The Functions of Principle as the Basis of Court Decision in Hard Cases

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Abstract
The task of court is to produce just decisions. A court decision may be just if it coheres moral. Principle is praxis of moral. This article is to articulate that principle has significant meanings in court’s decisions. This is because principle is a moral standard that serves to be a reference for Court to settle hard cases equitably. In this writing, case approach is employed. In addition, it also uses comparative approach, in which court decisions of different countries are presented. The purpose of using comparative approach is to find similarities in referring to principle despite different jurisdictions and even different legal systems. From this study, it is found that principle may serve four functions to the court to reach equitable decisions. First, it may be a legal basis for the court to settle a case equitably in the absence of legal rule. In fact, not all human conducts are prescribed by law. It is frequently presumed that what is not prohibited is permitted to do. In this study, it is found that what is not forbidden is not necessarily permissible. The corner stone of determining whether or not it is permissible is principle. In this case, principle served to be legal basis directly applied by the court to avoid producing unjust judgment. Second, the principle has the derogatory function to supersede a statutory provision. In this case, applying such a provision may result in decision contrary to moral. This, certainly, contradicts the idea of the establishment of court of justice. It is justified, therefore, referring to the principle, the court supersedes such a statutory provision to bring about a just decision. Third, the principle serves to be a basis for the court to interpret obscure statutory provision governing the case. It is not unusual that statutory provision is obscure or ambiguous. Such a provision is hard to understand. Settling the case governed by such a provision appropriately, the court should interpret the provision sensibly.

Keywords: Principle; Basis; Moral; Decision.

Introduction
Principle plays essential roles for courts to settle hard cases. Such cases are not easily decided because of four reasons. First, there is no rule governs the case. In fact, it is not unusual that statutory provision is not available for the case. Faced
with such a situation, judge, who handles the case, may apply principle directly to resolve the case. Relying on the principle, court may send decision notwithstanding the absence of legal rules. Second, application of statutory provision available to the case will result in inequitable settlement. In this kind of situation, judge shall weigh either applies the provision to the case for the sake of legal certainty at the expense of equitability or supersedes the provision to reach equitable decision. Since the idea of trial is to reach equitable decision, judge is justified to rely upon equitability principle and at the same time supersed the provision to settle the case equitably. In that case, the principle serves to be the derogatory function. Third, rule over the case is obscure or ambiguous. Handling such a case, judge shall interpret the provision in order to decide the case appropriately. The interpretation should be based on principle that leads to equitable decision. Last, reliance upon textual wordings of the rule will not produce justice. In such a case, court may rely upon principle or idea behind the provision. In fact, it is an interpretative work of judge.

This article is to articulate court’s reliance on principle to reach decision appropriately. Comparative approach is employed in this writing. Hard cases decisions of different jurisdictions, therefore, are presented to find out the way judges rely upon principle to resolve them. It is found that court relied upon principle as a basis for deciding the case at hand equitably when there is no available rule provided for the case. In the event that applying statutory provision concerning the case will result in injustice, court supersed the rule and referred to equitability principle to settle the case righteously. Then, handling case upon which applicable rule is obscure or ambiguous, it is found that court based on equitability principle meticulously interpreted the rule to get a clear-cut meaning of the provision to decide the case properly. Finally, the court should find principle behind the text of statutory provision to reach equitable decision since applying the text plainly will result in unequitable decision.

The discussion of this essay begins with the notion of principle. In this part, it is discussed definitions of principle given by various authors. The second part deals with direct application of principle for settling case. In this discussion, it can be learned
court’s reasoning to settle the case in the absence of statutory provision. The third part discusses court superseded statutory provision for applying it will bring about unjust decision. This work is justified to prevent statutory provision from being manipulated by one who has evil scheme. The fourth part is about court’s interpretation to deal with obscure or ambiguous rule. Sometimes the wordings of provisions are not so clear that the application of which will deviate from law maker intention; consequently, it may make court take inaccurate decision. It is the task of the court to interpret such a rule to reach correct decision. The last part of this article deals with provisions whose wordings when applied strictly will produce injustice. The court, therefore, relies upon principle or basic idea behind the provisions to send just decision.

