

STATUTORY CONSTRUCTION MATERIALS

Attached are several cases that involve construction of various statutes. Please read these cases carefully, considering the following questions:

- a) What statutory construction issues are addressed in each case?
- b) What is the underlying problem—for example, ambiguous statutory language, or an apparent contradiction between two separate statutes?
- c) What techniques of statutory construction did the court use (or could it have used) to resolve the issue?

Cases

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138 Ill. 2d 242
562 N.E.2d 168
149 Ill. Dec. 704

**The STATE of Illinois, Secretary of State,
Appellee,
v.
Edward MIKUSCH et al., Appellants.**

Supreme Court of Illinois.
Oct. 4, 1990.
No. 68775.

Justice WARD delivered the opinion of the court:

The defendants-appellants, Edward Mikusch and George Bender, Secretary of State investigators who were mandatorily retired at age 60, six other investigators whose mandatory retirement was stayed by agreement and the Human Rights Commission, appeal from a holding of the appellate court that investigators of the Secretary of State who had reached the age of 60 were subject to mandatory retirement from service under section 2-115 of the Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95½, par. 2-115). The court stated that the involved provision of section 2-115 was not violative of, but stood as an exception to, the age discrimination provisions of the Illinois Human Rights Act.

Section 2-115 of the Vehicle Code (Ill. Rev. Stat. 1981, ch. 95½, par. 2-115) was amended on June 20, 1979, to provide, "No person may be retained in service as an investigator under this section after he has reached 60 years of age." The Human Rights Act (Ill. Rev. Stat. 1981, ch. 68, par. 1-101 *et seq.*), enacted on November 8, 1979, prohibits discrimination in employment because of age.

Under section 2-115, the Secretary of State notified certain of his investigators that each would be retired on his upcoming sixtieth birthday. The notice cited section 2-115 and stated:

"According to our records, you will be 60 years of age on [date] thus requiring your mandatory retirement effective as of the cease of business that date."

The Secretary of State sought administrative review of the Human Rights Commission's decision that the Secretary of State had violated the Human Rights Act by discriminating against the Secretary of State investigators on the basis of age. Upon notification of their mandatory retirement, the investigators had filed a complaint with the Department of Human Rights.

Under the Human Rights Act it is illegal, subject to certain exceptions, for an employer to act against an employee with "unlawful discrimination." (Ill. Rev. Stat. 1981, ch. 68, par. 2-102(A).) Unlawful discrimination includes discrimination against a person because of his or her age. (Ill. Rev. Stat. 1981, ch. 68, par. 1-103(Q).) Age is specifically defined to mean "the chronological age of a person who is 40 but not yet 70 years old." (Ill. Rev. Stat. 1981, ch. 68, par. 1-103(A).) The defendants contend too that even if the appellate court was correct in concluding that the mandatory retirement of investigators of the Secretary of State pursuant to section 2-115 was consistent with the Human Rights Act, the section cannot stand because it is in violation of the Federal Age Discrimination in Employment Act (29 U.S.C. § 621 *et seq.* (1988)).

The Human Rights Commission held that the mandatory retirement provision of section 2-115 of the Vehicle Code was in irreconcilable conflict with the age discrimination prohibition of the Human Rights Act. The circuit court of Sangamon County, after initially reversing the Commission's decision, affirmed it. The Secretary of State appealed to the appellate court, which reversed the circuit court, holding that section 2-115 of the Vehicle Code was not so antagonistic to pertinent provisions of the Human Rights Act that both statutes could not be operative (181 Ill. App. 3d 431, 130 Ill. Dec. 26, 536 N.E.2d 1237 (1989)). We granted the

defendants' petition for leave to appeal under our Rule 315 (107 Ill. 2d R. 315).

The basic question is whether the Secretary of State could, pursuant to the mandatory retirement provision in section 2-115 of the Vehicle Code, retire Secretary of State investigators upon their reaching 60 years of age without violating the age discrimination provisions of the Human Rights Act.

In order to regard the apparently conflicting provisions of section 2-115 and the Human Rights Act as capable of being harmonized, we will consider, as the appellate court did, whether the legislature intended that the mandatory retirement provisions of the Vehicle Code be considered an exception to the Human Rights Act's general prohibition against forced retirement prior to 70 years of age. The language of neither the Human Rights Act nor the Vehicle Code is directed to this question and we must consider general rules of statutory construction.

The fundamental rule of statutory construction, of course, is to give effect to the intent of the legislature. (*People v. Parker* (1988), 123 Ill. 2d 204, 209, 121 Ill. Dec. 941, 526 N.E.2d 135.) In seeking to ascertain legislative intent, courts consider the statutes in their entirety, noting the subject they address and the legislature's apparent objective in enacting them. (*Gill v. Miller* (1983), 94 Ill. 2d 52, 56, 67 Ill. Dec. 850, 445 N.E.2d 330.) It is presumed that the legislature, in enacting various statutes, acts rationally and with full knowledge of all previous enactments. (*Pliakos v. Illinois Liquor Control Comm'n* (1957), 11 Ill. 2d 456, 143 N.E.2d 47.) It is further presumed that the legislature will not enact a law which completely contradicts a prior statute without an express repeal of it and that statutes which relate to the same subject are to be governed by one spirit and a single policy. (*People v. Maya* (1985), 105 Ill. 2d 281, 286, 85 Ill. Dec. 482, 473 N.E.2d 1287; *S. Buchsbaum & Co. v. Gordon* (1945), 389 Ill. 493, 59 N.E.2d 832; *People*

ex rel. Martin v. Village of Oak Park (1939), 372 Ill. 488, 24 N.E.2d 571.) As this court observed in *People ex rel. Adamowski v. Metropolitan Sanitary District* (1958), 14 Ill. 2d 271, 283, 150 N.E.2d 361, it is not unusual for two or more bills to be passed at the same session of the legislature which pertain to the same subject. For the later enactment to operate as a repeal by implication of the earlier one, therefore, there must be such manifest and total repugnance that the two cannot stand together. A construction, if possible, of the two statutes which allows both to stand will be favored. See also *People ex rel. Young v. Chicago & North Western Ry. Co.* (1960), 20 Ill. 2d 462, 467, 170 N.E.2d 614.

The legislature suggested what its intent should be considered to be when these situations appear by enacting the Statute on Statutes (Ill. Rev. Stat. 1989, ch. 1, par. 1105):

"Two or more Acts which relate to the same subject matter and which are enacted by the same General Assembly shall be construed together in such a manner as to give full effect to each Act except in case of an irreconcilable conflict."

The Secretary argued and the appellate court judged that the mandatory retirement provision of section 2-115 of the Vehicle Code was not in irreconcilable conflict with the Human Rights Act on the ground that section 2-115 could be harmonized with the Human Rights Act by reading section 2-115 as an exception to the Human Rights Act. We consider this to be error. Reading section 2-115 as an exception to the Human Rights Act (prior to its 1987 amendment) is not consistent with the plain language of the Act or with the actions taken by the legislature. Section 2-115 and the Human Rights Act are directly in conflict.

The general provisions of the Human Rights Act make it clear that discrimination based on age is prohibited. The introductory section of the Act declares that the State's public policy is to "secure for all individuals within Illinois the

freedom from discrimination because of *** age *** in connection with employment.” (Ill. Rev. Stat. 1981, ch. 68, par. 1-102(A).) This court has considered the intent of the legislature regarding the Human Rights Act as it applies to mandatory retirement. In *Board of Trustees of Community College District No. 508 v. Human Rights Comm’n* (1981), 88 Ill. 2d 22, 29, 57 Ill. Dec. 844, 429 N.E.2d 1207, it was held that retirement was sufficiently connected to employment to include it within the broad range of discriminatory practices prohibited by the Act and, thus, that the Human Rights Act prohibits involuntary retirement based on age. The Human Rights Act bars the compelled retirement of all employees prior to 70 years of age except those exempted under the Act.

The Human Rights Act, in section 2-104, does provide employers with certain exceptions for conduct which would otherwise violate the Act. For example, under section 2-104(A), an employer can justify an employee’s mandatory retirement prior to becoming 70 years of age if the decision is based on a *bona fide* occupational qualification. (Ill. Rev. Stat. 1981, ch. 68, par. 2-104(A).) Section 2-104, however, does not include among its listed exceptions one permitting mandatory retirement of Secretary of State investigators at age 60. The plaintiff, nevertheless, argues that although not explicitly included in section 2-104 as an exception under the Human Rights Act, the legislature intended that section 2-115 operate as an exception to the Act. We do not agree.

It is established in statutory construction that the expression of certain exceptions in a statute will be construed as an exclusion of all others. (*Weast Construction Co. v. Industrial Comm’n* (1984), 102 Ill. 2d 337, 340, 80 Ill. Dec. 763, 466 N.E.2d 215; *People ex rel. Difanis v. Barr* (1980), 83 Ill. 2d 191, 199, 46 Ill. Dec. 678, 414 N.E.2d 731; *Roth v. Department of Public Health* (1982), 109 Ill. App. 3d 457, 460, 65 Ill. Dec. 55, 440 N.E.2d 910.) Here, the legislature provided a detailed list of exceptions and the list did not

include one to allow the mandatory retirement of Secretary of State investigators.

A further indication that the mandatory retirement provision of section 2-115 was not intended as an exception is that the Human Rights Act was enacted after section 2-115 was amended to call for the mandatory retirement of Secretary of State investigators at age 60. As stated, we will assume that the legislature was aware of its previous enactment, *i.e.*, section 2-115, at the time it was enumerating the exceptions to the Human Rights Act. We consider its failure to provide for the mandatory retirement of Secretary of State investigators as indicating its intention not to make it an exception to the Act.

