

**MINNESOTA  
REVISOR'S MANUAL**  
with  
Styles and Forms  
2002 Edition

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## FOREWORD

This 2002 edition of the Revisor's Manual replaces the manual printed in 1997. It incorporates changes required by the development of legislative practice and many changes suggested by users and by experience.

Please remember that the advice and the requirements set forth can be fully understood only in the context of the entire legislative process. Nearly all of the requirements have exceptions and those exceptions, when understood, throw light on the requirements.

This manual has benefited from many suggestions by its users and, in particular by staff from the following legislative offices: the Chief Clerk's Office, House Research, House Fiscal Services, the Secretary of the Senate, Senate Counsel and Research, the Legislative Reference Library, and the Legislative Commission on Pensions and Retirement. All of us in the revisor's office wish to express our thanks to those who have given us their time and thoughts.

I also wish to thank all of the staff in the revisor's office who contributed to this manual. The project was truly a group effort, beginning with the establishment of a writing standards task force, and continuing with corresponding revisions.

We hope that the 2002 Revisor's Manual will be helpful as you embark on the important task of drafting legislation. We encourage users of this manual to continue to give us their comments, criticisms, and suggestions for improvements.

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# Chapter 2

## Interpretation of Statutes

### What Drafters Need to Know

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#### 2.1 The Aim of This Chapter

Creating meaning from written words is a two-part process: writer and reader create the meaning together. Part of the drafter's job, though, is to try to control the reader's creativity—that is, to prevent the reader from interpreting the law in unintended, or hostile, ways. For this reason, drafters need to be aware of readers' habits and patterns in interpreting the law, and of the most common situations in which questions of interpretation arise.

Some information about the habits of readers and the slipperiness of words is available in books of instruction about drafting. Most drafting texts contain explanations of the ways certain word patterns are likely to be misread and tell what the drafter can do to avoid misreadings. Other information about the same problems appears in works about the interpretation of statutes by courts. Those works also contain explanations of specific problems of wording, but they contain other useful discussions too. Their authors recognize that not every interpretation problem is the fault of the drafter: Sometimes language problems result from legislative compromise; sometimes new situations arise that cause old language to be seen in a new light.

Both of these types of information—drafting advice and discussions of statutory construction—are useful to drafters who want to know what will happen when their drafts are read. Both subjects are too large to be discussed in depth here. So this chapter is limited to basic information and bibliography with annotations. The books and articles mentioned here have been chosen and organized to give drafters an overview of the problems involved in reading and understanding statutory text.

#### 2.2 The Basics: Minnesota Statutes, Chapter 645

Chapter 645 of Minnesota Statutes codifies standard rules of statutory interpretation that apply to all drafting.

##### (a) Basic Concepts

Chapter 645 states when laws become effective (645.02), how amendments are read together (645.29 to 645.33), how repeals work (645.34 to 645.43), how time is computed (645.071, 645.14, 645.15, 645.151), how references to subdivisions and paragraphs work (645.46, 645.47), what "to" means in range references (645.48), and which law controls when amendments to the same section cannot be reconciled (645.28). All these matters are basic to drafting. Other matters that are also

important but that do not affect every draft are the provisions about special laws (645.021 to 645.024), penalties (645.24, 645.241), and surety bonds (645.10).

### **(b) Definitions**

In day-to-day drafting, the things next in importance in chapter 645 are its lists of definitions. Unless a different definition is provided in a draft, the definitions in chapter 645 will control. The list of terms defined includes technical matters like "final enactment" and everyday concepts like "child." Drafters need to know which terms are there.

They also need to know that many other definitions of general application are found in the statutes, but outside of chapter 645. Examples include the definitions of "rule" in Minnesota Statutes, section 14.02, "city" in section 410.015, and "official newspaper" in section 331A.01. The main heading DEFINITIONS in the index to Minnesota Statutes can help a drafter learn whether there is a general definition that might apply to a draft.

### **(c) Rules of Construction**

Besides drafting basics and definitions, chapter 645 also contains a collection of well-known rules about statutory construction. These rules are of three basic types: rules about language, rules about the application of laws, and rules about legislative intent.