The Notion of Principle

Whatever the definition of principle, it refers to moral standard. According to Ronald M. Dworkin, principle is a standard to be observed since it is a requirement of justice or fairness or other morality dimension.1 Prior to Dworkin, George Whitecross Paton stated:2

“A principle is the broad reason which lies at the base of a rule of law: it has not exhausted itself in giving birth to that particular rule but is still fertile. Principles, the means by which the law lives, grows, and develops, demonstrate that law is not a mere collection of rules. Through the medium of the principle, law can draw nourishment from the views of the community, for the ratio legis is wide, and deduction from it a particular rule, regard may be paid to the circumstances to which the rule is to be applied”.

The statement indicates that before Dworkin stressed the importance of principle dealing with justice and fairness or other morality dimension, principle has been acceptable in jurisprudence as a fundamental idea upon which legal system is established. Raul Narits, a Professor of Jurisprudence of the University of Tartu stated:3

1 R.M. Dworkin (Ed.), The Philosophy of Law (Oxford University Press 1982).[42].
2 George Whitecross Paton, A Textbook of Jurisprudence, English Language Book Society (Oxford University Press 1972).[236].
3 Raul Narits, ‘Principles of Law and Legal Dogmatics as Methods Used by Constitutional Courts’ (2007) XII Juridica International <https://www.etis.ee/Portal Publication /Display>.[16].
“One of the shortest definitions could be “very important general rules”. Yet, not everybody understands why that is the case. One explanation is that principles of law have to do with values. Another opinion is that the importance of principles stems from their bond to the idea of law, the most important component of which is justice”.

After identifying some meanings of principle, Jordan Daci summed up that principle is the collectivity of moral or ethical standards or judgments. As a matter of fact, under no circumstances is law separated from morality.

According to H.L.A. Hart, it was John Austin, the founder of legal positivism who separated law from morality. In fact, prior to Austin, jurisprudence was treated merely a branch of moral theory or political theory. In his work The Concept of Law, Hart identified that Legal Positivism does not include morality or justice into the criteria of legal validity. Hart himself tried to refer to morality when he introduced rule of recognition in the legal system. In his idea, legal system is different from other normative systems, in that it consists of primary rules and secondary rules. According to Hart, primary rules are standards of behavior which restrict certain actions or impose certain duties to perform services or make contributions to common life. Secondary rules are rules that create procedures through which primary rules can be introduced, changed or enforced. Secondary rules can be thought of as rules about the rules.

The secondary rules are supplemented to primary rules because the primary rules have three defects. First, the primary rules are uncertain since there is neither authoritative text nor officials to be referred if doubts arise about the essence and scope of the rules. Second, the rules are static since there is no means to introduce new rules for new circumstances. Last, there is no special agency to administer

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4 Jordan Daci, ‘Legal Principles, Legal Values and Legal Norms Are They the Same or Different?’ [2010] Academicus International Scientific Journal <http://www.academicus.edu>.[110].
5 Wayne Morrison, Jurisprudence from the Greeks to Post-Modernism (Cavendish 1998).[224].
6 Stanford Encyclopedia of Philosophy, ‘John Austin’<https://plato.stanford.edu/entries/austin-john> accessed 27 December 2020.
7 Hart H.L.A., The Concept of Law (Oxford University Press 1997).[185].
8 ibid.[91].
9 ibid.[94].
sanction in case of rule violation.  

According to Hart, there is a remedy for each defect. The remedy for the uncertainty of primary rules is what Hart introduced as rule of recognition. Rule of recognition provides both private persons and officials with authoritative criteria for identifying primary rules of obligation. It is rule of recognition that provides criteria for the validity of a rule. The validity, however, does not deal morality. Hart did not explain how the criteria make the rule valid.

In fact, it was Lon L. Fuller who firstly identified that Hart is a positivist. According to Fuller, Hart did not refer to morality as the foundation of law. Instead, Hart concluded that foundation of legal system is certain “fundamental accepted rules specifying the essential lawmaking procedures”. Then, Stephen Perry commented on Hart’s foundation of law. Criticizing Hart’s idea, Stephen Perry stated that Hart did not give an explanation of how standards of conduct actually are or might be binding for some person or group of persons. In his article, he differentiated the term “norm” from the term “normative”. The term “norm” deals with standard of conduct; while, the term “normative” includes moral obligation. He keenly stated “… For example, all of us are under the moral obligation not to enslave other human beings, but we do not have this obligation, or at least we do not exclusively have it, by virtue of a Hartian social rule or by virtue of any other kind of norm…” Hart, then, does not specify morality as one of criteria provided by the rule of recognition for the validity of law.