Judging that the legislature did not intend the age-60 provisions of section 2-115 to be an exception does not, however, compel the conclusion that the legislature acted irrationally in enacting both statutes. On the contrary, the legislature, for example, may have believed that the retirement of the investigators mandated by section 2-115 would not contradict the Human Rights Act if it were considered as one of the enunciated exceptions to the Act, specifically, a *bona fide* occupational qualification. (Ill. Rev. Stat. 1981, ch. 68, par. 2-104(A).) The *bona fide* occupational qualification exception is available if the employer shows that age is reasonably related to the essential operation of the job involved and if there is a factual basis for believing that all or substantially all persons above the age limit would be unable to properly perform the duties of the job, or that it is impossible or impracticable to determine job fitness on an individualized basis. (*Popkins v. Zagel* (C.D. Ill. 1985), 611 F. Supp. 809, 813; *Orzel v. City of Wauwatosa Fire Department* (7th Cir. 1983), 697 F.2d 743.) Several courts have upheld mandatory retirement statutes similar to the one at issue on the basis of a *bona fide* occupational qualification defense. (See, *e.g.*, *Popkins v. Zagel* (C.D. Ill. 1985), 611 F. Supp. 809, 813 (where an Illinois statute mandating the retirement of

police officers at age 60 was justified on the basis of a *bona fide* occupational qualification); see also *Equal Employment Opportunity Comm'n v. Wyoming* (1983), 460 U.S. 226, 103 S. Ct. 1054, 75 L. Ed. 2d 18 (where the Supreme Court stated that a Wyoming statute requiring forced retirement of game wardens at age 55 was permissible if the State could demonstrate that age was a *bona fide* occupational qualification); *Equal Employment Opportunity Comm'n v. New Jersey* (D.N.J. 1985), 620 F. Supp. 977 (where a New Jersey statute mandating retirement of State troopers at age 55 was justified as a *bona fide* occupational qualification.) Here, however, the Secretary of State did not attempt to justify his actions on the basis of a *bona fide* occupational qualification or on the basis of any other exception provided in the Act.

The Secretary argues too that in 1987 section 2-104 of the Human Rights Act was amended to provide, "Nothing contained in this Act shall prohibit an employer *** from *** [i]mposing a mandatory retirement age for *** law enforcement officers ***." (Ill. Rev. Stat. 1989, ch. 68, par. 2-104(A)(7).) This amendment, the Secretary says, clarified the legislature's intention that section 2-115 be considered an exception to the Act. The defendants respond that the amendment of the statute in 1987 changed the law and is a further indication that the mandatory retirement provision of section 2-115 was not intended, in and of itself, as an exception prior to the amendment of 1987. The statute as amended is not applicable here.

Generally, a material change in the language of an unambiguous statute creates a presumption, although it can be rebutted by evidence of a contrary legislative intent, that the amendment was intended to change the law. (*People v. Hare* (1988), 119 Ill. 2d 441, 451, 116 Ill. Dec. 664, 519 N.E.2d 879; *Weast Construction Co. v. Industrial Comm'n* (1984), 102 Ill. 2d 337, 340, 80 Ill. Dec. 763, 466 N.E.2d 215; 1A N. Singer, *Sutherland on Statutory Construction* § 22.30, at 179 (Sands 4th ed. 1972).) The Secretary argues

that the amendment did not indicate a legislative intent to change the law, but instead was merely a clarification of existing law. In cases where a subsequent statutory amendment has been construed as a clarification rather than a change in the meaning of a statute, however, some ambiguity existed in the statute prior to the amendment, and the statutory language as it originally existed did not disclose clearly the intent of the legislature. (*People v. Hare* (1988), 119 Ill. 2d 441, 451, 116 Ill. Dec. 664, 519 N.E.2d 879.) When the import of the original statutory language is clear, the court has declined to view an amendment as simply clarifying the legislature's intention. (*Hare*, 119 Ill. 2d at 451, 116 Ill. Dec. 664, 519 N.E.2d 879.) Here the language of the Human Rights Act was not unclear. At the time the investigators were mandatorily retired, section 2-102(A) prohibited, subject to specific defined exceptions, none of which applied to the defendants, the mandatory retirement of an employee before the age of 70.

Furthermore, it would appear that section 2-104 was amended to keep pace with the Federal Age Discrimination in Employment Act, which had, in 1986, been amended to provide for an identical exception. (29 U.S.C. § 623(i) (1988).) To contend that the amendment to our statute was actuated by a desire to clarify the legislature's intention regarding the mandatory provision of section 2-115 is simply not supportable.

We would state again that the amendment is not applicable on the facts here. The legislature expressly provided in the text of the amendment that the section added by the amendment would not "apply with respect to any cause of action arising under the Illinois Human Rights Act as in effect prior to December 3, 1987." (Ill. Rev. Stat. 1989, ch. 68, par. 2-104(A)(7).) Such a restriction would not have been necessary if the amendment did not change, but simply clarified, existing law.

The Secretary also points to an amendment in the Illinois Pension Code (Ill. Rev. Stat. 1987,

ch. 108½, par. 14-110(c)(5)) which took effect after the Human Rights Act was enacted and which, the Secretary says, evidences the legislature's understanding that the mandatory retirement provision of section 2-115 was to be considered an exception to the Human Rights Act. In 1983, the legislature amended the Pension Code to provide:

"A person who became employed as an investigator for the Secretary of State between January 1, 1967 and December 31, 1975 and who has served as such until attainment of age 60 *** shall be entitled to have his retirement annuity calculated in accordance with subsection (a), notwithstanding that he has less than 20 years of credit for such service." (Ill. Rev. Stat. 1987, ch. 108½, par. 14-110(c)(5).)

The Secretary says that the legislature set the age in this section of the Pension Code at 60 because of the provision in section 2-115. The Secretary contends that the language of the Pension Code amendment reaffirms that the legislature intended that the mandatory retirement provision of section 2-115 stand as an exception to the Human Rights Act. The 1983 amendment to the Pension Code, however, makes no reference to section 2-115 or that retirement of Secretary of State investigators is mandated at age 60. The amendment simply eliminated the 20-year service requirement for those Secretary of State investigators serving to the age of 60 who were employed between January 1, 1967, and December 31, 1975, and entitled them to use the "formula" method provided in the Code in calculating their pensions. The most that can be said of this amendment is that it encouraged, rather than mandated, retirement at age 60.

Concluding that the statutory provisions are irreconcilable it must be determined which act is controlling. When two statutes appear to be in conflict, the one which was enacted later should prevail, as a later legislative expression of intent. (Ill. Rev. Stat. 1989, ch. 1, par. 1105; *People ex rel. Fitzsimmons v. Swailes* (1984), 101 Ill. 2d 458, 461, 79 Ill. Dec. 90, 463 N.E.2d 431.) The Human

Rights Act must prevail, as it was enacted four months after section 2-115 of the Vehicle Code was amended to require retirement of Secretary of State investigators at age 60. The Secretary, however, argues for a statutory construction that when two pieces of legislation are in conflict, the more specific piece of legislation should control over the more general. (*People v. Singleton* (1984), 103 Ill. 2d 339, 82 Ill. Dec. 666, 469 N.E.2d 200.) The Secretary claims that the Vehicle Code and the Pension Code deal more specifically with the retirement of Secretary of State investigators and, therefore, their terms should control over the terms of the Human Rights Act, which are general.

The Human Rights Act is directed to problems of discrimination and is clearly more specific on the issue of age discrimination than the Vehicle Code and the Pension Code. The Act's terms should control.

We hold that the mandatory retirement provision of section 2-115 of the Vehicle Code is inconsistent with the provisions of the Human Rights Act, and that the Human Rights Act is the controlling statute. We need not address the defendants' contention that the Code also violates the provisions of the Federal Age Discrimination Act.

For the reasons stated, the judgment of the appellate court is reversed, and the judgment of the circuit court is affirmed.

Appellate court judgment reversed; circuit court judgment affirmed.

176 Ill. 2d 171
679 N.E.2d 1230
223 Ill. Dec. 457

Jennifer Panky BURRELL, Appellee,
v.
SOUTHERN TRUSS et al. (Wood River
Township Hospital et al., Appellants).

Supreme Court of Illinois.
April 24, 1997.
No. 81621.

Justice MILLER delivered the opinion of the court:

Wood River Township Hospital (Wood River), Medical Radiological Services, Inc. (Medical Radiological), and Dr. Anthony Marrese filed separate liens in the circuit court of Saline County against proceeds received by plaintiff, Jennifer Panky Burrell, in a settlement with defendants, Joel Kingston and Southern Truss. Wood River filed its claim under the Hospital Lien Act (770 ILCS 35/0.01 *et seq.* (West 1992)), and Medical Radiological and Dr. Marrese filed their separate claims under the Physicians Lien Act (770 ILCS 80/0.01 *et seq.* (West 1992)). The total of these three liens exceeded one-third of plaintiff's settlement. The circuit court aggregated the lien claims, limited total recovery on the liens to one-third of the settlement, and prorated the amounts to be dispensed to the lienholders so that the total paid to the lienholders did not exceed one-third of plaintiff's recovery. On appeal, the appellate court affirmed the distribution to the lienholders. 281 Ill. App. 3d 553, 217 Ill. Dec. 379, 667 N.E.2d 172. We granted leave to appeal (155 Ill. 2d R. 315) and now reverse the judgments of the appellate and circuit courts.

Plaintiff filed a complaint based on the negligent or wrongful acts of Kingston in the course of his employment with Southern

Truss. Plaintiff later settled her claims against the defendants for a total of \$8,500. Plaintiff then filed a petition to adjudicate certain outstanding liens, arguing that the total amount of the liens exceeded one-third of the settlement. Three of the plaintiff's creditors entered appearances in the proceedings. Wood River asserted a lien in the amount of \$913.65 under the Hospital Lien Act. Medical Radiological and Dr. Marrese asserted liens in the amount of \$473 and \$1,529, respectively, under the Physicians Lien Act. The Hospital Lien Act provides that "the total amount of all liens hereunder shall not exceed one-third of the sum paid or due to said injured person on said claim or right of action * * *." 770 ILCS 35/1 (West 1992). The Physicians Lien Act contains identical limiting language. 770 ILCS 80/1 (West 1992). Although the liens together exceeded one-third of plaintiff's settlement, the total amounts claimed under each of the two lien acts did not exceed one-third of the settlement.

The circuit judge read the Hospital Lien Act and the Physicians Lien Act together and limited total recovery by the lienholders to one-third of plaintiff's settlement. The judge then prorated each lien at 97.17% of its total—an amount that would reduce the total of the liens so that they would not exceed one-third of the settlement. Thus, Wood River's lien was reduced by \$25.86, Medical Radiological's lien was reduced by \$13.39, and Dr. Marrese's lien was reduced by \$43.28.

