IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CURLEY CAMP
HOWARD CAMP
MARTY TATE, D/B/A TATE LOGGING — APPELLANTS

VS. — NO. 2008-CA-01076

CLINT STOKES — APPELLEE

ON APPEAL FROM THE CHANCERY COURT
OF MONROE COUNTY MISSISSIPPI

APPEAL BRIEF OF APPELLANTS CURLEY CAMP, HOWARD CAMP, MARTY TATE, D/B/A TATE LOGGING

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CURLEY CAMP **HOWARD CAMP** **MARTY TATE, D/B/A TATE LOGGING**	**APPELLANTS**
VS.	**NO. 2008-CA-01076**
CLINT STOKES	**APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Curley Camp	-	Defendant/Appellant
Howard Camp	-	Defendant/Appellant
Marty Tate, D/B/A Tate Logging	-	Defendant/Appellant
Clint Stokes	-	Plaintiff/Appellee
Carter Dobbs, Jr.	-	Attorney for Defendants/Appellants
Brad Blalock	-	Attorney for Plaintiff
Honorable Jacqueline Mask	-	Trial Judge

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II. APPELLANTS' STATEMENT OF THE CASE

(A) NATURE OF THE CASE.

This appeal involves one single issue, and that issue is whether the trial Court may allow attorney fees and/or expert witness fees to a successful Defendant in a timber trespass case filed under § 95-5-10(3), Mississippi Code of 1972, as amended.

(B) COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW.

Plaintiff/Appellee in this case will be referred to as "Stokes." Defendants/Appellants will be referred to as "Camp brothers" and "Tate."

Stokes and the Camp brothers are the owners of adjoining tracts of land in Monroe County, Mississippi. Stokes owns the tract of land lying to the East and the Camp brothers own the land lying to the West. Stokes filed a Complaint For Trespass And Wrongful Cutting Of Timber against the Camp brothers and Tate pursuant to § 95-5-10(3), Mississippi Code of 1972, as amended, alleging that Tate, with the Camp brothers' consent, cut timber across the common boundary line on his property. The Camp brothers and Tate filed an Answer denying Stokes' claim, and filed a Counter-Complaint For Cancellation Of Cloud On Title, asking the Court to determine that an old wire fence was the common boundary line between the respective tracts of land.

The trial Court determined that the central issue was the location of the common boundary line between the Camp brothers and Stokes, which determination would be dispositive of the issue of ownership of the land and timber allegedly wrongfully cut.

The case was tried, and on April 29, 2008, the trial Judge entered an Opinion And Judgment, (R. 3, R. E. 3) dismissing Stokes' Complaint For Timber Trespass and finding that the fence line alleged by the Camp brothers and Tate to be the true boundary line, was in fact, the boundary line between the lands of the respective parties.

On May 9, 2008 the Camp brothers and Tate filed a Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs. On May 27, 2008 an Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs was entered (R.16, R. E. 16.) On June 13, 2008 an Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs was entered (R. 17, R. E. 17.) On June 19, 2008 the Appellants filed their Notice of Appeal.

It is from the Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs that Appellants Camp brothers and Tate have filed this appeal.

(C) STATEMENT OF FACTS RELEVANT TO THE ISSUE PRESENTED FOR REVIEW.

(1) Stokes and the Camp brothers are owners of adjoining tracts of land in Monroe County, Mississippi. Stokes owns the tract of land lying to the East and the Camp brothers own the land lying to the West. Stokes purchased his property in April, 2006. The Camp brothers and their family have owned their land since the year 1911.

(2) In 2007 Tate, acting in contractual concert with the Camp brothers, cut the timber on their land up to an old fence line that they asserted was the line between their land and that of Stokes. Stokes disagreed with the location of the common boundary line and filed suit against the Camp brothers and Tate pursuant to § 95-5-10(3), Mississippi Code of 1972, as amended. The Camp brothers and Tate filed an Answer denying Stokes' claim, and they also filed a Counter-Complaint For Cancellation Of Cloud On Title, asking the Court to determine that an old wire fence, up to which the timber was cut, was the common boundary line between the respective tracts of land owned by the parties.

(3) The case was tried before the Chancellor, and the Court determined that the central issue was the location of the common boundary line between the Camp brothers and Stokes. On April 29, 2008 the trial Judge entered an Opinion And Judgment (R. 3, R. E. 3), dismissing Stokes' Complaint For Timber Trespass and finding that the old fence line alleged by the Camp brothers and Tate to be the boundary line was, in fact, the true boundary line of the properties of the respective parties.

(4) On May 9, 2008 the Camp brothers and Tate filed a Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs, alleging that pursuant to § 95-5-10(3), Mississippi Code of 1972, as amended, the Court should have awarded them, as successful parties in the litigation, all reasonable expert witness fees and attorney's fees.

(5) On June 13, 2008 the Court entered an Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs (R. 17, R. E. 17,) finding that § 95-5-10(3) does not apply to a successful Defendant in a case filed pursuant to this timber trespass statute.

(6) The Court in its Amended Order clarified that no hearing was held by the Court as to any allowable amount of attorney fees and/or expert witness fees, and because the Court found that § 95-5-10(3) did not apply to successful Defendants in a timber trespass case under said statute, no such hearing was deemed necessary by the Court.

III. SUMMARY OF APPELLANTS' ARGUMENT

WHETHER THE TRIAL COURT ERRED IN RULING THAT THE ALLOWANCE OF ATTORNEY FEES AND/OR EXPERT WITNESS FEES, AS PROVIDED BY § 95-5-10(3), MISSISSIPPI CODE OF 1972, AS AMENDED, DOES NOT APPLY TO A SUCCESSFUL DEFENDANT IN A TIMBER TRESPASS CASE FILED PURSUANT TO SAID STATUTE.

The statute under which Plaintiff Stokes' suit was filed and tried, § 95-5-10(3), Mississippi Code of 1972, as amended, states that "All reasonable expert witness fees and attorney's fee shall be assessed as Court costs in discretion of the Court." This statute does not state that "the successful Plaintiff's" witness fees and attorney's fees shall be assessed as Court costs. "All" means what it says; that the statute on its face applies to successful Defendants, as well as successful Plaintiffs.

Rule 54(d) of the Mississippi Rules of Civil Procedure provides that costs shall be allowed as a matter of course to the prevailing party, Defendants Camp brothers and Tate in this case.

IV. APPELLANTS' ARGUMENT

ISSUE 1: WHETHER THE TRIAL COURT ERRED IN RULING THAT THE ALLOWANCE OF ATTORNEY FEES AND/OR EXPERT WITNESS FEES, AS PROVIDED BY § 95-5-10(3), MISSISSIPPI CODE OF 1972, AS AMENDED, DOES NOT APPLY TO A SUCCESSFUL DEFENDANT IN A TIMBER TRESPASS CASE FILED PURSUANT TO SAID STATUTE.

Appellants Camp brothers and Tate were the prevailing parties in the timber trespass case filed by Appellee Stokes and tried in the lower Court. The timber trespass suit was filed by Stokes pursuant to § 95-5-10, Mississippi Code of 1972, as amended. As prevailing parties, Appellants Camp brothers and Tate are, by the plain reading of this statute, are entitled to reasonable expert witness fees and attorney's fees.

