NOTES

Demystifying Ambiguous Statutes with the Maxims of Statutory Interpretation: A Closer Look at J.D. Tan, LLC v. Summers

Alexander Kleinberg*

In July of 2001, Division One of the Washington Court of Appeals decided J.D. Tan, LLC v. Summers,¹ a creditors' rights case that turned on the meaning of an ambiguous state statute. In an opinion that is noticeably long on brevity and slight on reasoning, an undivided panel of the court held the statute at issue² was not ambiguous and was not in need of judicial interpretation.³ Because the court mistakenly determined that this convoluted law was not ambiguous, it failed to judicially interpret this statute by applying the maxims of statutory interpretation. Not only did this mistake lead to an erroneous outcome, but it also cost J.D. Tan, LLC approximately $1.8 million, not including attorneys' fees.

* J.D. Candidate 2003, Seattle University School of Law; B.A., University of Washington, 1997. I would like to thank my colleagues at the Seattle University Law Review for their tireless and unyielding devotion to the pursuit of excellence. It has been both an honor and a privilege to work alongside such a talented group of individuals.

2. The statute at issue was WASH. REV. CODE § 6.17.020(3) (2001). This statute pertains to the enforcement of judgments. When the J.D. Tan case was decided, subsection (3) of this statute provided, in relevant part:
   a party in whose favor a judgment has been rendered pursuant to subsection (1) . . . of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued.
3. J.D. Tan, LLC, 107 Wash. App. at 269, 26 P.3d at 1008.
Given the scope of the quandary evidenced by the court's holding in J.D. Tan, this Note stresses the need for holding the Washington judiciary accountable for carrying out its duty: the judicial interpretation of statutes that are unequivocally ambiguous. This Note puts forth the J.D. Tan case as an example of how Washington's courts can properly resolve future cases in which the meaning of a law is unclear by applying the maxims of statutory interpretation. Should this occur, good things will happen: patently absurd or unfair results will be diminished, as will societal waste in the form of needless litigation and uncollected debts.

Section I begins with a brief discussion of the maxims of statutory interpretation and an explanation of how courts employ them to determine an enigmatic law's meaning. Section II provides a history of the J.D. Tan case, including a chronicle of the underlying dispute between the principal debtor, William Summers, and the assignee of the judgment holder, J.D. Tan, LLC. Section III explains why the statute at issue in J.D. Tan, RCW 6.17.020(3), was ambiguous when this case was decided, and how this statute was in need of judicial interpretation via application of the maxims of statutory interpretation. Section IV analyzes how the J.D. Tan court could have reached a correct result by interpreting the ambiguous statute through the application of four particular maxims of statutory interpretation. Finally, Section V concludes with a summary of this Note, along with a policy analysis explaining why a court that is faced with an ambiguous statute should proceed in a manner different from the manner chosen by the court in J.D. Tan.

I. THE MAXIMS OF STATUTORY INTERPRETATION

A maxim is a concisely expressed principle or rule of conduct. Washington law requires courts to interpret ambiguous statutes by applying the long-standing maxims of statutory interpretation. The principles governing statutory interpretation have existed for centuries and "capture some of the wisdom of the ages." They "are intended to function as a basis for [judicial] decision making, theoretically elevating decisions above mere result-oriented analysis because the rulings

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appear grounded in a historically tested maxim.” In essence, these principles of statutory construction are designed to provide courts with guidance in situations where the scope or meaning of a statute is unclear.8

II. THE HISTORY OF J.D. TAN, LLC V. SUMMERS

On March 30, 1990, Evergreen Park of Richmond Limited Partnership and Creekside of Kirkland Limited Partnership obtained two money judgments against William Summers and his business partners, James Summers and Darrell Fischer, and against each of their wives.9 The judgments were in the respective amounts of $1,079,071.74 and $673,695.52, totaling almost $1.8 million.10

Within two days after entry of the judgments, William Summers and his partners filed for bankruptcy protection, and the resulting bankruptcy stay provision immediately took effect, barring any collection efforts.11 After pending for over six years, the bankruptcy proceeding was dismissed on August 13, 1996.12 Although his wife was granted a discharge, Summers’ discharge was denied for transferring property with the “intent to hinder, delay, or defraud creditors.”13 According to the bankruptcy proceeding record, Summers had engaged in consummate game playing with his assets for the purpose of retaining those assets for his own use and denying his creditors access to recovery.14

Once a judgment has been entered, Washington law gives the holder of the judgment a period of ten years to enforce payment.15 At the time of the J.D. Tan case, subsection (1) of RCW 6.17.020 read as follows:

Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or

8. See id.
10. Id. at 267, 26 P.3d at 1007.
12. Id.
13. Id.
14. Id.
enforcement of the judgment at any time within ten years from entry of the judgment.\textsuperscript{16}

On February 11, 2000, less than two months before the expiration of the ten-year execution period, the two judgments entered in favor of Evergreen Park and Creekside were assigned to Judgment Services, a collection agency.\textsuperscript{17} Judgment Services obtained a court order on February 17, 2000, that extended the judgments for an additional ten years pursuant to RCW 6.17.020(3). It is at this point where the trouble began.

