

Listing the Canons of Construction

By Stephen Adams

The first day of my first job out of law school, I was handed a stack of papers about eight inches tall, and was told to read over them. These papers included sample complaints, answers, discovery requests, a few sample motions, and some other things. While most of this was helpful (and admittedly, a bit overwhelming), there is one thing in that stack that I have used over and over again throughout the years: a list of statutory construction principles, along with case cites. I have not been able to figure out who created this list, but whoever created it deserves to be given great credit.

I thought it would be worthwhile to share the wealth, so below is a list of statutory construction principles that incorporates some on the canons on the list I was given and that is based primarily on Idaho case law. This list is by no means exclusive or comprehensive. It is designed primarily to be a quick checklist for use by practitioners. The first few items on the list are general principles of statutory construction, and these are followed by a number of specific canons. At the end of the list are some canons that apply to particular areas of law. Due to length, only the list of canons (with relevant citations) is provided here. A version of this article with extended commentary and citations can be found on the Advocate Extra web page: .

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1. **“Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction.”** *In re Adoption of Doe*, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014).¹
2. **“Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations.”** *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 931, 277 P.3d 374, 378 (2012).²
3. **Courts “determine legislative intent by examining not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and [the statute’s] legislative history.”** *State v. Olivas*, 158 Idaho 375, 379, 347 P.3d 1189, 1193 (2015).³
4. **Legislative history can be a guide for statutory construction.** *See Leliefeld v. Johnson*, 104 Idaho 357, 367, 659 P.2d 111, 121 (1983).⁴
5. **Extrinsic aids may be used to interpret an ambiguous statute.** *See State v. Moore*, 111 Idaho 854, 856, 727 P.2d 1282, 1284 (Ct. App. 1986).⁵
6. **“When the language of a statute is ambiguous, [Courts] must consider the social and economic results which would be effectuated by a decision on the meaning of the statute.”** *Smith v. Dep’t of Employment*, 100 Idaho 520, 522, 602 P.2d 18, 20 (1979).

7. **Statutes should be given a “reasonable and practical interpretation, in accord with common sense.”** *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 646, 132 P.3d 397, 403 (2006).⁶
8. ***Stare decisis* applies to statutory construction.** *State v. Climer*, 127 Idaho 20, 22, 896 P.2d 346, 348 (Ct. App. 1995).
9. **Grammatical rules apply to statutory construction.** *See State v. Paciorek*, 137 Idaho 629, 632, 51 P.3d 443, 446 (Ct. App. 2002).⁷
10. ***Ejusdem Generis* (“of the same kind or nature”): “Where general words follow the enumeration of particular class of persons or things, the general words will be construed as applying only to things of the nature enumerated.”** *In re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664, 666 (1936).⁸
11. ***Noscitur a Sociis*: “[A] word is known by the company it keeps.”** *State v. Hammersley*, 134 Idaho 816, 821, 10 P.3d 1285, 1290 (2000), *overruled on other grounds by State v. Poe*, 139 Idaho 885, 88 P.3d 704 (2004).⁹
12. **“Constructions that would lead to absurd or unreasonably harsh results are disfavored.”** *Friends of Farm to Mkt. v. Valley Cty.*, 137 Idaho 192, 197, 46 P.3d 9, 14 (2002).¹⁰
13. **“In determining the ordinary meaning of a statute effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.”** *Hillside Landscape Const., Inc. v. City of Lewiston*, 151 Idaho 749, 753, 264 P.3d 388, 392 (2011).¹¹
14. **Courts “cannot insert into statutes terms or provisions which are obviously not there.”** *Matter of Adoption of Chaney*, 126 Idaho 554, 558, 887 P.2d 1061, 1065 (1995).¹²
15. **Courts are generally unwilling to correct errors or unanticipated consequences of a given statute.** *See Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011).¹³
16. ***Expressio unius est exclusio alterius*: “[W]here a constitution or statute specifies certain things, the designation of such things excludes all others.”** *Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cty.*, 159 Idaho 84, 356 P.3d 377, 380 (2015).¹⁴
17. **If terms are defined in a statute, that definition controls construction of those terms.** *See Cameron v. Lakeland Class A Sch. Dist. No. 272, Kootenai Cty.*, 82 Idaho 375, 381, 353 P.2d 652, 655 (1960).¹⁵
18. **Words used in one place in a statute usually have the same meaning in every other place in the statute.** *See St. Luke's Magic Valley Reg'l Med. Ctr., Ltd. v. Bd. of Cty. Comm'rs of Gooding Cty.*, 149 Idaho 584, 589, 237 P.3d 1210, 1215 (2010).¹⁶

