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Statutory Interpretation and the Plain Meaning Rule

Charles A. Sither

STATUTORY INTERPRETATION AND THE PLAIN MEANING RULE

It cannot be disputed that statutory law is increasing, and as a natural result the approach of the courts to the problem of interpretation is becoming more important each day It is obvious that the difficulties of lawyer and layman alike, in understanding and complying with statutes which affect their problems and activities, are and will be increasingly aggravated unless the courts arrive at some consistent and uniform method of statutory interpretation.

At the time of the enactment of any statute, the legislature has available an unlimited reservoir of words and phrases capable of expressing in plain, everyday language any purpose or intent it may have in mind relative to the subject matter. Further, it is presumed to have at least a general knowledge of existing law on the subject and must certainly have a clear understanding of the situation to be dealt with and the result to be accomplished. Finally, it is specifically charged with the duty and responsibility, and is vested with the exclusive constitutional power, to enact legislation. Logically, then, the courts should apply statutory law precisely as it is written, rather than as they think it should have been written, or even as they think it was intended to be written.[1]

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[1] The ideal type of "team work" between courts and legislatures toward which the writer believes all concerned should aim was exemplified more than once in New York when Cardozo, J. sat on its highest bench.

For example, in Hoadley v. Hoadley, 244 N.Y. 424, 155 N.E. 728, 733, decided in 1927, that eminent judge, after holding that the court could not extend the remedies provided by statute where the legislature had intended to make such remedies exclusive, discussed considerations which would justify the provision of additional remedies, and stated, "Considerations such as these may suggest an amendment of the statute that will extend the right of action. Our concern at this time is with the statute as enacted." The statute in question was amended the following year by the New York Legislature along the lines suggested by the Court. N. Y. CIV. PRAC. ACT, sec. 1137 (1928 Amend.)

Again, in Manhattan Co. v Morgan, 242 N.Y. 38, 150 N.E. 594, 599, decided in 1926, Cardozo, J. stated, "There is force in the argument that wider freedom of choice through the spontaneous flowerings of custom would work a social gain. One of the debit items to be charged against codifying statutes is the possibility of interfer-

The primary rule of interpretation of statutes is, however, traditionally stated as being to give effect to the intention of the law-making body.[2] So stated, the rule is disarmingly simple, but, in applying it, it is difficult if not impossible to find any consistent theory of statutory interpretation in the decisions of the courts. The canons of statutory construction and the traditional rules of interpretation are far too numerous to be related here.[3] It is not the present purpose to discuss them in detail, but rather to suggest an approach to the general problem which it is believed will be practical as well as beneficial. Briefly, it involves the acceptance of the "plain meaning rule" as the basic principle to guide the courts in interpreting and applying the enactments of the law-making branch.

The term, "plain meaning rule," is herein used in a somewhat special sense which requires explanation. It starts with the proposition already stated, that, logically, courts should apply statutory law precisely as it is written. But a concession is made to legal tradition in cases where the written words do not in fact have a plain meaning. In such cases, effect may be given to legislative intent where that intent is unmistakably clear from a reading of the statute as a whole or where, if it is not thus made clear, a review of the legislative history leaves no legitimate or reasonable doubt whatever as to that intent. Thus, not only is it not intended here to argue for the abolition of such existing canons of construction as those which, for example, permit the courts to make allowance for typographical errors and the like,

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ence with evolutionary growth. It is the ancient conflict between flexibility and certainty. So far as the Negotiable Instruments Law is concerned, the remedy for the evil, if it be one, is an amendment of the statute that will add to the negotiable instruments there enumerated or described, such other classes as the law merchant or the custom of the market may from time to time establish. Until such an amendment shall be adopted, the courts in their decisions must take for granted that the Legislature is content with the law as it is written." The same year, the New York Legislature adopted the amendment which the Court's opinion indicated was desirable. LAWS 1926, ch. 704.

[2] Williams v. United States Fidelity and Guaranty Co., 236 U.S. 549, 59 L.Ed. 713, 35 Sup. Ct. 289 (1915) Phillips v. Pope's Heirs, 49 Ky. (10 B. Mon.) 163 (1849), SUTHERLAND, STATUTORY CONSTRUCTION (1891) secs. 234, 235.

[3] Reference may be made to SUTHERLAND, STATUTORY CONSTRUCTION (1891) *Passim*, for detailed discussion.

but the concession goes further. Provided the legislative intent is unmistakable, provided it is wholly consistent with the wording of the statute, and provided the proposed extended application of the literal scope of that wording is clearly demanded by such intent, it is conceded that courts may extend the application of a given statute to related situations not precisely covered by its terms, at least in those cases where the statute is of such nature that traditionally it would have been subject to "liberal construction."

