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REMARKS ON THE THEORY OF APPELLATE DECISION AND THE RULES OR CANONS ABOUT HOW STATUTES ARE TO BE CONSTRUED

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I

One does not progress far into legal life without learning that there is no single right and accurate way of reading one case, or of reading a bunch of cases. For

(1) Impeccable and correct doctrine makes clear that a case "holds" with authority only so much of what the opinion says as is absolutely necessary to sustain the judgment. Anything else is unnecessary and "distinguishable" and noncontrolling for the future. Indeed, if the judgment rests on two, three or four rulings, any of them can be rightly and righteously knocked out, for the future, as being thus "unnecessary." Moreover, any distinction on the facts is rightly and righteously a reason for distinguishing and therefore disregarding the prior alleged holding. But

(2) Doctrine equally impeccable and correct makes clear that a case "holds" with authority the rule on which the court there chose to rest the judgment; more, that that rule covers, with full authority, cases which are plainly distinguishable on their facts and their issue, whenever the reason for the rule extends to cover them. Indeed, it is unnecessary for a rule or principle to have led to the decision in the prior case, or even to have been phrased therein, in order to be seen as controlling in the new case: (a) "We there said . . ." (b) "That case necessarily decided . . ."

These divergent and indeed conflicting correct ways of handling or reading a single prior case as one "determines" what it authoritatively holds, have their counterparts in regard to the authority of a series or body of cases. Thus

(1) It is correct to see that "That rule is too well settled in this jurisdiction to be disturbed"; and so to apply it to a wholly novel circumstance. But

(2) It is no less correct to see that "The rule has never been extended to a case like the present"; and so to refuse to apply it: "We here limit the rule." Again,

(3) It is no less correct to look over the prior "applications" of "the rule" and rework them into a wholly new formulation of "the true rule" or

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"true principle" which knocks out some of the prior cases as simply "misapplications" and then builds up the others.

In the work of a single opinion-day I have observed 26 different, describable ways in which one of our best state courts handled its own prior cases, repeatedly using three to six different ways within a single opinion.

What is important is that *all* 26 ways (plus a dozen others which happened not to be in use that day) are correct. They represent not "evasion," but sound use, application and development of precedent. They represent not "departure from," but sound continuation of, our system of precedent as it has come down to us. The major defect in that system is a mistaken idea which many lawyers have about it—to wit, the idea that the cases themselves and in themselves, plus the correct rules on how to handle cases, provide one single correct answer to a disputed issue of law. In fact the available correct answers are two, three, or ten. The question is: *Which* of the available correct answers will the court *select*—and *why?* For since there is always more than one available correct answer, the court always has to select.

True, the selection is frequently almost automatic. The type of distinction or expansion which is always *technically* available may be psychologically or sociologically unavailable. This may be because of (a) the current tradition of the court or because of (b) the current temper of the court or because of (c) the sense of the situation as the court sees that sense. (There are other possible reasons a-plenty, but these three are the most frequent and commonly the most weighty.)

The *current tradition* of the court is a matter of period-style in the craft of judging. In 1820-1850 our courts felt in general a freedom and duty to move in the manner typified in our thought by Mansfield and Marshall. "Precedent" guided, but "principle" controlled; and nothing was good "Principle" which did not look like wisdom-in-result for the welfare of All-of-us. In 1880-1910, on the other hand, our courts felt in general a prime duty to order within the law and a duty to resist any "outside" influence. "Precedent" was to control, not merely to guide; "Principle" was to be tested by whether it made for order in the law, not by whether it made wisdom-in-result. "Legal" Principle could not be subjected to "political" tests; even legislation was resisted as disturbing. Since 1920 the earlier style (the "Grand Style") has been working its way back into general use by our courts, though the language of the opinions moves still dominantly (though waningly) in the style (the "Formal Style") of the late 19th Century. In any particular court what needs study is how far along the process has gotten. The best material for study is the latest volume of reports, read in sequence from page 1 through to the end: the current mine-run of the work.

