

McKinney's Consolidated Laws of New York Annotated
Statutes (Refs & Annos)
Chapter 6. Construction and Interpretation
B. Rules of Construction

McKinney's Statutes § 92

§ 92. Legislative intent as primary consideration

Currentness

a. Generally

The primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature.

COMMENT

Since the intention of the Legislature, embodied in a statute, is the law,⁶¹ in the construction of statutes the basic rule of procedure⁶² and the primary consideration of the courts is to ascertain and give effect to the intention of the Legislature.⁶³ Hence the legislative intent is said to be the “fundamental rule,”⁶⁴ “the great principle which is to control,”⁶⁵ “the cardinal rule”⁶⁶ and “the grand central light in which all statutes must be read.”⁶⁷ So it is the duty of courts to adopt a construction of a statute that will bring it into harmony with the Constitution and with legislative intent,⁶⁸ and no narrow construction of a statute may thwart the legislative design.⁶⁹

The intent of the Legislature is controlling and must be given force and effect,⁷⁰ regardless of the circumstance that inconvenience, hardship, or injustice may result.⁷¹ Indeed the Legislature's intent must be ascertained and effectuated whatever may be the opinion of the judiciary as to the wisdom, expediency, or policy of the statute,⁷² and whatever excesses or omissions may be found in the statute.⁷³ The courts do not sit in review of the discretion of the Legislature and may not substitute their judgment for that of the lawmaking body.⁷⁴

COMMENT

Generally, in the construction of statutes, the intention of the Legislature is first to be sought from a literal reading of the act itself⁷⁵ or of all the statutes relating to the same general subject-matter.⁷⁶ In this respect, the legislative intent is to be ascertained from the words and language used in the statute,⁷⁷ and if language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation.⁷⁸ What the Legislature intended to be done can only be ascertained from what it has chosen to enact, and it is only when words of the statute are ambiguous or obscure that courts may go outside the statute in an endeavor to ascertain their true meaning.⁷⁹

Where, however, after a reading of the statute, its meaning is still not clear, courts must search for legislative intent in the purpose of the enactment,⁸⁰ and from such facts and through such rules as may, in connection with the language, legitimately reveal it.⁸¹ Thus it is said that the quest for legislative intent requires the courts to pierce all disguises

of verbal expression, and go straight to the purpose of the bill, aided by formulated rules when they serve, but bound by no rules that hinder discovery of such intent.⁸² All available aids to statutory construction should be explored in determining the meaning and intendment of statutes,⁸³ and if the language of the statute is vague, ambiguous or uncertain, the courts are not proscribed from applying time honored presumptions to the legislative process in an attempt to ferret out the legislative intent.⁸⁴

The rules of construction are not permitted to override the doctrine that the intent of the Legislature is the primary object of all statutory construction,⁸⁵ and no statute may be construed so strictly as to result in perversion of the legislative intent.⁸⁶ However, the court cannot, through construction, enact an intent the Legislature totally failed to express,⁸⁷ and courts may not read into a law any word or provision unless good grounds appear for thinking that the lawmakers intended to include something which they have failed to plainly express.⁸⁸ In arriving at the intent of the Legislature, the courts are not to speculate as to the possible thoughts which might have been in the minds of the legislators when the statute was enacted.⁸⁹ “It is not for the court, acting upon conjecture and surmising what may have been the intent of the Legislature, to interpolate exceptions in the statute, thus in effect avoiding and nullifying the express declaration of the Legislature.”⁹⁰

ANNOTATIONS

61. *Commissioner of Taxation and Finance v. Riger Bldg. Corporation*, 1940, 260 App.Div. 358, 22 N.Y.S.2d 378, appeal denied 260 App.Div. 896, 23 N.Y.S.2d 832, reversed on other grounds 285 N.Y. 217, 33 N.E.2d 529.

Wright v. New York Cent. R. Co., 1942, 263 App.Div. 461, 33 N.Y.S.2d 531.

Implied provisions

Whatever is necessary or plainly implied is as much a part of a statute as that which is expressed. *Salmon v. Rochester & Lake Ontario Water Co.*, 1923, 120 Misc. 131, 197 N.Y.S. 769; *Jaffe Plumbing & Heating Co. v. Brooklyn Union Gas Co.*, 1966, 51 Misc.2d 1083, 275 N.Y.S.2d 24, affirmed 29 A.D.2d 1051, 1052, 290 N.Y.S.2d 1022.

Key to meaning

The true legislative intent is the key to the meaning of a statute. *People v. Pfingst*, 1956, 1 Misc.2d 890, 148 N.Y.S.2d 640.

Letter of statute

A thing which is within intent of makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it is within intention of the makers. *Bogartz v. Astor*, 1943, 182 Misc. 214, 43 N.Y.S.2d 937, affirmed 268 A.D. 795, 49 N.Y.S.2d 175, appeal denied 293 N.Y. 763, 57 N.E.2d 841; *People v. Burkhalter*, 1952, 203 Misc. 532, 117 N.Y.S.2d 609.

62. *Farrell v. Board of Health of City of Oswego*, 1935, 243 App.Div. 332, 276 N.Y.S. 907.

Westchester County Soc. for Prevention of Cruelty to Animals v. Mengel, 1943, 266 App.Div. 151, 41 N.Y.S.2d 605, affirmed 292 N.Y. 121, 54 N.E.2d 329.

McK. Statutes cited in *Goldstein v. City of Long Beach*, 1967, 28 A.D.2d 558, 280 N.Y.S.2d 272, 273.

Objective

Legislative intent is objective of all statutory construction. *Blauweis v. Kirschner*, 1927, 128 Misc. 630, 219 N.Y.S. 662.

Intent of Legislature in enacting legislation is primary object to be found, and whenever such intention is apparent it must be followed in construing statute. *River Brand Rice Mills, Inc. v. Latrobe Brewing Co.*, 1953, 305 N.Y. 36, 110 N.E.2d 545; *State v. J. S. Garlick Parkside Memorial Chapels, Inc.*, 1968, 55 Misc.2d 797, 287 N.Y.S.2d 159, affirmed 30 A.D.2d 143, 290 N.Y.S.2d 829.

63. *Brusco v. Braun* (1 Dept. 1993) 199 A.D.2d 27, 605 N.Y.S.2d 13, leave to appeal granted 201 A.D.2d 989, 609 N.Y.S.2d 768, affirmed 84 N.Y.2d 674, 621 N.Y.S.2d 291, 645 N.E.2d 724.

Allstate Ins. Co. v. Libow, 1984, 106 A.D.2d 110, 482 N.Y.S.2d 860, affirmed 65 N.Y.2d 807, 493 N.Y.S.2d 128, 482 N.E.2d 923.

Ames Dept. Stores v. Assessor, 1984, 102 A.D.2d 9, 476 N.Y.S.2d 222.

Delaware County Elec. Co-op., Inc. v. Power Authority of State of N.Y., 1983, 96 A.D.2d 154, 468 N.Y.S.2d 233, affirmed 62 N.Y.2d 877, 478 N.Y.S.2d 865, 467 N.E.2d 529.

