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"And the law may be resembled to a nut, which has a shell and a kernel within; the letter of the law represents the shell, and the sense of it the kernel, and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit by the law, if you rely only upon the letter, and as the fruit and profit of the nut lies in the kernel, and not in the shell, so the fruit and profit of the law consists in the sense more than in the letter."*

TO interpret a statute is to find the proper meaning so that it may be applied to a particular case. The first canon of interpretation—that if a statute is plain and explicit it needs no interpretation—is meaningless, for one can hardly ever say that a statute is plain and explicit until it has been subjected to the traditional techniques and processes of interpretation. Little or nothing can be done about interpreting a statute apart from the facts of the case to which the statute is to be applied, for issues as to statutory meaning cannot be framed in any other way. Truly, there may be an obvious meaning, and no other may be apparent even after a careful reading of the statute; but to stop there is only to solve the problem of interpretation by avoiding it. Merely to find that a given case comes clearly within the obvious meaning of a statute does not necessarily justify the conclusion that the statute is plain and explicit. Very often the obvious meaning is the correct one, but until one can say that it is the only sensible meaning, the statute has not been fully interpreted. At this point in the process the context must be studied so as to be sure there is no other equally justifiable meaning that the text will bear by fair use of language. Moreover, if the obvious meaning is not in accord with the meanings of other parts of the statute and with the subject-matter and purpose or reason of the statute, it is no longer persuasive. A statute is therefore only tentatively plain and explicit until the necessary interpretative techniques have been applied and a critical analysis of the meanings of all other parts of the statute or of other statutes *in pari materia* or of relevant common law doctrines confirms the obvious meaning so chosen. Hence, every statute must be interpreted in the light of (1) the subject-matter with which it deals; (2) the reason or purpose behind its enactment as found in the text and the evil toward which it was directed (including here extrinsic aids and the common law); and (3) the meanings of the several other relevant parts of the same statute or of statutes *in pari materia*. Likewise, the obvious meaning is not the

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*Eyston v. Studd, 2 Pl. Com. 459, 465 n, 75 Eng. Reprints 688 (C. B. 1574).

correct one unless it is sensible. If, then, the literal or obvious meaning is sensible and fulfils these several demands, any other conflicting meaning (contextual or otherwise) not meeting these essentials cannot be regarded as the proper one. Thus the obvious or primary meaning—the one which is first gleaned by reading the statute in the light of the case to which it is to be applied—may not accord with the subject-matter, purpose or other parts of the statutes. If it does not, it is clearly inferior to any other meaning, contextual or otherwise, that does actually meet these tests, provided the latter is a meaning that the statute will justifiably bear by a fair use of language.[1]

Reducing a Statute to a Single Meaning

Since no legislature ever intends to give two simultaneous inconsistent commands, every statute must if possible be reduced to a single, sensible meaning before it is applied to any case.[2] When Lord Brougham said that we must ascertain the ". . . intention from the words of the statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute . . . ."[3] he must have been referring to statutes susceptible of but one sensible meaning that is plain and explicit. But if a statute is susceptible of another interpretation—a contextual or implied meaning—which is derived from the whole text itself with or without the use of extrinsic aids and if such contextual meaning is a fair one in that it accords with the ordinary use of language and with the object and purpose of the statute, it is clearly superior to any obvious or literal meaning which does not fulfill these demands.[4] But suppose that there are two sensible meanings which the statutory language will reasonably bear and that both accord not only with the object or purpose of the act but are also consistent with the meanings

1. This paper deals only with the general aspects of contextual interpretation. Problems of textual meaning in relation to (1) the subject-matter treated; (2) the object and purpose of the statute as determined from the text, from statutes *in pari materia*, the common law and other extrinsic aids; (3) specific problems of association of words, of presumptions and implications, of modification of language and (4) the relation of statutes and the common law from the standpoint of contextual interpretation are to be treated subsequently in separate papers.

2. For example, the "fictitious" law case of Pope and Fortescue as a result of Sir John Swale's bequest to his friend, Mr. Stradling of "all my black and white horses" is in point. The donor had six black, six white, and six that were black and white. Pope and Fortescue doubted "whether the pied (black and white) horses were included in the legacy." Upon the premise that there can be but one meaning to any set of words at any one time, it was resolved that the testator could not have meant at once all black and all white horses and also all "black and white" horses; but either the one group or the other. LIEBER, LEGAL AND POLITICAL HERMENEUTICS (1880) 16.

3. Fordyce v. Bridges, 1 H. L. Cas. 1, 4, 9 Eng. Reprints 650, 650 (1847).

4. Compare this approach with United States v. Sprague, 282 U. S. 716 (1931), concerning the meaning and constitutionality of the Eighteenth Amendment.

of the other parts of the act. In such a case a solution will most often be found in the study of extrinsic aids, such as the history of the bill, the economic, social or other relevant conditions surrounding its enactment, the evil at which the act was directed and the means of attaining the ends sought. At this point the meaning is chosen that is most satisfactory in view of all intrinsic and extrinsic aids.

If the language of a statute is not susceptible of at least one sensible meaning under all the circumstances of the particular case, the statute is too vague to be considered an enforcible command of the legislature.[5] A "sufficient expression" signifying some definite intent is necessary, and the meaning of the words is important not only as "a sign of the intent" but also "as a condition necessary to the legal validity of the writing."[6] Practically, this may first involve the finding of a meaning which gives a satisfactory solution for the case at hand and then determining whether the instrument contains "a sufficient expression" to justify the meaning so found. Theoretically at least, the meaning must in statutory interpretation come out of the text by use of interpretative techniques and extrinsic aids in the first instance.[7] But whenever the text is capable of more than one sensible meaning, choosing one of them in view of a given set of facts and a desired result comes very close to putting a desired sense into the text instead of bringing one out of it. A statute having only one meaning is said to be plain and explicit; and this occurs when, in view of the text and the facts of the particular case to which the statute is to be applied, but one meaning is justified literally or contextually by fair use of language. No other means of interpretation can then be sought on the ground that the legislature intended a different meaning.

5. State v. Partlow, 91 N. C. 550 (1884).

6. Hawkins, *Principles of Legal Interpretation* (1860) 2 JURID. SOC. PAPERS 298; see also, THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898) 411, 413. "'*The question . . . is not what the writer meant,* but what he has authorized the interpreter to say it is probable was his meaning. But if there be a total absence, not merely of intent, but of indicia, of marks or signs from which it is reasonably to be collected, . . . it is clear the process of interpretation must stop for want of materials.'" *Id.* at 413 (italics inserted).