In his book The Morality of Law, published in 1964, Fuller entirely disagreed with Hart’s idea. He insisted that there should be morality in law. His idea is in common with Ronald Dworkin’s insistence. Dworkin, however, encountered Hart

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10 ibid.[92-93].
11 ibid.[94].
12 ibid.[100].
13 ibid.[106-109].
14 Lon L. Fuller, ‘Positivism and Fidelity to Law: A Reply to Professor Hart’ (1958) 71 Harvard Law Review.[639].
15 Stephen Perry, ‘Hart on Social Rules and the Foundation of Law: Liberating the Internal Point of View’ (2006) 72 Fordham Law Review <https://ir.lawnet.fordham.edu/flr>.[1175].
16 ibid.[1175-1176].
17 ibid.
18 L. Fuller, The Morality of Law (Yale University Press 1973).[133].
more aptly. He asserted the importance of principle for resolving hard cases to reach
decision based on moral instead of being based on statutory provisions.

**Direct Application of Principle**

Distinguishing principle from rule, Dworkin presented a unique case Riggs v Palmer, which is also called Elmer case.\(^{19}\) In that case, the plaintiffs, Mrs. Riggs and Mrs. Preston, the daughters of Francis B. Palmer, sought to invalidate the will of their father that gave Elmer E. Palmer, grandson to the testator, a bulk of estate. The plaintiffs, on the contrary, were given small legacies. The testator at the date of his will owned a farm and considerable personal property. The petition was filed with the court because Elmer has murdered the testator by poisoning the old man. Elmer committed the murder because he worried that his grandfather might change the will. In fact, the old man had a new wife, Mrs. Bresee with whom before his marriage he entered into an ante-nuptial contract in which it was agreed that, in lieu of dower and all other claims upon his estate in case she survived him, she should have her support upon his farm during her life, and such support was expressly charged upon the farm.

The plaintiffs argued that allowing Elmer to inherit under the will would give Elmer benefit from the crime he has committed. Elmer was sentenced for murder. However, there was no statute under either probate or criminal law that invalidated the will that gave him estate based on his role in the murder.

The court ruled in favored of the plaintiffs. Judge Robert Earl who delivered majority opinion of the court wrote: “The principle which lies at the bottom of the maxim, volenti non fit injuria (to a willing person, no injury be done’), should be applied to such a case, and a widow should not, for the purpose of acquiring, as such, property rights, be permitted to allege a widowhood which she has wickedly and intentionally created”. The reason of the court was the principle of universal law and maxims would be violated by allowing Elmer to profit from his crime.

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\(^{19}\) Ronald Dworkin, *Taking Rights Seriously* (Duckworth 2009).[23].
The decision indicates that the absence of rule makes court directly refer to principle as the basis of its judgment if the case deals with morality. The court set a frame for forbidden act notwithstanding the absence of written rule. The frame is moral and appropriateness. From the decision, it can be inferred that something that is not expressly prohibited by law does not necessarily mean it is permissible.

**Derogatory Function**

In its derogatory function, principle may supersede provision.\(^{20}\) The principle may be relied upon by the court because applying the provision will bring about injustice. This is contrary to the function of the court, which is the forum for the disputing parties to seek justice. Justice is manifestation of moral. Principle is praxis of moral. Relying upon principle signifies that moral supersedes statutory provision. In Dutch Supreme Court decision on December 7, 1990, derogatory function of principle is applied. The case is known as the onwaardige deelgenoot (unworthy spouse). It is about the marriage of a man of 39 years old and a widow who was 72 years old without prenuptial agreement.

On September 29, 1983, Mrs. Dorothea van Wylick, a widow of 72 years old married her butler, who was 39 years old whose name is Lodewijk. Lodewijk has been her nurse for many years, and over the years a relationship of trust has developed between the two. After the marriage, Lodewijk remained taking care of the lady. There was no prenuptial agreement entered into by the couple. Lodewijk had nothing; while, Mrs. Van Wylick is affluent. Five weeks after the wedding day, on November 5, 1983 Mrs. Van Wylick passed away. It was known that she consumed soup with too much pepper intentionally provided by her husband even though he knew that Mrs. Van Wylick was not allowed to consume pepper. Lodewijk, then, was sentenced to imprisonment for a certain time for premeditated murder.

