

Problem 7

On November 8, 1996, defendant pleaded guilty to one count of manslaughter and one count of carrying a pistol without a license. He was sentenced to thirty years for the manslaughter count, with fifteen years to serve and the balance suspended, with probation, and a consecutive ten-year term, suspended, with probation, for the firearms conviction. While on probation after his release from incarceration, defendant was arrested. The circumstances of that arrest follow.

On December 30, 2012, Police Patrolmen Ludwig Castro (Castro) and Eugene Chin (Chin) observed defendant make a right turn without using a turn signal and then stop in the roadway, obstructing the flow of traffic, to speak to a pedestrian. Chin activated the overhead lights of his police cruiser, and Castro exited the cruiser and approached the driver's side door of the car. Patrolman Castro instructed defendant to pull the vehicle over; defendant responded by fleeing the scene. Castro testified that he and Chin pursued defendant at speeds in excess of forty miles per hour until the car was cut off by another police cruiser, bringing the chase to an abrupt end.

Castro further testified that, when he approached the vehicle after the stop, he observed the defendant hunched over with his hands between his legs. Castro then spotted the "shiny barrel of a revolver" on the floor of the car. Defendant was taken into custody, and the officers retrieved a 1858 Remington 1858 .44-caliber black powder revolver from the floor of the vehicle. The weapon was damaged and unable to be fired in the condition in which it was found. The defendant claimed he kept the gun for sentimental reasons because it belonged to his great grandfather. The gun was incapable of being fixed to become operable.

It is illegal for individuals on probation to carry a firearm. East Carolina statute section 11-47-1 provides:

A person on probation commits the crime of unlawful use of weapons if he knowingly carries ... a firearm ... upon his person.

East Carolina statute section 11-47-2(3) defines firearm as follows:

'Firearm' includes any handgun, machine gun, pistol, rifle, or other instrument from which steel or metal projectiles are propelled ... except crossbows, longbows, and instruments propelling projectiles which are designed or used for a primary purpose other than as a weapon.

The statute defining "firearms" was first enacted in 1927 and the term "firearm" was defined to "include any machine gun or pistol." The language of the earlier statute made clear that the machine gun and pistol had to be "capable of being shot." Inoperable machine guns and pistols were not covered. The statute was amended in 1950 to include the catchall phrase and the exception, as written above.

Problem Questions

1. What is the language at issue? There are two separate arguments the defendant could make that he is not guilty of violating this statute. Do you see both?
2. How does the defendant want that language interpreted?
3. How does the state want that language interpreted?
4. Is the language structurally or lexically ambiguous, if so, why?
5. Is the ordinary meaning specifically or generally absurd, if so, why?
6. Does the ordinary meaning of the language raise a constitutional question that the court should try to avoid?
7. Assuming you answered yes to question 4, 5, or 6, what intrinsic sources are relevant? What arguments would the defendant make regarding this source(s)?
The state?
8. Assuming you answered yes to question 4, 5, or 6, what extrinsic sources are relevant? What arguments would the defendant make regarding this source(s)?
The state?

Problem 8

The defendants, logging companies, sued the US government arguing that the language in the statute below should not apply to habitat modification or destruction that could kill or injure endangered animals. Logging companies clear cut forests, which destroys the habitat where endangered animals live. Assume logging companies would be considered a person for purposes of this statute.

The Endangered Species Act of 1973:

16 § 1538(a)(1)(B): "[I]t is unlawful for any person subject to the jurisdiction of the United States to ... take any [endangered or threatened] species within the United States..."

16 § 1532(19): Definitions: "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to engage in any similar conduct."

Agency Regulation:

50 C.F.R. § 17.3: Harm in the definition of 'take' in the Act means an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

Problem Questions

1. Identify the language you need to interpret from each section of the statute. How has the agency interpreted this language? Ignore the agency's interpretation for now; you are interpreting the language *de novo*. We will return to it in a later problem.
2. Using a *de novo* standard of review, a court should apply the canon *noscitur a sociis/ejusdem generis*/the rule against surplusage (circle one or more) to this language because:
3. What is the unifier among the list of words?
4. The canon *expressio unius* is/is not (circle one) appropriate to apply to this statute because:
5. Applying the canon you selected above, how would you expect a court to rule on the issue of whether habitat destruction is unlawful and why?