STATUTORY INTERPRETATION BY COURTS

* Start with Text [dictionary, literature]
* Use the structure of the statute – statutory intent
* Look at extrinsic sources – legislative history/intent
* Apply theories and cannons

*Theories of Statutory Construction*

* Textualism – text is the only tool for interpretation
* Intentionalism – congress’ intent for specific words?
* Purposivism – why was the statute enacted?
* Imaginative Reconstruct–put court in enactors shoes
* Dynamic Interpretation – how would framers view in light of changes in the law/society since enacting?

*Reasons to interpret statutes outside of the text*

* Scrivenor’s Error – obvious mistakes should not be enforced (*Shine*, *Locke*)
* Coherence with public norms – adopt the construction which avoids injustice, hardships, constitutional doubts and objectionable results; the one that advances public good (*Bob Jones U*)

*Statute Based Cannons*

* The Mischief Rule – what mischief is the statute correcting? No remedy under existing law? Does statute remedy?
* Golden Rule – Look at whole statute, giving words ordinary meaning, unless it would result in an absurd result.
* The Literal Rule – If language is plain it is what congress intended. Enforce as written
* Plain Meaning Rule – apply ordinary meaning (*Taniguchi –*14 dictionaries, *Costello* – used google)

*Textual Cannons of Construction*

Linguistic/Grammar Cannons – how word fit together

* Ejusdem Generis – of the same kind
  + General words relate to objects similar in nature to the enumerated list (*Ali*)(*Yates*)
* Noscitur a Sociis – a thing is known by its associates
  + Words must be interpreted consistently with surrounding context (*US v. Williams*)
* Expressio Unis – mention of one thing indicates the exclusion of another
  + If congress did not include, it meant to exclude
* Surplusage – don’t interpret in a way that makes other parts of the statute superfluous
* Last Antecedant – a limiting phrase only applies to the clause immediately before it
* Conjunctive – and; applies to all connected
* Disjunctive – or; applies to each term individually
* Punctuation – location has effect on meaning
* May/Shall – discretion/mandatory
* Absurd Results Doctrine (*Holy Trinity*)

Whole Act Cannons – meaning of words in relation to act

* Presume consistent meanings for identical words
* Assume congress’ wants to avoid redundancy and surplusage
* Titles and Provisios meanings

Whole Code Cannons – meaning in light of other statutes

* Whole code rule – construe language in one statute by looking at language in others (*WVU Hospital*)
* In Pari Materia – try to interpret different statutes in a consistent manner, more so if same subject matter
* Presumption against repeal by implication

*Substantive Cannons* – generally require ambiguity to use

* Rule of lenity – when more than one interpretation exists in a criminal statute, pick the one most favorable to defendant (*Muscarello, McNally)*
* Presumptions – So many….see outline page 15
* Civil forfeiture – police can seize assets used in a crime, so they can’t aid criminal’s defense
* Constitutional Avoidance – use interpretation that avoids conflict with the constitution (*Catholic Bishop of Chicago*)
* Federalism Clear Statement Rule – congress must express intent with specific language for certain substantive interests (*Gregory v. Ashcroft*)
  + Congress won’t hide elephants in mouse holes (*Wilderness Ass’n*)
* Presumption against preemption

*Extrinsic Sources of Statutory Meaning*

* Common Law – use to show legislative intent at the time of enactment (*Smith v. Wade*)
* Legislative Background (disfavored – manipulation)
  + Committee Reports (*Enray Sinclair*)
  + Author/Sponsor Statements/Amicus Briefs (*Perez*)
  + Member statements, floor debates
  + Hearing Records
  + Other Legislative Statements
  + Presidential and Agency Statements

STAUTORY INTERPRETATION METHOD

1. Look at text for meaning– if ambiguous use cannons to determine meaning
2. Determine if meaning matched the statutory intent/purpose
3. Supplement meaning with legislative intent
4. if needed consider imaginative/dynamic methods

STRUCTURE OF STATUTES – pg 1

POLICY REASONS FOR/AGAINST TEXTUALISM – pg 7

THEORIES OF LEGISLATIVE PROCESS

* Public Choice – statutes reflect the self-interest of well organized groups that prevail to congress
  + Act to maximize individual gain
  + Cater to special needs, like reelection
* Social Choice – equal powers can create a dead lock
* Political – people don’t vote in a vacuum
  + Curry favor, vote with the group
* Pluralist – people form groups/parties; free riding
* Proceduralist – best laws survive; stability

LEGISLATIVE PROCESS

* Bill is drafted – drafting party lends credibility
* Bill is introduced to congress – strategic person
* Bill is referred to Committee -where bills die
  + Senate has discretion to skip this
* Committee Chair schedules hearings/marks up
  + Must be accompanied by committee report which lists all changes and justification for the bill
  + House Rule 11 – force a hearing
* Floor scheduling / calendaring -shapes debate
  + House- amendments must be germane
  + Senate – no germane req.; filibuster
* Floor consideration – bills debated and voted
* Reconciliation – goes to other legislative body
* Presentment – to the president; veto power
* Enacted or vetoed; 2/3 majority to overturn
* Civil Rights Bill Process – Disparate treatment/ impact cases (*Griggs, Weber, Johnson, Ricci*)

