



FACULTY OF LEGAL STUDIES

LLM Third Semester

2023

Course Information

Part I

Course Title	Legal Interpretation
Course Code	LW007
Course Instructor	Prof. Ravindra Pratap
Course Duration	One semester
Course Units	2
Medium of Instruction	English
Prerequisites	Nil
Precursors	Nil
Equivalent Courses	N/A

Course Overview

As law depends on a medium for expression, its application requires a measure of interpretation. Since language is the primary form of the expression of law, legal arguments and judicial decisions, it is not uncommon to find vagueness and ambiguities in legal instruments and documents. Linguistic analysis, particularly the study of semantics and pragmatics, sometimes becomes indispensable for a proper understanding of the complexities of legal language. This analysis can be used to explain how legal language differs from ordinary language in giving expression to essentially no different things. Issues of interpretation are therefore regularly before the higher courts. The course is therefore mainly based on the hermeneutics of the national and international judicial decisions drawn also from the South Asian countries. It endeavours to explore the means and processes of the application of law for the adjudication of legal claims. The final objective is to critically understand the legal reasoning and techniques adopted by the adjudicator for supporting a certain or particular judicial outcome.

Part II

Course Aims

The course aims to help the student develop a learning approach that combines the theory and practice of judicial reasoning in the application of law. This will be pursued by studying the representative literature, including the general rule and supplementary means of treaty interpretation, on the key methods of legal justification for understanding major questions of legal interpretation. Thus, upon successfully completing the course, the student will be able to distinguish various types of ambiguity: lexical, syntactic, referential, show how a judicial outcome can

be justified, explore the different ways of legal justification, and give some theoretical tools of appraisal of judicial outcome.

Part III

Evaluation Criteria

There will be a continuous evaluation measured by class participation and a written evaluation.

Part IV

Course Structure

Week 1

Introduction

Required reading

Vienna Convention on the Law of Treaties, 1969, Articles 31 and 32.

Supplementary readings

WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 3(2).

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of the International Court of Justice, 08 July 1996.

William N. Eskridge and Philip P. Frickey, eds., 'The Making of the Legal Process' (1994) 107 Harvard Law Review 2031.

G L Williams, 'Language and Law' (1945) 61 Law Quarterly Review 71.

Further readings

American Convention on Human Rights, Article 29.

Prosecutor v. Tadić, Case No. IT-94-1-A, ICTY, Appeals Chamber, Judgment 15 July 1999, 146.

Supreme Court Advocates-on-Record Association and Anr. v Union of India, Judgment of the Supreme Court of India, dated 06 October 1993.

Brian H Bix, 'Legal interpretation and the philosophy of language' in Peter Tiersma and Lawrence Solan (eds), *The Oxford Handbook on Language and Law* (Oxford, 2012), Chapter 10.

Week 2

Forms of Interpretive Text

Required reading

Vienna Convention on the Law of Treaties, 1969, Articles 31 and 32.

Supplementary readings

Charter of the United Nations and Statute of the International Court of Justice, 1945, Article 2(4).

UN General Assembly “Resolution” 2625.

General Agreement on Tariffs and Trade, Article XX(g)

Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2013 I.C.J. (Judgment of November 11), Dispositif.

Georg H Taylor, ‘Legal interpretation: The window of the text as transparent, opaque or translucent’ (2011) 3 RECHTD 169.

Further readings

Bangladesh’s Right to Information Ordinance 2008, Section 3 (b).

Constitution of India, Preamble.

Constitution of Sri Lanka, Article 154J.

Brown v Board of Education, 347 U.S. 483 (1954).

Kesavananda Bharati v State of Kerala, AIR SC 1461.

Chevron U.S.A., Inc. v Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

Ravindra Pratap, *Interpretation of Statutes — A Reader* (2010) Chapter 2.

Week 3**Meaning of Interpretation**Required reading

O W Holmes, “The Theory of Legal Interpretation”, 12 *Harvard Law Review* (1899), 417.

Supplementary readings

Vienna Convention on the Law of Treaties, 1969, Articles 31 and 32.

Diamond, Commissioner of Patents and Trademarks v. Chakrabarty, Judgment of the Supreme Court of the United States, 16 June 1980.

The Island of Timor Case, PCA (1914).

J Raz, “Intention in Interpretation” in Robert P. George, ed. (1996) *The Autonomy of Law: Essays on Legal Positivism* (London: OUP) 249.

Martin Stone, “Focusing the Law: What Legal Interpretation Is Not,” in Marmor (ed.) (1995) *Law and Interpretation* (Oxford: OUP) 31.

Roscoe Pound (1922) *An Introduction to the Philosophy of Law* (New Haven: Yale University Press) Chapter 3.

Further readings

Grey v. Pearson [1857] 6 H.L.C., at 106.

Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase), ICJ Reports (1950), 221.

Daniel Peat, 'Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation' (2016) 75 Cambridge Law Journal 629.

Richard H Fallon Jr, 'The Meaning of "Legal Meaning" and Its Implications for the Theory of Legal Interpretation' (2015) 82 University of Chicago Law Review 1235.

