Linguistic Canons of Construction: An Overview

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Linguistic Canons of Construction

• One subset of *Textual Canons*
  – Linguistic
  – Whole Act
  – Whole Code

• General strategies
  – Courts almost always start with the text itself, and then expand outward to other statutory provisions, statute structure and other statutes
  – Move from narrow to broad
Ejusdem Generis

• “of the same kind”

• When general words follow a list of specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to the objects enumerated by the preceding specific words

Noscitur a Sociis

- “Known by the company it keeps”

- A word is given more precise content by the neighboring words with which it is associated.

- *United States v. Williams* (“presents” child pornography)

- Like *ejusdem generis*, *noscitur* doesn’t apply if the list has no common feature.
Expressio Unis

- “the mention of one thing excludes another”

- Requires listing of specific terms that support the inference that the failure to include others reflected an intentional decision by the legislature

- Again, requires group that share a characteristic or association
Variations of *Expressio Unis*

- More specific variations of *expressio unis* include:
  - A list of specific exceptions to a general prohibition means that Congress intentionally excluded any further exceptions.
  - If the statute requires an action to be performed in a particular way, that requirement reflects a decision by Congress to prohibit other ways to perform that action.
  - Specific legislative provisions on pre-emption mean that Congress intended to foreclose other general types of preemption.
Other linguistic rules

• “May” vs. “Shall”
  – But note ambiguity of “shall”
  – Federal Rules of Civil Procedure

• The Last Antecedent Rule – a limiting phrase only applies to the clause immediately before it, and doesn’t migrate upward through the statute.
  – The errant teenager’s house party

• Conjunctive vs. Disjunctive (in other words, “and” vs. “or”)

• Punctuation – the deadly comma (“knowingly”), limited weight of parentheticals
Dictionary Act

- Passed originally in 1871, but modified several times (including 2008).
- Limited effect – applies “unless the context indicates otherwise.”
  - Section 1
- More than just definitions
  - Section 7 – look familiar?
  - Section 8
- What if Section 1 did not allow courts flexibility to interpret otherwise?