7. "How do we find out whether there be a sufficient expression? Not merely, in case of a real question, by contemplating the words of the text; but also by comparing them with persons, facts, and things outside. They are the words of a particular person, one or more [and in this respect the problem seems identical with that of a statute]; and the question is, what do his words mean? what is the meaning of the words, in his mouth? Whatever technical rules there be for construing legal language, . . . whatever *prima facie* rules and presumptions,—these must all be allowed their proper application; and, at the end of it all, the sound judgment of the trained judicial mind, and, perhaps, the practical experience of a jury, must be appealed to. There must be no addition to the text of what is not in it. But when is a thing 'in it'? It may be said to be there when a mind fully informed, and doing no violence to the rules of language and of legal construction, may reasonably find it there." THAYER, *op. cit. supra* note 6, at 411-412.

A statute, then, is not fully interpreted until it is shown that the meaning chosen accords with the subject-matter, the statutory purpose and the remaining portions of all statutory texts involved. Even then it is not fully interpreted if it is susceptible of another sensible meaning which can fulfill the same demands.[8] Of course, one is not concerned with the possible meanings unless a choice of one or another will work a different result in the case at hand. Hence, the issue of statutory meaning comes out of an issue raised by a given case, with different solutions resulting from the choice of different meanings. As a consequence, if the possible meanings applicable can have no different result in the case at hand, the problem of choice is academic.[9] This often occurs when the portion of the text which has a doubtful meaning is not the portion upon which the case depends, or if it is the applicable portion, application of either suggested meaning makes no difference in the result. The portion applicable may be perfectly clear; and if its meaning accords with the whole statute, that ends the problem of interpretation for that case.

Interpreting a statute therefore means the finding of a single, sensible, consistent meaning for the whole. It is the process of choosing from two or more possible meanings by determining which one of them best accords with the text, other relevant parts of the same statute and other relevant statutes in light of the relevant precepts and doctrines of the common law. Application, on the other hand, means determining whether the facts of the given case do or do not come within the single meaning so chosen. Although the two steps are often accomplished as one process, analytically the former precedes the latter in every statutory problem. All statutes, whether remedial, penal or in derogation of the common law are or ought to be interpreted today in the same manner by finding the single sensible meaning through techniques or processes to be marked out in conformity with reason and the context of all relevant statutory precepts. Distinctions between strict and liberal interpretation ought now to be entirely disapproved.[10] Strict and liberal construction (using

8. Denn *ex dem.* Scott v. Reid, 35 U. S. 522 (1836); Prindle v. United States, 41 Ct. Cl. 8 (1905); Southern Surety Co. v. Dardanelle, 169 Ark. 755, 276 S. W. 1014 (1925); Brown v. W. & B. Leather Co., 9 Del. Ch. 39, 74 Atl. 1105 (1910); Commonwealth v. International Harvester Co., 131 Ky. 551, 115 S. W. 703 (1909); State v. Wilder, 206 Mo. 541, 105 S. W. 272 (1907); People v. Schoonmaker, 63 Barb. 44 (N. Y. 1871); Rosenplaenter v. Roessele, 54 N. Y. 262 (1873).

9. "If it can make no practical difference which of two statements be true, then they are really one statement in two verbal forms; if it can make no practical difference whether a given statement be true or false, then the statement has no real meaning." JAMES, THE MEANING OF TRUTH (1914) 51.

10. For early tendencies in this direction, see Attorney General v. Sillem, 2 H. & C. 431, 530-532, 159 Eng. Reprints 178, 222-223 (Ex. Chamb. 1863); SEDGWICK, STATUTES AND CONSTITUTIONAL LAW (1857) c. viii, 250.

the word "construction" in the sense of application) still obtains and should obtain in certain types of statutes (as, for example, penal and remedial statutes, respectively); but this simply signifies that, after the problem of meaning is solved, whether doubtful cases (on the line as regards that meaning) are to be resolved in favor of one party or the other is a question of judicial or legislative policy—is to be determined by the general course of judicial treatment of that statutory type or by express legislative direction. A strict or liberal attitude, however, toward particular legislation can never be part of the process of finding out what it actually means.

Recently these judicial and legislative attitudes towards particular types of penal legislation have been excellently and exhaustively treated by Professor Hall,[11] except that the author has not differentiated such policies of application of statutes from the necessarily more scientific and impartial approach to problems of interpretation. Mr. Justice Holmes made it clear that penal statutes are not to be interpreted strictly or liberally but rather with common sense.[12] He was not speaking, however, of attitudes or policies for resolving doubts as to applying the chosen meaning to close cases.

Hence it is clear that (1) a statute may be plain and explicit in meaning and either clear or doubtful as to application, or (2) it may be doubtful in meaning and either clear or doubtful as to application, or (3) it may be clear and explicit both as to meaning and application. Some explanation of each of these is necessary.

Clear and Explicit Meaning: Application Doubtful.—If only a single statute or provision is involved and there are no patent ambiguities in the language used, and if the words are susceptible of only one sensible meaning after applying the proper techniques of interpretation in light of the facts of the case, then the statute being clear and explicit needs no further interpretation, even though the application of that meaning to that case may really not be in any sense clear. The first proposition simply stated is that a plain, single meaning does not solve the problem whether close cases are or are not included within that single meaning, because there are shades of meaning of every word in language;[13] and

11. Hall, *Strict or Liberal Construction of Penal Statutes* (1935) 48 HARV. L. REV. 748.

12. United States v. Alford, 274 U. S. 264 (1927).

13. Meaning plain but application doubtful: In Gardner v. Collins, 27 U. S. 58, 60 (1829), the statute provided that "when the title to any real estate of inheritance . . . came by descent, gift or devise from the parent or other kindred of the intestate, . . . such estate shall go to the kin next to the intestate, of the blood of the person from whom such estate came or descended, if any there be." Half-brothers and sisters claimed from the intestate under this statute. It was held that they were of the blood within the statute and that "the person from whom such estate came" refers to the immediate ancestor and not the original ancestor who purchased the estate. See also, United States v. Hart-