19. The words “may” or “should” as used in a statute are permissive. The words “shall” and “must” are mandatory— except when the plain language of the statute indicates they are not. *See Twin Falls Cty. v. Idaho Comm'n on Redistricting*, 152 Idaho 346, 349, 271 P.3d 1202, 1205 (2012).¹⁷

20. Singular includes plural and vice versa; male includes female and vice versa. *State v. Holder*, 49 Idaho 514, 290 P. 387, 389 (1930).¹⁸

21. The legislature is presumed to have full knowledge of judicial decisions and existing case law. *See St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'rs of Ada Cty.*, 146 Idaho 753, 758, 203 P.3d 683, 688 (2009).¹⁹

22. Courts “presume the legislature was aware of those statutes previously enacted when passing new legislation.” *State v. Betterton*, 127 Idaho 562, 563, 903 P.2d 151, 152 (Ct. App. 1995).²⁰

23. A statute adopted from another jurisdiction may be given the meaning adopted by the other jurisdiction. *See Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 868, 853 P.2d 607, 613 (Ct. App. 1993).²¹

24. Modification of a statute indicates an intent to change the meaning of the statute. *See Dohl v. PSF Indus., Inc.*, 127 Idaho 232, 237, 899 P.2d 445, 450 (1995).²²

25. “The legislature is presumed not to intend to overturn long established principles of law unless an intention to do so plainly appears by express declaration or the language employed admits of no other reasonable construction.” *George W. Watkins Family v. Messenger*, 118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990), *abrogated on other grounds by Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).²³

26. Statutes should be reasonably construed to avoid implied repeal. *See Seiniger Law Offices, P.A. v. State ex rel. Indus. Comm'n*, 154 Idaho 461, 465, 299 P.3d 773, 777 (2013).²⁴

27. Statutes should be reasonably construed, if possible, to avoid a constitutional conflict. *State v. Olivas*, 158 Idaho 375, 380, 347 P.3d 1189, 1194 (2015) (quoting *Grice v. Clearwater Timber Co.*, 20 Idaho 70, 117 P. 112, 114 (1911)).²⁵

28. If two statutes are irreconcilable, the later in date controls. *See Beehler v. Fremont Cty.*, 145 Idaho 656, 658, 182 P.3d 713, 715 (Ct. App. 2008).

29. If two statutes address the same subject, the more specific statute controls over the more general statute. *Arthur v. Shoshone Cty.*, 133 Idaho 854, 861, 993 P.2d 617, 624 (Ct. App. 2000).²⁶

30. Statutes are not retroactive unless there is a clear legislative intent for them to be retroactive. *See Gailey v. Jerome Cty.*, 113 Idaho 430, 432, 745 P.2d 1051, 1053 (1987).²⁷

31. Statutes *in pari materia* (“in the same matter”) should be construed in light of each other. *See City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 69, 72 P.3d 905, 909 (2003).²⁸

32. When construing two separate statutes that deal with the same subject matter, the statutes should be construed harmoniously, if at all possible, so as to further the legislative intent. *See State v. Seamons*, 126 Idaho 809, 811-12, 892 P.2d 484, 486-87 (Ct. App. 1995).²⁹

33. Courts have the final say in construing statutes and determining legislative intent. *See J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853, 820 P.2d 1206, 1210 (1991) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60, 73 (1803)).³⁰

34. Agency interpretation of a statute may not conflict with legislative intent. *See J.R. Simplot Co.*, 120 Idaho at 861-62, 820 P.2d at 1218-19.³¹

35. “[S]tatutes granting privileges or relinquishing rights are to be strictly construed.” *See Pocatello v. State*, 145 Idaho 497, 501, 180 P.3d 1048, 1052 (2008) (citing, and quoting from, *Caldwell v. United States*, 250 U.S. 14, 20 (1919)).