The *current temper* of the court is reflected in the same material, and represents the court's tradition as modified by its personnel. For it is plain

that the two earlier period-styles represent also two eternal types of human being. There is the man who loves creativeness, who can without loss of sleep combine risk-taking with responsibility, who sees and feels institutions as things built and to be built to serve functions, and who sees the functions as vital and law as a tool to be eternally reoriented to justice and to general welfare. There is the other man who loves order, who finds risk uncomfortable and has seen so much irresponsible or unwise innovation that responsibility to him means caution, who sees and feels institutions as the tested, slow-built ways which for all their faults are man's sole safeguard against relapse into barbarism, and who regards reorientation of the law in our polity as essentially committed to the legislature. Commonly a man of such temper has also a craftsman's pride in clean craftsman's work, and commonly he does not view with too much sympathy any ill-done legislative job of attempted reorientation.[1] Judges, like other men, range up and down the scale between the extremes of either type of temper, and in this aspect (as in the aspect of intellectual power and acumen or of personal force or persuasiveness) the constellation of the personnel on a particular bench at a particular time plays its important part in urging the court toward a more literal or a more creative selection among the available accepted and correct "ways" of handling precedent.

More vital, if possible, than either of the above is *the sense of the situation as seen by the court.* Thus in the very heyday of the formal period our courts moved into tremendous creative expansion of precedent in regard to the labor injunction and the due process clause. What they saw as sense to be achieved, and desperately needed, there broke through all trammels of the current period-style. Whereas the most creative-minded court working in the most creative period-style will happily and literally apply a formula without discussion, and even with relief, if the formula makes sense and yields justice in the situation and the case.

So strongly does the felt sense of the situation and the case affect the court's choice of techniques for reading or interpreting and then applying the authorities that one may fairly lay down certain generalizations:

A. In some six appealed cases out of ten the court feels this sense so clearly that lining up the authorities comes close to being an automatic job. *In the very process of reading an authority* a distinction leaps to the eye, and that is "all" that that case holds; or the language of another authority (whether or not "really" in point) shines forth as "clearly stating the true rule." Trouble comes when the cases do not line up this clearly and semi-

1. Intellectually, this last attitude is at odds with the idea that reorientation is for the legislature. Emotionally, it is not. Apart from the rather general resistance to change which normally companions orderliness of mind, there is a legitimate feeling that within a team team-play is called for, that it is passing the buck to thrust onto a court the labor of making a legislative job make sense and become workable.

automatically, when they therefore call for intellectual labor, even at times for a conclusion that the law as given will not allow the sensible result to be reached. Or trouble comes when the sense of the situation is not clear.

B. Technical leeways correctly available when the sense of the situation and the case call for their use cease to be correctly available *unless used in furtherance of what the court sees as such sense.* There is here in our system of precedent an element of uprightness, or conscience, of judicial responsibility; and motive becomes a factor in determining what techniques are correct and right. Today, in contrast with 1890, it may be fairly stated that even the literal application of a thoroughly established rule is not correct in a case or situation in which that application does not make sense unless the court in honest conscience feels forced by its office to make the application.

C. Collateral to B, but deserving of separate statement, is the proposition that *the greater the felt need, because of felt sense, the wider is the leeway correctly and properly available in reshaping an authority or the authorities.* What is both proper and to be expected in an extreme case would become abuse and judicial usurpation if made daily practice in the mine-run of cases. All courts worthy of their office feel this in their bones, as being inherent in our system of precedent. They show the feeling in their work. Where differences appear is where they should appear: in divergent sizings up of what is sense, and of how great the need may be in any situation.

One last thing remains to be said about "sense."

There is a sense of *the type of situation* to be contrasted with the sense of *a particular controversy between particular litigants.* Which of these aspects of sense a court responds to more strongly makes a tremendous difference. Response primarily to the sense of the particular controversy is, in the first place, dangerous because a particular controversy may not be typical, and because it is hard to disentangle general sense from personalities and from "fireside" equities. Such response is dangerous in the second place because it leads readily to finding an out *for this case only*—and that leads to a complicating multiplicity of refinement and distinction, as also to repeated resort to analogies unthought through and unfortunate of extension. This is what the proverb seeks to say: "Hard cases make bad law."

If on the other hand the type of situation is in the forefront of attention, a solving rule comes in for much more thoughtful testing and study. Rules are thrust toward reasonable simplicity, and made with broader vision. Moreover, the idiosyncracies of the particular case and its possible emotional deflections are set for judgment against a broader picture which gives a fair chance that accidental sympathy is not mistaken for long-range justice for all. And one runs a better chance of skirting the incidence of the other proverb: "Bad law makes hard cases."

