



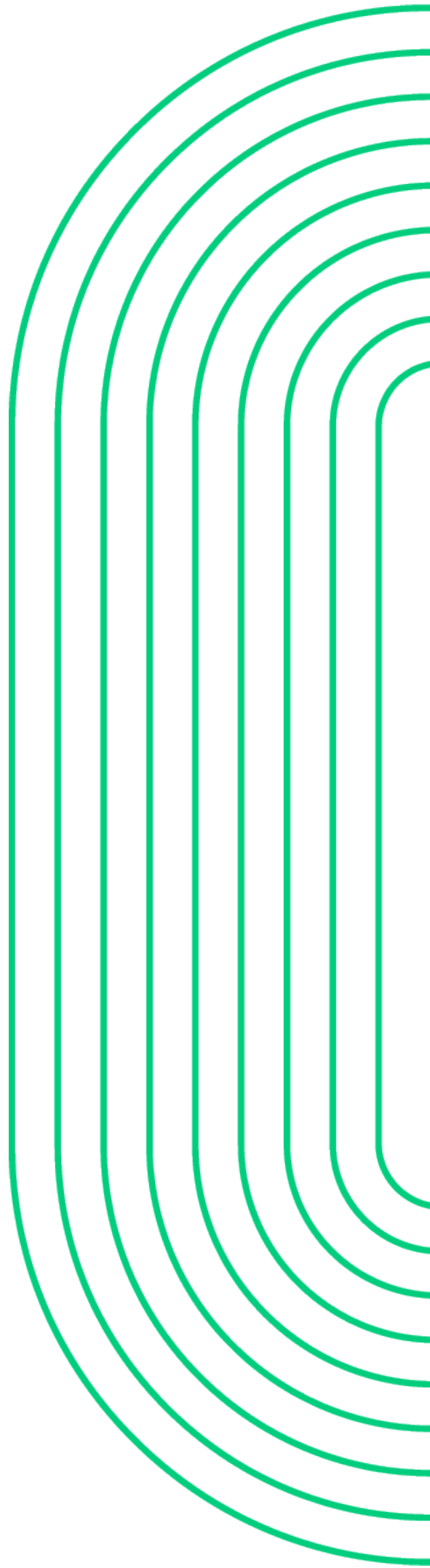
# Statutory Interpretation

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# Why Is It Important?

- At federal and state levels, statutes are predominant form of legal authority
- At federal level, agency deference decreasing
- At state level, courts more likely to say what statutes mean definitively

“The lion’s share of modern-day appellate judging is ‘legisprudence’—interpreting statutes. Day by day, the university of free-form, common-law judging shrinks, meaning the bulk of this Court’s time is spent deciding what the Legislature’s words mean.”

- Former Texas Supreme Court Justice Don Willett



# Statute: “Food is prohibited in this room.”

- Can you eat a sandwich?
- Can you drink water?
- Can you drink orange juice?
- Can you drink a yogurt smoothie?
- Can you chew gum?
- Can you chew tobacco and spit it into a small bucket you carry with you at all times?
- Can you keep a peanut butter and jelly sandwich in your bag and eat it in the hallway in between presentations?
- If you have a medical condition that requires you to eat at periodic intervals throughout the day, including this presentation, can you?





# How do Texas courts interpret statutes?

Don't Texas courts adhere to textualism?



# Main Takeaways

- Texas courts adhere to textualism, but Texas courts and judges disagree about its application
- Context is important
- Importance of certain legal fictions in understanding how judges go about interpreting statutes

# What is Textualism?

- A statute's authority comes from its enactment as law and thus a statute's meaning does not change over time
- Legislative intent is determined by the words of the statute as understood at the time of passage
- Contrast with Intentionalism and Purposivism

# Textual Tools



When confronted with a question of statutory interpretation, think in this order: rules that relate to meaning of individual words → surrounding words → larger statutory scheme → other legal texts



