STATUTORY INTERPRETATION

Which jurisdiction's law applies -- Connecticut, federal, or other?) See *Comm'r of Public Health* v. *Freedom of Info. Comm'n*, 311 Conn. 262, 268, 86 A.3d 1044 (2014) ("[b]ecause the present case requires interpretation of federal statutes and regulations, we must interpret this scheme in accordance with federal law"); *Szewczyk* v. *Dep't of Soc. Servs.*, 275 Conn. 464, 474–75, 881 A.2d 259 (2005) ("principles of comity and consistency" require us to follow plain meaning rule for interpretation of federal statutes "because that is the rule of construction utilized by the United States Court of Appeals for the Second Circuit").

Which version of the statute controls?

- Absent due process concerns, legislative intent determines which version applies. Certain presumptions regarding legislative intent apply unless the statute reflects a contrary legislative intent.
- Presumption that substantive statute is governed by statute in effect on the date on which the criminal act or the act giving rise to liability occurred.[1] See General Statutes § 55–3 ("No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect.");[2] General Statutes § 2-32 (prescribing general rule of effective of public acts).
- Presumption that procedural or remedial statutes apply retrospectively.[3] BUT criminal statutes of limitation, although procedural, apply retroactively only if limitations period in effect at the time of crime had not lapsed at the time limitations period was amended.[4]
- BUT "an amendment that is intended to clarify the intent of an earlier act necessarily has retroactive effect."[5]

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[1]See, e.g., *State* v. *Nathaniel S.,* 323 Conn. 290, 300 (2016) ("Connecticut follows the rule that the date of the offense is the touchstone for both substantive and procedural changes to the law."); *Kluttz* v. *Howard*, 228 Conn. 401, 404 n. 3 (1994) (in workers' compensation cases, date of injury is applicable date for determining rights and obligations as between parties); *Langs* v. *Harder*, 165 Conn. 490, 492–93 (1973) (statutes in effect when termination of benefits occurred controls whether termination was proper).

[2]"This presumption against the retroactive application of statutes applies similarly to regulations that impose, in the parlance of § 55–3, 'new obligation[s]....'" *Shannon* v. *Comm'r of Hous*., 322 Conn. 191, 203 (2016).

[3]See *State* v. *Skakel*, 276 Conn. 633, 679–80 (2006).

[4] See *State* v. *Skakel*, 276 Conn. 633, 880-81 (2006).

[5] *Estate of Brooks* v*. Comm'r of Revenue Servs*., 325 Conn. 705, 720 (2017), cert. denied sub nom*. Estate of Brooks* v. *Connecticut Com'r of Revenue Servs*., 138 S. Ct. 1181, 200 L. Ed. 2d 314 (2018).

GENERAL STATUTES § 1-2z (Plain Meaning Rule):effective Oct 1, 2003**
"The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is *plain and unambiguous* and *does not yield absurd or unworkable results*, extratextual evidence of the meaning of the statute shall not be considered." (Emphasis added.)

****** Legislatively overruling *State* v. *Courchesne*, 262 Conn. 537, 559-90 (2003) (rejecting plain meaning rule).

PLAIN & UNAMBIGUOUS?
"The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Gonzalez* v. *O & G Indus., Inc.*, 322 Conn. 291, 303 (2016). "[S]tatutory language does not become ambiguous merely because the parties contend for different meanings." (Internal quotation marks omitted.) *Glastonbury Co.* v. *Gillies*, 209 Conn. 175, 180 (1988).

- Are terms statutorily defined?
  - Check for definitional provisions in title, chapter & subsection ("part"). Note that most definitional provisions include a qualification that the definitions to the specified statutes apply unless the context indicates otherwise. See, e.g., General Statutes § 12-201 ("When used in this chapter, unless the context otherwise requires . . . .") Therefore, consider context to ensure that the definition makes sense as applied.
  - Check the Provisions of General Application: Construction of Statutes in Title I, chapter 1, of the General Statutes, which contains not only definitions of certain basic terms (i.e., "month," "year," "person") that are used throughout the general statutes, but also generally application rules of construction.
  - If more than one statutory definition appears to apply, the provision most specific to subject generally controls. See *Griswold Airport, Inc.* v. *Madison*, 289 Conn. 723, 729 n. 10, 961 A.2d 338 (2008) ("[i]t is a well-settled principle of [statutory] construction that specific terms covering [a] given subject matter will prevail over general language of ... another statute which might otherwise prove controlling").
- Absent statutory definition, General Statutes § 1-1 (a) provides: "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." Commonly approved usage reflected in dictionaries. Refer to dictionaries published *at time law was enacted*, and, if amended, at time provision was amended, as meaning may change over time.[6] If available, look for specific word, not simply root word (i.e., if term at issue is "advertising sign," compare

[6]See *Kuchta* v. *Arisian*, 329 Conn. 530, 537 (2018).