Wood River and Medical Radiological appealed, arguing that the Hospital Lien Act and Physicians Lien Act each create distinct liens and that there exists a separate right under each act to a maximum of one-third of plaintiff's settlement. The appellate court disagreed and affirmed the decision of the circuit court. 281 Ill. App. 3d at 558, 217 Ill. Dec. 379, 667 N.E.2d 172. The appellate court noted the similarity of the language in the different lien acts and believed that the intent

of the legislature and the practical application of the statutes were furthered by reading the statutes together. 281 Ill. App. 3d at 556-57, 217 Ill. Dec. 379, 667 N.E.2d 172. Like the circuit court, the appellate court limited recovery on the total of all liens under the hospital and physicians lien acts to a maximum of one-third of the plaintiff's recovery.

In construing a statute, courts are required to ascertain and give effect to the intent of the legislature. *Varelis v. Northwestern Memorial Hospital*, 167 Ill. 2d 449, 454, 212 Ill. Dec. 652, 657 N.E.2d 997 (1995). Courts should first look to the language of the statute to determine the intent of the drafters. *Nottage v. Jeka*, 172 Ill. 2d 386, 392, 217 Ill. Dec. 298, 667 N.E.2d 91 (1996). When the statutory language is clear, no resort is necessary to other aids of construction. *Henry v. St. John's Hospital*, 138 Ill. 2d 533, 541, 150 Ill. Dec. 523, 563 N.E.2d 410 (1990). We must determine in this case whether the hospital and physicians lien acts limit the recovery of all lienholders under these acts to a combined one-third of plaintiff's recovery, or whether the statutes simply limit recovery under each individual lien act to one-third of plaintiff's recovery.

As we have noted, the Hospital Lien Act provides that "the total amount of all liens hereunder shall not exceed one-third of the sum paid or due to said injured person on said claim or right of action ***." 770 ILCS 35/1 (West 1992). The Physicians Lien Act contains the same language. 770 ILCS 80/1 (West 1992). Unlike the courts below, we believe that the plain language of these statutes limits application of the one-third maximum to each individual act and requires aggregation of only those liens filed under that particular act. We agree with the lienholders that the phrase "all liens hereunder," in limiting the amount of liens that may be asserted against a single recovery, refers only to liens filed under each act, and

does not include liens that are asserted under separate provisions. To hold otherwise, as plaintiff suggests, would require us to read into the statutes an additional limitation that the legislature did not include.

This interpretation of the statutory language conforms to the long standing construction the appellate court has given this language. *Wheaton v. Department of Public Aid*, 92 Ill. App. 3d 1084, 48 Ill. Dec. 507, 416 N.E.2d 780 (1981), dealt with a fact pattern almost identical with the present case. In *Wheaton*, one claimant filed a lien under the Hospital Lien Act and two other claimants filed liens under the Physicians Lien Act. *Wheaton*, 92 Ill. App. 3d at 1085, 48 Ill. Dec. 507, 416 N.E.2d 780. The amount claimed under each act was less than one-third of plaintiff's settlement, but the total amount asserted under the two acts, together, exceeded one-third of the settlement. *Wheaton*, 92 Ill. App. 3d at 1086-87, 48 Ill. Dec. 507, 416 N.E.2d 780. The appellate court held that the amounts of the hospital's and physicians' liens could not be reduced as long as the total amount of the liens filed under each separate act did not exceed one-third of plaintiff's recovery. *Wheaton*, 92 Ill. App. 3d at 1086, 48 Ill. Dec. 507, 416 N.E.2d 780.

The same rationale has been followed by every court deciding the issue until the present case. See, e.g., *Illini Hospital v. Bates*, 135 Ill. App. 3d 732, 734, 90 Ill. Dec. 528, 482 N.E.2d 235 (1985) (language of the statute is clear and the allowance of liens under the Hospital Lien Act is mandatory provided it does not exceed one-third of the total recovery); *In re Estate of McMillan*, 115 Ill. App. 3d 1022, 1026, 71 Ill. Dec. 804, 451 N.E.2d 958 (1983) (in light of the plain language of section 1 of the Hospital Lien Act, reduction of hospital's lien appropriate only if lien exceeds one-third of settlement); *O'Donnell v. Sears, Roebuck & Co.*, 71 Ill. App. 3d 1, 13, 27 Ill. Dec. 110, 388 N.E.2d 1073 (1979) (under the

Hospital Lien Act, the court is charged with the responsibility of adjudicating and enforcing hospital liens pursuant to a mechanical “one-third of proceeds” formula).

Although we rest our decision on the plain language of the statutes at issue here, we note that our interpretation is consistent with the legislative history of related provisions. There are five other separate acts providing for liens in favor of health-care providers in Illinois. These additional lien acts govern dentists (770 ILCS 20/0.01 *et seq.* (West 1992)), physical therapists (770 ILCS 75/1 *et seq.* (West 1992)), home health care agencies (770 ILCS 25/1 *et seq.* (West 1992)), clinical psychologists (770 ILCS 10/0.01 *et seq.* (West 1992)), and emergency medical services personnel (770 ILCS 22/1 *et seq.* (West 1992)). All the acts except the one applicable to dentists were enacted after the Wheaton decision. “Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law.” *People v. Hickman*, 163 Ill. 2d 250, 262, 206 Ill. Dec. 94, 644 N.E.2d 1147 (1994). We may thus assume that the legislature was aware of, and approved, Wheaton’s construction when it enacted the other lien statutes and continued to use the phrase “all liens hereunder” or an equivalent expression, “all liens under this Act,” in limiting the amount that may be received under each act to one-third of the plaintiff’s recovery.

Further support for our holding may be found in the legislative history of one of the post-Wheaton statutes, the Home Health Agency Lien Act. Like the provisions applicable to physicians and hospitals, at issue here, the Home Health Agency Lien Act uses the phrase “all liens hereunder” in limiting the amount that may be asserted under that statute against a single recovery. During debate on the Act, there was discussion regarding the distribution of a recovery when

the liens of different types of health-care providers exceed the money available. 84th Ill. Gen. Assem., House Proceedings, June 20, 1985, at 323-24. Representative Johnson, explaining that he wished to establish legislative intent, offered an example in which, after the attorney’s lien had been deducted, \$60,000 remained of an initial \$100,000 recovery and separate sums of \$30,000 were claimed under the hospital, physicians, and home health care lien acts. 84th Ill. Gen. Assem., House Proceedings, June 20, 1985, at 323-24 (statements of Representative Johnson). In response to questions from Representative Johnson, Representative Levin affirmed that all the liens should be treated “on the same footing,” to use Representative Johnson’s phrase, and reduced on a prorated basis so that each of the three lien categories would be entitled to \$20,000 of the \$60,000 remaining from the recovery. 84th Ill. Gen. Assem., House Proceedings, June 20, 1985, at 324 (statements of Representatives Johnson and Levin). As these remarks demonstrate, the amount claimed under each lien act in the example is for less than one-third of the settlement. After adjudication, however, the lienholders’ total recovery would equal an amount that represents 60% of the total settlement, exceeding one-third of the settlement.

For the foregoing reasons, we conclude that the Hospital Lien Act and the Physicians Lien Act provide for separate liens, with the total amounts that may be claimed under each act limited to one-third of plaintiff’s settlement. We therefore reverse the judgments of the appellate and circuit courts and remand the cause to the circuit court of Saline County for entry of judgment consistent with this opinion.

Appellate court judgment reversed; circuit court judgment reversed; cause remanded.

Justice HARRISON, dissenting:

I was against granting the petition for leave to appeal in this case, and I still think review by this court was inappropriate. The court's decision today does not award Wood River, Medical Radiological, or Dr. Marrese a single penny more than they were otherwise entitled to. It merely makes it easier for them to collect the amount plaintiff already owes by increasing their statutory lien rights against her settlement proceeds. The increase for all three health care providers totals all of \$82.53.

Eighty-two dollars and fifty-three cents in additional lien rights for three providers for four years of litigation. That is all this case is or was ever about. What this shows to me is that there is no amount too trivial to warrant the court's intervention if my colleagues believe they can make the litigation process more difficult for plaintiffs.

Wholly aside from these considerations, I believe that the majority's opinion is misguided. The appellate court correctly noted that if the various liens could be aggregated, as the majority here holds, the total lien amount could easily consume the plaintiff's entire recovery. The plaintiff would have hired an attorney and endured the rigors of litigation and achieved success and be left with nothing. I share the appellate court's view that the legislature could not have intended such an absurd and unjust result.

A second flaw in the majority's analysis is that it can yield inequitable and absurd results even among the lien holders themselves. Because the majority treats each of the lien statutes as being independent of the others, the size of a particular health care provider's lien may depend on the fortuity of whether the other lien holders are governed by the same lien statute or by a different one.

The anomalies that can result are readily illustrated. Assume, for example, that a

plaintiff receives a \$9,000 recovery and has agreed to pay his attorney a one-third contingency fee. If the plaintiff had a physical therapy bill of \$3,000 and a bill from his doctor for \$3,000, the majority's approach would mean that the therapist and the doctor could each assert liens for the full amount they were owed, a total of \$6,000. If, however, the providers submitting the \$3,000 bills were both doctors rather than a doctor and a physical therapist, their combined lien rights would be limited to \$3,000, half as much. Similarly, if there were two doctors who both had bills of \$3,000 in addition to the physical therapist with the \$3,000 bill, each of the doctors would have to accept liens for a reduced amount, while the physical therapist would be entitled to a lien for the full \$3,000.

I can see no rational basis for such disparate results. The appellate court's approach avoids these problems completely. The majority's analysis simply ignores them. In so doing, it sets the stage for inequities that the legislature could not have intended and failed to recognize when it debated and enacted the law.

Where the passage of a series of legislative acts results in confusion and consequences that the General Assembly may not have contemplated, the courts must construe the acts in such a way as to reflect the obvious intent of the legislature and permit practical application of the law. *People ex rel. Community High School District No. 231 v. Hupe*, 2 Ill. 2d 434, 448, 118 N.E.2d 328 (1954). The appellate court did that here. Its judgment should therefore be affirmed. Accordingly, I dissent.