On the case-law side, I repeat, we ought all thus to be familiar with

the fact that the right doctrine and going practice of our highest courts leave them a very real leeway within which (a) to narrow or avoid what seem today to have been unfortunate prior phrasings or even rulings; or (b), on the other hand, to pick up, develop, expand what seem today to have been fortunate prior rulings or even phrasings.

It is silly, I repeat, to think of use of this leeway as involving "twisting" of precedent. The very phrase presupposes the thing which is not and which has never been. The phrase presupposes that there was in the precedent under consideration some one and single meaning. The whole experience of our case-law shows that that assumption is false. It is, instead, the business of the courts to use the precedents constantly to make the law always a *little* better, to correct old mistakes, to recorrect mistaken or ill-advised attempts at correction—but always within limits severely set not only by the precedents, but equally by the traditions of right conduct in judicial office.

What we need to see now is that all of this is paralleled, in regard to statutes, because of (1) the power of the legislature both to choose policy and to select measures; and (2) the necessity that the legislature shall, in so doing, use language—language fixed in particular words; and (3) the continuing duty of the courts to make sense, under and within the law.

For just as prior courts can have been skillful or unskillful, clear or unclear, wise or unwise, so can legislatures. And just as prior courts have been looking at only a single piece of our whole law at a time, so have legislatures.

But a court must strive to make sense *as a whole* out of our law *as a whole*. It must, to use Frank's figure,[2] take the music of any statute as written by the legislature; it must take the text of the play as written by the legislature. But there are many ways to play that music, to play that play, and a court's duty is to play it well, and in harmony with the other music of the legal system.

Hence, in the field of statutory construction also, there are "correct," unchallengeable rules of "how to read" which lead in happily variant directions.

This must be so until courts recognize that here, as in case-law, the real guide is Sense-for-All-of-Us. It must be so, so long as we and the courts pretend that there has been only one single correct answer possible. Until we give up that foolish pretense there must be a set of mutually contradictory *correct* rules on How to Construe Statutes: either set available as duty and sense may require.

Until then, also, the problem will recur in statutory construction as in the handling of case-law: *Which* of the technically correct answers (a) *should* be given; (b) *will* be given—and Why?

And everything said above about the temper of the court, the temper

2. Frank, *Words and Music: Some Remarks on Statutory Interpretation*, 47 COL. L. REV. 1259 (1947).

of the court's tradition, the sense of the situation and the case, applies here as well.

Thus in the period of the Grand Style of case-law statutes were construed "freely" to implement their purpose, the court commonly accepting the legislature's choice of policy and setting to work to implement it. (Criminal statutes and, to some extent, statutes on procedure, were exceptions.) Whereas in the Formal Period statutes tended to be limited or even eviscerated by wooden and literal reading, in a sort of long-drawn battle between a balky, stiff-necked, wrong-headed court and a legislature which had only words with which to drive that court. Today the courts have regained, in the main, a cheerful acceptance of legislative choice of policy, but they are still hampered to some extent in carrying such policies forward by the Formal Period's insistence on precise language.

II

One last thing is to be noted:

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.

If a statute is to be merged into a going system of law, moreover, the court must do the merging, and must in so doing take account of the policy of the statute—or else substitute its own version of such policy. Creative reshaping of the net result is thus inevitable.

But the policy of a statute is of two wholly different kinds—each kind somewhat limited in effect by the statute's choice of measures, and by the statute's choice of fixed language. 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, a deliberate choice of one line of approach rather than another. Here talk of "intent" is reasonably realistic; committee reports, legislative debate, historical knowledge of contemporary thinking or campaigning which points up the evil or the goal can have siguificance.

But on the other hand—and increasingly as a statute gains in age—its language is called upon to deal with circumstances utterly uncontemplated at the time of its passage. Here the quest is not properly for the sense originally intended by the statute, for the sense sought originally to be *put into it,* but rather for the sense which *can be quarried out of it* in the light of the new situation. Broad purposes can indeed reach far beyond details known or knowable at the time of drafting. A "dangerous weapon" statute of 1840 can include tommy guns, tear gas or atomic bombs. "Vehicle," in a statute of 1840, can properly be read, when sense so suggests, to include an automobile, or a hydroplane that lacks wheels. But for all that, the sound quest does not

run primarily in terms of historical intent. It runs in terms of what the words can be made to bear, in making sense in the light of the unforeseen.