"advertise" to "advertising").[7]

- Mandatory or directory: "Shall" does not always mean "must." See *Elec. Contractors, Inc.* v. *Ins. Co. of State*, 314 Conn. 749, 757-59, 104 A.3d 713 (2014) (explaining approach to determining whether statute is mandatory or directory).
- Title of statute -- generally NOT evidence of meaning. See Preface to the General Statutes, p. vii;[8] *Clark* v. *Commissioner of Correction*, 281 Conn. 380, 389 n.14, 917 A.2d 1 (2006). Title of *public act* enacting statute, by contrast, is evidence of legislative intent because that language was before the legislature when it voted on the act. See *Commission on Human Rights & Opportunities* v. *Savin Rock Condo. Assn., Inc.*, 273 Conn. 373, 384, 870 A.2d 457 (2005).
- Relationship to other statutes – what is a related statute?
  - Same subsection ("part")/chapter/ title of General Statutes, depending on nature and scope of subject in statute at issue.
  - Other titles of General Statutes addressing same subject (i.e., operating motor vehicle under the influence is addressed in motor vehicle & criminal statutes.)
  - Public act enacting or amending statute may indicate which statutes the legislature views as related.[9]
  - Statutes referencing your statute number indicate some relationship.
  - If specific word/phrase is at issue, consider legislature's use of same term elsewhere in General Statutes.
  - Earlier versions of statute (genealogy of statute) are not considered extra-textual sources for purposes of § 1-2z. See, e.g., *Housatonic R. Co*. v.

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[7]See *Kuchta* v. *Arisian*, 329 Conn. 530, 537 (2018).

[8]Preface to the General Statutes, p. vii: "A boldface catchline follows the section number of each section of the General Statutes. *These catchlines are prepared, and from time to time changed, by the Revisors [of the General Statutes]* and are intended to be informal brief descriptions of the contents of the [statutory] sections. . . . *These boldface catchlines should not be read or considered as statements of legislative intent since their sole purpose is to provide users with a brief description of the contents of the sections*. By contrast, certain sections contain subsections or subdivision catchlines that are not in boldface. These non-boldface catchlines were enacted by the General Assembly as part of the section and therefore may only be amended, deleted or repealed by act f the General; Assembly." (Emphasis added).

[9]EXAMPLE: In *State* v. *Menditto*, 315 Conn. 861, 870-71, 110 A.3d 410 (2015), the court considered whether a public act "decriminimalized" the offense of possession of less than ½ ounce of marijuana by changing the penalty from a term of imprisonment to a fine for purposes of the statute permitting erasure of criminal records for such offenses. The Appellate Court concluded that the definition of offense in the penal code (crime or violation) dictated the meaning of the term "offense" in the erasure statute, permitting erasure for only conduct for which had been legalized. Our court rejected that analysis, relying in part on another statute amended in the same public act that had changed the penalty for possession.

Comm'r of Revenue Servs., 301 Conn. 268, 21 A.3d 759 (2011). Subsequent versions may not be consulted in plain meaning inquiry. See below.

- Case law predating the enactment of § 1-2z in 2003 may be consulted without running afoul of § 1-2z, even when the plain meaning rule would have yielded a different result. See *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 501, 923 A.2d 657 (2007) (holding that § 1-2z does not require this court to overrule prior judicial interpretations of statutes, even if not based on plain meaning rule). (See legislative acquiescence under rules of construction/)

ABSURD OR UNWORKABLE RESULT?