§ 95-5-10 reads in its entirety as follows:

> (1) If any person shall cut down, deaden, destroy or take away any tree without the consent of the owner of such tree, such person shall pay to the owner of such tree a sum equal to double the fair market value of the tree cut down, deadened, destroyed or taken away, together with the reasonable cost of reforestation, which cost shall not exceed Two Hundred Fifty Dollars (250.00) per acre. The liability for the damages established in this subsection shall be absolute and unconditional and the fact that a person cut down, deadened, destroyed or took away any tree in good faith or by honest mistake shall not be an exception or defense to liability. To establish a right of the owner prima facie to recover under the provisions of this subsection, the owner shall only be required to show that such timber belonged to such owner, and that such timber was cut down, deadened, destroyed or taken away by the defendant, his agents or employees, without the consent of such owner. The remedy provided for in this section shall be the exclusive remedy for the cutting down, deadening, destroying or taking away of trees and shall be in lieu of any other compensatory, punitive or exemplary damages for the cutting down, deadening, destroying or taking away of trees but shall not limit actions or awards for other damages caused by a person.

> (2) If the cutting down, deadening, destruction or taking away of a tree without the consent of the owner of such tree be done willfully, or in reckless disregard for the rights of the owner of such tree, then in addition to the damages provided for in subsection (1) of this section, the person cutting down, deadening, destroying or taking away such tree shall pay to the owner as a penalty Fifty-five Dollars ($55.00) for every tree so cut down, deadened, destroyed or taken away if such tree is seven (7) inches or more in diameter at a height of eighteen (18) inches above ground level, or Ten Dollars ($10.00) for every such tree so cut down, deadened, destroyed or taken away if such tree is less than seven (7) inches in diameter at a height of eighteen (18) inches above ground level, as established by a preponderance of the evidence. To establish the right of the owner prima facie, to recover under the provisions of this subsection, it shall be required of the owner to show that the defendant or his agents or employees, acting under the command or consent of their principal, willfully and knowingly, in conscious disregard for the rights of the owner, cut down, deadened, destroyed or took away such trees.
>
> (3) All reasonable expert witness fees and attorney's fees shall be assessed as court costs in the discretion of the court.

The Chancellor in her Amended Order Denying Motion To Alter And Amend Opinion And Judgment And To Assess Court Costs (R. 17, R. E. 17) denied Appellants' Camp brothers' and Tate's Motion because she found that § 95-5-10(3) does not apply to a successful Defendant in a timber trespass case under this statute. She did not exercise her discretion in assessing expert witness fees and attorney's fees because she determined that the timber trespass statute does not apply to a successful Defendant in a timber trespass case. She held no hearing to determine the amount of expert witness fees and attorney's fees for the same reason (R. 17, R. E. 17.)

This statue does not state that "The successful Plaintiff's" witness fees and attorney's fees shall be assessed as court costs." The statute on its face applies to successful Defendants as well as successful Plaintiffs.

This statute should be considered in connection with Rule 54(d), *Judgment; costs*, of the Mississippi Rules of Civil Procedure, which states that:

> Except when express provision thereof is made in a statute, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs....

The Comment to Rule 54(d) states that:

> Costs almost always amount to less in a successful litigant's total expenses in connection with a law suit and their recovery is nearly always awarded to the successful party.

The point of the foregoing is that § (3) of the statute states that expert witness fees and attorney's fees shall be assessed as Court costs. Since pursuant to Rule 54(d), costs "shall be allowed as of course to the prevailing party unless the Court otherwise directs," by operation of the statute reasonable expert witness fees and attorney's fees shall also be assessed by the Court. Again, the Chancellor in this case did not exercise any discretion as provided by the statute because she was of the opinion that § (3) of the statute does not apply to a prevailing Defendant, as she so stated in her Amended Order (R. 17, R. E. 17.)

In interpreting § 95-5-10, Mississippi Code of 1972, as amended, the "plain meaning rule" applies. Attached to this Brief as an Appendix are excerpts from the text Volume 2A Norman J. Singer, Statutes and Statutory Construction § 46:01 (Rev. 2000). § 46:01, *The Plain Meaning Rule*, pp. 113-122; 125-126, states in part as follows:

> A basic insight about the process of communication was given classic expression by the Supreme Court of the United States when it declared that "the meaning of the statute muse, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms."[1] this generally means when the language of the stature is clear and not unreasonable or illogical in its operation, the court may not go outside the statute to give it a different meaning.[2] The court disclaimed that it was engaged in the process of interpretation when it decided what the statute "plainly" meant. It said "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meaning need no discussion."
>
> What has come to be known as the plain meaning rule has been given expression in a variety of ways;[3] "When the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction."[4] "It is not allowable to interpret what has no need of interpretation."[5] "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses."[6]
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> * * *
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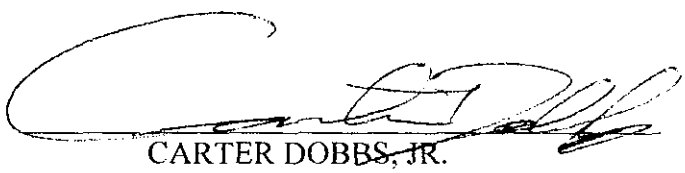
> One who questions the application of the plain meaning rule to a provision of an act must show either that some other section of the act expands or restricts its meaning, that the provision itself is repugnant to the general purview of the act, or that the act considered in pari materia with other acts,[19] or with the legislative history of the subject matter, imports a different meaning.[20]

§ (3) of Mississippi Code § 95-5-10 is plain and unambiguous on its face. It is clear and not unreasonable or illogical in its operation. An exception to the well-established rule concerning a trial Court assessing expert witness fees and attorney's fees is that the Court may do so when authorized by statute. *Stanton & Associates, Inc.* v. *Bryant Const. Co., Inc.*, 464 So.2d 499 (Miss. 1985). Code § 95-5-10(3) clearly is such an exception to this rule. "All reasonable expert witness fees and attorney's fees," by the plain meaning rule, means what it says. There is absolutely no limitation on the face of this statute that applies its operation only to successful Plaintiffs.

V. CONCLUSION

For the reasons set out above, this Court should render a decision reversing the decision of the Chancellor as to the assessment of expert witness fees and attorney's fees as costs, and remanding the case to the lower Court for a hearing as to the amount of expert witness fees and attorney's fees to be allowed to Appellants' Camp brothers and Tate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellants, do hereby certify that I have, on this the 12th day of November, 2008, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellants' Brief to Honorable Jacqueline Estes Mask, Chancellor, at her usual mailing address of Post Office Box 7395, Tupelo, Mississippi 38802 and to the Appellee, Clint Stokes, at his mailing address of Post Office Box 2871, Columbus, Mississippi 39704.

CARTER DOBBS, JR.

APPENDIX TO

APPEAL BRIEF OF APPELLANTS

Statutes and Statutory Construction

SIXTH EDITION

By NORMAN J. SINGER
PROFESSOR OF LAW
UNIVERSITY OF ALABAMA

2000 Revision

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CHAPTER 46
LITERAL INTERPRETATION

§ 46:01 The plain meaning rule

A basic insight about the process of communication was given classic expression by the Supreme Court of the United States when it declared that "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms."[1] This generally means when the language of the statute is clear and not unreasonable or illogical in its operation, the court may not go

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[Section 46:01]

