



A GUIDE TO READING, INTERPRETING AND APPLYING STATUTES¹

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¹ The original handout was written in 2006 by Katharine Clark and Matthew Connolly consulting WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY, & ELIZABETH GARRETT, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY (3d. ed. 2001). The handout was revised in 2017 by Suraj Kumar and Taylor Beech and in 2026 by Eric Davis consulting WILLIAM N. ESKRIDGE, JR., ABBE R. GLUCK, & VICTORIA F. NOURSE, STATUTES, REGULATION, AND INTERPRETATION: LEGISLATION AND ADMINISTRATION IN THE REPUBLIC OF STATUTES (2d. ed. 2024).

INTRODUCTION

A firm understanding of the tools of statutory interpretation is essential for legal practitioners. This handout provides a practical framework for discerning the meaning of statutes. Courts do more than resolve obvious ambiguities when they interpret statutes. They begin with the enacted text and read it in light of its structure, context and established interpretive principles. Effective statutory analysis therefore requires more than reading a provision in isolation. It demands careful attention to statutory language, structure, context, and the broader legal framework in which the statute operates.

This guide walks you through that process step by step. Part I identifies the preliminary steps to take before beginning interpretation. Part II explains the primary tools courts use to determine statutory meaning. Part III introduces the major interpretive approaches that shape modern statutory doctrine. These sections are designed to help you read statutes carefully, analyze them systematically, and argue about them effectively.

I. Preliminary Steps

There are three important preliminary steps you should take before attempting to interpret a given statute:

1. Read the statute. The primary language of the statute should always serve as the starting point for any inquiry into its meaning.² To properly understand and interpret a statute, you must read the text closely, keeping in mind that your initial understanding of the text may not be the only plausible interpretation of the statute or even the correct one.³
2. Understand your client's goals. Make sure that you have a firm grasp of your client's goals and the underlying facts of your client's legal problem so that you will be able to determine which statutes are relevant to your case.
3. Confirm the statute is still good law. Be sure to update the statute. Use Shepard's or KeyCite to determine: (a) whether the statute or parts of the statute have been repealed or otherwise invalidated; (b) whether the statute has been amended; and (c) whether there are any court decisions that can guide your analysis of the statute.

² ESKRIDGE, *supra* note 1, at 135–36.

³ CHRISTOPHER G. WREN AND JILL ROBINSON WREN, THE LEGAL RESEARCH MANUAL: A GAME PLAN FOR LEGAL RESEARCH AND ANALYSIS (2d. ed. 1986) (*hereinafter* “WREN & WREN”).

II. Tools of Statutory Interpretation

Statutory interpretation often begins with the statutory text itself, but determining the meaning of a statute frequently requires careful analysis. Modern courts generally treat the enacted statutory language as the central guide for interpretation, while recognizing that questions often arise about how that language applies to particular facts or how its provisions should be understood in relation to one another.⁴ Even when statutory language initially appears clear, interpreters must determine how the text should be read in light of the statute as a whole and the broader legal context in which it operates.⁵

Courts therefore rely on a variety of interpretive tools to determine the most persuasive reading of a statute.⁶ These tools generally fall into five categories: (A) the text of the statute; (B) legal interpretations of the statute; (C) the context and structure of the statute; and (D) the purpose of the statute.

In applying these tools, courts frequently rely on interpretive principles that have been used so often that they have become formalized into canons of construction. These canons reflect recurring assumptions about how statutes are written and how legal language is ordinarily understood.⁷ While these canons may not be particularly useful for discerning the *meaning* of a statute, many courts find them persuasive, and you may use these canons to *justify and provide support for* a particular interpretation of a statute. Be aware, however, that for each canon that supports your interpretation, there is often an opposite canon that can be used to defeat your interpretation or support an alternative interpretation of the statute in question.⁸ Additionally, your audience may find some canons more persuasive than others.

The sections that follow describe these tools of statutory interpretation and identify common and relevant canons of construction⁹ that can be used to justify and support your interpretations.

⁴ *Id.* at 135–36.

⁵ *Id.* at 135–36, 139.

⁶ *Id.* at 135–39.

⁷ *Id.* at 136.

⁸ See Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to be Construed*, 3 VAND. L. REV. 395, 401–406 (1950).

⁹ See generally ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* (2012).

A. Statutory Text

a. *Statutory Definitions*

Many statutes contain a “definitions” section that sets forth and defines the key terms used in the statute. You might find these definitions either in the section of the statute you are analyzing or in one of the first sections of the entire act. Sometimes these specific terms are codified as definitions for a chapter or title of the relevant statute, meaning that they are intended to apply to the entire chapter or title (unless otherwise specified). These definitions are important because they suggest that legislatures intended for a term to have a specific meaning that might differ in important ways from its common usage.

b. *Plain Meaning*

i. Ordinary or Reasonable Understanding

Courts generally assume that the words of a statute carry the meaning that an ordinary reader would attribute to them in context. Statutory interpretation therefore begins with the enacted statutory text and considers how a reasonable reader would understand that language within the statutory scheme.¹⁰ Moreover, some courts previously adhered to the principle that if the words of a statute are clear and unambiguous, the court need not inquire any further into the meaning of the statute.¹¹ Modern doctrine is more nuanced, so even when statutory language initially appears straightforward, courts often examine how the text operates in context and how it interacts with other provisions of the statute.¹²