#### MANDATES ON LANGUAGE USE IN DRAFTING.

Some of the rules of construction in chapter 645 answer questions that are purely linguistic or grammatical, for example, "Roman and Arabic numerals are parts of the English language" (645.09) and "Provisos [expressions that begin with 'provided that'] shall be construed to limit rather than to extend the operation of the clauses to which they refer" (645.19). A number of these provisions are sometimes cited as mandates governing drafting, but not all drafters see them as absolutes. Here are the most important linguistic or grammatical concepts, with some annotations to show how they actually apply:

- (1) "The singular includes the plural, and the plural, the singular..." (645.08). Most drafting texts advise drafters to use the singular when possible. See Reed Dickerson, *The Fundamentals of Legal Drafting*, pp. 124-125.
- (2) "Words of one gender include the other genders" (645.08). The policy of the revisor's office is to draft in a gender-neutral style. The revisor has the authority to change statutes and rules editorially to remove gender-specific words that are not essential to meaning. Drafters are advised to avoid the various forms of "he" and "she" unless they are essential. See chapter 10 for more information on gender-neutral drafting.
- (3) "Shall" and "must" are mandatory; "may" is permissive (645.44).

A complication that is almost a contradiction is that "shall" and "must" are often construed as directory rather than mandatory; and "may" in some contexts is construed as mandatory. Context nearly always determines the meaning more surely than does the verb alone. While drafters should know that the definitions in chapter 645 exist, they should not rely on them as a substitute for care in drafting. For advice on choosing wording for mandates, directions, permissions, and entitlements, see section 10.8.

- (4) Provisos and exceptions (645.19). Even though the statute tells how to construe them, drafters would do well not to draft provisos. Most of them are really conditions, which should begin with "if", or exceptions, which should begin with "except that." See Dickerson, *Fundamentals*, pp. 128-129.
- (5) Headnotes are catchwords, not part of the statute (645.49). See *In re Dissolution of School District No. 33*, 239 Minn. 439, 60 N.W.2d 60 (1953); *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 303 n.23 (Minn. 2000). But see *Matter of Contest of General Election on Nov. 8, 1977*, 264 N.W.2d 401, 404 n.5 (Minn. 1978). But the Uniform Commercial Code is an example in which the headnotes are made part of the act and are available as an aid to statutory construction.

Readers make use of headnotes even if judges may not, and the point of having a headnote is to use it as a finding aid. Drafters should write headnotes that help readers. For advice about writing headnotes, see sections 4.6(c)(3) and 10.3; and Daniel Felker et al., *Guidelines for Document Designers*, (Washington, 1981), pp. 17-20.

#### STATUS AND APPLICATION OF LAWS.

Another group of provisions in chapter 645 deals with legal ideas about the status and application of laws. Among these are:

- (1) Severability (the question of whether sections that were passed together remain valid individually if one of them is declared unconstitutional) (645.20).
- (2) Retroactivity (the question of whether a section can apply to cases that arose before it was passed) (645.21).
- (3) Savings clauses (clauses designed to preserve certain rights, duties, or privileges that would otherwise be destroyed by an enactment). The sections in chapter 645 prohibiting retroactive effect and governing amendments and repeals contain many general savings provisions. Those sections make it unnecessary to draft special savings clauses in most cases. See also *State v. Chicago Great Western Railway Co*, 222 Minn. 504, 25 N.W.2d 294 (1946) and *Ogren v. City of Duluth*, 219 Minn. 555, 18 N.W.2d 535 (1945).
- (4) The application of laws to the state (645.27).

#### LEGISLATIVE INTENT.

Still another group of provisions gives very general rules about determining legislative intent. Section 645.16 makes legislative intent the object of all construction. Section 645.17 gives some basic presumptions about what the legislature intends: it does not intend absurdities, ineffective language, or constitutional violations, and it does intend to follow precedent and to favor the public interest.

Section 645.16 also codifies a form of the "plain meaning rule" or theory of construction by binding interpreters to the text of a law if it is clear, and by listing the sources that may be considered if the text is not clear. The rule has been criticized because it is sometimes used to frustrate the apparent intent of the legislature and because it requires a court to find the text to be

ambiguous before the court may consider all the information it needs to make an informed judgment.

### **Readings on plain meaning:**

Mellinkoff, David. *Legal Writing: Sense and Nonsense* (Saint Paul: West Publishing, 1982), p. 17.

Murphy, Arthur W. "Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts." *Columbia Law Review* 75 (1975): 1299.