[1]**United States.** U.S. v. Revis, 22 F. Supp. 2d 1242 (N.D. Okla. 1998); Caminetti v. U.S., 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917); Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977); United States v. Pennsylvania Environmental Hearing Board, 584 F.2d 1273 (3rd Cir. 1978); Brastex Corp. v. Allen Intern., Inc., 702 F.2d 326 (2d Cir. 1983); McBarron v. S & T Industries, Inc., 771 F.2d 94 (6th Cir. 1985); Reid v. Department of Commerce, 793 F.2d 277 (Fed. Cir. 1986); Hoechst Aktiengesellschaft v. Quigg, 917 F.2d 522 (Fed. Cir. 1990); Professional Lawn Care Ass'n v. Village of Milford, 909 F.2d 929 (6th Cir. 1990), cert. granted, judgment vacated on other grounds, 501 U.S. 1246, 111 S. Ct. 2880, 115 L. Ed. 2d 1046 (1991); U.S. v. Behnezhad, 907 F.2d 896 (9th Cir. 1990); State of Ill. by Illinois Dept. of Public Aid v. Bowen, 808 F.2d 571, 36 Ed. Law Rep. 1128 (7th Cir. 1986); Teel v. American Steel Foundries, 529 F. Supp. 337, 10 Fed. R. Evid. Serv. (LCP) 70, 33 U.C.C. Rep. Serv. (CBC) 42 (E.D. Mo. 1981); Keenan v. Washington Metropolitan Area Transit Authority, 643 F. Supp. 324 (D.D.C. 1986); Palestine Information Office v. Shultz, 674 F. Supp. 910 (D.D.C. 1987), decision aff'd, 853 F.2d 932 (D.C. Cir. 1988); Guarantee Elec. Co. v. Big Rivers Elec. Corp., 669 F. Supp. 1371 (W.D. Ky. 1987); Brooklyn Bridge Park Coalition v. Port Authority of New York and New Jersey, 951 F. Supp. 383 (E.D.N.Y. 1997); McClary v. Erie Engine & Mfg. Co., 856 F. Supp. 52 (D.N.H. 1994); Matter of Cox, 10 Vet. App. 361 (1997), as amended, (Sept. 4, 1997) and vacated on other grounds, 149 F.3d 1360 (Fed. Cir. 1998); Brooks v. Brown, 5 Vet. App. 484 (1993), aff'd, 26 F.3d 141 (Fed. Cir. 1994); U.S. v. Revis, 22 F. Supp. 2d 1242 (N.D. Okla. 1998).

outside the statute to give it a different meaning.[2] The court disclaimed that it was engaged in the process of interpretation when it decided what the statute "plainly" meant. It said "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."

What has come to be known as the plain meaning rule has been given expression in a variety of ways:[3] "When the intention of the legislature

is the "standard method." Schanck, The Only Game in Town: An Introduction to Interpretive Theory, Statutory Construction, and Legislative Histories, 38 Kan L Rev 815, 818 (1990).

[2]**Florida.** Sheffield v. Davis, 562 So. 2d 384 (Fla. Dist. Ct. App. 2d Dist. 1990).

[3]**United States.** Harrison v. Northern Trust Co., 317 U.S. 476, 63 S. Ct. 361, 87 L. Ed. 407 (1943); Rosenman v. U.S., 323 U.S. 658, 65 S. Ct. 536, 89 L. Ed. 535 (1945); Packard Motor Car Co. v. N.L.R.B., 330 U.S. 485, 67 S. Ct. 789, 91 L. Ed. 1040 (1947); Jones v. Liberty Glass Co., 332 U.S. 524, 68 S. Ct. 229, 92 L. Ed. 142 (1947); Lawson v. Suwanee Fruit & S.S. Co., 336 U.S. 198, 69 S. Ct. 503, 93 L. Ed. 611 (1949) (where the court stated that a statutory definition is not always controlling); Ex parte Collett, 337 U.S. 55, 69 S. Ct. 944, 93 L. Ed. 1207, 10 A.L.R.2d 921 (1949); Unexcelled Chemical Corp. v. U.S., 345 U.S. 59, 73 S. Ct. 580, 97 L. Ed. 821 (1953); U. S. v. Public Utilities Commission of Cal., 345 U.S. 295, 73 S. Ct. 706, 97 L. Ed. 1020 (1953); Barber v. Gonzales, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 1009 (1954); Wirtz v. Local 191, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 321 F.2d 445 (2d Cir. 1963); Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F.2d 230 (D.C. Cir. 1963) (legislative history not to be considered where meaning unambiguous); Essex County and Vicinity Dist. Council of Carpenters and Millwrights, United Broth. of Carpenters and Joiners of America, AFL-CIO v. N. L. R. B., 332 F.2d 636 (3d Cir. 1964); Northwest Paper Co. v. Federal Power Commission, 344 F.2d 47 (8th Cir. 1965); U. S. v. Deardorff, 343 F. Supp. 1033 (S.D.N.Y. 1971); In re Longhorn Securities Litigation, 573 F. Supp. 255 (W.D. Okla. 1983); Ford v. Gober, 10 Vet. App. 531 (1997); Jaquay v. West, 11 Vet. App. 67 (1998).

Alabama. Custred v. Jefferson County, 360 So. 2d 285 (Ala. 1978).

Alaska. Application of Babcock, 387 P.2d 694 (Alaska 1963).

The Supreme Court applies the "sliding scale approach" toward statutory interpretation which means the plainer the language of the statute, the more convincing contrary legislative history must be. Alaska Housing Finance Corp. v. Salvucci, 950 P.2d 1116 (Alaska 1997).

Arizona. City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1964); Finn v. J. H. Rose Truck Lines, 1 Ariz. App. 27, 398 P.2d 935 (1965).

California. In re W. R. W., 17 Cal. App. 3d 1029, 95 Cal. Rptr. 354 (2d Dist. 1971).

Colorado. Robinson v. State, 155 Colo. 9, 392 P.2d 606 (1964).

Delaware. Logan v. Davis, 55 Del. 51, 183 A.2d 596 (Super. Ct. 1962), judgment rev'd on other grounds, 55 Del. 244, 191 A.2d 1 (1963).

Idaho. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964); Petersen v. State, 87 Idaho 361, 393 P.2d 585 (1964); Knight v. Employment Sec. Agency, 88 Idaho 262, 398 P.2d 643 (1965).

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Illinois. Walgreen (Telephone Co. v. Fox, 177, 112 N.E.2d 466 (22 Ill. 2d 432, 176 N.E

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New Jersey. Bravan State v. Rucker, 46 N.J. of Review, Division of I N.J. Super. 418, 134 A.2

New York. Tishman Concord Hotel, 48 N.Y text); People v. Uncaphe

Rhode Island. Unite Krupa v. Murray, 557 A

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Wisconsin. State ex re toga, 114 Wis. 2d 14, 33

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is so apparent from the face of the statute that there can be no question

Illinois. Walgreen Co. v. Murphy, 386 Ill. 32, 53 N.E.2d 390 (1944); Illinois Bell Telephone Co. v. Fox, 402 Ill. 617, 85 N.E.2d 43 (1949); People v. Shamery, 415 Ill. 177, 112 N.E.2d 466 (1953); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

Indiana. Meridian Mortg. Co., Inc. v. State, 182 Ind. App. 328, 395 N.E.2d 433 (2d Dist. 1979).

Kansas. Harris v. Shanahan, 192 Kan. 183, 387 P.2d 771 (1963).

Louisiana. State Through Dept. of Highways v. Bradford, 242 La. 1095, 141 So. 2d 378 (1961).

Maryland. Hunt v. Montgomery County, 248 Md. 403, 237 A.2d 35 (1968).

Massachusetts. Johnson's Case, 318 Mass. 741, 64 N.E.2d 94 (1945).

Michigan. People v. Gilbert, 414 Mich. 191, 324 N.W.2d 834 (1982).

Minnesota. Johnson v. Johnson, 277 N.W.2d 208 (Minn. 1979).

Missouri. Steggall v. Morris, 363 Mo. 1224, 258 S.W.2d 577 (1953); Foremost Dairies, Inc. v. Thomason, 384 S.W.2d 651 (Mo. 1964); State ex rel. Whaley v. Gaertner, 605 S.W.2d 506 (Mo. Ct. App. E.D. 1980).

New Hampshire. Words used must be given their ordinary meaning unless it appears from the context that a different meaning was intended. Martin v. Gardner Mach. Works, Inc., 120 N.H. 433, 415 A.2d 878 (1980).