- Thwart or undermine the purpose of statute – as expressly set forth in the scheme or implicit in its terms? [Note: if there is a statement of purpose, check to see whether it existed at the time your provision was enacted.]
- Conflict with related provisions or result in incoherent construction of scheme as a whole?
- If statute is based on a uniform law, consider whether the construction would be consistent with other jurisdictions' construction. See, e.g., *Studer* v. *Studer*, 320 Conn. 483, 489, 131 A.3d 240 (2016). NOTE: A "model" act differs from a "uniform" act, as only the latter is specifically intended to ensure consistency among jurisdictions. Often, the statute will expressly state that it is a model or uniform act. See, e.g., General Statutes § 35-50 (Uniform Trade Secrets Act) General Statutes § 50a-100 (UNCITRAL1 Model Law on International Commercial Arbitration); General Statutes § 54-185 (Uniform Criminal Extradition Act). Sometimes, the statute will expressly require consideration of the law of other jurisdictions to promote uniformity. See, e.g., General Statutes § § 19a-289u; General Statutes § 45a-542dd.

EXTRATEXTUAL EVIDENCE

"When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Mayer* v. *Historic Dist. Comm'n*, 325 Conn. 765, 775 (2017).

- Rules of construction – see below. "[Legal] presumptions are rules of construction and, accordingly, are to be used only after we have determined that a statute is ambiguous pursuant to § 1–2z. If we determine that no such ambiguity exists, these presumptions are inapplicable." *Achillion Pharm., Inc.* v. *Law*, 291 Conn. 525, 532 n.8, 970 A.2d 57 (2009).
    - CHECK FOR ONES SPECIFIC TO SUBJECT MATTER
    - NOTE THAT CERTAIN MATTERS REQUIRED TO BE EXPRESSED UNAMBIGUOUSLY IN TEXT; EXTRATEXTUAL SOURCES MAY NOT BE CONSULTED: i.e., abrogating common-law right, waiving sovereign immunity.

- Legislative history of statute at issue (committee hearings, floor debates, proposed bills – raised, substitute, amendments – rejected & adopted). Request "bill file" for public act –includes all amendments and proposed versions of bill. *Use caution when using these sources –consider who is making the statement and the context in which it is made to determine how much weight to give and for what purpose it is to be used.* Statements of by nonlegislators (persons testifying before committees, explanatory notes at the end of the proposed bill prepared by the office of legislative research) are not evidence of legislative intent, but can be used to understand problem legislation was aimed at addressing.[10] In floor debates, most persuasive evidence is the explanation of bill from its *sponsor; Connecticut Ass'n of Not-For-Profit Providers for the Aging* v. *Dep't of Soc. Servs*., 244 Conn. 378, 395 n.22, 709 A.2d 1116 (1998); and agreement on meaning between opponents and supporters of bill; *State* v. *Parra*, 251 Conn. 617, 630, 741 A.2d 902 (1999). With respect to rejected amendments, those rejected by legislative vote on the floor are given weight, whereas those rejected in committee generally not given weight. See *State* v. *Salamon*, 287 Conn. 509, 574, 949 A.2d 1092 (2008).[11]

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[10]"[T]he summaries prepared by the office of legislative research expressly provide: 'The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either house thereof for any purpose.' . . . Although the comments of the office of legislative research are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." (Citations omitted; internal quotation marks omitted.) *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 124 n. 15, 942 A.2d 396 (2008).

**PLEASE NOTE THAT THIS PROVISO IS NOT REPRODUCED IN THE ELECTRONIC VERSIONS AVAILABLE ON THE GENERAL ASSEMBLY'S WEBSITE.

[11]"As this court previously has observed, '[w]e are reluctant to draw inferences regarding legislative intent from the failure of a legislative committee to report a bill to the floor . . . because in most cases the reasons for that lack of action remain unexpressed and thus obscured in the mist of committee inactivity.' *In re Valerie D.*, 223 Conn. 492, 518 n. 19, 613 A2d 748 (1992); accord *Conway* v. *Wilton*, supra, 238 Conn. 679-80. Furthermore, 'we are unaware of any occasion in which this court has relied on a legislative committee's rejection of a proposed bill as evidence of the intent of the entire General Assembly, which never voted on or discussed the proposal.' *Ricigliano* v. *Ideal Forging Corp.*, 280 Conn. 723, 741-12, 912 A2d 462 (2006); see also *Bob Jones University* v. *United States*, 461 U.S. 574, 600, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983) ('unsuccessful attempts at legislation are not the best of guides to legislative intent' [internal quotation marks omitted]); cf. *In re Valerie D.*, supra, 518 n. 19 (although no inference of legislative intent generally may be drawn from failure of legislative committee to report bill to floor, weight should be given to legislative committee's rejection of proposed bill when [1] committee adopted second proposed bill that took directly contrary approach to first bill, [2] both bills were considered together, [3]

