



PROGRAM MATERIALS
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Statutory Interpretation: How To Use It To Your Clients' Advantage

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Statutory Interpretation: How To Use It To Your Clients' Advantage

Introduction

- Greg Overstreet, Overstreet Law Group
(www.OverstreetLawGroup.com)
- 29 years of statutory interpretation experience in constitutional, statutory, and regulatory litigation, as well as drafting legislation and lobbying
- Author of a book on statutory interpretation published by the Montana bar association

- But don't worry: this CLE is on the rules of statutory interpretation for all state and federal courts, not just Montana

What Is Statutory Interpretation?

- Statutory “Interpretation” Not Statutory “Construction”
- Statutory interpretation is using the multitude of rules for discerning the meaning of statutes
 - And also constitutions, regulations, ordinances, court rules, contracts, deeds, trusts
 - This presentation will use the term “statute” to refer to all of these kinds of laws

- Goal of this CLE is using these rules to persuade a judge that the interpretation that benefits your client is the correct one
- You use the rules of statutory interpretation in your daily lives outside of your law practice:
 - The specific controls over the general (“Ejusdem Generis”):



- Punctuation:

“No more tequila” versus “No, more tequila.”

Why Statutory Interpretation Skills Are Important To Your Law Practice

- Lots of cases involve the meaning of statutes
 - Used in cases involving a statutory right
 - Used in cases involving a statutory cause of action
 - Used in cases in which your client fits within an exception to a statute (or your client is arguing the other side doesn't fit within an exception)
 - Even if the meaning of a statute is seemingly settled, it might not be settled as applied to the facts of your case

- Look at the statutes in your cases with the rules of statutory interpretation in mind – you might realize some arguments you never saw before
- The rules of statutory interpretation are powerful tools in the tool box of creative legal arguments
- The rules of statutory interpretation can be the basis for a judge who was leaning your client's way to ultimately decide the case in your client's favor. The rules of statutory interpretation can provide the legal justification for a judge's

decision that may be based on non-legal grounds such as the fairness of the outcome.

The Rules of Statutory Interpretation Are Very Similar in All the States and Federal Courts

- The rules of statutory interpretation are fairly uniform so what I'm presenting today will likely apply where you practice.

There Are Dozens of Canons of Statutory Interpretation, Most With Funny Latin Names

- Example: specific controls over general ("Ejusdem Generis")

- We won't be covering all of them. Most only apply to very specific and uncommon language in a statute.
 - Besides, no one speaks Latin anymore
 - And these canons only come into play when a court cannot determine the “plain meaning” of a statute – and almost all the action is in convincing a court that your interpretation is the “plain meaning.”

The Fork in the Road of Statutory Meaning: Plain Meaning or Ambiguity

- Most state courts and the federal courts use a two-step analysis:

- (1) Does the statute have a single “plain meaning”
 - If so, the analysis stops and the plain meaning is the interpretation, but
- (2) If no single plain meaning is discernable so that the statute is ambiguous, the numerous canons of statutory interpretation (such as specific-controls-over-general) are employed

Rationale for Carrying Out the “Plain Meaning” of a Statute

- Legislature makes laws and courts aren’t supposed to change them via “interpretations.”

So the best way to give a statute the meaning intended by the Legislature is to carry out its “plain meaning.”

- A statute with a “plain meaning” does not need to be “interpreted” further

“Plain Meaning” Isn’t Always “Plain”

- Many states have rules of statutory interpretation to determine “plain meaning”
 - For example, Montana has a four-part test for what is the “plain meaning”:
 - “[1] [W]e ask whether the interpretation reflects the intent of the legislature considering the plain language of the

statute. [2] We next examine whether the interpretation comports with the statute as a whole. [3] We then consider whether an agency charged with administration of the statute has placed a construction on the statute. Finally, [4] where appropriate, we analyze whether the interpretation avoids absurd results.”

