Statutory Interpretation *SURVIVAL GUIDE*

Driedger’s Modern Principle:

**Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context**

**and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.**

GAME PLAN:

1. Read through question carefully and copy onto Fact Pattern sheet.
2. Make questions as read through the scenario.

2:00-2:30 – flesh out plan

2:30-3:40 – write

3:40-4:00 – read through +

 + note up if necessary

* + question definitions of key terms
	+ provincial or federal / jurisdiction issues
	+ look at dates
	+ highlight issues
1. Refer to Acts/appendices considering questions.
	* pick main issues likely at play
	* frame core pieces of appendices with respect to what they do
		+ define and list
		+ provide conditions
		+ state purpose of legislation
		+ delegate responsibilities (*people*)
2. Make preliminary conclusions on each of the issues + jot down.
3. Pick apart main issues one at a time. Use headings.
	* what are big issues? include sub issues as well
	* ie. Heading: The Body, Subheading: Textual Analysis
	* go through each issue individually, continue on to Anatomical Research

“She would likely be able to use the body if she follows specific procedures outline in the Act and disposes of it appropriately as in s. \_\_ of the Act”

1. Begin writing substantive response
	* + BEGINNING WITH CONCLUSION
		+ Ms. Bobbie would likely be able to use the body in question so long as she follows specific procedures outline in the Act and disposes of it appropriately as in s. \_\_ of the Act.

**USING THE TOOLS**

* **Textual analysis**: What is the meaning of the words read alone and understood in the ordinary sense?
	+ Plain Meaning Rule: The ordinary meaning that spontaneously comes to the mind of a competent reader upon reading text. Courts will depart from ordinary sense if text is unclear or ambiguous. Though the mechanism underlying textualism, the ordinary meaning and the Plain Meaning Rule will not constitute the whole of this analysis, which aims at a more holistic approach considering Driedger’s Modern Principle.

“It is very likely that \_\_ would be interpreted to mean \_\_”

* + Technical meaning: If dictionary definition given, refer to this. When dealing with specialized subject, specialized understanding preferred over ordinary usage. However, burden of establishing the technical meaning of the expression and that the technical meaning was *intended* in this context.
	+ No superfluous words: Every word of the text is there for a reason and plays a meaningful role in the legislative scheme. The legislature does not legislate in vain. There is no tautology or redundancy in legislation.
	+ Internal coherence: All provisions of the text fit together logically and work together coherently to achieve the purposes of the legislation. *The legislature would have said “x”.* A legitimate basis for rejecting interpretation is to point out that if legislature had intended that, they would have framed it differently.
* **Legislative purpose analysis**: What is the meaning of the words read together with rest of the Act according to the legislature’s intent?
	+ Legislative scheme: Look to the long title, preamble, and purpose sections, definitions, headings, and marginal notes for interpretive assistance (key information on intension). The provisions of the Act are assumed to work together as parts of a coherent scheme designed to implement the legislature’s goals.
	+ Coherence in statutory scheme: Legislatures are presumed to intend to enact constitutionally valid law. An interpretation that renders legislation valid is preferred over one that does not.
	+ Golden rule: AVOID ABSURDITY “If interpreted to be \_\_, we would arrive at an absurd conclusion”
		- irrational distinctions such as treating similar things differently
		- contradictory effects
		- defeating the purpose of legislation
		- undermining the efficient application of legislation
		- violating important norms of justice or fairness
	+ Mischief rule: This should only be applied where there is ambiguity in the statute. Under the mischief rule, the court's role is to suppress the mischief the Act is aimed at and advance the remedy.
* **Contextual analysis**: What is the meaning of the words when read against the reasons for the creation of the statute, the kind of human behaviour it concerns, and the consequences of the proposed interpretations?
	+ Horizontal coherence: Where statutory contexts are analogous, use purposive interpretation in order to determine meaning and internal consistency.
	+ Vertical coherence: Is achieved through presumptions
		- the Constitution trumps all
		- federal legislation prevails over provincial
		- human rights legislation prevails over general legislation
		- subordinate legislation must be consistent with enabling statute
		- domestic must be interpreted consistently with international law
	+ Generous or narrow: If the Act is quasi-constitutional or benefit-conferring (have to do with human rights??), then requires a broader and more generous approach for interpretation. Ambiguities must be resolved in favour of the claimant.
	+ Paramountcy rule: If there is a conflict between two provisions. One type of law takes precedence over the other on the basis of some principled reason. The legislation prevails over the common law or the *specific prevails over the general* (also addressed by the Shared Meaning Rule).
* *Expressio unius est exclusion alterius*: the express mention of one thing excludes all others. In a specific list excluding certain things, it is assumed that those were excluded on purpose.
* *Noscitur a sociis*: The meaning of a word may be known from accompanying words.
* *Ejusdem generis*: Limited class rule. “Of the same kind, class, or nature.”
	+ *ie*. ice skating, sledding, skiing, and other sports
		- Sports may be **read down** to include only sports that are played in the winter.
	+ When a list of things that all belong to an **identifiable class** is followed by a general term, the general term may be read down to include only things within that class.