36. Worker’s compensation statutes are construed in favor of the employee. *See Davaz v. Priest River Glass Co.*, 125 Idaho 333, 337, 870 P.2d 1292, 1296 (1994).³²

37. Courts can consider consequences and effects when construing criminal statutes. *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004).³³

In conclusion, the general rule appears to be that the most reasonable interpretation of a statute is the one that will likely be adopted by a court. These canons are in place simply to help determine what is reasonable under the circumstances.

About the Author: Stephen Adams is a staff attorney for Judge Lynn Norton in Ada County. He is extraordinarily proud of his wife (who graduated from law school and passed the bar in 2015) and three daughters.

¹ *See also In re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664, 666 (1936) (“Other rules of construction are equally potent, especially the primary rule which suggests that the intent of the Legislature is to be found in the ordinary meaning of the words of the statute. The sense in which general words, or any words, are intended to be used, furnishes the rule of interpretation, and that is to be collected from the context; and a narrower or more extended meaning will be given, according as the intention is thus indicated.”); *Sweeney v. Otter*, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990); *State v. Olivas*, 158 Idaho 375, 347 P.3d 1189, 1193 (2015); *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). Statutory authority for this principal interpretation issue is found in Idaho Code § 73-113.

² *See also State v. Olivas*, 158 Idaho 375, 379, 347 P.3d 1189, 1193 (2015); *Porter v. Bd. of Trustees, Preston Sch. Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004); *In re Adoption of Doe*, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014); *Bonner Cty. v. Cunningham*, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014); *Hamilton ex rel. Hamilton v. Reeder Flying Serv.*, 135 Idaho 568, 572, 21 P.3d 890, 894 (2001).

³ *See also State v. Hickman*, 146 Idaho 178, 184, 191 P.3d 1098, 1104 (2008); *The Senator, Inc. v. Ada Cty., Bd. of Equalization*, 138 Idaho 566, 570, 67 P.3d 45, 49 (2003); *Lopez v. State*, 136 Idaho 174, 178, 30 P.3d 952, 956 (2001); *State v. Quick Transp., Inc.*, 134 Idaho 240, 244, 999 P.2d 895, 899 (2000).

