Journal of Civil Law Studies

Volume 15
Number 1 *2023*

Article 9

12-13-2023

Judicial Methods of Interpretation of the Law (Excerpts)

Julio C. Cueto-Rúa

JUDICIAL METHODS OF INTERPRETATION OF THE LAW* (EXCERPTS)†

Julio C. Cueto-Rúa

Preface 446

Acknowledgment 447

Introduction 448

Chapter II – The Structure of the Case 452
1. Elements of the Case 452
2. The Empirical Element: The "Facts" of the Case 454
3. The Logical Element: The Normative Relationship Between the Antecedent "Facts" and the Juridical Consequences 457
4. The Axiological Element: The Value of the Facts of the Case, the Behavior of the Parties, and the Behavior of the Judge 459

Chapter IV – Closing the Dialectical Process: Final Interpretation and Selection of the Applicable Rules of Law 465
1. Clarity of the Facts and Clarity of the Rules 465
2. Plain Meaning of Words and Plain Meaning of Rules 468

Illustration 13 471
I. Introduction 471
II. Discussion 473

Illustration 20 474
I. Introduction 474
II. Discussion 477

† These excerpts are presented as a sample of the book by Julio C. Cueto-Rúa. They should be read together with the preceding introduction in Olivier Moréteau, *Cueto-Rúa's Judicial Methods of Interpretation of the Law: A Guide for the Future,* 15 J. CIV. L. STUD. 431 (2023).

PREFACE

[ix] When Dr. Joe Dainow introduced Julio Cueto-Rua to a group of Louisiana judges a few years ago he said, "If I were a young man, I'd leave my work and follow him." Before the conference ended the next day, we had begun to understand why.

Most of us had been appellate judges for a long time. Nevertheless, few of us could have adequately explained the process used to decide the hard cases. Nor could we have explained that there was a degree of objectivity employed in reaching what we thought was a just result.

The hard cases, of course, are the ones that test the judge. How does the judge, after he finds out what happened, decide the hard cases? The case where the law is silent, or where the applicable rules of law are ambiguous, or conflicting? Or where the literal application of the relevant statute would produce a harsh result surely not envisioned by the legislator?

At that conference Cueto-Rua had selected a few opinions from the reported cases written by some of the judges present. Each was a hard case. He explained the method used in reaching the decision, and even the considerations which brought the judge to the conclusion in a case that could have gone either way. The opinion authors, who themselves might have described the process as groping and muddling to find a satisfactory solution, were pleased and surprised to learn that there was a method used and an object sought—justice—which had real meaning.

When I was a young lawyer, if I thought of justice, it was as a rather vague ideal. And, when the judge in my case began to speak of justice, I [x] would tell my client to brace himself because he was about to get it, and probably wouldn't like it. But lawyers are not born judges, and judges are seldom taught how to decide cases. Our efforts to balance the legitimate interests of society are usually crude, elemental and narrow, because axiology—the study of the nature and types of value judgments is foreign to us.

For this reason the good judge will never cease his efforts to understand the juridical values at work in the cases before him. Cueto-Rua's description of those values, the relationships among them and their part in the judicial process is an essential aid to the judge seeking a solution to the hard case. The one best solution to the case before the judge is the one that will realize all the positive juridical values in a properly balanced way. This best solution, says the author, is an objective solution, made so by the process. Justice, then, is done.

Every judge should be aware of the reality of justice. The good judge will be aware of the contents of this book. The best judge will understand and apply the principles in it.

July, 1980 *John A. Dixon, Jr.*
Chief Justice,
Louisiana State Supreme Court

ACKNOWLEDGMENT

[xi] I am greatly indebted to Professor Saul Litvinoff, Director of the Louisiana State University Center of Civil Law Studies, for his wise suggestions and comments and for his intellectual support.

I owe inspiration and insight into the operation of the Louisiana courts to the members of the Louisiana judiciary, especially the Justices of the Supreme Court of Louisiana, who generously shared with me their time and efforts devoted to the examination of the nature of the judicial process.

To my colleagues of the Louisiana State University Paul M. Hebert Law Center, my gratitude for their encouragement and assistance.

To Lance Dickson and the Law Library Staff, my thanks for their cooperation in the use of the vast bibliographical resources of the Paul M. Hebert Law Center.

To Nancy Dunning I am very much in debt for her untiring efforts to make the manuscript easier to read in English. I owe recognition to Mrs. Jude Rouse for her care and dedication to the preparation of the manuscript for printing.

To Melanie Shaw and Jan Holloway, my thanks for their assistance in the revision of footnotes and the preparation of indexes and tables.

May, 1980

Julio C. Cueto-Rua

INTRODUCTION

[1] I wish to preface this work with a few words about its origin and motivation. Several years ago, Dean Paul M. Hebert of the Louisiana State University Law Center and Professor Joseph Dainow then Director of the Louisiana State University Center of Civil Law Studies, organized a series of seminars for Louisiana appellate judges for the discussion and analysis of judicial methods of interpretation of law. Those seminars were held in New Orleans and in Baton Rouge during 1976 and 1977. Dean Hebert and Professor Dainow urged me to expand the content of the seminars by writing an essay in the hope that it would be of some benefit to judges and practitioners alike. Through the present work, I have attempted to satisfy their request and, although I do not know whether its content would meet the standard of scholarship which they always demanded, I do wish to render this tribute of my admiration and recognition to the memory of these two outstanding legal scholars.

Professionally trained judges in both civil law and common law countries appear to apply methods of interpretation of law which follow the same basic pattern. This work is an attempt to describe those methods by pointing out their essential similarities and their technical differences.

Such a description is possible not only because outstanding civil law and common law judges have discussed the methods which they have applied in reaching their decisions, but also because the judges' reasoning and the actual disposition of their cases make evident the type of considerations, factors, and elements which led to the final judgments.

The traditional theory of judicial interpretation of the law, which [2] perceives in the judicial process only the operation of logical considerations and nothing else, has been shown by uniform judicial experience to be inconsistent with actual courtroom experiences. Since the time of Ihering in Germany, Gény in France, and Holmes in the Anglo-American law world, the traditional theory has been challenged by judges and jurists who**,** in writing from both civil law and common law perspectives, have used different theoretical approaches, e.g., historical, teleological, and psychological, that have led to the development of numerous methodological doctrines. The list of these doctrines is so lengthy as to necessitate their classification, yet the results of such a classification have not been very encouraging for, after an examination of the different categories, one may be inclined to embrace either a pluralistic, syncretic theory that does not dissipate his doubts or to choose one from among the many competing theoretical conceptions that will probably leave him with an obvious feeling of its inadequacy.

