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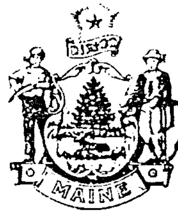

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LEGAL SUMMARY

An Outline On

STATUTORY CONSTRUCTION

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I. INTRODUCTION

A. What are we talking about?

You have written a bill...or amended a bill and it becomes a law. Someone out there doesn't like what it purports to do. They challenge the law in court. The court interprets the law and tells everyone what it really means. The court has engaged in statutory construction, i.e. it has construed the statute. The rules or principles that guide them in interpreting the statute form the basis for this legal summary.

B. Why should we care about statutory construction?

We care because we write the laws. Did the court, in interpreting our statute, concur with what we thought we wrote? Did we create the ambiguity or confusion in the law which required someone to go to court to seek clarification? We are responsible for the language of the law, that's our job and that's why we care that the law is interpreted correctly.

A recent case in Maine illustrates the importance of accurate drafting. In that case the courts created what I will name "the Competent Draftsman Presumption". The statement of fact and the language of the bill itself were contradictory. In interpreting the statute, the court presumed that the draftsman was competent and stated: "Obviously, to carry out that intent [i.e. the intent in the statement of fact], any competent draftsman would have included in LD 2011 [the bill] itself a special definition...." Stone v. Board of Registration in Medicine, 503 A. 2d. 222, 227 (1986). The court rejected the intent expounded in the statement of fact and ruled that the language of the bill was controlling. Their interpretation of the law was based on a presumption of competence of the draftsman. We, as bill drafters, have a special responsibility to be as accurate and clear as possible.

The principles of statutory construction have been developed to aid courts in giving effect to the intent of the Legislature and form a basis for predicting how a court will interpret an act of the Legislature. Learning a few simple rules of statutory construction will help you increase the probability that a law will be applied as it was intended to be applied.

C. When will a court apply the rules of construction?

A court may not need to use the rules of statutory construction to aid in interpreting the statute. That, of course, is the ideal situation. In that instance, the law itself is so clear and unambiguous that the court does not need to look beyond the plain and simple language of the statute.

A court will apply rules of statutory construction to interpret a statute only when the law is not clear. "[W]hen the language of a statute is clear and unambiguous, there is no need to resort to rules of statutory construction." Robbins v. Foley, 469 A.2d 840, 842-3 (1983). This leads us directly to the fundamental rule of statutory construction.

II. THE FUNDAMENTAL RULE OF STATUTORY CONSTRUCTION

"The fundamental rule in the construction or interpretation of any statute is that the intent of the legislature as divined from the statutory language itself controls." Raymond v. State, 467 A.2d 161, 164, 1983.

We can learn an important drafting rule from this fundamental rule: Since the goal of the court is to find the intent of the legislation, the clearer you can make this intent, the more accurate the court interpretation will be. That is true in cases of ambiguities and in cases where a problem occurs that was not anticipated.

Justice Harold Leventhal said: "[F]rom the point of view of the court the most important contribution the draftsman can make is to provide a realistic statement of the basic objective of the statute, either as an ultimate social objective or as the intention as to how the mechanics that are going to be provided are in furtherance of the ultimate social objective. Many well-drafted acts provide this." (Remarks given to federal executive employees at a conference designed to improve their drafting skills.)

Karl N. Lewellyn, a noted legal author and scholar, stated this in a slightly different way: "If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense." Remarks on the Theory of Appellate Decision and the Rules or Canons about how Statutes are to be Construed, 3 Vanderbilt Law Review 395, 400 (1950). He then goes on to say that the policy of a statute is of two wholly different kinds:

> "On the one hand there are the ideas consciously before the draftsmen, the committee, the legislature: a known evil to be cured, a known goal to be attained....Here talk of 'intent' is reasonably realistic: comittee reports, legislative debate, historical knowledge of contemporary thinking or campaigning which points up the evil or the goal can have significance." (Id. 400)

On the other hand, and particularly as the statute gains in age, the policy of the statute is dealt with in the context of circumstances that were "utterly uncontemplated" at the time the legislation was enacted. Here, he says, the courts must look for what sense can be made out of the words of the statute in light of the unforeseen circumstances. For example, does a "dangerous weapon" statute enacted in 1840 include machine guns or atomic bombs?