However, it must be recognized that indulgence by the courts in "judicial legislation," where interpretation of statutes is involved, is bad simply because it usurps the basic legislative function and is contrary to the doctrine of separation of powers. It is bad also—and this is perhaps yet more fundamental—because the mere possibility that it may be indulged in (and *a fortiori* the realization of that possibility in the particular instance) introduces a highly subjective, uncertain, uncontrollable, unpredictable, and, it is submitted, unnecessary, proviso into every enacted law.

In general, there are said to be two basic methods of statutory construction, strict and liberal, although each is subject to numerous modifications. The latter is frequently employed as a cloak for the achievement of a desired result, actually by no identifiable legal "method" at all, from the application of a statute which has failed to legislate that result. It is submitted that both should at once be discarded in favor of the "plain meaning rule" as herein advocated. The search for legislative intent should be confined primarily to that area where such intent is effectively expressed, to wit, the words of the statute as finally enacted. On principle, if the legislature fails to give expression to its intent completely and accurately in the statute, it is and should be the duty of the legislature, and the legislature alone, to supplement or correct.

Thus the ultimate goal would be to confine the operation of any statute to matters definitely within its terms, that is, cases which fall plainly and clearly within the natural meaning of the actual language used.[4] Where the language is unambiguous, that

[4] This is sometimes done in criminal cases. United States v. Resnick, 299 U.S. 207, 81 L.Ed. 127, 57 Sup. Ct. 126 (1936).

should end the matter even though extrinsic evidence might support an argument that the actual language does not reflect the intent of the legislature. Where the language is ambiguous, the court should look first within the four corners of the statute in attempting to resolve the ambiguity Only if it cannot be thus resolved would the concession already made enable the court to review legislative history, and if the legislative intent does not then emerge with unquestionable clarity, the court should decide the particular case as if no statute had been enacted, leaving it to the legislature to take further action if it wishes.

It is recognized that the trend today seems to be in the direction of so-called "liberal construction."[5] One court has said that a liberal construction seeks to arrive at the legislative intention through ascertaining the chief purpose of the statute, its context, subject matter, and consequences, rather than from the strict import of the words used.[6] This description of liberal construction shows on its face that elements of uncertainty, which may be highly subjective, are introduced the instant a judge decides to interpret a statute "liberally " If liberal construction were confined to resolving ambiguities in favor of giving effect to the expressed purpose of the legislature, it would not be too objectionable, but its operation should be confined to instances where an ambiguity is plainly apparent, the purpose of the statute itself is equally apparent, and such purpose is broad and clear enough to resolve all doubts created by the particular ambiguity

Opponents of the "plain meaning rule" attack its type of approach as being narrow and as preventing the courts from determining the "true meaning" of a statute. However, among other things, they usually fail to consider that even a statute which is subject to strict construction is nevertheless entitled to

[5] The United States Supreme Court has repeatedly held that a statute should be read in such a way as to carry out Congressional intent despite a contrary literal meaning. Markham v. Cabell, 326 U.S. 404, 90 L.Ed. 165, 66 Sup. Ct. 193 (1945) United States v. Rosenblum Truck Lines, Inc., 315 U.S. 50, 86 L.Ed. 671, 62 Sup. Ct. 445 (1941) United States v. American Trucking Associations, Inc., 310 U.S. 534, 84 L.Ed. 1345, 60 Sup. Ct. 1059 (1940), United States v. Dickerson, 310 U.S. 554, 84 L.Ed. 1356, 60 Sup. Ct. 1034 (1939)

[6] State ex rel. Schroeder v. Morris, Mayor, 199 Ind. 78, 155 N.E. 198 (1927).

a fair construction with the words being given their ordinarily accepted meaning.

Proponents of "liberal construction" argue that it enables the court to give statutes a "beneficial operation" and one which will promote "justice." This may have an attractive sound, but among other things it should be considered how "just" it is to "interpret" a statute favorably for one litigant when in every case there is an equally important opposite interest involved.

One sometimes almost suspects that the attitude of opponents of the "plain meaning rule" may be a result of some underlying mistrust of laws made by popularly elected legislatures. Perhaps it would be unfair to characterize their position as another way of saying that legislative power should have been given to the courts in the Constitution, but, since it was not, the courts should nevertheless usurp it in the interest of "justice." It is recognized that the Constitution, or at any rate state constitutions, probably contemplated that the courts may continue to exercise quasi-legislative functions in the development of principles of common law and equity, but it is submitted that such functions should not be carried over into the field of statutory law.

