

Thoughts on "Rules of Construction" To Apply In Textual Controversies

Post by "Cassius" of September 3, 2021 at 9:04 AM

This is a paste of a post from an earlier discussion where the issue was buried in a "Welcome" thread. It would be good to discuss general approaches to how to construe texts which may seem corrupted or may seem contradictory with other passages. How do we decide between them?

The issue of how contracts and statutes are construed in court is certainly not exactly the same issue, but it seems to me that similar principles provide at least a starting point for analysis. Here's the earlier post, and I hope we can find more to add to the discussion and maybe compile our own list of considerations to think about in any textual controversy. I bet there are lists of considerations for more general critical analysis, but these below are the first that come to my own mind.

The issue of textual construction is never going away no matter how many Herculaneum texts we find.

Here's a good list of rules of construction. A work of philosophy isn't exactly a statute, and many of these obviously don't apply, but many do:

https://sedm.org/Litigation/10-PracticeGuides/Rehnquist_Court_Canons_citations.pdf

This list might actually be better than the first list I linked:

<https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf>

<https://www.epicureanfriends.com/thread/2870-thoughts-on-rules-of-construction-to-apply-in-textual-controversies/?postID=22356#post22356>

SEMANTIC CANONS

Ordinary-Meaning Canon. Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.

Fixed-Meaning Canon. Words must be given the meaning they had when the text was adopted.

Omitted-Case Canon. Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered.

General-Terms Canon. General terms are to be given their general meaning (*generalia verba sunt generaliter intelligenda*).

Negative-Implication Canon. The expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*).

Mandatory/Permissive Canon. Mandatory words impose a duty; permissive words grant discretion.

Conjunctive/Disjunctive Canon. And joins a conjunctive list, or a disjunctive list—but with negatives, plurals, and various specific wordings there are nuances.

Subordinating/Superordinating Canon. Subordinating language (signaled by *subject to*) or superordinating language (signaled by *notwithstanding* or *despite*) merely shows which provision prevails in the event of a clash—but does not necessarily denote a clash of provisions.

Gender/Number Canon. In the absence of a contrary indication, the masculine includes the feminine (and vice versa) and the singular includes the plural (and vice versa).

Presumption of Nonexclusive “Include”. The verb to include introduces examples, not an exhaustive list.

Unintelligibility Canon. An unintelligible text is inoperative.