**Ideal Answer:**

1. Opens with a conclusion.
2. Spots issues.
3. Displays step by step reasoning with reference to class materials.
4. Comes to a conclusion on the sub-issues, but with varying degrees of certainty.

“She would likely be able to use the body if she follows specific procedures outline in the Act and disposes of it appropriately as in s. \_\_ of the Act”

“I am now going to engage in a contextual analysis of the word *body*”

“If interpreted \_\_ to be \_\_, we would arrive at an absurd conclusion”

“It is very likely that \_\_ would be interpreted to mean \_\_”

“I would need more information to interpret whether \_\_ means \_\_”

\*if one assumption leaves you with nothing, follow assumption that leaves you with more work to do

MEANING IN STATUTORY INTERPRETATION

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| RULE | Description | Rebuttals |
| Ordinary or plain meaning | Meaning that spontaneously comes to the mind of a competent reader upon reading text.  | Courts rely on *own linguistic* *intuitions* to determine ordinary meaning of language.  |
| Technical meaning | When dealing with specialized subject, specialized understanding preferred over ordinary usage. Use experts. | Burden of establishing the technical meaning of the expression and that the technical meaning was *intended* in this context. |
| Shared meaning | Discrepancy between versions of a bilingual statute, meaning shared by both versions is presumed to be the intended meaning. If one is broader, the more narrow version prevails. | Rebutted by evidence suggesting that some other meaning was intended. |
| Original meaning | Meaning of the words fixed at the time of enactment, but its application to facts over time is not fixed. Contrary to dynamic interpretation which is where text is applied in light of circumstances and assumptions existing at the time of application. | Language that is technical, concrete, and specific tends to attract a static interpretation.Language that is general or abstract attracts a dynamic interpretation. |
| Plausible meaning | If the ordinary meaning of a text is rejected, a plausible meaning is adopted that the text is capable of bearing. | This rule is sometimes honoured in the breach. |
| Straightforward expression | The legislature chooses the clearest, simplest, and most direct way of stating its meaning (argue in reference to the text). | Cannot assume court will agree with you. |
| No superfluous words | Every word of the text is there for a reason and plays a meaningful role in the legislative scheme. | The legislature does not legislate in vain. There is no tautology or redundancy in legislation. |
| *Ejusdem generis* (limited class):“Of the same kind, class, or nature.”Ie. ice skating, sledding, skiing, and other sportsSports may be **read down** to include only sports that are played in the winter. When a list of things that all belong to an **identifiable class** is followed by a general term, the general term may be read down to include only things within that class. |
| Internal coherence | All provisions of the text fit together logically and work together coherently to achieve the purposes of the legislation. | *The legislature would have said “x”.* A legitimate basis for rejecting interpretation is to point out that if legislature had intended that, they would have framed it differently. |

Re Rizzo and Rizzo Shoes Ltd ( 1998 Supreme Court judgement)

Does bankruptcy of an employer constitute a dismissal from employment? A claim made on behalf of former employees said that termination and severance pay was owing under Ontario’s Employment Standards Act. At the SCC Iacobucci J (for the court) overcame the plain meaning rule and used Driedger’s principle to hold that benefits *were* payable to the former employees.