Thomas v. Bethlehem Steel Corp., 1983, 95 A.D.2d 118, 466 N.Y.S.2d 808, affirmed 63 N.Y.2d 150, 481 N.Y.S.2d 33, 470 N.E.2d 831.

Anderson v. Board of Ed. of City of Yonkers, 1974, 46 A.D.2d 360, 362 N.Y.S.2d 536.

Sandusky v. McCummings, 1995, 164 Misc.2d 700, 625 N.Y.S.2d 457.

Home Office Reference Laboratory, Inc. v. Axelrod, 1984, 127 Misc.2d 444, 485 N.Y.S.2d 178.

Jacobs v. Marine Midland Bank, N.A., 1984, 124 Misc.2d 162, 475 N.Y.S.2d 1003.

Nagin v. Long Island Sav. Bank, 1982, 114 Misc.2d 61, 450 N.Y.S.2d 725, affirmed 99 A.D.2d 827, 472 N.Y.S.2d 423, appeal denied 63 N.Y.2d 603, 480 N.Y.S.2d 1025, 469 N.E.2d 103.

Kruger v. Page Management Co., Inc., 1980, 105 Misc.2d 14, 432 N.Y.S.2d 295.

Van Etten v. State, 1980, 103 Misc.2d 487, 426 N.Y.S.2d 908, affirmed 83 A.D.2d 963, 444 N.Y.S.2d 874, appeal denied 55 N.Y.2d 602, 446 N.Y.S.2d 1025, 431 N.E.2d 309.

Matter of Maureen G., 1980, 103 Misc.2d 109, 426 N.Y.S.2d 384.

People v. Casella, 1977, 90 Misc.2d 442, 395 N.Y.S.2d 909.

Cota v. Madison Central School Dist., 1977, 89 Misc.2d 646, 392 N.Y.S.2d 233, affirmed 62 A.D.2d 1083, 404 N.Y.S.2d 547.

Conrad v. Home & Auto Loan Co., Inc., 1975, 81 Misc.2d 834, 366 N.Y.S.2d 850.

Angello v. Dusinberre, 1975, 80 Misc.2d 472, 363 N.Y.S.2d 520.

People v. Hurt, 1974, 78 Misc.2d 43, 355 N.Y.S.2d 728.

Jacques v. Richard, 1973, 74 Misc.2d 965, 346 N.Y.S.2d 704.

People v. Queen, 1971, 66 Misc.2d 616, 322 N.Y.S.2d 58.

People ex rel. Collins v. Spicer, 1885, 99 N.Y. 225, 1 N.E. 680.

People ex rel. Bockes v. Wemple, 1889, 115 N.Y. 302, 22 N.E. 272.

Gilmore v. City of Utica, 1890, 121 N.Y. 561, 24 N.E. 1009.

Hayden v. Pierce, 1895, 144 N.Y. 512, 39 N.E. 638.

Matter of Rapid Transit R. Com'rs, 1895, 147 N.Y. 260, 41 N.E. 575.

Matter of Sherrill v. O'Brien, 1907, 188 N.Y. 185, 81 N.E. 124.

People ex rel. Lichtenstein v. Langen, 1909, 196 N.Y. 260, 89 N.E. 921.

Flynn v. Prudential Ins. Co. of America, 1913, 207 N.Y. 315, 100 N.E. 794.

State Industrial Commission v. Newman, 1918, 222 N.Y. 363, 118 N.E. 794.

Johanns v. Ficke, 1919, 224 N.Y. 513, 121 N.E. 358.

City of New York v. Whitridge, 1919, 227 N.Y. 180, 124 N.E. 788.

People ex rel. Steckler v. Warden of City Prison, 1932, 250 N.Y. 430, 182 N.E. 73.

Van Cortlandt v. New York Cent. R. Co., 1934, 265 N.Y. 249, 192 N.E. 401 (statute authorizing construction of railroad and providing for construction of drawbridges over navigable streams or inlets by such railroad).

Sharkey v. Thurston, 1935, 268 N.Y. 123, 196 N.E. 766.

People v. Ryan, 1937, 274 N.Y. 149, 8 N.E.2d 313.

In re Schinasi's Will, 1938, 277 N.Y. 252, 14 N.E.2d 58, reargument denied 278 N.Y. 624, 16 N.E.2d 128 (quest is for the intention of the Legislature).

Chittenden Lumber Co. v. Silberblatt & Lasker, 1942, 288 N.Y. 396, 43 N.E.2d 459.

Astman v. Kelly, 1957, 2 N.Y.2d 567, 161 N.Y.S.2d 860, 141 N.E.2d 899.

McK. Statutes cited in Goldstein v. Behalf of Bd. of Ed. of City of New York v. Shanker, 1968, 23 N.Y.2d 111, 295 N.Y.S.2d 625, 628, 242 N.E.2d 802.

Vandeweghe v. City of New York, 1934, 150 Misc. 815, 270 N.Y.S. 570, affirmed 242 App.Div. 762, 275 N.Y.S. 218 (construction of legislative act is dependent upon intention of Legislature).

McK. Statutes quoted in *People*, on Complaint of Schoenherr v. Polin, 1949, 196 Misc. 620, 92 N.Y.S.2d 167, 169.

Dobkin v. Chapman, 1966, 25 A.D.2d 745, 269 N.Y.S.2d 49, motion granted 18 N.Y.2d 782, 275 N.Y.S.2d 266, 221 N.E.2d 808, motion granted 20 N.Y.2d 762, 284 N.Y.S.2d 68, 230 N.E.2d 715, affirmed 21 N.Y.2d 490, 289 N.Y.S.2d 161, 236 N.E.2d 451.

Jaffe Plumbing & Heating Co. v. Brooklyn Union Gas Co., 1966, 51 Misc.2d 1083, 275 N.Y.S.2d 24, affirmed 29 A.D.2d 1051, 1052, 290 N.Y.S.2d 1022.

McK. Statutes cited in *Goldstein v. City of Long Beach*, 1967, 28 A.D.2d 558, 280 N.Y.S.2d 272, 273.

People v. Nieke, 1968, 56 Misc.2d 363, 289 N.Y.S.2d 448, 449.

Jonathan Logan, Inc. v. Stillwater Worsted Mills, Inc., 1968, 31 A.D.2d 208, 295 N.Y.S.2d 853, 857.

Duty of court

The court's role in interpreting a statute is to discern and implement the will of the Legislature and attempt, by reasonable construction, to reconcile and give effect to all of the provisions of the subject legislation. *Carney v. Philippone*, 2004, 1 N.Y.3d 333, 774 N.Y.S.2d 106, 806 N.E.2d 131, reargument denied 2 N.Y.3d 794, 781 N.Y.S.2d 292, 814 N.E.2d 464, answer to certified question conformed to 368 F.3d 164.

Question of legislative intent in enacting statute is for court to determine in any judicial proceeding. *Minichiello v. Royal Business Funds Corp.*, 1965, 47 Misc.2d 310, 262 N.Y.S.2d 708, affirmed 25 A.D.2d 502, 266 N.Y.S.2d 570, reversed on other grounds 18 N.Y.2d 521, 277 N.Y.S.2d 268, 223 N.E.2d 793, certiorari denied 88 S.Ct. 41, 389 U.S. 820, 19 L.Ed.2d 72.

