

CONSTITUTIONAL AUTHORITY TO TAX, BASIS OF TAXATION & INTERPRETING TAX STATUTES

Including: Scope For Equitable Construction

INTERPRETING TAX STATUTES

- ❖ Taxable event
- ❖ Taxable person
- ❖ Rate of taxation
- ❖ Measure of taxation
- ❖ Charging section to be construed strictly

CONSTITUTION WAS A STATUTORY INTERPRETATION

Chief Justice Dickson of Canadian Supreme Court states

- ❖ Statue defines present rights and obligations
- ❖ Easy to enact and easy to repeal

Constitutional interpretation

- ❖ Eye for the future
- ❖ Continuing framework for exercise of legitimate Governmental power
- ❖ Cannot be easily repealed or amended
- ❖ Capable of growth

TYPES OF INTERPRETATION

**1 - Plain or textual Interpretation – go by the plain language
and not the intention or the mental state of the law maker**

- ❖ Curtails judicial discretion.
- ❖ Dislikes legislative history

TYPES OF INTERPRETATION

2 - Original interpretation – interpretation according to the original meaning

- ❖ Encourages neutrality
- ❖ Prevents unguided value judgments
- ❖ Safeguards against political judging
- ❖ Remains static and not dynamic

TYPES OF INTERPRETATION

3 - Doctrinalism

- ❖ The principle underlying past decision provides the basis for future interpretation
- ❖ Allows development and growth over time
- ❖ Judges capable of applying, extending and adjusting legal principles
- ❖ If need be, can be overruled or altered.

TYPES OF INTERPRETATION

4 - Structuralism

- ❖ Usage of overall arrangement of the constitution or statute
- ❖ Meaning as a whole
- ❖ Put structure in place and build interpretation on it
- ❖ They refused to answer questions on the origin of law, the legislative intent or the consequences and concerns
- ❖ The basic system is assumed to be consistent and does not permit the structure to be tested
- ❖ Does not allow adaptation

TYPES OF INTERPRETATION

5 - Prudentialism

- ❖ Examination of costs and benefits of different policies
- ❖ Appeal to public sense of conscience as apposed to textual
- ❖ Concentrates more on the present than on the past
- ❖ New problems – new solutions
- ❖ Decision does not appear senseless to the society at large
- ❖ Emotional appeal and human touch
- ❖ Easy understanding to common man since it is common sense application
- ❖ Act of balancing instead of adhering to legislative intent or the text of the law.

TYPES OF INTERPRETATION

6 - Purpose of interpretation

- ❖ Strikes between subjective purpose (intent of the authors) and the objective purpose (intent of the system) – (words and intent)
- ❖ Subjective purpose – goals, interests, values, aims, policies
- ❖ Objective purpose – to actualize the above
- ❖ One cannot use the constitution or a statute to achieve a purpose that its language cannot bear
- ❖ Courts tends to swing between textual interpretation and purposive interpretation

TYPES OF INTERPRETATION

7 - Statutory interpretation with constitutional basis

- ❖ Public trust doctrine
- ❖ Public utility doctrine
- ❖ Interplay of essential commodities act
- ❖ Utility to a weaker section