302 Ill. App. 3d 334
 705 N.E.2d 919
 235 Ill. Dec. 736

BAGCRAFT CORPORATION, Appellant,
v.
The INDUSTRIAL COMMISSION et al.
(Shirley Bolda, Appellee).

Appellate Court of Illinois,
 Third District,
 Industrial Commission Division.
 Dec. 23, 1998.
 Rehearing Denied Feb. 17, 1999.
 No. 3-97-0901WC.

Justice RAKOWSKI delivered the opinion of the court:

Section 11 of the Workers' Compensation Act (Act) precludes an employee from recovering for accidental injuries incurred while participating in voluntary recreational activities, unless the employee was ordered or assigned to participate in the activity. 820 ILCS 305/11 (West 1996). Illinois courts, however, have also long adhered to the traveling employee doctrine, which allows an employee to recover for injuries he sustained during reasonable and expected activity while traveling away from home, even if that activity was recreational in nature. In this case, employer contends that, unless a traveling employee is assigned or ordered to participate in the recreational activities from which the injury arose, section 11 precludes recovery. In effect, employer argues that section 11 abrogates the traveling employee doctrine with respect to recreational activities. We disagree and affirm.

I. BACKGROUND

Shirley Bolda (claimant), the widow of Richard Bolda (decedent), filed an application for adjustment of claim under the Act, seeking

compensation for decedent's death. Decedent was a plant manager for Bagcraft Corporation (Bagcraft), a company that produces paper bags and other flexible packaging supplies. On September 20, 1990, the day of decedent's death, he was 55 years old and had worked for Bagcraft for 12 years.

Rhineland Paper Company (Rhineland) is a subsidiary of Wausau Paper Company and was one of Bagcraft's major suppliers of paper. For at least three years prior to September 1990, Rhineland had invited Bagcraft to send a group of its employees to visit its paper mill and to stay over night at its company lodge in Wisconsin. Although Marshall Rodin, the former president of Bagcraft, testified that the trips to Rhineland had no real business importance, the testimony of decedent's colleagues as well as memoranda that were distributed prior to the trip reveal that the trip was for business purposes and that decedent was recommended to go on the trip partly because he was familiar with Rhineland's product and could contribute to the meetings.

The agenda and activities for this trip were the same as the previous trips. On Thursday morning, September 20, Rhineland sent its corporate plane to Chicago. Rhineland's sales people greeted the Bagcraft group at the airport and flew with them to Wisconsin. Upon arriving in Wisconsin, Rhineland transported the Bagcraft contingent to its paper mill.

Rhineland gave the Bagcraft employees a tour of the mill. After the tour, the parties met and discussed general business and quality issues, including baggy sheets of paper and pin holes in the paper. When the meetings concluded around 2:30 p.m., Rhineland drove the Bagcraft employees to Wausau's lodge, where they spent the remainder of the afternoon and evening.

At the lodge, Bagcraft employees and a couple of Rhinelanders' sales people participated in a wide range of recreational activities together, including trapshooting, riding all-terrain vehicles (ATVs), fishing, walking, and hiking. The Bagcraft employees were also free to simply sit around or play pool at the lodge. These activities were available in preceding years and were described in a folder of information that Rhinelanders gave the Bagcraft employees before reaching the lodge.

Decedent and James Allen, a coworker, decided to go for an ATV ride. While riding back to the lodge, decedent unexpectedly flew over the handle bars of the ATV and struck a tree. He suffered a severe head injury and died shortly after reaching the hospital.

The accident upset the remainder of the agenda. However, on previous trips, more Rhinelanders' employees would arrive before dinner. The parties would discuss business issues as well as other topics during and after dinner. On this trip in particular, Rhinelanders planned to show a film about Rhinelanders after dinner.

The arbitrator found that decedent's fatal injuries arose out of and in the course of his employment. Specifically, the arbitrator found that decedent was a traveling employee and that riding an ATV was a reasonable and foreseeable recreational activity under the circumstances. The Commission affirmed and awarded claimant burial costs and death benefits. The circuit court confirmed the Commission's decision. We have jurisdiction pursuant to Supreme Court Rule 301, allowing appeals from final judgments. 155 Ill. 2d R. 301.

II. ANALYSIS

The traveling employee doctrine is well settled. "Injuries to employees whose duties require them to travel away from home are

not governed by the rules applicable to other employees." *Johnson v. Industrial Comm'n*, 278 Ill. App. 3d 59, 64, 214 Ill. Dec. 802, 662 N.E.2d 156 (1996); *Bailey v. Industrial Comm'n*, 247 Ill. App. 3d 204, 208, 187 Ill. Dec. 97, 617 N.E.2d 305 (1993); *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 572, 38 Ill. Dec. 127, 403 N.E.2d 215 (1980). See *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69, 338 N.E.2d 379 (1975); *David Wexler & Co. v. Industrial Comm'n* 52 Ill. 2d 506, 510, 288 N.E.2d 420 (1972); *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388-89, 205 N.E.2d 453 (1965); *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 694, 188 Ill. Dec. 573, 618 N.E.2d 1143 (1993). Under a traveling employee analysis, determination of whether an injury arose out of and in the course of the employee's employment depends on the reasonableness of the employee's conduct at the time of the injury and whether the employer could anticipate or foresee the employee's conduct or activity. *Johnson*, 278 Ill. App. 3d at 64, 214 Ill. Dec. 802, 662 N.E.2d 156; *Bailey*, 247 Ill. App. 3d at 208, 187 Ill. Dec. 97, 617 N.E.2d 305; *Howell Tractor & Equipment Co.*, 78 Ill. 2d at 574, 38 Ill. Dec. 127, 403 N.E.2d 215. See *Wright*, 62 Ill. 2d at 70, 338 N.E.2d 379; *David Wexler & Co.*, 52 Ill. 2d at 510, 288 N.E.2d 420; *Ace Pest Control*, 32 Ill. 2d at 388-89, 205 N.E.2d 453; *Chicago Bridge & Iron*, 248 Ill. App. 3d at 694, 188 Ill. Dec. 573, 618 N.E.2d 1143. Under this approach, Illinois courts have repeatedly held that, even though the recreational activities of a traveling employee fall outside the scope of employment, any injuries incurred during those activities are compensable under the Act as long as the recreational activity and the employee's conduct were reasonable and foreseeable. *Howell Tractor & Equipment*, 78 Ill. 2d at 574, 38 Ill. Dec. 127, 403 N.E.2d 215; *Wright*, 62 Ill. 2d at 71, 338 N.E.2d 379; *Johnson*, 278 Ill. App. 3d at 64, 214 Ill. Dec. 802, 662 N.E.2d 156; *Bailey*, 247 Ill. App. 3d at 208, 187

Ill. Dec. 97, 617 N.E.2d 305. See also *David Wexler & Co.*, 52 Ill. 2d at 510-11, 288 N.E.2d 420. This added protection is afforded under the Act because “[i]t is expected that an employee working out of town will seek some type of recreational activity on his days of rest” (*Wright*, 62 Ill. 2d at 71, 338 N.E.2d 379) and that “[i]t would be obviously unreasonable and contrary to the intent of the [Workers’] Compensation Act and its purposes to say that a traveling employee has the protection of the Act only when in the physical act of performing [her] duties and only in the course of a normal business day” (*Wright*, 62 Ill. 2d at 71, 338 N.E.2d 379, quoting *Wexler*, 52 Ill. 2d at 511, 288 N.E.2d 420).

In this case, Bagcraft does not dispute that decedent was a traveling employee. It did not submit evidence that decedent’s conduct of riding an ATV was unreasonable or unanticipated. Nor does it make any such argument on appeal. Instead, Bagcraft contends that section 11 bars recovery because decedent was injured while voluntarily participating in a recreational activity. In essence, Bagcraft’s argument is that section 11 abrogates the common law traveling employee doctrine as it applies to recreational activities. Although Illinois courts have not addressed this issue, we conclude for the following reasons that section 11 has no application to traveling employees.

The judiciary will not interpret a statute in a manner that will abrogate the common law unless such intent is clearly gleaned from the language of the statute. *Malfeo v. Larson*, 208 Ill. App. 3d 418, 424, 153 Ill. Dec. 406, 567 N.E.2d 364 (1990). Consequently, the court strictly construes a statute in derogation of the common law to ensure that any changes to the common law are clearly expressed by the language of the statute or that the changes are the clear and necessary implication of the language. *Malfeo*, 208 Ill. App. 3d at 424, 153

Ill. Dec. 406, 567 N.E.2d 364; see *In re Petition of K.M.*, 274 Ill. App. 3d 189, 194, 210 Ill. Dec. 693, 653 N.E.2d 888 (1995), quoting *American Ambassador Casualty Co. v. City of Chicago*, 205 Ill. App. 3d 879, 884, 150 Ill. Dec. 755, 563 N.E.2d 882 (1990) (“a ‘court has no right to read into the statute words that are not found there either by express inclusion or by fair implication’”). The court also strictly construes statutes in derogation of the common law in favor of persons who are subject to their operation. *In re Illinois Bell Switching Station Litigation*, 161 Ill. 2d 233, 240, 204 Ill. Dec. 216, 641 N.E.2d 440 (1994). Moreover, it is well established that “[w]here statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law.” *Burrell v. Southern Truss*, 176 Ill. 2d 171, 176, 223 Ill. Dec. 457, 679 N.E.2d 1230 (1997), quoting *People v. Hickman*, 163 Ill. 2d 250, 262, 206 Ill. Dec. 94, 644 N.E.2d 1147 (1994).

Section 11 provides in pertinent part:

“Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program.” 820 ILCS 305/11 (West 1996).

The language of section 11 is unambiguous. It forecloses recovery where an injury is sustained during, but not limited to, athletic events, parties, and picnics. 820 ILCS 305/11 (West 1996). There is no language, however, evincing an intent on the part of the legislature to abrogate the traveling employee doctrine. The legislative history is equally devoid of any indication that section 11 applies to the traveling employee situation. Rather, the only substantive mention of

section 11 was that “[i]t limited the recreational liability when a person was playing for a company *** recreational team.” 81st Ill. Gen. Assem., Senate Proceedings, June 25, 1980, at 445-46 (statements of Senator Bruce).

