

Conjunction and/or Disjunction In the law

Aaryan and Mikey





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Q: Does Congress have the power to legislate on Defence and Welfare?



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Q: Does Congress have the power to legislate on Defence and Welfare?

Disjunction VS Conjunction

Disjunction: $X \sim Y$

True if:

- X is true, Y is false
- Y is true, X is false
- X is true, Y is true

Conjunction: $X * Y$

True if:

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$\text{NOT} (X \sim Y) = (\text{NOT} X) * (\text{NOT} Y)$

In order to ride the rollercoaster, you **cannot** be younger than 8 **or** shorter than 100cm

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$\text{NOT} (X * Y) = (\text{NOT} X) \sim (\text{NOT} Y)$

We **cannot** go to Universal studios **and** Disneyland in the same day



Question

When does “and” become disjunctive instead of conjunctive in the law?

The *And/Or* Rule



“Generally, the words “or” and “and” in a statute may be construed as interchangeable when necessary to effectuate legislative intent.”

“When it is apparent that the Legislature has erroneously used the wrong word, the courts will make the necessary change in the statute in order that it shall conform to the legislative intent.”

01.

Beslity vs. Manhattan Honda

“Any person who has been injured [by false advertising] . . . may bring an action in his own name to enjoin such unlawful act or practice **and** to recover his actual damages or fifty dollars, whichever is greater”

Facts:

- Beslity, a victim of false advertising, sues to recover actual damages/fifty dollars, arguing that the features of the advertisement were contained only in the car that he purchased.
- Trial court ruled against him because he did not both enjoin (since the ad was no longer printed) and recover damages.
- Appellate court reversed this, using the *And/Or* Rule, ruling that the legislature meant to “allow consumers to elect their remedy.”

01.

Beslity vs. Manhattan Honda: the Modal Verb “May”

“Any person who has been injured may bring an action to enjoin and to recover damages.”

- Usually, “may’ is applied to a group of conjuncts:
 - You may eat cheese and meat. (You may eat cheese and may eat meat)
 - Does not require eating both cheese and meat.
- In this case, “may” cannot be distributed to the conjuncts
 - May (bring an action (to enjoin and to recover damages))
 - Modifies “bring,” not “enjoin” and “recover”
- Therefore, the words of the statute do actually mean that you must both enjoin and recover
- A drafting error, legislature most likely meant “and” to mean “or”

What do you think?

Does the modal verb modify only “bring,” or also “enjoin” and “recover?”
Should the fact that “and” meant “or” in this case have been clear? Or is it ambiguous?

02.

Calbeck vs Travelers Insurance co

Section 3(a), Longshoremen and Harbor Workers' Compensation Act

Compensation **shall** be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) **and** if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law

Result:

- The US Supreme Court majority ruled that federal compensation was authorised to two maritime workers where state compensation was also available.

02.

Calbeck vs Travelers Insurance co

Compensation if navigable and not(recovery)

Two possible constructions

- 1) Compensation if [navigable and not[recovery]]
- 2) [Compensation if navigable] and [compensation if not[recovery]]

Court ruled in favor of interpretation 2), i.e the disjunctive *and*. Again, this is likely because it is prefaced by the modal verb *shall*.



Question

Does a “modal canon” fix the ambiguity?



*No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine Years a Citizen of the United States, **and** who shall not, when elected, be an Inhabitant of that State for which he (sic) shall be chosen.*



No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he (sic) shall be chosen.

Can a 15 year old Tibetan living in California be a Senator of California?

An interesting aside...



Can “or” ever mean “and”?

03.

People v. Caine

A person is guilty of harassment when, with intent to harass, annoy or alarm another person ...

(5) He engages in a course of conduct **or** repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose

Facts of the Case

- Paul Caine began arguing with an officer who was writing him up for a traffic infraction.
- Caine said the officer could “*shove the summons up [his] f***ing a****”
- Officer asked “what did you say” and Caine repeated himself
- Officer directed Caine to the vehicle at which point he said “*Go f*** yourself!*”

- Judges appealed to and/or rule for the final verdict that Caine did *not* violate the statute, since he had to both engage in a course of conduct **and** repeatedly commit acts
- Their main argument was that there was no *intent* and that it was more of an outburst, but the and/or rule was still cited.

Solutions To And/Or Ambiguity?



Paul Conway lists several drafting tips to help solve this ambiguity:

- Draft using:
 - a. indentation AND₁ paragraph numbering (for layout clarity); AND₁
 - b. a subscript on the language connectors, 'AND', and 'OR', for interpretative clarity

Subscript meanings:

Mikey wants ranch and cheese.

AND₁ = **Within sentence connector:** Mikey wants [macaroni and cheese]

AND₂ = **Between sentence connector:** [Mikey wants macaroni] and [Mikey wants cheese]

Mikey wants [macaroni or cheese]

OR₁ = **Within sentence connector:** Mikey wants [macaroni or cheese]

OR₂ = **Between sentence connector:** [Mikey wants macaroni] or [Mikey wants cheese]

Solutions To And/Or Ambiguity?



- Do not routinely use the format 'a means b, and includes c.' If that concept is to be used, then draft in the format:-
 - a. a means b OR₂ c; AND₂
 - b. a includes b AND₂ c.

This is an abbreviated way of saying:-

- a. a means at least one, but possibly both, of b or c; AND₂
 - b. a includes each of b AND₂ c, but there are other unspecified things which are included in the category of a.
- Do not routinely use the format 'a means b, and includes c, but does not include d'. If that concept is to be used, then draft in the format:-
 - a. a means b; AND₂
 - b. c is an a; AND₂
 - c. d is NOT an a.

Solutions To And/Or Ambiguity?



- Drafters must understand principles of law, the facts, and the structure of language. The goal is clarity, precision, simplicity, and brevity. Understanding logic should help to avoid syntactic ambiguity specifically, and vagueness generally.
- Lawyers and drafters must understand each of the syntax forms:- 'AND'; 'OR'; 'NOT'; 'IF ... THEN ...'; and 'IF AND ONLY IF ... THEN ...'. An understanding of 'because' and 'unless' is also helpful.
- Documents would be easier to understand if legal rules were drafted in the form of an 'IF ... THEN ...' proposition, namely, 'IF condition-a is fulfilled, THEN result-b occurs'.

Thank you!



References

Conway, Paul . "Syntactic Ambiguity" 2002 March 14

Solan, Lawrence. "The Language of Judges" 1993