The court provided Judgment Services with the additional ten-year execution period that is available to judgment holders under RCW 6.17.020(3).\textsuperscript{18} However, at this time the statute did not specifically name assignees as parties that were afforded this right of extension. Instead, subsection (3) read in relevant part as follows:

\textit{[A] party in whose favor a judgment has been rendered pursuant to subsection (1) or (4) of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued. . \textsuperscript{19}}

Several months after the judgments were extended, Judgment Services assigned them to J.D. Tan, LLC, a collection agency.\textsuperscript{20} J.D. Tan quickly commenced proceedings to enforce the judgments by filing a motion for a temporary restraining order that sought to enjoin the defendants from transferring, encumbering, or disposing of certain assets, pending execution upon the judgments.\textsuperscript{21} The temporary restraining order was granted; at this time J.D. Tan also moved for an order to show cause why the temporary restraining order should not be converted to a preliminary injunction.\textsuperscript{22} About one month later, following a show cause hearing, J.D. Tan’s request for a preliminary injunction was denied when the trial court held that an assignee had no authority to extend a judgment beyond its original ten-year term under RCW 6.17.020(3).\textsuperscript{23} The court reasoned that the Legislature’s omission of the words “or the assignee” in subsection (3) was not “a

\begin{itemize}
\item \textsuperscript{16} Id. (emphasis added.)
\item \textsuperscript{17} J.D. Tan, LLC, 107 Wash. App. at 267, 26 P.3d at 1007.
\item \textsuperscript{18} Id.
\item \textsuperscript{19} WASH. REV. CODE § 6.17.020(3) (Emphasis added).
\item \textsuperscript{20} J.D. Tan, LLC, 107 Wash. App. at 267, 26 P.3d at 1007.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id. at 267–68, 26 P.3d at 1007.
\item \textsuperscript{23} Id. at 268, 26 P.3d at 1007.
\end{itemize}
mere clerical error” that the court had the power to correct.\(^\text{24}\) As a result, the court concluded the statute was not ambiguous and was, therefore, not in need of judicial interpretation.\(^\text{25}\)

Summers moved for a declaratory judgment that would vacate the order of February 17, 2000 and declare the judgments void as a matter of law.\(^\text{26}\) The court granted this motion on June 21, 2000, and J.D. Tan appealed.\(^\text{27}\) On appeal, a panel of three judges held that RCW 6.17.020(3) did not provide assignees the right of extension.\(^\text{28}\) The court further held that the statute was not ambiguous because it could not “reasonably be understood to apply to assignees of judgments as well as to original judgment creditors.”\(^\text{29}\) The court did not address the arguments made by J.D. Tan.\(^\text{30}\)

The conclusion reached by the Court of Appeals in *J.D. Tan* is especially susceptible to criticism given that questions of statutory construction are reviewed de novo, meaning that the reviewing court was not bound by the trial court’s application of the law in the underlying proceedings.\(^\text{31}\)

### III. RCW 6.17.020(3) Was Ambiguous Because It Was Susceptible to at Least Two Reasonable Meanings

Even though assignees were not specifically named in the statute when this case was decided, J.D. Tan’s contention that RCW 6.17.020(3) could be reasonably read to include assignees is persuasive for two reasons.\(^\text{32}\) First, Washington law has long called for the spirit

\(^{24}\) *Id.*  

\(^{25}\) *Id.* at 269, 26 P.3d at 1008.  

\(^{26}\) *Id.* at 267, 26 P.3d at 1007.  

\(^{27}\) *Id.*  

\(^{28}\) *Id.* at 269, 26 P.3d at 1008.  

\(^{29}\) *Id.*  

\(^{30}\) Several of the arguments made by the appellant have been utilized in this Note. In its Opening Brief, Appellant J.D. Tan argued, *inter alia*, (1) that Washington Revised Code § 6.17.020(3) could be plainly understood to refer to assignees; (2) that the statute’s legislative history did not demonstrate a legislative intent to discriminate against assignees; (3) that prior judicial interpretation of the statute compelled the conclusion that the statute applied to assignees; (4) that the rules of statutory construction did not support an unduly restrictive interpretation of the statute; and, in a different vein, (5) that the statute of limitations for the enforcement of the judgments was tolled for at least two years during the pendency of William Summers’ bankruptcy, the result being that the period during which the judgments may be enforced had not yet expired. Appellant’s Opening Brief at 6, *J.D. Tan, LLC* (No. 46848-1-I).  


\(^{32}\) At the time of the court’s holding in *J.D. Tan*, WASH. REV. CODE § 6.17.020(1) provided:  

Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has
of the law to prevail over its letter and for the civil portion of the Revised Code of Washington to be "liberally construed."\footnote{33}{A liberal construction of RCW 6.17.020(3) would have afforded assignees rights that were identical to those enjoyed by original judgment holders.} Moreover, a liberal construction of RCW 6.17.020(3) comports with fundamental tenets of property law, which favors the free alienability of property rights.\footnote{34}{One reason why free alienability of property has long been encouraged is because this policy promotes the efficient utilization of resources.} Construing RCW 6.17.020(3) to include assignees comports with this public policy. The original judgment creditor, who may be unwilling or unable to execute its judgment, could nevertheless obtain redress by selling its judgment to an assignee and cashing out its ownership interest in the debt. As a result, a valuable resource (which in the case of J.D. Tan consisted of two judgments totaling almost $1.8 million) would not go to waste by escaping collection.

