’m happy to do that any time, as well.

Text: You should all have received a digital copy of your reading materials, *Statutory Construction: Cases and Materials* (2021). There is no charge for the materials. You’re welcome.

Grading: This class will be based on three assessments: A one-hour midterm worth 25 points, a two-hour final worth 60 points, and class participation worth 15 points.

Reading assignments: Below is a tentative schedule of reading assignments. I will assign specific pages of the text as we go

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| Jan. 11 | Introduction and overview: <i>Washington v. Barnes</i> -- Is a lawn mower a "motor vehicle"? |
| Jan. 13 | State and federal enactment process: The conventional, "Schoolhouse-Rock" account and the real world |
| Jan. 18 | Anatomy of a statute and judicial enforcement of drafting requirements |
| Jan. 20 | Direct democracy: Enactment process |
| Jan. 25 | Direct democracy: Judicial enforcement of enactment requirements |
| Jan. 27 | Statutory construction theory: What does it mean to say, "What does it mean"? |

- Feb. 1 The role of the courts in statutory construction: *Caminetti* and the "plain meaning" rule; *Holy Trinity* and the preeminence of purpose; *Marshall* and the "pragmatic" approach
- Feb. 3 The Oregon view of the role of the courts in statutory construction: *PGE v. BOLI* and *State v. Gaines*
- Feb. 8 The rules of textual analysis and why a cat is not a "domestic animal": Definitions, dictionary acts, and dictionaries
- Feb. 10 Textual canons of construction: The rule against surplusage, *ejusdem generis*, the rule of the last antecedent, and *expressio unius*
- Feb. 15 More textual canons: Rules of grammar, syntax, punctuation, and the "Oxford comma" case
- Feb. 17 What is the "context" of a statute?
- Feb. 22 Midterm
- Feb. 24 Legislative history: What is it? What does it reveal?
- Mar. 1 *Weber* and the uses, misuses, and abuses of legislative history
- Mar. 3 *Train*: Can legislative history supplant the statute's text?
- Mar. 8 Substantive canons of construction: The rule of lenity, the avoidance canon, and the rule against unreasonable results
- Mar. 10 Persistent ambiguity and competing substantive canons of construction: Is a fish a "tangible object"?
- Mar. 15 Special problems: "Scrivener's errors" and changes in meaning over time -- Can an iPhone in silent mode "ring"?
- Mar. 17 *Stare decisis* and statutory construction: Can courts change their minds about the meaning of statutes?
- Mar. 29 Administrative agency interpretations of statutes: To defer or not to defer
- Mar. 31 Interpreting statutes adopted by initiative: Special rules?
- Apr. 5 The problem of retroactivity

- Apr. 7 Inferring private causes of action from statutes
- Apr. 12 Bringing it all together with some final (hard) cases: *King v. Burwell*
and the Affordable Care Act; *Hively v. Ivy Tech* and *Bostock v. Clayton*
County on whether discrimination based on sexual orientation is
discrimination based on "sex"
- Apr. 14 Review