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**ТРИБУНА МОЛОДЫХ УЧЕНЫХ**

# TEXTUAL CANONS OF LEGAL RULES INTERPRETATION IN THE AMERICAN LAW

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***Abstract.*** The paper represents the role and significance of the main internal means of statutory interpretation of one of the most acknowledged theories of interpretation – the textual theory of interpretation of legal rules - in the USA law. Using a particular case as an example, the paper illustrates the application of various textual canons, such as "noscitur a sociis", "ejusdem generis" and "inclusio unius est exclusio alterius", and gives a short description of the judges' stances towards each of the aforementioned canons.

***Key words:*** legal interpretation, legal rules, USA law, statutory text, canons of interpretation, textual theory of interpretation.

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The importance of the following research on textual canons of interpretation in the USA law based on the fact that there are currently three separate theories of interpretation in the USA, each having their own structure, while the choice of a particular theory depends on the "basis", which forms the theory. *Textual* basis invites the interpreter to ponder how an ordinary American citizen will read and understand the text of the statute, as well as how many possible versions of interpretation of the particular notion actually exist in the context of this statute. *Precedential* basis helps to determine the meaning of the legal rule by focusing on past judicial decisions, which oblige the court interpreting the statute – or have a sufficient argumentation in favor of a particular version of interpretation, which may satisfy the court as the interpreter.

***Textual basis*** includes dictionaries, grammar textbooks, the search for linguistic rules as applied in practice, and most importantly, the interpreter's vision of proper meaning regarding the notion in question. In order to illustrate the application of the textual canons of interpretation it is useful to refer to *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*[1]. In this case, the United States Supreme Court was struggling with all of the most important textual canons in the course of the judges' discussion of the Endangered Species Act of 1973 (further referred to as "the Act")[2].

Section 9(a)(1)(B) of the Act prohibits any person *to take endangered species*, which are nearly extinct and are included in the Red Book of the USA. Notably § 3(19) of the Act explained the meaning of the verb "to take" as prohibition to harass, *harm*, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. When the Ministry of Internal Affairs had an opportunity to apply the Act in 1994, it interpreted the verb "to harm" in § 3(19) as "any action of killing or any other harmful action, which leads to significant alteration or deterioration of the endangered species' natural habitat". Obviously, the interpretation by the Ministry of Internal Affairs turned out to be wide reaching, conflicting with the special interests of business in the forest industry, whose representatives filed a claim against the Minister of Internal Affairs. The claim was supported with a reference to the fact that Congress, while adopting this Act, did not *intend* to include the phrase "alteration of the endangered species' natural habitat" in the sphere of its application[3]. The District Court supported the Minister, while the Appellate Court of the District of Columbia rendered a decision that the Ministry's interpretation was far more expansive than the one expressed in the statute. It would seem, at this point, that the discussion had come to its logical end, especially from textualists' point of view. The Act clearly limited the sphere of its application and interpretation should not go beyond the text of the statute. Still, the Supreme Court of the United States of America decided otherwise and by six votes against three rendered a decision ***allowing expansive interpretation*** by the governmental body. This example rather succinctly conveys the clash of major textual canons of interpretation, as the Supreme Court's decision was not unanimous and was highly debated and polemized.

Textualist theory primarily determines *plain meaning*, resulting from the text of the statute. In the *Sweet Home* case, Judge Stevens pointed out that the plain meaning of the verb "to harm" – which was the main word used to express the notion "to take endangered species" – can be construed as

[1] See: The United States Reports. Vol. 515. P. 687.

[2] See: *Eskridge W.N. (jr.), Frickey P.P., Garrett E.* Legislation and statutory interpretation. 2nd ed. New York, 2006. P. 258.

[3] See: The United States Reports. Vol. 515. P. 687.

actions, resulting in a net negative effect for the endangered species of animals and plants in question. In other words, if the natural habitat of a spotted owl was altered significantly, the result is negative for the owl, which means that the animal received harm. However, Judge Scalia did not accept this logic. His point of view was based on a more traditional interpretation of the verb "to take", meaning the physical ***submission of nature (animal) to man***. It seemed that the verb "to take" should be interpreted in a restrictive way, as a form of behavior, aimed at the extermination of a particular animal or plant. It is interesting to note that the Supreme Court of the United States resorted to various types of ***dictionaries*** multiple times to determine the ***plain*** and ordinary meaning[4]. However, this inherently raises the question: Which of the numerous dictionaries more precisely reflects the plain meaning of a particular notion? Judge Scalia, for example, is often critical of the dictionary *Webster's Third* – insisting, along with other linguistic specialists, that its definitions are too "colloquial"[5]. This inevitably leads to another logical question – is this kind of critical approach towards dictionaries even acceptable, if the interpreter's goal is to search for the plain and ordinary meaning of the notion? Or is the goal, in actuality, to search for the meaning of the notion in its strict sense, accentuating the fact that these notions reflect a part of a legal document, i.e. statute? What exact notion should be interpreted in this case – "harm" or "take"?