New Jersey. Bravand v. Neeld, 35 N.J. Super. 42, 113 A.2d 75 (App. Div. 1955); State v. Rucker, 46 N.J. Super. 162, 134 A.2d 409 (App. Div. 1957); Hancock v. Board of Review, Division of Employment Sec., New Jersey Dept. of Labor and Industry, 46 N.J. Super. 418, 134 A.2d 775 (App. Div. 1957).

New York. Tishman v. Sprague, 293 N.Y. 42, 55 N.E.2d 858 (1944); Zaldin v. Concord Hotel, 48 N.Y.2d 107, 421 N.Y.S.2d 858, 397 N.E.2d 370 (1979) (citing text); People v. Uncapher, 207 Misc. 960, 141 N.Y.S.2d 377 (County Ct. 1955).

Rhode Island. United Transit Co. v. Nunes, 99 R.I. 501, 209 A.2d 215 (1965); Krupa v. Murray, 557 A.2d 868, 53 Ed. Law Rep. 548 (R.I. 1989).

When the language of a statute is clear and unambiguous and does not contradict an evident legislative purpose, there is no need for statutory construction or the use of interpretive aids. Fruit Growers Exp. Co. v. Norberg, 471 A.2d 628 (R.I. 1984).

Vermont. Leno v. Meunier, 125 Vt. 30, 209 A.2d 485 (1965).

Washington. Krystad v. Lau, 65 Wash. 2d 827, 400 P.2d 72 (1965).

Wisconsin. State ex rel. Nekoosa Papers, Inc. v. Board of Review of Town of Saratoga, 114 Wis. 2d 14, 336 N.W.2d 384 (Ct. App. 1983).

If the language of a statute is clear on its face, the courts are precluded from referring to extrinsic sources to aid in interpreting that language. Seep v. State Personnel Com'n, 140 Wis. 2d 32, 409 N.W.2d 142 (Ct. App. 1987).

Sheets, When Extrinsic Aids Will Be Used—The Plain Meaning Rule, 1952 Wash ULQ 267; Comment: Administrative Practice as a Guide to Judicial Interpretation of Statutes, 7 Md L Rev 87 (1942); Miller, Statutory Language and the Purposive Use of Ambiguity, 42 Va L Rev 23 (1956); Dixon, Judicial Method in Interpretation of Law in Louisiana, 42 La L Rev 1661 (1982); Popkin, Law-Making Responsibility and Statutory Interpretation, 68 Ind LJ 865 (1993).

as to its meaning, there is no room for construction."[4] "It is not allow-

[4]**United States.** Meeks v. West, 12 Vet. App. 352 (1999); Overseas Educ. Ass'n, Inc. v. Federal Labor Relations Authority, 876 F.2d 960, 54 Ed. Law Rep. 413 (D.C. Cir. 1989); Architects Collaborative, Inc. v. President and Trustees of Bates College, 576 F. Supp. 380 (D. Me. 1983); Tallman v. Brown, 7 Vet. App. 453, 99 Ed. Law Rep. 467 (1995), reconsideration denied, review denied, 8 Vet. App. 216 (1995) and judgment rev'd on other grounds, 105 F.3d 613, 116 Ed. Law Rep. 882 (Fed. Cir. 1997); Sweitzer v. Brown, 5 Vet. App. 503 (1993).

Alaska. Gibson v. State, 719 P.2d 687 (Alaska Ct. App. 1986).

Arizona. State Tax Commission v. Television Services, Inc., 108 Ariz. 236, 495 P.2d 466 (1972).

California. People ex rel. People v. Sands, 102 Cal. 12, 36 P. 404 (1894); In re Atiles, 33 Cal. 3d 805, 191 Cal. Rptr. 452, 662 P.2d 910 (1983) (disapproved of on other grounds by, In re Joyner, 48 Cal. 3d 487, 256 Cal. Rptr. 785, 769 P.2d 967 (1989)) and (overruled on other grounds by, People v. Bruner, 9 Cal. 4th 1178, 40 Cal. Rptr. 2d 534, 892 P.2d 1277 (1995)); Cucamonga County Water Dist. v. Southwest Water Co., 22 Cal. App. 3d 245, 99 Cal. Rptr. 557 (4th Dist. 1971); Maldonado v. Superior Court, 162 Cal. App. 3d 1259, 209 Cal. Rptr. 199 (1st Dist. 1984); People v. Burroughs, 234 Cal. App. 3d 245, 285 Cal. Rptr. 622 (3d Dist. 1991).

Colorado. Statutory words should be given their plain and generally accepted meaning. Incorporation of Town of Eastridge v. City of Aurora, 41 Colo. App. 299, 590 P.2d 72 (1978), judgment aff'd, 198 Colo. 440, 601 P.2d 1374 (1979).

District of Columbia. Tibbs v. U.S., 507 A.2d 141 (D.C. 1986).

Illinois. Matter of Donnelly's Estate, 111 Ill. App. 3d 1035, 67 Ill. Dec. 757, 445 N.E.2d 49 (5th Dist. 1983), judgment aff'd and remanded, 98 Ill. 2d 24, 74 Ill. Dec. 58, 455 N.E.2d 88 (1983).

Maryland. Vallario v. State Roads Commission, 290 Md. 2, 426 A.2d 1384 (1981).

Massachusetts. Pyle v. School Committee of South Hadley, 423 Mass. 283, 667 N.E.2d 869, 111 Ed. Law Rep. 481 (1996).

Michigan. If the wording of a statute is unambiguous, there is no room for courts to attempt to construe it. Michigan Harness Horsemen's Ass'n v. Racing Com'r, 123 Mich. App. 388, 333 N.W.2d 292 (1983).

Minnesota. Where the statutory language is unambiguous, the court may not disregard the letter of the law under the pretext of pursuing its spirit. City of Rochester v. People's Co-op. Power Ass'n Inc., 466 N.W.2d 753 (Minn. Ct. App. 1991), review granted, (Apr. 29, 1991) and review dismissed, (May 28, 1991) and rev'd on other grounds, 483 N.W.2d 477 (Minn. 1992).

Missouri. Americare Systems, Inc. v. Missouri Dept. of Social Services, 808 S.W.2d 417 (Mo. Ct. App. W.D. 1991).

Nebraska. Gatewood v. Powell, 1 Neb. App. 749, 511 N.W.2d 159 (1993).

When the words of a statute are plain, direct and unambiguous, no construction is necessary or will be indulged to ascertain their meaning. Association of Commonwealth Claimants v. Moylan, 246 Neb. 88, 517 N.W.2d 94 (1994).

New Jersey. Policemen's Benev. Ass'n, North Brunswick, Local 160 v. Township of North Brunswick, 318 N.J. Super. 544, 723 A.2d 1287 (App. Div. 1999); Schulman v. O'Reilly-Lando, 226 N.J. Super. 626, 545 A.2d 241, 48 Ed. Law Rep. 571 (App. Div. 1988); Aetna Burglar & Fire Alarm Company v. Director, Division of Taxation, 16 N.J.Tax 584 (N.J. Tax, 1997).

able to interpret what has no need of interpretation."[5] "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly

Pennsylvania. Salvado v. Prudential Property and Cas. Ins. Co., 287 Pa. Super. 304, 430 A.2d 297 (1981).

Rhode Island. Roadway Exp., Inc. v. Rhode Island Commission for Human Rights, 416 A.2d 673 (R.I. 1980).

Tennessee. State v. Holtcamp, 614 S.W.2d 389, 20 A.L.R.4th 813 (Tenn. Crim. App. 1980).