It has been the prevailing approach in studies and investigations of the judicial methods of interpretation of law to focus attention on the general rules of law, as though the question of interpretation was concerned exclusively with the discovery and statement of the meaning of these general rules. Such an approach implies the presence of two separate fields of analysis, each one of them being subjected to specific, yet unrelated, methodological requirements. One is the field of facts, i.e., those actual events which led to the dispute. The other is the field of law—the region of rules which provides the normative ground for the adjudication of the case. There are many convincing reasons to doubt the accuracy of such a separation of law and fact. An approach which views the process of interpretation of law solely as an intellectual task that operates at the abstract level unaffected by social facts and immune to the exigencies, claims, and expectations of the parties and the community is not consistent with experience as it is lived and felt by jurists and professors of law, who

explain and teach the law, nor by judges and lawyers, who decide and argue cases.

This work approaches its subject from a different perspective. In analyzing cases, judicial reasoning, and judgements, it became apparent that at least in the adjudication of cases the process of interpretation of law does not begin at the abstract and general level of the rules of law but does begin at the very concrete and specific level of the facts of the case. It just does not correspond to reality to think that the judge approaches the general rules of law unaffected by the specific nature of the case submitted to him for final adjudication. Thus, the search for the rule of law [3] to be applied to the case is essentially linked to the axiological nature of the relevant facts of the case. Similarly, the process of interpretation of the general rules of law is influenced by axiological considerations, since any general rule of law is expressive of processes of evaluation and choice. On the basis of this common axiological influence, there appears, therefore, to exist an essential relationship between facts and rules which colors the entire process of interpretation.

Furthermore, that relationship is dialectical in nature. The theoretical foundations for this dialectical construct of the method of interpretation were laid in the forties and fifties by an outstanding legal philosopher, Carlos Cossio, in his pioneering works: *La Teoría Egológica del Derecho y el Concepto Jurídico de Libertad* (first and second editions), "El Substrato Filosófico de los Métodos lnterpretativos," *El Derecho en el Derecho Judicial, Teoría de la Verdad Jurídica,* and *La Valoración Jurídica y la Ciencia del Derecho* (second edition).[1] Cossio's doctrinal foundations have been applied in this work along with the very important theoretical contributions made by great common law lawyers such as Holmes, Cardozo, Pound, and Llewelyn. Together these doctrines and theories provide

1. C. COSSIO, LA TEORÍA EGOLÓGICA DEL DERECHO Y EL CONCEPTO JURÍDICO DE LIBERTAD 329-48 (2d ed. 1964) [hereinafter cited as COSSIO, LA TEORÍA EGOLÓGICA]; EL DERECHO EN EL DERECHO JUDICIAL (1959); LA VALORACIÓN JURÍDICA Y LA CIENCIA DEL DERECHO (1954); Cossio, *El Substrato Filosófico de las Métodos lnterpretativos,* 6 REVISTA UNIVERSIDAD (1949).

an adequate basis for the understanding of the judicial methods of interpretation of law and a sufficient theoretical basis for the discovery of the objective meaning of judicial decisions.

The ensuing analysis and its theoretical foundation show that, essentially, civil law judges and common law judges follow the same dialectical process of evaluating and understanding the law as evidenced by the judges' grounding their decisions in similar logical and axiological considerations. Although the differences in the logical approach to the normative materials given the judges in each system of law (a *formulated* general rule of law in the case of the civil law and a general rule of law *to be formulated* in the common law) create some specific problems of logics in the handling of these materials, such differences do not alter the basic steps of the dialectical process followed by the professional judges nor the final axiological nature of their decisions. In this sense then, it may be stated that once the general rules to be used in a given case have been selected or derived, common law judges and civil law judges, professionally trained in the study and application of the law, follow similar methods in the performance of their respective judicial functions.

[4] However, Professor Frank Mitchell thinks otherwise. He is of the opinion that the technical differences which may be identified in the process of learning and applying civil law rules and common law rules are such that jurists in one system may be considered lay in respect to those of the other system. He has stated, for example:

> Because professional control of both Anglo-American and civil law has been maintained by means of esoteric legal method, thus excluding the validity of lay interpretations, both Anglo-American and civilian legal regimes, which for centuries have developed separately from each other, possess dissimilar legal methods, including methods of interpretation, with the result that the jurists of one system have been in a lay position in regard to the legal methods and content

of the other.[2]

In my opinion, such technical, or logical, differences which may be found in the handling of normative materials by judges of the respective systems do not reach sufficient intensity and scope to nullify the following fundamental similarities:

a) civil law and common judges go through a *dialectical process* in their search for legal and just decision of the case;

b) in both systems of law, the same *traditional methods of interpretation* have been and are being applied by judges for the decision of cases, to wit: logical, historical, and teleological;

c) in both systems, the judges face *a choice* of normative premises and methods of interpretation;

d) in both instances, *axiological factors are determinative* of the choice of normative premises and of the choice of methods.

Both civil law and common law judges work with general rules of law, although at civil law these rules are given to the judges *a priori* by the lawmakers, while at common law the general rules are extracted from precedents by the judges themselves. It remains, however, that those basic similarities still provide the basis for understanding the process of judicial interpretation of law evolving at both civil law and common law.

...

CHAPTER II – THE STRUCTURE OF THE CASE

1. Elements of the Case

[14] A person who brings a case before the court is seeking an official recognition of his claims or interests and the use of state machinery or procedure to force performance by or to obtain redress from the other party.

---

2. Mitchell, *A Study of Interpretation in the Civil Law,* 3 VAND. L. REV. 557, 559 (1950).

A judicial petition is based upon the allegation that certain facts have occurred and that particular consequences are imputed to those facts by rules of law.[3] These rules perform a logical function: they establish a normative relationship between certain antecedent events (the alleged facts) and particular consequences (the performance or the sanction) which ought to follow.[4] It appears then that at least two elements are directly involved in the claim. One is empirical, mutable, contingent. The other is logical, relational.

The party against whom the claim is judicially made may deny the plaintiff's allegations by asserting either that the facts invoked by the plaintiff are not true or, if they are recognized as true, that they do not entail the legal consequences asserted by the plaintiff. (Of course, if the [15] plaintiff and the defendant disagree as to the facts of the case, then two conflicting sets of facts are present. Eventually, on the basis of the evidence this conflict will be resolved through a judicial determination of what the "facts" of the case "really" were.) Nevertheless, the same type of elements present in the claim are also found in the answer: an empirical component (the facts as alleged or recognized by the defendant) and a logical element (the link or connection between those facts and their legal consequences).

Traditionally, the prevailing theories of the judicial process of interpretation of the law have focused only upon these two components of a case, i.e., the empirical and logical elements. There is, however, a third and vitally important element which must be considered in any proper and complete theory of judicial interpretation.

---

3. *See* COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at 329-48; H. KELSEN, GENERAL THEORY OF LAW AND STATE 38 (20th century Legal Philosophy Series Vol. 1, trans. A. Wedberg 1945) [hereinafter cited as KELSEN].