Thus, interpretation typically begins by considering how a reasonable reader would understand the statutory language in context, considering ordinary rules of grammar and how the provision fits within the broader statutory scheme.

ii. Dictionary Definitions

Dictionaries can also be helpful in interpreting the meaning of statutory language. It will likely be more effective to compare and contrast definitions from multiple dictionaries to obtain a broader consensus on the meaning of words. Analyzing interpretations from multiple sources will help you to reduce the risk of choosing an interpretation that may have been approved by one source but rejected by many others.¹³ If you are asked to interpret a statute that was enacted a long time ago, you might consider digging up dictionary definitions (as well as other sources such as encyclopedias) from the time period in which the statute was enacted.¹⁴

Be aware however, that if a statute deals with a technical or specialized subject (e.g., ERISA, tax, telecommunications, etc.), the words in the statute may have meanings that differ

¹⁰ See ESKRIDGE, *supra* note 1, at 135–36.

¹¹ *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003).

¹² See ESKRIDGE, *supra* note 1, at 135–36.

¹³ See *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218, 224–26 (1994).

¹⁴ James J. Brudney & Lawrence Baum, OASIS OR MIRAGE: THE SUPREME COURT’S THIRST FOR DICTIONARIES IN THE REHNQUIST AND ROBERTS ERAS, 55 WM. & MARY L. REV. 483, 511–12 (2013) (explaining that interpreters seeking the ordinary meaning of statutory language as understood by the enacting Congress often consult dictionaries from around the time of enactment).

from their ordinary usage. In such circumstances, courts may interpret the text dealing with a technical or specialized subject in a manner consistent with the way those words are used in the relevant industry or community.

iii. Common Law Definitions

Similar to words that have a technical or an industry-specific meaning, some statutory words can have a meaning in common law that is widely understood and accepted. In such cases, courts will adopt the common law meaning.¹⁵ For example, the Supreme Court has noted that “extortion” is a common law word, and it has interpreted that term by reference to its meaning at common law.¹⁶

c. Commonly Used Terms and Grammar

Terms	Function
And v. Or	“And” typically signifies a conjunctive list, meaning each condition in the list must be satisfied, while “or” typically signifies a disjunctive list, meaning satisfying any one condition in the list is sufficient
May v. Shall	Generally, “shall” signifies that certain behavior is mandated by the statute, while “may” grants the agent some discretion
Unless/Except	These terms usually signify an exception to the statute
Subject to... Within the meaning of For the purposes of	These terms may limit the scope of the statute, or may indicate that a certain part of the statute is controlled or limited by another section or statute
If...then... Upon Before/After Provided that...	Generally, these terms indicate that for one part of a statute to take effect, a precondition or requirement must be satisfied
Notwithstanding	Literally, “in spite of,” this term usually signifies that a certain term or provision is not controlled or limited by other parts of the statute, or by other statutes
Each/Only Every/Any/All	These terms commonly limit the class of objects that are either included in or excluded from the statute
Punctuation Rules	Punctuation may be used as an interpretive aid to clarify how words and phrases in a statute relate to one another, but it is usually considered a secondary guide to statutory meaning. ¹⁷ For example, a missing Oxford comma in Maine’s overtime statute created ambiguity about whether

¹⁵ Carter v United States, 530 U.S. 255, 266 (2000).

¹⁶ *Id.*; Evans v. United States, 504 U.S. 255, 261–64 (1992).

¹⁷ *Id.* at 350.

	“packing for shipment or distribution” referred to one activity or two, which ultimately affected whether delivery drives were entitled to overtime. ¹⁸
Singular/Plural Usage	Unless the context indicates otherwise, words importing the singular include the plural, and words importing the plural include the singular. ¹⁹ For example, if a federal statute provides that “a driver must carry a license while operating a motor vehicle,” the provision applies to multiple drivers even though the statute refers to “a driver” in the singular.
Gendered Pronouns	Statutes may use pronouns such as “he” or “she.” Under modern drafting conventions and interpretive rules, gendered pronouns/terms are generally interpreted to apply to persons of any gender, unless the statutory context indicates otherwise. ²⁰

d. *Relevant Canons of Construction*

i. Omitted-Case

Nothing is to be added to what the text states or reasonably implies; that is, a matter not covered is to be treated as not covered.²¹ Essentially, this means that even though legal texts can sometimes be incomplete because they fail to address certain situations, courts should not fill in these gaps with rules of their own.²² For example, in one Supreme Court opinion, a taxpayer underpaid his taxes by \$7,000, but was only found to have negligently underpaid by \$700. The taxpayer argued that the statute imposing a penalty for underpayment of taxes should be read to require payment in “an amount equal to 5% of the amount of the underpayment attributable to negligence.” The Court, however, refused to fill in the gaps of the statutory language that simply required payment in “an amount equal to 5% of the underpayment,” even though this interpretation led to an arguably less reasonable result.²³

ii. General-Terms

General terms are to be given their general meaning and afforded their full and fair scope, without being arbitrarily limited.²⁴ This canon is based on the reality that it is often useful to create categories (e.g. “dangerous weapons”) without knowing or anticipating everything that may fit or come to fit within that category.²⁵ For example, the Eighth Circuit construed a statute that allowed the government to seize “any property, including money,” to mean both real and personal property.²⁶

iii. Negative-Implication Canon (*Expressio Unius Est Exclusio Alterius*)

The expression of one thing implies the exclusion of others.²⁷ This canon means that where certain terms have been explicitly set forth in a statute, that statute may be interpreted not to apply to terms that have been excluded from the statute. For example, one could argue that a

¹⁸ O'Connor v. Oakhurst Dairy, 851 F.3d 69 (1st Cir. 2017).