He, however, claimed his right of his jointly-marital property because the wedlock was held without prenuptial agreement. In the petition, he referred to article

\(^{20}\) H.S. Taekema et al, *Recht in Context* (Boom Juridische Uitgevers 2011).[99].
1:100 (1) of Civil Code concerning Persons and Families. The provision specifies:

“The spouses have an equal share in the dissolved community of property, unless provided otherwise by a prenuptial agreement or by an agreement concluded between the spouses in writing with a view to the imminent dissolution of the community of property other than by death or as a result of termination prenuptial agreement”.

According to Mrs. Van Wilick’s family, the convict is undeserved to get any portion of Mrs. Van Wylick’s assets because he has murdered her. The lawyer of the family argued that it is the fact that Mrs. Van Wylick died shortly after the wedding is indeed relevant. Lodewijk was recently convicted of the murder of Mrs. Van Wylick. It would be unfair, therefore, if Lodewijk got the money. It was supposed that Lodewijk married Mrs. Van Wylick for getting her money. It should be taken into account that Lodewijk made a homosexual relationship with someone else. Furthermore, the family’s lawyer gave the fact that Lodewijk still kept such a relationship when he married Mrs. Van Wylick. According to the lawyer, based on the fact, it is contrary to the general principle of law if Lodewijk is entitled to get money from someone he has murdered. It would also be contrary to the reasonableness and fairness that is offensive to the sense of justice.

Unfortunately, the family’s lawyer, however, failed to argue that article 1:100 (1) of Civil Code is inapplicable to the marriage. The validity of the law served to be a point of departure for Lodewijk’s lawyer to insist that Lodewijk has the right to get his part. Pursuant to the provision, after entering into a marriage in community of property, a community of property is created and both persons are entitled to their share, even if one regrets and even if one gets a divorce. Lodewijk’s lawyer stated further that Lodewijk has a universal human right to a private life and everyone is equal before the law. It is not significant, therefore referring to the fact that there was a great age difference, that there was a great financial difference between the two, and that Lodewijk had a homosexual relationship.

In fact, there is no statutory provision prohibits Lodewijk to get the money. Applying the provision, however, will be contrary to moral. As a result, on December 7, 1990, the Dutch Supreme Court decided that Lodewijk is undeserved
to get Mrs. Van Wilick’s wealth. The basis of the decision is not statutory provision but reasonableness and fairness.

Obviously, referring to reasonableness and fairness, the Dutch Supreme Court superseded article 1:100 (1) of Civil Code. The decision signifies that when application of provision may bring about injustice, the court may refer to the principle to produce justice. This is the derogatory function of principle. The second case depicting the derogatory function of principle is Küçükdeveci v Swedex. In this case, the Dusseldorf Higher Labor Court asked the European Court about applicability of article 622 paragraph (2) of the German Civil Code presumed as containing discriminatory provision. There are two significant things derived from the case. First, in case of contradiction between statutory provision and general principle of Community law, the general principle of law shall prevail. Second, the decision of the European Court becomes a case law concerning discrimination.

The case was initiated by Seda Küçükdeveci. Ms. Seda Küçükdeveci was born on February 12, 1978. On June 1996, when she was 18 years old, she worked with Swedex. After about ten years’ service, on December 19, 2006 she was informed that she would be dismissed by the employer. The job termination was effective since January 31, 2007. The employer gave her notice period based on article 622 paragraph (2) of the German Civil Code. The article prescribes:

(1) The employment relationship of an employee can be terminated with due observance of a period of four weeks starting on the 15th day or at the end of calendar month.

(2) In the event of dismissal by the employer, the notice period is, if the employment relationship in the company or enterprise:
   a. has lasted two years, is one month to the end of a calendar month;
   b. has lasted five years, is two months to the end of a calendar month;
   c. has lasted eight years, is three months to the end of a calendar month;
   d. has lasted ten years, is four months to the end of a calendar month.

When calculating the duration of the work, periods of work completed by the employee before reaching the age of 25 years are not counted.

In fact, Ms. Küçükdeveci entered into the service before 25 years. Consequently, notwithstanding her ten-year service, pursuant to the article, she got only one month’s notice period. Alleging that article 622 (2) of the German Civil Code
containing discrimination provision, which is contrary to European Community law, she filed a lawsuit with the Monchengladbach Arbeitsgericht (Labor Court). She argued that she should be given at least a four-month notice period. The court granted her petition. Swedex appealed and the case was brought before the Dusseldorf Landesarbeitsgericht (Regional Higher Court whose jurisdiction is to settle labor dispute).