III

When it comes to presenting a proposed construction in court, there is an accepted conventional vocabulary. As in argument over points of case-law, the accepted convention still, unhappily requires discussion as if only one single correct meaning could exist. Hence there are two opposing canons on almost every point. An arranged selection is appended. Every lawyer must be familiar with them all: they are still needed tools of argument. At least as early as Fortescue the general picture was clear, on this, to any eye which would see.

Plainly, to make any canon take hold in a particular instance, the construction contended for must be sold, essentially, by means other than the use of the canon: The good sense of the situation and a *simple* construction of the available language to achieve that sense, *by tenable means, out of the statutory language.*

Canons of Construction

Statutory interpretation still speaks a diplomatic tongue. Here is some of the technical framework for maneuver.

Thrust	But	Parry
1. A statute cannot go beyond its text.[2]		1. To effect its purpose a statute may be implemented beyond its text.[4]
2. Statutes in derogation of the common law will not be extended by construction.[5]		2. Such acts will be liberally construed if their nature is remedial.[6]
3. Statutes are to be read in the light of the common law and a statute affirming a common law rule is to be construed in accordance with the common law.[7]		3. The common law gives way to a statute which is in consistent with it and when a statute is designed as a revision of a whole body of law applicable to a given subject it supersedes the common law.[8]

3. First National Bank v. DeBerriz, 87 W. Va. 477, 105 S.E. 900 (1921); Sutherland, Statutory Construction § 388 (2d ed. 1904); 59 C.J., *Statutes*, § 575 (1932).

4. Dooley v. Penn. R.R., 250 Fed. 142 (D. Minn. 1918); 59 C.J., *Statutes* § 575 (1932).

5. Devers v. City of Scranton, 308 Pa. 13, 161 Atl. 540 (1932); Black, Construction and Interpretation of Laws § 113 (2d ed. 1911); Sutherland, Statutory Construction § 573 (2d ed. 1904); 25 R.C.L., *Statutes* § 281 (1919).

6. Becker v. Brown, 65 Neb. 264, 91 N.W. 178 (1902); Black, Construction and Interpretation of Laws § 113 (2d ed. 1911); Sutherland, Statutory Construction §§ 573-75 (2d ed. 1904); 59 C.J., *Statutes* § 657 (1932).

7. Bandfield v. Bandfield, 117 Mich. 80, 75 N.W. 287 (1898); 25 R.C.L., *Statutes* § 280 (1919).

8. Hamilton v. Rathbone, 175 U.S. 414, 20 Sup. Ct. 155, 44 L. Ed. 219 (1899); State v. Lewis, 142 N.C. 626, 55 S.E. 600 (1906); 25 R.C.L., *Statutes* §§ 280, 289 (1919).

4. Where a foreign statute which has received construction has been adopted, previous construction is adopted too.[9]	4. It may be rejected where there is conflict with the obvious meaning of the statute or where the foreign decisions are unsatisfactory in reasoning or where the foreign interpretation is not in harmony with the spirit or policy of the laws of the adopting state.[10]
5. Where various states have already adopted the statute, the parent state is followed.[11]	5. Where interpretations of other states are inharmonious, there is no such restraint.[12]
6. Statutes *in pari materia* must be construed together.[13]	6. A statute is not *in pari materia* if its scope and aim are distinct or where a legislative design to depart from the general purpose or policy of previous enactments may be apparent.[14]
7. A statute imposing a new penalty or forfeiture, or a new liability or disability, or creating a new right of action will not be construed as having a retroactive effect.[15]	7. Remedial statutes are to be liberally construed and if a retroactive interpretation will promote the ends of justice, they should receive such construction.[16]
8. Where design has been distinctly stated no place is left for construction.[17]	8. Courts have the power to inquire into real—as distinct from ostensible—purpose.[18]

9. Freese v. Tripp, 70 Ill. 496 (1873); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 176 (2d ed. 1911); 59 C.J., *Statutes*, §§ 614, 627 (1932); 25 R.C.L., *Statutes* § 294 (1919).