¹⁹ *Id.* at 366–67; *See also*, The Dictionary Act, 1 U.S.C. § 1.

²⁰ *Id.* at 366; The Dictionary Act, 1 U.S.C. § 1.

²¹ SCALIA & GARNER, *supra* note 13, at 93.

²² *Id.*

²³ *Id.*; *See Comm'r v. Asphalt Products Co.*, 482 U.S. 117, 121 (1987).

²⁴ SCALIA & GARNER, *supra* note 13, at 101.

²⁵ *Id.*

²⁶ *Id.*; *United States v. South Half of Lot 7 & Lot 8, Block 14*, 910 F.2d 488, 490-91 (8th Cir. 1990).

²⁷ SCALIA & GARNER, *supra* note 13, at 107.

statute that prohibits “any horse, mule, cattle, hog, sheep, or goat” from running upon lands enclosed by a fence does not apply to turkeys because the statute does not explicitly proscribe turkeys.²⁸ Be aware, however, that this doctrine assumes that the enacting legislature thought through the statutory language “carefully, considering every possible variation.”²⁹ In reality, there could be other reasons for legislatures to omit terms from a statute.

iv. Presumption of Nonexclusive “Include”

The verb *to include* introduces examples, not an exhaustive list.³⁰ The Eighth Circuit opinion referenced *supra* as an example of the general terms canon illustrates this canon as well. The statutory language “any property, including money” did not limit the meaning of property solely to money.³¹ On the other hand, language such as “consists of” or “comprises” indicates a group contains precisely that number or description. Statutes in the intellectual property context are, however, an exception to this canon.³²

v. Rule of the Last Antecedent

A modifier or qualifying phrase generally applies only to the word or phrase immediately preceding it. For example, if a statute provides benefits to “employees, contractors, or volunteers who are injured on duty,” the rule of the last antecedent suggests that the phrase “who are injured on duty” modifies only “volunteers,” the nearest term, rather than the entire series. The Supreme Court applied this canon when interpreting a Social Security statute: “...he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” The phrase “which exists in the national economy” modified only “any other kind of substantial gainful work,” not the claimant’s “previous work.”³³

vi. Series-Qualifier

When a modifier follows a parallel list, it may apply to the entire series, not just the last item. Take the same preceding example, but under the series-qualifier canon the phrase *who are injured on duty* would apply to all three terms—employees, contractors, and volunteers— because the modifier appears at the end of the entire series. This canon is often a “popular counter-canon” to the last antecedent rule canon.³⁴

B. Legal Interpretations

a. *Judicial Interpretations Through Case Law*

Oftentimes you will find that the statute you are analyzing has already been interpreted by a court. Additionally, court decisions may also discuss what alternative interpretations of the statute were plausible (or at least considered) and why the court either approved or rejected those alternatives. You can find references to case law in the case annotations of an annotated statute,

²⁸ Tate v. Ogg, 195 S.E. 496, 499-500 (Va.1938).

²⁹ See ESKRIDGE, *supra* note 1, at 348–49.

³⁰ SCALIA & GARNER, *supra* note 13, at 132.

³¹ See United States v. South Half of Lot 7 & Lot 8, Block 14, 910 F.2d at 490-91.

³² *Id.*

³³ Barnhart v. Thomas, 540 U.S. 20, 26 (2003).

³⁴ ESKRIDGE, *supra* note 1, at 353.

by updating the relevant section of the statute using Shepard’s or KeyCite, or through your own legal research on platforms such as LexisNexis and Westlaw.

b. *Agency Interpretations Through Regulations*

Sometimes the agency responsible for administering a statute issues regulations to clarify how the statute should be interpreted and applied. Agency regulations are published in the Code of Federal Regulations (CFR) and can help illuminate both the meaning of particular statutory terms and the policy concerns underlying the statute. Regulations are often cross-referenced in annotated statutes along with relevant case law.³⁵

Historically, courts sometimes deferred to agency interpretations of statutes under the framework announced in *Chevron*.³⁶ Pursuant to the *Chevron* doctrine, courts followed a two-step analysis: first asking whether Congress had directly addressed the precise question at issue in the statutory text, and if not, deferring to any reasonable agency interpretation of the ambiguous statute.³⁷

In 2024, however, the Supreme Court overruled *Chevron* in *Loper Bright Enterprises*.³⁸ The Court held that automatic judicial deference to agency interpretations of statutes is inconsistent with the Administrative Procedure Act, which directs courts to “decide all relevant questions of law.”³⁹ Now, courts must exercise independent judgment in determining the meaning of a statute rather than deferring to agency interpretations simply because the statute is ambiguous.⁴⁰