We assume that the legislature enacted section 11 with knowledge of the traveling employee doctrine as it has evolved in the common law. *Burrell*, 176 Ill. 2d at 176, 223 Ill. Dec. 457, 679 N.E.2d 1230. As early as 1968, Illinois courts have applied the traveling employee doctrine to cases similar to the instant case, where the employee is away from home on a business trip and is injured while engaged in a recreational activity. *See, e.g., Johnson*, 278 Ill. App. 3d 59, 214 Ill. Dec. 802, 662 N.E.2d 156 (injuries sustained after falling off a yacht while on a business trip in Mexico held compensable); *Wright*, 62 Ill. 2d 65, 338 N.E.2d 379 (death held compensable where employee was killed on highway six miles from motel although employee may have been engaged in a private outing); *David Wexler & Co.*, 52 Ill. 2d 506, 288 N.E.2d 420 (even if traveling employee may have been returning from a golf outing when he died in an automobile accident, court found decedent’s death was still compensable as it was reasonable that decedent would seek recreation while away from home on a legal holiday); *U.S. Industries v. Industrial Commission*, 40 Ill. 2d 469, 240 N.E.2d 637 (1968) (applying the traveling employee analysis, but denying compensation on the basis that employee’s midnight pleasure drive in unfamiliar, mountainous terrain was not reasonably expected by employer). Without specific language directing application of section 11 to the traveling employee scenario, we cannot conclude that the legislature intended to abrogate an entire body of case law. We thus conclude that the proper analysis requires application of the traveling employee doctrine and not section 11.

In this case, there is ample evidence to support the Commission’s determination that decedent was a traveling employee. One will be deemed a traveling employee where he is required to travel away from home to perform his employment-related duties. *Bailey*, 247 Ill. App. 3d at 208, 187 Ill. Dec. 97, 617 N.E.2d 305. Here, five of decedent’s colleagues testified that the Rhinelander trip was for business purposes; only the former president of Bagcraft said it was not. Testimony established that the trip was an opportunity to review current business conditions as well as to continue building a close relationship with Rhinelander. According to Bagcraft employees, Bagcraft believed that the development of a strong relationship was important to Bagcraft primarily because, at that time, Rhinelander was one of Bagcraft’s top five paper suppliers in terms of volume and that a strong relationship would yield the best possible value from each purchase. More importantly, a memorandum distributed prior to the excursion confirmed that the it was a business trip, stating in part that “[t]he purpose of th[e] trip is to review our current business, and correct any technical, quality or pricing issues as well as to discuss new business.” Other memoranda and testimony further reflect that decedent was selected because he was familiar with Rhinelander’s product and could contribute to the meetings. Moreover, the meetings at Rhinelander related directly to Bagcraft and Rhinelander’s business relationship. The participants discussed general business during the meetings as well as quality issues, including Bagcraft’s complaint about receiving baggy sheets of paper or paper with pin holes. Although personal pleasure was a byproduct of participating in the Rhinelander excursion, it is apparent from the record that decedent would not have gone on the trip but for his employer’s request. As such, there was ample evidence from which to conclude that

decedent was on a business trip and that the traveling employee analysis was applicable to this case.

Given that the traveling employee doctrine applies to the instant case, the proper test for determining whether decedent's death arose out of and in the course of his employment is whether his conduct was reasonable and anticipated by Bagcraft. As to the "reasonableness" prong, all the record indicates is that, while returning to the lodge, decedent flew over his handle bars and struck a tree. There is nothing to suggest that decedent's conduct was unreasonable at the time of the accident; nor can we say that riding an ATV is unreasonable *per se*. As to the "anticipated" prong, the evidence shows that Bagcraft knew or should have known that ATV riding was among the recreational options at the Rhineland lodge. Not only did Bagcraft employees ride the ATVs on previous trips, but Rhineland distributed information packets on each trip describing the recreational activities available at the lodge. As such, we find that the Commission's conclusion that decedent's conduct was reasonable and anticipated by Bagcraft is not against the manifest weight of the evidence.

In so ruling, we reject Bagcraft's contentions that our decision in *Kozak v. Industrial Comm'n*, 219 Ill. App. 3d 629, 162 Ill. Dec. 107, 579 N.E.2d 921 (1991), requires a different result. In *Kozak*, decedent traveled to Houston to play in an intercorporation tennis match that was organized for the purpose of selecting a team to represent employer in a national tennis championship. In the course of playing tennis, decedent suffered a fatal heart attack. Lacking any indication that decedent was traveling to Houston for any purpose other than to participate in a tennis tournament, we affirmed the Commission's application of section 11 and found that his death did not arise out of and in the course of

his employment. *Kozak*, 219 Ill. App. 3d at 634, 162 Ill. Dec. 107, 579 N.E.2d 921.

The distinction between the instant case and *Kozak* is clear and outcome determinative. Here, the Commission found that decedent's trip was for a business-related purpose whereas in *Kozak* the Commission found that decedent's trip was for the sole purpose of participating in a tennis tournament. Accordingly, *Kozak* is distinguishable and provides no support for Bagcraft's contentions.

III. CONCLUSION

Therefore, for the foregoing reasons, we affirm the circuit court's confirmation of the Commission's decision.

Affirmed.

McCULLOUGH, P.J., and HUTCHINSON, HOLDRIDGE, and RARICK, JJ., concur.

313 Ill. App. 3d 666
730 N.E.2d 138
246 Ill. Dec. 458

The PEOPLE of the State of Illinois,
Plaintiff-Appellant,
v.
Wesley R. BOWDEN, Defendant-Appellee.

Appellate Court of Illinois,
Fourth District.
May 22, 2000.
No. 4-99-0081.

Justice KNECHT delivered the opinion of the court:

The State appeals the order of the circuit court of Greene County dismissing a felony charge of escape (720 ILCS 5/31-6(a) (West 1998)) it brought against defendant, Wesley R. Bowden. We affirm.

I. BACKGROUND

In 1998, the defendant was committed to the Greene County jail in lieu of posting bail to await trial on a pending felony charge of obstruction of justice, a Class 4 felony (720 ILCS 5/31-4(a), (d)(1) (West 1998)). On November 17, 1998, the trial court modified the conditions of defendant's bail to authorize work release. Under the terms of defendant's bail, beginning November 18, 1998, defendant was to be released from the county jail at 7 a.m. and to return at 7 p.m. On November 18, 1998, defendant was released as scheduled but thereafter failed to return.

On November 19, 1998, the State charged defendant with one count of escape in violation of section 31-6(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/31-6(a) (West 1998)). On December 29, 1998, defendant filed a memorandum of law in support of a motion to dismiss, contending he was not properly charged with escape under section 31-6(a) of the Code. On January 15, 1999, the trial court

dismissed the charge of escape against defendant. The State appeals.

II. ANALYSIS

This appeal presents one issue for our review: whether a person *charged with a felony who is released on work release* from a penal institution *as a condition of bail*, but fails to return, may properly be prosecuted for the Class 2 felony of escape as defined in section 31-6(a) of the Code (720 ILCS 5/31-6(a) (West 1998)).

The statutory provision in question provides as follows:

“Escape; failure to report to a penal institution or to report for periodic imprisonment.

(a) A person convicted of a felony *or charged with the commission of a felony* who intentionally escapes from any penal institution or from the custody of an employee of that institution commits a Class 2 felony; however, a person *convicted of a felony* who knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement is guilty of a Class 3 felony.” (Emphasis added.) 720 ILCS 5/31-6(a) (West 1998).

Here, the Class 3 felony provision of section 31-6(a) is not at issue as the defendant, in the present case, was committed to the county jail not as a convicted felon but, rather, in lieu of posting bail before trial. Accordingly, the State contends defendant is properly charged with escape under the Class 2 felony provision of section 31-6(a) of the Code (720 ILCS 5/31-6(a) (West 1998)) as a person charged with the commission of a felony who intentionally escaped from a penal institution. In response, defendant argues his actions are not properly characterized as an “escape” under the Class 2 felony provision of section 31-6(a) but, rather, as a failure to return from a work release.

Hence, the question before us becomes whether the failure to return from work release, when ordered as a condition of bail for a defendant charged with a felony, constitutes an “escape” from a penal institution in violation of the Class 2 felony provision of section 31-6(a) (720 ILCS 5/31-6(a) (West 1998)).

Because this case presents no questions of fact and our decision turns on the proper interpretation of the statute, we review the trial court’s ruling *de novo*. *In re Application of the County Treasurer & Ex Officio County Collector*, 307 Ill. App. 3d 350, 353, 240 Ill. Dec. 437, 717 N.E.2d 530, 533 (1999). A fundamental canon of statutory interpretation and construction is to ascertain and give effect to the intention of the legislature. *McCann v. Presswood*, 308 Ill. App. 3d 1068, 1071, 242 Ill. Dec. 532, 721 N.E.2d 811, 813 (1999). This inquiry appropriately begins with the language of the statute itself (*People v. Woodard*, 175 Ill. 2d 435, 443, 222 Ill. Dec. 401, 677 N.E.2d 935, 939 (1997)), as the language used by the legislature is the best indication of legislative intent (*Nottage v. Jeka*, 172 Ill. 2d 386, 392, 217 Ill. Dec. 298, 667 N.E.2d 91, 93 (1996)). In interpreting a statute, a court must give the legislative language its plain and ordinary meaning. *Staske v. City of Champaign*, 183 Ill. App. 3d 1, 4, 132 Ill. Dec. 184, 539 N.E.2d 747, 749 (1989). Where a statute is ambiguous and the legislative intent cannot be ascertained from the plain and ordinary meaning of its language, then the court is guided by the rules of statutory construction. *Village of Buffalo v. Illinois Commerce Comm’n*, 180 Ill. App. 3d 591, 595, 129 Ill. Dec. 598, 536 N.E.2d 438, 441 (1989).