J.D. Tan further bolstered its cause when it argued that the plain meaning of RCW 6.17.020(3) rendered the statute applicable to both assignees and original judgment holders alike.\footnote{35}{This result can be reached by dissecting the meaning of the phrase "rendered pursuant to subsection (1)." Furthermore, it is unlikely that the absence of the words "or the assignee" in subsection (3) was the result of a clear intent by the Legislature to deprive assignees of the benefits provided by subsection (3), for there is nothing in the statute's legislative history that supports the existence of a unifying regulatory scheme.} These contentions will be addressed seriatim.

\footnote{33}{Matter of R., 97 Wash. 2d 182, 187, 641 P.2d 704, 707 (1982); see also WASH. REV. CODE § 1.12.010 (2001).}{been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.}
A. Meaning of the “Rendered Pursuant to” Phrase

Courts often enlist the help of a dictionary when interpreting an ambiguous statute. Subsection (3) of RCW 6.17.020 provided that “a party in whose favor a judgment has been rendered pursuant to subsection (1) or (4) of this section may [apply for a ten year extension during which an execution may be issued].” Webster’s New Twentieth Century Dictionary defines render as “to cause to be or become; to make.” Substituting this definition for the word “render” in subsection (3) illustrates how the statute could have been read to have an entirely different meaning than the one given to it by the J.D. Tan court: “a party in whose favor a judgment has been [caused to be] pursuant to subsection (1) or (4) of this section” may apply to the court for a ten-year extension to execute the judgment. This interpretation suggests that an assignee judgment holder can receive the ten-year extension provided by subsection (3) because an assignee judgment holder’s interest in the judgment was “caused to be” pursuant to subsection (1),” for assignees are specifically named in subsection (1) of RCW § 6.17.020. By giving the word “rendered” its plain meaning, it becomes apparent that subsection (3) applied to assignees, because their interests as judgment holders were “caused to be” “pursuant to subsection (1).”

Notwithstanding the contention set forth above, Summers successfully argued that assignees were not within the contemplated class of judgment holders to whom the Legislature sought to convey the right of extension because they were not specifically named in subsection (3). Given that a court must, above all else, search for legislative intent when construing a statute, Summers should not have won this argument.

The Legislature intended to afford assignees all of the rights and protections enjoyed by original judgment creditors, including the right to receive a ten-year extension upon which a judgment may be executed. Assignees were specifically named in subsection (1), and subsection (3) included, in relevant part, the language “a party in whose favor a judgment has been rendered pursuant to subsection (1).”

40. WEBSTER’S, supra note 4 at 1530 (2d ed. 1979).
42. Id.
Moreover, if a statute is susceptible of two interpretations, the one which best advances the overall legislative purpose should be adopted. Because the purpose of RCW 6.17.020 is to enable the execution of judgments, reading subsection (3) to include assignees makes sense. Such a reading advances the purpose of RCW 6.17.020 because this interpretation applies to a broader class of judgment holders; both original judgment creditors and assignees would be protected under this interpretation. 

In addition to advancing the legislative purpose behind RCW 6.17.020, reading subsection (3) to include assignees is the most logical construction of the statute. The phrase "pursuant to subsection (1) . . . of this section" contained in subsection (3) is most logically construed to incorporate the provisions of subsection (1) into subsection (3), which refer to the execution of judgments by an original judgment creditor "or the assignee." Although the words "or the assignee" were absent from subsection (3) when J.D. Tan was decided, it is highly unlikely that this absence was the result of a clear intent by the legislature to deprive assignees of the benefits of subsection (3). This is because the textual differences between subsections (1) and (3) of RCW 6.17.020 were not part and parcel of a single unified statutory scheme.

B. There Is No Evidence that the Legislature Intended to Set Apart Assignees and Original Judgment Creditors Because the History of RCW 6.17.020 Does not Indicate the Presence of a Unifying Regulatory Scheme for Differentiating Between these Classes of Judgment Holders

When analyzing a statute, Washington courts aim to carry out the intent of the Legislature. Because scant evidence exists to prove that the Legislature intended to differentiate between assignees and original judgment creditors, textual differences alone are insufficient to infer a legislative intent to limit the application of subsection (3) to original judgment holders. This is especially true given the absence of a unifying regulatory scheme for differentiating between these classes of judgment holders in the statute's history.

It is clear from its lengthy existence and sporadic amendments that RCW 6.17.020 is not part of a unifying regulatory scheme de-

45. Id. at 722, 669 P.2d at 503.
47. Appellant's Opening Brief at 36, J.D. Tan, LLC (No. 46848-1-I) (emphasis added).
48. Id.
49. Talmadge, supra note 7, at 183 (citing Whatcom County v. City of Bellingham, 128 Wash. 2d 537, 546, 909 P.2d 1303, 1308 (1996)).
signed to differentiate between classes of judgment holders. The statute was originally enacted in 1929, but it was not until sixty-five years later that it was amended to provide for the right to extend a judgment, as is codified in the present subsection (3).50 The present subsection (1) was originally enacted in 1929 as RCW 6.04.020.51 In 1980, that section of the statute was amended to substitute “ten years” for the original six-year period during which a judgment could be collected.52 In 1989, subsection (2) was added,53 providing that “a party who obtains a judgment or order of a court of record of any state, or an administrative order...for accrued child support” may execute at any time within ten years after the eighteenth birthday of the youngest person named in the child support order.54 Additionally, the 1989 amendments modified subsection (1) to include the words “except as provided in subsection (2) of this section.”55 Finally, subsection (3) was added in 1994, and subsection (1) was amended to provide, “except as provided in subsections (2) and (3) of this section...”56