C Ogden and I Richards (1923) *The Meaning of Meaning* (New York: Harvest).

Week 4

Need for Interpretation

Required reading

H L A Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review 593.

Supplementary readings

Philo Riggs v Elmer E. Palmer, 115 NY 506 (1889).

Jerzy Wróblewski (1992) *The Judicial Application of Law* (London: Springer) 1–8.

Further readings

Doha Declaration on the TRIPS Agreement and Public Health, 2001.

Security Council Resolution 827 (1993), annexing statute of the ICTY.

Atala Riffo and Daughters v Chile, Judgment of the Inter-American Court of Human Rights, dated 24 February 2012.J.

Case 26/62, *Van Gend & Loos*, Judgment of the European Court of Justice, dated 5 February 1963.

Additional District Magistrate, Jabalpur v S S Shukla etc. etc., AIR 1976 SC 1207.

McDougal, Lasswell and Miller (1961) *The Interpretation of International Agreements and World Public Order: Principles of Content and Procedure* (New Haven: Yale University Press) Chapter 1.

Week 5

Text in Interpretation

Required reading

Vienna Convention on the Law of Treaties, 1969, Article 31 (1).

Supplementary readings

Grey v Pearson [1857] 6 H.L.C. 61.

Brown v. Board of Education 347 US 483 (1954).

Sabel BV v. Puma AG, Rudolf Dassler Sport, Judgment of the European Court of Justice, 11 November 1997.

Walter Sinott-Armstrong, 'World Meaning in Legal Interpretation' (2005) 42 San Diego Law Review 465.

Further readings

The Municipal Council of Moratuwa and Others v Weerahennadige Shian Hires Fernando, Judgment of the Supreme Court of Sri Lanka in SC SPL / LA NO. 122-123/2011, dated 31 October 2012.

Prof. Nurul Islam and Ors. v Government of the People's Republic of Bangladesh and Ors., Bangladesh Supreme Court Judgment of 7 February 2000.

CONSTITUTION PETITION NO.1, 7, 8, 10 and 12/2002, Judgment of the Supreme Court of Pakistan, dated 10 April 2002.

Scalia, "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws", The Tanner Lectures on Human Values, Princeton University, 8 and 9 March 1995, 79.

Week 6

Context in Interpretation

Required reading

Vienna Convention on the Law of Treaties, 1969, Article 31.

Supplementary readings

Agreement Establishing the World Trade Organization, 1994

Dayton Agreement, 1995.

United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (12 October 1998).

W.N. Eskridge Jr., "Dynamic Statutory Interpretation." 135 University of Pennsylvania Law Review 1479 (1986–87).

Further readings

Annexes I to IV of Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement), 2001.

Understandings relating to Articles I, II, III and VIII of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), 1976.

Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No. 3), [2000] 1 A.C. 147.

Polish Postal Service in Danzig, PCIJ, Series B, No. 11 (1925), 39.

Week 7

Object and Purpose in Interpretation

Required readings

Vienna Convention on the Law of Treaties, 1969, Article 31.

Lon L Fuller, 'Positivism and Fidelity to Law—A Reply to Professor Hart' (1958) 71 Harvard Law Review 630.

Supplementary readings

Luther R Campbell aka Luke Skywalker, et al v. Acuff Rose Music, Inc. Judgement of the US Supreme Court of the United States, 7 March 1994.

United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (29 April 1996), page 22.

A Barak (2005) *Purposive Interpretation in Law* (Princeton: Princeton University Press) Chapter 1.

Further readings

American Convention on Human Rights, 1969, Article 1.

Certain Expenses of the United Nations, ICJ Reports 1962, 151.

Hunter et al. v Southam Inc., [1984] 2 S.C.R. 145 (Supreme Court of Canada).

The Heydon [1584] EWHC Exchequer J36.

Palm Oil Research and Development Board and Anr. v Premium Vegetable Oil Sdn Bhd, Judgment of the Federal Court of Malaysia, dated 27 February 2004.

Prosecutor v Zejnil Delalić, et al., Case No. IT-96-21-T, ICTY Trial Judgment, 16 November 1998.

David S Jonas and Thomas S Saunders, 'Object and Purpose of a Treaty: Three Interpretive Methods' (2010) 43 Vanderbilt Journal of Transnational Law 565.

Week 8**Subsequent Agreement, Subsequent Practice and Relevant Rule in Interpretation**Required reading

Vienna Convention on the Law of Treaties, 1969, Article 31(3)(c).

Supplementary readings

Subsequent agreements and subsequent practice in relation to the interpretation of treaties, Text of draft conclusions 1–5 provisionally adopted by the Drafting Committee at the sixty-fifth session of the International Law Commission, 6 May–7 June and 8 July–9 August 2013, Draft Conclusion 2.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, para. 22

J Arato, Subsequent Practice and Evolutive Interpretation: Techniques Interpretation over Time and Their Diverse Consequences, 9(3) Law & Practice of International Courts and Tribunals 443 (2010).

Further readings

GA Res A/RES/51/210 of 17 December 1996.

The 1951 agreement between the civil servants of India and Pakistan for the purposes of interpretation of the Radcliffe Award.