The duty of the court in the construction of a statute is fulfilled by ascertaining the legislative intention and applying it if lawful. *People v. Guiton*, 1914, 210 N.Y. 1, 103 N.E. 773; *Wiley v. Solvay Process Co.*, 1915, 215 N.Y. 584, 109 N.E. 606.

It is the duty of the courts to place the construction upon a statute, even when it is susceptible of two constructions, which more nearly carries out what appears to be the general legislative design on the subject. *People ex rel. Cohen v. Rattigan*, 1916, 157 N.Y.S. 1003, affirmed 172 A.D. 957, 157 N.Y.S. 1140.

Guide

Statutory interpretation must be guided by Legislature's intent. *Grimshaw v. Gnudi*, 1930, 136 Misc. 443, 240 N.Y.S. 199; *Osborne v. International Ry. Co.*, 1919, 226 N.Y. 421, 123 N.E. 849.

Intent and purpose

When embarking upon construction of statute intent of Legislature and purpose of law are to be looked for. *People v. Big Apple Supermarket, Inc.*, 1967, 55 Misc.2d 139, 284 N.Y.S.2d 970.

Paramount consideration

Implementing intent of legislature is always primary consideration in statutory interpretation. *Dodge v. Board of Educ. for Schodack Cent. School Dist.*, 1996, 167 Misc.2d 186, 638 N.Y.S.2d 288, affirmed 237 A.D.2d 806, 655 N.Y.S.2d 123.

The paramount consideration in construing statutes is to ascertain and give effect to the intention of the Legislature and the spirit and purpose of the law and the objects to be accomplished must be considered. [Metropolitan Life Ins. Co. v. Durkin](#), 1950, 276 A.D. 394, 94 N.Y.S.2d 865, affirmed 301 N.Y. 376, 93 N.E.2d 897.

To ascertain and carry out legislative intent is the paramount consideration to which all other rules of construction must be subordinated. [Moskowitz v. LaGuardia](#), 1944, 183 Misc. 33, 48 N.Y.S.2d 174, affirmed 268 A.D. 918, 51 N.Y.S.2d 758, affirmed 294 N.Y. 830, 62 N.E.2d 388.

Legislative intent is always paramount. [People v. P.T. Cox Const. Co.](#), 1939, 172 Misc. 244, 15 N.Y.S.2d 756, affirmed 19 N.Y.S.2d 145.

Primary command

A primary command to the judiciary in the interpretation of statutes is to ascertain and effectuate the purpose of the Legislature; in finding such purpose one should look to the entire statute, its legislative history and the statutes of which it is made a part. [Rankin on Behalf of Bd. of Ed. of City of New York v. Shanker](#), 1968, 23 N.Y.2d 111, 295 N.Y.S.2d 625, 242 N.E.2d 802.

Fulfillment of policies

Statutes are to be interpreted so as to fulfill policies which the Legislature evidently had in mind. [Cherkis v. Impellitteri](#), 1954, 307 N.Y. 132, 120 N.E.2d 530.

Reasonable and sensible construction

Statutes should receive reasonable and sensible construction to effectuate legislative intention. [Cantor v. Pennsylvania R. Co.](#), 1934, 150 Misc. 844, 270 N.Y.S. 346; [People v. Lorch](#), 1939, 171 Misc. 469, 13 N.Y.S.2d 155.

64. [Jones v. Mail & Express Publishing Co.](#), 1894, 30 N.Y.S. 335.

[Miller v. McGoldrick](#), 1950, 198 Misc. 618, 100 N.Y.S.2d 156.

[People v. Tiphaine](#), 3 Parker, Cr.R. 241, 13 How.Prac. 74.

Principal rule

Principal rule of construction of statutes is to ascertain and give effect to intention of the Legislature, but where language of statute is doubtful, or where adherence to strict letter will lead to injustice, absurdity, or to contradictory provisions, it is court's duty to determine the true meaning, and if legislative intent cannot be discovered, to give statute a reasonable construction consistent with general principles of law. [In re Littleton's Estate](#), 1927, 129 Misc. 845, 223 N.Y.S. 470; [Onondaga Water Service Corporation v. Crown Mills](#), 1928, 132 Misc. 848, 230 N.Y.S. 691.

65. [Sega v. State](#), 1983, 60 N.Y.2d 183, 469 N.Y.S.2d 51, 456 N.E.2d 1174, reargument denied 61 N.Y.2d 670, 472 N.Y.S.2d 1028, 460 N.E.2d 232.

[People ex rel. Wood v. Lacombe](#), 1885, 99 N.Y. 43, 1 N.E. 599.

[People ex rel. Bockes v. Wemple](#), 1889, 115 N.Y. 302, 22 N.E. 272.

[New York Post Corp. v. Leibowitz](#), 1957, 2 N.Y.2d 677, 163 N.Y.S.2d 409, 143 N.E.2d 256.

People ex rel. Eickemeyer Dynamo Co. v. Rice, 1893, 21 N.Y.S. 48, affirmed 138 N.Y. 614, 33 N.E. 1083.

Spencer v. Myers, 1894, 26 N.Y.S. 371, affirmed 150 N.Y. 269, 44 N.E. 942.

Central Trust Company of New York v. New York Equipment Co., 1894, 26 N.Y.S. 850.

66. Wilson v. Board of Ed., Union Free School Dist. No. 23, Town of Oyster Bay, Nassau County, 1972, 39 A.D.2d 965, 333 N.Y.S.2d 868, 871.

People ex rel. Onondaga County Savings Bank v. Butler, 1895, 147 N.Y. 164, 41 N.E. 416.

Gusthal v. Board of Aldermen of City of New York, 1898, 23 App.Div. 315, 48 N.Y.S. 652.

Taggart v. Sisson, 1890, 9 N.Y.S. 758.

Jarl Co. v. Village of Croton-on-Hudson, 1933, 148 Misc. 150, 153, 265 N.Y.S. 271, affirmed 262 N.Y. 551, 188 N.E. 60.

Skenandoa Rayon Corporation v. Halifax Fire Ins. Co. of Halifax, Nova Scotia, 1935, 245 App.Div. 279, 281 N.Y.S. 193, affirmed Skenandoa Rayon Corporation v. Halifax Fire Ins. Co., 272 N.Y. 457, 3 N.E.2d 867.

In re Sonderling's Will, 1936, 157 Misc. 231, 283 N.Y.S. 568.

Hutton v. Heitzmann, 1939, 171, Misc. 1023, 14 N.Y.S.2d 234.

Application of Myones, 1947, 191 Misc. 280, 76 N.Y.S.2d 143.

Application of Toth, 1953, 120 N.Y.S.2d 807.

Zientara v. Zientara, 1969, 59 Misc.2d 344, 299 N.Y.S.2d 253.