4. In the most simplified manner, it may be stated that because something has occurred someone has become bound either to do, to omit, or to give something-the performance or to suffer a penalty—the sanction. That which is due as a performance or that which ought to be suffered as a sanction is due or is owed merely because a rule of law establishes such a relationship. *See* COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at 333; Cueto-Rúa, *Limites de la Normación Positiva de la Conducta, in* DEL PENSAMIENTO JURÍDICO ARGENTINO ACTUAL (1955) [hereinafter cited as Cueto-Rúa, *Limites*].

Although theoretical emphasis upon this element has been lacking, experience and reality reveal its pervasive influence and importance. Structurally, this element is found in every case as the values inherent in juridical experience. That is to say that the events, i.e., human behavior and the natural phenomena linked thereto, constituting juridical experience are value laden, having either positive or negative value. The axiological element of a case is, then, the value or worth exhibited by the "facts" of the case, the behavior of the parties, and the behavior of the judge.

2. The Empirical Element: The "Facts" of the Case

The "facts" of the case may differ in nature. Usually, facts consist of human acts—human behavior, the doing or the omitting of certain acts, such as the delivery of merchandise, the deposit of money, the consenting to marriage, the injury to limbs, the embezzlement of property, the conveyance of land, the drilling of wells, the use of water, or the installation of a manufacturing plant. On the other hand, the "facts" may be physical events—natural phenomena beyond the will or control of the persons involved, such as the flooding of a valley, the fall of hail, the occurrence of a contagious disease, the growth of plants, the procreation of cattle, or the avulsion of land. However, psychic phenomena, which do not gain some kind of temporal-spatial manifestation through acts or gestures, have no juridical significance. Moreover, they most certainly are not "facts" susceptible of being proved before the judge.

Because human action is empirical, in the sense that it takes place at a certain time and at a certain location, any human act is essentially linked to natural elements. In juridical experience, then, natural elements [16] are taken into account when they exhibit some connection with human life or behavior. Furthermore, natural "facts" become juridically relevant only when they are linked to, or intertwined with, human beings and their actions in such a way that

this connection gives rise to certain rights or duties.[5] The following examples are offered to illustrate this point: the spontaneous fruits of the earth and the young of animals belong to the owner by right of accession (La. Civ. C. Art. 484); the accretion which is formed successively and imperceptibly to any soil situated on the shore of a river or other stream becomes the property of the owner of the soil so situated (La. Civ. C. Art. 501); the sudden loss of a considerable tract of land adjoining a river and its addition to land situated either downstream or on the opposite shore, if the former can be identified, remain the property of the original owner (La. Civ. C. Art. 502); cases of venereal disease which come to the attention of physicians ought to be reported by them to the state board of health (La. R. S. 40: 1065).

Thus far, reference has been made only to those "facts" which are alleged by the parties and which form the bases for the plaintiff's claim that the defendant should be ordered to execute or to refrain from some act or acts (the performance) or to suffer some penalty and for the defendant's claim that he is not bound to do so. In addition to such "facts," there are other "facts" which are similarly relevant for a proper understanding of the case.

This latter category of "facts" consists of the acts performed by the parties themselves before the court and to those performed by the court itself, e.g., the filing of the claim or demand by the plaintiff, the filing of an answer by the defendant, any amendments and corrections to those instruments, and all other procedural acts performed by the parties or by the judge up until the rendition of the final judgment.[6] Such procedural [17] acts are executed before the

5. The terms "rights" and "duties" in this work are used in their most extensive con· notation. "Rights" include privileges, immunities, and powers; "duties" include liabilities, no rights, and disabilities. The meanings attributed to these latter, definitional terms are those given them by Wesley Hohfeld. W. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING 35-64 (1964) [hereinafter cited as HOHFELD].

6. A final judgment is rendered for or against a party to a case, not only because certain "facts" were found to be relevant by the judge, but also because a demand or claim was made, a defense was asserted, and a trial was had. Yet, in

judge or are produced in such a manner that the judge is immediately apprised of their content and implications. These "facts" are also linked to specific juridical consequences since they serve to define the subject matter with reference to which the judge will exercise the powers of his office, to specify the contested "facts" in need of proof, and to aid in the determination of the type of relief which the parties will be afforded.[7] Therefore, in addition to being called upon to "find" and interpret the "facts" of the case, the judge is bound to interpret the behavior of the parties before the court by determining the meaning and relevancy thereof.

---

defining the "antecedent facts" of a case, legal writers have generally been hesitant to include within the category of "antecedent facts" those acts which may generally be referred to as "procedural." This reluctance is rooted in the need for clarity and simplicity in describing the norm represented by the term "antecedent facts." For instance, Ross has pointed out how cumbersome such a description would become if procedural acts were included as antecedent facts. In his book *On Law and Justice,* for instance, he states:

> [I]f one single norm of conduct were to be presented in its entirety, it would be an enormously complicated matter. However, the conditions governing the bringing of an action-proof and other procedural measures together with the rules concerning the content of the judgment and its enforcement, are to a large extent the same for various norms of conduct in their certain groups. Therefore, the complete norm of conduct was divided into fragments and similar fragments reassembled for treatment in separate disciplines. This resulted in great advantages in economy of presentations.

A. ROSS, ON LAW AND JUSTICE 209 (1958) [hereinafter cited as ROSS, ON LAW AND JUSTICE]. The relevancy of judicial claims and procedural matters as conditioning or determining the operation and application of rules of law and the adjudication of disputes has been recognized, under quite different theoretical reasoning, by some of the most influential jurists of our rime. *See* H. HART, THE CONCEPT OF LAW 94-96 (1961); KELSEN, *supra* note 2, at 81-83; H. KELSEN, PURE THEORY OF LAW 134-37 (M. Knight trans. 1967); A. ROSS, DIRECTIVES AND NORMS 91 (1968).

7. In Morawetz's opinion: *"Who* the decision-maker is and *how* he is situated are often critically important in an assessment of consequences." Morawetz, *A Utilitarian Theory of Judicial Decision,* [1979] ARIZ. ST. L. J. 339, 357 [hereinafter cited as Morawetz].

3. The Logical Element: The Normative Relationship Between the Antecedent "Facts" and the Juridical Consequences

In every case, the parties and the judge engage in a discussion of controverted rights and duties. In approaching this discussion, the judge and the parties perceive their own behavior, insofar as that behavior relates to the case, in normative terms. By "normative" is meant that particular way of thinking characterized by the use of the logical copula "ought" which is relied upon in order to link the "facts" of the case to juridical consequences. While the sociologist may be looking for the *cause* of some human event, the judge and the parties, through their legal representatives, seek to determine what *ought to be done* by certain persons due to the occurrence of a particular event or events. The relationship between certain "facts" and particular, specific consequences is [18] established by the rules of law, whether such rules be statutory, customary, or judge-made.