Considering the lengthy history of RCW 6.17.020, along with its sporadic and varying additions and amendments, it is reasonable to believe that the omission of the words “or the assignee” from subsection (3) was mere oversight. Perhaps the draftsmen of subsection (3) believed the phrase “rendered pursuant to subsection (1)” was sufficient to include assignees within the contemplated class of original judgment holders with the right of extension.57 Nevertheless, unless legislative intent is clear, courts should be slow to adopt a construction of a statute that is in derogation of property rights and the state’s power to create them.58 Given these parameters, it is unreasonable to infer from the textual difference alone a legislative intent to limit the application of subsection (3) solely to original judgment holders in what would be a dramatic and unprecedented manner.59

50. Appellant’s Opening Brief at 36, J.D. Tan, LLC (No. 46848-1-I).
51. Id.
52. Id.
53. Id.
54. Id. at 36–37.
55. Id. at 37.
56. Id. (emphasis added).
57. See id. As an aside, this error serves as a prime example as to why lawmakers should strive for the utmost degree of clarity when crafting law in today’s ultra-litigious society.
58. PUD v. Seattle, 382 F.2d 666, 670 (9th Cir. 1967).
59. Appellant’s Opening Brief at 37, J.D. Tan, LLC (No. 46848-1-I).
IV. INASMUCH AS RCW 6.17.020(3) WAS SUSCEPTIBLE TO AT LEAST TWO REASONABLE MEANINGS, IT REQUIRED JUDICIAL INTERPRETATION VIA APPLICATION OF THE MAXIMS OF STATUTORY INTERPRETATION.

The Washington judiciary claims the exclusive power to interpret the acts of the Legislature. When a statute is susceptible to at least two reasonable meanings it is ambiguous, and courts must then resort to an interpretative process to ascertain the Legislature's meaning. The Court of Appeals was duty-bound to judicially interpret RCW 6.17.020(3) by applying the maxims of statutory interpretation. The court failed to discharge this duty because it erroneously concluded that RCW 6.17.020(3) was not ambiguous and not in need of judicial interpretation. This conclusion was beside the mark because subsection (3) could have been reasonably understood to apply to assignees.

Judicial interpretation of RCW 6.17.020(3) could have properly settled the confused legal issues presented by J.D. Tan. Subsection (3) could have been interpreted to both include and exclude assignees from the class of judgment holders that were afforded the right of extension. Because these interpretations directly conflict with one another, the J.D. Tan court should have resolved this tension by ascertaining the Legislature's intent by applying the maxims of statutory interpretation.

Perhaps the greatest difficulty in applying the maxims of statutory interpretation lies not with their actual application, per se, but in choosing which maxims to apply in a given situation. In actuality, there "are literally so many canons of statutory construction, often diametrically opposed to one another, that the courts may pick and choose those canons most favorable to the ultimate disposition the court wishes to achieve." Although there is no bright line rule for determining which maxims should be employed, the facts and circumstances of the case at hand seem particularly well-suited for application of the following four maxims: (1) remedial statutes should be con-

60. Talmadge, supra note 7, at 182.
62. Talmadge, supra note 7, at 184, (citing State v. Wilson, 125 Wash. 2d 212, 216, 883 P.2d 320, 322 (1994) (stating that the court is "ultimate authority" on meaning and purpose of statute)).
64. Talmadge, supra note 7, at 180.
65. Id.
strored in accordance with common law, 66 (2) statutes in derogation of common law rights must be strictly construed; 67 (3) the purpose of an ambiguous statute is to be determined through comparison to other related statutes; 68 and (4) the intent of the Legislature in crafting a statute is of paramount importance in determining its meaning, and it is the role of the judiciary to ascertain that intent. 69

These particular maxims were selected because 6.17.020 is a remedial statute that involves property rights and comes without any helpful legislative history. Each of the maxims listed above will be applied to the facts of J.D. Tan to demonstrate how the court could have reached a correct result had it determined RCW 6.17.020(3) was, in fact, ambiguous.

A. The Maxim “Remedial Statutes Are to be Liberally Construed” Should Have Been Applied Since RCW 6.17.020(3) Is a Remedial Statute Whose Purpose Is to Compensate a Party Who Has Suffered Financial Loss.

A statute is “remedial” when it relates to a practice, procedure, or remedy 70 and does not affect a substantive or vested right. 71 Any doubt as to the meaning of a statute should be resolved in favor of the claimant for whose benefit the act was passed. 72 Statutes providing remedies against either public or private wrongs are to be liberally construed. 73

RCW 6.17.020 is a remedial statute because it relates to procedures for collection of judgments and to remedies available to judg-