# Meaning of Words

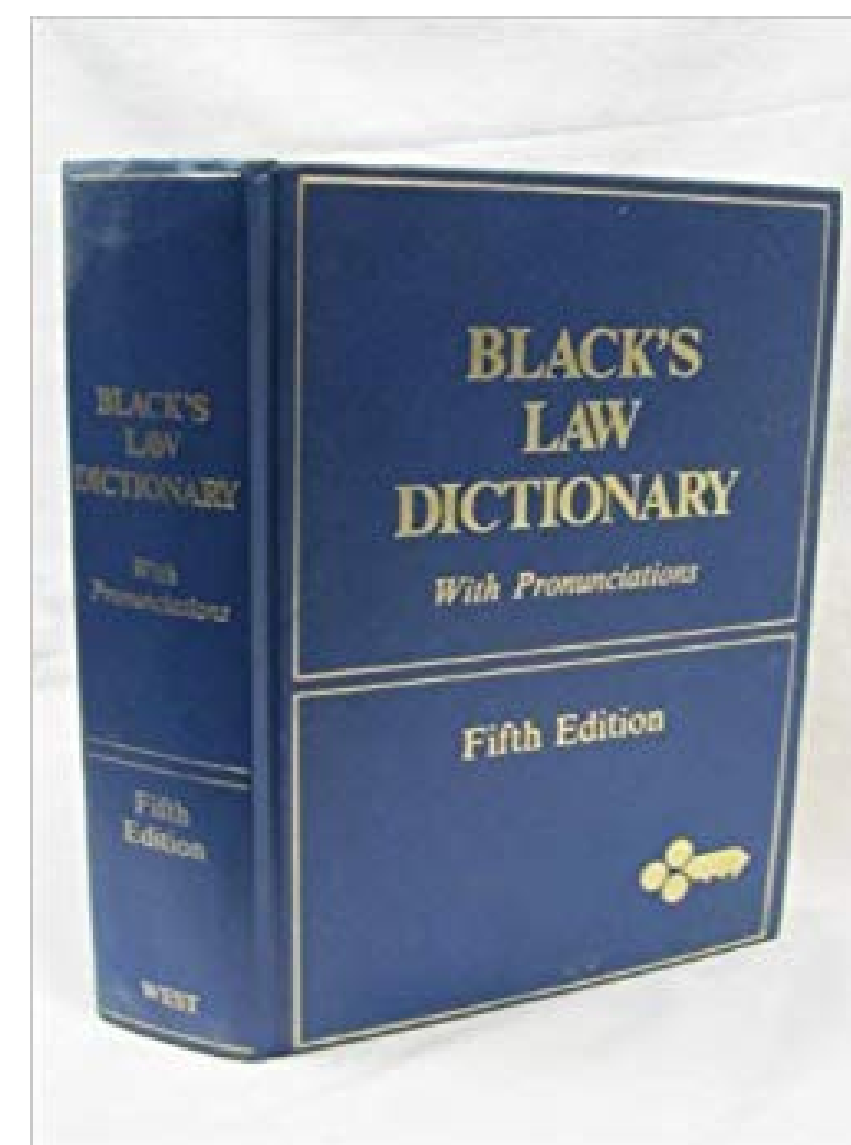
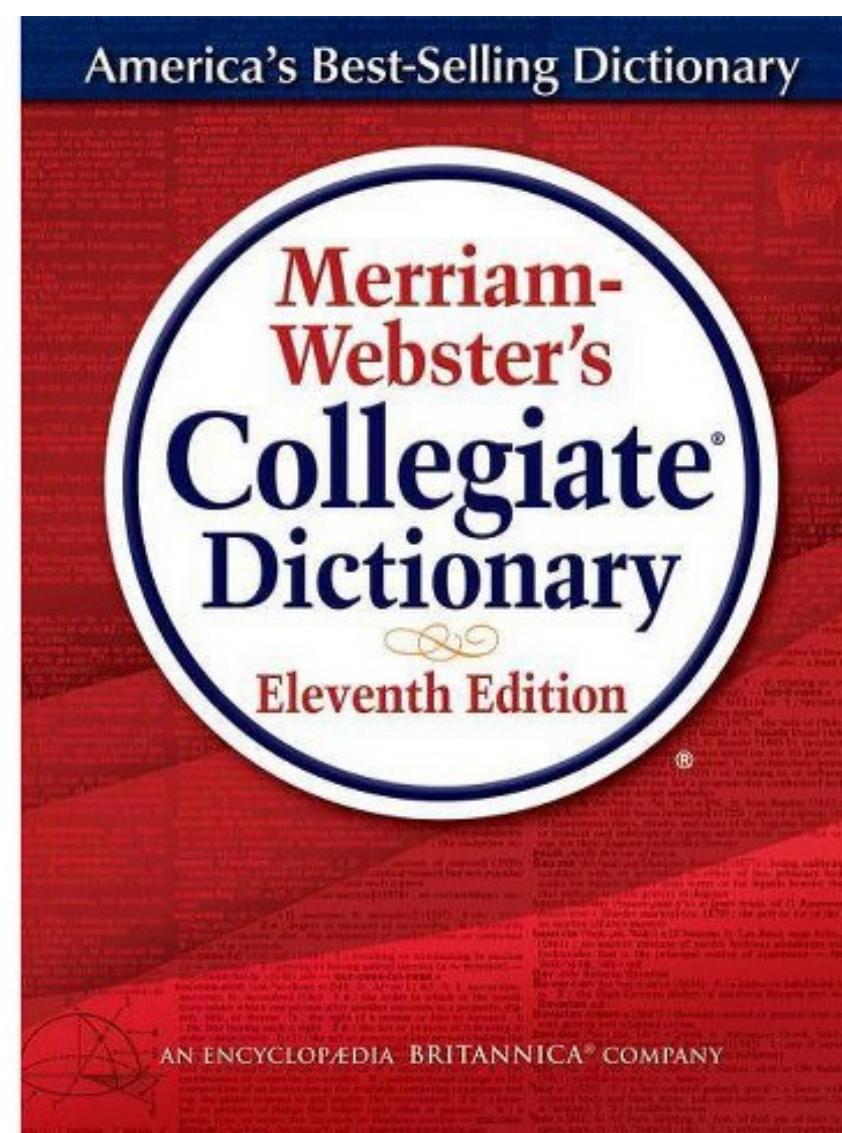
- Statutory definitions trump alternative definitions
- If the word has an established legal or technical meaning, that normally prevails
- If neither of the above, courts will try to determine the words "plain," "common," or "ordinary" meaning

