



# How to read “Procrustean reasoning”

*A step-by-step approach to statutory interpretation by counsel to fit their goals*

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Procrustes had a house on the side of a well-traveled road between two important cities. To every weary traveler who passed by, Procrustes extended the invitation of a warm meal and a night’s rest in his very special bed, which he promised would fit exactly the body of whomever lay upon it. The unwitting travelers would accept, only to find that Procrustes’ method of fitting was to stretch them if they were too short, or amputate their legs if they were too long.

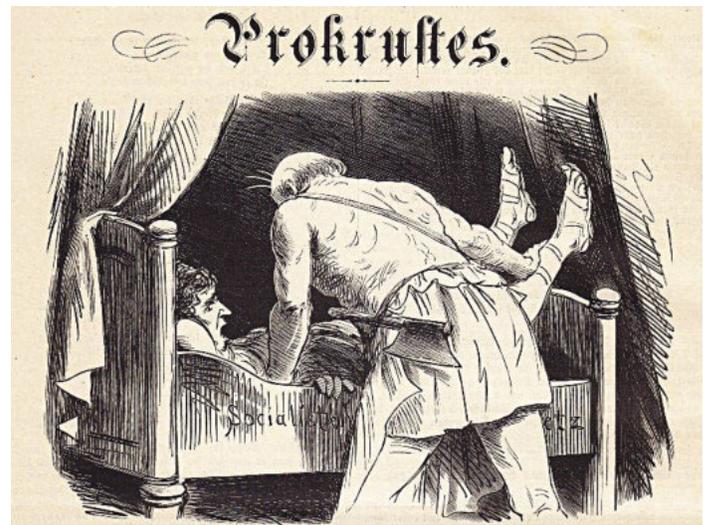
This story is from Greek mythology. In practice, counsel will use “Procrustean reasoning” to extend or stretch the meaning of a statute to fit their goals. We have seen this in demurrers, motions to strike, and other attacks on the pleadings, as well as motions for summary judgment. What follows is intended to be a practical guide to statutory interpretation to allow you to thwart these attempts.

## The law

In *Halbert’s Lumber v. Lucky Stores* (1992) 6 Cal.App.4th 1233, the court provided a step-by-step approach to statutory interpretation:

First, a court should examine the actual language of the statute. ... [I]t is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed ‘into law’ by the Governor, (*Halbert, supra*, 6 Cal.App.4th at 1238.)

Second, “[i]n examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them a special meaning.” (*Ibid.*) A court should give a word its plain meaning. (See, *Ibid.*) “If the meaning is without ambiguity, doubt, or uncertainty, then the language controls. [Citations.] There is nothing to ‘interpret’ or ‘construe.’ [Citations.]” (See, *Id.* at 1239.) If a word’s meaning is not clear, a court must refer to the legislative history to determine intent. (See, *Ibid.*)



Finally, if neither the plain meaning nor statutory history reveal clear meaning, a court should “apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [citations], practical [citations], in accord with common sense and justice, and avoid an absurd result [citations].” (*Ibid.*)

## Three-step approach to statutory interpretation

Examine the words;

- Give the words their plain meaning, and, if it is still unclear, read legislative history to determine intent; and
- Apply common sense, if neither the plain meaning nor statutory history reveal intent.

## Guidelines to implement this approach

### Examine the words

Words matter. Especially in a statute. Read the law. Pay attention to the words used and omitted. Assume the legislature did not include or omit a word “by accident.” (*Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 894 [explaining, “As our Supreme Court stated, ‘we are aware of no authority that supports the notion of legislation by accident.’ [Citation.]”]) The legislature knew how to include or omit a word if it wanted. (See, *Ibid.*)



### Give words their plain meaning

A dictionary, case or statute can define a word. A court can refer to a dictionary definition to determine a word's plain meaning. (See, *Halbert, supra*, 6 Cal.App.4th at 1250 [examining the word "mechanic"].) A court can also refer to case law or statute to determine a word's ordinary meaning. (See, *Halbert, supra*, 6 Cal.App.4th at 1240 [examining the word "furnished"].)