Agency interpretations may still receive persuasive weight under the framework described in *Skidmore v. Swift & Co.*⁴¹ Under *Skidmore*, the weight given to an agency’s interpretation depends on factors such as the thoroughness of its reasoning, the validity of its analysis, its consistency with earlier and later pronouncements, and other factors that give the interpretation “power to persuade.”⁴²

c. *Relevant Canons of Construction*

i. Rule of Lenity

Ambiguity in a statute defining a crime or imposing a penalty should be resolved in favor of the defendant.⁴³ For example, in one case, a criminal statute prohibited the use of “proceeds” of criminal activities for various purposes, and the meaning of “proceeds” could reasonably be construed to mean both “receipts” and “profits.” The Court adopted the defendant-friendly “profits” definition of “proceeds” rather than the “receipts” definition because the rule of lenity

³⁵ See 1 U.S.C. § 204(a) (providing for publication of agency rules in the Code of Federal Regulations); 44 U.S.C. § 1510.

³⁶ *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

³⁷ *Id.* at 842–43.

³⁸ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (“*Chevron* is overruled.”).

³⁹ *Id.*; 5 U.S.C. § 706.

⁴⁰ *Id.*

⁴¹ *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

⁴² *Id.*

⁴³ SCALIA & GARNER, *supra* note 13, at 296.

required the statute to be interpreted in favor of the defendant.⁴⁴ Be aware, however, that application of this rule is vague and it is often the subject of controversy.⁴⁵

ii. Constitutional Avoidance

Under this canon, when a statute is susceptible to more than one reasonable interpretation, courts prefer the interpretation that avoids serious constitutional questions.⁴⁶ The canon reflects the presumption that Congress does not intend to enact legislation that violates the Constitution.⁴⁷ As a result, if one plausible reading of a statute would raise substantial constitutional concerns and another would not, courts generally adopt the latter interpretation. The doctrine is grounded in several institutional considerations, including respect for Congress, judicial restraint, and the separation of powers. This tool assists courts in reducing the need to invalidate legislation.⁴⁸ The Supreme Court has repeatedly applied this principle. For example, the Court narrowed the federal “honest services” fraud statute to cover only bribery and kickback schemes in order to avoid serious vagueness concerns under the Due Process Clause.⁴⁹

iii. Presumption Against Change in Common Law

A statute will be construed to alter the common law only when that disposition is clear.⁵⁰ Although this alteration of common law must be clear, it need not be express.⁵¹ For example, a D.C. statute provided that “any dog wearing a tax tag . . . shall be regarded as personal property.” The court refused to read this statute in a way that would prevent a dog owner from recovering under a common law rule that all pets are considered personal property when the owner’s dog was not wearing a tax tag, thus refusing to change the common law without an “exactness of expression” to do so.⁵²

iv. Rule Against Absurdity

You should “adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that...leads to any manifest absurdity.”⁵³ This is the absurd results canon, which involves “deviating from a textual reading” if the interpretation leads to consequences that are absurd.⁵⁴

C. Context and Structure

a. *Cross-References and Companion Statutes*

When reading complex statutes, be aware of references to other statutes. These references may lead you to other statutes that affect the meaning and function of the statute you are trying to analyze. For example, an immigration statute defines an “aggravated felony” as, among other

⁴⁴ United States v. Santos, 553 U.S. 507, 514 (2008).

⁴⁵ SCALIA & GARNER, *supra* note 13, at 296.

⁴⁶ See ESKRIDGE, *supra* note 1, at 596–97, 599.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Skilling v. United States, 561 U.S. 358 (2010).

⁵⁰ *Id.* at 318.

⁵¹ *Id.*

⁵² *Id.*; Sharfeld v. Richardson, 133 F.2d 340, 341 (D.C. Cir. 1942).

⁵³ *Id.* at 366.

⁵⁴ *Id.*

things, “a crime of violence.”⁵⁵ That provision references another federal statute, which in turn defines “crime of violence.”⁵⁶

b. *Relevant Canons of Construction*

i. The Whole Act Rule

The text should be construed as a whole. A legal instrument typically contains many interrelated parts, and thus the entirety of the document provides the context for each of its parts.⁵⁷ This canon typically “establishes that only one of the possible meanings that a word or phrase can bear is compatible with use of the same word or phrase elsewhere in the statute.”⁵⁸ Thus, courts generally interpret statutory language in light of the statute as a whole so that related provisions are read consistently with one another.⁵⁹

ii. Harmonious Reading

Generally, statutes should be interpreted so that different provisions operate consistently with one another rather than creating conflict between sections of the statute.⁶⁰ This is similar to the Whole Act canon.

iii. Presumption of Consistent Usage (and Meaningful Variation)

A word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in its meaning.⁶¹ For example, the provisions in section 77j of the Securities Act require that certain information be included in a “prospectus” and that certain information can be omitted from a “prospectus.” The presumption of consistent usage suggests that each time the word “prospectus” is used in the above provisions, it should be interpreted in a way that is consistent with the way the term is interpreted in other parts of the statute.⁶² The presumption of meaningful variation suggests that when the legislature has departed from the consistent usage of a particular term, the legislature intended for that particular term to have a different meaning.⁶³ For example, if a statute says *land* in one place and *real estate* in another, the use of a different term in the second place presumably includes improvements as well as raw land.⁶⁴

iv. Related-Statutes

Statutes dealing with the same subject are to be interpreted together, as though they were one law.⁶⁵ According to Justice Frankfurter, “statutes cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes,” and part of the statute’s context is the body of law of which it forms a part.⁶⁶ In certain areas of law, interpretations may cut across statutes. For

⁵⁵ 8 U.S.C. § 1101(a)(43)(F).