Texas. Boykin v. State, 818 S.W.2d 782 (Tex. Crim. App. 1991), reh'g on petition for discretionary review denied, (Nov. 20, 1991).

The general proposition that a statute may not be inquired into if it is clear on its face cannot be followed when a statute is codified and the legislature explicitly states that no substantive change in the law is intended. Bryant v. Metropolitan Transit Authority, 722 SW2d 738 (Tex. App. 1986), disapproved by Fleming Foods of Texas, Inc. v. Rylander, 1999 WL 1127657, 43 Tex. Sup. Ct. J. 171 (Tex. Sup. Ct. 1999).

Utah. Employers' Reinsurance Fund v. Industrial Com'n of Utah, 856 P.2d 648 (Utah Ct. App. 1993).

Vermont. State v. Bourn, 139 Vt. 14, 421 A.2d 1281 (1980).

Washington. Snow's Mobile Homes, Inc. v. Morgan, 80 Wash. 2d 283, 494 P.2d 216 (1972).

Wisconsin. Matter of Athans, 107 Wis. 2d 331, 320 N.W.2d 30 (Ct. App. 1982).

Wyoming. Montana-Dakota Utilities Co. v. Wyoming Public Service Com'n, 746 P.2d 1272 (Wyo. 1987).

[6]**Alaska.** Kodiak Elec. Ass'n, Inc. v. DeLaval Turbine, Inc., 694 P.2d 150, 40 U.C.C. Rep. Serv. (CBC) 155 (Alaska 1984).

Arkansas. Mears v. Arkansas State Hospital, 265 Ark. 844, 581 S.W.2d 339 (1979).

Delaware. Explicit provisions override implications. Cannon v. Container Corp. of America, 282 A.2d 614 (Del. 1971) (overruled on other grounds by, Keeler v. Harford Mut. Ins. Co., 672 A.2d 1012 (Del. 1996)).

District of Columbia. Since the court is interpreting and applying a statute which is clear on its face, they are obliged to apply the language as written. Kleiboemer v. District of Columbia, 458 A.2d 731 (D.C. 1983).

Kansas. Ordinary words in a statute are to be given their ordinary meaning and the statute is not to be read so as to add or subtract from that which is stated therein. R. D. Andersen Const. Co., Inc. v. Kansas Dept. of Human Resources, 7 Kan. App. 2d 453, 643 P.2d 1142 (1982).

Kentucky. Clark v. Clark, 601 S.W.2d 614 (Ky. Ct. App. 1980).

Nebraska. Gatewood v. Powell, 1 Neb. App. 749, 511 N.W.2d 159 (1993).

New Jersey. Ingraham v. Travelers Companies, 217 N.J. Super. 126, 524 A.2d 1319 (App. Div. 1987), decision aff'd, 110 N.J. 67, 539 A.2d 733 (1988).

North Dakota. The purpose of statutory construction is to determine the intent of the legislature. In Interest of T.J., 482 N.W.2d 850 (N.D. 1992).

Wisconsin. Gilbert v. Dutruit, 91 Wis. 661, 665, 65 N.W. 511 (1895).

But see Rota v. Brotherhood of Ry., Airline and S. S. Clerks, 338 F. Supp. 1176 (E.D. Pa. 1972).

expresses."[6] "The . . . rule . . . assumes that the words of the stat-

[6]**United States.** Swarts v. Siegel, 117 F. 13 (C.C.A. 8th Cir. 1902); Pacificorp Capital, Inc. v. U.S., 852 F.2d 549 (Fed. Cir. 1988); California Save Our Streams Council, Inc. v. Yeutter, 887 F.2d 908 (9th Cir. 1989); U. S. v. McFillin, 487 F. Supp. 1130 (D. Md. 1980); Zimick v. West, 11 Vet. App. 45 (1998); Hennessey v. Brown, 7 Vet. App. 143 (1994).

Alaska. City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982); Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983); Janes v. Otis Engineering Corp., 757 P.2d 50 (Alaska 1988).

Arizona. Dewitt v. Magma Copper Co., 16 Ariz. App. 305, 492 P.2d 1243 (Div. 2 1972).

California. Johnson v. Raybestos-Manhattan, Inc., 234 Cal. Rptr. 106 (App. 1st Dist. 1987), review denied and ordered not to be officially published, (Apr. 30, 1987); People v. Young, 192 Cal. App. 3d 812, 237 Cal. Rptr. 703 (1st Dist. 1987).

Connecticut. Dubno v. Colby, 38 Conn. Supp. 54, 458 A.2d 396 (Super. Ct. 1982).

Hawaii. State v. Akina, 73 Haw. 75, 828 P.2d 269 (1992).

Louisiana. McGee v. State, 502 So. 2d 121 (La. Ct. App. 4th Cir. 1986), writ denied, 505 So. 2d 730 (La. 1987).

Massachusetts. Patrick P. v. Com., 421 Mass. 186, 655 N.E.2d 377 (1995).

Michigan. Council 23 Am. Federation of State, County and Municipal Emp., AFL-CIO v. Civil Service Commission for Wayne County, 32 Mich. App. 243, 188 N.W.2d 206 (1971) (interpretation of constitution).

Minnesota. Graber v. Peter Lametti Const. Co., 293 Minn. 24, 197 N.W.2d 443 (1972) (precise and unambiguous language not susceptible to construction).

Montana. When the term "property" is used, it means real and personal property. Tongue River Elec. Co-op., Inc. v. Montana Power Co., 195 Mont. 511, 636 P.2d 862 (1981).

Nebraska. Rudder v. American Standard Ins. Co. of Wis., 187 Neb. 778, 194 N.W.2d 175 (1972); State on Behalf of Matchett v. Dunkle, 244 Neb. 639, 508 N.W.2d 580 (1993).

Nevada. Building and Const. Trades Council of Northern Nevada v. State ex rel. Public Works Bd., 108 Nev. 605, 836 P.2d 633, 77 Ed. Law Rep. 508 (1992).

New Jersey. State v. Johnson, 203 N.J. Super. 436, 497 A.2d 242 (Law Div. 1985); Ingraham v. Travelers Companies, 217 N.J. Super. 126, 524 A.2d 1319 (App. Div. 1987), decision aff'd, 110 N.J. 67, 539 A.2d 733 (1988); State v. Ridgeway, 256 N.J. Super. 202, 606 A.2d 873 (App. Div. 1992).

New York. Dati v. Gallagher, 68 Misc. 2d 692, 327 N.Y.S.2d 472 (Sup. Ct. 1971).

North Carolina. Williams v. Williams, 299 N.C. 174, 261 S.E.2d 849 (1980); State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986).

South Carolina. Rabon v. South Carolina State Highway Dept., 258 S.C. 154, 187 S.E.2d 652 (1972).

Virginia. Loyisi v. Com., 212 Va. 848, 188 S.E.2d 206, 75 A.L.R.3d 928 (1972).

Washington. Nisqually Delta Ass'n v. City of DuPont, 103 Wash. 2d 720, 696 P.2d 1222 (1985).

Wisconsin. Villa Clement, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 120 Wis. 2d 140, 353 N.W.2d 369 (Ct. App. 1984).

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ute have the same meaning to those who authored it and to those who read it.''[7] ''The court considers the language of an enactment in its natural and ordinary signification, and if there is no ambiguity or obscurity in the language, there is usually no need to look elsewhere to ascertain intent.''[8] ''Where the words of the statute are clear and free from ambiguity, the letter of the statute may not be disregarded under the pretext of pursuing its spirit.''[9] In the absence of a specific indication to the

son, South Carolina Supreme Court Sends the Wrong Message: '' If you are Pregnant and Addicted Tell Your Doctor and you will Go to Jail'': Whitner v. State, 20 Hamline L Rev 207 (1996).