- Subsequent legislation (successful and failed) may be used for limited purposes. Keep in mind that, unless the subsequent legislation is specifically deemed clarifying (see below), it is not direct evidence of legislative intent at the time of enactment of underlying statute. See *State* v. *McVeigh*, 224 Conn. 593, 619–21, 620 A.2d 133 (1993). See generally *Celentano* v. *Oaks Condominium Assn*., 265 Conn. 579, 597, 830 A.2d 164 (2003) (describing limited circumstances in which subsequent history may be relied on); see also *State* v. *Cote*, 286 Conn. 603, 624 n.14, 945 A.2d 412 (2008) (reliance on subsequent history "would be inappropriate when construing a penal statute wherein the construction proposed by the state raises concerns of fair notice").
- When there is clear evidence that an amendment is "clarifying," the amendment applies as if it were part of the original statute. See *Comm'r of Pub. Health* v. *Freedom of Info. Comm'n*, 311 Conn. 262, 281, 86 A.3d 1044 (2014) ("the clarifying language is not, as a substantive matter, applied retroactively because the clarification simply makes clear what the law meant all along"); *Bhinder* v. *Sun Co.*, 263 Conn. 358, 368–69, 819 A.2d 822 (2003) ("an amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act").
- Case law construing statute. See rule of construction below re legislative acquiescence.
- Case law from other jurisdictions interpreting same or comparable statute in other jurisdictions.
- Law review articles addressing same or similar legislation and/or problems arising at time legislation was enacted that might shed light on purpose and scope.[12]

RULES/CANONS OF STATUTORY CONSTRUCTION (This list is not exhaustive.) RULES PROVIDE GUIDANCE, NOT INEXORABLE COMMANDS:[13] CANONS

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legislative history of committee hearings contained testimony regarding relative merits and demerits of two disparate approaches represented in bills, and [4] legislature passed bill endorsed by committee)." *State* v. *Salamon*, supra, 287 Conn. 574.

[12]See, e.g., *Kuchta* v. *Arisian*, 329 Conn. 530, 541-42 (2018).

[13]"Although the so-called canons of statutory construction may at times serve as useful tools in deciphering legislative meaning, to rely on any one of them as a compelling factor in the interpretive process is problematic, because as Professor Karl Llewellyn persuasively has demonstrated, 'there are two opposing canons on almost every point.' K. Llewellyn, 'Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed,' 3 Vand. L. Rev. 395, 401 (1950). The so-called 'canons' are not that, at least in the sense that any one of them reliably can be determined to apply or not to apply in any given case. They are, instead, merely guides drawn from experience, to be employed or not to be employed carefully and judiciously, depending on the circumstances. See F. Frankfurter, 'Some Reflections on the Reading of Statutes,' 47 Colum. L. Rev. 527, 544–45 (1947); see also *United Illuminating Co.* v. *New Haven*, 240 Conn. 422, 455, 692 A.2d 742 (1997)." Miller's

TYPICALLY TREATED AS EXTRATEXTUAL SOURCES.[14]

Certain matters subject to strict or liberal interpretation, presumption of particular outcome that must be overcome once there is a determination that the statute's meaning is ambiguous

Taxes (different presumptions depending on whether imposition of/exemption from tax);[15] Remedial schemes (i.e., worker's compensation);[16] Insurance contracts (different presumptions depending on whether question of coverage or exclusion from coverage);[17] Abrogation/in derogation of common law;[18] Waiver of sovereign immunity.[19] Note that special rules generally apply only after statute is determined to yield an ambiguous or bizarre/unworkable result.

"[T]he legislature is always presumed to have created a harmonious and consistent body of law." *Hartford/Windsor Healthcare Properties, LLC* v. *Hartford*, 298 Conn. 191, 198, 3 A.3d 56 (2010)

Rules when statute appears to conflict with other statutes

Pond Co., LLC v. City of New London, 273 Conn. 786, 811 n.25 (2005).