Sometimes, punctuation, grammar, and statutory schemes create ambiguity. Cases recognize dozens of rules to help analyze laws in these situations. These rules can be found in Cal. Jur. 3d, Statutes, Sections 83-130 "Interpretation."

### Examining legislative history

Examining legislative history can be complicated and time-consuming. The following resources discuss how to conduct legislative-history research: Cal. Jur. 3d, Statutes, Sections 110-127 "Application of General Rules of Construction."

The Loyola Law School, Los Angeles, web site ([guides.library.lls.edu/c.php?g=497693&p=3407260](http://guides.library.lls.edu/c.php?g=497693&p=3407260)) publishes the following checklist on legislative-history research:

- Check West's Annotated California Codes and Deering's California Codes for your code section;
  - Look up the statute in *Statutes of California and Digests of Measures*;
  - Locate the bill number for your statute in *Table of Laws Enacted* or *Summary Digest of Statutes of California and Digests of Measures*;
  - Locate the bill history in Senate Final History;
  - Compare different versions of the bill;
  - Refer to the Assembly File Analysis;
  - Check committee analysis;
  - Check the Senate Journal;
  - Search for committee reports and hearings;
- Contact agencies for additional information;
- If more information is required, you may wish to consult additional research

guides or contact a legislative research agency such as:

- Carolina C. Rose, Research and Practice Guide: California Legislative History and Intent (6th ed., Legislative Research Inc. 2005), available online;
- U.C. Berkeley Law web site: <https://www.law.berkeley.edu/library/dynamic/guide.php?id=54>.

### Applying common sense

Applying common sense means avoiding an absurd result. (*Chan v. Korean Air Lines, Ltd.* (1989) 109 S.Ct. 1676, 1682-1683.) A court should construe a statute to give it the intended effect. (See, *Ibid.*)

### Case analysis: an employment law example

Let's imagine you practice employment law. Your client has a disabled child. She seeks reasonable accommodations to care for her child. The employer denies her accommodations. You believe that under the Fair Employment and Housing Act ("FEHA") an *association* with a physically disabled person is itself a disability that should be accommodated. Defendant demurs, and claims that the FEHA's protections are limited to the employee's own disability and do not extend to the child of the employee. And now you're off to the races.

You start with the language. It is an unlawful employment practice: "For an employer, because of the race, religious creed, color, national origin...physical disability,... of **any person**,...to discriminate against the person in...privileges of employment." (Gov. Code, § 12940(a) [emphasis added])

But, you wonder, how far does that protection reach? Who does "any person" include? The law provides the answer: "Race, religious creed, color, national origin...physical disability...'includes ... that the person is associated with a person who has... any of those characteristics." (Gov. Code, § 12926(o))

It appears the Legislature did indeed extend protections to your client who was

dealing with her child's disability. But the defendant has claimed that the *accommodation* protections do not extend to the physical disability of an associated person. It is an unlawful employment practice: "For an employer ...to fail to make reasonable accommodations for the known physical or mental disability of an ... employee." (Gov. Code § 12940(m(1))) You believe the language of the statutory scheme is clear if read together.

Of course, you look at the legislative history. For the FEHA, you have quite a lot to work with. You may spend hours on this part. No need to trouble you with the details, but this will prove to be a fruitful search. Finally, you apply common sense and notions of fairness and justice. Could the Legislature have meant to prohibit unlawful discrimination based on the disability of an employee's child yet fail to prohibit unlawful accommodation? That would be an absurd and unfair result indeed.

### Conclusion

In defense of their cases, defense counsel will quote terms that don't exist, misread words that do exist, and misconstrue statutory schemes that otherwise hang together nicely. So, read the law. Make sure it says what you think it does. And, use statutory-interpretation rules to make your point.



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