The logical relationship between such "facts" and the *duty* to do, to give, or to omit is easily illustrated:

If F(abc), then P by D to C ought to be,

where "F(abc)" represents the "facts," "P" refers to the performance (to do, to give, or to omit), "D" is the debtor, and "C" the creditor. The logical relationship in the case in which sanctions are imposed because of a *breach* of a legal duty may be illustrated in a like manner:

If no P, then S by O against L ought to be,[8]

where "no P" means the breach of the legal duty, "S" is the penalty to be applied, "O" represents the state organ (usually the judge) responsible for the application of the sanction or penalty, and "L" is the liable person—the person who is bound to suffer the application of the penalty.[9]

---

8. *See* COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at 333.

9. Usually, the responsible or liable party is the debtor himself, i.e., the person who failed to do, to omit, or to give what was due; however, this is not always the case. A legal system may have established that persons other than the debtor

This logical structure is present in every instance of human experience when such experience is thought of in terms of rights and duties, whether it be viewed as such by the parties themselves, by judges, or by anyone else who is interested in examining such events from a juridical, normative perspective.

Of the two preceding logical propositions, the first represents the mutual relationship between the creditor and the debtor of a given performance. The second proposition, on the other hand, reflects the relationship between the party who is liable for the violation of the duty, or performance, and the state organ which is called upon to enforce the performance, or its equivalent.[10] There is, moreover, a logical relationship between these two propositions: Either there is performance of the duty owed by the debtor, or there is a violation of that duty; there is no third alternative-tertium *non datur.* Thus, both propositions may be linked in the disjunctive and illustrated as follows:

[19] If F(abc), then P by D to C ought to be, *or* if no P, then S by O against L ought to be.

This formula, then, reads: If some facts have occurred, a certain performance is owed by a person (debtor) to another person (creditor) or, if the performance is not rendered,[11] then a particular sanction ought to be applied by the state organ (the judge) against the liable party.[12]

---

may be liable in the event the debtor breaches the duty. *See* KELSEN, *supra* note 2, at 65-67.

10. The important function of state organs in the operation of the rules of law is discussed with keen insights by Max Radin. Radin, *Solving Problems by Statute,* 14 ORE. L. REV. 90 (1934).

11. In private law under most modern centralized legal systems, such as the American one, lack of performance alone will not be sufficient to put coercive state action into motion. The law usually requires that a claim he filed by a person who can exhibit proper standing, i.e., a right to demand damages. The creditor is the person normally qualified by the legal system to file such a claim. *See* KELSEN, *supra* note 2, at 51.

12. The second logical proposition refers directly to the person who ought to suffer the penalty and to the person, e.g., an organ of the state in modern centralized legal systems, who ought to apply the penalty. No reference is made to the creditor insofar as the act of applying the sanction is concerned, because the creditor himself is not allowed, except in very rare instances, to apply sanctions against

Since every act of human behavior when considered from the juridical standpoint is perceived in normative terms, then whoever views the human events which have taken place from that perspective must necessarily think of those events in terms of rights, duties, breaches of duties, and sanctions. Juridical experience itself, then, appears to comprise an empirical element—the "facts" of the case, including the behavior of the parties and the behavior of the judge, and a logical element—the formal relationship between those facts and certain specific consequences as established by the rules of law.

4. The Axiological Element: The Value of the Facts of the Case, the Behavior of the Parties, and the Behavior of the Judge

In every case submitted to a judge for decision, in addition to the empirical and logical elements, there is a third and rather elusive element which has been the cause of considerable difficulty within juridical theory. This element is of an axiological nature; it is the value, or worth, of the facts of the case, of the behavior of the parties, and of the behavior of the judge.

Juridical experience is meaningful experience; it is experience having [20] inherent value.[13] Juridical experience exhibits particular

---

the liable party. *See* COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1*,* at .333; KELSEN, *supra* note 2, at 50-51; Cueto-Rúa, *Limites, supra* note 3.

13. Juridical experience is human experience, but a specific type of human experience. It is constituted by the interference or limitation that can be identified in the action of one person vis-a-vis the action of another person. Georgio Del Vecchio calls it "intersubjective coordination of actions," which he defines as:

> the inter-subjectivity or bilaterality belonging to every juridical determination, that is, the simultaneous consideration of several subjects placed ideally on the same plane and represented, as it were, the one as the function of the other; ... the reciprocity or inseparable correlation, through which the affirmation of a personality in this form is at the same time its limitation with regard to a personality of another necessarily affirmed in the same act. The limit is at once a separation and a joining; claim goes with obligation, superiority with subordination; none of these terms can exist by itself, each one is valid as a complement of the other and draws its own meaning from the other.

G. DEL VECCHIO, JUSTICE; AN HISTORIC AND PHILOSOPHICAL ESSAY 83 (1952) [hereinafter cited as DEL VECCHIO]. Similar ideas, developed in great detail, are found in COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at 295-308. For the meaning of "intersubjective coordination," *see* note 19 and ch. 3, note 30, *infra.*

value, whether such be positive or negative,[14] and requires the taking of a position and the perception of the values involved. Human beings are not indifferent when confronted with it. To the contrary, the events which constitute juridical experience necessarily evoke a responsive attitude of approval or disapproval. Those events are "deemed" just or unjust, peaceful or conflictual, orderly or disorderly, safe or unsafe, cooperative or uncooperative. Neither the parties nor the judge can ignore the meaning of such events nor the effects of these events upon the lives of the parties, the judge, and the community as a whole.

Every human action, whether consciously or unconsciously undertaken, is an act of preference. During each waking moment, a person has to make choices. He has to elect one from among several courses of action available to him as a result of his historical situation—the peculiar circumstances of his past, present, and future. In life, choice is unavoidable. Choice is rooted in the very nature of human existence. Even a totally passive attitude of renunciation or disinterest expresses a choice of, a preference for one manner of living over another.[15] One makes a choice on the basis of the value which he perceives in the chosen alternative, yet any given choice may be "the best" or it may be "the worst." [21] Moreover, a choice may be neither the best nor the worst; it may be of moderate value; it may, in sum, be positioned at some intermediate point on the axiological scale.

If living necessarily requires constant choice, then any human act will be reflective of choice and, thus, will exhibit a certain value.

---

14. Values exhibit what may be called a polar structure: to a positive value, e.g., beauty, corresponds a negative one, e.g., ugliness, as its opposite. To each positive value corresponds at least one negative value. Between the poles, a graduation may be established. Each value, whether positive or negative, may achieve different degrees of realization. See COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at 600 et seq.; N. HARTMANN, ETHICS 253, 410, 444 (S. Coit trans. 1932) [hereinafter cited as HARTMANN]. For further development of this concept *see* Chapter IX.

15. *See* J. MARIÁS, INTRODUCCIÓN A LA FILOSOFÍA 251-57 (4th ed. 1956) [hereinafter cited as MARIÁS].

This value will be rated as being higher or lower on the axiological scale depending upon the intrinsic merit of the chosen course of action as compared with the merits of the other, but rejected, available courses of action. Therefore, inasmuch as human behavior is composed of an act or acts predicated upon choice, and thus has inherent value, the behavior of the parties and that of the judge will be of greater or lesser value, i.e., more or less worthy of approval or disapproval, depending upon the kind of choice each of them makes.