AGENCY IMPLEMENTATION & INTERPRETATION

* Most statutes designate an agency with admin control and rulemaking authority. Seen as having expertise, being fair, representing interests, having accountability, being flexible and efficient
* Delegation normally based on a CBA
* Independent v. Executive agencies
* Follow rules set by the APA
* Substantive/Legislative rule making
* Agency Adjudication
* Informal RM – Notice and Comment
* Informal Guidance
* Investigation and Information gathering
* Subject to Judicial Review – A&C; *Chevron*
* Non-delegation doctrine – can’t delegate inherit law making without an intelligible purpose and constraints on agency power

STATUTORY INTERPRETATION BY AGENCIES

*Agency Regulation Powers under the APA*

* Formal Adjudication and rule making
  + Agency hearings – trail like process which generates binding legal rules
  + *SEC v. Chinery* – formal rulemaking must be “on the record” and is subject to an arbitrary and capricious standard of review
  + Rarely used – normally informal
* Informal Rulemaking
  + Notice and Comment – agency presents proposed rule, give time for public input, address comments and issue a final rule
    - If you don’t comment, you can’t bring an issue later
  + *US v. Nova Scotia Food* – FDA did not respond to comments in its final ruling so rule was found arbitrary and capricious and therefore invalid
* Informal Adjudication – interpretive guidance, memos, letters – not always binding
  + No need for N&C; agencies can change their own interpretive guidance at any time (*Perez*)
* Agencies use many of the same tools as courts. In addition they consider scientific data, economic data and public attitudes when determining reasonable course of action

AGENCY OVERSIGHT BY THE BRANCHES

*Presidential Control*

* Control over personnel through appointments
* Control over appropriations through the OMB via EO
* Presidential Directives – war and national secutiry

*Congressional Control*

* Congressional review act – all agencies must submit “major” rules and supporting information to congress before they may take effect. (congress can change)
* New legislation which changes/affects agency
* Restrict funding – they approve budgets
* Oversight hearings – hold officials accountable
* Confirmation of officers appointed by pres.

*Judicial Control*

* Occurs after the agency action is complete, wait until someone brings a challenge
* **Hard Look Doctrine**
  + Any FORMAL agency action must be supported by substantial evidence
  + Any INFORMAL agency action must be reasonable and not arbitrary or capricious
* **Arbitrary and Capricious standard** – a reviewing court cannot set aside an agency rule that is reasonable, based on consideration of relevant factors and which is within the agencies delegated authority.
  + Courts look at the process the agency used. Agency must examine all relevant information, explain its decisions in detail, consider reasonable alternatives, explain departures from past practices before implementing rule
    - Agencies get almost complete discretion in choosing when to enforce a rule (*Heckler*)
    - *Citizens of Overton Park* – failure to provide alternatives or any evidence for why hwy was needed was arbitrary and capricious
    - *HBO* – must be on the record, no sham RM
    - *Vermont Yankee PP* – courts can’t impose their own additional standards on agencies based on their interpretation
  + An agency rule may be arbitrary and capricious if:
    - Agency relied on factors congress did not intend it to consider
    - Agency failed to consider an important aspect of problem (*Motor Vehicle Manu v. State Farm*)
    - Offered an explanation for the act counter to the evidence before the agency
    - Rule is so implausible that it could not be ascribed to a difference in view or the product of agency expertise

JUDICIAL DEFERENCE TO AGENCY INTERPRETAION

*Reasons for deference*

* When the statute is not clear, courts should defer to the experts who work with the statute day in and day out and have developed wisdom on what works
* “When I am confused, I go with the agency”
* Political accountability and congressional delegation

***Pre Chevron – Respected but not binding***

* *Skidmore* – amicus brief by agency officer on work hours is not binding but should be respected due to the agency’s body of experience and informed judgement.
* Amount of respect a court shows an agency decision is weighted based on the agency’s:
  + Thoroughness of consideration
  + Validity of reasoning
  + Consistency with prior/later pronouncements
  + Procedural Defects
  + Delegation rights, level of public reliance

***Chevron– If congress delegated authority – courts give deference***

* Step 0(*Mead*): Has congress delegated the agency the general power to issue interpretations which carry the force of law and has the agency exercised that authority in issuing the interpretation at issue? (use *Skidmore* rules)
  + If yes – step 1; If no – use Skidmore deference
* Step 1: Did congress address the specific statutory question directly?
  + Express Delegation – agency interpretation gets deference unless arbitrary or capricious
  + Implied Delegation – deference if agency interpretation is reasonable
* Step 2: Was the Agency interpretation reasonable?
  + If yes, give deference unless A&C; If no, use Skidmore

***Auer Deference – Super deference*** is given to agency interpretations of their own rules or interpretations