[7]**Michigan.** People v. Gilbert, 414 Mich. 191, 324 N.W.2d 834 (1982).

Scislowski, The U.C.C. Section 4-205(2) Payment/Deposit Warranty: Allow a Drawer to Hold a Depository Bank Liable for Collecting an Item with a Forged Indorsement, 28 Akron L Rev 573 (1995).

[8]**United States.** Pacific Nat. Cellular v. U.S., 41 Fed. Cl. 20 (1998).

Colorado. People v. White, 870 P.2d 424 (Colo. 1994).

Connecticut. United Technologies Corp. v. Groppo, 220 Conn. 665, 600 A.2d 1350 (1991).

Delaware. Grand Ventures, Inc. v. Whaley, 632 A.2d 63 (Del. 1993); Wilgus v. Estate of Law, 1996 WL 769335 (Del. Super. Ct. 1996).

Illinois. In determining legislative intent, the courts should first consider the statutory language; where the language is clear and unambiguous, the courts must enforce the law as enacted without resort to other aids, but when the statute is ambiguous on its face, the court should look to similar statutes as an aid to construction. Scott v. Archer-Daniels-Midland Co., 194 Ill. App. 3d 510, 141 Ill. Dec. 589, 551 N.E.2d 776 (5th Dist. 1990).

Maryland. Vallario v. State Roads Commission, 290 Md. 2, 426 A.2d 1384 (1981).

Oklahoma. If the statute is plain and unambiguous and its meaning clear and no occasion exists for the application of the rules of construction the statute will be accorded a meaning expressed by the language used. TRW/Reda Pump v. Brewington, 1992 OK 31, 829 P.2d 15 (Okla. 1992).

South Carolina. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Utah. Beaver County v. Utah State Tax Com'n, 916 P.2d 344 (Utah 1996).

West Virginia. In the absence of a specific indication to the contrary, words used in the statute will be given their common, ordinary and accepted meaning, and the plain language of the statute should be afforded its plain meaning. Meadows on Behalf of Professional Employees of West Virginia Educ. Ass'n v. Hey, 184 W. Va. 75, 399 S.E.2d 657, 65 Ed. Law Rep. 212 (1990).

[9]**Delaware.** A statute has been held to be ''ambiguous'' if it is reasonably susceptible to different conclusions or interpretations, or literal interpretation of the words of the statute would lead to an absurd or unreasonable result that could not have been intended by the legislature. Grand Ventures, Inc. v. Whaley, 632 A.2d 63 (Del. 1993).

New Jersey. State v. Zeidell, 299 N.J. Super. 613, 691 A.2d 866 (App. Div. 1997), rev'd on other grounds, 154 N.J. 417, 713 A.2d 401 (1998).

Pennsylvania. Salvado v. Prudential Property and Cas. Ins. Co., 287 Pa. Super. 304,

contrary, words used in the statute will be given their common, ordinary and accepted meaning, and the plain language of the statute should be afforded its plain meaning.[10] "The intent of the authors of legislation is gleaned from what is said, not from what they may have intended to say."[11] The rules of statutory construction favor according statutes with their plain and obvious meaning, and therefore one must assume that the legislature knew the plain and ordinary meanings of the words it chose to include in the statute.[12] It has also been noted by a Missouri court that simply because a civil statute is penal in nature does not convert it into a criminal statute and subject it to all the requirements of criminal law; rather, the court must give effect to the plain meaning of the words used in such a statute to insure that the purpose of the statute is carried out.[13]

The above statements cannot be taken at face value since parties litigate the issue of meaning all the way to a court of last resort.[14] For example, the Alaska courts have stated that "Alaska no longer adheres

430 A.2d 297 (1981).

[10]**West Virginia.** Meadows on Behalf of Professional Employees of West Virginia Educ. Ass'n v. Hey, 184 W. Va. 75, 399 S.E.2d 657, 65 Ed. Law Rep. 212 (1990).

[11]**Delaware.** State v. Croce, 1997 WL 524070 (Del. Super. Ct. 1997).

Kentucky. Clark v. Clark, 601 S.W.2d 614 (Ky. Ct. App. 1980).

Michigan. People v. Fields, 448 Mich. 58, 528 N.W.2d 176 (1995).

[12]**Florida.** Sheffield v. Davis, 562 So. 2d 384 (Fla. Dist. Ct. App. 2d Dist. 1990).

[13]**Missouri.** Reeder v. Board of Police Com'rs of Kansas City, Mo., 800 S.W.2d 5 (Mo. Ct. App. W.D. 1990).

[14]**United States.** For an instance where members of a court were divided over whether the meaning of an act was clear, see U. S. v. Canadian Vinyl Industries, Inc., 555 F.2d 806 (C.C.P.A. 1977).

California. People v. Weems, 54 Cal. App. 4th 854, 62 Cal. Rptr. 2d 903 (6th Dist. 1997), review denied, (Aug. 13, 1997).

New Jersey. See Tung-Sol Elec. v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 34 N.J. Super. 349, 112 A.2d 571 (App. Div. 1955), adhered to, 35 N.J. Super. 397, 114 A.2d 285 (App. Div. 1955).

New York. Allstate Ins. Co. v. Libow, 106 A.D.2d 110, 482 N.Y.S.2d 860 (2d Dep't 1984), order aff'd, 65 N.Y.2d 807, 493 N.Y.S.2d 128, 482 N.E.2d 923 (1985).

Araujo, Method in Interpretation: Practical Wisdom and the Search for Meaning in Public Legal Texts, 68 Miss L J 225 (1998); Murphy, Old Statutes Never Die: The "Plain-Meaning Rule" and Statutory Interpretation in "Modern" Federal Courts, 75 Colum L Rev 1299 (1975); Absurdity and Repugnancy of the Plain Meaning Rule of Interpretation, 3 Man LJ 53 (1969); Stern, Warrants Without Probable Cause, 59 Brook L Rev 1385 (1994); Holder, Say What you Mean and Mean What You Say: THE Resurrection of Plain Meaning in California Courts, 30 UC Davis L Rev 569 (1997).

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to a plain meaning rule.''[15] Nevertheless, it is also stated that where a statute's meaning appears clear and unambiguous, the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent.[16] In many instances, expressions of the plain meaning rule represent an attempt to reinforce confidence in an interpretation arrived at on other grounds. This is exemplified when a court defends an interpretation it has decided upon with the argument that if the legislature had intended otherwise it would have said so.[17] However, the plain meaning rule coincides with a high degree of literalism in the court's approach to the process of interpretation which emphasizes the importance of the legislative text. A court may speak of the plain meaning of the language of an act as being the best evidence of legislative intent. Actually, the plain meaning rule may be more consistent with an interpretation of what the statute means to persons affected by it.[18]

One who questions the application of the plain meaning rule to a

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[15]**Alaska.** Wylie v. State, 797 P.2d 651 (Alaska Ct. App. 1990); Sonneman v. Knight, 790 P.2d 702, 60 Ed. Law Rep. 209, 47 A.L.R.5th 965 (Alaska 1990); Ward v. State, 758 P.2d 87 (Alaska 1988); Municipality of Anchorage v. Sisters of Providence in Washington, Inc., 628 P.2d 22 (Alaska 1981); State, Dept. of Natural Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981).

[16]**Alaska.** Wylie v. State, 797 P.2d 651 (Alaska Ct. App. 1990); Ward v. State, 758 P.2d 87 (Alaska 1988); University of Alaska v. Geistauts, 666 P.2d 424, 12 Ed. Law Rep. 969 (Alaska 1983).

[17]**Arizona.** Padilla v. Industrial Commission, 113 Ariz. 104, 546 P.2d 1135 (1976).