Because the behavior of the parties, whether past or present, is not neutral, but exhibits a positive or negative value, any attempt to deal with that behavior as though it were neutral-indifferent to or unaffected by preferences-is inadequate and methodologically insufficient, since such a treatment ignores and distorts reality.[16] Any theory of the judicial process which omits consideration of the axiological element that is involved in every case and which excludes the value of the judge's behavior is unsatisfactory as a theory because it does not take reality into account. The first condition to be met by a "good" theory of the judicial process is a neutral description of the datum, regardless of the disturbing nature of its reality.

It should be noted that one of the most intriguing aspects of traditional legal theory is the acknowledged fact that, although judges and lawyers are clearly aware that values and value-judgments play a fundamental role in the process whereby a case is studied, analyzed, and finally decided, it has not been common, particularly for judges, to expound upon this role which such values and value-judgments play nor to openly discuss these factors.[17] Not even the obvious benefits to be derived for achieving a better administration of

16. COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1, at ch. 3.

17. There are of course exceptions, some of which are very significant because of the personality and intellectual powers of the authors or speakers. *See generally* B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921) [hereinafter cited as CARDOZO]; J. Gmelin, *Dialectic and Technicality: The Need of Sociological Method*, in SCIENCE OF LEGAL METHOD, SELECTED ESSAYS BY VARIOUS AUTHORS (Modern Legal Philosophy Series No. IX, 1921); Holmes, *The Path of Law,* 10 HARV. L. REV. 457 (1896) [hereinafter cited as Holmes, *The Path of Law*].

justice, for the adequate and more complete training of lawyers and judges, or for a smoother [22] operation of the institutions of government (including the increased awareness of the citizens as to what actually transpires in court) have been enough to persuade judges, lawyers, and jurists to fully disclose and discuss the complex axiological process which judges must necessarily and unavoidably undertake in deciding a case.

A case is the judicial expression of a human conflict. And, human conflicts, like behavior, do have inherent value, such value being either positive (worthy) or negative (unworthy).[18] The value involved in a case is, in the first place, the value of the behavior of *both parties,* the plaintiff and the defendant. It is a bilateral value because, when considered from a juridical standpoint, the behavior of one person interferes with or limits the behavior of another person. Such an interference, or limitation, is worthy or unworthy, i.e., it will exhibit some degree of worthiness or unworthiness. Thus, there is some inherent value in each one of the two (or more) mutually dependent acts of human behavior.

By interference, in this context, is meant the limitation of the freedom of action of one person simply because of the presence or behavior of another person. Positive action is not indispensable. Interference occurs by the mere presence of two or more humans in any social group or at any given location. For instance, the mere presence of a person sitting on a park bench and enjoying the sunny afternoon imposes certain limitations on others in the park, e.g., bystanders will be prevented, among other things, from sitting on that occupied space on the bench. A second example is the fact that spouses, even when separated by distance, impose limitations on each other's freedom of action. Of course, interference is more obvious in cases of positive action, such as entering into a contract, entering into a marriage, erecting a common wall, forming a joint

18. *See* 3 A. HERNÁNDEZ-GIL, METODOLOGÍA DE LA CIENCIA DEL DERECHO 418-19 (1973) [hereinafter cited as HERNÁNDEZ-GIL].

venture, causing damage by negligence, or converting goods. In all of these instances, preferences and choices have taken place. Certain courses of action were adopted, other courses were omitted. The actions taken, whatever their content, did have certain effects upon the lives of other human beings. And vice versa.

When the behavior of one of the persons involved in a case is examined from a juridical standpoint, such behavior is understood by the intuitive appreciation of the value of that behavior as well as of the value of the conduct of the other person who was subject to the former's interference. [23] Both behaviors express, in their mutual interference, a certain juridical meaning, i.e., some degree of justice or injustice, of order or disorder, of security or insecurity, of peace or discord, of solidarity or isolation.[19] This juridical meaning is "felt," or intuitively comprehended, by the lawyers who have been called upon by the parties to take their case to the courts. The lawyers' training and experience enable them to gain a rapid understanding of the conflict, its implications, and its possible judicial outcome. This meaning is similarly "felt" by the judge.

In addition to its mutual interference, the behavior of the plaintiff and the defendant also interferes with the behavior of the judge. There is no question that because of the actions taken by the parties the judge is consequently limited in his freedom to act. He is *bound* to take some procedural action. Conversely, the behavior of the judge interferes with the behavior of the parties. It is because the judge chooses to do or to omit certain acts that the parties become bound to engage in some specific kind of behavior vis-a-vis the judge. Thus, the behavior of the judge and of the parties is expressive of an axiological meaning: it is just or unjust, secure or insecure, orderly or disorderly, peaceful or conflictual.

The axiological meaning of the behavior of the parties *per se* is expressed by the "facts" on the basis of which the claim and the

19. Chapter IX of the present work is devoted to the analysis of this complex topic.

denial thereof were made. Those antecedent "facts" are usually acts of human behavior or, if not, they are natural events closely linked to human behavior. Nevertheless, in both instances, because human behavior is directly or indirectly involved, the nature of the "facts" is the same: those "facts" are not neutral to values—they are expressive of legal values, whether negative or positive. Therefore, because every case is an instance of bilateral human behavior,[20] it follows that every case presented to a judge for decision is expressive of an axiological meaning. It is the duty [24] of the judge to discover that meaning.[21] This task, of course, presents varying degrees of difficulty which range from the easy, common, "run-of-the-mill" cases (the meaning of which is obvious even to lay persons) to the "hard" or "difficult" cases (the meaning of which seems to be hidden, contradictory, or ambiguous).

…

20. Expressions such as, "bilateral behavior," "intersubjective coordination of actions" as used by Del Vecchio, or "behavior in intersubjective interference" as per Cossio refer to the same central point: that the action of one person, whatever its content, limits or interferes with the action of another person. *See* COSSIO, LA TEORÍA EGOLÓGICA, *supra* note 1*,* at 284 *et seq.*; DEL VECCHIO, *supra* note 10. Judges and lawyers are particularly devoted to the study of those interferences in order to discover their juridical meaning. That is in fact the main professional task of judges and lawyers. For the sake of clarity and in order to avoid terminological problems related to the meaning of "intersubjective coordination" or "intersubjective interference," the relations between persons who are identical or identifiable from a biographical standpoint out of which rights and duties, *lato sensu,* are created will be referred to as "interpersonal" or "interindividual" relations. For further clarification of this point, *see* ch. 3, note 30, *infra.*

21. To interpret, says Josef Kohler, is *to* discover meaning and significance. Kohler, *Judicial Interpretation of Enacted Law,* in SCIENCE OF LEGAL METHOD; SELECT ESSAYS BY VARIOUS AUTHORS (Modem Legal Philosophy Series No. IX 1921) [hereinafter cited as Kohler].