[14]Compare *Achillion Pharm., Inc.* v. *Law*, 291 Conn. 525, 532 n.8, 970 A.2d 57 (2009) ("[Legal] presumptions are rules of construction and, accordingly, are to be used only after we have determined that a statute is ambiguous pursuant to § 1–2z. If we determine that no such ambiguity exists, these presumptions are inapplicable."); *Miller's Pond Co., LLC* v. *New London*, 273 Conn. 786, 811 n.25 (2005) (characterizing canon of construction that "[w]here statutes contain specific and general references covering the same subject matter, the specific references prevail over the general," as "a form of 'extratextual evidence of the meaning of the statute'") with *Housatonic R. Co.* v. *Comm'r of Revenue Servs.*, 301 Conn. 268, 317 (2011) (*Eveleigh, J.*, dissenting) (criticizing majority for applying that very canon in course of analysis purporting to apply § 1-2z and concluding that statute's meaning is plain and unambiguous); *Genesky* v. *East Lyme*, 275 Conn. 246, 283 (2005) (*Borden, J.*, concurring) (same).

[15]*Kasica* v. *Columbia*, 309 Conn. 85, 101-02, 70 A.3d 1 (2013); *Prudential Prop. & Cas. Ins. Co.* v. *Bannon*, 233 Conn. 243, 248, 658 A.2d 567 (1995).

[16]*Vincent* v. *New Haven*, 285 Conn. 778, 792, 941 A.2d 932 (2008); *Comm'n on Human Rights & Opportunities* v. *Sullivan Associates*, 250 Conn. 763, 782, 739 A.2d 238 (1999)..

[17]*Misiti, LLC* v. *Travelers Prop. Cas. Co. of Am.*, 308 Conn. 146, 154-55, 61 A.3d 485 (2013); *New London Cnty. Mut. Ins. Co.* v. *Nantes*, 303 Conn. 737, 755, 36 A.3d 224 (2012).

[18]*Perry* v. *Perry*, 312 Conn. 600, 623, 95 A.3d 500 (2014); *Caciopoli* v. *Lebowitz*, 309 Conn. 62, 70, 68 A.3d 1150 (2013).

[19]*State* v. *Lombardo Bros. Mason Contractors*, 307 Conn. 412, 438-39, 54 A.3d 1005 (2012).

STATE v. TABONE, 292 Conn. 417, 433-34, 973 A.2d 74 (2009): It is axiomatic that the legislature is presumed not to have intended to enact conflicting legislation, and that, in the absence of a construction that harmonizes the two, both statutes can be given effect only when they do not conflict. See *Perille* v. *Raybestos-Manhattan-Europe, Inc.*, 196 Conn. 529, 541-43, 494 A.2d 555 (1985) ("We are entitled to presume that, in passing a statute, the legislature not only did so with knowledge of the existing statutes but also that it did not intend to enact a conflicting statute. . . . [W]e recognize, however, that we cannot assume that a legislative enactment is devoid of purpose. . . . [Therefore, the conflicting statute] still enjoys vitality where appropriate." [Citations omitted; internal quotation marks omitted.]).

AIRPORT v. MADISON, 289 Conn. 723, 742, 961 A.2d 338 (2008): It is a "well-settled principle of [statutory] construction that specific terms covering [a] given subject matter will prevail over general language of . . . another statute which might otherwise prove controlling." (Internal quotation marks omitted.) *Board of Education* v. *State Board of Education*, 278 Conn. 326, 338, 898 A.2d 170 (2006).

MCKINLEY v. MUSSHORN, 185 Conn. 616, 624, 441 A.2d 600 (1981): [A]bsent manifest intent to repeal an earlier statute, when general and specific statutes conflict they should be harmoniously construed so the more specific statute controls.

Interpretation of statute that renders a term or phrase meaningless

LOPA v. BRINKER INTERNATIONAL, INC., 296 Conn. 426, 433, 993 A.2d 955 (2010): "It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.)