## **2.3 What Makes a Law Unclear?**

Although judges can declare any statute plain, they will always have a rich fund of ways to declare it unclear. English has a multitude of ways to be vague, or over-general, or ambiguous, or all three, although the differences are important.

*Ambiguity* exists when words can be interpreted in more than one way. For example, is a "light truck" light in weight or light in color? *Vagueness* exists when there is doubt about where a word's boundaries are. If a law applies to the blind, who exactly is blind? What degree of impairment counts? *Over-generality* exists when the term chosen covers more than it should. If a law applies to "communicable diseases," is it really meant to cover the common cold? Legislatures sometimes choose to be vague or general and to let administrative agencies supply the specifics. They rarely choose to be ambiguous. Specific guidance about types of ambiguity and ways to avoid it can be found in sections 10.8 to 10.13.

### **Readings on ambiguity and vagueness:**

Christie, George C. "Vagueness and Legal Language." *Minnesota Law Review* 48 (1964): 885.

Dickerson, Reed. "The Diseases of Legal Language," *Harvard Journal on Legislation* 1 (1964): 5.

Evans, Jim. "Ambiguity" (chapter 4) and "Vagueness" (chapter 5). In *Statutory Interpretation: Problems of Communication*. New York: Oxford University Press, 1988.

### **Readings on specific problems leading to ambiguity:**

Child, Barbara. "Achieving Clarity and Avoiding Ambiguity." In *Drafting Legal Documents: Principles and Practices*, 2nd ed. St. Paul: West Publishing Co., 1992.

Dickerson, Reed. "Substantive Clarity: Avoiding Ambiguity." In *Fundamentals of Legal Drafting*, 2nd ed. Boston: Little, Brown, 1986.

Of course, not every case of ambiguity, vagueness, or over-generality arises from drafting errors. The many participants in the legislative process, and the need for compromise among them, sometimes produce indefinite wording. A case in point is the 1991 Civil Rights Act (105 Stat. 1070, 1991); its passage was complicated by a fight to create competing legislative histories to bend later interpretation of language left uncertain (*New York Times*, Nov. 18, 1991).

Sometimes, too, new ideas, inventions, and situations appear that the legislature did not foresee, so that they are not clearly included under a statute, or are included when reason says they should not

be. A classic example of this sort of unclarity is an ancient law of Bologna, forbidding the spilling of blood in the streets. Logically it forbids emergency surgery at the scene of an accident, but history tells us that violence, not surgery, is what its drafters had in mind.

## 2.4 Beyond the Basics: Principles of Interpretation Outside Chapter 645

The words of chapter 645 do not guarantee the way a specific law will be read. Readers of statutes, and courts in particular, take a variety of approaches to the text. They can choose whether to supplement their understanding of the text with other materials: things said and done during the proceedings of the law's passage, the history of the amendments to the text, statutory precedents, the views of an administrative agency, and common knowledge. Even if they limit themselves to the text of the statute alone, they have a choice of many, sometimes opposing, canons of construction.

A good source for the study of all these matters is *Statutes and Statutory Construction*, an exhaustive multivolume set. The work is commonly cited as *Sutherland Statutory Construction* after its original author.

Some other comprehensive works on interpretation are these:

Dickerson, Reed. *The Interpretation and Application of Statutes*. Boston: Little, Brown, 1975.

Frickey, Philip P. "From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Construction." *Minnesota Law Review* 77 (1992): 241.

Hart, Henry M., and Albert M. Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Westbury, N.Y.: Foundation Press, 1994.

See also part 3 of the bibliography in chapter 13.

## 2.5 Judges' Approaches to the Text

When a judge decides that the words of a statute are unclear, he or she has a choice of philosophies to guide interpretation. One is the **textualist** approach, which emphasizes the actual words of the law. Another is the **archaeological** or **intentionalist** approach, which emphasizes the historical and legislative background of the statute. A third is the **interpretive** approach, which draws on the current legal and social context of the law to decide what it ought to mean. For a fuller discussion of the general theories of statutory construction, see Lisa Larsen, "Contested Statutes" House Information Brief, October 1990.

### (a) Textualist Approach

The textualist approach relies on the plain meaning rule. The textualist judge will determine the meaning of the statute by using definitions, rules of grammar, punctuation, context, the text of related statutes, and the canons of statutory construction, especially the ones that solve specific problems of ambiguity. These aids are intrinsic aids to interpretation. The following demonstrate and analyze textualist arguments.