CHAPTER IV – CLOSING THE DIALECTICAL PROCESS: FINAL INTERPRETATION AND SELECTION OF THE APPLICABLE RULES OF LAW

1. Clarity of the Facts and Clarity of the Rules

[93] The dialectical process through which the judge has journeyed in an attempt to understand the facts of the case and the behavior of the parties and to identify the rules of law which correspond to the case has narrowed the number of rules of law deemed applicable thereto. A screening process has taken place whereby rules invoked by the parties or considered *motu propio* by the judge were discarded from, while others were incorporated into, the set of rules still competing for application to the case. In order to adjudicate the dispute, a final choice must now be made.

The judge has gained some concrete ideas as to how the case should be decided and as to which specific rules of law he will apply, whether those rules have been given to him by the legislative organs of the state, or created in the past by judges deciding similar cases, or lived and experienced by the people through their customary behavior. In the common or typical dispute having recurring factual elements, the case is rather simple to decide. The meaning of the facts is obvious and the applicable rules of law, i.e., the rules having meanings which correspond to the meaning of those facts, are similarly clear and easy to identify and follow. It suffices to read and to interpret them in accordance with their apparent, plain grammatical meaning. In these cases, it is not so much [94] that the rules are clear, plain, and unambiguous in meaning[22] but that the facts of the case are clear, plain, and unambiguous in *their* meaning. The clarity and simplicity of the facts of the case are the crucial factors in the judge's quickly and directly being able to choose the rules of law which provide the normative ground for the solution of the dispute. *A priori*

22. Joseph Witherspoon has even stated: "The very process of judicial decisions, particularly in administration of statutes, belies the existence of 'plain meaning'." Witherspoon, *Administrative Discretion to Determine Statutory Meaning: "The Low Road,"* 38 TEX. L. REV. 392, 426 (1960).

abstract statements concerning the degree of clarity and lack of ambiguity of a given rule of law have a limited scope. Final judgment about clarity must await the test of experience. Logic and grammar are not sufficient guarantees of correctness and accuracy. Consider the following case. School authorities pass a regulation forbidding students to bring cats into the classrooms. It is clear, of course, that kittens are not allowed in a classroom. Simply using the techniques of grammar and semantics provides sufficient ground for the assertion that kittens are included within the meaning and scope of the prohibition. On this basis then, it may *be* said that the rule is dear and unambiguous. But, is it so clear if a small dog is involved? And, what if the student brings the dog to the school but leaves it tied to a tree dose by the door of the classroom? Will the prohibition still apply? Finally, what if the animal brought into the classroom by the student is neither a cat nor a dog, but an ant placed in a box which the student keeps in his pocket?

A great number of cases do not present complicated problems of interpretation and selection of rules for the simple reason that a majority are "run-of-the-mill" type cases, the meanings of which are easy to understand and the solutions of which are easy to arrive at by the application of well-known rules of law similarly clear in meaning. There is a common tendency, however, to think that rules, by themselves, are clear and therefore not in need of interpretation; yet, such thinking implies a very superficial understanding of the operation of law.[23]

---

23. According to Witherspoon:

> If there is a valid use of the term 'plain' or 'clear' relative to legislative language, it is not a use that can be enveloped in a rule or that can serve in any fashion as a cause for assigning meaning to language. In the case of language the concept 'plain' is essentially a relational concept. It refers to or expresses the relation between a human judgment concerning the meaning of language and the grounds or reasons for reaching such a judgment. When these grounds or reasons are deemed to be very good or strong, we may give vent to the conclusion (although with doubtful wisdom) that that meaning is 'plain' or is '*the* plain meaning.' When the concept 'plain' is thus properly understood, the notion of a 'plain meaning *rule*' must always be viewed as the supreme nonsense and futility of

[95] Article 13 of the Louisiana Civil Code states: "When a law is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." This normative statement seems to imply that rules of law may be classified into two broad categories: those that are clear and free from all ambiguity and those that are vague or ambiguous and hence in need of some sort of interpretation. Such a categorization overlooks the fact that every rule of law may be clear with reference to certain facts but ambiguous or vague with reference to a different set of facts. *(See* Illustration No. 12.) Returning to the above example, there is no question that if a student brought a kitten into the classroom, he would violate the rule enacted by the school authorities. But would he commit such a violation if he brought an ant in a box or if he had leashed a small dog to a tree just outside the main entrance of the school? It is easy, then, to see that the rule is clear with reference to some acts, e.g., bringing in kittens, but ceases to be clear with reference to certain other acts, e.g., bringing small dogs to the school or ants into the classroom.

The ambiguity and vagueness found in the common case is not ambiguity and vagueness in the words chosen by the maker of the rule entirely aside from any relationship with the objects to which the words refer. Prohibition against bringing cats clearly means prohibition against bringing *small* cats. It may even be alleged, by analogical interpretation, that a prohibition against bringing cats means, similarly, a prohibition against bringing dogs. However, it is difficult to say that a prohibition against bringing cats means also the prohibition against bringing ants kept in a box or leashing a dog to

---

> a nominalist age. The 'rule' simply misses the point about 'plainness' and its proponents simply avoid discussing the real issues concerning meaning. Those issues relate to the grounds or reasons for assigning meaning to statutory language. A meaning may be 'plain,' but it will rarely, if ever, be *indisputably* 'plain.'

Witherspoon, *Administrative Discretion to Determine Meaning: "The Middle Road": I,* 40 TEX. L. REV. 751, 763 (1962).

an outside tree. The process of interpretation of rules of law is essentially conditioned by the nature of the facts of the case and by the meanings attributed to those facts by the respective judges. Many differences in the meanings of rules of law as traditionally interpreted by the judges may be shown to be only apparent differences, because the differences in rule meanings are related to differences in the nature and meaning of the facts of the various cases in which the rules were applied. Attempts to determine in the abstract the final and definite meaning of rules of law, without relating them to concrete social experience, to social conflicts, or to individual disputes, may, however, become purely logical and grammatical exercises unconnected to reality.