⁵⁶ 18 U.S.C. § 16.

⁵⁷ SCALIA & GARNER, *supra* note 13, at 167.

⁵⁸ *Id.*

⁵⁹ ESKRIDGE, *supra* note 1, at 369–70.

⁶⁰ *Id.* at 379–80; SCALIA & GARNER, *supra* note 13, at 180–82.

⁶¹ SCALIA & GARNER, *supra* note 13, at 170.

⁶² *Gustafson v. Alloyd Co.*, 513 U.S. 561, 567–69 (1995).

⁶³ *See* ESKRIDGE, *supra* note 1, at 378.

⁶⁴ *Id.*

⁶⁵ SCALIA & GARNER, *supra* note 13, at 252.

⁶⁶ *Id.*

example, in a case interpreting the federal bank fraud statute, the Supreme Court considered how it had interpreted “the analogous mail fraud statute.”⁶⁷

v. *Ejusdem Generis*

Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned.⁶⁸ In other words, you should use the specific objects or things explicitly set forth in the statute to determine what other objects or things the legislature intended to include. For example, if a statute lists “dogs, cats, horses, cattle, and other animals,” this canon would suggest that the catchall phrase *other animals* refer to other *similar* animals.⁶⁹ This might include animals like sheep but not include protozoa. Be aware, however, that a savvy lawyer may argue that other parts of the statute’s text include protozoa.⁷⁰

vi. Associated Words (*Noscitur a Sociis*)

A word is known by the company it keeps. When statutory terms appear in a list or series, courts may interpret a particular term in light of the surrounding words. This doctrine is particularly useful when the term being interpreted appears alongside two or more terms with similar meanings.⁷¹ These terms may provide clues on how broadly or narrowly a term should reasonably be interpreted.⁷² When statutory terms appear in a list or series, courts may interpret a particular term in light of the surrounding words.⁷³ For example, a court interpreted the word “sanitation” by looking at the surrounding words in the statute—inspection, fumigation, and disinfection—and concluded that the statute referred to cleaning measures, not mask mandates.⁷⁴

TIP: The general difference between *noscitur a sociis* and *ejusdem generis* is that *noscitur a sociis* “just requires a list.”⁷⁵ While, *ejusdem generis* “requires a general term.”⁷⁶

vii. Rule to Avoid Surplusage

If possible, every word and every provision should be given effect. None should be ignored and none should needlessly be given interpretation that causes it to duplicate another provision or to have no consequence.⁷⁷ For example, a federal identity-theft statute imposes criminal penalties on anyone who “knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person.”⁷⁸ If the term “use” were interpreted to include situations in which a person merely transfers or possesses identifying information, the words “transfer” and “possess” would serve no independent purpose in the statute.⁷⁹ However, if “use” is interpreted to refer to a distinct misuse of identifying information, separate from

⁶⁷ Shaw v. United States, 137 S. Ct. 462, 467 (2016).

⁶⁸ SCALIA & GARNER, *supra* note 13, at 199.

⁶⁹ *Id.*

⁷⁰ ESKRIDGE, *supra* note 1, at 346.

⁷¹ ESKRIDGE, *supra* note 1, at 344–46.

⁷² *See id.*

⁷³ *See* ESKRIDGE, *supra* note 1, at 344–46.

⁷⁴ *See* Health Freedom Defense Fund v. Biden, 599 F. Supp. 3d 1144, 1159 (M.D. Fla. 2022).

⁷⁵ *Id.* at 347.

⁷⁶ *Id.*

⁷⁷ SCALIA & GARNER, *supra* note 13, at 174.

⁷⁸ *See* Dubin v. United States, 599 U.S. 110 (2023).

⁷⁹ *See id.*

transferring or possessing it, then each term contributes something to the statute’s meaning, and none would be considered “surplusage.”

D. Purpose

Tools that deal with a statute’s purpose focus on establishing the legislature’s intent for enacting the statute and using that intent to understand and interpret a statute’s meaning. According to Chief Judge Robert Katzmann of the Second Circuit, “legislation is a purposive act,” and “judges should construe statutes to execute that legislative purpose.”⁸⁰ Because legislation is the product of a deliberative and informed process, it has discernable purposes and objectives.⁸¹ The following tools of interpretation aim to discern those purposes.