10. Bowers v. Smith, 111 Mo. 45, 20 S.W. 101 (1892); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 176 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 404 (2d ed. 1904); 59 C.J., *Statutes* § 628 (1932).

11. Burnside v. Wand, 170 Mo. 531, 71 S.W. 337 (1902).

12. State v. Campbell, 73 Kan. 688, 85 Pac. 784 (1906).

13. Milner v. Gibson, 249 Ky. 594, 61 S.W.2d 273 (1933); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 104 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 443-48 (2d ed. 1904); 25 R.C.L., *Statutes* § 285 (1919).

14. Wheelock v. Myers, 64 Kan. 47, 67 Pac. 632 (1902); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 104 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 449 (2d ed. 1904); 59 C.J., *Statutes* § 620 (1932).

15. Keeley v. Great Northern Ry., 139 Wis. 448, 121 N.W. 167 (1909); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 119 (2d ed. 1911).

16. Falls v. Key, 278 S.W. 893 (Tex. Civ. App. 1925); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 120 (2d ed. 1911).

17. Federoff v. Birks Bros., 75 Cal. App. 345, 242 Pac. 885 (1925); SUTHERLAND, STATUTORY CONSTRUCTION § 358 (2d ed. 1904); 59 C.J., *Statutes* § 570 (1932).

18. Coulter v. Pool, 187 Cal. 181, 201 Pac. 120 (1921); 59 C.J., *Statutes* § 570 (1932).

9. Definitions and rules of construction contained in an interpretation clause are part of the law and binding.[19]	9. Definitions and rules of construction in a statute will not be extended beyond their necessary import nor allowed to defeat intention otherwise manifested.[20]
10. A statutory provision requiring liberal construction does not mean disregard of unequivocal requirements of the statute.[21]	10. Where a rule of construction is provided within the statute itself the rule should be applied.[22]
11. Titles do not control meaning; preambles do not expand scope; section headings do not change language.[23]	11. The title may be consulted as a guide when there is doubt or obscurity in the body; preambles may be consulted to determine rationale, and thus the true construction of terms; section headings may be looked upon as part of the statute itself.[24]
12. If language is plain and unambiguous it must be given effect.[25]	12. Not when literal interpretation would lead to absurd or mischievous consequences or thwart manifest purpose.[26]
13. Words and phrases which have received judicial construction before enactment are to be understood according to that construction.[27]	13. Not if the statute clearly requires them to have a different meaning.[28]

19. Smith v. State, 28 Ind. 321 (1867); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 89 (2d ed. 1911); 59 C.J., *Statutes* § 567 (1932).

20. *In re* Bissell, 245 App. Div. 395, 282 N.Y. Supp. 983 (4th Dep't 1935); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 89 (2d ed. 1911); 59 C.J., *Statutes* § 566 (1932).

21. Los Angeles County v. Payne, 82 Cal. App. 210, 255 Pac. 281 (1927); SUTHERLAND, STATUTORY CONSTRUCTION § 360 (2d ed. 1904); 59 C.J., *Statutes* § 567 (1932).

22. State *ex rel.* Triay v. Burr, 79 Fla. 290, 84 So. 61 (1920); SUTHERLAND, STATUTORY CONSTRUCTION § 360 (2d ed. 1904); 59 C.J., *Statutes* § 567 (1932).

23. Westbrook v. McDonald, 184 Ark. 740, 44 S.W. 2d 331 (1931); Huntworth v. Tanner, 87 Wash. 670, 152 Pac. 523 (1915); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS §§ 83-85 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 339-42 (2d ed. 1904); 59 C.J., *Statutes* § 599 (1932); 25 R.C.L., *Statutes* §§ 266-267 (1919).

24. Brown v. Robinson, 275 Mass. 55, 175 N.E. 269 (1931); Gulley v. Jackson, 165 Miss. 103, 145 So. 905 (1933); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS §§ 83-85 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 339-42 (2d ed. 1904); 59 C.J., *Statutes* §§ 598-99 (1932); 25 R.C.L., *Statutes* §§ 266, 267 (1919).

25. Newhall v. Sanger, 92 U.S. 761, 23 L. Ed. 769 (1875); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 51 (2d ed. 1911); 59 C.J., *Statutes* § 569 (1932); 25 R.C.L., *Statutes* §§ 213, 225 (1919).