2. Plain Meaning of Words and Plain Meaning of Rules

[96] In order to better understand the problems involved in statements like those made in Article 13 of the Louisiana Civil Code, it may be helpful to take a closer look at the meaning of the words used in stating general rules of law. Common general words used in natural languages,[24] as opposed to artificial or technical languages, are inherently ambiguous in the sense that each of them has several meanings. It is sufficient to look in any good dictionary to discover that plurality of meaning exists. The meaning of a word is conditioned by the factual circumstances which surround its utterance and by the grammatical context in which it is found. Interpretation by reference to circumstances, situations, and context occurs spontaneously throughout daily life. To understand the spoken or written words of a natural language implies that an interpretation of words has taken place and, therefore, a selection of their meaning has taken place as well. The common observation that because the words are

24. In contemporary philosophy of language, "natural" languages are languages understood in the ordinary sense, such as English or Spanish. Natural languages are distinguished from artificial or symbolic languages, that is, languages used at a special level of communication. *See* J. AUSTIN, HOW TO DO THINGS WITH WORDS (1962).

clear and their meanings plain no interpretation is needed *ignores the process of interpretation which has already taken place.*[25]

[97] The ambiguity of words is further complicated by the fact that different meanings of the words may or may not be related to objects having some common element. It is easier to interpret a word and to choose one of its meanings when there is no common element among the several meanings of that word. For instance, the word "root" has, among others, the following meanings:

(1) a subterranean plant part

(2) part of a tooth within a socket

(3) something that is an origin or source

(4) a quantity taken an indicated number of times and an equal factor

(5) the part by which an object is attached to something else

---

25. Harry Jones states:

> Theoretically, the plain meaning rule raises a preliminary issue of admissibility in every case, and the acceptance or rejection of offered extrinsic aids should depend upon the disposition which the court makes of that preliminary issue. The evidence afforded by extrinsic aids, logically speaking, should be irrelevant unless the interpreting court has *first* come to the conclusion either that the statute is 'ambiguous' with respect to the fact situation of the particular controversy, or that the application of the statute, according to its literal meaning, would lead to 'absurd or wholly impractical consequences.' The frequently quoted formula that extrinsic aids may be resorted to 'to solve but not to create ambiguity' can only mean that the evidence provided by such aids should be considered solely for the light which it throws upon the proper resolution of a doubt or 'ambiguity' apparent to the court *before* it examines the extrinsic sources. In other words, the theory of the plain meaning doctrine is that the 'ambiguity' or 'absurdity' which will take a case outside the scope of its application must be discoverable upon a bare or literal reading of the text, wholly apart from the background or context which the committee reports and other extrinsic sources provide.

Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Statutes,* 25 WASH. U. L. Q. 2, 10-11 (1939). To come "first" to the conclusion that the statute is ambiguous is tantamount to concluding that the statute is not clear or that its meaning is not plain. This conclusion implies, certainly, that in other cases the court may come to the conclusion, "first," that there is a "plain meaning" to be followed. What is to be doubted is the assertion made by Jones to the effect that the court may come to a conclusion concerning "ambiguity" or "clarity" upon a "bare or literal reading of the text." The court finds a statute "clear" when the facts of the case are "clear" and when the statute, in accordance to its "plain meaning," provides the expected just solution *of* the dispute.

(6) the simple element inferred as the basis from which a word is derived by phonetic change or by extension

(7) the tone from whose overtones a chord is composed.[26]

The circumstances or situation in which the word "root" is uttered or the grammatical context in which it appears will allow a rapid, almost instantaneous selection of one of those different meanings. The situation becomes more complicated, however, if the word refers to different objects which have a common element. For example, the word "immovable" has, among others, these meanings:

(1) incapable of being moved

(2) not moving or not intended to be moved

(3) steadfast, unyielding

(4) real property.[27]

The common element in this instance is immobility. There is no question that land is an immovable, as is a building built on the land. But, what about a mobile home from which the wheels have been removed and which is fixed to the ground by short steel posts? What about wooden partitions in a house which are nailed to the walls and screwed to the floor? What about the central heating system installed in a building? What about air conditioners placed on window sills and attached to the windows? The dictionary refers to "immovables" as "incapable of being moved," "not moving," or "not intended to be moved." A common element is present in all of those meanings; there are also shades of meaning, and those shades of meanings may be of great importance in [98] understanding the meaning of a particular factual situation. That which is "not moving" may nevertheless be moved. That which is "not intended to be moved" may be moved under certain circumstances. Thus, is a removable object an immovable?[28] To say that a word is not ambiguous merely means

26. WEBSTER'S NEW COLLEGIATE DICTIONARY (1976).

27. *Id*.

28. *See, e.g.,* Vincent v. Gold, 261 So. 2d 75 (La. App. 3d Cir. 1972); La Fleur v. Foret, 213 So. 2d 141 (La. App. 3d Cir. 1968), wherein the nature of schogie screens—colored glass "doors"—and window air conditioners was discussed by the court.

that there is no doubt as to the meaning which should be chosen in a particular situation. The choice of meaning is made by the simple and direct technique of looking at the circumstances, situation, or context involved. Thus, to say that a word is unambiguous does not mean that the word alone has one, and only one, meaning. When the word used is not the name of an individual object, then more than one meaning will usually be involved and interpretation is therefore needed.

In addition to ambiguity, words suffer from unavoidable vagueness. The vagueness of words is related to the extent of the objects to which the words refer, e.g., to what semanticists call "referents." Words exhibit this peculiar structure: A word has a clear core or central nucleus of meaning, clear in the sense that there are no doubts about which object or objects are referred to by the word, but the word is also surrounded by a halo of uncertainty whenever an object which does not fall within the clear core of reference is involved. For example, it is clear that the expression "private automobile" refers to a four-wheeled, self-propelled vehicle with a body that provides seating accommodations and driving facilities. There may, however, be some doubt as to whether a car is properly named or referred to by that expression, "private automobile," when half of the seats have been removed and replaced by a flat board on which cargo can be transported, or if the self-propelled vehicle were to have only three wheels and room for transportation of merchandise in addition to seating accommodations.

...

ILLUSTRATION 13

I. Introduction

[364] The following case involves a discussion of the meaning of the word "animals." By statute, trains in Tennessee are required

to sound the alarm whistle and to put down the brakes when an animal appears on the tracks. In the case below, three geese were run over and killed by a train on which the whistle was not sounded and the brakes were not put down. The court indicated the need "to draw the line somewhere" as to what animals fell within the purview of the statute. Accordingly, the court concluded that the goose was a proper animal at which to draw the line. Left unexplained is the reason for the court's choice. Certainly no logical reason can be asserted, and apparently there was nothing in history which indicated any such limitations. The judgment is clearly based on axiological considerations of order, security, and cooperation.

NASHVILLE & K. R. CO.
v.
DAVIS
Supreme Court of Tennessee

WILKES, J.