In the *Sweet Home* case lower courts and Supreme Court Judges, having dissenting opinions, used the rule ***noscitur a sociis***, which means, "the notion should be interpreted by considering the words with which it is associated in context". This canon of interpretation implies that if two or more non-generic words with a similar meaning are grouped together, the notion with a general meaning will be determined by the definition of the words with special meaning[6]. Section 3(19) enumerated a whole list of actions, which described the verb "to take", including "harm" and nine more actions, aimed at negative consequences for an animal in the form of specific damage. Following this logic, Judge Scalia, who supported Judge Williams from a lower court, pointed out that the verb "to take", as a general word associated with ten actions, must be interpreted in light of and subject to these actions, i.e. strictly[7].

Bearing some similarity to the aforementioned canon of interpretation is ***ejusdem generis***, which could be described as "of the same kind". In accordance with this legal construct, in a case when general words follow more specific ones in any statutory list, general words must be interpreted as "including" the specific words placed before them[8]. However, applying this canon to Section 3(19) would make for an unfortunate example. If the statute defined the verb "to take" as to harass, pursue, hunt, shoot, wound, kill, trap, capture, collect, or ***harm in any other way***, it would be possible to use the *ejusdem generis* canon to interpret the word "to harm" as a general word for every other action in this list. As a result, the verb "to harm" would be strictly interpreted only in light of these actions. Such interpretation is restrictive and inadequate, because it outlines a defined strict list of negative actions, aimed at infringement upon the environmental living conditions of a particular animal or plant. However, Section 3(19) enumerated the action "to harm" among other actions in the list, and, therefore, canon *noscitur a sociis* is more applicable in this case, while, strictly speaking, both canons entail the same interpretative result. They are similar in establishing very strict and narrow limits of interpretation, which the courts may not disregard. Nevertheless, six United States Supreme Court Judges refused to use both canons, as they saw the discretional motive of legislative intent, hidden in the text of the Act.

The use of the *ejusdem generis canon* in the sphere of criminal law was realized in the *State of Hawaii, Plaintiff-Appellee*, *v. Lee Rackle* case of 1973[9], where the phrase "other deadly or dangerous weapon" was interpreted as including any of the following "a dirk, dagger, blackjack, slug (sic) shot, billy, metal knuckles, (and) pistol", but not the flare gun, which is designed as an emergency signaling device, while not as an offensive weapon. Later, the "driver's knife" was also excluded from the list of dangerous weapon.

The third canon, applied by Judge Scalia in *Sweet Home*, was the ***inclusio unius*** canon, which presupposes "the limitation by what is included" or the so-called rule of negative connotation[10]. Judge Scalia stated that Section 9(a)(1)(B) of the Act, prohibiting the elimination of the natural habitat of the flora and fauna in the specified region, must be read in light of § 7(a)(2), which prohibits the adoption of federal programs, which may "eliminate or significantly alter the natural habitat of the flora and fauna". Judge Scalia pointed out that "if Congress includes a certain formulation in one section of the statute, but do not use it in another, the general rule should be that Congress acted willfully and intentionally regarding such inclusion or exclusion"[11]. In other words, by prohibiting "to eliminate or alter the habitat" to governmental organs, Congress intentionally allows the other subjects of law to undertake such actions. This canon is based on the ancient Roman rule "*inclusio unius est exclusio alterius*", which means that the

[4] See: *Aprill E.* The Law of the word: dictionary shopping in the supreme court // Arizona State Law Journal. 1998. Vol. 30. P. 275; *Solan L.* When judges use the dictionary // American Speech. 1993. Vol. 68. P. 1; *Note.* Looking it up: dictionaries and statutory interpretation // Harvard Law Review. 1994. Vol. 107. P. 1437.

[5] MCI v. AT&T (1994) // The United States Reports. Vol. 512. P. 218, 228; Sledd J., Ebbitt W. Dictionaries and that dictionary. Illinois, Glenview, 1962.

[6] See: *Singer N.J.* Statutes and statutory construction. St. Paul, Minnesota, 1992. § 47.16. P. 183.

[7] See: The United States Reports. Vol. 515. P. 719, 720.

[8] See: *Singer N.J.* Op. cit. § 47.17; Cleveland v. United States (1946) // The United States Reports. Vol. 329. P. 14, 18; Short v. State (1954) // North Eastern Reporter (Second Series). Vol. 122. P. 82, 85, 86; Circuit City Stores, Inc. v. Adams (2001) // The United States Reports. Vol. 532. P. 105.

[9] See: Criminal Law: concepts and practice / E.S. Podgor, P.J. Henning, A.E. Taslitz, A. Garcia A. 2nd ed. Durham, N.C., 2009. P. 62.

[10] A connotation is a commonly understood cultural or emotional association that some word or phrase carries, in addition to its explicit or literal meaning, which is its denotation. A connotation is frequently described as either positive or negative, with regard to its pleasing or displeasing emotional connection. For example, a stubborn person may be described as being either strong-willed or pig-headed; although these have the same literal meaning (stubborn), strong-willed connotes admiration for the level of someone's will (a positive connotation), while pig-headed connotes frustration in dealing with someone (a negative connotation). See: *White Peter A.* Feelings and JEA Sequences. Psychological Metaphysics. Abingdon, 2017. P. 315.