In most cases where application of the "plain meaning rule" would give a result which advocates of liberal construction would consider non-beneficial, it will be found either that the legislature did not have in mind the factual situation presented or that the legislature intended not to legislate with respect to such factual situation. If the latter is the case, it seems abundantly clear on any theory that the courts should not attempt to contravene the legislative intent. If the former is the case, the courts should not attempt to conjecture as to what the legislature would have done unless (a) the legislative intent and purposes have been clearly expressed in the statute itself, (b) the actual wording of the statute is sufficiently general to permit the courts to supply the omission, and (c) only one result consistent with the expressed legislative purpose can be reached. Surely the best rule is to stick to the "plain meaning rule" as herein advocated, even if the court thinks the legislature should have made the statute more comprehensive. The courts defi-

nitely should not speculate on the probable intent of the legislature apart from the words. It would be no intolerable burden on our law-making bodies to insist that they declare the purpose and intent of each statute in plain language, and in so doing, render unnecessary wild protracted quests by the courts of this elusive conjectured intent. Reorientation should be in that direction, with a view ultimately to withdrawing entirely that part of the concession heremabove made which permits a review of legislative history in certain circumstances.

There is undoubtedly a good deal of confusion in the courts today as to the proper method of going about interpreting statutes. On the whole it is believed that the line of demarcation between the "plain meaning rule," as herein advocated, and most methods actually being employed is not as pronounced as some courts and text writers are inclined to believe, and therefore the approach herein advocated would involve no revolutionary, but merely a highly salutary, change of trend. Basically, it is a question of emphasis. The tendency has been to minimize the importance of literal interpretation. That tendency should be reversed.

The inconsistencies of the courts have been marked. To illustrate the difficulties in which deviation from the "plain meaning rule" may place the courts (and *a fortiori*, lawyers attempting to advise on the effect of a given enactment), one may contrast *United States* v *Rosenblum Truck Lines*[7] with *Cammetti* v *United States*.[8] Both were Supreme Court cases.

In the *Rosenblum* case the appellees, on and prior to the critical date set forth in the applicable statute, were engaged in the business of hauling for common carriers, but principally for only one carrier. The statute provided that so-called "grandfather rights" were to be given to those carriers engaged in such operations on the critical date.[9] Later, after the critical date, the appellees ceased hauling for common carriers and began hauling for individual shippers in their own right. The Interstate Commerce Commission found that the appellees did not

[7] 315 U.S. 50, 86 L.Ed. 671, 62 Sup. Ct. 445 (1941).

[8] 242 U.S. 470, 37 Sup. Ct. 192, 61 L.Ed. 442 (1916).

[9] 49 STAT. 543 (1887), 49 U.S.C.A. secs. 306 (a) or 309 (a) (Supp. 1946).

qualify as carriers by motor vehicle within the meaning of the Motor Carrier Act of 1935[10] and, therefore, were not entitled to a certificate or permit under the "grandfather clause" of that Act. Appellees, basing their argument on the precise wording of the statute, contended that they were entitled to such permit and the lower court sustained their contention. However, in reversing the lower court, the Supreme Court stated that in any problem of statutory construction, the intention of the enacting body controlled, and that in this case, Congress had set forth broadly in the declaration of policy that the essence of transportation by motor carriers in the public interest was to achieve adequate, efficient, and economical service, and that Congress did not intend to confer these "grandfather rights" on the basis of a single transportation service to the public. Thus where the plain meaning of the words used produced a result plainly at variance with the policy of the legislature, the Court gave effect to what it conceived the Congress intended to provide rather than to the literal words Congress employed. Yet, in the previously decided *Caminetti* case, *supra,* where the plain meaning of the words used in a statute also produced a result plainly at variance with the policy of the legislature, the Court refused to give effect to what was most persuasively shown to have been the intent of Congress and applied the literal words Congress had employed. In that case the Court was dealing with the provision of the Mann Act which provided in effect that any person who shall knowingly transport or cause to be transported, in interstate or foreign commerce, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine, or imprisonment, or both.[11] The Court upheld the conviction of defendant despite the fact that (1) it was plainly proven that the act of defendant in transporting a girl across a state line for immoral purposes was in no wise an interstate commercial transaction, there being no compensation involved, and (2) the author of the Mann Act personally had stated in the Congressional debates that the purpose of the act was the suppression of *commercialized* vice.

[10] 49 STAT. 543 (1887), 49 U.S.C.A. sec. 1 (1929).
[11] 36 STAT. 825 (1910), 18 U.S.C.A. sec. 398 (1927).