Michigan. People v. Fields, 448 Mich. 58, 528 N.W.2d 176 (1995).

[18]**United States.** In re Roxford Foods Litigation, 790 F. Supp. 987 (E.D. Cal. 1991).

The rule of lenity is to be applied only if, after reviewing all sources of legislative intent, the statute remains truly ambiguous. U.S. v. McDonald, 692 F.2d 376 (5th Cir. 1982).

This is especially true in statutes that have yet to be interpreted. Janowski v. International Broth. of Teamsters Local No. 710 Pension Fund, 673 F.2d 931 (7th Cir. 1982), cert. granted, judgment vacated on other grounds, 463 U.S. 1222, 103 S. Ct. 3565, 77 L. Ed. 2d 1406 (1983).

A departure from the plain meaning of the statutory language is only justified where the application of literal language would be at variance with legislative intent as revealed by the statute as a whole and its legislative history. State of Me. v. Goldschmidt, 494 F. Supp. 93 (D. Me. 1980).

In construing a federal tax statute the court must first look to statutory language and if the meaning is clear the statute must be enforced as written. U. S. v. Northumberland Ins. Co., Ltd., 521 F. Supp. 70 (D.N.J. 1981).

California. In re Keith T., 156 Cal. App. 3d 983, 203 Cal. Rptr. 112 (1st Dist. 1984).

Connecticut. Burnham v. Administrator, Unemployment Compensation Act, 184 Conn. 317, 439 A.2d 1008 (1981).

provision of an act must show either that some other section of the act expands or restricts its meaning, that the provision itself is repugnant to the general purview of the act, or that the act considered in pari materia with other acts,[19] or with the legislative history of the subject matter, imports a different meaning.[20] Unless the defendants can demonstrate

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District of Columbia. Tenley and Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment, 550 A.2d 331 (D.C. 1988).

Illinois. Wyness v. Armstrong World Industries, Inc., 131 Ill. 2d 403, 137 Ill. Dec. 623, 546 N.E.2d 568 (1989).

Missouri. Matter of Maxey's Estate, 585 S.W.2d 326 (Mo. Ct. App. S.D. 1979).

New Jersey. Newark Firemen's Mut. Benev. Ass'n, Local No. 4 v. City of Newark, 90 N.J. 44, 447 A.2d 130 (1982).

Texas. Salas v. State, 592 S.W.2d 653 (Tex. Civ. App. Austin 1979).

See Aron, Tidewater Oil v. United States: Statutory Construction or Destruction???, 34 U Pitt L Rev 725 (1973); Goldberg, Discrimination by Managers and Supervisors: Recognizing Agent Liability Under Title VII, 143 U Pa L Rev 571 (1994).

[19]**United States.** Herbert v. U.S., 662 F. Supp. 573 (S.D.N.Y. 1987), judgment rev'd on other grounds, 850 F.2d 32 (2d Cir. 1988); U.S. v. Fourteen Thousand Eight Hundred and Seventy-Six Pieces of Puerto Rico Lottery Tickets, 791 F. Supp. 345 (D.P.R. 1992).

Courts must refrain from attempting to decipher the meaning of statutory language in isolation from other relevant statutory provisions. When another provision expands or restricts the meaning of the pertinent statutory text, then the gloss provided by that provision controls. In re WM. Cargile Contractor, Inc. v. Slutsky, 145 F.3d 1335 (6th Cir. 1998).

Alaska. Hafling v. Inlandboatmen's Union of Pacific, 585 P.2d 870 (Alaska 1978).

One who questions the application of the plain meaning rule has the burden of proving it should not be used. Helton v. State, 778 P.2d 1156 (Alaska Ct. App. 1989).

California. People v. Superior Court (Smith), 190 Cal. App. 3d 427, 235 Cal. Rptr. 482 (3d Dist. 1987); County of Sacramento v. Pacific Gas & Elec. Co., 193 Cal. App. 3d 300, 238 Cal. Rptr. 305 (3d Dist. 1987); Transamerica Occidental Life Ins. Co. v. State Bd. of Equalization, 232 Cal. App. 3d 1048, 284 Cal. Rptr. 9 (2d Dist. 1991); Del Mar v. Caspe, 222 Cal. App. 3d 1316, 272 Cal. Rptr. 446 (6th Dist. 1990).

Texas. If a statute creates a right unknown to the common law or deprives a person of a common-law right, the statute will not be extended beyond its plain meaning. Person v. Latham, 582 S.W.2d 246 (Tex. Civ. App. Beaumont 1979), writ refused n.r.e., (Oct. 10, 1979).

Utah. Stevensen v. Monson, 856 P.2d 355 (Utah Ct. App. 1993).

Washington. State v. McDougal, 120 Wash. 2d 334, 841 P.2d 1232 (1992).

Wisconsin. Van Cleve v. Hemminger, 141 Wis. 2d 543, 415 N.W.2d 571 (Ct. App. 1987).

Lazo, True or False: Expert Testimony on Repressed Memory, 28 Loy LA L Rev 1345, 1412 (1995).

[20]**United States.** Anderson v. Black & Decker (U.S.), Inc., 597 F. Supp. 1298 (E.D. Ky. 1984).

California. Great Lakes Properties, Inc. v. City of El Segundo, 19 Cal. 3d 152, 137

that the natural and customary import of the statute's language is either repugnant to the general purview of the act or for some other compelling reason should be disregarded, the court must give effect to the statute's plain meaning.[21]

It has been held that even if the words of the statute are plain and unambiguous on their face the court may still look to the legislative history in construing the statute if the plain meaning of the words of the statute is a variance with the policy of the statute or if there is a clearly expressed legislative intention contrary to the language of the statute.[22]

If the language is plain, unambiguous and uncontrolled by other parts of the act or other acts upon the same subject the court cannot give it a different meaning. But the customary meaning of words will be

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Cal. Rptr. 154, 561 P.2d 244 (1977); Tiernan v. Trustees of Cal. State University & Colleges, 33 Cal. 3d 211, 188 Cal. Rptr. 115, 655 P.2d 317, 8 Ed. Law Rep. 496 (1982); County of Sacramento v. Pacific Gas & Elec. Co., 193 Cal. App. 3d 300, 238 Cal. Rptr. 305 (3d Dist. 1987); Transamerica Occidental Life Ins. Co. v. State Bd. of Equalization, 232 Cal. App. 3d 1048, 284 Cal. Rptr. 9 (2d Dist. 1991); Del Mar v. Caspe, 222 Cal. App. 3d 1316, 272 Cal. Rptr. 446 (6th Dist. 1990).

Pennsylvania. The legislative history cannot serve as a pretext for disregarding the plain meaning of the words of the statute. Borough of West Chester v. Taxpayers of Borough of West Chester, 129 Pa. Commw. 545, 566 A.2d 373 (1989).

Utah. Stevensen v. Monson, 856 P.2d 355 (Utah Ct. App. 1993).

Washington. State v. McDougal, 120 Wash. 2d 334, 841 P.2d 1232 (1992).

Kelch, An Apology for Plain-Meaning Interpretation of the Bankruptcy Code, 10 Bankr Dev J 289 (1994).

[21]**United States.** In re Allen, 186 B.R. 769 (Bankr. N.D. Ga. 1995).

California. Tiernan v. Trustees of Cal. State University & Colleges, 33 Cal. 3d 211, 188 Cal. Rptr. 115, 655 P.2d 317, 8 Ed. Law Rep. 496 (1982); DaFonte v. Up-Right, Inc., 2 Cal. 4th 593, 7 Cal. Rptr. 2d 238, 828 P.2d 140 (1992).