III. CATEGORIES OF AIDS FOR STATUTORY CONSTRUCTION

The search for the purpose of the legislation is not always easy. The courts rely on two categories of aids to determine the legislative intent:

1. Intrinsic aids: those principles or guidelines that derive meaning from the internal structure of the text. The courts prefer to find the legislative intent within the language of the law itself. All interpretations of statutes should begin with the text of the statute.

2. Extrinsic aids: information that comprises the background of the text, such as legislative history and related statutes.

The Maine Key Number Digest, Volume 13, contains many references to statutory construction rules used in Maine under Part VI (§§174-278) of the subject heading "Statutes". Parts IV and V of this paper contain some of the more common rules.

IV. THE INTRINSIC AIDS USED IN STATUTORY CONSTRUCTION

1. Plain meaning rule. "The fundamental rule in statutory construction is that words must be given their plain meaning." Paradis v. Webber Hospital, 409 A.2d 672, 675 (1979). There are, of course, exceptions to this rule: The meaning of words is not "free from doubt" when it leads to absurd or wholly impracticable consequences. Ballard v. Edgar, 268 A.2d 884 (1970)

2. Consider the statute as a whole. Perhaps one-time U.S. Supreme Court Justice Frankfurter best expressed this canon when he gave us his three rules of statutory interpretation: (1) read the statute, (2) read the statute, and (3) read the statute.

   The meaning of a particular section of law or word can sometimes best be ascertained by looking at the whole of the law surrounding that section or word. To quote Justice Cardoza, a former Justice of the U.S. Supreme Court: "There is need to keep in view also the structure of the statute, and the relation, physical and logical, between its several parts." Duparquet Co. v. Evans, 297 U.S. 216, 218 (1936).

3. Reasonable interpretation. If there are several interpretations and one would lead to an absurd result, the law favors the rational and favorable result.

4. Ejusdem generis. When general words follow specific words in an enumeration, the general words are construed to include only objects similar in nature to the preceding specific words. Example: The personal representative of decedent, who died of alcohol poisoning, sued the tavernkeeper under the Dram Shop Act. The Dram Shop Act gives a right to sue to "Every wife, child, parent, guardian, husband or other person, who is injured...by any intoxicated person or by reason of the intoxication of any person...against anyone who...has caused or contributed to the intoxication of such person." Plaintiff argued that the phrase "or any other person" was broad enough to include the intoxicated person. The court, under the rule of esjudem generis, held that since the enumerated persons were in some relationship to the intoxicated person the general phrase "or other person" must also stand in relation to the intoxicated person in some manner. The court ruled that the intoxicated person is precluded from suing under the Act since he cannot stand in a special relation to himself. The personal representative, who was suing on behalf of the dead intoxicated person, lost by esjudem generis. Klingerman v. Sol Corporation of Maine, 505 A.2d 474 (1986).

   The problem with this rule is that it doesn't tell us what categories of similar things are applicable. E.g., if we said pines, firs, spruce, or other kinds of vegetation, does the rule include all trees, all conifers, all nondeciduous conifers, or the pine family of evergreens? Far better to clarify the language.

5. Expressio unius est exclusio alterius. The express mention of one person or thing implies the exclusion of other persons or things. Dickerson calls this maxim "at best a description, after the fact, of what the court has discovered by the context." It appears that Maine courts will use it when convenient and not use it when it is inconvenient. Note their statement in 1979 that the maxim "expressio unius est exclusio alterius" is a handy tool that is used at times in ascertaining intention of the lawmaking body. Wescott v. Allstate Insurance, 397 A.2d 156.

6. Reddendo singula singulis. If a sentence contains several antecedents and several consequents, they are to be read distributively, although a strict grammatical construction may demand otherwise. Example: "for money or other good consideration paid or given" was held to refer to "money paid or consideration given".

7. Last antecedent rule. A qualifying phrase or clause applies only to the last of several preceding subjects, unless the context indicates otherwise.