# Code Construction Act

- Gov't Code § 311.011
  - (a) Words and phrases shall be read in context and construed according to the rules of grammar and usage
  - (b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly

# Dictionary Definitions

- What if a word has multiple definitions?
- What dictionaries should we use?
- Are dictionaries acontextual?



# Other Sources of Ordinary Meaning

- Other statutes?
- Rules of evidence/procedure?
- Case law?
- Treatises?







# Immediate Context

- Rule against surplusage: give effect to every word and provision in a statute—nothing is duplicative
- Noscitur a sociis: an ambiguous word is understood by the words around it
- Eiusdem generis: catch-all provisions at end of lists are understood with reference to specific items in list

# Immediate Context

- Expressio unius: the expression of one thing excludes the alternatives
- Syntactic and semantic rules
  - And/or
  - May/shall
  - “including”



# Broader Statutory Context

- Whole Act Rule: a statute as a whole should be assumed to be coherent and consistent
- Assumption that a statutory term has the same meaning everywhere it is used within a statute
- Rule against surplusage (again)

# In Context of Other Statutes

- In pari materia: when multiple statutes use identical terms or deal with related issues, courts typically presume a word has same meaning across statutes
- Borrowed statute rule

# In Context of Other Statutes

- Statutory development:
  - Legislative ratification: “Once this Court has construed a statute and the Legislature re-enacts the statute without substantial change, it is presumed the Legislature has adopted our interpretation.”
  - Legislative changes presumed to have significance



# In Context of Other Statutes

- Conflicts
  - Specific provisions control over more general provisions
  - Later-enacted statutes control over earlier-enacted statutes
- But, no repeals by implication

# Rule Against Absurd Results

- Even though plain language says one thing, applying it would lead to absurd results, so court should not apply it
- “[T]he bar for reworking the words our Legislature has passed into law is high . . . [it] is reserved for truly exceptional cases, and mere oddity does not equal absurdity.”

# Substantive Canons



# Substantive Canons

- Judge-created
- Protect important values in legal system
- Not absolute rules; more like rebuttable presumptions
- Different judges give canons different weight in the analysis and phrase them differently
- Theoretically, encourage better legislative drafting



# Constitutional Avoidance

- Avoid interpretation that would render the statute unconstitutional
- Gov't Code § 311.021(1): "In enacting a statute, it is presumed that compliance with the constitutional of this state and the United States is intended[.]"



# In Derogation of Common Law

- Statutes in derogation of the common law are not to be strictly construed
- However, when a statute creates a liability unknown at common law, or deprives a person of a common-law right, the statute will be strictly construed not to extend beyond plain meaning or applied to cases not clearly within its purview

# External Sources of Meaning

- Legislative history
- Agency interpretations

# Legislative History



# Legislative History

- Gov't Code § 311.023
  - In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider . . . (2) circumstances under which the statute was enacted; (3) legislative history

Questions?







# Thank You

## Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.