the problem of the content and extent of meaning of words or phrases—always uncertain—often arises when the meaning is applied to a close case.[14] If, however, the facts of the case are clearly within or clearly outside the unambiguous language (clearly within or outside the content and extent of the single meaning) the statute is also plain and explicit in application.[15] The general misconception at this point is the belief that no statute can be said to be plain and unambiguous until it is known whether the case at hand is within or outside the content and extent of the statutory words. If this were so, no written language could ever be regarded as plain in meaning apart from situations to which it is to be applied. Yet this is clearly not so, even though in many instances the particular situations to which a text is to be applied may bring to light inconsistencies or double meanings in the text that would otherwise have been regarded as non-existent. For example, a statute provided that "a bell shall be placed upon each locomotive engine, and be rung at the distance of at least eighty rods from the place where the railroad *shall cross any traveled public road or street. . . .*" In this case the railroad crossed the street on a well constructed bridge of sufficient height to allow travelers on the road beneath to pass without danger of collision. The company was found guilty of violating the statute for not ringing the bell at this road-crossing as the purpose of the statute was to prevent engines from causing runaways by giving drivers notice of approaching trains.[16] If the purpose, however, had been to prevent collisions, crossing at the level of the street without

well, 73 U. S. 385, 386 (1868), where the question was whether the defendant charged with embezzlement was an "officer" within a statute requiring "all public officers of whatever grade, . . . to keep safely . . . all public money." The defendant was a clerk in the office of the assistant treasurer and appointed by the latter. The Court found him to be an "officer" within the statute. So in State v. Brewster, 42 N. J. L. 125, 128 (Sup. Ct. 1880), the statute provided that it "shall be the duty of collectors of townships, . . . out of the first moneys which shall be collected by them, to pay . . . the state and county taxes. . . ." The first taxes collected in this instance were obtained under a special act providing for a fire and water tax for the support of specific water works. The court held that in spite of this provision in the special act, this money was still to be paid for county taxes according to the statute quoted.

14. A statute of limitations provided that actions should be commenced within certain periods *"after the cause of action shall have accrued."* Where the defendant took adverse possession of a house after the owner's death, the court held that the statute started to run from that date and not a later date when an administrator was appointed. Tynan v. Walter, 35 Cal. 634, 643 (1868) (italics inserted). Here the meaning of the word "accrued" not depending in any way upon other language of the statute is not a question of interpretation but one of determining the extent of meaning of a single word—doubtful application.

15. *Absoluta sententia expositore non indiget.* 2 COKE, INSTITUTES (1797) 553; Clementson v. Mason, L. R. 10 C. P. 209, 221 (1875). In such a situation problems of interpretation and application do not arise. United States v. Lexington Mill Co., 232 U. S. 399 (1914); Rex v. Banbury, 1 A. & E. 136, 110 Eng. Reprints 1159 (K. B. 1834).

16. People v. New York Cent. R. Co., 13 N. Y. 78, 80 (1855) (italics inserted).

ringing the bell would have been the proper meaning. In this case, once the proper meaning was chosen in accordance with the purpose of the act, its application was clear. But this is a problem of finding the proper meaning, not a difficulty in the application of a plain and explicit meaning.[17]

Statutory Meaning Doubtful: Application Clear or Doubtful.—The case just given also explains one aspect of this second category. If, however, the text is susceptible of more than one meaning and if the case at hand comes clearly within or is clearly beyond all the possible meanings, the statute is clear and explicit as to application in that case, even though the meaning remains otherwise doubtful. In this situation the common belief stated above is truly justified, because a statute may not be plain, taken in the abstract, and may nevertheless be perfectly plain with respect to a particular case. Application being clear, further interpretation is of course unnecessary for that case,[18] even though actually the meaning of the text is far from being plain and explicit. Thus courts often regard a statute having more than one meaning as plain and explicit for no other reason than that its application in the case at hand is plain with respect to all possible meanings. But this approach often leads to misunderstandings as to just what the process of interpretation really is. For example, an ambiguous statute may clearly not be applicable to a given case; but this only means that the process of choosing the right statute, preliminary to real interpretation, has not been properly carried out. Here the statute is clear only in the artificial sense that it is clearly inapplicable even though ambiguous in meaning, because the facts of the case at hand are clearly outside all possible meanings of the text. Here there is no problem of interpretation, because there is then no problem of application.

If more than one statute is involved the same approach is applicable. The text of all relevant statutes (*i.e.*, statutes *in pari materia*, or if the text be part of a code, all other relevant sections of the code) ought first to be reduced to a single consistent meaning in view of the case at hand. While inconsistencies or ambiguities in any part of the relevant statutory law remain, a single meaning has not been found—the statute is not clear—even though it be true that such singleness of meaning may not be necessary to determine the problem of application of the text to the case in question. If the case is clearly within or outside all possible meanings, reducing the text to further explicitness is unnecessary. Of course it would often be difficult and impracticable, if not impossible, to resolve all ambiguities and inconsistencies in a statute

17. Eisenberg v. Commercial Credit Corp., 267 N. Y. 80, 195 N. E. 691 (1935).

18. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION (2d ed. 1904) § 367 and cases cited.

or code or to make a choice from possible meanings of any text *in vacuo*, that is, without a case to which the statute is to be applied. At this point (interpretation), the facts of the case do serve a most useful purpose; they focus the interpreter's attention acutely upon the relevant provisions demanded by that case, so that he may deal directly with the ambiguities or double meanings, patent or latent, of a specific portion of the text. Even assuming that interpretation is concerned only with the solution of actual cases, it is true, nevertheless, that certain ambiguities, inconsistencies or double meanings of a statute must be ironed out if they relate to or conflict with that portion of the text which is to be applied. There also must be a consistent single meaning of the whole text before it can be applied to any case. The facts of a case are therefore necessary in order to reduce the problem of interpretation to some specific portion of the text or texts applicable, so that that portion may be reduced to a single meaning. These steps are interpretation properly so-called. Determining, on the other hand, whether the facts of the case at hand are within the content and extent of such single meaning, so chosen, should always be denominated as application. Whether the facts are within or outside the meaning chosen, however, may be difficult to determine; but this in no way interferes with the clarity of the statute after it has been reduced to a single, sensible meaning.

