
TABLE OF CONTENTS

AUTHOR’S NOTE FOR THE FIRST EDITION	V
EDITING CONVENTIONS AND DISCLAIMERS	VII
TABLE OF CASES.....	XVII
TABLE OF AUTHORITIES	XXXV

Chapter 1. An Introduction to the Interplay Between Purpose and Text 1

Preliminary Note on the Goals of Statutory Interpretation (with Particular Attention to the Relation Between Meaning and Legislative Intent).....	1
Riggs v. Palmer	9
Notes and Questions.....	16
23 Stat. 332 (1885).....	31
Church of the Holy Trinity v. United States.....	33
Notes and Questions.....	42
Note on the <i>Statutes at Large</i> and the <i>United States Code</i>	47
United States v. Locke.....	55
Notes and Questions.....	64
Note on Judicial Interpretations of 28 U.S.C. § 1453(c)(1)	72
Spivey v. Vertrue, Inc.	75
Notes and Questions.....	77
Note on the Case of the Speluncean Explorers.....	81
Note on the Concept of “Rules” and “Standards”	91
Jaskolski v. Daniels	95
Notes and Questions.....	99
Note on Ambiguity vs. Vagueness in Statutory Language	102

Chapter 2. Canons of Construction107

A. Introduction.....	107
B. Canons That Formalize Common Principles of Textual Interpretation.....	110
1. The “Ordinary Meaning” Principle	111
2. The Possible Relevance of Terms of Art	115
a. Terms with Technical Meanings in Particular Fields	115
b. Terms That Have Acquired Prior Meaning in the Law	116
3. <i>Noscitur a Sociis</i>	117
4. <i>Ejusdem Generis</i>	120
5. The Presumption of Consistent Usage	123
6. The Presumption Against Superfluity.....	126
7. <i>Expressio Unius Est Exclusio Alterius</i>	129
Mission Product Holdings, Inc. v. Tempnology, LLC.....	134
Note.....	139
Yates v. United States	140
Notes and Questions	158
C. The Rule of Lenity.....	160
Muscarello v. United States	167

Notes and Questions	179
Note on “Hybrid Civil/Criminal Statute[s]”	183
D. Statutes and the Constitution	185
1. Separability	188
2. The Traditional Saving Canon	200
3. The Canon That Favors Avoiding Constitutional Doubts	206
NLRB v. Catholic Bishop of Chicago	213
Notes and Questions	223
E. Clear-Statement and Implied-Limitation Rules	229
1. The Presumption Against Extraterritoriality	232
Morrison v. National Australia Bank Ltd.	240
Notes and Questions	256
2. The Presumption Against Retroactivity	274
Landgraf v. USI Film Products	276
Notes and Questions	300
Note on <i>Rivers v. Roadway Express</i> and <i>Lindh v. Murphy</i>	309
F. Conflicts Among Canons	314
G. The Strange Case of the “Last-Antecedent Rule”	319
Lockhart v. United States	324
Notes and Questions	339
Chapter 3. Legislative History	345
A. Introduction	345
B. The Rise of Reliance on Legislative History in Statutory Interpretation	351
Preliminary Note for <i>United Steelworkers v. Weber</i>	359
United Steelworkers v. Weber	363
Notes and Questions	385
C. Recent Debates About the Use of Legislative History	396
1. Constitutional Arguments	397
Immigration and Naturalization Service v. Chadha	400
Notes and Questions	421
Note on <i>Chadha</i> and the Debate over Legislative History	425
Office of Legal Policy, U.S. Department of Justice, USING AND MISUSING LEGISLATIVE HISTORY: A RE-EVALUATION OF THE STATUS OF LEGISLATIVE HISTORY IN STATUTORY INTERPRETATION (1989)	435
Notes and Questions	438
2. Nonconstitutional Arguments	442
a. Theoretical Objections to the Logic Behind the Use of Legislative History	443
(i) The Alleged Incoherence of Collective Intent	443
(ii) The Alleged Irrelevance of “Subjective” Intent	448
b. Practical Objections That the Use of Legislative History Will Do More Harm than Good	453
(i) Objections to the Premise That Using Legislative History Helps Courts Identify Intended Meaning	454
(ii) Objections Based on Notice	461
(iii) Objections Based on Cost	466

