CANONS OF STATUTORY INTERPRETATION

The doctrine of separation of powers underlays and overarches the functioning of all branches of government: the legislature makes the law, the executive implements the law, and the courts apply the law and decide disputes about the meaning of the law.

When the meaning and application of a statute is in dispute, a court will follow a system of rules for interpreting the meaning of the statute to aid the court in its determination. These rules are known as "canons of statutory construction." Some of the canons more frequently utilized by the courts are listed here.

1. It is presumed that the legislature says what it means in a statute, and that the statute means what it says.

2. Legislative Intent. The primary goal of the courts is to give effect to "legislative intent," or as U.S. Chief Justice John Marshall phrased it in 1824: "give effect to the will of the Legislature."

3. Ordinary Usage. The words and phrases of a statute are to be read in context, according to the usual rules of grammar, and given their common meaning, unless by legislative definition or otherwise they have acquired a technical or particular meaning.

4. Plain Meaning. A court will not utilize the rules of statutory construction when the language of the statute is plain and unambiguous and conveys a clear and definite meaning; in such case, the statute is applied according to its plain meaning.

5. Presumptions. The enactment of a statute is clothed with these presumptions by court precedent, statutory guideline, or both:

    a. Compliance with the state and federal constitutions is intended.

    b. The *entire* statute is intended to be effective.
        - Words may not be read into or out of the statutory text.
        - Each word is designed to have meaning and be given effect.

    c. A just and reasonable result is intended.

    d. A result feasible of execution is intended.

    e. A statute is presumed to be prospective in its operation unless expressly made retroactive.

6. Determining Legislative Intent. When a statute is ambiguous, a court may consider the following to help ascertain the intention of the legislature:

   a. The object sought to be obtained (purpose of the statute);

   b. The legislative history (if any);

   c. The circumstances under which the statute was enacted;

   d. The common law or former statutory provisions, including laws on the same or similar subjects;

   e. The consequences of a particular construction;

   f. The administrative construction of the statute by the official or agency charged with carrying out the law.

7. Constitutional Challenge. If a statute is challenged on both constitutional and non-constitutional grounds, the case will be resolved on non-constitutional grounds whenever possible.

8. Criminal Laws. When found ambiguous, penal (criminal) statutes are construed strictly against the state and liberally in favor of the accused.

9. The word "shall" is mandatory, and the word "may" is permissive, unless the context requires otherwise. (The word "should" is a "may" with encouragement, but not a requirement, to act like "shall.")

10. The word "and" may be read "or" and the word "or" may be read "and" if the sense requires it.

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CASE #1

Burg v. Zimmerman

I. **FACTS:**

The plaintiff, Karl Burg, was severely injured while snowmobiling at night. At the time of the accident, Burg was traveling on the graded, unfinished bed of new highway lanes under construction, which ran alongside an existing highway. The accident occurred when Burg swerved to avoid hitting another snowmobiler, Robert Zimmerman, who had, five minutes earlier, together with a companion, stopped and shut off his snowmobile on the same path Burg was using. Before trial, Burg moved for a determination by the judge that the driver of the stopped snowmobile was negligent per se for violating the statute, which requires head and tail lamps to be illuminated when a snowmobile is operated at night.

II. **STATUTE:**

Sec. 350.09. Head lamps, tail lamps and brakes, etc.

> (1) Any snowmobile operated during the hours of darkness or operated during daylight hours on any highway right-of-way shall display a lighted head lamp and tail lamp . . . .

Sec. 350.01 Definitions.

> (9r) "Operate" means the exercise of physical control over the speed or direction of a snowmobile or the physical manipulation or activation of any of the controls of a snowmobile necessary to put it in motion.

III. ISSUE TO DECIDE: Whether Zimmerman failed to display a lighted head and tail lamp while operating the snowmobile.

NOTES.

CASE #2
[State v. Cleary]

I. **STATUTE:**

Sec. 4511.19 (A): No person shall operate any vehicle...within this state if any of the following apply: (1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse ....

II. **FACTS:**

After working approximately fifteen hours, the appellant Michael Cleary, parked his automobile in the parking lot of a King Kwik store at approximately 10:00 p.m. and walked around the corner to McDuffie's Bar where he stayed until the bar closed at 2:30 a.m. He was found by the arresting officer at approximately 2:55 a.m. in the driver's seat of his car. The motor was running at high speed and his foot was on the accelerator. He was slumped over the steering wheel and had passed out. The car was not in gear and the emergency brake was engaged. He admitted he "sat there in an intoxicated state," but he intended to heed his lawyer's earlier advice about not driving if he "had more than two beers."