Problems, then, of reducing the relevant parts of the statute to one sensible meaning by the context or extrinsic aids—of making a choice among the several possible meanings—are problems solely of interpretation, and may involve several principles of interpretation or established techniques by which one finds the proper meaning.[19] The reason why extrinsic facts, conditions, history of the legislation and so on, surrounding the enactment of the statute, are relevant in determining its proper contextual meaning is not difficult to state. For example, whether the command, "close the door," means one door or another, whether it means also closing it quietly, locking it, returning therefrom or leaving the building, and so on, depends upon extrinsic conditions, past conduct or some other relevant circumstances. They are questions of context—implications from the words but given significance by extrinsic or intrinsic aids. On the other hand, what constitutes a door as distinguished from a gate or a window would be purely a matter of application, not interpretation. Legislative commands have similar contextual settings in the whole statute, in other statutes, in the common law and in the extrinsic conditions and circumstances existing at the

19. Commonwealth v. Churchill, 43 Mass. 118, 124 (1840); Brockert v. Ohio & P. R. Co., 14 Pa. 241, 243 (1850); Regina v. Surrey, L. R. 5 Q. B. 87 (1869); Lucas v. Dixon, 22 Q. B. D. 359 (1889); *cf.* State v. Brooks, 4 Conn. 446 (1823).

time of enactment. Of course, in such problems no order of precedence can govern the use of intrinsic or extrinsic aids in choosing between possible meanings.[20] Thus a reasonable and sensible meaning must be found by the use of the text, context, subject-matter, purpose of the statute as a whole, including extrinsic aids or conditions surrounding its enactment and application.[21]

After employing all relevant interpretative techniques the choice of the proper meaning from the several possible meanings depends upon the judicial judgment of the court, based on good faith and common sense.[22] Similarly, whether one meaning is sensible and another absurd or impossible of performance or whether an explicit meaning is of more significance than certain contextual implications is a matter of personal evaluations by the court and cannot be governed by any known objective standards. They are questions which deal with the art as distinguished from the science of interpretation.[23] Indeed, courts often avoid these finer problems of interpretation by entertaining a presumption in favor of the primary meaning (the literal, common, popular, technical meaning, as the case may be) which is quite proper only when the explicit meaning and the implicit or contextual meanings are equally consistent with the whole statute. Of course it is true, as Austin says, that "if the literal meaning of the words were not the primary index, . . . all the advantages of statute legislation would be lost."[24] But the fact is too often overlooked that such primary meaning loses its significance if it is not consistent with the meaning of the whole statute.

Meaning and Application Clear and Explicit.—As to the third proposition little explanation is necessary. If a statute is susceptible of but one meaning because there are no contextual meanings or implications in the statute or other relevant statutes, in extrinsic aids or in the relation of the statute to the common law, and if this single meaning leaves no doubt about its application or non-application to the case at hand, because it is clearly within or outside the content and

20. The cases on interpretation of statutes do not indicate any order of precedence in the use of aids in reaching the meaning of a statute, except that the text is always regarded as the point at which to begin the process.

21. Ogden v. Strong, Fed. Cas. No. 10,460 (C. C. [date unknown]); Koch v. Bridges, 45 Miss. 247 (1871); People v. Schoonmaker, 63 Barb. 44 (N. Y. 1871). The object is to find the meaning, not its legal consequences or effect.

22. "Faithful interpretation implies that words, or assemblages of words, be taken in that sense, which we honestly believe that their utterer attached to them. We have to take words, then, in their most probable sense, not in their original, etymological, or classical, if the text be such that we cannot fairly suppose the author used the words with skill, knowledge, and accurate care and selection." LIEBER, LEGAL AND POLITICAL HERMENEUTICS (1880) 88.

23. United States v. Wiltberger, 18 U. S. 76, 95 (1820), *per* Chief Justice Marshall.

24. AUSTIN, JURISPRUDENCE (3d ed. 1869) 338, 645.

extent of the single meaning, then of course the statute is clear and explicit both as to interpretation and application, so that no further techniques of interpretation or application are involved.[25] But to reach this conclusion with any degree of certainty, the whole statute must be surveyed in view of the several textual and contextual processes already established through judicial decisions on statutory interpretation.

Changing the Contextual Meaning in Applying It

Extending or restricting the meaning of a word or phrase, however, may easily occur when applying it to a given case. For example, whether a particular word or phrase of a statute takes a popular, commercial, or technical legal meaning must generally be determined before applying it to the case at hand. So far at least as particular words, phrases or provisions have different meanings in dictionaries or even different shades of the same meaning which are dependent on the context of the statute or other statutes or upon the common law, the question is one of contextual interpretation involving an understanding of law and the common use of language;[26] but if it is not a problem of context or if

25. Statute: "Every deed or conveyance not registered . . . shall be deemed . . . void, not only against such a deed or conveyance registered . . . but likewise against all and every creditor. . . ." The question was whether this provision makes an unregistered deed void against a registered one, *only* where the grantor of both be the same party. Held: that such a restriction cannot be read into the statute, and the unregistered deed is void, whether made by the same or a different grantor than the one registered. Warburton v. Loveland, 2 D. & C. 480, 493, 6 Eng. Reprints 806, 811 (H. L. 1832).

Statute: "All deeds . . . of real estate in this state, which have been executed and acknowledged in any other state or territory, in conformity with the laws of such state . . . shall be held and deemed to be . . . valid. . . ." In this case the plaintiff had conveyed Connecticut land in the state of New York, but had failed to meet the requirements of New York for conveying property there. Held: that the above statute would not by any proper interpretation make such a conveyance valid in Connecticut. Farrel Foundry v. Dart, 26 Conn. 376, 381 (1857).

Statute: "No county shall contract any debt by loan . . . except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; . . . *and the aggregate amount of indebtedness of any county, for all purposes* . . . shall not at any time exceed" a certain sum. The plaintiff, suing for a sum exceeding the specified amount, claimed that the general limitation on loans applied only to those for buildings, roads or bridges. The court held, however, that the limitation applied to any kind of loan whatsoever. Lake County v. Rollins, 130 U. S. 662, 663 (1889) (italics inserted).

26. "A word generally has several meanings, even in the dictionary. You have to consider the sentence in which it stands to decide which of those meanings it bears in the particular case, and very likely will see that it there has a shade of significance more refined than any given in the word-book. But in this first step, at least you are not troubling yourself about the idiosyncrasies of the writer, you are considering simply the general usages of speech. So when you let whatever galvanic current may come from the rest of the instrument run through the particular sentence, you still are doing the same thing." Holmes, *The Theory of Legal Interpretation* (1899) 12 HARV. L. REV. 417.

it does not depend upon other parts of the statute or upon law, the question is purely one of fact, not law; it calls for no knowledge of law but rather depends upon one's knowledge of language, upon one's good judgment and one's common sense. Such a factual problem is also directly involved in making a satisfactory application of the content and extent of shades of meaning of a single word or phrase to the case at hand. And yet the court's application of such words and phrases crystallizes their meanings as they are then precedents for future cases. For example, it has been held that a radio is not a "musical instrument" within the meaning of a statute exempting "musical instruments" from execution.[27] The phrase "musical instrument" is perfectly clear; the only difficulty is application, determining whether a radio is a musical instrument, which certainly has nothing to do with either statutes or law of any kind.[28] And yet the exclusion or inclusion of certain things within that term gradually affects the content and extent of the single meaning in that statute. The result may be restrictive or extensive construction.[29] When applying the meaning of the text of a will, however, the result in future cases is not so important as in the case of a statute. If in a will, to take the same example, extrinsic aids or the context of the will show that a radio should come within the words "musical instrument," the interests of the parties only in that case would be involved, for a will is not a law and has spent itself when the property is disposed of. As statutory application, however, deals both with the case at hand and sets a rule for future cases, it is important that the meaning found shall not be improperly extended or restricted in application in particular cases.