D.	The Hierarchy of Legislative History and Its Interaction with Other Interpretive Tools.....	468
1.	The Hierarchy of Types of Legislative History	468
2.	Interactions Between Legislative History and the Canons.....	478
a.	Can Legislative History Overcome the Rule of Lenity?.....	480
b.	Can Legislative History Overcome Implied-Limitation Rules?	484
c.	Can Legislative History Overcome Descriptive Canons for Resolving Ambiguity?.....	489
d.	Legislative History and the Presumption Against Absurdity	490
3.	The Use of Legislative History to Identify “Scrivener’s Errors” (or Other Errors That Courts Might Correct Through Interpretation).....	492
	Lamie v. United States Trustee	493
	Note and Question.....	501
	Koons Buick Pontiac GMC, Inc. v. Nigh.....	502
	Notes and Questions	512
E.	When Might Legislative History Bear Only on Expected Applications and Not on “Meaning”?	519
	Preliminary Note for <i>Boutilier v. INS</i>	522
	<i>Boutilier v. Immigration and Naturalization Service</i>	523
	Notes and Questions	526
	<i>Bostock v. Clayton County</i>	534
	Notes and Questions	571

Chapter 4. Interpreting Statutes in Light of Other Statutes and Past Interpretations577

A.	Interpreting Statutes in Light of Past Judicial Decisions About the Same Statutes	577
	Introductory Note About <i>Stare Decisis</i>	577
1.	Should <i>Stare Decisis</i> Have Special Force in Statutory Cases? ...	591
	<i>Flood v. Kuhn</i>	594
	Notes and Questions	606
	<i>Kimble v. Marvel Entertainment, LLC</i>	617
	Notes and Questions	631
2.	Theories of Legislative Acquiescence and Ratification.....	633
a.	Should the Legislature’s Failure to Override a Prominent Interpretation of a Statute Add to the Precedential Force of That Interpretation?	633
b.	When the Legislature Reenacts a Statute Without Relevant Change, Is the Legislature Implicitly Codifying Prominent Glosses on the Old Statute?	644
c.	What if Subsequent Statutes Suggest Approval of a Precedent Without Actually Codifying It?.....	651
B.	Interpreting Statutes in Light of Other Statutes (and Past Decisions About Those Other Statutes).....	653
1.	The Concept of Statutes <i>In Pari Materia</i>	653
	<i>Wachovia Bank, N.A. v. Schmidt</i>	673

	Notes and Questions	678
2.	“Statutory Usage”	683
	West Virginia University Hospitals, Inc. v. Casey	685
	Notes and Questions	699
3.	The Presumption Against Implied Repeals.....	705
	Morton v. Mancari.....	706
	Notes and Questions	713
	Radzanower v. Touche Ross & Co.	723
	Notes and Questions	731
	Epic Systems Corp. v. Lewis	742
	Notes and Questions	763
4.	Statutory Directions About How to Interpret Statutes	772
	Note on the Dictionary Act, the Revised Statutes, and Title 1 of the United States Code	786
	Dorsey v. United States	796
	Notes and Questions	810
	Clinton v. City of New York	814
	Notes and Questions	829
	Note on the Administrative Procedure Act	836
	Note on <i>Burwell v. Hobby Lobby Stores, Inc.</i>	840
Chapter 5. Federal Statutes and Administrative Agencies		847
A.	Introduction to Federal Administrative Agencies	848
B.	<i>Chevron</i> Deference	855
1.	The Basis and Scope of <i>Chevron</i> Deference.....	856
	<i>Chevron U.S.A. Inc. v. Natural Resources Defense Council</i>	856
	Notes and Questions	867
	Note on the “Major Questions” Doctrine	888
	<i>West Virginia v. EPA</i>	900
	Notes and Questions	921
2.	The Relationship Between <i>Chevron</i> and Other Interpretive Doctrines.....	934
a.	<i>Chevron</i> and Textualism vs. Purposivism	935
b.	<i>Chevron</i> and the Canons.....	937
	<i>Babbitt v. Sweet Home Chapter of Communities for a Great Oregon</i>	945
	Notes and Questions	968
c.	<i>Chevron</i> and Legislative History.....	980
d.	<i>Chevron</i> and Judicial <i>Stare Decisis</i>	986
C.	<i>Auer</i> Deference	999
	<i>Kisor v. Wilkie</i>	1002
	Notes and Questions	1022
Chapter 6. Federal Statutes and the Federal Structure		1027
A.	A Sampling of Federalism Canons	1027
1.	Preserving “the Federal-State Balance”	1027
	<i>Bond v. United States</i>	1028
	Notes and Questions	1042