26. Clark v. Murray, 141 Kan. 533, 41 P.2d 1042 (1935); SUTHERLAND, STATUTORY CONSTRUCTION § 363 (2d ed. 1904); 59 C.J., *Statutes* § 573 (1932); 25 R.C.L., *Statutes* §§ 214, 257 (1919).

27. Scholze v. Sholze, 2 Tenn. App. 80 (M.S. 1925); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 65 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 363 (2d ed. 1904).

28. Dixon v. Robbins, 246 N.Y. 169, 158 N.E. 63 (1927); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 65 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 363 (2d ed. 1904).

14. After enactment, judicial decision upon interpretation of particular terms and phrases controls.[29]	14. Practical construction by executive officers is strong evidence of true meaning.[30]
15. Words are to be taken in their ordinary meaning unless they are technical terms or words of art.[31]	15. Popular words may bear a technical meaning and technical words may have a popular signification and they should be so construed as to agree with evident intention or to make the statute operative.[32]
16. Every word and clause must be given effect.[33]	16. If inadvertantly inserted or if repugnant to the rest of the statute, they may be rejected as surplusage.[34]
17. The same language used repeatedly in the same connection is presumed to bear the same meaning throughout the statute.[35]	17. This presumption will be disregarded where it is necessary to assign different meanings to make the statute consistent.[36]
18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute.[37]	18. Rules of grammar will be disregarded where strict adherence would defeat purpose.[38]
19. Exceptions not made cannot be read.[39]	19. The letter is only the "bark." Whatever is within the reason of the law is within the law itself.[40]

29. Eau Claire National Bank v. Benson, 106 Wis. 624, 82 N.W. 604 (1900); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 93 (2d ed. 1911).

30. State *ex rel.* Bashford v. Frear, 138 Wis. 536, 120 N.W. 216 (1909); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 94 (2d ed. 1911); 25 R.C.L., *Statutes* § 274 (1919).

31. Hawley Coal Co. v. Bruce, 252 Ky. 455, 67 S.W.2d 703 (1934); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 63 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION, §§ 390, 393 (2d ed. 1904); 59 C.J., *Statutes*, §§ 577, 578 (1932).

32. Robinson v. Varnell, 16 Tex. 382 (1856); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 63 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 395 (2d ed. 1904); 59 C.J., *Statutes* §§ 577, 578 (1932).

33. *In re* Terry's Estate, 218 N.Y. 218, 112 N.E. 931 (1916); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 60 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 380 (2d ed. 1904).

34. United States v. York, 131 Fed. 323 (C.C.S.D.N.Y. 1904); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 60 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 384 (2d ed. 1904).

35. Spring Canyon Coal Co. v. Industrial Comm'n, 74 Utah 103, 277 Pac. 206 (1929); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 53 (2d ed. 1911).

36. State v. Knowles, 90 Md. 646, 45 Atl. 877 (1900); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 53 (2d ed. 1911).

37. Harris v. Commonwealth, 142 Va. 620, 128 S.E. 578 (1925); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 55 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 408 (2d ed. 1904).

38. Fisher v. Connard, 100 Pa. 63 (1882); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 55 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 409 (2d ed. 1904).

39. Lima v. Cemetery Ass'n, 42 Ohio St. 128 (1884); 25 R.C.L., *Statutes* § 230 (1919).

40. Flynn v. Prudential Ins. Co., 207 N.Y. 315, 100 N.E. 794 (1913); 59 C.J., *Statutes* § 573 (1932).

20. Expression of one thing excludes another.[41]	20. The language may fairly comprehend many different cases where some only are expressly mentioned by way of example.[42]
21. General terms are to receive a general construction.[43]	21. They may be limited by specific terms with which they are associated or by the scope and purpose of the statute.[44]
22. It is a general rule of construction that where general words follow an enumeration they are to be held as applying only to persons and things of the same general kind or class specifically mentioned (*ejusdem generis*).[45]	22. General words must operate on something. Further, *ejusdem generis* is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.[46]
23. Qualifying or limiting words or clauses are to be referred to the next preceding antecedent.[47]	23. Not when evident sense and meaning require a different construction.[48]
24. Punctuation will govern when a statute is open to two constructions.[49]	24. Punctuation marks will not control the plain and evident meaning of language.[50]

41. Detroit v. Redford Twp., 253 Mich. 453, 235 N.W. 217 (1931); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 72 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 491-94 (2d ed. 1904).