The distinctions (up to this point in this paper) only show the first steps in the contextual process of handling a statutory text. They do not purport to deal with detailed techniques by which this process is carried out. Nor is it possible here to go into the question of determining how one tells in any case whether the problem is one of choosing from two or more distinct meanings (which involves the technique of interpretation) or whether the problem is merely the determination of the content and extent of meaning of a word or phrase or clause which directly and only involves statutory application. A single explanation of the process without its details or techniques seems to be this: if the difficulties involve the meanings of other portions of the text—of choosing among several possible distinct meanings which depend upon other parts of the statute, other statutes or the common law, it is a matter always

27. Dunbar v. Spratt-Snyder Co., 208 Iowa 490, 226 N. W. 22 (1929); Comment (1930) AIR L. REV. 149.

28. State v. Brooks, 4 Conn. 446 (1823).

29. The term "construction" really signifies the crystallized meaning by application in decisions in actual cases.

of legal interpretation for the court; while if the problem is one which in no way involves inconsistencies in other portions of the text but only the meaning of a word, phrase or clause, it is a pure question of fact which is to be worked out in applying the statute and may be solved either by the court or left to the jury directly—in applying the law to the case at hand.[30]

Some Specific Problems in the Contextual Process

It seems clear, if what has been said is correct, that if the meaning of the language of a statute is not plain, search for the proper meaning must in the first instance be sought in the text and context of the statute itself.[31] Where the obvious or literal meaning of the language of a statute is seemingly plain but upon further investigation is found to be repugnant to or inconsistent with other parts of the statute or results in absurdity in application to the case at hand, a contextual meaning which is sensible and consistent with the language of the whole statute, if such can be found, should be chosen.[32] The literal, popular, grammatical or obvious meaning of a statute is not plain, if (1) the language is susceptible of two or more sensible meanings; or (2) if such obvious textual meaning is inconsistent with any other part or parts of the act; or (3) if such obvious meaning is absurd or results in absurdity in application to the case at hand. These generalities, however true, are of little help in reaching a conclusion in a given case. Situations in detail must be studied in order to bring out the technique in the application in statutory interpretation. They are suggested here merely as primary leads into the study of actual decisions involving a choice from two or more meanings which involved the context.

Coke speaks of "construing one part of the statute by another part of the same statute" as best expressing the meaning of the makers.[33]

30. de Sloovère, *The Functions of Judge and Jury in the Interpretation of Statutes* (1933) 46 HARV. L. REV. 1086.

31. This is called exposition *ex visceribus actus*. The meaning is to be determined from within the four corners of the act. 1 COKE, INSTITUTES *381b; Lincoln College Case, 3 Co. 58b, 76 Eng. Reprints 764 (C. P. 1595).

32. See Latham v. Lafone, L. R. 2 Ex. 115 (1867); Coxhead v. Mullis, 3 C. P. D. 439 (1878); Regina v. Mansel Jones, 23 Q. B. D. 29, 32 (1889); Burkill v. Thomas, [1893] 1 Q. B. 99; *cf.* Valentini v. Canali, 24 Q. B. D. 166 (1889). See, also, DE SLOOVÈRE, CASES ON THE INTERPRETATION OF STATUTES (1931) 185-199.

33. ". . . it is the most naturall and genuine exposition of a statute to construe one part of the statute by another part of the same statute, for that best expresseth the meaning of the makers. As here the question upon the generall words of the statute is, whether a fine levied onely by a husband seized in the right of his wife with warrantie shall barre the heire without assets. And it is well expounded by the former part of the act, whereby it is enacted that alienation made by tenant by the courtesie with warrantie shall not bar the heire, unless assets descend. And therefore it should be inconvenient to intend the statute

Blackstone also shows that a meaning must be found that will preserve all parts of the statute as a consistent whole.[34] A question often arising and often wholly overlooked is whether the literal meaning has some definite and final superiority over a definite contextual meaning. The answer is, of course, that it has no such superiority if the literal meaning, unlike the contextual meaning, is inconsistent with other parts of the statute or not in accord with the purpose or object of the statute.[35] Interpretation by the context thus involves the question whether the literal meaning or the contextual meaning shall be deemed the true meaning of the statute. Of course the plain and explicit meaning of a statute cannot, as we have seen, be contradicted if it is consistent with the entire text and statutory purpose. Any contextual meaning is of course spurious if it is one which the text will not reasonably and sensibly bear upon reading the entire statute. If a meaning as found by the context, however, is more plainly what was meant in the sound judgment of the court—in the sense that it better satisfies the whole—than the literal meaning, and is a contextual meaning which the words will sensibly bear, then it ought to be superior to the literal meaning of the statute. For example, in *Commonwealth v. Bralley*,[36] the statute provided that "no person shall be allowed to be a manufacturer of any spiritous or intoxicating liquors for sale, or a common seller *thereof*, without being duly appointed or authorized. . . ." It was urged that the word "thereof"

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in such manner, as that he that hath nothing but in the right of his wife should by his fine levied with warrantie barre the heire without assets. And this exposition is *ex visceribus actus*." Co. Litt. *381a.

34. "One part of a statute must be so construed by another, that the whole may (if possible) stand: *ut res magis valeat, quam pereat*. As if land be vested in the king and his heirs by act of parliament, saving the right of A, and A has at that time a lease of it for three years: here A shall hold it for his term of three years, and afterwards it shall go to the king. For this interpretation furnishes matter for every clause of the statute to work and operate upon." 1 Bl. Comm. *89.

