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Law Schools Need to Teach Statutory-Construction Rules

Focus Column

Litigation

By Daniel Lee Jacobson

The casebook method has long been the favored tool of learning for law students. Students learn to analyze appellate cases, thus learning how to read, write and think as a lawyer, while simultaneously learning the rules of common law.

But little law-school time is spent on reading statutes. That being so, attorneys sometimes are ill-equipped to interpret and employ statutes in their practices. In order to interpret and employ statutes, one must understand statutes; in order to understand statutes, one must know the rules of statutory construction.

In fact, "it is ... important for our system of justice to observe well-founded and established rules [of statutory construction]," the court ruled in *Finn v. Superior Court*, 156 Cal.App.3d 268 (1984). This article addresses those rules.

Civil Code Section 22.2 states, "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State [California], is the rule of decision in all the courts of this State." The Legislature is empowered to abrogate the common law, so long as such abrogation is not constitutionally offensive. *People v. Hickman,* 204 Cal. 470 (1928).

In *California Teachers' Association v. Governing Board of Hilmar Unified School District*, 95 Cal.App.4th 183 (2002), the court ruled that "[o]ur fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." This tenet of statutory construction is universally accepted in the state. See also, for instance, *People v. Casillas*, 92 Cal.App.4th 171 (2001); *Ford v. Norton*, 89 Cal.App.4th 974 (2001); and *People v. Barrajas*, 62 Cal.App.4th 926 (1998).

In fact, "[i]t is a cardinal principle that the primary rule of statutory construction to which every other rule must yield is that the intention of the Legislature should be given effect." *California School Employees Association v. Jefferson Elementary School District*, 45 Cal.App.3d 683 (1975).

Then the question is how to "ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." The answer is well-settled. According to *People v. Toney*, 32 Cal.4th 228 (2004), citing *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709 (2003); and *People v. Jefferson* 21 Cal.4th 86 (1999): "We begin by examining the words [of the statute] themselves because the statutory language is generally the most reliable indicator of legislative intent."

Where possible, a court must employ the "plain meaning" rule when examining the words of a statute. "Where the statute is clear, the 'plain meaning' rule applies," the court ruled in *Berry v. State of California,* 2 Cal.App.4th 688 (1992). "The Legislature is presumed to have meant what it said, and the plain meaning of the language governs."

"[W]e look first to the words of the statute, giving the language its usual, ordinary meaning," the court stated in *People v. Fulton*, 109 Cal.App.4th 876 (2003), citing *People v. Birkett,* 21 Cal.4th 226 (1999). And the court in *Giles v. Horn*, 100 Cal.App.4th 206 (2002), citing *Lungren v. Deukmejian*, 45 Cal.3d 727 (1988), found, "Under the so-called plain meaning rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning."

A court finds the "plain" or "ordinary" meaning of the words in a statute in the same place as would a grammar-school student - the dictionary.

"In seeking to ascertain the ordinary sense of words, courts ... regularly turn to general dictionaries." *Scott v. Continental Insurance* 44 Cal.App.4th 24 (1996). The court in *People v. Whitlock,* 113 Cal.App.4th 456 (2003), quoting *Consumer Advocacy Group Inc. v. Exxon Mobil Corp.*, 104 Cal.App.4th 438 (2002), found the same: "To ascertain the common meaning of a word, 'a court typically looks to dictionaries.'"

However, "where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is thereby enlarged or restricted and especially to avoid absurdity or to prevent injustice." *Taylor v. Forte Hotels International*, 235 Cal.App.3d 1119 (1991), quoting *S.F. Bay etc. Com. v. Town of Emeryville*, 69 Cal.2d 533 (1968), which, in turn, quoted *People v. Asamoto*, 131 Cal.App.2d 22 (1955).

Every reasonable effort should be made to give significance to all of the words of a statute. "If possible," the court decided in *Moyer v. Workmen's Compensation Appeals Board*, 10 Cal.3d 222 (1973), "significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose ; a construction making some words surplusage is to be avoided." The court in *People v. Isaia*, 206 Cal.App.3d 1558 (1989), agreed that "[c]onstructions which would make part of ... [a] statute surplusage should be avoided."

Statutory context is important, as is the context of the use of a word within a statute. "A statute must be construed in the context of the entire statutory [scheme] of which it is a part, in order to achieve harmony among [its] parts," according to *O'Brien v. Dudenhoeffer*, 16 Cal.App.4th 327 (1993), citing *Unzueta v. Ocean View School District,* 6 Cal.App.4th 1689 (1992). "This principle applies even though the two provisions are in separate codes."

The words of a statute "must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." *Citizens of Lake Murray Area Association v. City Council of San Diego*, 129 Cal.App.3d 436 (1982), citing *Moyer.*

A specific statute will prevail over a general one, according to *Medical Board of California v. Superior Court*, 88 Cal.App.4th 1001 (2001).

"If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs," the court said in *In re Marriage of Romero*, 99 Cal.App.4th 1436 (2002).

However, according to *Halbert's Lumber Inc. v. Lucky Stores*, 6 Cal.App.4th 1233 (1992), "if the meaning of the words [in a statute] is not clear courts must take the second step and refer to the legislative history" - and "[a]n exception to ... [the plain meaning rule] is a situation in which to follow a statute's plain meaning would result in absurd consequences which the Legislature did not intend." *People v. Fenton*, 20 Cal.App.4th 965 (1993), citing *Younger v. Superior Court*, 21 Cal.3d 102 (1978).

As further explained in *City of Los Angeles v. Los Olivos Mobile Homes Park*, 213 Cal.App.3d 1427 (1989): "The literal meaning [of a statute] may be disregarded ... to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole."

There have been times when courts have expressed misgivings with absolute adherence to the plain meaning rule. In *Mesa Forest Products Inc. v. St. Paul Mercury Insurance Co.*, 73 Cal.App.4th 324 (1999), the 2nd District Court of Appeal quoted *Bodell Construction Co. v. Trustees of California State University*, 62 Cal.App.4th 1508 (1998): "[T]he 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose."

"If the terms of the statute provide no definitive answer," the court continued in *Mesa*, "then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history."

But most California courts consider going beyond the meaning of the words in a statute to determine the meaning of that statute to be a step that is not to be taken lightly.

Justice David G. Sills explained, "It is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, re-amended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and after perhaps more lobbying, debate and analysis, finally signed 'into law' by the Governor."

"The same care and scrutiny," Sill continued, "does not befall the committee reports, caucus analyses, authors' statements, legislative counsel digests and other documents which make up a

statute's 'legislative history.'" *Halbert's Lumber.*

Sills went on to explain the last potential step in statutory construction.

"The final step," he said, " - and one which we believe should only be taken when the first two steps have failed to reveal clear meaning - is to apply reason, practicality and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable." *Halbert's Lumber.*

These rules of construction constitute the structure by which statutes are interpreted and then ultimately employed.

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