Legislative inaction (no amendment in response to court's construction of a statute -- "legislative acquiescence"):

STUART v. STUART, 297 Conn. 26, 46-47, 996 A.2d 259 (2010): We have recognized that "legislative inaction [following our interpretation of a statute] is not necessarily legislative affirmation. . . ." (Internal quotation marks omitted.) *State* v. *Salamon*, 287 Conn. 509, 521, 949 A.2d 1092 (2008). Indeed, we frequently have stated that "legislative inaction is not always the best of guides to legislative intent." (Internal quotation marks omitted.) Id., 522. Thus, we occasionally have overruled both civil and criminal cases involving the construction of statutes, "even when the legislature has had numerous occasions to reconsider [our] interpretation and has failed to do so." *Conway* v. *Wilton*, 238 Conn. 653, 662, 680 A.2d 242 (1996); see, e.g., *State* v. *Skakel*, 276 Conn. 633, 666-67, 888 A.2d 985 (overruling prior case law interpreting 1976

amendment to criminal statute of limitations applicable to felonies as applying prospectively only), cert. denied, 549 U.S. 1030, 127 S. Ct. 578, 166 L. Ed. 2d 428 (2006); *State* v. *Miranda*, 274 Conn. 727, 733-34, 878 A.2d 1118 (2005) (overruling this court's prior interpretation of General Statutes § 53a-59 [a] [3]); *Waterbury* v. *Washington*, 260 Conn. 506, 538-39, 800 A.2d 1102 (2002) (overruling prior cases concerning exhaustion doctrine as applied to Connecticut Environmental Protection Act); *State* v. *Colon*, 257 Conn. 587, 589, 778 A.2d 875 (2001) (overruling this court's prior interpretation of General Statutes § 53a48 [a]); *Ferrigno* v. *Cromwell Development Associates*, 244 Conn. 189, 201-202, 708 A.2d 1371 (1998) (overruling prior interpretation of General Statutes § 37-9 [3] because that interpretation created irreconcilable conflict between civil and criminal provisions of usury law); *Santopietro* v. *New Haven*, 239 Conn. 207, 215, 682 A.2d 106 (1996) (concluding that our previous interpretation of General Statutes § 52-228b was flawed); Conway v. Wilton, supra, 662-63 (overruling prior interpretation of General Statutes § 52-557f [3] as applied to municipalities).

In the present case, the argument in favor of legislative acquiescence is particularly weak because "the legislative acquiescence doctrine requires actual acquiescence on the part of the legislature. [Thus] [i]n most of our prior cases, we have employed the doctrine not simply because of legislative inaction, but because the legislature affirmatively amended the statute subsequent to a judicial or administrative interpretation, but chose not to amend the specific provision of the statute at issue." (Emphasis added.) *Berkley* v. *Gavin*, 253 Conn. 761, 776-77 n. 11, 756 A.2d 248 (2000). "In other words, [l]egislative concurrence is particularly strong [when] the legislature makes unrelated amendments in the same statute." (Internal quotation marks omitted.) *State* v. *Salamon*, supra, 287 Conn. 525.

Construction that might render a statute unconstitutional:

STATE v. COOK, 287 Conn. 237, 245, 947 A.2d 307 (2008): It is well established that this court has a duty “to construe statutes, whenever possible, to avoid constitutional infirmities....” (Citation omitted; internal quotation marks omitted.) *Denardo* v. *Bergamo*, 272 Conn. 500, 506 n. 6, 863 A.2d 686 (2005); see also *State* v. *Indrisano*, 228 Conn. 795, 805, 640 A.2d 986 (1994) (“in evaluating [a] defendant's challenge to the constitutionality of [a] statute, we read the statute narrowly in order to save its constitutionality, rather than broadly in order to destroy it”). “[W]hen called [on] to interpret a statute, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.” (Internal quotation marks omitted.) *State* v. *Floyd*, 217 Conn. 73, 79, 584 A.2d 1157 (1991). This principle directs us to “search for a judicial gloss ... that will effect the legislature's will in a manner consistent with constitutional safeguards.” Id.

Different terms used in same statute

FELICIAN SISTERS OF ST. FRANCIS OF CONNECTICUT, INC. v. HISTORIC

DIST. COMM'N, 284 Conn. 838, 850, 937 A.2d 39 (2008): "[T]he use of the different terms ... within the same statute suggests that the legislature acted with complete awareness of their different meanings ... and that it intended the terms to have different meanings...." (Internal quotation marks omitted.).

STATE v. HEREDIA, 310 Conn. 742, 761, 81 A.3d 1163 (2013) "[W]hen a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject ... is significant to show that a different intention existed.... That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or [nonaction] will have upon any one of them." (Internal quotation marks omitted.)