35. The problem of choice between an obvious and a contextual meaning is poignantly stated in the following passage concerning the interpretation of wills: "An interpreter, unimpeded by the alleged rule that the strict and primary meaning must, if sensible with reference to extrinsic circumstances, be inflexibly adhered to, may well consider that of two contending constructions the one is more proper, more strictly grammatical, without denying that the words will admit the other signification: he may also perceive that the strictly grammatical sense would not, if adopted, be altogether ineffectual, or lead to an absolutely absurd result; but the greater convenience of the opposing construction, and its more perfect harmony with the conception which he has formed of the testator's plan, may convince him beyond doubt that the less proper sense of the words is the true meaning of the testator. Is it expedient that he should be debarred from this conclusion, and forced to adopt the sense most in accordance with grammatical propriety, provided it is not altogether incompatible with the facts? Is this supposed rule of the English law in fact observed by our own courts?" Nichols, *Extrinsic Evidence in the Interpretation of Wills* (1860) 2 Jurid. Soc. Pap. 351, 371

36. 69 Mass. 456, 457 (1855).

meant "of liquors manufactured by the defendant." The defendant contended, in other words, that the statute prohibited only manufacturers from selling or being common sellers of liquor. Grammatically, such construction is at least ingenious; literally, the words might bear such meaning; but the context from another clause of the section made it clear that not only manufacturers but all persons were prohibited from selling liquor without authorization. Here the contextual meaning is the proper one because the literal meaning does not harmonize with another part of the statute. Similarly, the context in view of the subject-matter treated by the statute may explain the meaning of single words which, taken literally, do not harmonize the entire statute. In *Slater v. Cave*,[37] the words, "twenty-one years" were held to mean "the age of majority" as gleaned from the context of the statute, because the term "twenty-one years" was spoken of in the same breath with disabilities, such as insanity and duress, followed by the clause "such disabilities." This showed that the subject-matter of the statute was disabilities of minority, insanity and duress, so that the term "twenty-one years of age" meant "majority" which, as applied to women, happened in that state by a general statute to be the age of eighteen. Here the court chose the contextual meaning which was consistent with the subject-matter rather than the literal meaning which was not. General words or terms of a statute may thus be limited in meaning by the context, subject-matter or other parts of the same statute.[38]

There can therefore be no departure from the plain meaning of a statute in any case, if "plain meaning" signifies the only sensible meaning (consistent with the meaning of the whole statute) that the words will bear.[39] This may be a literal, grammatical, popular, commercial, trade,

37. 3 Ohio St. 80 (1853).

38. See Blackwood v. Regina, 8 App. Cas. 82, 94 (1882).

39. If the language of a statute is susceptible of only one meaning which makes sense even though not a reasonable meaning and is also consistent with the meaning of all other parts of the statute, that meaning must be applied to cases coming within it: Gardner v. Collins, 27 U. S. 58 (1829); United States v. Hartwell, 73 U. S. 385 (1867); Tynan v. Walker, 35 Cal. 634 (1868); Farrel Foundry v. Dart, 26 Conn. 376 (1857); Parvin v. Wimberg, 130 Ind. 561, 30 N. E. 790 (1892); Inhabitants of Orono v. Bangor Ry. & Sl. Co., 105 Me. 429, 74 Atl. 1022 (1909); Pearce v. Atwood, 13 Mass. 324 (1816); Doane v. Phillips, 29 Mass. 223 (1831); State v. Williams, 222 Mo. 268, 106 S. W. 618 (1909); Armstrong v. Modern Brotherhood, 132 Mo. App. 171, 112 S. W. 24 (1908); Douglas v. Board of Chosen Freeholders, 38 N. J. L. 214 (Sup. Ct. 1876); State v. Brewster, 42 N. J. L. 125 (Sup. Ct. 1880); Johnson v. Hudson River R. Co., 49 N. Y. 455 (1872); Benton v. Wickwire, 54 N. Y. 226 (1873); State v. Barco, 150 N. C. 792, 63 S. E. 673 (1909); Ruhland v. Waterman, 29 R. I. 365, 71 Atl. 450 (1908); King v. Inhabitants of Stoke Damerel, 7 B. & C. 563, 108 Eng. Reprints 833 (K. B. 1827); Warburton v. Loveland, 2 D. & C. 480, 489, 6 Eng. Reprints 806, 809 (H. L. 1831); General Iron Co. v. Moss, 15 Moore P. C. C. 122, 131, 15 Eng. Reprints 439, 443 (1861); Vestry of St. John v. Coffin, 12 App. Cas. 1 (1886), *per* Lord Halsbury.

technical or contextual meaning. Here any social interest in the equitable interpretation of the statute is negatived by the explicit legislative command. Before one can say, however, that the apparent meaning is the proper one, it must be first subjected to all contextual processes, in order to be sure that there is no other meaning for the language which is more consistent with the whole statute than the one which is apparent upon cursory reading. Thus contextual techniques are necessary even when the statute is apparently plain and explicit. An absurd or inconsistent literal meaning is of course inferior to a contextual meaning that is not. Similarly, if the language of a statute is susceptible of two meanings, one reasonable and one unreasonable, and there are no other genuine extrinsic or intrinsic indicia of choice (contextually justifiable), the former must be chosen.[40] If, however, both the literal and contextual meanings are reasonable but the former is not consistent with the entire act or with the object or purpose of the statute, then the contextual meaning is naturally the proper one. If, on the other hand, the literal meaning is sensible, reasonable and consistent with the act as a whole, the existence of a contextual meaning similarly sensible and reasonable, cannot rebut the presumption that the more obvious literal meaning was intended.[41]

These contextual problems in earlier cases were resolved by means of the maxim that "a thing within the letter is not within the statute unless it was also within the intention."[42] All that the maxim means according to doctrines of genuine interpretation is that a thing within the letter can be beyond the statute only because the letter of the statute is not the proper meaning. The maxim is often stated in early cases the other way round: a thing within the intention is within the statute even though it is not within the letter. In fact, it is not beyond the statute at all; it is actually within the properly chosen meaning, which does not turn out to be the literal or obvious one. What occurs here is that a contextual meaning which is more extended than the literal meaning, and which better harmonizes the whole statute, has been found and chosen as the proper one. The earlier distinctions between the letter

40. Boon v. Howard, L. R. 9 C. P. 398 (1874). This rule is called by Coke *argumentum ab inconvenienti.* See Regina v. Skeen, Bell 97, 169 Eng. Reprints 1182 (Q. B. 1859). It is really not based on convenience but on a presumption of reasonableness on the part of the law-makers.