Words and definitions: *Christensen v. Hennepin Transportation*, 215 Minn. 394, 10 N.W.2d 406 (1943); *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946).

Context: *Kolledge v. F. and L. Appliances, Inc.*, 248 Minn. 357, 80 N.W.2d 62 (1956).

Rules of grammar: *Welscher v. Myhre*, 231 Minn. 33, 42 N.W.2d 311 (1950); *Gale v. Commissioner of Taxation*, 228 Minn. 345, 37 N.W.2d 711 (1949); *Amaial v. Saint Cloud Hosp.*, 598 N.W.2d 379 (Minn. 1999); Sutherland Statutory Construction, sec. 49.35.

Punctuation: *State Department of Highways v. Ponthan*, 290 Minn. 58, 186 N.W.2d 180 (1971).

### **(b) Language-Related Canons of Construction**

Besides the text of the laws itself, the textualist judge makes use of canons of construction. Some of the language-related canons are codified in chapter 645 and were discussed above. Others are not codified, but are useful for drafters to know:

*Noscitur a sociis* (*associated words*). The meaning of doubtful words may be determined by their reference to associated words.

*Readings*: Sutherland Statutory Construction, sec. 47.16; *State v. Suess*, 236 Minn. 174, 52 N.W.2d 409 (1952); *State v. Taylor*, 594 N.W.2d 533 (Minn. App. 1999).

*Ejusdem generis*. General words following a listing of specific words are interpreted to be limited to the same sort of words specifically listed. This canon is codified at section 645.08.

*Readings*: Sutherland Statutory Construction, sec. 47.17 to 47.22; *State v. Walsh*, 43 Minn. 444, 45 N.W. 721 (1890); but see also *Olson v. Griffith Wheel Company*, 218 Minn. 48, 15 N.W.2d 511 (1944).

*Last antecedent*. When a series of words of general meaning is followed by words of limitation—grammatically, a relative clause or phrase—their limitation will apply to the last antecedent on the list. For instance, in a statute providing "Licensees may hunt moose, deer, geese, and ducks which are not on the endangered species list," the words "which are not on the endangered species list" will apply only to *ducks*, the last antecedent on the list.

*Expressio unius est exclusio alterius*. The expression of one thing is the exclusion of another.

*Readings*: Sutherland Statutory Construction, sec. 47.24; *Northern Pacific Ry. Co. v. Duluth*, 243 Minn. 84, 67 N.W.2d 635 (1954).

### **(c) The Value of Canons of Construction**

No canon of construction gives a guarantee of how a statute will be read. To see how the canons can be used to counter one another, read Karl L. Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are To Be Construed," *Vanderbilt Law Review* 3 (1950): 395-406. The subject is discussed further in "Symposium: A Reevaluation of the Canons of Statutory Interpretation," *Vanderbilt Law Review* 45 (1992): 529-795.

#### **(d) Archaeological or Intentionalist Approach**

A judge who focuses on "legislative intent" rather than words uses materials beyond the statute itself to determine the statute's meaning. These materials are collectively called *extrinsic aids* to interpretation.

Much has been written recently about the validity of this approach, and especially about whether judges are right or wrong to use legislative history in construing statutes. Some criticisms of legislative history focus on federal materials, which can be manipulated to insert evidence of intent more readily than Minnesota legislative materials can. The essential criticism, though, is that evidence of legislative intent nearly always shows various intents, leaving judges free to choose the intent that most nearly matches their own.

#### **Readings on legislative history:**

Breyer, Steven. "The Uses of Legislative History in Interpreting Statutes." *Southern California Law Review* 65 (1992): 845.

Mayton, William T. "Law Among the Pleonasms: The Futility and Aconstitutionality of Legislative History in Statutory Interpretation." *Emory Law Journal* 41 (1992): 113-158.

Slawson, David W. "Legislative History and the Need to Bring Statutory Interpretation under the Rule of Law." *Stanford Law Review* 44 (1992): 383-427.

"Why Learned Hand Would Never Consult Legislative History Today," *Harvard Law Review* 105 (1992): 1005-1024.