- So four common tests for “plain meaning” are: (1) legislative intent and the plain language, (2) statute as a whole, (3) agency interpretation, if any, and (4) avoiding absurd results

- Most statutes are found to have a single “plain meaning”
 - Probably 90% of reported statutory interpretation cases find the statute has a “plain meaning”
 - Several reasons for this:
 - Most statutes are written fairly clearly
 - There is usually a multi-part test to determine “plain meaning.” This means judges can feel satisfied that they applied a test to come to their conclusion (as opposed to just reading

the statute and going with their initial conclusion)

- Judges love to rule that their interpretation is the “plain meaning.” It makes it seem like any biases they might have are irrelevant. Even if they did some judicial gymnastics when applying the multi-part test, they can seem to be “just reading the law” by finding a statute has a “plain meaning.”
- If the statute has a “plain meaning” the analysis ends

- As previously noted, a statute with one plain meaning needs no further “interpretation”

The Second Fork in the Road: An “Ambiguous” Statute Is Subject to the Canons of Statutory Interpretation

- Difference between “rules” of statutory interpretation and “canons” of statutory interpretation: rules refers to the plain-meaning test and canons to the rules applied to an ambiguous statute. Besides, judges pick and choose which canons to apply; picking and choosing is more appropriate for “canons” than “rules.”

- “Ambiguous” means it has more than one rational interpretation
 - That is, it did not have one “plain meaning”

A Few of the Dozens of Canons of Statutory Interpretation

- This presentation only highlights the most common canons of statutory interpretation
 - There is a 15-volume treatise, Sutherland on Statutory Construction, that has all of them
- The following canons of statutory interpretation can be considered by a court but are not binding
 - Courts pick and choose canons to apply or not apply

- Reasons why courts pick and choose canons to apply:
 - Different statutory text triggers various canons applicable only to those kinds of statutory text
 - Judges often apply the canons suggested to them in briefing – which is why knowing the canons gives you an advantage
- Common canons of statutory interpretation:
 - Legislative history
 - Amendments, failures to pass

- Legislative record
 - Bill summaries, floor speeches, testimony of committee chairs
- Grammar
 - Some cases hold that grammar is not determinative.
- Same or different language
 - It is presumed the Legislature meant to give the same meaning to the same words and a different meaning to different words
- Surrounding language

- Terms should be interpreted consistently with the words surrounding them
- Same subject as in other statutes
 - Statutes on the same subject are harmonized, if possible, with the one at issue and are given the same general meaning as the other statutes on the topic
- Order of enactment of statutes on the same subject
 - Later-enacted statutes on the same subject are presumed to be a refinement

of the previously-enacted one.

Therefore if a later-enacted statute irreconcilably conflicts with a previously-enacted one, the later-enacted one controls.

- Specific controls over the general
 - The stop light example
 - A commonly used canon – and a powerful one to know
- Expression of one thing implies the exclusion of others

- Another commonly used canon of statutory interpretation and another powerful one to know
- “Mistake” in legislative drafting
 - Only a very clear case of a legislative drafting mistake will be corrected by a court
- “Shall” and “may”
 - Not nearly as straight forward as it seems
 - I personally think that when the Legislature uses “shall” that must mean

something mandatory, while “may” is permissive

- Courts pick and choose if they give meaning to “shall” or “may.” There are numerous cases supporting either approach.
 - Statutory interpretation can be more of an art than a science.
- Conditions, limitations, and provisos
- These would seem to be indicators of “plain meaning” but they are canons of statutory interpretation to be applied to an ambiguous statute

- Extrinsic (outside the text of the statute) aids to interpretation
 - Case law from your state or federal circuit
 - Case law from another state or circuit on the same or a similar statute
 - Case law from other jurisdictions on a uniform or model act that has been adopted by your state
 - Common law can be used to interpret a statute

- Statements of legislative intent in the act in which the statute is contained
 - This would seem to be part of the “reading the statute as a whole” test for “plain meaning” but is technically an extrinsic aid
- Headings of statutes added by the code revisor are not considered
- “Historic and factual conditions that led to the adoption of the statute”
- Previous interpretations given by legislative or executive branch

Codified Rules of Statutory Interpretation and Definitions

- Some states (like Montana) have codified a partial list of these rules of statutory interpretation
 - They are often in the first title of a state's statutes
- Almost all states have codified definitions of certain words
 - Example: “day” or “year”
- Some states even codify maxims
 - Example: “For every wrong there is a remedy” (Montana)

- Definitely check your state's statutes for codified rules of statutory interpretation, definitions, and maxims

Conclusion

- The rules of statutory interpretation are powerful tools
- Be thinking of them as you analyze any case involving a statute, constitutional provision, regulation, ordinance, or court rule
- The rules of statutory interpretation can be the legal rationale a judge needs to rule for your client

- The party that provides statutory interpretation analysis in their brief has a big advantage. Be that party.