

Hi. This is Chris Micheli, an adjunct professor at McGeorge School of Law in its Capital Lawyering program and a principal at the Sacramento governmental relations firms of Aprea & Micheli. Today's podcast is on rules of statutory construction primarily for the non-lawyer.

For those working in and around the California State Capitol, it's important to understand general rules of statutory construction whether you're a lawyer or a non-lawyer.

What is the purpose of statutory construction? Well, the general rules of statutory construction are used by the courts in interpreting statutes. However, by understanding these rules, those who draft statutes can be drafted by the rules the courts will use in interpreting those statutes. That's why even non-lawyers should familiarize themselves with these general rules.

While courts are not required to follow these rules of statutory construction in every instance, they are intended to guide the courts in determining what the intent of the Legislature was in enacting a particular statute.

The general rule of statutory construction is to effectuate the intent of the Legislature, which basically requires the courts to give the statutory language its usual and ordinary meaning. The fundamental rule of statutory construction is known as the plain language rule.

Basically, this rule provides that when the meaning of a statute is clear and unambiguous, there's usually no need for a court to apply any of those rules of statutory construction because the plain meaning of the statute can be ascertained without resorting to what we call the use of extrinsic aids to help in understanding the language.

Under this rule, if the statute is clear then the courts presume the Legislature meant what they wrote in the statute and the courts give effect to the plain meaning of that statute.

In order to resort to the general rules of statutory construction, a court must determine that there's ambiguity in the statutory language and as a result it's unclear what was intended by the Legislature in enacting the particular statute. The courts have determined that a party demonstrates statutory ambiguity by providing an alternative meaning to the statutory language and, as a result, the statutory language can be given more than one interpretation, then a court generally should consider extrinsic aids to determine the purpose of the statute and the intent of the Legislature.

Among the extrinsic aids are the legislative history of the statute, the public policy surrounding its enactment, the statutory scheme in which the language is found, and other related issues. In this regard, the language of a statute should be construed in light of the rest of the statutory scheme in which the particular statute is found. The goal of the court is to harmonize the parts of the statute by considering the context of the statutory framework in which this particular statute is found.

For example, statutes related to the same subject matter should obviously be interpreted consistently. In regards to interpreting general vs. specific statutes, if a specific statute is deemed

to be inconsistent with a general statute that covers the same subject matter, then the specific statute is usually deemed to be an exception to the rule provided by the general statute.

In addition, as a general rule of statutory construction, courts must construe an exemption in a statute narrowly. In a similar vein, a more recently enacted statute generally is given more weight than an earlier enacted statute. In other words, if two statutes cannot be reconciled and they appear to be in conflict, then the recently enacted statute will take precedence over the earlier enacted statute.

Another important rule is that when interpreting a statute, a court will give significance to each word in the statute in trying to ascertain the legislative purpose. The last antecedent rule provides that any qualifying words are to be applied to the words or phrases immediately preceding the word or qualifying words and they're not interpreted as extending to other words.

One type of rule of statutory construction provides that where general words follow a list of particular items, then the general words will be interpreted only to those items of the same general nature or class as those set forth in the statute.

Another statutory construction rule provides that a statute which lists specific items will generally prevent the inclusion of other items. In addition, courts generally interpret the word "may" as being permissive, while interpreting the word "shall" as mandatory.

There's also an important rule that statutes are presumed to operate prospectively, rather than retroactively unless there's some evidence that the Legislature intended the legislation to be applied retroactively. The presumption is against retroactive application unless the Legislature is plainly determined by express statement or other indicia that it was their intent to apply the statute retroactively.

Again, the fundamental rule of the courts in interpreting a statute is to determine the intent of the Legislature and give effect to that legislative purpose. When the statute is unclear or ambiguous then the courts need to look at the variety of extrinsic aids to assist them in ascertaining what the intent of the Legislature was.

The California courts have provided explicit guidance regarding which extrinsic aids are permitted to be used. In this regard, the legislative history as well as general circumstances surrounding the enactment of the statute can and should be considered by the courts in order to properly determine the intent of the Legislature.

And finally, the Courts generally give deference to the interpretation of a statute given by an administrative agency that has expertise and is charged with interpreting and enforcing that particular statute. While not necessarily a rule of statutory construction it is important to take this point into consideration if there's an agency determination regarding the meaning of a statute.

Thanks for joining.