

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>

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.

Post by “Cassius” of February 1, 2023 at 4:17 PM

I see copying this post to a new thread did not indicate that it is new today. Here's a part from the "Court Canons" that seems particularly on point (and it will bump the date of the thread). It seems to me that some or a lot of this makes good sense in construing the works of any

philosopher who claims to promote reason and clarity and consistency:

I. TEXTUAL CANONS

- **Plain meaning rule:** follow the plain meaning of the statutory text, [FN1] except when text suggests an absurd result [FN2] or a scrivener's error. [FN3]

II. LINGUISTIC INFERENCE

- **Expressio unius:** expression of one thing suggests the exclusion of others. [FN4]
- **Noscitur a sociis:** interpret a general term to be similar to more specific terms in a series. [FN5]
- **Ejusdem generis:** interpret a general term to reflect the class of objects reflected in more specific terms accompanying it. [FN6]
- Follow **ordinary usage of terms**, unless Congress gives them a specified or technical meaning. [FN7]
- Follow **dictionary definitions of terms**, unless Congress has provided a specific definition. [FN8] Consider dictionaries of the era in which the statute was enacted. [FN9] Do not consider "idiosyncratic" dictionary definitions. [FN10]
- **"May"** is usually precatory, while **"shall"** is usually mandatory. [FN11]
- **"Or"** means in the alternative. [FN12]

III. GRAMMAR AND SYNTAX

- **Punctuation rule:** Congress is presumed to follow accepted punctuation standards, so that placements of commas and other punctuation are assumed to be meaningful. [FN13]
- Do not have to apply the **"rule of the last antecedent"** if not practical. [FN14]

IV. TEXTUAL INTEGRITY

- Each statutory provision should be read by **reference to the whole** act. [FN15] Statutory interpretation is a "holistic" endeavor. [FN16]
- **Avoid**
 - interpreting a provision in a way that would render other provisions of the Act **superfluous or unnecessary**. [FN17]
 - interpreting a provision in a way **inconsistent with the policy of another provision**. [FN18]
 - interpreting a provision in a way that is **inconsistent with a necessary assumption of another provision**. [FN19]
 - interpreting a provision in a way that is **inconsistent with the structure of the statute**. [FN20]
 - **broad readings** of statutory provisions **if** Congress has specifically provided for the broader policy in more specific language elsewhere. [FN21]
- Interpret the **same or similar terms in a statute the same way**. [FN22]
- **Specific provisions** targeting a particular issue apply instead of provisions more generally covering the issue. [FN23]
- Provisos and statutory **exceptions should be read narrowly**. [FN24]
- **Do not create exceptions** in addition to those specified by Congress. [FN25]