Viewed separately, these two cases may well yield "beneficial" results, but it is not easy to reconcile the methods of interpretation. It would appear from these (and other) cases that courts sometimes determine upon a result, and *then* supply the "reasoning" for it. It is not intended to say that this necessarily results in obvious "injustice," because we are frequently fortunate in having men of high ideals and integrity as members of our judiciary But the net results are still to render void and nugatory much of our written law, to substitute therefor judicial discretion, and, as stated in the beginning, to aggravate the difficulties of lawyers and laymen. Consistency is non-existent, and written words become undependable and unpredictable decoys rather than the guides they are meant to be.

It is submitted that the old terms, liberal construction and strict construction, have lost a great deal of their content. One might even venture to suggest that "liberal construction" has never had any accurately definable content, while even so eminent an authority as Sutherland was faced with the phenomenon that strict construction may vary in "degree of strictness."[12] To say the least, the old terms are confusing, and the confusion is hardly dispelled by such statements as the following, made by the Illinois Supreme Court in *Franklin County Coal Co., Inc.* v. *Ames, Director of Finance*[13] " strict construction is not an exact antithesis of liberal construction." Again, it has been said that a statute strictly construed is confined to its purpose.[14] The implication as to the meaning of liberal construction is positively frightening. Nor is the situation helped by the language of such cases as *Miller, Collector of Internal Revenue* v *Standard Nut Margarine Co.*,[15] wherein the court stated that tax laws are to be interpreted "liberally" in favor of taxpayers. In that case, the Court called it a "liberal interpretation" of a statute to refuse to extend its operation beyond the clear meaning and import of the words used. In other words, it was "liberal" to refuse to extend the statute to a matter which was definitely not within its written terms. How much simpler it

[12] SUTHERLAND, STATUTORY CONSTRUCTION, sec. 347 (1891).
[13] 359 Ill. 178, 194 N.E. 268, 269 (1934).
[14] United States v McElvain, 272 U.S. 633, 639, 47 Sup. Ct. 219, 71 L.Ed. 451 (1926).
[15] 284 U.S. 498, 52 Sup. Ct. 260, 76 L.Ed. 422 (1932).

would have been merely to adopt the plain meaning. The recommendation here is to drop both terms in favor of the "plain meaning rule."

Merely adopting new terminology, however, will of course not solve the problem. For example, Kentucky supposedly advocates the "plain meaning rule"[16] and yet, in a recently decided case, the Court of Appeals developed at length the legislative and judicial history of the statute there involved before applying the plain meaning.[17]

The importance of the problem was recently pointed up by two decisions of the Kentucky Court of Appeals interpreting the State's constitutional provision of a $5000 yearly salary limit for all "public officers" other than the governor.[18] These very interesting cases rested upon the interpretation of the one term, "public officers." In 1942, the court held that while certain employees of the state, including professors at the state university, were not "public officers," nevertheless the Constitutional Convention could hardly have intended that mere employees should receive greater compensation than public officers and, therefore, the salary limit applied to such employees.[19] Reversing itself late in 1947, the court held that the term, "public officers," should be given its plain meaning, and therefore employees (at least employees who are professors at the state university) are not subject to the salary limit.[20] In the meantime, during a period of increasing incomes and prices all over the nation, the university had suffered seriously by not being able adequately to meet competition from other institutions for teaching personnel.[21]

[16] Hurry Up Broadway Co. v Shannon, 267 Ky. 302, 304, 102 S.W 2d 30, 31 (1937) There the court stated, "It is a cardinal rule of construction of statutes that where the language of the statute is free from ambiguity, the exact language of the statute will be followed." See also Note (1947) 35 Ky. L. J. 352.

[17] Department of Revenue v McIlvain, 302 Ky 558, 195 S.W 2d 63 (1946).

[18] Talbott v Public Service Commission, 291 Ky. 109, 163 S.W 2d 33 (1942) and Pardue v Miller, 306 Ky 110, 206 S.W 2d 75 (1947)

[19] Talbott v Public Service Commission, 291 Ky 109, 163 S.W 2d 33 (1942).

[20] Pardue v Miller, 306 Ky 110, 206 S.W 2d 75 (1947).

[21] It is not intended to imply that the "plain meaning rule" as herein advocated should be applied to the interpretation of constitutions as distinguished from statutes. It is recognized that there are

The problem of statutory interpretation has been discussed pro and con by various writers in recent articles.[22] The import of this note has been merely an argument for a methodical, predictable, and uniform approach to the problem. It seems almost self evident that no uniformity or predictability in interpretation can be obtained otherwise than on the basis of primary emphasis on plain meaning. It is not disputed that men (even judges) will differ in their personal opinions on almost any given problem as a matter of course. No two individuals are fundamentally alike in their thought processes, and as a natural result, they seldom arrive at exactly the same conclusion. This is especially true when the dispute is as to what is "just" or "beneficial." But the existence of such differences of opinion (e.g., as to the "true meaning" of a statute) should not be permitted to render doubtful *ab initio* the application and operation of all written law. The area of dispute should be progressively confined rather than constantly widened.

