

RULES OF INTERPRETATION AND CANONS OF CONSTRUCTION:

DISTINCTIONS AND CONTEMPORARY APPLICATIONS

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1

DISTINGUISHING RULES FROM CANONS

Conceptual Distinction

“Texas courts have developed the rules of interpretation to determine a contract’s *meaning* and canons of construction determine its *legal effect*.”

- *McCarty v. Montgomery*, 290 S.W.3d 525, 532 (Tex. App.—Eastland 2009, pet. denied) (emphasis added).

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2

2

DISTINGUISHING RULES FROM CANONS CONT.

Rules of Interpretation

Examples

- **Meaning** → derived from the intent of the parties to the instrument
 - **Policy** → freedom of contract
1. Construe as a whole.
 2. Plain and ordinary meaning unless the instrument shows contrary intent.
 3. Construe so as to to give each provision meaning and purpose.
 4. Surrounding circumstances to determine meaning.

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3

3

DISTINGUISHING RULES FROM CANONS CONT.

Canons of Construction

Examples

- **Legal Effect** → driven by other policy considerations unrelated to the parties' intent
 - Canons generally promote certainty
 - Matter of judicial preference
- Construe against the drafter when the instrument's meaning is in doubt.
 - The strip-and-gore doctrine.
 - Granting clause controls over other clauses.
 - The greatest estate canon.
 - Reservations must be clearly and expressly provided in the instrument.

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4

4

APPLYING RULES AND CANONS TO UNAMBIGUOUS INSTRUMENTS

The Two-Step Approach → Canons Do Not Apply Absent an Ambiguity

- “The rules of interpretation may be utilized to determine if an agreement is ambiguous, but the canons of construction do not apply absent a determination of ambiguity.”
 - *Moon Royalty, LLC v. Boldrick Partners*, 244 S.W.3d 391, 394 (Tex. App.—Eastland 2007, no pet.); *Graham v. Prochaska*, 429 S.W.3d 650, 655 (Tex. App.—San Antonio 2013, pet. denied) (same).
- “The greatest estate [canon] and construing reservations against the grantor [] do not apply when the deed is unambiguous.”
 - *Stewman Ranch, Inc. v. Double M. Ranch, Ltd.*, 192 S.W.3d 808, 812 (Tex. App.—Eastland 2006, no pet. denied).

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APPLYING RULES AND CANONS TO UNAMBIGUOUS INSTRUMENTS

Rejection of the Two-Step Approach

- “The two-step procedure adopted by the Eastland Court of Appeals is not the method used by other courts . . . in determining whether a deed is ambiguous.”
 - *Boulanger v. Waste Mgmt. of Texas, Inc.*, 403 S.W.3d 1, 7 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (applying the strip-and-gore doctrine canon without first finding the deed ambiguous).
- Practical basis: casting aside canons of construction “complicates the job of title examiners who would be unable to rely on the written word.”
 - *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.).

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6

6

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