#### **(e) Extrinsic Aids in Minnesota**

Minnesota sets statutory limits on the use of extrinsic aids in determining the legislative intent of a law. *Tuma v. Commissioner of Economic Security*, 386 N.W.2d 702, 706 (Minn. 1986) (legislative intent can be considered in interpreting a statute only after the statute is found to be ambiguous). The permissible types of extrinsic aids are discussed below:

#### **LEGISLATIVE HISTORY.**

- (1) *Tape recordings and written minutes of committee proceedings* may not be used as evidence of intent according to senate rule 50.9 and house rule 6.24. But, for a contrary example of their use, see *In the Matter of State Farm Mutual Automobile Insurance Co.*, 392 N.W.2d 558 (Minn. App. 1986).
- (2) *Journals of either house* can be used as evidence. See Minnesota Statutes, section 599.12; see *Randall Jacques v. Pike Power Co*, 172 Minn. 306, 215 N.W. 221 (1927) (determining which of two enrolled bills the legislature actually passed); see *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 74 N.W.2d 249 (1956) (determining that the two houses had never agreed to the exact text of a bill).
- (3) *Committee reports*, which are contained in the journals, can be used as evidence. For legislative rules governing the reports, see senate rule 12.11 and house rule 6.30. See also *Christgau v. Woodlawn Cemetery Assn.*, 208 Minn. 263, 293 N.W. 619 (1940) (use of a committee report to show the purpose of a change in wording).

- (4) *Rules of the house and senate and joint rules* are evidence. See *Loper v. State*, 82 Minn. 71, 84 N.W. 650 (1900) (making use of a legislative rule requiring that when a section is amended, the whole section must be printed).
- (5) *Comparison of new law with old*. See Minnesota Statutes, section 645.16.
- (6) *Comparison of new law with the common law* can provide evidence of legislative intent when the subject area is based on the common law. See *State v. Arnold*, 182 Minn. 313, 235 N.W. 373 (1931).

#### LEGISLATIVE CONSTRUCTION OF STATUTES.

One source of legislative construction is the reports of legislative commissions. These reports often recommend the passage of legislation and serve as the groundwork on which the legislation is built. They can be used as evidence of legislative intent. See *Barlau v. Minneapolis Moline Power Implement Co.* 214 Minn. 564 at 575, 9 N.W.2d 6 (1943).

Another source of legislative construction is revision or recodification of existing law. The legislature's choice of arrangement, and its choice of things left out as well of things included, are evidence of its intentions. See Minnesota Statutes, section 645.39; see also *Garberg v. Hennepin County*, 294 Minn. 450 at 455, 202 N.W.2d 637 (1972).

#### EXECUTIVE CONSTRUCTION OF STATUTES.

Certain actions of the executive branch of government can be used to determine legislative intent. Among these are the interpretation of executive orders on which legislation is based; the governor's objections to a law that has been vetoed (entered in the legislative journals); the governor's "state message" or any message given to call a special session, since these become the background of legislation passed at the session; and the opinions of the attorney general. Opinions of the attorney general are not binding on the court but have persuasive weight when their interpretations have gone unchallenged for many years. See *State v. Hartmann*, 261 Minn. 314, 112 N.W.2d 340 (1961); *Billigmeier v. Hennepin County*, 428 N.W.2d 79 (Minn. 1988).

#### ADMINISTRATIVE CONSTRUCTION OF STATUTES.

Interpretations by administrative agencies are not binding on the courts. The courts give them weight if they are of long standing. Even so, courts are likely to discount an agency interpretation that expands the agency's own jurisdiction. See *Minnesota Microwave v. Public Service Commission*, 291 Minn. 241, 246, 190 N.W.2d 661 (1971); *Soo Line Ry. Co. v. Commissioner of Revenue*, 277 N.W.2d 7 (Minn. 1979).

#### PRIOR JUDICIAL CONSTRUCTION.

When a law has been construed, that construction influences a later court's interpretation, but does not control it completely. See Minnesota Statutes, section 645.17, *Cashman v. Hedberg*, 215 Minn. 463, 10 N.W.2d. 388 (1943).

#### CONSTRUCTION OF STATUTES IN PARI MATERIA.

"In pari materia" means "on the same subject." Minnesota courts, however, have required that statutes be not only about the same subject, but also directed toward the same purpose in order to be considered in pari materia. See *In re Karger's Estate*, 253 Minn. 542, 93 N.W.2d 137 (1958).

The doctrine does not apply when neither statute is ambiguously worded. *State v. Lucas*, 589 N.W.2d 91 at 94 (Minn. 1999). Furthermore, it has long been the rule that “where failure of expression rather than ambiguity of expression \*\*\* is the vice of the enactment, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.” *State v. Moseng*, 254 Minn. 263 at 269, 95 N.W.2d 6 at 11-12 (1959).