Asian Agricultural Products Ltd. v Republic of Sri Lanka, ICSID Case No. ARB/87/3, Final Award, dated 21 June 1990.

Campbell McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention' (2005) 54 ICLQ 279.

Week 9**Special Meaning in Interpretation**Required reading

Vienna Convention on the Law of Treaties, 1969, Article 31.

Supplementary readings

Refugees Convention, 1951.

Regina v Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants) [2004] UKHL 55.

Richard Gardiner (2017) *Treaty Interpretation* (London: OUP) Chapter 7.

Further readings

Article 1 (2) of the Convention on the Conservation of Antarctic Marine Living Resources, 1980 (CCAMLR) *International Status of South West Africa*, ICJ Reports 1950, 128.

Legal Status of Eastern Greenland, PCIJ, Series A/B, No. 53 (1933) 49.

Fitzmaurice, Elias and Merkouris, eds. (2010) *Treaty Interpretation and the Vienna Convention on the Law of Treaties* (The Hague, Martinus).

Week 10**Preparatory Work and Concluding Circumstances in Interpretation**Required reading

Vienna Convention on the Law of Treaties, 1969, Article 32.

Supplementary readings

European Communities – Customs Classification of Certain Computer Equipment, WTO AB Report, para 94.

Pepper (Inspector of Taxes) v Hart [1993] 1 All E.R. 42.

John F Manning, “The Absurdity Doctrine”, 116 *Harvard Law Review* (2003) 2387.

Further readings

Anglo-Iranian Oil Co. (Preliminary Objections), *ICJ Reports* (1952), 93.

United States – Gambling and Betting Services, *WTO AB Report*, paras. 248 and 249.

United States v Kirby, 74 U.S. 482 (1868).

Fitzmaurice, Elias and Merkouris, eds. (2010) *Treaty Interpretation and the Vienna Convention on the Law of Treaties* (The Hague, Martinus).

Aristotle, *Nicomachean Ethics*, Bk. V, Ch. 10, 1137b.

Week 11

Liberal and Restrictive Interpretation

Required reading

Lauterpacht, “Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties”, 26 *British Yearbook of International Law* (1949), 48.

Supplementary readings

Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.

Case of the S.S. “Wimbledon”, *PCIJ Ser A 1923*, 23, at 24.

United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (29 April 1996) 23.

M. Azath S. Salley v Colombo Municipal Council and Others, Judgment of the Supreme Court of Sri Lanka in S.C. (F/R) No. 252/2007, dated 04 March 2009.

Alexander Orakhelashvili, ‘Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights’ (2003) 14 *EJIL* 529.

Further readings

Novartis AG v. Union of India and Others, Judgment of the Supreme Court of India, dated 01 April 2013.

Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase), *ICJ Reports* (1950), 221.

Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol, Judgment of the European Court of Justice, dated 12 April 2005.

Week 12

Equity and other considerations in interpretation

Required reading

David Kennedy, ‘The Turn to Interpretation’ (1985) 58 *South California Law Review* 251.

Supplementary readings

Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), ICJ Reports (1986), 559.

M. Azath S. Salley v Colombo Municipal Council and Others, Judgment of the Supreme Court of Sri Lanka in S.C. (F/R) No. 252/2007, dated 04 March 2009.

Başak Çali, 'Specialized Rules of Treaty Interpretation: Human Rights' in Duncan B. Hollis (eds) (2012) *The Oxford Guide to Treaties* (London: OUP) 525–50.

Further readings

Charter of the United Nations and Statute of the International Court of Justice, 1945.

North Sea Continental Shelf Cases, ICJ Reports (1969), 3.

Case 157/86 *Mary Murphy and Others v Bord Telecom Eireann*, Judgment of the European Court of Justice, dated 04 February 1988.

Greenalls Management Limited v Her Majesty's Commissioners of Customs and Excise [2005] UKHL 34.

David O Brink, 'Legal Interpretation, Objectivity, and Morality' in Brian Leiter (ed), *Objectivity in Law and Morals* (Cambridge: Cambridge University Press, 2001) 12–65.

Week 13**Conclusion**Required reading

Ronald Dworkin, 'Law as Interpretation' (1982) 60 *Texas Law Review* 530.

Supplementary readings

Obligations Concerning Negotiations Relating to the Cessation of Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v India), Jurisdiction of the Court and the Admissibility of the Application, ICJ Judgment of 5 October 2016.

T Endicott, 'Putting Interpretation in Its Place,' 13 *Law and Philosophy* (1994) 451.

M Waibel, 'Demystifying the Art of Interpretation' (2011) 22 *EJIL* 571.

Further Readings

Vienna Convention on the Law of Treaties, Articles 60–62, 70, 72–73.

United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970.

Responsibility of States for Internationally Wrongful Acts, UNGA Res. A/RES/56/83, 28 January 2002, Articles 50, 52.

In the Matter of Chagos Marine Protected Arbitration (Mauritius v UK), PCA, Award, 18 March 2015.

Philip Allott, 'Interpretation—An Exact Art' in Andrea Bianchi, eds. (2015) *Interpretation in International Law* (London: OUP) Chapter 18.