67. Hudson Iron Co. v. Alger, 54 N.Y. 173.

68. People v. Gazulis, 1961, 29 Misc.2d 939, 212 N.Y.S.2d 910.

69. Reno v. Van Voris (3 Dept.1997) 230 A.D.2d 296, 657 N.Y.S.2d 526.

Abrams v. Esposito, 1980, 75 A.D.2d 528, 426 N.Y.S.2d 770, affirmed 54 N.Y.2d 886, 444 N.Y.S.2d 918, 429 N.E.2d 425.

People v. Jacobs, 1980, 105 Misc.2d 616, 432 N.Y.S.2d 614.

Matter of Maureen G., 1980, 103 Misc.2d 109, 426 N.Y.S.2d 384.

People v. Schuster, 1975, 83 Misc.2d 871, 374 N.Y.S.2d 951.

People v. Hoffman, 1973, 76 Misc.2d 564, 351 N.Y.S.2d 87.

Patrikes v. J.C.H. Service Stations, 1943, 180 Misc. 917, 41 N.Y.S.2d 158.

70. State v. Glen & Mohawk Milk Ass'n, Inc., 1984, 61 N.Y.2d 705, 472 N.Y.S.2d 606, 460 N.E.2d 1091.

People ex rel. Davies v. Cowles, 13 N.Y. 350.

Cathcart v. The Fire Department of City of New York, 26 N.Y. 529.

People ex rel. Barron v. Martin, 1892, 20 N.Y.S. 585.

Matter of Consolidated Gas Co. of New York, 1907, 56 Misc. 49, 106 N.Y.S. 407, affirmed 124 App.Div. 401, 108 N.Y.S. 823.

People v. Glynn, 1908, 128 App.Div. 257, 112 N.Y.S. 695.

Long v. Jerzewski, 1932, 257 N.Y.S. 371, 235 App.Div. 441, 257 N.Y.S. 371 (legislative intent must prevail).

Pyrke v. Standard Accident Ins. Co., 1932, 144 Misc. 53, 258 N.Y.S. 869, affirmed Baldwin v. Same, 237 App.Div. 334, 261 N.Y.S. 507, motion granted 239 App.Div. 858, 263 N.Y.S. 1002, affirmed 262 N.Y. 575, 183 N.E. 71 (statutes should be construed to give force to Legislature's intent, not so as to render them impotent).

Municipal Credit Union v. Andrews, 1937, 250 App.Div. 168, 294 N.Y.S. 223 (Legislature's will is controlling).

In re Bashford's Estate, 1942, 178 Misc. 951, 36 N.Y.S.2d 651.

People v. Malinauskas, 1952, 202 Misc. 565, 110 N.Y.S.2d 314 (in the interpretation of statutes, effect should be given to the intent of the Legislature in its adoption).

Application of La Porte, 1956, 1 Misc.2d 945, 150 N.Y.S.2d 467, reversed on other grounds 2 A.D.2d 710, 152 N.Y.S.2d 916, affirmed 2 N.Y.2d 921, 161 N.Y.S.2d 886, 141 N.E.2d 917 (courts may not disregard intention of legislative body when it is clearly to be found in the language used).

Clarkin v. Power, 1960, 26 Misc.2d 58, 203 N.Y.S.2d 480, affirmed 10 A.D.2d 998, 204 N.Y.S.2d 101, affirmed 8 N.Y.2d 876, 203 N.Y.S.2d 920, 168 N.E.2d 720.

Schwartz v. Lefkowitz, 1964, 21 A.D.2d 13, 247 N.Y.S.2d 716.

Shapiro v. Shapiro, 1969, 59 Misc.2d 412, 298 N.Y.S.2d 785.

Apparent intent

Effect must be given to apparent legislative intent. Farmers' Loan & Trust Co. v. New York Cent. R. R., 1929, 134 Misc. 778, 236 N.Y.S. 250.

Conformance with legal effect

Intent of Legislature as indicated by statute is to be followed by the courts if not at variance with the legal effect of the provisions of the statute. Hanson v. Griffiths, 1953, 204 Misc. 736, 124 N.Y.S.2d 473, affirmed 283 A.D. 662, 127 N.Y.S.2d 819.

71. As to the avoidance of objectionable consequences, see §§ 141 to 153, post.

72. People v. Glendenning, 1985, 127 Misc.2d 880, 487 N.Y.S.2d 952.

Community School Bd., Dist. 3 of School Dist. of City of New York v. Board of Ed. of School Dist. of City of New York, 1971, 66 Misc.2d 739, 321 N.Y.S.2d 949, affirmed 38 A.D.2d 932, 330 N.Y.S.2d 167.

Hyatt v. Taylor, 42 N.Y. 258.

Reilly v. Gray, 1894, 28 N.Y.S. 811.

People ex rel. Terry v. Keller, 1899, 35 App.Div. 493, 54 N.Y.S. 1011, affirmed 158 N.Y. 187, 52 N.E. 1107.

People ex rel. Commissioners of Oneida v. Board of Supervisors of Oneida County, 1902, 36 Misc. 597, 73 N.Y.S. 1098, affirmed 170 N.Y. 105, 62 N.E. 1092.

People ex rel. Darling v. Warden of City Prison, 1913, 154 App.Div. 413, 139 N.Y.S. 277.

People on Complaint of Gayle v. Samuel Adler, Inc., 1958, 13 Misc.2d 497, 177 N.Y.S.2d 361.

People v. Johnson, 1969, 63 Misc.2d 800, 313 N.Y.S.2d 768.

Responsibility

“Courts are not responsible that only wise laws shall be made; they have no power given to them to judge of the wisdom of the legislature, nor to revise and alter that which has been enacted to be the law.” *People ex rel. Davies v. Cowles*, 13 N.Y. 350.

Discretion of Legislature

Legislature has wide discretion in determining what interests of public require and what measures are reasonably necessary for protection of such interests and question of wisdom of legislative enactment is not for courts to decide; rather, courts should seek only to determine that relationship between ends sought and means adopted is not wholly vain or fanciful or an illusory pretense. *College Barn, Inc. v. State*, 1969, 60 Misc.2d 715, 303 N.Y.S.2d 894.

Public policy

“The question of public policy involved is one to be determined by the legislature; and, if the legislative intent is clear, then it must control the courts and the State officers.” *Lehigh Valley R. Co. v. Canal Board*, 1910, 69 Misc. 251, 125 N.Y.S. 227, affirmed 146 A.D. 151, 130 N.Y.S. 978, modified on other grounds 204 N.Y. 471, 97 N.E. 964.

Injustice

“The legislature alone is responsible for the injustice, if any, resulting from unguarded and unwise legislation.” *People ex rel. Akin v. Morgan*, 65 Barb. 473, 1 Thomp. & C. 101, reversed on other grounds 55 N.Y. 587.

The duty of a court is to interpret a statute as written and to effectuate its purposes, and not to determine the social justice or injustice of the statute or whether it promotes the general welfare. *Ropelewski v. Bielicki*, 1950, 197 Misc. 882, 99 N.Y.S.2d 701.

“The remedy for unjust for unwise legislation is not to be administered by the courts. It remains in the hands of the people; and is to be wrought out by means of a change in the representative body, if it cannot be otherwise obtained.” *People ex rel. Griffin v. Brooklyn*, 4 N.Y. 419.