Facing the case, the Higher Labor Court asked two questions to European Court. First, whether a notice period that takes into account years of service 25 years is contrary to primary EC law or Directive 2000/78/EC. Second, whether article 622 (2) of the German Civil Code violates European Community law. In answering the first question, the European Court determined that general principle of non-discrimination shall be the basis for reviewing 622 (2) of the German Civil Code. According to the Court, Directive 2000/78/EC should be seen as a concrete expression of the general principle of non-discrimination on the basis of age, which is rooted in various international instruments, the common international traditions of Member States and the Charter of Fundamental Rights of the European Union. The European Court viewed that article 622 (2) of the German Civil Code containing discrimination provision, which is contrary to Directive 2000/78/EC. According to the European Court, however, the directive may not be applicable directly by the national court. Since directive is a concrete expression of the general principle of non-discrimination on the basis of age, then the European Court answered the second question that the national court should rely upon the general principle of discrimination. Consequently, article 622 (2) of the German Civil Code containing discrimination provision is inapplicable due to contrary to general principle of non-discrimination. Relying upon the general principle of discrimination, article 622 (2) of the German Civil Code is superseded.

Vagueness Doctrine

It is possible that the meaning of statutory provision is vague. Such a rule may lead to legal uncertainty. If such a provision is under the realm of criminal law, it
may on the one hand make people confuse about what behavior is prohibited, and on the other hand, lead to arbitrary enforcement by law enforcers. According to Carissa Byrne Hessick, since 1914, the United States Supreme Court has insisted that the Due Process Clause requires that a criminal statute “clearly define the conduct it proscribes. Using the vagueness doctrine, the Court strikes down or significantly limits a criminal statute.” By the same token, Emily M. Snoddon states that this doctrine permits the Court to strike down legislation that violates due process because it either (1) fails to give “a person of ordinary intelligence fair notice of what is prohibited”, or (2) is not standard, by which it authorizes or encourages seriously discriminatory enforcement.

Dealing with vague law, two United States Supreme Court decisions are presented in this article, Skilling v United States and Johnson v United States. In both cases, the Court did not invalidate the vague statutory provisions; instead, it did not apply the vague rules to individual cases. The difference between invalidating a rule and not applying the rule is when a rule is invalidated, it will not be applicable for the future case; while, not applying the rule means that the rule is not applied to the case but it may be applicable for the future case. Handling cases to which vague provisions are applied, the Court referred to principle, especially in these two cases, that is developed in criminal law.

Skilling v United States was decided on June 24, 2010. Jeffrey Skilling, who was Chief Executive Officer of Enron Corporation from February until August 2001, was charged with inter alia conspiracy to commit “honest-services” wire fraud. He was indicted as to have violated 18 U.S.C. §§ 371, 1343, 1346 by depriving Enron and its shareholders of the intangible right of his honest services. After a 4-month trial, the jury found that Skilling guilty of 19

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21 Carissa Byrne Hessick, ‘Vagueness Principle’ (2017) 48 Arizona State Law Journal <https://arizonastatelawjournal.org/wp-content/uploads/2017/03/Hessick_final.pdf>. accessed on February 13, 2021.

22 Emily M. Snoddon, ‘Clarifying Vagueness: Rethinking the Supreme Court’s Vagueness Doctrine’ (2019) 86 The University of Chicago Law Review 2302 <https://lawreview.uchicago.edu/sites/Snoddon_Clrifying/Vagueness.pdf>.

23 ibid.[2304-2305].
counts including conspiracy to commit honest-services fraud. Skilling appealed to the Fifth Circuit. Regarding honest-services fraud charge, he alleged that the jury improperly convicted him of conspiracy to commit honest-services wire fraud. Skilling also argued that the honest-services should be invalidated as unconstitutionally vague. The Court of Appeal, however, rejected his argument. Moreover, the court did not address Skilling’s argument concerning the vagueness of the statute.

Skilling, then, appealed to the US Supreme Court. According to the Court, section 1346 is properly confined to cover only bribery and kickback schemes. Skilling was charged with conspiracy to commit honest-services wire fraud. He was not charged with bribery and kickback. Consequently, it does not fall within the Court’s confinement of section 1346 proscription.