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66. Appellant’s Opening Brief at 29, J.D. Tan, LLC (No. 46848-1-1) (citing State v. Douty, 92 Wash. 2d930, 936, 603 P.2d 373, 376 (1979)).
68. Appellant’s Opening Brief at 32, J.D. Tan, LLC (No. 46848-1-1) (citing Ropo, Inc. v. Seattle, 67 Wash. 2d 574, 409 P.2d 148 (1965)).
70. Note how both “procedure” and “remedy” seem to be contained in WASH. REV. CODE § 6.17.020: the procedure is how to apply for the ten-year extension under Subsection (3), and the remedy (concededly more subtle) is the additional time to execute the judgment in order to satisfy the underlying debt.
71. Appellant’s Opening Brief at 29, J.D. Tan, LLC (No. 46848-1-1) (citing Miebach v. Colasurdo, 102 Wash. 2d 170, 181, 685 P.2d 1074, 1081 (1984)).
72. Appellant’s Opening Brief at 29, J.D. Tan, LLC (No. 46848-1-1).
73. Id. (citing State v. Superior Court of Pierce County, 104 Wash. 268, 272, 176 P. 352, 353 (1918)).
ment creditors. Accordingly, it should be construed liberally to promote the purpose for which it was enacted.\textsuperscript{74}

The notion that remedial statutes should be liberally construed has long been embedded in this State’s jurisprudence,\textsuperscript{75} as seen from the Washington Supreme Court’s 1913 decision in Peet v. Mills. The issue in Peet was whether an employee who was injured on the job could sue the president of his corporate employer for negligence.\textsuperscript{76}

Horace Peet was a motorman for the Seattle, Renton & Southern Railway Company.\textsuperscript{77} On what was presumably a foggy day in January of 1912, he was injured in a collision between two railcars.\textsuperscript{78} Peet was unable to sue the railway company because of the recently enacted Workmen’s Compensation Act of 1911, which declared “all civil actions and civil causes of action for such personal injuries . . . [against an employer] are hereby abolished, except in this act as provided.”\textsuperscript{79}

Instead, Peet sued the railway company’s president for negligence and sought to hold him personally liable, alleging that the president had broken his promise to employees that a signal system would be used on foggy days to avert accidents.\textsuperscript{80} Even though the statute explicitly forbade suit only against employers, the court held Peet did not have a cause of action against the president.\textsuperscript{81}

Finding that the Workmen’s Compensation Act of 1911 was a remedial statute, the court reasoned as follows:

\begin{quote}
It is a well-accepted rule that remedial statutes, seeking the correction of recognized errors and abuses in introducing some new regulation . . . should be construed with regard to the former law and the defects or evils sought to be cured and the remedy provided; that in so construing such statutes they should be interpreted liberally, to the end that the purpose of the Legislature in suppressing the mischief and advancing the remedy be promoted, \textbf{even to the inclusion of cases within the reason, although outside the letter, of the statute} . . . \textsuperscript{82}
\end{quote}

\begin{footnotes}
\item[74] Appellant’s Opening Brief at 29, J.D. Tan, LLC (citing State v. Douty, 92 Wash. 2d 930, 936, 603 P.2d 373, 376 (1979)).
\item[75] See, e.g., Peet v. Mills, 76 Wash. 437, 439, 136 P. 685, 686 (1913); Int’l Ass’n. of Firefighters, Local 46 v. City of Everett, 146 Wash. 2d 29, 34, 42 P.3d 1265, 1267 (2002).
\item[76] Peet, 76 Wash. at 438, 136 P.2d at 685.
\item[77] Id.
\item[78] Id.
\item[79] Id. at 439, 136 P. at 686.
\item[80] Id. at 438, 136 P. at 685.
\item[81] Id. at 439, 136 P. at 686 (emphasis added).
\item[82] Id. (emphasis added).
\end{footnotes}
In the case at hand, even if a lingering doubt remained as to the meaning of RCW 6.17.020(3) after the statute’s legislative history (or lack thereof) had been considered, the statute should have been construed in favor of protecting the rights of judgment creditors and their assignees, not those of debtors, because of its remedial nature. In the current setting, it is the judgment creditor, not the debtor, who has been given a remedy. After all, the existence of the judgment itself is per se evidence that the judgment creditor (or its assignee) is entitled to remuneration, whether it is for services rendered, money lent, goods sold, or damages incurred. Therefore, RCW 6.17.020(3) is remedial because its purpose is to provide a remedy to the judgment holder in the form of a ten-year extension during which the judgment can be executed.

The concept that remedial statutes are to be liberally construed also befits the notion of fundamental fairness. Justice is best served by protecting the party who has suffered a loss, and has properly sought redress for its injury by obtaining a legally enforceable mandate for relief in the form of a judgment. Surely it makes more sense to favor the judgment holder over the debtor; to conclude otherwise would sanction the debtor’s use and enjoyment of unwarranted, potentially ill-gotten returns, for which it would not be obligated to make restitution.

B. Statutes in Derogation of Common Law Rights Must Be Strictly Construed.

The J.D. Tan court’s reading of RCW 6.17.020(3) appears to be in derogation of the common law rights of an assignee since the assignee historically “stands in the shoes” of the assignor and takes all of the rights which the assignor had at the time of the assignment.83 For example, in Washington State Bar Ass’n v. Merchants Rating & Adjusting Co., the court held that an assignee of a claim for collection has rights equal to those of the original claimant.84 Washington law requires courts to strictly construe statutes that are in derogation of common law rights,85 and the Legislature’s intent to deviate from the common law will not be found unless it is clearly expressed.86 Moreover, Washington law has long recognized the assignment of judg-

83. Appellant’s Opening Brief at 30-31, J.D. Tan, LLC (No. 46848-1-I).
85. Appellant’s Opening Brief at 30, J.D. Tan, LLC (No. 46848-1-I).
86. Id. (citing McDonald v. Hayner, 43 Wash. App. 81, 84, 715 P.2d 519, 521-522 (1986)).
ments as valuable property rights. Contractual rights, executory contracts, choses in action, and other property rights, including judgments, are freely assignable unless the assignment is expressly prohibited by statute or contract or is in contravention of public policy. Although there is no per se common law right to extend a collection period, there is a longstanding tendency to favor the free alienability of property rights. As such, it is not unreasonable to conclude a policy that favors the free alienability of property also favors the theory that the assignee should enjoy the same rights as the assignor, including the right to a ten-year extension under RCW 6.17.020(3).

