

## **LEGISLATIVE PROCESS**

### **Summary of (Some) Textual Canons**

Professor Carolyn Shapiro  
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This summary is taken from pp. 819-36 of the casebook. It does not replace careful reading of the casebook, which discusses each of these canons in detail and provides exceptions to them. In addition, remember that these canons are guides or arguments, not absolute rules. They can be trumped by, for example the court's understanding of legislative intent, for example, or by other canons.

#### **Maxims of Word Meaning and Association**

- (1) Words are generally used in their ordinary sense, but sometimes also in a technical sense or according to the accumulated meaning through court decisions.
- (2) *Noscitur a Sociis*, which means "it is known from its associates." This canon suggests that we can understand the meaning of an ambiguous word by looking at the other words it is grouped with.
- (3) *Ejusdem generis*, which means "of the same kind, class, or nature." This suggests that general words listed along with specific words should be given a narrow construction. The particular words indicate the class and the general words extend the provisions of the statute to everything else in the class. In order for this to apply, all items listed must be similar enough to belong to the same class.
- (4) *Expressio [or inclusio] unius est exclusio alterius*, which means "the inclusion of one thing indicates exclusion of the other." This suggests that if the legislature has mentioned certain types of things, it meant to exclude other things.

#### **Grammar Canons**

- (5) Punctuation Rules. The court can consider punctuation as an aid to interpretation.
- (6) The Last Antecedent Rule. Referential and qualifying phrases refer only to the last antecedent. Note that the punctuation rule can trump with this canon.
- (7) The "And" versus "Or" Rule. The word "and" generally implies conjunctive, while the word "or" generally implies disjunctive.
- (8) The "May" versus "Shall" Rule. The word "shall" generally is mandatory and provides for no discretion. The word "may" often allows for discretion by the actor or decisionmaker.

(9) Singular and Plural; Male and Female Pronouns. In general, courts do not rely on whether the statute is written in the singular or plural and whether it uses male or female pronouns.

(10) The Golden Rule. This is not so much a canon, as an escape hatch. Courts should avoid absurd results, and should be willing to correct scrivener's errors.

### **The Whole Act Rule**

(11) In general, the Whole Act Rule requires the court to read the statute as a whole. There is a presumption of coherence.

(12) The title of a statute can be considered to resolve uncertainty or to help correct obvious errors.

(13) The preamble can also be considered to discover the legislative intent.

(14) Provisos, which restrict or narrow the statute, should be narrowly construed.

(15) Rule to Avoid Surplusage. There is a presumption that every word or phrase adds something to the command, and the statute should not be interpreted.

(16) Presumption of Consistent Usage and Meaningful Variation A word is generally understood to have the same meaning throughout the statute, and sometimes even throughout the Code. As a corollary, a change in language generally denotes a change in meaning.

(17) Rule Against Interpreting a Provision in Derogation of Other Provisions. The statute should not be interpreted in ways that would create conflict between the provisions of the statute or in ways that would undermine aspects of the statute.