42. Springer v. Philippine Islands, 277 U.S. 189, 48 Sup. Ct. 480, 72 L. Ed. 845 (1928); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 72 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 495 (2d ed. 1904).

43. De Witt v. San Francisco, 2 Cal. 289 (1852); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 68 (2d ed. 1911); 59 C.J., *Statutes* § 580 (1932).

44. People *ex rel.* Krause v. Harrison, 191 Ill. 257, 61 N.E. 99 (1901); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 69 (1911); SUTHERLAND, STATUTORY CONSTRUCTION § 347 (2d ed. 1904).

45. Hull Hospital v. Wheeler, 216 Iowa 1394, 250 N.W. 637 (1933); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 71 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 422-34 (2d ed. 1904); 59 C.J., *Statutes* § 581 (1932); 25 R.C.L., *Statutes* § 240 (1919).

46. Texas v. United States, 292 U.S. 522, 54 Sup. Ct. 819, 78 L. Ed. 1402 (1934); Grosjean v. American Paint Works, 160 So. 449 (La. App. 1935); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 71 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION, §§ 437-41 (2d ed. 1904); 59 C.J., *Statutes* § 581 (1932); 25 R.C.L., *Statutes* § 240 (1919).

47. Dunn v. Bryan, 77 Utah 604, 299 Pac. 253 (1931); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 73 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 420, 421 (2d ed. 1904); 59 C.J., *Statutes* § 583 (1932).

48. Myer v. Ada County, 50 Idaho 39, 293 Pac. 322 (1930); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 73 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION §§ 420, 421 (2d ed. 1904); 59 C.J., *Statutes* § 583 (1932).

49. United States v. Marshall Field & Co., 18 C.C.P.A. 228 (1930); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 88 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 361 (2d ed. 1904); 59 C.J., *Statutes* § 590 (1932).

50. State v. Baird, 36 Ariz. 531, 288 Pac. 1 (1930); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 87 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 361 (2d ed. 1904); 59 C.J., *Statutes* § 590 (1932).

25. It must be assumed that language has been chosen with due regard to grammatical propriety and is not interchangeable on mere conjecture.[51]	25. "And" and "or" may be read interchangeably whenever the change is necessary to give the statute sense and effect.[52]
26. There is a distinction between words of permission and mandatory words.[53]	26. Words imparting permission may be read as mandatory and words imparting command may be read as permissive when such construction is made necessary by evident intention or by the rights of the public.[54]
27. A proviso qualifies the provision immediately preceding.[55]	27. It may clearly be intended to have a wider scope.[56]
28. When the enacting clause is general, a proviso is construed strictly.[57]	28. Not when it is necessary to extend the proviso to persons or cases which come within its equity.[58]

51. Hines v. Mills, 187 Ark. 465, 60 S.W.2d 181 (1933); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 75 (2d ed. 1911).

52. Fulghum v. Bleakley, 177 S.C. 286, 181 S.E. 30 (1935); SUTHERLAND, STATUTORY CONSTRUCTION § 397 (2d ed. 1904); 25 R.C.L., *Statutes* § 226 (1919).

53. Koch & Dryfus v. Bridges, 45 Miss. 247 (1871); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 150 (2d ed. 1911).

54. Jennings v. Suggs, 180 Ga. 141, 178 S.E. 282 (1935); Ewing v. Union Central Bank, 254 Ky. 623, 72 S.W.2d 4 (1934); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 151 (2d ed. 1911); 59 C.J., *Statutes* § 631 (1932).

55. State *ex rel.* Higgs v. Summers, 118 Neb. 189, 223 N.W. 957 (1929); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 130 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 352 (2d ed. 1904); 59 C.J., *Statutes* § 640 (1932).

56. Reuter v. San Mateo County, 220 Cal. 314, 30 P.2d 417 (1934); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 130 (2d ed. 1911).

57. Montgomery v. Martin, 294 Pa. 25, 143 Atl. 505 (1928); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 131 (2d ed. 1911); SUTHERLAND, STATUTORY CONSTRUCTION § 322 (2d ed. 1904).

58. Forscht v. Green, 53 Pa. 138 (1866); BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 131 (2d ed. 1911).