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- ⁴ See also *Gillihan v. Gump*, 140 Idaho 264, 268, 92 P.3d 514, 518 (2004) (abrogated on other grounds by *Gonzalez v. Thacker*, 148 Idaho 879, 231 P.3d 524 (2009)); *Mix v. Gem Inv'rs, Inc.*, 103 Idaho 355, 357, 647 P.2d 811, 813 (Ct. App. 1982); *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626, 629 (1932); *In re Verified Petition for Writ of Mandamus*, No. 43169, 2015 WL 7421342, at *20 (Idaho Nov. 20, 2015) (Eismann, J., concurring) (unpublished).
- ⁵ See also *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 640-41, 586 P.2d 1346, 1356-57 (1978); *State v. Peterson*, 141 Idaho 473, 476, 111 P.3d 158, 161 (Ct. App. 2004); *State v. Williston*, 159 Idaho 215, 358 P.3d 776, 780 (Ct. App. 2015), review denied (Nov. 2, 2015); *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1, 4 (1940).
- ⁶ See also *Smith*, 100 Idaho at 522, 602 P.2d at 20; *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990).
- ⁷ See also *Ada Cty. Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 354, 298 P.3d 245, 248 (2013); *State v. Troughton*, 126 Idaho 406, 411, 884 P.2d 419, 424 (Ct. App. 1994).
- ⁸ See also *Turner v. City of Lapwai*, 157 Idaho 659, 664, 339 P.3d 544, 549 (2014); *Sanchez v. State, Dep't of Correction*, 143 Idaho 239, 244, 141 P.3d 1108, 1113 (2006); *State ex rel. Wasden v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 109, 106 P.3d 428, 435 (2005); *State v. Kavajecz*, 139 Idaho 482, 486, 80 P.3d 1083, 1087 (2003); *State v. Hart*, 135 Idaho 827, 831, 25 P.3d 850, 854 (2001).
- ⁹ See also *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 654, 132 P.3d 397, 411 (2006).
- ¹⁰ See also *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 932, 277 P.3d 374, 379 (2012); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004); *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 896, 265 P.3d 502, 509 (2011).
- ¹¹ See also *Wernecke v. St. Maries Joint Sch. Dist. No. 401*, 147 Idaho 277, 282, 207 P.3d 1008, 1013 (2009); *Maguire v. Yanke*, 99 Idaho 829, 836, 590 P.2d 85, 92 (1978); *Sampson v. Layton*, 86 Idaho 453, 457, 387 P.2d 883, 885 (1963); *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995); *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990).
- ¹² See also *Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cty.*, 159 Idaho 84, 356 P.3d 377, 382 (2015).
- ¹³ But see *Worthen v. State*, 96 Idaho 175, 180, 525 P.2d 957, 962 (1974); *State v. Witzel*, 79 Idaho 211, 217, 312 P.2d 1044, 1048 (1957); *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 409, 342 P.2d 706, 709 (1959); *Roos v. Belcher*, 79 Idaho 473, 481, 321 P.2d 210, 214 (1958).
- ¹⁴ See also *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978); *Noble v. Glenns Ferry Bank, Ltd.*, 91 Idaho 364, 367, 421 P.2d 444, 447 (1966).
- ¹⁵ See also *White v. Mock*, 140 Idaho 882, 890, 104 P.3d 356, 364 (2004); *Roe v. Hopper*, 90 Idaho 22, 27, 408 P.2d 161, 164 (1965); *Maguire v. Yanke*, 99 Idaho 829, 836, 590 P.2d 85, 92 (1978). See, e.g. *Hennefer v. Blaine Cty. Sch. Dist.*, 158 Idaho 242, 248-49, 346 P.3d 259, 265-66 (2015), reh'g denied (Apr. 23, 2015).
- ¹⁶ See also *Kerley v. Wetherell*, 61 Idaho 31, 96 P.2d 503, 508 (1939); *Sprouse v. Magee*, 46 Idaho 622, 269 P. 993, 996 (1928).
- ¹⁷ See also *Rife v. Long*, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995); *State, Dep't of Law Enf't v. One 1955 Willys Jeep, V.I.N. 573481691*, 100 Idaho 150, 159, 595 P.2d 299, 308 (1979) (abrogated by *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011)); *Bonner Cty. v. Cunningham*, 156 Idaho 291, 297-98, 323 P.3d 1252, 1258-59 (Ct. App. 2014); *Peterson v. Bonneville Joint Sch. Dist. No. 93*, 832 F. Supp. 2d 1217, 1221 (D. Idaho 2011).
- ¹⁸ See also Idaho Code § 73-114, and generally all of Idaho Code Title 73, Chapter 1.
- ¹⁹ See also *Robison v. Bateman-Hall, Inc.*, 139 Idaho 207, 212, 76 P.3d 951, 956 (2003); *State v. Martinez*, 126 Idaho 801, 803, 891 P.2d 1061, 1063 (Ct. App. 1995); *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 126 Idaho 145, 150, 879 P.2d 1078, 1083 (1994).
- ²⁰ See also *State v. Perkins*, 135 Idaho 17, 21, 13 P.3d 344, 348 (Ct. App. 2000); *State v. Long*, 91 Idaho 436, 441, 423 P.2d 858, 863 (1967).
- ²¹ See also *Doe v. Durtschi*, 110 Idaho 466, 473, 716 P.2d 1238, 1245 (1986) (n.2); *Liefeld v. Johnson*, 104 Idaho 357, 367, 659 P.2d 111, 121 (1983). See also *Intermountain Bus. Forms, Inc. v. Shepard Bus. Forms Co.*, 96 Idaho 538, 541, 531 P.2d 1183, 1186 (1975) ("Idaho's statute is modeled after the Illinois 'long arm' statute. Thus, we may look to the decisions of the Illinois court on point for persuasive guidance."); *Chacon v. Sperry Corp.*, 111 Idaho 270, 273, 723 P.2d 814, 817 (1986) (adopting federal interpretation of the federal rules for the Idaho Rules of Civil Procedure).