2.	When Should Federal Statutes Be Read to Cover the States Themselves?.....	1045
a.	The Presumption Against Reading Federal Statutes to Abrogate State Sovereign Immunity.....	1046
b.	Are States “Persons,” and When Do Other General Words in Federal Statutes Reach States?	1052
c.	Federal Statutes and the Qualifications for Important State Offices.....	1062
	Gregory v. Ashcroft	1064
	Notes and Questions	1078
B.	Federal Statutes and the Preemption of State Law	1087
1.	“Express” Preemption	1090
a.	Do Some Preemption Clauses Cover Only Certain Types of State Law?	1092
b.	Do Courts Ever Owe <i>Chevron</i> Deference to an Agency’s Interpretation of an Express Preemption Clause?	1095
c.	Should Interpreters Approach Preemption Clauses with a Presumption Against Preemption?	1097
d.	Should Courts Use a Special Style of Interpretation for Preemption Clauses?.....	1100
	Note on the Preemption Clause in the Airline Deregulation Act of 1978	1104
	Northwest, Inc. v. Ginsberg.....	1108
	Notes and Questions	1114
2.	Implied “Field” Preemption	1119
3.	Conflict Preemption	1125
	Geier v. American Honda Motor Co.	1128
	Notes and Questions	1151
	Note on “Obstacle” Preemption	1166
C.	Federal Statutes and “General” Law	1178
1.	Interpreting Federal Statutes That Use Terms Familiar to State Law.....	1183
a.	The Possibility That a Term in a Federal Statute Might Be a Mere Placeholder for Definitions Supplied by the Law of Individual States.....	1183
	Reconstruction Finance Corp. v. Beaver County	1184
	Notes and Questions	1186
b.	The Possibility That a Term in a Federal Statute Should Be Given a Uniform Interpretation That Reflects the Statute’s Purposes but Deviates from General Law	1192
	NLRB v. Hearst Publications, Inc.	1193
	Notes and Questions	1201
c.	The Possibility That a Term in a Federal Statute Might Draw Its Meaning from General Law	1204
	Nationwide Mutual Insurance Co. v. Darden	1204
	Notes and Questions	1208
2.	When (and Why) Might General Law Govern Other Questions That a Statute “Federalizes”?.....	1210
	Meyer v. Holley	1211

Notes and Questions	1217
Note on the Details of Federal Rights of Action.....	1223
Chapter 7. Statutes over Time	1235
A. Unexpected Applications of an Invariant Directive	1236
Commonwealth v. Welosky	1239
Notes and Questions	1246
B. “Open-Textured” Terms and Phrases.....	1251
In re Erickson.....	1253
Notes and Questions	1257
C. Aging Statutes and Imaginative Reconstruction.....	1260
Coda: A Problem from the Copyright Act of 1909	1264
Jerome H. Remick & Co. v. American Automobile Accessories Co.	1266
Jerome H. Remick & Co. v. American Automobile Accessories Co.	1268
Notes and Questions	1269
D. The Importance of <i>When</i> Courts Resolve Indeterminacies	1272
1. The Relevance of Current Policy Considerations.....	1272
2. The Relevance of Modern Constitutional Doctrine.....	1273
3. The Relevance of Other Statutes	1274
E. The Effect of <i>Stare Decisis</i>	1281
F. Static and Dynamic References	1284
Jam v. International Finance Corp.	1284
Notes and Questions	1301
INDEX	1309