Responding Skilling’s claim that section 1346 is unconstitutionally vague in context, the Court needed to review the origin and subsequent application of the honest-services doctrine. Having learned a series of decisions, the Court found that Congress intended §1346 to reach at least bribes and kickbacks. Because reading the statute to proscribe a wider range of offensive conduct would raise vagueness concerns, the Court holds that §1346 deals only with bribery and kickback. The Court also found that there is no consensus in interpreting section 1346 concerning honest-services fraud. Dispelling doubt, the Court relied upon principle that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity”.

The Supreme Court reasonably limited construction of section 1346 deals only with bribery and kickback. Skilling was charged with conspiring to defraud Enron’s shareholders by misrepresenting the company’s fiscal health to his own profit, it was never alleged that he solicited or accepted side payments from a third party in exchange for making these misrepresentations. The indictment, therefore, alleged three objects of the conspiracy-honest-services wire fraud, money or-property wire fraud, and securities fraud. The allegation did not deal with bribery and kickback. Consequently, the Supreme Court decided that Jeffrey Skilling did not violate § 1346.
The second case dealing with vague rule is US Supreme Court decision on June 26, 2015 on Johnson v United States. In this case, Samuel Johnson pleaded guilty to being a felon of possessing a firearm in violation of section 922 (g). In fact, he was a felon with a long criminal record. Having monitored him since 2010, the Federal Bureau of Investigation found that he was involved in a white-supremacy organization, which was suspected by the FBI as planned to commit acts of terrorism. In the investigation, Johnson told undercover agents that he had manufactured explosives and that he planned to attack “the Mexican consulate” in Minnesota, “progressive bookstores”, and “liberals”.

The plea of guilty made by Johnson made the Government ask for an enhanced sentence under the Armed Career Criminal Act (ACCA), which imposes an increased prison term upon the defendant with three prior convictions for a “violent felony”, § 924 (e) (1), a term defined by § 924 (e) (2) (B)’s residual clause to include any felony that “involves conduct that presents a serious risk of physical injury to another.” The Government alleged that Johnson’s previous offenses—including unlawful possession of a short-barreled shotgun-qualified as violent felonies. The District Court held that residual clause covers unlawful possession of a short-barreled shotgun and sentenced Johnson to a 15-year imprisonment under ACCA. The Eight Circuit affirmed (per curiam).

The US Supreme Court, however, held that imposing an increased sentence under ACCA’s residual clause violates due process. The Court, then, reversed the Eight Circuit decision. Four reasons were presented by the Court to support its decision. First, the Government violates the Due Process Clause when it takes away someone’s life, liberty, or property under a vague criminal law because the law does not give ordinary people fair notice of the punished conduct on the one hand, and it makes arbitrary enforcement on the other hand. If a court decided the residual clause covers a crime, the court would envisage the kind of conduct that the crime involves “the ordinary case” and to judge whether that abstraction presents a serious potential risk of physical injury. Second, tying the judicial assessment of risk to a judicially imagined “ordinary case” of crime rather than to real fact or statutory elements
makes the clause leave grave uncertainty about how to estimate the risk posed by a crime. The uncertainty will produce more unpredictability and arbitrariness than the Due Process Clause tolerates. Third, in this case, it was measured the riskiness of an idealized ordinary case of crime instead of the riskiness of an individual’s conduct on a particular occurrence. Fourth, experience shows clearly about the unavoidable uncertainty and arbitrariness of adjudication under the residual clause.

**Principle Behind the Text**

To reach equitable decision, the Court may not strictly rely upon the textual wordings of statutory provision. Rather, it broadly interprets the text to find the intention of lawmaker. It is possible that a subject matter is not explicitly covered by the text of the provision because when the statute was enacted, the subject matter was not manifest. In principle, however, the subject matter is also the essence of the provision. The principle is the basis of settling the case equitably.

This is the case about discriminatory treatment against homosexuality. The case is Bostock v Clayton County, Georgia, which was decided by the United States Supreme Court on June 15, 2020. It was Gerald Bostock, a child welfare advocate of Clayton County, who initiated the case. He was fired by his employer of being homosexual. He sued his employer, alleging sex discrimination under Title VII of the Civil Right Act of 1964.

As a child welfare advocate, Bostock made Clayton County win national award for its work. After working with the county for a decade, he began participating in a gay recreational softball league. Not long after his participation in the league, influential members of the community made comments that lowered Bostock’s reputation about his sexual orientation. His conduct was considered unbecoming a county employee. He was, therefore, fired from his job.