The basic rule of construction with regard to statutes in pari materia is to construe the statutes in a consistent fashion, so as to harmonize one with the other and gain a uniform result. *Minneapolis Eastern Ry. Co. v. Minneapolis*, 247 Minn. 413, 77 N.W.2d 425 (1956); *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 153 N.W.2d 209 (1967). Where there is a conflict between clauses, the statute enacted later controls, as this is considered to be the more current expression of legislative intent. *State v. Coolidge*, 282 N.W.2d 511, (Minn. 1979). While statutes passed during the same legislative session are given special weight with regard to their construction, *Halverson v. Elsberg*, 202 Minn. 232, 277 N.W. 535 (1938), statutes with the same subject and purpose are considered to have been enacted with the same legislative intent despite having been enacted at different legislative sessions. *Christgau v. Woodlawn Cemetery Assn.*, 208 Minn. 263, 293 N.W. 619 (1940).

#### CONSTRUCTION OF STATUTES ADOPTED BY REFERENCE.

Minnesota Statutes, section 645.31, says that when a statute adopts another law by reference, it "also adopts by reference any subsequent amendments of such other law, unless there is clear legislative intention to the contrary." Unfortunately, some jurists regard the adoption of future amendments as an unconstitutional delegation of legislative authority. The troublesome questions are: (1) When are future amendments really adopted? and (2) When may they legitimately be adopted?

Relevant cases on this subject are *Wallace v. Commissioner of Taxation*, 289 Minn. 220, 184 N.W.2d 588 (1971) and *Minnesota Recipients Alliance v. Noot*, 313 N.W.2d 584 (Minn. 1981). The issue is also treated in *Minnesota Energy and Economic Development Authority v. Printy*, 315 N.W.2d 319 (Minn. 1984). The practical result of these cases is that drafters should be wary of incorporating by reference future amendments to federal law.

Sections 11.1 and 11.5 present forms of reference designed explicitly to exclude or to include future amendments.

#### CONSTRUCTION OF UNIFORM LAWS.

Uniform laws are proposed by the National Conference of Commissioners on Uniform State Laws for the purpose of standardizing state law on a particular subject. Because they are intended to be standard and uniform, they need to be construed to promote that purpose, and Minnesota Statutes, section 645.22, codifies this idea. Another state's construction of a uniform law is therefore available to a Minnesota court. See *Layne-Minnesota Co. v. Regents of the University of Minnesota*, 266 Minn. 284, 123 N.W.2d 371 (1963).

#### CONSTRUCTION OF STATUTES ADOPTED FROM OTHER STATES.

Generally, when a state adopts a statute from a sister state whose highest court has interpreted the statute, the adopting state takes that interpretation with the statute adopted. See *Olson v. Hartwig*, 288 Minn. 375, 180 N.W.2d 870 (1970).

## **(f) Interpretive Approach**

Judges who use the interpretive approach treat the statute as if it had been recently enacted. They ask whether the language and structure of the law suggest how it should apply to modern conditions.

### **Readings on the interpretive approach:**

*Commonwealth v. Maxwell*, 271 Pa. 378, 114 A. 825 (1921) (determined that the word "persons" in a jury selection law included women, even though at the time of the statute's passage women were excluded from the vote and so from jury duty).

*Schus v. Powers-Simpson Co.*, 85 Minn. 447, 89 N.W. 68 (1902) (legislative enactments in general and comprehensive terms, prospective in operation, apply to persons, subjects, and business within their general scope which come into existence subsequent to their passage).

## **2.6 Conclusion**

Drafters can control some things about the way their drafts will be read. They can try to avoid ambiguity always. When language is vague or over-general, they can question whether more specific wording is appropriate. They can test a draft for clarity by reading it from the viewpoint of a person hostile to the statute. The draft is probably clear if friendly and hostile audiences interpret it the same way.

Even so, drafters cannot control everything: they cannot control judges and they cannot control the future. Trying to tie the hands of judges leads to overwriting, archaic expression, and headaches for the drafter and the reader. (On this subject, see George Gopen, "The State of Legal Writing: Res Ipsa Loquitur," *University of Michigan Law Review* 86 (1987): 333-80.) The drafter should accept that interpretation of statutes can produce surprises.