It is believed that bench and bar should at once take stock of the present state of the law relative to this problem. It is not thought desirable that legislatures be called upon to enact statutes attempting to require the courts to adopt and adhere to the "plain meaning rule." This is a job for the courts themselves.[23]

important considerations in connection with the interpretation of constitutions which are not present in the interpretation of statutes. As it happens, the provision relating to the salary limit discussed in the text of this note, though embodied in a constitution, is really statutory in its essential nature. It is therefore thought to be a useful example, at least by way of analogy However, it is recognized that difficulties may be created where such essentially statutory material is incorporated into constitutions, and it is not the purpose of this note to explore these difficulties or make any recommendation with regard to constitutional interpretation in general.

[22] de Sloovere, *Extrinsic Aids in the Interpretation of Statutes* (1940) 88 U. OF PA. L. REV. 527; Horack, *In the Name of Legislative Intention* (1931) 38 W VA. L. Q. 119; Jones, *Statutory Doubts and Legislative Intention* (1940) 40 COL. L. REV. 957; Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes* (1939) 25 WASH. U.L.Q. 2; Radin, *Statutory Interpretation* (1930) 43 HARV. L. REV. 863.

[23] There is nothing new in the idea that courts should exercise "self-discipline" when tempted by the "beneficial" result which might follow from judicial legislation. The books abound with statements such as the following, by the Supreme Court of Pennsylvania in McManus & Henry v Cassidy, 66 Pa. St. 260, 262 (1871) "With a great desire to sustain this judgment, we find ourselves unable to do so without assuming legislative powers." In Cohn v Cohn, 310

The most elementary principles of jurisprudence support the proposition that, along with being just, our laws, especially our statutory laws, should be certain and their applications predictable.

It is, of course, not denied that there are weaknesses in the "plain meaning rule," but they can, and should, all be eliminated in due time by the agency which is both originally and ultimately responsible for all statutory law, namely, the legislature, precisely along the lines recently suggested by Mr. Justice Frankfurter in a lecture before the Association of the Bar of the City of New York when he said, in effect, that although words are clumsy tools, they are the only tools the legislatures have and, therefore, the pressure on the legislatures should be increased in order to compel them to attain more exactness in their use of words as well as perfection of draftmanship.[24] In the meantime, it is not denied that the "plain meaning rule" must be subject to the limited concessions set forth at the beginning of this note in cases where statutes are imperfectly drafted. It is not claimed that the "plain meaning rule" is so nearly perfect as to make possible complete certainty and sure predictability as to the application of every statute to every factual situation, but it is believed that it will enable the courts and the public to come far closer to the attainment of this ideal than will other approaches which writers in recent years have been suggesting.

In conclusion, the "plain meaning rule" requires a reasonable interpretation and of course permits words to have their fullest meaning, and as a natural result it gives statutes effect according to the natural and obvious import of their language, without resorting to forced or wholly fictional constructions for the purpose of either limiting or extending their operation. It does not require restricting the words of a statute to their narrowest meaning, but does refuse to extend the law by implication from factors surrounding the enactment. Generally, the

Mass. 126, 37 N.E. 2d 260 (1941), the court stated, "We cannot add a provision to a statute which the Legislature did not deem expedient to embody therein."

[24] Frankfurter, *Some Reflections on the Reading of Statutes*, 2 THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 213 (1947).

bringing in of extrinsic evidence and opinions will serve only to create doubt and ambiguity rather than diminish it. Everyone desires that statutes be workable, just, and beneficial, but this desire should not be used as a cloak for the judicial re-writing of statutes. The legislature's powers should not be usurped nor its responsibilities evaded. The "plain meaning rule" as herein advocated appears to come closer to achieving a desirable compromise among all the desiderata of statutory interpretation than any other approach. The courts have had no difficulty in consistently holding that federal tax statutes are never retroactive unless there is a declaration to this effect that is "clear, strong, and imperative."[25] Why not apply similar reasoning in interpreting all statutes and permit their plain meaning to be departed from or extended only when the legislative intent is clear, strong, and imperative?

CHARLES A. SITHER

[25] United States v. Burr, 159 U.S. 78, 82-83, 15 Sup. Ct. 1002, 40 L.Ed. 82 (1895)