Had the court determined RCW 6.17.020(3) was ambiguous, it could have employed an analysis like the one set forth above to conclude the Legislature intended to include assignees within the purview of subsection (3). Instead, the cursory result reached by the Court of Appeals in J.D. Tan had the effect of construing subsection (3) in a manner antagonistic to the common law rights of the assignee. If state law mandates that precedent laid down at common law is not to be departed from in the absence of a clear expression from the Legislature, how can the holding of J.D. Tan, in which a purported assignee is left with something less than the entire “bundle of sticks” be justified? Where can this “clear expression” from the Legislature be found?

Washington law has long held that various types of property rights, including judgments, are freely assignable unless the assignment is expressly prohibited. RCW 6.17.020(1) expressly provides that judgments are assignable. Although RCW 6.17.020(3) did not specifically name assignees at the time J.D. Tan was decided, this provision did not bar them from the class of judgment holders with the right of extension. Application of the maxim at hand to RCW 6.17.020(3) indicates J.D. Tan was wrongly decided; property rights are assignable unless expressly prohibited. Moreover, the Legislature did not express an intent to differentiate between assignees and

87. Appellant’s Opening Brief at 30, J.D. Tan, LLC (No. 46848-1-I) (citing WASH. REV. CODE § 4.56.090).
89. See POSNER, supra note 34, at 10–13.
91. Id.
original judgment holders in either the text of RCW 6.17.020(3), or in the statute’s legislative history.92

C. The Court’s Formal Interpretation of RCW 6.17.020(3) Was Inconsistent with Other Related Statutes, Thereby Contravening the Maxim of In Pari Materia.

Had the Court of Appeals chosen to judicially interpret RCW 6.17.020(3) by applying the maxim of in pari materia,93 it probably would have concluded that section 6.17.020(3) applied to assignees. By examining the numerous other statutes that pertain to the collection of judgments and reading them in the same manner, in pari materia, it becomes clear that none of these statutes discriminate between rights held by assignees and rights held by original judgment holders. One of the fundamental rules of statutory construction is that the interpretation of statutes should be undertaken in such a manner as to harmonize all acts, if possible.94 Washington law boasts many statutes dealing with the collection of judgments that cannot be reconciled with the interpretation of section 6.17.020(3) that is set forth by the Court of Appeals in J.D. Tan.

Of the handful of Washington statutes that pertain to the collection of judgments, none of them discriminates between rights held by assignees and rights held by original judgment holders. To illustrate, RCW 4.56.210(1) provides that a judgment shall cease to be a lien or charge against the estate or person of the judgment debtor after ten years from the date of entry. Subsection (3) of this statute states: “A lien based upon an underlying judgment continues in force for an additional ten year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.” This statute does not differentiate between the original judgment creditor and any subsequent holder of the judgment.95

The same can also be said for RCW 4.56.190, which provides for attachment of a judgment lien to the real property owned by the judgment debtor. This statute further provides that real estate “shall

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92. See Wash. Rev. Code § 6.17.020(3) (2001); S. Rep. No. 55-5827, Regular Sess. (Wash. 1997) (declaring that both state and local government may assign public debts to collection agencies, which shall have the same remedies and powers enjoyed by assignees of private creditors).

93. In pari materia means “[r]elating to the same matter or subject.” In cases of statutory interpretation, the common maxim is that statutes in pari materia are to be construed together. BLACK’S LAW DICTIONARY 318 (Pocket ed. 1996).

94. Appellant’s Opening Brief at 32, J.D. Tan, LLC (No. 46848-1-I) (citing Ropo, Inc. v. Seattle, 67 Wash. 2d 574, 409 P.2d 148 (1965)).

95. Appellant’s Opening Brief at 33, J.D. Tan, LLC (No. 46848-1-I).
be held and bound to satisfy any judgment...for a period not to exceed ten years from the day on which such judgment was entered unless the ten year period is extended in accordance with RCW 6.17.020(3).\textsuperscript{96} There is no requirement that the judgment be held by the original judgment creditor, nor is there any indication the Legislature envisioned different "classes" of judgment holders.\textsuperscript{97}

Similarly, RCW 6.32.010 provides for the right to conduct supplemental proceedings within ten years after the entry of a judgment; this right may be extended pursuant to RCW 6.17.020(3).\textsuperscript{98} Again, the statute neither states nor implies any difference in treatment between original judgment creditors and subsequent judgment holders.\textsuperscript{99} Additional support for this proposition can be found in RCW 6.32.015, which provides for the right of a judgment creditor to obtain an order requiring the judgment debtor to answer interrogatories "within ten years after entry of a judgment." The time period can be extended pursuant to RCW 6.17.020(3).\textsuperscript{100} Nothing in RCW 6.32.015 indicates that an assignee of the original judgment creditor would not be entitled to the rights afforded by the statute.\textsuperscript{101}