Intention of Parliament:

1. The expressed intention, the intention expressed by the enacted words.
2. The implied intention, the intention that may legitimately be implied from the enacted words.
3. The presumed intention, the intention that the courts will in the absence of an indication of the contrary impute to Parliament.
4. The declared intention, the intention that Parliament itself has said may be or must be or must not be imputed to it.

Common Law Presumptions Used to Determine Legislative Intent

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| Legislative purpose | Purpose of the legislation insofar as the text permits. Interpretations that would tend to defeat legislative purposes are considered absurd. |
| Legislative scheme | The provisions of the Act are assumed to work together as parts of a coherent scheme designed to implement the legislature’s goals.  |
| Coherence in a statutory scheme | Legislatures are presumed to intend to enact constitutionally valid law. An interpretation that renders legislation valid is preferred over one that does not. In some cases legislatures do intend to restrict a Charter right or freedom in order to achieve an important goal, and are entitled to do so if can be justified under s 1. Also compliance with related legislation and regulations to provide coherence, compliance with common law to ensure consistency. |
| General presumptions | General presumptions against- extraterritorial application of legislation- retroactive application of legislation- interfering with vested rights- applying legislation to the Crown and its agents |
| Specific presumptions against absurdity | Absurdities:- irrational distinctions such as treating similar things differently or different things the same way- irrational, contradictory, or anomalous effects- defeating the purpose of legislation- undermining the efficient application of legislation- violating important norms of justice or fairness |

Issues Arising in Statutory Interpretation

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| Ambiguous, vague, or incomplete text | *Disputed meaning*Establish that the preferred meaning is the **ordinary meaning**, an intended **technical meaning**, or at least a **plausible meaning**. |
| Evolving context | *Static vs dynamic interpretation*The text should be interpreted in light of current understanding of language and social conditions (**dynamic interpretation**), as opposed to interpreting based on the conditions when first enacted(**static interpretation**).  |
| Overinclusive text | *Non-application*Not applying a provision to the facts even though it would otherwise apply given its ordinary meaning – called “**reading down**”. To **avoid absurdity** or to comply with presumptions of legislative intent. |
| Underinclusive text | *Incorrigible gap in legislative scheme: supplement with common law rule or remedy* Legislation can’t apply to the facts even though, given its purpose, it probably should apply. The court has no jurisdiction to fill a gap in a legislative scheme by “reading in” or otherwise enlarge the scope of legislation. Courts may intervene if the flaw can be characterized as a minor “drafting error”.*Supplement of a corrigible gap*Concede that the legislation as drafted does not apply, but claims that the common law does apply so as to supplement the underinclusive legislation. Generally successful when court relies on *parens patriae* jurisdiction (common law power to protect vulnerable people like children). |
| Contradictory or incoherent text | *Corrigible mistake*The provision contains a drafting mistake, which must be corrected before determining whether the provision applies to the facts. What did legislature intend? What would have text said if had been properly drafted? |
| Overlapping provisions | *No conflict: overlap versus exhaustive code*If two or more provisions apply to the same facts, each is to be applied as written. The courts work with a presumption of overlap so any law could apply in the absence of evidence to the contrary.*Conflict: Paramountcy rule*There is a conflict between two provisions and one type of law takes precedence over the other on the basis of some principled reason. The legislation prevails over the common law or the specific prevails over the general. |