"Ejusdem generis": "[W]hen a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *State* v. *Terwilliger*, 314 Conn. 618, 658, 104 A.3d 638 (2014).

"Expressio unius est exclusio alterius": Absent clear evidence to the contrary, "the expression of one thing is the exclusion of another." *Felician Sisters of St. Francis of Connecticut, Inc.* v. *Historic Dist. Comm'n*, 284 Conn. 838, 851, 937 A.2d 39 (2008) (by exempting certain properties from purview of historic district commission, legislative intent not to limit commission's jurisdiction over other types of property).

Prior construction of statute by agency:

DEPT. OF PUBLIC SAFETY v. STATE BOARD OF LABOR RELATIONS, 296 Conn. 594, 599, 990 A.2d 206 (2010): It is well settled . . . that we do not defer to the board's construction of a statute - a question of law - when . . . the [provisions] at issue previously ha[v]e not been subjected to judicial scrutiny or when the board's interpretation has not been time tested." (Internal quotation marks omitted.) *Christopher R.* v. *Commissioner of Mental Retardation*, 277 Conn. 594, 603, 893 A.2d 431 (2006). A conclusion that an agency's interpretation of a statute is entitled to deference, however, "does not end [our] inquiry. We also must determine whether the [board's] interpretation is reasonable. . . . In so doing, we apply our established rules of statutory construction." (Citation omitted.) *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 407, 944 A.2d 925 (2008); see also *Vincent* v. *New Haven*, 285 Conn. 778, 784 n. 8, 941 A.2d 932 (2008) ("rule of deference applies only when agency `has consistently followed its construction over a long period of time,[20] the statutory language is ambiguous, and the agency's interpretation is reasonable'" [emphasis in original]).

Prior construction of *regulation* by agency:[21]

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[20]See *Dept. of Public Safety* v. *State Board of Labor Rel.*, supra, 296 Conn. 601, citing cases in which agency's action did or did not constitute "time tested" interpretation.

[21]Although agencies may be "authors" of their own regulations in the sense that they usually have drafted them, regulations are given the force of law equivalent to

ALEXANDRE v. COMMISSIONER OF REVENUE SERVICES, 300 Conn. 566, 578, 22 A.3d 518 (2011). Administrative regulations have the full force and effect of statutory law and are interpreted using the same process as statutory construction, namely, under the well established principles of General Statutes § 1–2z. (Internal quotation marks omitted.).

SARRAZIN v. COASTAL, INC., 311 Conn. 581, 610-11, 89 A.3d 841 (2014): These principles [of affording no deference to an interpretation unless time tested or subject to prior judicial review] apply as equally to regulations as they do to statutes. See, e.g., *Wood* v. *Zoning Board of Appeals*, 258 Conn. 691, 698–99, 784 A.2d 354 (2001); *Fullerton* v. *Dept. of Revenue Services*, 245 Conn. 601, 608, 714 A.2d 1203 (1998); *Real Estate Listing Service, Inc.* v. *Real Estate Commission*, 179 Conn. 128, 138–39, 425 A.2d 581 (1979). . . . The requirements that an interpretation be '"formally articulated and applied for an extended period of time" provide a proper basis for deference because, like judicial review, they ensure that the interpretation is articulated through procedures that allow for robust adversarial testing and in a manner that has general applicability. *Longley* v. *State Employees Retirement Commission*, supra, at 164, 931 A.2d 890; see also General Statutes § 4–166 et seq. (setting forth procedures under Uniform Administrative Procedure Act that agencies must follow to adopt regulations or issue declaratory rulings). The department's interpretation of § 31–60–10 of the regulations was not promulgated pursuant to any formal rule-making procedures or articulated pursuant to any adjudicatory procedures, has not been time-tested or subject to judicial review in this state. See *Hasselt* v. *Lufthansa German Airlines*, 262 Conn. 416, 432, 815 A.2d 94 (2003) (declining to accord substantial deference to statement of policy, not adopted pursuant to formal rule-making or adjudicatory procedures, made by chairman of Worker's Compensation Commission because it had been neither time-tested nor subject to judicial review).