He brought the suit under Title VII of the Civil Right Act of 1964 alleging unlawful discrimination on the basis of sex. Title VII makes it “unlawful ... for
an employer to fail or refuse or to discharge any individual, or otherwise to
discriminate against individual ... because of such individual’s race, color, religion,
sex, or national origin.” The employer did not challenge that the employee was fired
because he is homosexual. The dismissal, however, according to the employer does
not violate Title VII of the Civil Right Act of 1964.

The employer argued that in a daily conversation the plaintiff was fired
for being gay not because of sex. According to the employer, intentional
discrimination based on homosexuality or transgender is not intentional
discrimination based on sex. Such an argument is the basis for the employer to
avoid Title VII of the Civil Right Act of 1964 liability. The employer stressed
that the concepts of homosexuality and transgender status are different from
the concept of sex. The defendant argued further that if Congress wanted to
address these matters in Title VII, it would have referenced them specifically.
The Bostock’s suit went to Eleven Circuit. The Court held that firing employee
based on his gay status does not violate Title VII of the Civil Right Act of 1964.
Consequently, the case should be dismissed.

The case, then, went to the US Supreme Court. Handling the case, the Court
learnt about the time when the statute adopted. The law was adopted in 1964. It is
necessary for the Court to examine the key statutory terms. The employer stated
that the term “sex” in 1964 referred to the status as male or female determined by
reproductive biology. While, the plaintiff argued that even in 1964 the term bore
a broader scope that does not only deal with anatomy but also includes gender
identity and sexual orientation.

As the point of departure of its analysis, the Court assumed that the employer
referred the term “sex” to biological distinction between male and female. The
Court, however, stated that the question is not just what “sex” meant but what Title
VII of the Civil Right Act of 1964 says about it. According to the Court, the statute’s
message for the case is simple and momentous. It is impossible to discriminate
against a person for being homosexual or transgender without discriminating against
that individual based on sex. Imagine an employer who has a policy of firing any
employee who is found homosexual. The employer hosts an office holiday party and invites employees to come with their spouses. An employee makes it and introduces a manager to Susan, the employee’s wife. Imposing policy of firing homosexual employee, the employer will fire employee whose wife is Susan if that employee is a woman. Obviously, the ultimate goal of such a policy is to discriminate a person on the basis of sexual orientation.

Furthermore, the Court stated that Title VII of the Civil Right Act of 1964 does not deal with male and female. Instead, the law deals with individual employee. The Court agreed that homosexuality and transgender are distinct concept of sex. As a matter of fact, however, that discrimination based on homosexual or transgender status necessarily entails discrimination based on sex: the first cannot happen without the second.

According to the Court, since its enactment, Title VII of the Civil Right Act of 1964 prohibits all forms of discrimination based on sex. The Supreme Court held that in Title VII of the statute, Congress adopted broad language making it illegal for an employer to rely upon employee’s sex when deciding to fire that employee. The Court concluded that an employer who fires an employee for being gay or transgender defies law. Consequently, Eleventh Circuit judgment that dismissed Gerald Bostock’s suit is reversed. It can be inferred, therefore, that principle behind the wordings prevails over the text.

**Conclusion**

Principle is a moral standard that should be observed by Court to reach equitable decisions. It has been acceptable in jurisprudence as a fundamental idea upon which legal system is established. When Court faces hard cases, it will rely upon the principle to reach equitable decisions. The absence of legal rule does not prevent the Court from reaching equitable decision. The Court may apply the principle directly as the basis of deciding the hard case equitably. The Court decision implied that if something is not expressly prohibited by law, it does not mean that it is permissible.
The Court may supersede the governing rule over the case if applying it may result in decision contrary to moral or bring about injustice. The principle, then, is relied upon to produce decision consistent to moral. Principle in this case serves as derogatory function to statutory provision.

Vague rule in criminal law leads to legal uncertainty. It makes on the one hand, people confuse whether or not an act is prohibited and on the other hand, law enforcers’ arbitrariness to apply such a rule. Handling a case dealing with vague rules, the Court relies upon the principle that if there is ambiguity in criminal statutes, the case should be resolved in favor of lenity. If applying textual wordings of statutory provision produces injustice, the Court should find the principle behind the text. The Court may learn the essential idea of enacting the statute. Instead of applying the text plainly, the Court relies upon principle behind the text to reach just decision.

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