Finally, the Legislature did not intend to differentiate between assignees and original judgment holders in RCW 4.16.020, which is a statute of limitation. This statute also refers to the right of extension afforded by RCW 6.17.020(3); like RCW 4.56.210, it does not discriminate between original judgment creditors and subsequent holders of a judgment.\textsuperscript{102} Along these lines, it is noteworthy that a multitude of cases interpreting statutes of limitation stand for the proposal that such statutes should be construed in favor of claimants.\textsuperscript{103} For example, in Shew v. Coon Bay Loafers, Inc., the Washington Supreme Court held that if it is questionable as to which of two statutes of limitation are applicable to a particular situation, the statute providing the longest period is generally applied.\textsuperscript{104}

Had the \textit{J.D. Tan} court applied the maxim of \textit{in pari materia} to RCW 6.17.020(3), it probably would have concluded the Legislature did not intend to differentiate between rights enjoyed by original judgment holders and rights held by assignees. Each of the five stat-

\begin{footnotes}
\footnote{96. \textit{WASH. REV. CODE} \S 4.56.190 (2001).}
\footnote{97. \textit{Id.} at 34.}
\footnote{98. \textit{Id.}}
\footnote{99. \textit{Id.}}
\footnote{100. \textit{Id.}}
\footnote{101. \textit{Id.}}
\footnote{102. \textit{See WASH. REV. CODE} \S 4.16.020 (2001).}
\footnote{103. Appellant's Opening Brief at 33, \textit{J.D. Tan, LLC} (No. 46848-1-I).}
\footnote{104. Shew v. Coon Bay Loafers, Inc., 76 Wash. 2d 40, 455 P.2d 359 (1969).}
\end{footnotes}
utes listed above pertains to the enforcement of judgments, and none of them differentiates between assignees and original judgment holders. Furthermore, the reasoning set forth in Shew seems particularly appropriate given the facts of the case at hand: in instances of uncertainty, claimants, not debtors, should be given the benefit of the doubt because of their valid, legally recognized claims. Courts award judgments in the hope of adequately compensating injured parties; laws providing for this compensation should be used not as debtors’ loopholes for escape, but rather as means for achieving equitable ends.

D. The Court Was Charged with Interpreting RCW 6.17.020(3) in Accordance with the Manifest Intent of the Legislature.

When analyzing an ambiguous statute, the Washington judiciary is obligated to construe the statute so as to effectuate legislative intent.\textsuperscript{105} In so doing, courts are to avoid a literal reading if it would result in unlikely, absurd or strained consequences.\textsuperscript{106} The purpose of an enactment should prevail over express but inept wording.\textsuperscript{107}

Had the J.D. Tan court attempted to interpret RCW 6.17.020(3) by ascertaining the intent of the Legislature, it probably would have concluded that the Legislature intended to provide assignees all of the rights set forth in subsection (3). This interpretation follows from the statute because there is no legislative record indicating what the intent of the Legislature was in drafting the statute, and assignees are not specifically mentioned in the legislative history. The legislative history of RCW 6.17.020(3) indicates that the statute was intended to benefit judgment holders in general. There does not appear to be any intent on the part of the Legislature to differentiate between original judgment creditors and subsequent assignees.\textsuperscript{108} In fact, the initial Bill was conceived and thereafter promulgated almost single-handedly by a large coalition of professional assignees – collection agencies – who were aggrieved by the inflexibility of the ten-year statute of limitations for the enforcement of judgments and who sought relief from its strictures in light of the recurrent problem of certain difficult-to-collect judgments.\textsuperscript{109}

\begin{footnotes}
107. Appellant’s Opening Brief at 38, J.D. Tan, LLC (No. 46848-1-I) (citing Elgin, 118 Wash. 2d at 555, 825 P.2d at 316).
108. Appellant’s Opening Brief at 13, J.D. Tan, LLC (No. 46848-1-I).
109. Id. (citing Declarations of collection agency lobbyists Mark Gjurasic, Kevin Underwood, and Pat Mitchell (emphasis added)).
\end{footnotes}
Although there was no specific mention of assignees at any point in this Bill’s legislative history, there was also no evidence that the Legislature intended to establish two separate classes of judgment creditors with respect to the right to obtain extensions of judgments.\(^{10}\) Remarkably, much evidence exists to the contrary; the assignees’ lobbyists conceived and promulgated the initial bill, which suggests that the Legislature intended to benefit assignees in RCW 6.17.020(3). Moreover, the only individuals who testified on behalf of the Bill were lobbyists representing the collection agency associations.\(^{11}\) One of these key individuals, Kevin Underwood, was an attorney for Allied Credit Companies.\(^{12}\) Mr. Underwood worked closely with the Washington Collectors’ Association Legislative Committee in introducing the Bill, and he testified before both the House and Senate committees in favor of its passage. The following passage is taken from his deposition in the J.D. Tan case:

[The bill] was introduced by the Senate Law and Justice Committee at the behest of a large coalition of professional collection entities whose concern was their ability to enforce certain hard-to-collect judgments assigned to them...by original judgment creditors. There was never, throughout the entire time that this bill was being drafted or considered, any discussion – either by legislative committee members or their staff – of an intent to deprive assignees, as opposed to original judgment creditors, of the ability to avail themselves of the benefit of the proposed statute. To the contrary, the express intent of the bill was to extend the period during which a judgment could be enforced, regardless of whether the party attempting to renew the judgment were the original judgment creditor or a subsequent assignee.