8. Nositur a sociis. It is known by its companions. In a group of associated words, each assumes the general "color" or associated meanings of its fellow words in the listing.

9. Technical words. Maine has several varying rules on the interpretation of technical words, each one correct in the context of the case from which it derived:

   a. Technical words convey technical meanings. Portland Terminal Co. v. Boston & M.R.R., 1144 A. 390 (1929).

   b. If a term used in a statute has legal meaning, it is presumed that the Legislature attached that meaning to the term. Sweeney v. Dahl, 34 A.2d 673 (1944).

   c. Within the statutory scheme, a word should be construed according to its usage as a legal term of art only when it appears that such construction was legislatively intended. Pride's Corner Concerned Citizens Ass'n v. Westbrook Board of Zoning Appeals, 398 A.2d 415 (1979).

V. THE EXTRINSIC AIDS USED IN STATUTORY CONSTRUCTION

Extrinsic aids are those found outside the text of the statute itself. Maine clearly recognizes the appropriateness of looking at extrinsic evidence in

construing statutes: [W]hen the language of the statute does not clearly dictate the proper scope of its application or is ambiguous, this Court [Maine Supreme Judicial Court] may go beyond the face of the statute and look to extrinsic aids to interpretation in order to determine the true legislative intendment." Franklin Property Trust v. Foresite, Inc., 438 A.2d 218, 223, (1981).

The most common extrinsic aids are the following:

1. Title. There is no history of this ever being used in Maine.

2. Historical background. The Mischief Rule. Sir Edward Coke said the law should be interpreted to "surpress the mischief and advance the remedy." Chief Justice Felix Frankfurter said that "Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government." The purpose of legislation is what statutory construction must "seek and effectuate." Reading of Statutes, 47 Columbia Law Review 527, 538-9 (1947).

   Maine courts have said, "[W]hen it is clear that the legislature enacted the legislation ...to address a specific problem, [the Supreme Judicial Court] is charged by the rules of statutory construction with adopting the construction that will best solve the problem." Roberta, Inc. v. Inhabitants of Town of Southwest Harbor, 449 A.2d 1138, 1140 (1982).

3. Statutory context. The statutory context of the legislation is significant in interpreting its intent. What legislation is it replacing, what other legislation deals with this subject or deals with a different subject according to the same procedure? All may be relevant to this statute's true meaning.

4. Legislative history. Maine courts have ruled that the legislative history may be relevant in construing statutes. See Littlefield v. State Dept. of Human Services, 480 A.2d 731, (1984). In an interesting corollary to this they have noted that if placement of commas creates an ambiguity, the legislative history, rather than punctuation, determines legislative intent. See State v. Young, 476 A.2d 186 (1984).

   The case of Stone v. Board of Registration in Medicine 503 A.2d 222 (1986), best illustrates when the Maine Supreme Judicial Court thinks it is

appropriate to look at legislative history. In that case the court said that for extrinsic material to constitute legislative history, the proponent must show that the material was widely available and generally relied upon by legislators considering the bill. They quoted Dickerson who postulated a four part test: To serve as external context material it must be:

(1) relevant;

(2) reliable and reliably revealed;

(3) reasonably available to the legisaltive audience; and

(4) taken into account (that is relied on) by the Legislature.

Also in that case the court offered the following caution on the use of legislative history: A different meaning cannot be created out of whole cloth from legislative history.

5. Statement of fact. In 1981, the court determined that the statement of fact was "a proper and compelling aid in ascertaining the legislative purpose and intent." Franklin Property Trust v. Foresite, Inc., 438 A.2d 218, 223.

   However, the court placed limits on the usefulness of the statement of fact in the Stone case. There they said: "It was the statutory language, plain on its face, that the legislators voted to enact and the Governor signed, not the Statement of Fact....A different meaning cannot be created out of whole cloth from legislative history. If the legislature intends to qualify and limit general terms which have a plain meaning, they must do it by adopting definitions and limiting amendments into the law - not by policy statements in legislative history." Stone, 503 A.2d at 227-28.