In the present case, the State maintains defendant was properly charged with a Class 2 felony under section 31-6(a), citing *People v. Simmons*, 88 Ill. 2d 270, 58 Ill. Dec. 781, 430 N.E.2d 1032 (1981). In *Simmons*, the Supreme Court of Illinois interpreted section 31-6(a), which then provided only for a Class 2 felony,

stating as follows: “A person convicted of a felony, or charged with the commission of a felony who intentionally escapes from any penal institution *** commits a Class 2 felony.” Ill. Rev. Stat. 1977, ch. 38, par. 31-6(a). Section 3-6-4(a) of the Unified Code of Corrections (Unified Code) (Ill. Rev. Stat. 1977, ch. 38, par. 1003-6-4(a)) meanwhile provided as follows:

“A committed person who escapes or attempts to escape from an institution or facility of the Adult Division [of the Department of Corrections], or escapes or attempts to escape while in the custody of an employee of the Adult Division, or holds or participates in the holding of any person as a hostage by force, threat or violence, while participating in any disturbance, demonstration or riot, causes, directs[,] or participates in the destruction of any property is guilty of a Class 2 felony. A committed person who fails to return from furlough or from work and day release is guilty of a Class 3 felony.”

In interpreting section 31-6(a) of the Code, our supreme court noted that the Unified Code “defines ‘escape’ as ‘intentional and unauthorized absence’ of a committed person from the custody of the Department” (*Simmons*, 88 Ill. 2d at 270, 58 Ill. Dec. 781, 430 N.E.2d at 1033) and found “no reason why conduct that is considered an escape under the [Unified Code and other statutory provisions] should not also be escape for purposes of the [Code]” (*Simmons*, 88 Ill. 2d at 273, 58 Ill. Dec. 781, 430 N.E.2d at 1034). In so doing, the court found an unauthorized absence from a work-release program was properly prosecuted as an escape under section 31-6(a) (Ill. Rev. Stat. 1977, ch. 38, par. 31-6(a)), reasoning as follows:

“[W]e think the proper interpretation of the provisions found in the [Code] and in the [Unified Code], read together, is that escape is especially serious if it is *either* by a felon *or* from the facilities of the Adult Division, around which the legislature chose to erect a special legal barrier to escape. To vindicate

all the interests that must be protected, the State must be able to prosecute under either statute as it chooses.

Even if the [Code] were invariably more severe than the corrections code, the coexistence of the two statutes could be justified on the ground that the legislature wanted to give prosecutors and juries a choice. [Citation.] We see no reason to depart from the general rule that where conduct violates two criminal statutes possessing different elements or defenses (here commitment for a felony under one statute or to the Adult Division under the other) the State is free to prosecute under whichever carries the greater penalty. [Citation.]” (Emphasis in original.) *Simmons*, 88 Ill. 2d at 275-76, 58 Ill. Dec. 781, 430 N.E.2d at 1035.

The *Simmons* court further explained:

“The phenomenon of two escape statutes covering in some instances the same conduct did not originate with the corrections code but with the [Code] itself. The [Code] took anti-escape prohibitions that formerly applied only to jails, workhouses, and houses of correction (Ill. Rev. Stat. 1959, ch. 38, par. 228b), and expanded them to cover all penal institutions, specifically defined (Ill. Rev. Stat. 1977, ch. 38, par. 2-14) to include penitentiaries, state farms, and reformatories, while leaving intact the special escape provisions in statutes dealing with the penitentiary (Ill. Rev. Stat. 1961, ch. 108, par. 121), the state farm (Ill. Rev. Stat. 1961, ch. 118, par. 18), and the women’s reformatory (Ill. Rev. Stat. 1961, ch. 23, par. 2807). To hold that the [Code] did not apply to escapes from those institutions that had escape laws of their own would not only ignore the express definition of ‘penal institution’ but would almost wipe out the change in the law the [Code] provision was designed to effect, namely expansion of the coverage to all institutions. Thus, before passage of the [Unified Code], an escapee could be prosecuted under either the [Code] or the special statute dealing with the particular institution. As we have explained, we find

nothing in the corrections code definite enough to convince us that the legislature intended any change in that policy.” *Simmons*, 88 Ill. 2d at 277, 58 Ill. Dec. 781, 430 N.E.2d 1032, 430 N.E.2d at 1036.

Thereafter, in *People v. Marble*, 91 Ill. 2d 242, 247, 62 Ill. Dec. 953, 437 N.E.2d 641, 643 (1982), the supreme court followed its decision in *Simmons*, again finding failure to return from temporary work release constitutes an escape within meaning of section 31-6(a) of the Code (Ill. Rev. Stat. 1977, ch. 38, par. 31-6(a)).

After the decisions in *Simmons* and *Marble*, the legislature amended section 31-6(a) (Pub. Act 83-248, § 1, eff. January 1, 1984 (1983 Ill. Laws 1928)), adding the Class 3 felony provision as its second clause, which provides in its present form:

“[A] person convicted of a felony who knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement is guilty of a Class 3 felony.” 720 ILCS 5/31-6(a) (West 1998).

The State concedes additional language was added to section 31-6(a) of the Code after the decisions in *Simmons* and *Marble*, but it argues the later amendment does not alter the judicial interpretation of escape as including a failure to return from a temporary work release.

Our reading of section 31-6(a) of the Code, together with its succeeding amendment, does not permit this interpretation. We decline to adopt the State’s proposed construction.

An interpreting court presumes an amendment of a statute is made to effect some purpose, and that effect must be given to the law amended in a manner consistent with the amendment. *People v. McCoy*, 63 Ill. 2d 40, 45, 344 N.E.2d 436, 439 (1976). The legislature is presumed to know the construction the statute has been given and, by reenactment, is

assumed to have intended for the new statute to have the same effect. *Williams v. Crickman*, 81 Ill. 2d 105, 111, 39 Ill. Dec. 820, 405 N.E.2d 799, 802 (1980). While an amendment to an unambiguous statute indicates an intent to change the law, an amendment to an ambiguous statute can be interpreted as intending to clarify that ambiguity. *Board of Regents of the Regency Universities System v. Illinois Educational Labor Relations Board*, 166 Ill. App. 3d 730, 744, 117 Ill. Dec. 799, 520 N.E.2d 1150, 1159 (1988).

In reading the statutory provision and its amendment, this court finds the 1984 amendment to section 31-6(a) of the Code, Public Act 83-248, materially changed the provision, creating a presumption the amendment was intended to clarify the definition of “escape.” *See generally DeGrand v. Motors Insurance Corp.*, 146 Ill. 2d 521, 531, 167 Ill. Dec. 944, 588 N.E.2d 1074, 1079 (1992) (finding material change in statute by amendment creates presumption legislature intended to change the law). Our conclusion is supported by the fact the State’s proposed interpretation not only violates fundamental principles of statutory interpretation but also yields an absurd result.

Courts may not, under the guise of statutory interpretation, create new rights or limitations not suggested by the language of the statute. *Trigg v. Sanders*, 162 Ill. App. 3d 719, 727, 114 Ill. Dec. 96, 515 N.E.2d 1367, 1372 (1987). A court cannot read into a statute words that are not within the intention of the legislature as determined from the statute, nor can a court restrict or enlarge the meaning of a statute. *Trigg*, 162 Ill. App. 3d at 727, 114 Ill. Dec. 96, 515 N.E.2d at 1373.

Here, the legislature, in amending section 31-6(a) and creating the Class 3 felony provision, made an express distinction between the act of “escape” and that of “failure to return.” In making this distinction, the legislature omitted the act of failure to

return from the Class 2 felony provision of section 31-6(a). Whether this omission was inadvertent or deliberate, we are prevented from reading the act of failure to return into the Class 2 felony provision of section 31-6(a).

We further reject the State’s interpretation of section 31-6(a) because it would yield an unjust result. Under the State’s interpretation, a convicted felon who fails to return from work release is guilty of a Class 3 felony, while an individual merely *charged* with a felony who fails to return is guilty of a more serious Class 2 felony. An interpreting court must presume the legislature did not intend to produce an unjust or absurd result. *Mattis v. State Universities Retirement System*, 296 Ill. App. 3d 675, 679, 231 Ill. Dec. 49, 695 N.E.2d 566, 569 (1998).

Thus, we find, as did the trial court, section 31-6(a) of the Code simply does not address the situation wherein a person held in a penal institution and *charged* with a felony—but not convicted—fails to return from a work release as required by his bail bond. Accordingly, we conclude defendant was not an escapee as defined in section 31-6(a) of the Code but, rather, a person released on bail who violated a condition of his bail providing for work release (*see* 720 ILCS 5/32-10(a), (d) (West 1998)).

III. CONCLUSION

We hold the failure of a defendant in the custody of a penal institution charged with the commission of a felony who knowingly fails to return to a penal institution from a temporary work release as a condition of bail is not properly chargeable with escape as defined in section 31-6(a) of the Code.

Affirmed.

COOK, P.J., and GARMAN, J., concur.

319 Ill. App. 3d 453
 744 N.E.2d 902
 253 Ill. Dec. 169

Gary A. NEWLAND, Plaintiff-Appellant,
v.
BUDGET RENT-A-CAR SYSTEMS, INC.,
Budget Rent-A-Car Corporation, and Bargain
Auto Rental, Inc., Defendants-Appellants.

Appellate Court of Illinois,
 First District.
 Feb. 2, 2001.
 No. 1-99-1798.

Justice BUCKLEY delivered the opinion of the court:

This is an appeal from the trial court's order dismissing plaintiff's complaint with prejudice. Two issues are raised: (1) whether, at the time of the instant controversy, car rental companies were permitted to sell automobile insurance without a license; and (2) if car rental companies were not so required, whether plaintiff sufficiently stated a claim for relief.

I. BACKGROUND

In November 1998, plaintiff Gary Newland filed an amended complaint against Budget Rent-A-Car Corporation and its related entities. According to the amended complaint, in October 1997, plaintiff rented a car from Bargain (a Budget licensee). As part of the rental contract, plaintiff purchased a supplemental "personal accident and cargo insurance" (PACI) policy.

The amended complaint does not allege that plaintiff was involved in any sort of accident or that he attempted to make a claim pursuant to the PACI policy. Nor does it allege that defendants misrepresented the scope of the PACI policy's coverage.

