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Using legal texts: statutes, treaties and cases



Interpretation of statutory texts

- Grammatical interpretation
- Contextual interpretation; statute as a whole
- Legal definitions provided in the statute
- Purposive interpretation: objective and purpose of the statute; values and principles
- Vague formulations: do other law sources provide any guidance?
- Collision of rules; *lex superior*, *lex specialis*, *lex posterior*



Interpretation of international treaties by domestic (Norwegian) Courts

- (as a starting point: avoid conflict between international and national law through interpretation, in so far as this is possible)
- Treaties adopted by transformation:
 - According to Norwegian approach to interpretation (as Norwegian rules)
 - In conformity with the international obligations
 - In case of conflict which cannot be interpreted 'away' – domestic law supercedes
- By incorporation:
 - According to international law rules of interpretation



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Interpretation of international treaties – international law principles

- Vienna Convention on the Law of Treaties, 1969, SECTION 3. INTERPRETATION OF TREATIES
- Codifies customary international law on treaties and is thereby relevant for non-Contracting parties



Article 31

General rule of interpretation

- 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Article 31

General rule of interpretation

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.



- 3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
- 4. A special meaning shall be given to a term if it is established that the parties so intended.



Article 32 Supplementary means of interpretation

- Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
 - (a) leaves the meaning ambiguous or obscure; or
 - (b) leads to a result which is manifestly absurd or unreasonable.



Interpretation of ECHR by national courts

- Norwegian Supreme Court (Rt-2005-833) will use the same method as the ECtHR; i.e. take into account the text of the Convention, general objectives and decisions by the ECtHR.
- In case of a doubt with regard to interpretation of the ECHR, Norwegian courts may take into consideration values of Norwegian legal system



Interpretation of EU legal acts

- Harmonization and homogeneity as important arguments for national courts to comply with the European Court's method and reasoning
- Purpose of EU law (teleological interpretation) is central in EU Court's practice
 - Harmonization objective
 - Common market and integration
 - Equality, non-discrimination
- Contextual interpretation



Bulmer v Bollinger [1974] L.R.Ch 411

- **Beyond doubt the English courts must follow the same principles as the European court.** Otherwise there would be differences between the countries of the nine...They [English courts] must look to the purpose or intent... They must devine the spirit of the Treaty and gain inspiration from it. If they find a gap, they must fill it as best they can. They must do what the framers of the instrument would have done if they had thought about it. So we must do the same. Those are the principles, as I understand it, on which the European court acts.



Interpretation of EU legal acts

- Textual (grammatical) analysis has probably more importance for the interpretation of secondary legislative acts than Treaties
 - Still, recitals (preamble) are very important for determining the contents of substantive provisions of Directives, Regulations etc
- NB: many languages/differences in translation



Interpretation of contracts

- Subjective or objective interpretation?
- Common intention of the parties
 - Wording of the contract and commonly used terminology
 - Context of the conclusion
 - Subjective/individual conditions of the parties(statement of the parties, conduct, practices and usages between them)
 - Purpose of the contract
 - Declaratory rules of law
 - Good faith



- What is the standard for assessment if the common intention is unclear?
- Legitimate expectations/»reasonable» person-test
- Art 4.1 UNIDROIT Principles:
 1. A contract shall be interpreted according to the common intention of the parties.
 2. If such an intention cannot be established, a contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.



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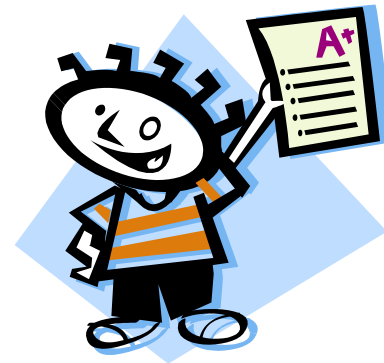
Group work with assignments





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Some suggestions on writing of exams





- *Prior to the exam:* check the permitted materials at the exam
- Obtain a good overview over the contents of these materials, most important provisions, case law etc
- Become familiar with the learning requirements of your topic!



- Master's level (10 credits): A **good understanding** is required
- Bachelor's level (10 credits): A **general understanding** is required
- How advanced, broad or deep knowledge is expected?
 - Specific requirements for individual topics are listed on the home pages of these topics



- *At the exam:*
- Analyze the requirements of the question very carefully
- Prepare an answer plan
- Write a concise and up-to-the point introduction to set the scene and explain what and why will be answered



- Usually no right or wrong answer, only well (or poorly) written.
- The main part of the answer: the law and its application? Your evaluation? Both? (depends on the question)
- Reveal all important stages in your argumentation: write them down. Do not jump directly to conclusions as this will make your answer look less thorough and less analytical



- Write clearly and avoid ambiguous statements open for different meanings. Important to give reasons for your statements and pay attention to (important) details
- Logical and transparent structure. No need to make a sub-heading for each new thought you write down
- Make a clear and logical conclusion (answer to the question you have been asked)



- In a 'case' study: make sure you use the facts in the assignment in a correct way:
 - Distinguish between relevant and irrelevant facts
 - Create a proper factual framework for your legal discussions: connection between legal provisions and their interpretation and the facts of the case
 - Avoid supplementing the factual background provided in the assignment with your own assumptions/fill in gaps in the facts.