73. *Rosenplaenter v. Roessle*, 54 N.Y. 262.

People v. DeFornaro, 1910, 65 Misc. 457, 119 N.Y.S. 746.

Matter of Starbuck's Estate, 1910, 137 App.Div. 866, 122 N.Y.S. 584, affirmed 201 N.Y. 531, 94 N.E. 1098.

People v. Weinstock, 1913, 140 N.Y.S. 453.

As to when omissions in statutes may be judicially supplied, see §§ 143 to 147, post.

74. See § 73, ante.

b. Ascertainment of intention

The intention of the Legislature is first to be sought from a literal reading of the act itself, but if the meaning is still not clear the intent may be ascertained from such facts and through such rules as may, in connection with the language, legitimately reveal it.

ANNOTATIONS

75. *Allstate Ins. Co. v. Libow*, 1984, 106 A.D.2d 110, 482 N.Y.S.2d 860, affirmed 65 N.Y.2d 807, 493 N.Y.S.2d 128, 482 N.E.2d 923.

Civil Service Emp. Ass'n, Inc. v. Oneida County, 1980, 78 A.D.2d 1004, 433 N.Y.S.2d 907.

Young v. Koch, 1985, 128 Misc.2d 119, 487 N.Y.S.2d 918.

Wiley v. Solvay Process Co., 1915, 215 N.Y. 584, 109 N.E. 606.

Department of Welfare of City of New York v. Siebel, 1959, 6 N.Y.2d 536, 190 N.Y.S.2d 683, 161 N.E.2d 1, appeal dismissed 80 S.Ct. 586, 361 U.S. 535, 4 L.Ed.2d 538.

People v. Henries, 1930, 136 Misc. 224, 241 N.Y.S. 127.

Auswin Realty Corp. v. Kirschbaum, 1946, 270 App.Div. 334, 59 N.Y.S.2d 824.

McK. Statutes quoted in *Adelman v. Adelman*, 1969, 58 Misc.2d 803, 296 N.Y.S.2d 999, 1002.

Obligation of courts

Courts are constitutionally obligated to determine expressed will of legislature, and legislative intent must be first sought in language of statute under consideration. *Drelich v. Kenlyn Homes, Inc.*, 1982, 86 A.D.2d 648, 446 N.Y.S.2d 408.

76. *Young v. Koch*, 1985, 128 Misc.2d 119, 487 N.Y.S.2d 918.

Betz v. Horr, 1938, 276 N.Y. 83, 11 N.E.2d 548.

McK. Statutes cited in *Rankin on Behalf of Bd. of Ed. of City of New York v. Shanker*, 1968, 23 N.Y.2d 111, 295 N.Y.S.2d 625, 628, 242 N.E.2d 802.

In re Villard's Will, 1933, 147 Misc. 472, 264 N.Y.S. 236.

In re Bond & Mortgage Guarantee Co., 1936, 157 Misc. 240, 283 N.Y.S. 623.

McK. Statutes quoted in Hoyser v. Hoyser, 1946, 186 Misc. 621, 59 N.Y.S.2d 796, 798.

Baron v. Grossman, 1946, 73 N.Y.S.2d 421.

77. See § 94, post.

78. Roth v. Michelson, 1982, 55 N.Y.2d 278, 449 N.Y.S.2d 159, 434 N.E.2d 228.

DiMarco v. Hudson Valley Blood Services (1 Dept. 1989) 147 A.D.2d 156, 542 N.Y.S.2d 521.

Matter of Cristo Bros., Inc., 1983, 97 A.D.2d 274, 470 N.Y.S.2d 781, affirmed 64 N.Y.2d 975, 489 N.Y.S.2d 35, 478 N.E.2d 176.

Charles S. Wilson Memorial Hospital v. Axelrod, 1980, 76 A.D.2d 968, 429 N.Y.S.2d 63, affirmed 53 N.Y.2d 690, 439 N.Y.S.2d 108, 421 N.E.2d 503.

Young v. Koch, 1985, 128 Misc.2d 119, 487 N.Y.S.2d 918.

Zahn v. Pauker, 1984, 122 Misc.2d 935, 472 N.Y.S.2d 289, affirmed 107 A.D.2d 118, 486 N.Y.S.2d 422.

People v. Ruggieri, 1979, 102 Misc.2d 238, 423 N.Y.S.2d 108.

Town of Putnam Valley v. Slutzky, 1940, 283 N.Y. 334, 28 N.E.2d 860, reargument denied 284 N.Y. 590, 29 N.E.2d 665.

Meltzer v. Koenigsberg, 1951, 302 N.Y. 523, 99 N.E.2d 679.

Esposito v. 285 St. Johns Place, 1946, 68 N.Y.S.2d 18.

Miller v. McGoldrick, 1950, 198 Misc. 618, 100 N.Y.S.2d 156.

Howard v. Roncarelli, 1950, 198 Misc. 910, 101 N.Y.S.2d 122.

Feickert v. McGoldrick, 1953, 119 N.Y.S.2d 301.

Chiara v. McGoldrick, 1953, 124 N.Y.S.2d 309.

Honig v. Elmont Cemetery, Inc., 1966, 49 Misc.2d 1069, 269 N.Y.S.2d 336.

McK. Statutes quoted in Adelman v. Adelman, 1969, 58 Misc.2d 803, 296 N.Y.S.2d 999, 1002.

Resort to statute itself

Intendment of the Legislature must be derived from the interpretation of a statute itself, unless because of ambiguity it is found necessary to resort to extraneous material. In re Dexter's Claim, 1960, 11 A.D.2d 835, 202 N.Y.S.2d 924.

Court is bound to construe statute in accordance with sense of its terms and intention of the Legislature, but intention is first to be sought from words employed, and if language is unambiguous, plain and clear, conveying a distinct idea, there is no occasion to resort to other means of interpretation or to go elsewhere in search of conjecture in order to restrict or extend meaning. [General Acc. Fire & Life Assur. Corp. v. Martino](#), 1958, 12 Misc.2d 935, 175 N.Y.S.2d 894.

Where legislative language is clear, there is no occasion for examination into extrinsic evidence to discover legislative intent, and only where legislative language is ambiguous is the consideration of extrinsic evidence warranted. [New York Ambassador, Inc. v. Board of Standards & Appeals of City of New York](#), 1952, 114 N.Y.S.2d 901, reversed on other grounds 281 A.D. 342, 119 N.Y.S.2d 805, affirmed 305 N.Y. 791, 113 N.E.2d 302.

First guide

The first guide to legislative intent is the language of statute itself, and if such language is clear and unambiguous, resort may not be had to other rules of statutory construction to imply some different meaning. [Claim of Foscarnis](#), 1954, 284 A.D. 476, 132 N.Y.S.2d 323.

79. [La Vallee v. Peer](#), 1980, 104 Misc.2d 943, 429 N.Y.S.2d 383, affirmed 80 A.D.2d 992, 441 N.Y.S.2d 435, appeal denied 53 N.Y.2d 609, 442 N.Y.S.2d 1026, 425 N.E.2d 900.