41. United States v. Wiltberger, 18 U. S. 76 (1820); Lake County v. Rollins, 130 U. S. 662 (1889).

42. Eyston v. Studd, 2 Pl. Com. 459, 465, 75 Eng. Reprints 688, 695 (C. B. 1574); Strading v. Morgan, 1 Pl. Com. 199, 205a, 75 Eng. Reprints 305, 314 (1560); 4 BAC., tit. Statute, 1 S. 38, 45, 50. Cases in the early reports making use of this maxim, which is nothing more than a general statement as to contextual interpretation, are legion.

and intention are only understandable if intention is understood to mean context.[43]

Cases are sometimes cited as exemplifications of contextual interpretation when actually they have nothing to do with the context at all but are rather problems of common law defenses to breaches of statutes. For example, a statute of Edward II provided that "if any prisoner should break out of a prison he should be deemed guilty of a felony." A prisoner broke jail to escape being burned to death in a prison fire. Of this case Plowden[44] says "that he was not to be hanged because he did not stay to be burned." He is according to Plowden within the letter but not within the intention. But this is a question of a defense or excuse for the breach of the statute; and defenses for breaches of statutes are not contextual problems at all. The statute was plain and explicit and was clearly violated. Here the purpose was clearly to prevent prisoners from being at large under all circumstances. To say it contextually meant voluntary escape is to add a meaning to the statute which the words do not clearly bear as it does not accord with the purpose. The prisoner was merely excused upon the common law ground of duress. Another early law provided that "those who in a storm *forsake* the ship shall lose all, and that the ship and lading shall become the property of those who stay in it." Puffendorf in this case[45] rightly thought that the contextual meaning of this statute excluded a person from benefiting thereby who, because of illness, was unable to leave a ship which after the storm came safely to port. Here the purpose of the act was to induce those aboard ship to remain in order to aid in saving her from disaster. The contextual meaning which accorded with the purpose was therefore the real meaning rather than the literal meaning. The literal meaning in this case is simply not the proper meaning of the statute.[46] Only if the person comes by his conduct within the single meaning chosen for the statute can the question of a common law defense arise. On the other hand, if a contextual meaning is the proper one, coming within the literal meaning is not coming within the statute at all.

43. For example, reaching the conclusion that the word "void" in a statute means "voidable" by the context is not necessarily going beyond the fair use of language, and is not contrary to the doctrine of literalness when this doctrine is properly understood, for the word "void" is often used because of the subject-matter and purpose of the statute to apply not to the whole world but to particular persons, classes or things as in the phrase, "void except as against creditors or subsequent purchasers," which necessarily means "not void" against others or valid till avoided and so on. Green v. Kemp, 13 Mass. 515 (1816).

44. Reniger v. Fogossa, 1 Pl. Com. 1, 13, 75 Eng. Reprints 1, 20 (Ex. Chamb. 1551).

45. "Puffendorf, B. 5, Ch. 12," cited in Slater v. Cave, 3 Ohio St. 80, 86 (1853).

46. Even the literal meaning does not cover the case, since one can not take the benefit of a law if there has been no juristic act. Remaining on the ship was not volitional, so that from another angle the law had not been invoked.

At this point, therefore, the interpreter has to evaluate many different things: subject-matter treated; statutory purpose; literal and contextual meanings of language, involving questions of grammar and rhetoric; extrinsic aids; other relevant statutes and relevant doctrines of the common law. To lay down an extended series of canons or rules of interpretation under these circumstances would necessitate another series of rules for ascertaining how to choose the proper canon of interpretation. Such procedure is futile. The approach must be rather a study of the processes actually employed in the decisions; they can never be satisfactorily reduced to specific maxims. Similarly, the problem is complicated by the existence of presumptions in statutory interpretation, such as presumptions against exceeding legislative power, inconsistency, impossibility, absurdity, ineffectiveness and so on.[47] No two problems are ever exactly alike in statutory interpretation. Specific rules, therefore, cannot be satisfactorily applied, while general maxims, though they have the necessary flexibility, are too general and vague to be of any real value in close questions. Take, for example, the following maxim: If different parts of the same statute have different purposes, different meanings *may* result from the same language in different parts thereof.[48] This is a maxim or doctrine which describes what may happen under certain conditions; it is no guide in solving a problem of that type. Again, if certain language of a statute is susceptible of two meanings in one part and only one meaning in another part of a statute, we are told that the legislature is presumed to have used the same term in the same sense in different parts of the same statute,[49] assuming that both parts deal with the same subject-matter.[50] But there is another equally sensible presumption that no word is to be treated as superfluous or tautological. In short, a statute must be construed on the presumption that every word is necessary in obtaining a consistent meaning for the whole. But how are the courts to choose from so many inconsistent canons? If,

47. As to presumptions, see *In re* Low Yan Chow, 13 Fed. 605 (C. C. D. Cal. 1882); French v. Teschemaker, 24 Cal. 518 (1864); City of Jefferson v. Weems, 5 Ind. 547 (1854); Baily v. Commonwealth, 74 Ky. 688 (1876); Little v. Bowers, 46 N. J. L. 300 (Sup. Ct. 1884); Brincken, *Interpretation of Written Law* (1915) 25 YALE L. J. 129, 131.

48. Lawless v. Sullivan, 6 App. Cas. 373 (1881).

49. The presumption is rebuttable. So one finds an inconsistent canon: The same word should not be construed in the same sense wherever it occurs in the same instrument. Pace v. Burgess, 92 U. S. 372 (1875); Fairbank v. United States, 181 U. S. 283 (1900); STORY, CONSTITUTION (5th ed. 1891) §§ 454, 1014.

50. Courtauld v. Legh, L. R. 4 Ex. 126, 130 (1869). But the presumption may be rebutted by the context: Doe d. Angell v. Angell, 9 Q. B. 328, 355, 115 Eng. Reprints 1299, 1309 (1846); *Re* National Sav. Bank, L. R. 1 Ch. App. 547, 550 (1866); Green v. Smith, 24 Ch. D. 672, 678 (1881); Regina v. Overseers, 11 Q. B. D. 134 (1883). For example, where the words are used inaccurately in one part of the statute: Moody & Yate's Contract, 30 Ch. D. 344, 349 (1885).

therefore, there are two inconsistent presumptions or maxims of interpretation relevant and applicable to a particular question of interpretation, either one negatives the other or is superior to the other. To evaluate presumptions in order to choose between them or to say which is more relevant is often a more difficult task than making a choice from the several possible meanings of the statute to be interpreted.

Thus, the difficulties of proceeding at all on the basis of inconsistent canons of interpretation is so great that a new approach to the whole subject of statutory interpretation must be sought. Techniques and processes as found in the decisions must be worked out, and these must be derived directly from the context, subject-matter, extrinsic aids and purpose of particular legislation. Presumptions and maxims must be relegated to the secondary position of justifying, if possible, the conclusions reached. Indeed, this is probably what has been going on in statutory interpretation for centuries, with the result that the writers of digests and texts have been erroneously elaborating the maxims rather than dealing directly with actual problems of interpretation as found in the case law.