The central theory to plaintiff's complaint is that defendants were not licensed to sell insurance, as required under section 492.2 of the Illinois Insurance Code (215 ILCS 5/492.2 (West 1998)). Relying on this contention, plaintiff pled two counts. Count I alleged that defendants' misconduct resulted in unjust enrichment. Specifically, plaintiff contended that defendants illegally sold PACI and the profits therefrom (*i.e.*, the money defendants collected exceeded the cost of such insurance) constituted unjust enrichment. Count I requested that the trial court deem plaintiff entitled to a return of the PACI premium. Plaintiff based count II of the amended complaint under the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 1998)). Count II alleged that defendants engaged in deceptive business practices by selling insurance without a license. Count II further alleged that such insurance was "of minimal value" and "duplicative of insurance commonly held by renters." Count II's prayer for relief sought damages and injunctive relief.

Defendants moved to dismiss the amended complaint, arguing that it failed to state a cause of action. Defendants argued, *inter alia*, that section 492.2 of the Insurance Code did not apply and, in the alternative, that plaintiff failed to state a claim under unjust enrichment and Consumer Fraud Act theories. In March 1999, the trial court granted defendants' motion, concluding that section 492.2 did not apply. The court allowed plaintiff 28 days to refile. However, plaintiff elected to stand on his amended complaint. In May 1999, the trial court dismissed plaintiff's case with prejudice pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 1998)).

Plaintiff now appeals, arguing that (1) car rental companies, at the time of the controversy, were required to obtain a license in order to sell supplemental auto insurance; and (2) he sufficiently stated causes of action

under an unjust enrichment theory and under the Consumer Fraud Act.

II. ANALYSIS

When considering a motion to dismiss pursuant to section 2 615 of the Code of Civil Procedure, we interpret all well-pled allegations and supporting documents in the light most favorable to the nonmoving party. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997). Only where the plaintiffs fail to allege facts supporting a cause of action should the court grant the motion to dismiss. *In re Chicago Flood Litigation*, 176 Ill. 2d at 189, 223 Ill. Dec. 532, 680 N.E.2d 265. Our review of the trial court's determination of a motion to dismiss is *de novo*. *In re Chicago Flood Litigation*, 176 Ill. 2d at 189, 223 Ill. Dec. 532, 680 N.E.2d 265.

A. Whether Car Rental Companies Need Be Licensed

We first address plaintiff's argument that section 492.2 of the Insurance Code (215 ILCS 5/492.2 (West 1998)) requires a car rental company to hold a license to sell supplemental rental insurance.¹ Defendants disagree and contend that section 305(f) of the Illinois Vehicle Code (625 ILCS 5/6-305(f) (West 1998)) precludes such a finding.

The principal rule of statutory construction is to ascertain and give effect to the legislature's intent. *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 81, 196 Ill. Dec. 655, 630 N.E.2d 820 (1994). To determine the legislature's intent, courts first look to the statute's language. *Zekman v. Direct American Marketers, Inc.*, 182 Ill. 2d 359, 368-69, 231 Ill. Dec. 80, 695 N.E.2d 853 (1998). Courts accord the statute's

¹ Subsequent to the trial court's decision in this case, the legislature enacted a new section to the Insurance Code that specifically requires car rental companies to obtain a limited license to sell insurance. 215 ILCS 5/495.2 (West Supp. 2000).

language a plain and commonly understood meaning. *R.L. Polk & Co. v. Ryan*, 296 Ill. App. 3d 132, 140, 230 Ill. Dec. 749, 694 N.E.2d 1027 (1998). If possible, courts must give effect to every word, clause, and sentence and may not read a statute so as to render any part inoperative, superfluous, or insignificant. *Bauer v. H.H. Hall Construction Co.*, 140 Ill. App. 3d 1025, 1028, 95 Ill. Dec. 79, 489 N.E.2d 31 (1986). Courts must not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express. (*See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 149 Ill. Dec. 286, 561 N.E.2d 656 (1990)). Statutes should be evaluated as a whole and each provision should be construed in connection with every other section. *Peoples Gas Light & Coke Co. v. Illinois Commerce Comm'n*, 165 Ill. App. 3d 235, 247, 117 Ill. Dec. 56, 520 N.E.2d 46 (1987). When an apparent conflict exists between statutes, courts must construe statutes in harmony if possible. *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24, 52, 150 Ill. Dec. 578, 563 N.E.2d 465 (1990).

We find that the clear language of section 492.2 of the Insurance Code suggests that plaintiff is correct. Section 492.2 reads as follows:

“(a) *No person shall act as or hold himself out to be an insurance producer unless duly licensed in accordance with this Article for the class or classes of insurance as to which he acts or holds himself out as an insurance producer.*

(b) *No person shall, for a fee, engage in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any policy of insurance that could be issued in Illinois, unless that person is*

(1) engaged or employed as an attorney licensed to practice law and performing duties incidental to that position;

(2) a licensed insurance producer, limited insurance representative or temporary insurance producer offering advice concerning a class of insurance as to which he is licensed to transact business;

(3) a trust officer of a bank performing duties incidental to his position;

(4) an actuary or a certified public accountant engaged or employed in a consulting capacity, performing duties incidental to that position; or

(5) a licensed public adjuster acting within the scope of his license.

(c) In addition to any other penalty set forth in this Article, any individual violating paragraph (a) or (b) is guilty of a Class A misdemeanor. Any individual violating paragraph (a) or (b) and misappropriating or converting any monies collected in conjunction with such violation is guilty of a Class 4 felony." (Emphasis added.) 215 ILCS 5/492.2 (West Supp. 1999).

Examining section 492.2's clear language, we find no indication that the legislature intended to exempt car rental companies from the licensing requirement. To the contrary, section 492.2 uses broad, sweeping language restricting the sale of insurance. Further, the legislature articulated several exemptions to the licensing requirement in section 510.2 of the Insurance Code (215 ILCS 5/510.2 (West 1998)). Car rental companies are not listed among those entities, further suggesting that they are not exempt. See *Baker v. Miller*, 159 Ill. 2d 249, 260, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994); *Business Service Bureau, Inc. v. Martin*, 306 Ill. App. 3d 907, 910, 240 Ill. Dec. 77, 715 N.E.2d 764 (1999) (noting the statutory construction maxim *inclusio unius est exclusio alterius*, i.e., the enumeration of specific things in a statute implies the exclusion of others).

Nevertheless, defendants argues that section 6-305(f) of the Vehicle Code exempts car rental companies. Section 6-305(f) provides:

"Any person who rents a motor vehicle to another shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. Such person shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter. In addition to the rental rate, taxes, and mileage charge, if any, *such person may charge for an item or service provided in connection with a particular rental transaction if the renter can avoid incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which such person may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental.*" (Emphasis added.) 625 ILCS 5/6-305(f) (West 1998).

Defendants argue that section 6-305(f)'s above-emphasized language is more specific than that contained in section 492.2 of the Insurance Code and, therefore, exempts car rental companies from the licensing requirement. We reject this argument.

First, we note that section 6-305(f) of the Vehicle Code does not specifically state that car rental companies are exempt from licensing. The text of section 6-305(f) merely lists items for which car rental companies can and cannot charge their customers. That section 6-305(f) permits car rental companies to charge their customers a fee in order to recover costs for a service does not necessarily mean that they need not first obtain a license to provide the service. We decline to make such a finding. *See Kraft*, 138 Ill. 2d at 189, 149 Ill. Dec. 286, 561 N.E.2d 656 (holding that courts must not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express).

That section 6-305(f) allows car rental companies to *charge* for certain services does not necessarily mean that they can provide such services with unbridled autonomy. Rather, they must still comply with other relevant statutes. For example, section 6-305(f) also allows car rental companies to charge customers when the company must transport a car from one location to another. However, it does not follow that the person transporting the car need not possess a driver's license. Section 6-305(f) also allows car rental companies to charge customers for refueling costs. However, it does not follow that the car rental company can run its own gas station without proper licensing, permits, supervision by the Illinois Department of Agriculture, and appropriate weights and measures guidelines.

Defendants correctly note that specific statutory provisions usually prevail over general provisions. *See Brown v. Mason*, 132 Ill. App. 3d 439, 441, 87 Ill. Dec. 460, 477 N.E.2d 61 (1985). However, courts only resort to this device when the two provisions *conflict*. *See Brown*, 132 Ill. App. 3d at 441, 87 Ill. Dec. 460, 477 N.E.2d 61. We find that section 6-305(f) of the Vehicle Code and section 492.2 of the Insurance Code can be construed harmoniously and no conflict exists.

B. Whether the Amended Complaint Stated a Cause of Action

Defendants also based their motion to dismiss on the theory that the amended complaint fails to state a claim under an unjust enrichment theory and under the Consumer Fraud Act. We too have some difficulty with plaintiff's assertion that he sustained recoverable damage as a result of defendants' misinterpretation of the Vehicle Code. However, the record indicates that, in granting the motion to dismiss, the trial court relied solely upon its finding that the Insurance Code did not apply. We, therefore, find it preferable to limit our holding to that issue and remand for further proceedings consistent with this order.

III. CONCLUSION

For the foregoing reasons, we reverse and remand.

Reversed and remanded.

CAMPBELL, P.J., and GALLAGHER, J., concur.

198 Ill. 2d 439
 ___ N.E.2d ___
 ___ Ill. Dec. ___

Leslee C. PETERSEN, Appellee,
v.
Stanley J. WALLACH, Appellant.

Supreme Court of Illinois.
 Jan. 25, 2002.
 No. 89947.

Justice KILBRIDE delivered the opinion of the Court.

The sole issue presented by this appeal is whether the exception to the six-year statute of repose for attorney malpractice actions under sections 13-214.3(c) and (d) of the Code of Civil Procedure (the Limitations Act) (735 ILCS 5/13-214.3(c), (d) (West 1994)) applies only in cases where the assets of the deceased pass by way of the Probate Act of 1975 (Probate Act or Act) (755 ILCS 5/11a-1 *et seq.* (West 1994)). Plaintiff Leslee C. Petersen, the sole beneficiary of her mother's inter vivos trust, brought this action against defendant Stanley J. Wallach, alleging Wallach negligently rendered estate planning advice to her mother. The circuit court of Cook County dismissed the complaint as time-barred.