[Reed v. James W. Bell & Co.](#), 1947, 188 Misc. 914, 69 N.Y.S.2d 898.

80. [Metropolitan Life Ins. Co. v. New York State Labor Relations Board](#), 1938, 168 Misc. 948, 6 N.Y.S.2d 775, affirmed 255 App.Div. 840, 7 N.Y.S.2d 1007, and 255 App.Div. 840, 7 N.Y.S.2d 1008, affirmed 280 N.Y. 194, 20 N.E.2d 390.

[People ex rel. Bingham Operating Corporation v. Eyrich](#), 1942, 179 Misc. 197, 38 N.Y.S.2d 326, affirmed 265 App.Div. 562, 40 N.Y.S.2d 33, appeal denied 266 App.Div. 803, 41 N.Y.S.2d 959.

[Alpha Syndicate v. Horn](#), 1945, 186 Misc. 937, 59 N.Y.S.2d 110.

[Lapolla v. Board of Ed. of City of New York](#), 1949, 195 Misc. 651, 90 N.Y.S.2d 424, affirmed 275 App.Div. 1038, 92 N.Y.S.2d 419, appeal denied 276 App.Div. 834, 93 N.Y.S.2d 729, affirmed 301 N.Y. 580, 93 N.E.2d 490.

McK. Statutes quoted in [Adelman v. Adelman](#), 1969, 58 Misc.2d 803, 296 N.Y.S.2d 999, 1002.

Spirit and policy of statute

The legislative intent is to be sought, first in the words of the statute, and then in the occasion of the enactment and the policy which dictated it. [Bowne v. S. W. Bowne Co.](#), 1917, 221 N.Y. 28, 116 N.E. 364.

Consideration should be given to spirit of enactment. [In re Sonderling's Will](#), 1936, 157 Misc. 231, 283 N.Y.S. 568.

Where language of statute is not clear, the intent must be sought in such facts and with the aid of such rules as may reveal the intent in connection with the language, the conditions existing and sought to be remedied, and the spirit and intent of the enactment at the time of its adoption. [Standard Accident Ins. Co. v. Newman](#), 1944, 47 N.Y.S.2d 804, affirmed 268 A.D. 967, 51 N.Y.S.2d 767, appeal denied 268 A.D. 1039, 52 N.Y.S.2d 948.

Cause or necessity of enactment

In interpretation of statute, intention of Legislature in passing statute controls, and is to be ascertained from cause or necessity of making statute and from other circumstances. [Westchester County Soc. for Prevention of Cruelty to Animals v. Mengel](#), 1943, 266 A.D. 151, 41 N.Y.S.2d 605, affirmed 292 N.Y. 121, 54 N.E.2d 329.

Intent with which statutes have been enacted is to be determined from the content, occasion and necessity of the law, evils to be corrected and the objects and remedy in view. [People on Complaint of Main v. Klufus](#), 1956, 1 Misc.2d 828, 149 N.Y.S.2d 821, affirmed 2 A.D.2d 958, 157 N.Y.S.2d 903.

Education Law

Whether the word “conviction” in Education Law, includes a suspended sentence is a question of legislative intention. [Weinrib v. Beier](#), 1945, 294 N.Y. 628, 64 N.E.2d 175, motion denied 295 N.Y. 657, 65 N.E.2d 50.

81. [John Civetta & Sons, Inc. v. Environmental Control Bd. of City of New York](#), 1982, 116 Misc.2d 602, 456 N.Y.S.2d 318.

[Streeter v. Graham & Norton Co.](#), 1933, 237 App.Div. 258, 262 N.Y.S. 16, reversed on other grounds 263 N.Y. 39, 188 N.E. 150.

[American Institute of Management v. Piscopo](#), 1953, 204 Misc. 715, 124 N.Y.S.2d 534.

Reading of language

The language of a statute must be read in light of what it was intended to accomplish. [Guardian Life Ins. Co. of America v. Chapman](#), 1951, 302 N.Y. 226, 97 N.E.2d 877.

Extraneous matters

When statutory construction is required, extraneous connected circumstances, laws, and writings indicating legislative intent may be used. [Schwartz v. Lefkowitz](#), 1964, 21 A.D.2d 13, 247 N.Y.S.2d 716.

82. [Thomas v. Bethlehem Steel Corp.](#), 1983, 95 A.D.2d 118, 466 N.Y.S.2d 808, affirmed 63 N.Y.2d 150, 481 N.Y.S.2d 33, 470 N.E.2d 831.

[McCabe v. Aulls](#), 1924, 123 Misc. 471, 205 N.Y.S. 689.

[People v. Malinauskas](#), 1952, 202 Misc. 565, 110 N.Y.S.2d 314.

83. [People on Complaint of Hughes v. Ziegler](#), 1961, 29 Misc.2d 429, 214 N.Y.S.2d 177.

84. [Finest Restaurant Corp. v. L & A Music Co.](#), 1966, 52 Misc.2d 87, 275 N.Y.S.2d 1.

85. [In re Schacht](#), 1964, 20 A.D.2d 507, 248 N.Y.S.2d 65.

Canons subordinate to intent

All canons of statutory interpretation are subordinate to intent, and are intended as a means to ascertain, and not as a means to destroy, the legislative intent. [People v. Lane-Marvey Corp.](#), 1952, 203 Misc. 413, 114 N.Y.S.2d 467.

86. [In re Schacht](#), 1964, 20 A.D.2d 507, 248 N.Y.S.2d 65.

87. Perkins v. Merchants Mut. Ins. Co., 1975, 82 Misc.2d 157, 368 N.Y.S.2d 141, affirmed 50 A.D.2d 1070, 377 N.Y.S.2d 319, affirmed 41 N.Y.2d 394, 393 N.Y.S.2d 347, 361 N.E.2d 997.

Archer v. Equitable Life Assur. Soc. of United States, 1916, 218 N.Y. 18, 112 N.E. 433.

88. People v. Goodwin, 1975, 49 A.D.2d 53, 378 N.Y.S.2d 82.

Robertson v. Hoban, 1936, 248 App.Div. 262, 288 N.Y.S. 833.

89. Matter of Rochester Water Commissioners, 66 N.Y. 413.

People ex rel. Smith v. Gilon, 1901, 66 App.Div. 25, 72 N.Y.S. 1041.

People v. Weinstock, 1913, 140 N.Y.S. 453.

89. Christopher Inc. v. Joy, 1974, 44 A.D.2d 417, 355 N.Y.S.2d 584, modified on other grounds 35 N.Y.2d 213, 360 N.Y.S.2d 612, 318 N.E.2d 776.

90. Roballo v. Smith, 1984, 99 A.D.2d 5, 471 N.Y.S.2d 433.

Schampier v. Office of General Services, 1980, 73 A.D.2d 1011, 424 N.Y.S.2d 57, affirmed 52 N.Y.2d 746, 436 N.Y.S.2d 276, 417 N.E.2d 570.

Johnson v. Hudson River R. Co., 49 N.Y. 455.

People ex rel. Eakins v. Roosevelt, 1895, 12 Misc. 622, 34 N.Y.S. 228, affirmed 14 Misc. 531, 35 N.Y.S. 1085, affirmed 149 N.Y. 574, 43 N.E. 989.