a. *Preamble or Purpose Clauses*

Some statutes begin with a preamble or purpose clause that explains the objectives of the legislation or the problems the legislature sought to address.⁸² These provisions can provide useful context for understanding the statute’s aims and may help interpret ambiguous language. Historically, courts and commentators sometimes treated preambles as strong evidence of legislative purpose. Modern courts, however, generally give them more limited weight.⁸³ Though a preamble cannot override the operative text of a statute when the statutory language is clear, courts may consult it to help clarify ambiguous provisions or better understand the statute’s broader purpose.⁸⁴

b. *Legislative History*

Legislative history can provide useful guidance for determining the legislature’s intent, and thus the meaning of ambiguous statutory language. However, as Chief Justice Roberts noted at his confirmation hearings, “[a]ll legislative history is not created equal.”⁸⁵ Different weight should be given to different documents to reflect the legislative process, its rules, and internal hierarchy of communications. Chief Judge Katzmann suggests placing more weight on conference committee reports and committee reports, followed by “statements of a bill’s managers in the Congressional Record,” and lastly “stray statements of legislators on the floor.”⁸⁶

c. *Relevant Canons of Construction*

i. Supremacy of Text Principle

“The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”⁸⁷ Proponents of this canon reject extratextual sources, like legislative history, and determine purpose from the text alone.⁸⁸ This principle is premised on the

⁸⁰ ROBERT A. KATZMANN, JUDGING STATUTES 31 (2016).

⁸¹ *Id.*

⁸² ESKRIDGE, *supra* note 1, at 375–76.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ KATZMANN, *supra* note 31, at 54.

⁸⁶ *Id.*

⁸⁷ SCALIA & GARNER, *supra* note 13, at 56.

⁸⁸ *Id.*

idea that *context* includes the purpose of the text, and the *subject matter of the document* helps give the words meaning; therefore, the purpose must be derived from the text.⁸⁹

ii. Presumption Against Ineffectiveness

A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored.⁹⁰ This presumption ensures that a text's manifest purpose is furthered, not hindered. For example, the Supreme Court has held that an offense did not need to include a domestic relationship as an element to qualify as a "misdemeanor crime of domestic violence."⁹¹ The Court rejected an interpretation that would have construed that statute "to exclude the domestic abuser convicted under a generic use-of-force statute."⁹² Such an interpretation "would frustrate Congress' manifest purpose" of addressing domestic violence and would have rendered the law "'a dead letter' in some two-thirds of the States from the very moment of its enactment."⁹³

III. Theories of Statutory Interpretation

Given the range of interpretive tools, which ones should you use, and where should you begin? The answers often depend on the interpreter's theory of statutory interpretation.

Statutory interpretation does not occur in a vacuum. Judges, legislators, and administrative officials operate in different institutional settings and therefore approach statutes with different incentives and forms of reasoning.⁹⁴ Judges typically interpret statutes while resolving concrete disputes and therefore focus on enacted text, precedent, and interpretive principles that constrain judicial decision making.⁹⁵ Legislators often view statutes as instruments for addressing broader social problems through compromise and policy design.⁹⁶ Administrative agencies, charged with implementing statutory programs, may focus more directly on practical consequences, regulatory objectives, and enforcement realities.⁹⁷

To justify your interpretation of a particular statutory provision, you may need to describe which tools of statutory interpretation you used to reach your conclusion. Some readers find certain interpretive tools more persuasive than others. Understanding the various interpretive theories will help you anticipate your reader's reaction to your use of a particular tool of statutory interpretation.

⁸⁹ *Id.*

⁹⁰ SCALIA & GARNER, *supra* note 13, at 63.

⁹¹ *United States v. Hayes*, 555 U.S. 415, 418 (2009).

⁹² *Id.* at 427.

⁹³ *Id.* (citing a statement by Sen. Lautenberg). *But see id.* at 435 (Roberts, C.J., dissenting) ("We dismiss the value of such statements due to inherent flaws as guides to legislative intent, flaws that persist (and indeed may be amplified) in the absence of other indicia of intent").

⁹⁴ ESKRIDGE, *supra* note 1, at 1–19.

⁹⁵ *Id.* at 2, 8–9.

⁹⁶ *Id.* at 11–13.

⁹⁷ *Id.* at 17–19.

This Part briefly describes three major interpretive theories: textualism, intentionalism, and pragmatism. The Supreme Court’s decision in *King v. Burwell* and *Bostock v. Clayton County* shows these theories in action.⁹⁸

A. Textualism

Textualists “look for meaning in the governing text, ascribe to that text the meaning that it has borne from its inception, and reject judicial speculation about both the drafters’ extratextually derived purposes and the desirability of the fair reading’s anticipated consequences.”⁹⁹ Rather than consulting legislative history or inquiring into a statute’s purpose, textualists rely on the ordinary meaning of the words in the statute and generally accepted canons of statutory construction. To discern the meaning of statutory language, textualists may turn to dictionary definitions.¹⁰⁰

There are several common justifications for textualism. First, textualism constrains judicial discretion, thereby limiting “the tendency of judges to imbue authoritative texts with their own policy preferences.”¹⁰¹ Second, confining the interpretive task to what is fairly discernable from the text will encourage more precisely drafted laws.¹⁰² As a result, textualism “will provide greater certainty in the law, and hence greater predictability and greater respect for the rule of law.”¹⁰³ Third, textualism is the only principled and coherent method of statutory interpretation because any search for legislative intent is futile. The notion that there is a discernable legislative intent is “pure fantasy,” as “most legislators could not possibly have focused on the narrow point before the court,” and “[t]he few who did undoubtedly had varying views.”¹⁰⁴ Judges should look for the meaning of the text, not the intent of the legislature.¹⁰⁵ But note that scholars continue to debate the scope and limits of textualism, particularly whether textualist methods adequately constrain judicial discretion.¹⁰⁶

B. Intentionalism

Intentionalists focus on the meaning that the legislature intended to give the statute. Courts should interpret laws “in a manner consistent with legislative purposes.”¹⁰⁷ When statutes are unambiguous, the interpretive task typically ends with the plain meaning of the words.¹⁰⁸ When interpreting ambiguous laws, judges should consult “the interpretive materials the legislative branch thinks important to understanding its work.” Some sources of legislative history are more reliable than others—intentionalists typically consider conference committee

⁹⁸ 135 S. Ct. 2480, 2487 (2015); 140 S. Ct. 1731, 1737 (2020).