Petersen appealed and the appellate court reversed. 314 Ill. App. 3d 823, 248 Ill. Dec. 38, 733 N.E.2d 713. We now affirm and hold that section 13-214.3(d) (735 ILCS 5/13-214.3(d) (West 1994)) applies in all attorney malpractice cases when the injury occurs upon the death of the person for whom services were rendered, regardless of the manner used to distribute the decedent's assets.

BACKGROUND

Petersen filed her complaint on November 9, 1998. The complaint alleged that in 1989 Petersen's mother engaged the services of

defendant both to handle the administration of her husband's estate and to recommend estate planning advice that would minimize estate taxes. While providing these services, defendant allegedly recommended that plaintiff's mother make substantial taxable inter vivos gifts to plaintiff. In 1990 and 1991, plaintiff's mother made such gifts, totaling approximately \$580,000. According to plaintiff, upon her mother's death on November 10, 1996, these gifts were "added back" into her mother's estate for purposes of determining taxes, resulting in an increase of \$238,000 in tax liability.

Defendant moved to dismiss plaintiff's complaint as time-barred, alleging that the claim was not initiated within the six-year statute of repose found in section 13-214.3(c). Specifically, defendant argued that the services were rendered between 1989 and 1991 and the suit was not filed until November 9, 1998. In response, plaintiff countered that the section 13-214.3(d) exception to the statute of repose should apply to her claim because she filed suit within two years of her mother's death on November 10, 1996. The provisions of the Limitations Act at issue here provide, in relevant part, as follows:

"(b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services * * * must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

(c) Except as provided in subsection (d), an action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred.

(d) When the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered, the action may be commenced

within 2 years after the date of the person's death unless letters of office are issued or the person's will is admitted to probate within that 2 year period, in which case the action must be commenced within the time for filing claims against the estate or a petition contesting the validity of the will of the deceased person, whichever is later, as provided in the Probate Act of 1975." 735 ILCS 5/13-214.3 (West 1994).¹

Under this statutory framework, the trial court granted defendant's motion to dismiss, specifically relying on *Zelenka v. Krone*, 294 Ill. App. 3d 248, 228 Ill. Dec. 733, 689 N.E.2d 1154 (1997). In *Zelenka*, the Appellate Court, Third District, held that the exception to the six-year statute of repose created by section 13-214.3(d) is applicable only when the assets of a deceased are distributed under the Probate Act and not when the assets pass via an inter vivos trust. *Zelenka*, 294 Ill. App. 3d at 252, 228 Ill. Dec. 733, 689 N.E.2d 1154. The *Zelenka* court focused on the language in section 13-214.3(d) limiting legal malpractice actions to the time period for filing claims against the estate or to the time period for filing a petition to contest the validity of the will. According to the *Zelenka* court, that language indicates section 13-214.3(d) applies only to legal malpractice actions related to claims involving assets that pass under the Probate Act and not to claims involving assets passing independent of the Act. *Zelenka*, 294 Ill. App. 3d at 252, 228 Ill. Dec. 733, 689 N.E.2d 1154.

¹ Public Act 89-7 (Pub. Act 89-7, eff. March 9, 1995) partially amended section 13-214.3 by repealing subsection (d). The public act was held unconstitutional in its entirety by this court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997). As of this writing, however, the General Assembly has not addressed our holding in *Best* with regard to section 13-214.3 and the text of that section remains in its form prior to our decision in *Best*.

In the instant case, plaintiff appealed, arguing that the plain language of section 13-214.3(d) indicated that the exception applied to her claim because the section does not draw a distinction between probate and nonprobate distributions. Thus, according to plaintiff, her action was timely, even though she did not file it within the six-year statute of repose embodied within section 13-214.3(c) (735 ILCS 5/13-214.3(c) (West 1994)). The Appellate Court, First District, agreed and reversed, stating:

"The primary inquiry in determining whether section 13-214.3(d) is applicable is whether the injury caused by the act or omission occurred upon the death of the person for whom services were rendered, not the manner in which assets were distributed. Accordingly, where any injury caused by an act or omission does not occur until the death of the person for whom professional services were rendered, section 13-214.3(d) is applicable regardless of whether the assets are subject to distribution through probate proceedings, an inter vivos trust, or some other mechanism." 314 Ill. App. 3d at 827, 248 Ill. Dec. 38, 733 N.E.2d 713.

In order to resolve the conflict between this case and *Zelenka*, we granted defendant's petition for leave to appeal. 177 Ill. 2d R. 315. On appeal to this court, defendant argues that we should follow *Zelenka* for three reasons: (1) by tracking the language of the limitations periods applicable under the Probate Act, section 13-214.3(d) indicates that it only applies to claims arising out of the distribution of assets under the Probate Act; (2) the legislative history of section 13-214.3(d) indicates that the General Assembly intended solely to address probate distributions; and (3) application of section 13-214.3(d)'s limitation period to assets passing by way of an inter vivos trust could lead to an absurd or unjust result. We decline to follow *Zelenka* and affirm the decision of the appellate court below.

ANALYSIS

The interpretation of a statute is a question of law, subject to de novo review. *Yang v. City of Chicago*, 195 Ill. 2d 96, 103, 253 Ill. Dec. 418, 745 N.E.2d 541 (2001). The fundamental principle of statutory construction is to determine and give effect to the intent of the legislature. *In re Estate of Dierkes*, 191 Ill. 2d 326, 331, 246 Ill. Dec. 636, 730 N.E.2d 1101 (2000). The best means of determining legislative intent is through the statutory language. *In re Application of the County Collector of Du Page County for Judgment for Delinquent Taxes for the Year 1992*, 181 Ill. 2d 237, 244, 229 Ill. Dec. 491, 692 N.E.2d 264 (1998). When the meaning of a statute is not clearly expressed in the statutory language, a court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy. *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 81, 196 Ill. Dec. 655, 630 N.E.2d 820 (1994). When the language of an enactment is clear, it will be given effect without resort to other interpretative aids. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504, 247 Ill. Dec. 473, 732 N.E.2d 528 (2000); *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184-85, 237 Ill. Dec. 769, 710 N.E.2d 399 (1999); *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 375-76, 227 Ill. Dec. 560, 687 N.E.2d 1042 (1997), quoting *Barnett v. Zion Park District*, 171 Ill. 2d 378, 389, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

We believe the language of section 13-214.3(d) unambiguously supports its application to all cases when the alleged injury caused by the attorney's act or omission does not occur until the death of the person for whom the professional services were rendered. There is no language limiting such actions to those that involve assets distributed through probate proceedings or excluding actions that involve nonprobate distributions of assets. Therefore, under the statute a plaintiff has two years to

file a claim unless letters of office are issued or the will is admitted to probate. 735 ILCS 5/13-214.3(d) (West 1994).

If one of these two events occur during the two-year period following the death of the client, any action must then be commenced in accordance with time limitations set out in the Probate Act. Specifically, the applicable time limit is no later than the time for filing claims against the estate (*see* 755 ILCS 5/18-3 (West 1994)) or the time for filing a petition contesting the validity of the will (*see* 755 ILCS 5/8-1(a) (West 1994)). A claim against the estate may be filed on or before the date stated in the publication notice. 755 ILCS 5/18-3 (West 1994). That date shall not be less than six months from the date of the first publication or three months from the date of mailing or delivery of the notice. 755 ILCS 5/18-3 (West 1994). Alternatively, a petition contesting the validity of a will must be filed within six months of its admission to probate. 755 ILCS 5/8-1(a) (West 1994).

Conversely, if neither of these events occur within the two-year period, a plaintiff has the full two years from the date of the death of the client to file her claim. 735 ILCS 5/13-214.3(d) (West 1994). Thus, the lone inquiry made by a court when determining whether section 13-214.3(d) is applicable is simply whether the injury caused by the malpractice occurred upon the death of the client. The manner of distributing the decedent's assets is of no consequence.

If the legislature intended to limit the application of section 13-214.3(d) as defendant asserts, it certainly could have expressly limited the Act to probate distributions or by expressly excluding nonprobate distributions. We are not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 149 Ill.

Dec. 286, 561 N.E.2d 656 (1990). Moreover, because the language of section 13-214.3(d) is unambiguous, it was improvident for the appellate court to look beyond the language of the statute to the legislative history. See *Michigan Avenue National Bank*, 191 Ill. 2d at 504, 247 Ill. Dec. 473, 732 N.E.2d 528; *Davis*, 186 Ill. 2d at 184-85, 237 Ill. Dec. 769, 710 N.E.2d 399; *Epstein*, 178 Ill. 2d at 375-76, 227 Ill. Dec. 560, 687 N.E.2d 1042. Accordingly, we need not and do not address defendant's argument concerning the legislative history.

Finally, defendant argues that applying section 13-214.3(d) to all attorney malpractice cases, irrespective of the means of distributing decedent's assets, could lead to an absurd or unjust result. He contends that the limitation period will actually be shortened in some cases by application of the section 13-214.3(d) exception to the statute of repose. We cannot, however, ignore the plain language of a statute based on conjecture. The possibility of an unjust or absurd result is generally not enough to avoid the application of a clearly worded statute. We apply the rule of construction urged by defendant when an ambiguity exists in the statute's language. No ambiguity exists here. As we stated in *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 243 Ill. Dec. 224, 723 N.E.2d 256 (1999):

"Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise. [Citations.] Such consequences can be avoided only by a change of the law, not by judicial construction." *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 557, 243 Ill. Dec. 224, 723 N.E.2d 256 (1999), quoting *People ex rel. Pauling v. Misevic*, 32 Ill. 2d 11, 15, 203 N.E.2d 393 (1964).

CONCLUSION

It is the dominion of the legislature to enact laws and it is the province of the courts to construe those laws. We can neither restrict nor enlarge the meaning of an unambiguous statute. Section 13-214.3(d) unambiguously applies in all cases when the alleged injury caused by the malpractice does not occur until the death of the client, regardless of whether the deceased client's assets are distributed by probate, inter vivos trust, or some other mechanism. Accordingly, we affirm the judgment of the appellate court.

Affirmed.