Contents

Introduction	xi
PART ONE INTERPRETATION	1
Chapter One	
What Is Legal Interpretation?	3
1. Definition of Legal Interpretation	3
2. The Limits of Interpretation	16
3. Basic Problems in Interpretation	26
4. Systems of Interpretation in Law	30
5. Advantages and Disadvantages of Interpretive Rules	38
6. The Status and Sources of Interpretive Rules	47
7. Laws of Interpretation, Jurisprudence,	
and General Hermeneutics	54
Chapter Two	
Non-Interpretive Doctrines	61
1. The Essence of Non-Interpretive Doctrines	61
2. Filling in a Gap in a Legal Text	66
3. Resolving Contradictions Normatively	74
4. Correcting Mistakes in the Language of a Text	77
5. Deviating from the Language of the Text to Avoid Absurdity	80
6. Cy Pres Performance	80
7. From Interpretive Theory to Purposive Interpretation	82
PART TWO PURPOSIVE INTERPRETATION	83
Chapter Three	
The Essence of Purposive Interpretation	85
1. "Purposive Interpretation": Terminology	85
2. Fundamentals of Purposive Interpretation	88
Chapter Four	
The Semantic Component of Purposive Interpretation	97
1. Interpretive Theory and Semantic Theory	97
2. Types of Language	103
3. Canons of Interpretation	107

viii CONTENTS

Chapter Five	
The Purposive Component of Purposive Interpretation	110
1. The Essence of Purpose	110
2. Multiple Purposes	113
Chapter Six	
Subjective Purpose: Authorial Intent	120
1. The Essence of Subjective Purpose	120
2. Abstract Purpose and Concrete Purpose	126
3. Subjective Purpose and the Problem of Multiple Authors	129
4. Sources of Subjective Purpose	135
5. Subjective Purpose as a Presumption about the Text's Purpose	145
Chapter Seven	
Objective Purpose: Intent of the Reasonable Author;	7 40
Intent of the System	148
1. The Essence of Objective Purpose	148
2. Sources of Objective Purpose: Internal and External	157
3. Presumptions of Objective Purpose	170
4. Contradictions between Purposive Presumptions	176
Chapter Eight	7.00
The Purposive Component: Ultimate Purpose	182
1. The Weight of Subjective and Objective Purpose	
in Determining Ultimate Purpose	182
2. Type of Text: Will, Contract, Statute, and Constitution	185
3. Type of Text: The Effect of a Text's Age	707
on Its Ultimate Purpose	191
4. Type of Text: Distinguishing Texts by Scope of Issues Regulated	193
5. Type of Text: Changes in Regime Character and Society's	105
Fundamental Assumptions	195
6. Type of Text: Texts Based on Rules and Texts Based on Standards	197
	200
7. Type of Text: Content of the Provision 9. The Effect of Two of Text on Illtimate Developes	
8. The Effect of Type of Text on Ultimate Purpose	203
9. Formulating Ultimate Purpose	205
Chapter Nine	
Discretion as a Component in Purposive Interpretation	207
1. The Essence of Judicial Discretion	207
2. Situations of Judicial Discretion	214

CONTENTS ix

Chapter Ten	
The Theoretical Basis for Purposive Interpretation	218
1. The Need to Justify a System of Interpretation	218
2. Social Support for Purposive Interpretation	221
3. Jurisprudential Support for Purposive Interpretation	224
4. Hermeneutic Considerations in Favor	
of Purposive Interpretation	230
5. Constitutional Considerations in Favor	
of Purposive Interpretation	233
Chapter Eleven	
Purposive Interpretation and Its Critique of Other	260
Systems of Interpretation	
1. Purposive Interpretation and Subjective Systems	
of Interpretation	260
2. Purposive Interpretation and Objective Systems	
of Interpretation: Textualism, "Old" and "New"	269
3. Purposive Interpretation and Pragmatism	286
4. Purposive Interpretation and Dworkin's System	
of Interpretation	290
5. Purposive Interpretation and Free Interpretation	297
6. Critique of Purposive Interpretation and Some Responses	301
PART THREE INTERPRETATION IN LAW	305
Chapter Twelve	
The Interpretation of Wills	307
1. The Uniqueness of a Will and How It Affects Interpretation	307
2. The Language of a Will	309
3. The Purpose of a Will	309
Chapter Thirteen	
The Interpretation of Contracts	318
1. The Uniqueness of a Contract and How It	
Affects Interpretation	318
2. Contract Theory and Contractual Interpretation	321
3. The Purpose of a Contract	325
4. The Subjective Purpose of a Contract	326
5. Sources of Subjective Purpose	329
6. The Objective Purpose of a Contract	332

X CONTENTS

7. Presumptions for Identifying Objective Purpose	334
8. The Ultimate Purpose of a Contract	336
Chapter Fourteen	
Statutory Interpretation	339
1. The Uniqueness of a Statute and How	
It Affects Interpretation	339
2. The Subjective Purpose of a Statute	341
3. Subjective Purpose Learned from the Language of a Statute	342
4. Subjective Purpose Learned from Sources External	
to the Statute: Legislative History	344
5. The Objective Purpose of a Statute	350
6. Sources of Objective Purpose	352
7. Presumptions of Objective Purpose	358
8. The Ultimate Purpose of a Statute	363
Chapter Fifteen	
Constitutional Interpretation	370
1. The Uniqueness of a Constitution and How It	
Affects Interpretation	370
2. The Language of a Constitution	372
3. The Subjective Purpose of a Constitution	375
4. The Objective Purpose of a Constitution	377
5. Sources of Objective Purpose	377
6. The Ultimate Purpose of a Constitution	384
Appendix 1 The Structure of Legal Interpretation	395
Appendix 2 Purposive Interpretation	396
Appendix 3 Weighting Subjective and Objective Purposes	397
Index	399