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- ²² See also *Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cty.*, 159 Idaho 84, 356 P.3d 377, 382 (2015) (quoting *Nebeker v. Piper Aircraft Corp.*, 113 Idaho 609, 614, 747 P.2d 18, 23 (1987)); *Lincoln Cty. v. Fid. & Deposit Co. of Maryland*, 102 Idaho 489, 491, 632 P.2d 678, 680 (1981).
- ²³ See also *State v. Owens*, 158 Idaho 1, 10, 343 P.3d 30, 39 (2015); *Burns Holdings, LLC v. Madison Cty. Bd. of Cty. Comm'rs*, 147 Idaho 660, 666, 214 P.3d 646, 652 (2009); *Doolittle v. Morley*, 77 Idaho 366, 372, 292 P.2d 476, 481 (1956).
- ²⁴ See also *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009); *Tetzlaff v. Brooks*, 130 Idaho 903, 904, 950 P.2d 1242, 1243 (1997).
- ²⁵ See also *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 698, 718 P.2d 1129, 1136 (1986). See also Idaho Code § 73-101.
- ²⁶ Canons 28 and 29 are often quoted together. See also *Roe v. Harris*, 128 Idaho 569, 572, 917 P.2d 403, 406 (1996), *abrogated on other grounds by Rincover v. State, Dep't of Fin., Sec. Bureau*, 132 Idaho 547, 976 P.2d 473 (1999); *Tomich v. City of Pocatello*, 127 Idaho 394, 400, 901 P.2d 501, 507 (1995); *State v. Gamino*, 148 Idaho 827, 829, 230 P.3d 437, 439 (Ct. App. 2010); *State v. Betterton*, 127 Idaho 562, 564, 903 P.2d 151, 153 (Ct. App. 1995).
- ²⁷ See also *Guzman v. Piercy*, 155 Idaho 928, 938, 318 P.3d 918, 928 (2014); *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 262, 207 P.3d 988, 993 (2009). See also *State v. Owens*, 158 Idaho 1, 6, 343 P.3d 30, 35 (2015) and *Sanders v. Bd. of Trustees of Mountain Home Sch. Dist. No. 193*, 156 Idaho 269, 273, 322 P.3d 1002, 1006 (2014) for a discussion of retroactive case law.
- ²⁸ See also *Saint Alphonsus Reg'l Med. Ctr. v. Elmore Cty.*, 158 Idaho 648, 653, 350 P.3d 1025, 1030 (2015) (quoting *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 4, 855 P.2d 462, 465 (1993)); *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626, 629 (1932).
- ²⁹ See also *State v. Thiel*, 158 Idaho 103, 110, 343 P.3d 1110, 1117 (2015); *State v. Doe*, 147 Idaho 326, 329, 208 P.3d 730, 733 (2009); *State v. Callaghan*, 143 Idaho 856, 858, 153 P.3d 1202, 1204 (Ct. App. 2006); *Edwards v. Indus. Comm'n of State*, 130 Idaho 457, 461, 943 P.2d 47, 51 (1997); *Kaseburg v. State, Bd. of Land Comm'rs*, 154 Idaho 570, 577, 300 P.3d 1058, 1065 (2013).
- ³⁰ See also *Mulder v. Liberty Nw. Ins. Co.*, 135 Idaho 52, 57, 14 P.3d 372, 377 (2000).
- ³¹ See also *A & B Irr. Dist. v. Idaho Dep't of Water Res.*, 154 Idaho 652, 653-54, 301 P.3d 1270, 1271-72 (2012); *Hood v. Idaho Dep't of Health & Welfare*, 125 Idaho 151, 154, 868 P.2d 479, 482 (1994).
- ³² See also *Wernecke v. St. Maries Joint Sch. Dist. No. 401*, 147 Idaho 277, 282, 207 P.3d 1008, 1013 (2009).
- ³³ See also *State v. Webb*, 76 Idaho 162, 167, 279 P.2d 634, 636-37 (1955); *State v. Herrera*, 152 Idaho 24, 28, 266 P.3d 499, 503 (Ct. App. 2011).