⁹⁹ SCALIA & GARNER, *supra* note 13, at xxvii.

¹⁰⁰ *See, e.g.,* MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, 225–26 (1994) (Scalia, J.) (“Virtually every dictionary we are aware of says that ‘to modify’ means to change moderately or in minor fashion.”).

¹⁰¹ SCALIA & GARNER, *supra* note 13, at xxviii.

¹⁰² *See id.* (arguing that textualism will “discourage legislative free-riding, whereby legal drafters idly assume that judges will save them from their blunders”).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 376.

¹⁰⁵ *Id.* at 375 (“To be ‘a government of laws, not of men’ is to be governed by what the laws say, and not by what the people who drafted the laws intended.”).

¹⁰⁶ *See* JONATHAN R. SIEGEL, THE INEXORABLE RADICALIZATION OF TEXTUALISM, 158 U. Pa. L. Rev. 117 (2009).

¹⁰⁷ KATZMANN, *supra* note 31, at 10.

¹⁰⁸ *But see id.* at 29 (“At times, even when the statute is plain on its face, the judge may find legislative history helpful in reinforcing the court’s understanding of the words.”)

reports and committee reports the most authoritative sources.¹⁰⁹ Therefore, intentionalists not only examine the statutory text and structure but also consult legislative history to determine the underlying purpose of the legislature when it enacted the statute.

Intentionalists have advanced several arguments for their preferred mode of interpretation. First, relying solely on the statutory text is simply “inadequate when interpreting ambiguous laws,” and legislative history can help judges interpret undefined or specialized terms in complex statutes.¹¹⁰ Discerning legislative intent may not always be easy, but it is not impossible. Second, “legislation is the product of a deliberative and informed process,” and judges should “provide the meaning that the legislature intended.” Such an approach “facilitates healthy interbranch relations” by promoting comity between the legislature and the judiciary.¹¹¹ Third, textualism is actually more likely to increase judicial discretion and produce unintended consequences. If judges can consult dictionaries, then they should be able to consult other extratextual sources such as committee reports. Moreover, ignoring the legislature’s underlying purpose in enacting the statute risks adopting an interpretation “that the legislators did not intend.”¹¹²

C. Pragmatism

Pragmatists employ tools of statutory interpretation to reach a result that appropriately balances a number of factors, including predictability and certainty, economic efficiency, fairness, and the public interest.¹¹³ To reach the best interpretation, judges should consult traditional sources—“cases, statutes, regulations, constitutions, conventional legal treatises, and other orthodox legal materials.”¹¹⁴ But pragmatists also argue that judges should take real-world consequences and societal understandings into account when interpreting an ambiguous statutory provision.¹¹⁵

Unlike textualists and intentionalists, pragmatists do not assume that statutory interpretation yields a single objectively correct meaning. Instead, they view interpretation as a pragmatic and adaptive enterprise, with meaning shaped by context, consequences, and institutional considerations.¹¹⁶ There are multiple permissible understandings, and a pragmatist judge should choose the interpretation “that will produce the best results.”¹¹⁷ Many of the tools advocated by textualists and intentionalists do not definitively resolve ambiguous statutes. For example, “there is no canon for ranking or choosing between canons; the code lacks a key.”¹¹⁸ Similarly, legislatures often leave gaps in laws they pass; given the time it takes for legislatures

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 35.

¹¹¹ *Id.* at 29.

¹¹² *Id.* at 48.

¹¹³ See, e.g., Richard A. Posner, *Pragmatic Adjudication*, 18 CARDOZO L. REV. 1 (1996).

¹¹⁴ *Id.*

¹¹⁵ Richard A. Posner, *Comment on Professor Gluck’s “Imperfect Statutes, Imperfect Courts,”* 129 HARV. L. REV. F. 11 (2015); see also Posner, *supra* note 79, at 13.

¹¹⁶ See Associate Justice (Ret.) Stephen Breyer, *Pragmatism or Textualism*, 138 HARV. L. REV. 629, 645–46 (2025).

¹¹⁷ Posner, *supra* note 133, at 8.