[22]**United States.** Escobar Ruiz v. I.N.S., 838 F.2d 1020 (9th Cir. 1988) (overruling on other grounds recognized by, Castillo-Villagra v. I.N.S., 972 F.2d 1017 (9th Cir. 1992)); U.S. v. Murphy, 35 F.3d 143 (4th Cir. 1994); Doukas v. Metropolitan Life Ins. Co., 950 F. Supp. 422, 20 A.D.D. 245 (D.N.H. 1996).

California. The plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose; California Service Station etc. Assn. v. Union Oil Co., 232 Cal. App. 3d 44, 283 Cal. Rptr. 279 (1st Dist. 1991).

Delaware. Wilgus v. Estate of Law, 1996 WL 769335 (Del. Super. Ct. 1996).

New Mexico. State ex rel. Helman v. Gallegos, 114 N.M. 414, 839 P.2d 624 (Ct. App. 1992), cert. granted, (Aug. 14, 1992) and decision rev'd on other grounds, 117 N.M. 346, 871 P.2d 1352 (1994).

disregarded when it is obvious from the act itself that the legislature intended that it be used in a sense different from its common meaning.[23]

However, there is authority for applying the plain meaning rule even though it produces a harsh or unjust result or a mistaken policy as long as the result is not absurd.[24] However, in the absence of compelling

[23]**United States.** Order of Ry. Conductors of America v. Swan, 329 U.S. 520, 67 S. Ct. 405, 91 L. Ed. 471 (1947); Barber v. Gonzales, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 1009 (1954); Anderson v. Black & Decker (U.S.), Inc., 597 F. Supp. 1298 (E.D. Ky. 1984).

Where the "plain meaning" of a statute produces an unreasonable result plainly at variance with the policy of the legislation in question, the courts may follow the purpose of the legislation rather than the literal words. Trustees of Indiana University v. U. S., 223 Ct. Cl. 88, 618 F.2d 736 (1980).

Arkansas. Reynolds v. Holland, 35 Ark. 56, 1879 WL 1379 (1879).

California. County of Sacramento v. Pacific Gas & Elec. Co., 193 Cal. App. 3d 300, 238 Cal. Rptr. 305 (3d Dist. 1987).

Illinois. Karlson v. Murphy, 387 Ill. 436, 56 N.E.2d 839 (1944); Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947).

Louisiana. Howard v. Insurance Co. of North America, 159 So. 2d 560 (La. Ct. App. 3d Cir. 1964).

Maine. State v. Laverty, 495 A.2d 831 (Me. 1985).

Michigan. People v. Adamowski, 340 Mich. 422, 65 N.W.2d 753 (1954).

Minnesota. In re Raynolds' Estate, 219 Minn. 449, 18 N.W.2d 238 (1945).

Missouri. State v. Cummings, 724 S.W.2d 316 (Mo. Ct. App. S.D. 1987).

New Jersey. In re Roche's Estate, 16 N.J. 579, 109 A.2d 655 (1954) (overruled in part on other grounds by, In re Gardinier's Estate, 40 N.J. 261, 191 A.2d 294 (1963)); Matter of Closing of Jamesburg High School, School Dist. of Borough of Jamesburg, Middlesex County, 83 N.J. 540, 416 A.2d 896 (1980); Exxon Corp. v. Hunt, 97 N.J. 526, 481 A.2d 271 (1984), judgment aff'd in part, rev'd in part on other grounds, 475 U.S. 355, 106 S. Ct. 1103, 89 L. Ed. 2d 364 (1986).

New York. Seltzer v. City of Yonkers, 286 A.D. 557, 145 N.Y.S.2d 664 (2d Dep't 1955), judgment aff'd, 1 N.Y.2d 782, 153 N.Y.S.2d 51, 135 N.E.2d 588 (1956).

Rhode Island. Wayne Distributing Co. v. Rhode Island Com'n for Human Rights, 673 A.2d 457 (R.I. 1996).

A literal reading of a statute may be ignored if it does not convey a sensible meaning or where it defeats an evident legislative purpose. Kingsley v. Miller, 120 R.I. 372, 388 A.2d 357 (1978).

Texas. Lunsford v. City of Bryan, 156 Tex. 520, 297 S.W.2d 115 (1957).

Utah. Stevensen v. Monson, 856 P.2d 355 (Utah Ct. App. 1993).

Washington. State v. McDougal, 120 Wash. 2d 334, 841 P.2d 1232 (1992).

Wisconsin. State v. Gilbert, 115 Wis. 2d 371, 340 N.W.2d 511 (1983).

[24]**United States.** In re Rose, 86 B.R. 86 (Bankr. E.D. Mich. 1988).

Arizona. Members of Bd. of Ed. of Pearce Union High School Dist. v. Leslie, 112 Ariz. 463, 543 P.2d 775 (1975).

Kentucky. United Services Auto. Ass'n v. State Farm Mut. Auto. Ins. Co., 784

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reasons to hold otherwise, it is assumed that the plain and ordinary meaning of the statute was intended by the legislature.[25] The fact that the words in a statute have not been used before does not mean that they are ambiguous or unclear. The words should be given their common and approved usage.[26] This is also true when a custom which may have been followed for a long time is involved.[27] Courts are not free to read unwarranted meanings into an unambiguous statute even to support a supposedly desirable policy not effectuated by the act as written.[28]

§ 46:02 Literal meaning

What is meant by a literal meaning or interpretation generally goes unexplained. The fact that courts evidently do not feel an obligation to explain why they consider an application of a statute to represent a literal interpretation suggests that they consider literal meanings to be either intrinsic or self-evident. The absence of intrinsic meanings in

S.W.2d 786 (Ky. Ct. App. 1990).

Washington. State v. Walter, 66 Wash. App. 862, 833 P.2d 440 (Div. 1 1992); State v. McDougal, 120 Wash. 2d 334, 841 P.2d 1232 (1992).

Knutson, South Carolina Supreme Court Sends the Wrong Message: "If you are Pregnant and Addicted Tell Your Doctor and you will Go to Jail": Whitner v. State, 20 Hamline L Rev 207 (1996).

[25]**Vermont.** State v. Young, 143 Vt. 413, 465 A.2d 1375 (1983).

[26]**United States.** Palestine Information Office v. Shultz, 853 F.2d 932 (D.C. Cir. 1988).

New Jersey. Matter of Woodhaven Lumber and Mill Work, 123 N.J. 481, 589 A.2d 135 (1991).

Pennsylvania. Wajert v. State Ethics Commission, 491 Pa. 255, 420 A.2d 439 (1980).

South Dakota. Mid-Century Ins. Co. v. Lyon, 1997 SD 50, 562 N.W.2d 888 (S.D. 1997).

Washington. State v. McDougal, 120 Wash. 2d 334, 841 P.2d 1232 (1992).

Coffin, The Maryland Survey: 1996-1997; Recent Decision: The United States Court of Appeals for the Fourth Circuit, 57 Md L Rev 1233 (1998)(see especially, Part V. Health Care).

[27]**Maryland.** American Cas. Co. of Reading, Pennsylvania v. Department of Licensing and Regulation, Ins. Div., 52 Md. App. 157, 447 A.2d 484 (1982).

[28]**Connecticut.** Taravella v. Stanley, 52 Conn. App. 431, 727 A.2d 727 (1999).

New Jersey. Remedial Educ. and Diagnostic Services, Inc. v. Essex County Educational Services Com'n, 191 N.J. Super. 524, 468 A.2d 253, 14 Ed. Law Rep. 1010 (App. Div. 1983).

Coffin, The Maryland Survey: 1996-1997; Recent Decision: The United States Court of Appeals for the Fourth Circuit, 57 Md L Rev 1233 (1998)(see especially, Part V. Health Care).