NOTE: Federal courts apply a more deferential approach to an agency's interpretation of its own regulation.[22] See *Comm'r of Correction* v. *Freedom of Info. Comm'n*, 307

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statutes because, with the exception of emergency regulations, all adoptions, amendments, and repeals of regulations can take effect only after review and approval by the legislative and executive branches. See General Statutes § 4-169 (review by Attorney General for legal sufficiency); General Statutes §§ 4-170 (review, approval and disapproval without prejudice by bipartisan legislative Regulation Review Committee); General Statutes § 4-171 (review by General Assembly of regulations disapproved by review committee); General Statues §§ 4-172 and 4-173 (filed with and published by Secretary of State).

[22]The federal courts generally afford greater deference to federal agencies' interpretations of statutes and regulations than does this court, but the degree of deference is context-specific and more focused on the extent to which Congress has delegated authority to the agency to take actions that have the force of law as to the matter at hand. See generally *United States* v. *Mead Corp.*, 533 U.S. 218, 227 (2001) (discussing seminal cases of *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 [1984], and *Skidmore* v. *Swift & Co.*, 323 U.S. 134,

Conn. 53, 64-65, 52 A.3d 636 (2012).

RESEARCH:

- Read *entire* statute at issue, even if only one word or phrase is at issue
- Read related statutes for context (cast broad net – same scheme or same topic)
- Research other statutes using same term at issue or statutes referring to statute number at issue.
- Review genealogy of statute - how statute evolved over time, when pertinent added, what statute looked like prior to & after amendment
- Research whether there are pending amendments to statute or whether legislature previously has considered and rejected amendments that shed light on current meaning (search general assembly website).
- Research subsequent history (amendments post-dating conduct at issue).

LEGISLATIVE HISTORY RESOURCES

- General Statutes (blue books): lists public acts that amended statute (as of 1949 Revision);[23] historical notes summarize substance of amendments. NOTE: In recent history, statutes are revised every other year to incorporate supplemental act (currently we are using the statutes revised to January 1, 2017.
- Annotated General Statutes (red books): adds summary of case law interpreting statute by topic. ALSO lists derivation of statute – year and section (blue books only go back to 1949 Revision of General Statutes)
- Library website: http://ctstatelibrary.org/leghistory/ - digital documents for recent & other limited history
- General Assembly website: http://www.cga.ct.gov/ -search by public act, bill, topic.
- Office of Legislative Research website: https://www.cga.ct.gov/olr/about.asp
- Transcripts of Legislative Committee Hearings and Floor Debates (search card

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140 [1944], setting different standards); see also *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (explaining highly deferential standard when agency interprets its own regulations); Eskridge & Baer, "The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from *Chevron* to *Hamdan*," 96 Geo. L.J. 1083 (2008). Please note that this is an evolving (and sometimes inconsistent) area of federal law, and there is some indication that the U.S. Supreme Court may reconsider its deference to an agency's interpretations of its own regulations. See, e.g., *United Student Aid Funds, Inc.* v. *Bible*, 136 S. Ct. 1607, 1608, 195 L. Ed. 2d 241 (2016) (Thomas, J., dissenting from denial of certiorari) (arguing that court should resolve question it has raised whether it will overrule *Auer* deference to agency's interpretation of regulation).

[23]To find a version of the statute that existed prior to the 1949 revision, you need to search by subject in the preceding General Statutes. Once you find that, it will list in the margin the predecessor versions by year and statute number (or in some of the earliest statutes by page number).

catalogue at front of library by year and number of public act – lists committee name/pages, house &senate debate/pages
- Bill Folder (request from librarian by bill number and year): contains copies of all versions of bill (raised bill, substitute bill); amendments to bill (accepted and rejected); some written testimony submitted in support of/opposition to bill; analysis by office of legislative research (OLR).
- Legislative Record Index – two sections: (1) lists bills for each legislative session by subject; & (2) lists all activity by bill number (i.e., committee hearings, etc.
- Authoritative topical treatises (i.e., A. Larson & L. Larson, Workers' Compensation Law; A. Sevarino, Connecticut Workers' Compensation After Reforms).

NOTE: Major legislation (codification of penal code, death penalty) has all leg history compiled in separate binders - there should be notation on file card indicating this.

STATUTORY CONSTRUCTION RESOURCES

J. Sutherland, "Statutory Construction" – multi-volume treatise
K. Davis & R. Pierce, "Administrative Law" Treatise
"Words and Phrases" – multi-volume collection listing meaning ascribed to terms by various jurisdictions