¹¹⁸ KATZMANN, *supra* note 31, at 52 (quoting Posner, J.).

to pass new laws clarifying prior ambiguities, judges must step in to fill gaps in a reasonable way.¹¹⁹

D. Theories in Action

a. *King v. Burwell: Intentionalism, Pragmatism, and Textualism in Contrast*

The Affordable Care Act gives individuals subsidies to buy health insurance in the form of tax credits, to be used in regulated marketplaces called “exchanges.” Under the Act, each state was to set up its own exchange, but the federal government would create an exchange if the state did not. One provision of the Act stated that the availability of subsidies would depend on whether an individual purchased insurance through “an Exchange established by the State.” The IRS interpreted this provision to allow individuals to receive tax credits “regardless of whether the Exchange is established and operated by a state . . . or HHS.” The issue before the Court in *King v. Burwell* was “whether the Act’s tax credits are available in States that have a Federal Exchange rather than a State Exchange.”¹²⁰

In an opinion by Chief Justice Roberts, the Court rejected the challenge to the law and held that the subsidies could go to exchanges established by the federal government. The opinion contains elements of intentionalism and pragmatism. The Court acknowledged that the provision could be read to exclude subsidies for federally established exchanges.¹²¹ However, a “fair reading of legislation demands a fair understanding of the legislative plan,” and here, “Congress passed the Affordable Act to improve health insurance markets, not to destroy them.”¹²² Accepting the challengers’ argument would also undermine the larger statutory scheme and produce absurd results. Without the subsidies, other parts of the Act—including the requirement that individuals buy health insurance or pay a penalty—“could well push a State’s individual insurance market into a death spiral.”¹²³ To avoid such an outcome, the Court concluded from the statutory context and legislative purpose that the subsidies should flow to federal established exchanges.

Justice Scalia’s dissent is a classic articulation of textualism. According to Justice Scalia, “Words no longer have meaning if an Exchange that is *not* established by a State is ‘established by the State.’”¹²⁴ Context matters, but as “a tool for understanding the terms of the law, not an excuse for rewriting them.”¹²⁵ He also criticized the Court’s efforts to discern legislative intent. It is “interpretive jiggery-pokery,” he argued, “to subordinate the express words of the section that grants tax credits to the mere implications of other provisions with only tangential connections to tax credits.”¹²⁶ “Rather than rewriting the law under the pretense of interpreting it, the Court should have left it to Congress to decide what to do about the Act’s limitation of tax credits to state Exchanges.”¹²⁷

¹¹⁹ Posner, *supra* note 133, at 18–20.

¹²⁰ 135 S. Ct. 2480, 2487 (2015).

¹²¹ *Id.* at 2490.

¹²² *Id.* at 2495.

¹²³ *Id.* at 2493.

¹²⁴ *Id.* at 2497 (Scalia, J., dissenting).

¹²⁵ *Id.*

¹²⁶ *Id.* at 2500.

¹²⁷ *Id.* at 2506.

King v. Burwell highlights how intentionalist and pragmatic reasoning can reshape statutory meaning in light of broader context and consequences. The choice of interpretive theory often shapes both the result and the reasoning in a case. Thus, the same statutory text can yield fundamentally different outcomes depending on which interpretive theory a court chooses to elevate.

b. *Bostock v. Clayton County: Modern Textualism*

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals “because of...sex.”¹²⁸ Several employees alleged they were fired for being gay or transgender and brought suit under that provision. The issue before the Court in *Bostock v. Clayton County* was whether discrimination based on sexual orientation and gender identity falls within the meaning of discrimination “because of...sex.”¹²⁹

In an opinion by Justice Gorsuch, the Court held that Title VII’s prohibition on discrimination “because...sex” encompasses discrimination based on sexual orientation and gender identity. The opinion reflects a modern textualist approach grounded in the ordinary public meaning of the statutory language. The Court reasoned that an employer who fires a male employee for being attracted to men but would not fire a female employee for the same conduct, necessarily treats the male employee differently because of his sex.¹³⁰ The majority emphasized that statutory meaning is determined by the text itself, not by legislators’ expectations or intentions, explaining that “[j]udges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations.”¹³¹

Justice Alito’s dissent offers a competing account of textualism. In his view, a faithful textualist inquiry requires interpreting statutory language as it would have been understood at the time of enactment.¹³² Because the ordinary meaning of *sex* in 1964 did not include sexual orientation or gender identity, the majority’s interpretation effectively updated the statute rather than applied it.¹³³ Justice Kavanaugh’s separate dissent similarly argued that courts must interpret statutory phrases as a whole, rather than deriving meaning from the interaction of individual terms in isolation.¹³⁴

Bostock v. Clayton County highlights that even within an interpretive theory, interpreters can reach different conclusions about the same statutory language. Thus, agreement on theory does not always yield a single, determinate answer.

Conclusion

The interpretive techniques described in this handout can help you identify and explain the meaning of a statute. Courts rarely rely on a single interpretive theory in every case. Instead,

¹²⁸ 140 S. Ct. 1731, 1737 (2020).

¹²⁹ *Id.* at 1737–38.

¹³⁰ *Id.* at 1740–42.

¹³¹ *Id.* at 1754.

¹³² *Id.* at 1755–57 (Alito, J., dissenting).

¹³³ *Id.* at 1755–56.

¹³⁴ *Id.* at 1825–27 (Kavanaugh, J. dissenting).

they draw on a range of tools, including textual analysis, structural context, and background interpretive principles, to resolve questions of statutory meaning.¹³⁵ Remember that effective statutory analysis requires not only careful attention to the statutory text but also thoughtful selection of the interpretive tools most likely to persuade your reader.

¹³⁵ See ABBE R. GLUCK, THE STATES AS LABORATORIES OF STATUTORY INTERPRETATION, 119 Yale L.J. 1750, 1764–65 (2010).