

**PRESENTED AT**

49<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

April 14, 2023

Houston, TX

**Rules of Interpretation v. Canons of Construction:  
Distinctions and Contemporary Applications**

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## I. INTRODUCTION

If you are an oil and gas lawyer, you have likely read hundreds of cases applying principles of interpretation to construe contracts and deeds. As a result, you can recite in your sleep the most well-known principle in Texas: *that instruments must be interpreted according to the parties' intent as expressed within the four corners of the instrument*. Nonetheless, you may, as I have, occasionally asked yourself: are “canons of construction” different than “rules of interpretation”? If so, which of them applies when construing unambiguous instruments? Are all canons of construction created equal, or do some carry more weight than others?

These are some of the questions this article answers through an analysis of how Texas courts have applied and distinguished between the rules and canons, the impact of the Supreme Court of Texas’s recent decision in *Piranha Partners v. Neuhoff*, and subsequent decisions from various Texas courts applying the guiding principles established in *Piranha Partners v. Neuhoff*.

## II. DISTINGUISHING RULES FROM CANONS

Are rules of interpretation different than canons of construction? Well, if construing “canons of construction” according to the *plain and ordinary meaning*<sup>1</sup> of those words, the answer might be no.<sup>2</sup> Indeed, the semantic similarity between rules of interpretation and canons of construction may explain why some courts—whether intentionally or not—have used them interchangeably.<sup>3</sup>

Nonetheless, courts and legal scholars draw distinctions between the two. To paraphrase Professor Corbin, the *interpretation* of a contract is the process of determining the meaning of the words and symbols used in the contract, while *construction* of a contract is the process of determining the legal effect of those words and symbols in light of many factors external to the contract itself.<sup>4</sup> Or, as some courts have explained, “rules of interpretation [] determine a contract’s meaning and canons of construction [] determine its legal effect.”<sup>5</sup>

### A. Rules of Interpretation

For purposes of this article, the rules of interpretation encapsulate the following principles, which courts describe as rules directed at “ascertaining the parties’ intent as expressed within the four corners” of an instrument:

1. Instruments must be construed as a whole;

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<sup>1</sup> See *infra* note 6.

<sup>2</sup> A *canon* is commonly defined as “a generally accepted rule . . . by which something is judged,” and *construction*, among other definitions, is “the way in which words, actions, statements, etc. are understood by somebody,” which is synonymous with “interpretation.” *Oxford Advanced American Dictionary* (2014).

<sup>3</sup> *Boulanger ex rel. Westlum Tr. v. Waste Mgmt. of Texas, Inc.*, 403 S.W.3d 1, 7 (Tex. App.—Houston [1st Dist.] 2012, pet. denied); *Elder v. Anadarko E & P Co.*, No. 12-10-00250-CV, 2011 WL 2713817, at \*2 (Tex. App.—Tyler July 13, 2011, no pet.) (mem. op.).

<sup>4</sup> Arthur L. Corbin, *Corbin on Contracts*, § 534, at 7-9 (1960).

<sup>5</sup> *McCarty v. Montgomery*, 290 S.W.3d 525, 532 (Tex. App.—Eastland 2009, pet. denied); *Cahill v. Turnkey Vacation Rentals*, 500 F.Supp.3d 569, 573 (W.D. Tex. 2020).

2. Each word and phrase must be given its plain, grammatical meaning at the time of its drafting unless it definitely appears that such meaning would defeat the parties' intent;
3. Instruments must be considered so as to give each provision meaning and purpose so that no provision is rendered meaningless or moot;
4. Express terms are favored over implied terms of subsequent conduct; and
5. Considering the surrounding circumstances to determine the appropriate meaning to ascribe to the language chosen by the parties.<sup>6</sup>

The fifth rule warrants a brief explanation because, unlike its counterparts, it strays from an instrument's four corners. Consequently, it is often the subject of confusion given its proximity to the parol evidence rule, which "prohibits a party to an integrated written contract from presenting extrinsic evidence for the purpose of creating an ambiguity or to give the contract a meaning different from that which its language imports."<sup>7</sup> The Supreme Court of Texas shed light on the issue in *URI v. Kleberg County*, noting the differences between patent and latent ambiguities before providing an example of when the "surrounding circumstances" may be considered to reveal a *latent* ambiguity:

A classic example of a latent ambiguity is when a contract requires goods to be delivered to 'the green house on Pecan Street,' but there were, in fact, two green houses on Pecan Street. When surrounding circumstances reveal an ambiguity about the intent embodied in the contract's language, as in the 'green house' example, extrinsic evidence of the parties' true intent will then—and only then—be admissible to settle the matter. But, when the contextual evidence discloses no ambiguity, extrinsic evidence that the parties actually intended for the goods to be delivered to the blue house on Pecan Street would not be admissible to alter unambiguous contract language requiring delivery to the green house. Nor would the contract's meaning be informed by extrinsic evidence that the parties intended additional requirements or constraints that were not expressed in the agreement—such as delivery by 5:00 p.m. or only on Sundays.<sup>8</sup>

In other words, the parol evidence rule prohibits extrinsic evidence that alters an instrument's terms (e.g., evidence that the parties intended the delivery of goods to the blue house alters the term stating that that goods should be delivered to the green house), but it "does not prohibit consideration of surrounding circumstances that inform, rather than vary from or contradict, the contract's text," such as evidence that there were *two* green houses on Pecan Street.<sup>9</sup>

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<sup>6</sup> *Moon Royalty, LLC v. Boldrick Partners*, 244 S.W.3d 391, 394 (Tex. App.—Eastland 2007, no pet.) (listing the "rules of interpretation"); *Van Dyke v. Navigator Group*, No. 21-0146, 2023 WL 2053175, at \*3 (Tex. 2023) ("courts will adopt a term's ordinary meaning . . . One fundamental premise, however, is that a text retains the same meaning today that it had when it was drafted. Thus, the ordinary meaning at the time of drafting remains the meaning to which courts must later adhere.") (citations omitted); *First Bank v. Brumitt*, 519 S.W.3d 95, 110 (Tex. 2017) ("If a court concludes that the parties' contract is unambiguous, it may still consider the surrounding "facts and circumstances," but "simply [as] an aid in the construction of the contract's language.").

<sup>7</sup> 543 S.W.3d 755, 764 (Tex. 2018).

<sup>8</sup> *Id.* at 765-766.

<sup>9</sup> *Id.* at 766.

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First appeared as part of the conference materials for the  
49<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session  
"Rules of Interpretation and Canons of Construction "