This is an action for damages against the railroad company for running over and killing three geese of the value of $1.50. The owner of the geese lived about one mile from the railroad, but permitted them to run at large, and they went upon the railroad track near a public crossing. The engineer blew the whistle and rang the bell for the crossing, but there is no proof that he rang the bell or [365] sounded the alarm for the geese. Whether the geese knew of this failure to whistle for them does not appear. We think there is no evidence of recklessness or common-law negligence shown in the case, and the only question is whether a goose is an animal or obstruction in the sense of the statute (section 1574, subsec. 4, Shannon's Compilation), which requires the alarm whistle to be sounded, and brakes put down, and every possible means employed to stop the train and prevent an accident when an animal or obstruction appears on the track. It is evident that this provision is designed, not

only to protect animals on the track, but also the passengers and employés upon the train from accidents and injury. It would not seem that a goose was such an obstruction as would cause the derailment of a train, if run over.[1] It is true, a goose has animal life, and, in the broadest sense, is an animal; but we think the statute does not require the stopping of trains to prevent running over birds, such as geese, chickens, ducks, pigeons, canaries, or other birds that may be kept for pleasure or profit.[2] Birds have wings to move them quickly from places of danger, and it is presumed that they will use them (a violent presumption, perhaps, in the case of a goose, an animal which appears to be loath to stoop from its dignity to even escape a passing train). But the line must be drawn somewhere, and we are of the opinion that the goose is a proper bird to draw it at. We do not mean to say that in the case of recklessness and common-law negligence there might not be a recovery for killing geese, chickens, ducks, or other fowls, for that case is not presented. Snakes, frogs, and fishing worms, when upon railroad tracks, are, to some extent, obstructions; but it was not contemplated by the statute that for such obstructions as these trains should be stopped, and passengers delayed.[3] We are of the opinion that there is error in the court below giving judgment for the plaintiff, and the judgment is reversed, and, the case having been heard without a jury, the suit is dismissed, at the plaintiff's cost.

II. Discussion

1. The statute is seen as a means for the achievement of a certain end, and thus it should be interpreted in such a way that its aim is achieved.

2. A judicial interpretation of the statute consistent with the logical extension of the class "animals" would be irrational. Trains are not to be stopped because a bird alights on the railway tracks.

3. A grammatical and logical interpretation would lead to absurd results.

...

ILLUSTRATION 20

I. Introduction

[412] The First Circuit Court of Appeal of Louisiana deals in this case with the effect that the changed conditions for the movement of cars on multilane highways has on the statutory regulation of drivers' behavior. The wording of the statute remained unchanged, but the social reality to which it referred had changed substantially. Such a change brought new meaning to the old words.

LEE MAJOR SANDERS, Plaintiff-Appellant,
v.
RAYMOND O. HISAW ET AL., Defendants-Appellees.
Court of Appeal of Louisiana

TATE, Judge.

Plaintiff Sanders was riding as a passenger in defendant Hisaw's automobile when it was involved in a collision with a car owned by Edward Marshall and driven by his daughter. Sanders brought suit against Hisaw, Marshall, and their respective liability insurers. After trial, his claim against Marshall and his liability insurer was compromised.

Plaintiff appeals from judgment of the District Court dismissing his suit against Hisaw and the latter's insurer upon a holding that the sole proximate cause of the accident was the negligence of Miss Marshall in turning left suddenly across Hisaw's path.

The accident occurred at mid-morning on May 3, 1953 on the Air Line Highway on the approaches to the city of Baton Rouge. The southern two lanes of this four-lane highway reserved for eastbound traffic. Both the Hisaw and [413] Marshall vehicles were proceeding easterly, the former on the inside lane next to the neutral ground in the middle of the highway, and the latter on the outside

lane. Prior to the accident, the Hisaw vehicle at a speed of 55 mph was overtaking the Marshall vehicle, which was going less than 25 mph.

It is not disputed that Miss Marshall turned suddenly left to the other highway from the outside lane across the path of the Hisaw vehicle in which plaintiff was riding so that Hisaw was unable to avoid colliding with her. But it is urged, and this presents the sole question of this appeal, that Hisaw failed to sound his horn as he was overtaking Miss Marshall to pass her; and that this violation of his statutory duty, LSA-R.S. 32:233, subd. B, was a contributory proximate cause of this accident, so that Hisaw and his insurer are liable to Hisaw's passenger (the plaintiff) injured as a result thereof.

LRS-R.S. 32:233, subd. B provides: "The driver of an overtaking vehicle shall give audible and sufficient warning of his intention before overtaking, passing or attempting to pass a vehicle proceeding in the same direction."

We do not believe this statutory provision to be applicable to the present situation. The accident occurred on a four-lane highway; two lanes were reserved for each direction's traffic. If applicable to multiple-laned highways, motor vehicles would be required to sound the horn when passing any vehicle going in the same direction whether to their right or left and no matter how many lanes distant they might be. On our crowded eight-lane and four-lane highways designed to facilitate the passage of congested traffic there would be a never-ending cacophony of constantly blowing horns, an intolerable burden both on the ears of the public and on the batteries of the vehicles involved in the crowded traffic. [1] We do not believe the legislature intended the statute to apply in such circumstances or that the legislative provision contemplated application thereof to multiple-lane highways.[2]

In Mooney v. American Automobile Ins. Co., La. App. 1 Cir., 81 So.2d 625, we recently had occasion to consider a companion statutory provision, LSA-R.S. 32:233, subd. A, which provides that overtaking vehicles must pass to the left in passing other vehicles

proceeding in the same direction. Likewise, considering the effect the application thereof might have as burdening rather than facilitating traffic in such situations, we concluded that the legislative intention did not contemplate application of the provision to multiple-laned highways.[3]

In effect, the Mooney case holds that the burden of signalling [*sic*] his intention on a multiple-laned highway is upon the driver who intends to shift into another lane reserved for traffic going in the same direction, rather than upon the driver who intends to pass in his own lane other traffic proceeding in the same direction in other lanes.

Further, although in many jurisdictions the statutory requirement that the horn should be sounded has been construed as being for the purpose of warning the forward vehicle so that it will not tum left into the overtaking vehicle's path, cf. 2 Blashfield, Cyclopedia of Automobile Law 133, Section 938; in Louisiana, "the purpose of the law in requiring the giving of an audible warning by the overtaking vehicle, as we view it, is to favor its driver to the extent that his normal progress on the highway will not be unnecessarily impeded by the driver [414] of the car preceding him in not leaving or giving him sufficient clearance in which to pass ahead," De La Vergne v. Employers Liab. Assur. Corp., La.App. 1 Cir., 4 So.2d 66, at page 69, certiorari denied, Noted, 16 Tul.L.Rev. 283.

This distinction as to the statutory purpose is important, since the violation of a statute or ordinance does not constitute actionable negligence unless the statute is designed to control the situation at the time of the accident and to protect the class of person who seeks to invoke its protection, 38 Am. Jur. 834, "Negligence" Section 163. Thus, in Louisiana the overtaking motorist is under no duty to sound his horn when the forward vehicle is proceeding in its own lane leaving sufficient clearance for passing, and his failure to sound his horn in such circumstances will not be a proximate cause of an accident resulting when the forward vehicle suddenly turns across his path since the purpose of sounding the horn is *not* to warn the forward

vehicle not to turn left, De La Vergne v. Employers Liab. Assur. Corp., above cited.

II. Discussion

1. The judge is saying that if no new meaning was given to the old words under the changed social conditions of the time, then disorder would take place.

2. This is a purely rhetorical statement. The judge does not even attempt to prove his statement to the effect that the legislature "intended" not to apply the statute, i.e., giving "audible and sufficient warning of ... intention of overtaking," in the case of multilane highways.

3. See comment 2, *supra.*