People v. Abeel, 1905, 45 Misc. 86, 91 N.Y.S. 699, affirmed 100 App.Div. 516, 91 N.Y.S. 1107, affirmed 182 N.Y. 415, 75 N.E. 307.

McKinney's Statutes § 92, NY STAT § 92

Current through L.2022, chapters 1 to 55, 57 to 202. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated
Statutes (Refs & Annos)
Chapter 6. Construction and Interpretation
J. Construction of Words and Phrases

McKinney's Statutes § 240

§ 240. Expression of one thing as excluding others

Currentness

The maxim *expressio unius est exclusio alterius* is applied in the construction of the statutes, so that where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.

Editors' Notes

COMMENT

It is a universal principle in the interpretation of statutes that *expressio unius est exclusio alterius*. That is, to say, the specific mention of one person or thing implies the exclusion of other persons or thing.²⁵ As otherwise expressed, where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted and excluded.²⁶

Thus, where a statute creates provisos²⁸ certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned. Also, unless it indicates a different intent, a statute naming several classes of persons to be benefited thereby, will not be construed to benefit others.²⁹ So, too, where a statute which grants a certain power expressly states the time when such authority shall begin to be exercised, any other time is excluded.³⁰ In the same way, if a saving clause declares that an act shall not affect a proceeding commenced before a certain date, impliedly it affects proceedings commenced after that date.³¹

In applying the principle of *expressio unius est exclusio alterius*, it has been held that an express repeal of a particular clause of an act does not repeal the entire act, but in legal construction confirms the remaining clauses.³² Likewise, when a statute creates a new right and specifies the remedy for the enforcement of such right the remedy is generally exclusive.³³ The fact that by statute certain public officers hold their offices until their successors are chosen tends to indicate that other officers do not so hold.³⁴

The inference that an omitted thing was intended to be excluded may be fortified by the history of the act; if, for example, a prior act refers to two things and upon re-enactment but one is included, the inference is irresistible that the Legislature intended to exclude the one omitted.³⁵ It is also said that the maxim is especially applicable to the clause of a statute defining the powers of a new office created by the statute itself,³⁶ and the inference that omitted particulars were intended to be excluded is stronger in a carefully drafted statute than in one which is loosely drawn.³⁷

The maxim *expressio unius est exclusio alterius* is not, however, an ironbound rule of law excluding in all cases from the operation of a statute those things which are not enumerated therein. It is merely an aid to be utilized in ascertaining the meaning of a statute when its language is ambiguous,³⁸ and should be applied to accomplish the legislative intention, not to defeat it.³⁹ If the language of a statute indicates that other things than those mentioned are intended to be included within its operation, the maxim will not necessarily require their exclusion,⁴⁰ but in such case the intention to the contrary must be discernable from the context of the act itself.⁴¹

ANNOTATIONS

25. *People v. Ifill*, 1985, 127 Misc.2d 678, 487 N.Y.S.2d 647.

Golden v. Koch, 1979, 98 Misc.2d 972, 415 N.Y.S.2d 330, affirmed 49 N.Y.2d 690, 427 N.Y.S.2d 780, 404 N.E.2d 1321.

People v. Bouton, 1972, 71 Misc.2d 1095, 338 N.Y.S.2d 629.

People v. Monsanto, 1972, 70 Misc.2d 996, 335 N.Y.S.2d 451.

Buholtz v. Rochester Tel. Corp., 1971, 65 Misc.2d 1071, 319 N.Y.S.2d 202.

In re Bonnaffe, 23 N.Y. 169.

People v. Dolan, 36 N.Y. 59.

Wallace v. Swinton, 64 N.Y. 188.

Pratt v. Short, 79 N.Y. 437.

People ex rel. Killeen v. Angle, 1888, 109 N.Y. 564, 17 N.E. 413.

Keavey v. De Rago, 1897, 20 Misc. 105, 45 N.Y.S. 77.

People ex rel. Woodward v. Draper, 1910, 67 Misc. 460, 124 N.Y.S. 758, affirmed 142 App.Div. 102, 127 N.Y.S. 14, affirmed 202 N.Y. 612, 96 N.E. 1128.

New York Cent., & H.R.R. Co. v. Reusens, 1912, 151 App.Div. 458, 135 N.Y.S. 919.

Matter of Engel, 1913, 155 App.Div. 467, 140 N.Y.S. 286, reargument denied 155 App.Div. 921, 140 N.Y.S. 1118.

Aylesworth v. Phoenix Cheese Co., 1915, 170 App.Div. 34, 155 N.Y.S. 916.

Koehl v. Koehl, 1916, 92 Misc. 579, 156 N.Y.S. 234.

Konner v. State, 1918, 180 App.Div. 837, 168 N.Y.S. 345, affirmed 227 N.Y. 478, 125 N.E. 843.

Jackson v. Citizens Casualty Co. of New York, 1937, 252 App.Div. 393, 299 N.Y.S. 644, motion granted 253 App.Div. 869, 1 N.Y.S.2d 857, affirmed *Jackson v. Citizens Casualty Co.*, 277 N.Y. 385, 14 N.E.2d 446.

Smull v. Delaney, 1941, 175 Misc. 795, 25 N.Y.S.2d 387.

McK. Statutes quoted in [Dezsofi v. Jacoby](#), 1942, 178 Misc. 851, 36 N.Y.S.2d 672, 675.

McK. Statutes cited in [Doyle v. Gordon](#), 1957, 158 N.Y.S.2d 248, 257.

[Schauf v. City of New York](#), 1960, 23 Misc.2d 585, 198 N.Y.S.2d 435.

[People v. Szymanski](#), 1970, 63 Misc.2d 40, 311 N.Y.S.2d 120.

Express exclusion

Generally, express exclusion eliminates all others, and that which is not clearly embraced within named exception remains within scope of principal provision. [Deth v. Castimore](#), 1935, 245 A.D. 156, 281 N.Y.S. 114.

Grant of powers

The enumeration of certain powers with respect to a particular subject-matter is a negation of all other analogous powers with respect to the same subject-matter. [People ex rel. Western Union Telegraph Co. v. Public Service Commission](#), 1920, 192 A.D. 748, 183 N.Y.S. 659, reversed on other grounds 230 N.Y. 95, 129 N.E. 220, 12 A.L.R. 960, remittitur denied 230 N.Y. 657, 130 N.E. 933.

A grant of a specified power does not confer analogous powers not granted, and the only authority going with the grant is for the doing of the things necessary to carry its express power into execution. [Salmon v. Rochester & L.O. Water Co.](#), 1923, 120 Misc. 131, 197 N.Y.S. 769.

Express grant of power to one person excludes by implication grant of same powers to another. [Combs v. Lipson](#), 1964, 44 Misc.2d 467, 254 N.Y.S.2d 143.

Claims under Surrogate's Court Act

Enumeration in Surrogate's Court Act, of two kinds of claims upon which action against temporary administrator could be maintained by leave of surrogate impliedly denied the right to maintain action on other kinds of claims. [In re Herle's Estate](#), 1937, 165 Misc. 46, 300 N.Y.S. 103.