III. **ISSUE TO DECIDE:** Was Cleary operating his vehicle while under the influence of alcohol?

NOTES.

Case #3
[Seider v. O'Connell]

I. **STATUTE:**

> Sec. 632.05(2). Whenever any policy insures real property which is owned and occupied by the insured as a dwelling and the property is wholly destroyed ... the amount of the loss shall be ... the policy limits of the policy insuring the property.

II. **FACTS:** A fire destroyed a building the Seiders used both as a restaurant and as their residence. The insurance company offered to pay the actual cash value of the building ($125,000), but the Seiders wanted the policy limits of $150,000. The insurance company refused to pay the policy limits, arguing that because the building was used for both a residence and a small business, the statute did not apply.

III. **ISSUE TO DECIDE:** Who wins? Why?

IV. **NOW CONSIDER ADDITIONAL FACTS:** The Office of the Commissioner of Insurance is charged by the legislature with the administration and enforcement of all insurance laws, including this one. This agency adopted an administrative rule which says: "Any real property any part of which is used for commercial (non-dwelling) purposes is excluded from this section [632.05(2)]."

Does this additional fact make any difference?

NOTES.

Case #4

[State v. Maxon]

I. **STATUTE:**

> "No person, eighteen years of age or older, shall engage in sexual conduct with another, not the spouse of the offender, when the offender knows such other person is over twelve but **not over fifteen years of age** …."

II. **FACTS:** Defendant was charged with engaging in sexual conduct with a female, who was not the defendant's spouse. The female had passed the day of her 15th birthday but had not yet reached her 16th birthday.

III. **ISSUE:** Is the female "over the age of fifteen years of age" within the meaning of the statute?

NOTES.

Case #5
[Hyle v. Porter]

I. **FACTS:** Appellant, GP, was convicted of sexually oriented offenses in 1995 and in 1999. He was adjudicated to be a sexually oriented offender, and he duly registered as such. GP and his wife had co-owned and lived in their house since 1991. GP's residence was within 1,000 feet of the premises of a school. The county prosecutor sought a permanent injunction to enjoin GP from continuing to occupy his residence in violation of a statute enacted in 2003.

II. **STATUTE:** "No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises."

III. **ISSUE:** Does this statute apply to Appellant GP?

NOTES.

Case #6
[State v. Kenmore Demolition]

I. **FACTS:**

Kenmore Demolition Co., Inc., the appellant, was charged with the dumping of refuse or waste matter in violation of the Madison Township zoning ordinances. Kenmore was not charged with burning the refuse or waste material. Evidence was established that Kenmore dumped refuse or waste matter. Kenmore was found guilty of the charge and was fined. Kenmore appeals, arguing that one can only violate the ordinance if the person both dumps *and* burns the waste.

II. **ORDINANCE:**

> Sec. 29. Dumping of refuse or waste matter and the burning of such in existing excavations or quarries shall be prohibited * * *.

III. ISSUE TO BE DECIDED: Can Kenmore be convicted if it did not burn the refuse or waste that it dumped?

NOTES.

I. **FACTS:**

A. The statute provides that a person may have one's criminal record expunged (sealed) if the person meets specified conditions.

B. Petitioner had five criminal charges and convictions which arose out of one event. All of the charges were filed under one case number. The record of proceedings and the convictions for all five crimes are contained together under the same case number and are physically intertwined.

C. Petitioner requests to have sealed that portion of his record which relates to the four crimes which the statute permits to be expunged, including sealing the index and all records. The trial court finds that Petitioner is rehabilitated and qualifies for sealing the records of four of the five convictions. However, the fifth conviction was for a crime of violence (aggravated menacing) which, by law, cannot be expunged.

D. The statute is silent regarding the matter of a partial sealing.

II. **STATUTES.** There are three related statutes:

A. The first statute requires a person to be a "first offender" in order to be eligible for expungement. In defining a "first offender," the relevant portion of the statute provides:

> "When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction."

B. A second statute provides in relevant part:

> "When a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of his record in any of the cases until such time as he would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed ...."

C. A third statute states:

> "Upon determining that the applicant's record qualifies for sealing under [statutory section], the court shall order all official records pertaining to the case sealed and all index references to the case deleted."

III. ISSUE: May petitioner's request to seal four of five records be granted?