It is safe to say that neither I nor my clients [professional collection entities] would have taken any interest in promoting this bill and in assuring its passage had there been any indication of a legislative intent to “cut us out” of its provisions.\(^{13}\)

Some evidence exists that indicates at least one legislator was aware of the collection agency lobbyists’ interest in passing SB 6045 (SB 6045 eventually became RCW 6.17.020(3)). In a March 4, 1994 memorandum to Senator Adam Smith, legislative staff member Marty Lovinger raised concerns about SB 6045’s provision for a filing fee in

\(^{10}\) Id. at 14.
\(^{11}\) Id. (emphasis added).
\(^{12}\) Appellant’s Opening Brief at 19, J.D. Tan, LLC (No. 46848-1-I).
\(^{13}\) Id.
connection with the extension of a judgment, observing that *collection agencies* (who by definition take judgments by assignment, either outright or for collection purposes) would be among those judgment creditors availing themselves of the benefits of RCW 6.17.020(3).\(^{114}\) While the memorandum between Lovinger and Senator Smith by itself is hardly dispositive, it is a *persuasive indicator* of the legislative intent behind the passage of the bill, especially when considered in connection with the testimony of several collection agency lobbyists who were instrumental in promulgating RCW 6.17.020(3).

Although courts have generally not valued declarations of legislative intent offered by lobbyists,\(^ {115}\) *no* statute, court rule, or case exists that prohibits courts from relying on such evidence if it is deemed reliable, or if no conflicting evidence of legislative intent exists. Perhaps *J.D. Tan* constituted an appropriate instance to consider such evidence, considering both its abundance and its highly persuasive nature.

V. CONCLUSION

The holding of *J.D. Tan* yielded a result that was inequitable to assignees of judgments; assignees were denied rights that were extended to original judgment holders without credible evidence that the Legislature intended this result. The main problem presented by *J.D. Tan* was subsequently remedied by way of a recent amendment to RCW 6.17.020(3) to include the words "or the assignee," whereby lawmakers put an end to the inequity created by the *J.D. Tan* case. However, this kind of measure merely serves as a Band-Aid® or short-term fix to a problem of a grander scale.

Instead of relying on legislative action to clarify ambiguous statutes, the Washington judiciary must be increasingly held accountable for carrying out its duty of interpreting statutes that are undeniably ambiguous. Perhaps this end will materialize through implementation of new court rules, or additional legislation. Regardless of the remedial method employed, avoidance of problems like those seen in *J.D. Tan* will undoubtedly result in substantial societal good: patently absurd or unfair results will be diminished, as will societal waste in the form of uncollected debts and needless litigation.

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114. *Id.* at 15.

115. Talmadge, supra note 7, at 181 (citing W. Telepage, Inc. v. City of Tacoma, 140 Wash. 2d 599, 611, 998 P.2d 884, 891 (2000) (finding that noncontemporaneous understanding of lobbyist as to legislative intent was not reflective of legislature's rationale for enacting law)).
Taken together, the maxims of statutory interpretation strongly suggest that the Legislature did not intend to exclude assignees from the purview of RCW 6.17.020(3) for four reasons. First, RCW 6.17.020(3) is a remedial statute, and remedial statutes should be construed in accordance with common law.\textsuperscript{116} It is hornbook law that the assignee stands in the shoes of the assignor, and enjoys all rights and privileges of the party assigning its interest unless clearly expressed otherwise.\textsuperscript{117} In this case, there is no clear statement anywhere that purportedly limits the assignee's interest.

Second, state law requires civil statutes in derogation of common law rights to be strictly construed.\textsuperscript{118} Moreover, fundamental tenets of property law support a holding that RCW 6.17.020(3) could have been reasonably read to apply to assignees, given that assignees were not expressly excluded therein. One reason why the free alienability of property has long been encouraged by the law is because this policy encourages the most efficient utilization of resources.\textsuperscript{119} Reading RCW 6.17.020(3) to include assignees comports with this policy. The original judgment creditor, who may be unwilling or unable to execute its judgment for any one of a variety of reasons, could obtain redress nevertheless by selling its judgment to an assignee. As a result, a valuable property right (which in the case of J.D. Tan was a judgment for almost $1.8 million) would not go to waste by escaping collection.

Third, according to the maxim of in pari materia, the purpose of an ambiguous statute is to be determined through comparison to other related statutes.\textsuperscript{120} Each of the five statutes examined above pertain to the collection of judgments, and not one of them explicitly or implicitly differentiates between assignees and original judgment creditors. Finally, although there is little (if any) legislative history that might have shed light on the legislative intent behind RCW 6.17.020(3), the testimony of those lobbyists who were active in promulgating the aforementioned Bill is somewhat persuasive, and the court should have at least considered this testimony.\textsuperscript{121}

\textsuperscript{118} See POSNER, supra note 34, at 10–13.
\textsuperscript{120} See POSNER, supra note 34, at 10–13.