26. [Eaton v. New York City Conciliation and Appeals Bd.](#), 1982, 56 N.Y.2d 340, 452 N.Y.S.2d 358, 437 N.E.2d 1115, on remand 121 Misc.2d 336, 467 N.Y.S.2d 528.

[Patrolmen's Benev. Ass'n of City of New York v. City of New York](#), 1976, 41 N.Y.2d 205, 391 N.Y.S.2d 544, 359 N.E.2d 1338.

[People v. Lewis](#), 1972, 29 N.Y.2d 923, 329 N.Y.S.2d 100, 101, 279 N.E.2d 856.

[Schultz Management v. Board of Standards and Appeals of City of New York](#), 1984, 103 A.D.2d 687, 477 N.Y.S.2d 351, affirmed 64 N.Y.2d 1057, 489 N.Y.S.2d 902, 479 N.E.2d 247.

[Kevin McC v. Mary A](#), 1984, 123 Misc.2d 148, 473 N.Y.S.2d 116.

[Mazgulski v. Lewis](#), 118 Misc.2d 600, 462 N.Y.S.2d 84.

[McDonald's Will](#), 1982, 116 Misc.2d 834, 456 N.Y.S.2d 657.

Fusco v. Roth, 1979, 100 Misc.2d 288, 418 N.Y.S.2d 900.

Di Donna v. Di Donna, 1972, 72 Misc.2d 231, 339 N.Y.S.2d 592.

Doyle v. Gordon, 1954, 158 N.Y.S.2d 248.

People v. Kearse, 1968, 58 Misc.2d 277, 295 N.Y.S.2d 192.

Exclusions

Failure of a legislative body to include a matter within scope of an act may be construed as indication that its exclusion was intended. *City of New York v. New York Telephone Co.*, 1985, 108 A.D.2d 372, 489 N.Y.S.2d 474, appeal dismissed 65 N.Y.2d 1052, 1053, 494 N.Y.S.2d 1060, 484 N.E.2d 1058.

27. *In re New York Cable R. Co.*, 40 Hun 1, affirmed 104 N.Y. 1, 10 N.E. 332.

28. *Merkling v. Ford Motor Co.*, 1937, 251 App.Div. 89, 296 N.Y.S. 393.

Strauch v. Town of Oyster Bay, 1941, 263 App.Div. 833, 31 N.Y.S.2d 534.

Exemption

Where a specific exemption is made in a statute, the Legislature's failure to exempt other matters of a similar nature from operation of the statute is some indication that no further limitation was intended to be included. *Krou v. Clauson*, 1947, 74 N.Y.S.2d 21, affirmed 272 A.D. 1005, 74 N.Y.S.2d 832, affirmed 297 N.Y. 698, 77 N.E.2d 11.

29. *Green v. Hudson River R. Co.*, 32 Barb. 25.

Persons in military service

The maxim “expressio unius est exclusio alterius” excludes from the benefits of the Soldiers' and Sailors' Civil Relief Act all persons other than the classes therein stated, which are those in military service and their dependents. *Patrikes v. J.C.H. Service Stations*, 1943, 180 Misc. 917, 41 N.Y.S.2d 158, affirmed 180 Misc. 927, 46 N.Y.S.2d 233, appeal denied 266 A.D. 924, 44 N.Y.S.2d 472.

30. *Childs v. Smith*, 55 Barb. 45, 38 How.Prac. 328, reversed on other grounds 46 N.Y. 34.

31. *Lennon v. New York*, 55 N.Y. 361.

32. *People v. Barker*, 2 Wheeler Crim.Cas. 19.

33. *People v. Gorman*, 1928, 133 Misc. 161, 231 N.Y.S. 85.

Train v. Sisti, 1933, 146 Misc. 362, 262 N.Y.S. 167.

Odom v. East Avenue Corporation, 1942, 178 Misc. 363, 34 N.Y.S.2d 312, affirmed 264 App.Div. 985, 37 N.Y.S.2d 491.

McK. Statutes cited in *Reisman v. Reisman*, 1944, 46 N.Y.S.2d 335, 338.

Connell v. Lazar, 1949, 196 Misc. 757, 94 N.Y.S.2d 235, 237.

See, also, § 34, ante.

34. People ex rel. Morton v. Tieman, 30 Barb. 193, 8 Abb.Prac. 359.

35. People ex rel. Emerick v. Board of Fire Com'rs, 23 Hun 317, affirmed 86 N.Y. 149.

36. People ex rel. Donahue v. French, 12 Hun 254.

37. Behan v. People, 17 N.Y. 516.

38. Dening v. Cooke, 1937, 162 Misc. 723, 295 N.Y.S. 724.

McK. Statutes cited in Goldstein v. City of Long Beach, 1967, 28 A.D.2d 558, 280 N.Y.S.2d 272, 273.

People v. Kearse, 1968, 58 Misc.2d 277, 295 N.Y.S.2d 192.

39. John P. v. Whalen, 1981, 54 N.Y.2d 89, 444 N.Y.S.2d 598, 429 N.E.2d 117.

American Transit Ins. Co. v. Corcoran, 1984, 105 A.D.2d 30, 482 N.Y.S.2d 748, affirmed 65 N.Y.2d 828, 493 N.Y.S.2d 122, 482 N.E.2d 9h18.

Erie County v. Whalen, 1977, 57 A.D.2d 281, 394 N.Y.S.2d 747, affirmed 44 N.Y.2d 817, 406 N.Y.S.2d 453, 377 N.E.2d 984.

Auburn Police Local 195, Council 82, American Federation of State, County and Municipal Emp., AFL-CIO v. Helsby, 1977, 91 Misc.2d 909, 398 N.Y.S.2d 934, affirmed 62 A.D.2d 12, 404 N.Y.S.2d 396, affirmed 46 N.Y.2d 1034, 416 N.Y.S.2d 586, 389 N.E.2d 1106.

Westbrook Farms, Inc. v. Day, 1975, 83 Misc.2d 1072, 374 N.Y.S.2d 535.

In re Engel, 1913, 155 App.Div. 467, 140 N.Y.S. 286, reargument denied 155 App.Div. 921, 140 N.Y.S. 1118.

People v. Lane-Marvey Corp., 1952, 203 Misc. 413, 114 N.Y.S.2d 467.

Defeating purpose

Maxim “expressio unius est exclusio alterius”, although useful tool in process of statutory construction, should not be applied to defeat purpose for which statute was enacted. Goldstein v. City of Long Beach, 1967, 28 A.D.2d 558, 280 N.Y.S.2d 272.

40. People ex rel. Parker Mills v. Commissioners of Taxes, 23 N.Y. 242, 22 How.Prac. 143.

In re Engel, 1913, 155 App.Div. 467, 140 N.Y.S. 286, reargument denied 155 App.Div. 921, 140 N.Y.S. 1118.

Bowen v. Lease, 5 Hill 221.

41. Connery v. Sewell, 1926, 126 Misc. 418, 213 N.Y.S. 602.

[Notes of Decisions \(1\)](#)

McKinney's Statutes § 240, NY STAT § 240

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