[11] Keene Corp. v. United States (1993) // The United States Reports. Vol. 508. P. 200, 208.

inclusion of one notion presupposes the exclusion of other notions, and as a more general rule, that laws allow everything they do not prohibit. However, this canon is not as successful due to the fact that legislative abilities to foresee all possible practical cases of statutory application are seriously limited.

Last, but not least, the textual basis, applied to interpretation, is reflected in ***grammar and punctuation canons***. In the Sweet Home case, Judges did not debate about the various grammatical and punctuation issues of Section 3(19). Still, in other famous cases grammar and punctuation features of the wording of the statutory text played a determinative role. One example of such a case was *Bankamerica Corp. v. United States*[12] case. Section 8, paragraph 4 of the Clayton Act prohibits any person to be the head of the executive body or be a member of the collegial executive body of "two and more corporations, other than banks", which are competitors. Paragraph 1 of the law prohibits any person to be the head of the executive body in more than one bank. However, the statute, having this particular wording, does not prohibit the same person perform the functions of executive body in bank and, for example, in insurance company, which are competitors. This interpretation was actually supported by the Supreme Court of the USA in case *Bankamerica Corp. v. United States*. Still, not all Judges of the Supreme Court accepted this logic in interpreting the statute, based exclusively on the grammatical structure of the respective provisions. Dissenting Judges pointed out that statutory text was "ambiguous and imprecise" and had to be interpreted in light of the whole structure of the statute and its *goals*. Once again, textualists clashed with intentionalists. According to the latter, the overall goal of the statute remain an anchoring point throughout interpretation – to prevent concurrent service by person, representing the competing interests of two corporations. Following this logic, "imprecise" paragraph 4 should be interpreted as expanding on relations between banking and non-banking organizations, if they are direct competitors.

Yet another interesting case where the usage of punctuation in the statutory text came into play is *Commonwealth v. Kelly*[13]. According to the law, the sale of alcohol was prohibited between "11 pm and 6 am; or on Sundays, except for the distribution of alcohol by the owner of a bar to his clients". The owner of one such bar stated in court that, in accordance with the law, he is allowed to sell alcohol to his clients between 11 pm and 6 am, as well as on Sundays. However, the court pointed out that after the words "6 am" there is a semicolon, which has a particular punctuation goal – to separate parts of the sentence from each other. That is why the first prohibition also covers the owner of the bar.

It is crucial to notice that, according to *exceptions made to general grammar rules*, many old statutes still in effect today, whose scope of application was initially limited only to men due to discrimination-oriented politics, now largely refer to women as well, because references to "man" in the statutory text imply a reference to women as well, while the singular corresponds to the plural. In the U.S. Code and in some states, for example, in the District of Columbia, these exceptions were made part of the legislation[14].

[12] See: The United States Reports. Vol. 462. P. 122.

[13] See: North Eastern Reporter. Vol. 58. P. 691.

[14] See: *Eskridge W.N. (jr.), Frickey P.P., Garrett E.* Op. cit. P. 267.

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Finally, it is necessary highlight the role of precedential interpretation in the United States law. Despite the fact that technically statutes adopted by Congress represent the supreme legislative act, historically, the precedential system of law prevails in the USA, where court decisions, especially by the Supreme Court, play a dominant role. A peculiar problem of American statutory interpretation lies in the competition between Congress and the Supreme Court. If Congress does not approve of statutory interpretation, given by the Supreme Court, it will use all available political means to get the Supreme Court to overturn its decision. The same situation can be seen at a state level. However, the "inertia of precedential interpretation" all the more hinders legislative bodies from meddling with judicial interpretation[15]. In addition, the adoption of argumentation on statutory interpretation from other judicial decisions happens all the more frequently. This phenomenon was defined by professor Horack as "*stare de statute*"[16]. Despite the fact that such borrowing of argumentation must be strictly congruent with the sphere of law and circumstances of a particular case, all these tendencies generally show a gradual reinforcement of the role of precedential interpretation in the American law[17].

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[15] See: *Eskridge W.N. (jr.).* Overriding supreme court statutory interpretation decisions // Yale Law Journal. 1991. Vol. 101. P. 331.

[16] *Horack F. (jr.).* The common law of legislation // Iowa Law Review. 1937. Vol. 23. P. 41.

[17] See further: *Eskridge W.N. (jr.).* Public values in statutory interpretation // University of Pennsylvania Law Review. 1989. Vol. 137. P. 1007; *Sunstein C.* Interpreting statutes in the regulatory state // Harvard Law Review. 1989. Vol. 103. P. 407; Symposium "A Reevaluation of the Canons of Statutory Interpretation" // Vanderbilt Law Review. 1992. Vol. 45. P. 529; *Eskridge W.N. (jr.).* Dynamic statutory interpretation. Cambridge, 1994. Chap. 9; *Hart H.M. (jr.), Sacks A.M.* The legal process: basic problems in the making and application of law. St. Paul, 1994. Chap. 7; *Mermin S.* Law and the legal system: an introduction. 2nd ed. Boston, 1982. P. 237–270.

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