Contextual interpretation is therefore in part an art involving the application of a group of interpretative techniques or processes by which the interpreter evaluates the indicia of meaning so as to reach the most sensible and consistent or satisfactory meaning which the language as a whole is in good faith capable of bearing. But statutory interpretation is also a science or rather part of legal science in that it involves all the modes of thinking involved in other topics of the law in order to give objectivity to the several techniques or processes involved. The process may not be dissimilar to the judicial process of choosing by legal relevancy certain common law principles or doctrines and then applying them either by deduction or analysis or analogy to new situations. Thus it was perfectly natural for those skilled in the interpretation and application of common law principles and precepts to regard the maxims of interpretation as having a position analogous to such precepts in the processes of applying statutory law. So far as the processes are similar, the statutes as a whole, including provisions of codes and so on, are the law and take the same relative position in judicial and juristic thinking as common law rules or precepts take in the ordinary judicial processes. Finding the proper statute may well become a process not unlike finding the relevant common law precept; but no series of rules or canons has ever been laid down for determining what the principles of the common law actually are, what they mean, or when they are applicable to a given case. The well trained lawyer learns to interpret and apply them in the study of cases; he acquires a knowledge of the technique of relevancy through analysis, analogy, induction, legal logic and judicial experience and juristic thinking. So, also, must the process

of statutory interpretation be studied and applied. For example, in *Doe* ex dem. *James v. Dubois*,[51] an act provided that "no entailment of any lands or other real estate, shall continue to entail the same, in any case whatever, longer than the life of the person to whom the same hath been, or shall be first given or devised of such entailment." It was argued that the word "entailment" in this clause meant "devise" because in a preceding clause the word "devise" was used as synonymous with that word. But the substitution of the word "devise" for "entailment" in the above statute resulted in a senseless redundancy. The solution was based upon the object and purpose of the statute, gleaned from reading it as a whole, to reach estates created by deed as well as by will. In view of the tautology resulting from the limited interpretation and the object and purpose of the statute to prevent entailments, the court reached the conclusion that "entailment" was not restricted to devise but included both deeds and wills. Here there was a mode of judicial thinking involved; no canon or series of canons could in and of themselves have set out the real basis for the solution. Of course, if a word in one part is susceptible of two meanings and in another part has but one meaning there is a presumption (as previously stated) that, throughout, it takes the single, definite sense assuming that both parts deal with the same subject-matter. But such a presumption is rebuttable at least as shown in the present case, if following the rule results in tautology and especially if the other meaning does not conflict with the object and purpose as determined from the entire statute. These maxims have value only to describe conclusions already reached by some other inarticulate process. In reality the statutory purpose, subject-matter dealt with, and the art of contextual interpretation are at the base of solutions of most cases.

Similarly, in a choice between the literal, grammatical or a contextual meaning, if all three are sensible, the one should be chosen which accords with the object or purpose of the statute. Here is a statement in part of a process rather than a maxim of interpretation. In *United States v. Howell*,[52] the literal meaning was not valid as it was inconsistent with the object and purpose of the statute. The statute provided "that if any person or persons shall falsely make, forge, counterfeit, or alter, . . . any note, bond, coupon, or other security issued under the authority of this act, . . . every person so offending shall be deemed guilty of a felony." The defendant counterfeited certain treasury notes. But as they were not literally "issued under the authority of this act," the defendant contended that the statute only covered tampering with valid notes. The reasoning was based on the literal meaning, that if the note

51. 16 N. J. L. 285 (Sup. Ct. 1837).
52. 78 U. S. 432 (1870).

was issued under the act, it was a valid note; if it were not so issued, the passing of the note was not by the act an offense. Here the literal meaning is senseless and would render the statute void. Similarly it would run counter to the very object and purpose of the act, namely, to prevent counterfeiting; and the statute would be repugnant to itself in using the word "counterfeit" in one part and "issued under the authority of this act" at the end of the section. But supplying the ellipsis by a contextual meaning, it is clear that the making of any note essentially similar to those issued by the government was what was meant. Truly, false diamonds are not false if diamonds, and are not diamonds if false; but contextually such term means stones which falsely appear and are falsely alleged to be diamonds. In this case the contextual meaning was the only correct one, as the literal meaning was absurd. Similarly, "a writing" was held not to include "letters" (sealed) especially when another section showed that the statute meant to cover only such writings as can be read when passing through the mails.[53] Indeed, this case as well as others involving contextual interpretation show that there is no significance in merely determining the meanings of particular words in statutes, inasmuch as words have divers meanings any one of which may be proper in view of the context of the particular statute. As Mr. Justice Holmes has said, a word may have "a shade of significance more refined than any given in the word-book."[54] For example, instances when "a" may be read interchangeably with "one",[55] when words in the singular and plural may be read interchangeably,[56] are of no significance in particular cases as the solution depends purely upon the context or other considerations in the particular statute which are not susceptible of specific explanation in principle.

Of two or more contextual meanings, both of which are consistent with the entire statute, the one that is more satisfactory or gives the more satisfactory solution in the particular case should be chosen.[57] If the whole text and extrinsic aids do not offer a clear choice from the several sensible meanings which have arisen, if all the interpretative techniques or processes traditionally employed, such as the doctrine of literalness, the subject-matter treated, the object and purpose of the statute, extrinsic aids either in the form of the history of the bill or conditions surrounding the enactment or other relevant statutes or common law precepts fail to give a definite direction of choice from the several justifiable meanings, then judicial or legislative attitudes or policies toward that type of legislation may at that point be employed without transcending the doc-

53. United States v. Chase, 135 U. S. 255 (1890).
54. Holmes, *loc. cit. supra* note 26.
55. State v. Martin, 60 Ark. 343, 30 S. W. 421 (1895).
56. Ellis v. Whitlock, 10 Mo. 483 (1847).
57. Simms v. Registrar of Probate, [1900] A. C. 323.

trines of genuine interpretation. If these do not suffice for any reason, juristic attitudes found in analytical, historical, philosophical or sociological schools of jurisprudence must be employed. By means of one of these the most satisfactory meaning then may be chosen. But such a choice must be one that the text and context of the statute will bear by fair use of language.[58] These attitudes, whether legislative or judicial policies or juristic viewpoints, must, however, be employed only as a last resort.[59]

58. See the opinion of Lord Westbury in *Ex parte* Vicar, *etc.*, of St. Sepulchre, 4 DeG. J. & S. 232, 46 Eng. Reprints 907 (Ch. App. 1864).

59. See Pound, *Spurious Interpretation* (1907) 7 COL. L. REV. 379.