

# The Plain Meaning Rule

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## **I. The Plain Meaning Rule**

This discussion is applicable to both Federal and State Statutes. (See Sutherland on Statutory Construction and Cal Jur on Statutes for extensive general authorities on the “plain meaning” rule).

In any contested issue involving Legislative Intent the threshold question is usually going to involve the plain meaning rule. Many cases over the years have discussed the “plain meaning rule”, usually as a condition precedent to the court considering legislative intent. The underlying rationale of the rule is if the meaning of the statute is clear, there is no need to resort to legislative intent. Although not explicitly discussed in any case, undoubtedly an appealing characteristic of the “plain meaning” rule to overburdened courts is that choosing to apply the “plain meaning” rule will greatly simplify the amount of data they need to absorb.

On close inspection the diverse body of “plain meaning” case law is much more nuanced, courts often look at legislative intent even while stating the meaning is plain. Some courts and commentators have noted that legislative intent should control over the letter of the law if there is a conflict, which makes some sense as a logical extension of the separation of powers doctrine.

In California CCP Section 1858 is as close as one gets to a statutory version of the plain meaning rule. One can argue Section 1858 is itself in need of construction as the Section provides the Judge’s task with regard to statutes is to “ascertain and declare what is in terms **or in substance** contained therein...” (emphasis added). The phrase “or in substance” seems to impose a duty to seek the intent of the enactment as coequal with parsing the words.

The following Section, CCP Section 1859, states explicitly “In the construction of a statute the intention of the legislature...is to be pursued, if possible...”

The recent enactment of Government Code Section 9080(a) adds additional explicit legislative approval of the use of legislative documents to find legislative intent, so the “plain meaning rule” has perhaps less vitality in California than in other jurisdictions. But beyond issues of the vitality of the rule, “plain meaning” is a slippery concept in practice.

**A. Problems with the Plain Meaning Rule:** Some underlying theoretical issues raised by the plain meaning rule include:

**1. Words are imprecise instruments:** The apparent simplicity of this rule glosses over the fact words are elusive and imprecise instruments, dependent for meaning on context, and often what might appear as “plain” on first reading becomes less plain the more you think about the context and ramifications of the language. Words the legislature chose with one particular factual circumstance in mind may produce an entirely different result when applied to factual circumstances other than the one the legislature anticipated.

A typical approach to arguing whether the meaning of a statute is “plain” is to resort to dictionary definitions. In the real world this approach sometimes has limited utility. Since the meaning of words can vary according to the context, dictionaries typically provide an “average” meaning. Many of us have had the experience of going to the dictionary for a word we use regularly and found what the dictionary describes as the meaning is different than the way we often use the word.

For an interesting case that faced the problem of the legislature choosing language that had consequences many of the legislator’s who voted for the bill probably would have objected to see Unzueta v. Ocean View School District, 8 Cal Rptr 2d 614 (1992)

**2. Words change in meaning over time:** Words evolve. They take on fashionable nuances in different periods of history, so the common meaning of a word today might be significantly different than when the word was used by the legislature drafting the statute. The changes can be documented in some cases by comparisons of present dictionary definitions with old dictionary definitions. Many large libraries maintain copies of old dictionaries, if dictionary definitions become an issue in a plain meaning controversy, it would be wise to try to get a dictionary published roughly contemporaneously with the enactment of the statute to compare with current definitions.

**3. Words are a tool of language and logic and don’t reflect the full human experience.** Words are not ends in themselves, they are tools to achieve communication of thought, but we have modes of thinking that do not operate on the same program as words, for which words are a poor substitute. It is rather like using a word program on your computer to substitute for a picture, or a spreadsheet, or a piece of music. Words just cannot always do the job without reference to other modes of thought. This is perhaps best illustrated by the creation of courts of equity in England many years ago. The law had grown so reliant on words forming a symmetrical and logical body of law as an end in itself, and unwilling to compromise that symmetry with input from other modes of thought, that an entire separate body of courts had to be created to accomplish just results in many areas of the law.

## **B. Tools for Addressing Plain Meaning Rule Arguments:**

**1. What other words might the legislature have chosen?** A useful tool to determining if the meaning is plain or ambiguous is to consider what other words the legislature might have used that would clarify your particular issue. While the same issues with the evolving nature of language are at work when you undertake to consider other words the legislature might have used, this process is very useful for developing a sense of whether the meaning is really as clear as it might seem at first blush.

**2. Consider who actually chose the word.** In some circumstance the source of the language in question can arguably influence the level of scrutiny the legislature applied to any particular term. For example, if the language comes out of the deliberations of a committee it suggests a higher level of scrutiny in choosing the term in question, whereas if the legislature simply accepts language brought by some sponsoring agency as part of a larger proposal it suggests a “first impression” meaning could be more applicable.