VI. WHAT DOES ALL THIS MEAN? HOW DO I BEST APPLY WHAT I HAVE LEARNED ABOUT STATUTORY CONSTRUCTION?

A. How important are the rules of statutory construction?

The courts have been been interpreting laws since our Constitution was written. There will always be a need for the courts to interpret legislation, no matter how close to perfection the draftsman gets. Words are merely symbols of meanings. Individual words are inexact in and of themselves. In conjunction with

other words, in configurations of sentences and paragraphs, they lose even more of their ability to convey precise meanings. In addition, the nature of legislation makes laws inexact. Legislation is a creature of government and partakes of the infirmities and limitations inherent in any governing body. These difficulties are often intensified by the subject matter of the legislation. Can you imagine a tax law, no matter how complex, that can take into account the variety of human transactions not only existing at the time it was written, but fifty years hence? Perfection in drafting is unattainable regardless of the skill of the drafter.

Accordingly, the courts will continue to interpret legislation. They have developed literally hundreds of "rules" or canons to aid them in interpreting statutes. When they can't find a rule to suit their purposes, they make up a new one. Every rule has a counterpart rule that allows an opposite interpretation.

Some authorities feel that canons of construction are of little use. Reed Dickerson, the leading scholar on legislative drafting says: "The draftsman rarely needs to consult the authorities on the interpretation of [legislation]." In his books <u>Materials on Legal Drafting</u> and <u>The Fundamentals of Legal Drafting</u>, he suggests two reasons why this is true:

1. <u>Many rules are irrelevant.</u> They are merely rules by which courts resolve inconsistencies and contradictions or supply omissions. They apply when you failed to write a bill correctly. If you rely on the courts to accomplish what you did not, you may inappropriately relax your efforts in your own drafting. Your efforts should be focused on preventative drafting, not curative interpretation.

2. <u>Most of the rules describe problems that you already know about.</u> Justice Harold Leventhal gives us what is perhaps the best reason for not being overly concerned with the rules of statutory construction. He states that there are so many exceptions to the rules and caveats to the rules available to judges that it is useless to try to follow them in order to obtain the desired result.

B. How to use the rules of statutory construction

The rules of construction originated as observations in specific cases based on the particulars of that case alone. Throughout history they have periodically been taken out of their original context, codified in treatises, and passed on to other generations. The first treatise was no more than thirty pages and was written prior to 1567. The 1943 edition of Sutherland's Statutory Construction has three volumes and totals more than 1500 pages.

Even though we care about writing legislation that is not ambiguous or that will be interpreted correctly, of what use is it to learn the rules of statutory construction for drafting bills if learned scholars and judges think it is of limited value?

In spite of the criticisms and uncertanties of the rules of statutory construction, there are some reasons why a brief understanding of those rules can be helpful to draftsmen:

1. Some of the canons express current grammatical rules and common, established usage of particular words and phrases.

2. By being aware of the ways in which ambiguities most often appear, you are better able to avoid them.

3. You can not always address every problem that may arise. But, there are lessons to be learned from the rules of statutory construction that will give the court guidelines as to how to solve the problem consistent with the legislative intent.

4. You will be better able to interpret existing legislation when called on to do so...or when you want to amend or replace it.

The Maine Supreme Judicial Court has given us guidance in deciding what weight to place on the rules of construction. In 1962, they stated that the statutory canons and rules of construction are helpful, necessary, time-tested, and revered, but are to be judiciously consulted and applied. Public Service Co of N.H. v. Assessors of Town of Berwick, 183 A.2d 205.

VII. AN OUNCE OF PREVENTION IS WORTH OF POUND OF CURE

What have we learned from this? The two major problems requiring statutory construction are: 1) interpreting the

meaning of the words of the statute, and 2) applying the statute to a new situation uncontemplated at the time of enactment. As draftsmen, we have a special duty to minimize those problems to the extent we can. Most of the rules of statutory construction are designed to address those two situations. We can minimize those situations by following two simple rules:

1. Write as precisely and concisely as you can, but favor clarity over brevity. Words are the tools of our trade. Learn to use them well or you will wander forever the hallways of ambiguity.

2. Make sure the purpose of the legislation is clearly stated.

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