

**Q.** Please explain the legal doctrine of the “last antecedent.” I have read the definition given in § 47.33 of *Sutherland Statutory Construction*, Referential and Qualifying Words, but I am still puzzled.

**A.** The definition is confusing. Here it is:

Referential and qualifying words and phrases, when no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause or that can be made an antecedent without impairing the meaning of the sentence. ... Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma.

The so-called doctrine is simply a legal re-statement of the grammatical rule governing the placement of a comma. An article in *Time* magazine pointed out the importance of a single comma during a debate some time ago between Republican and Democrat members of a Republican-dominated subcommittee on the economy. The subject was taxes, and the bill under consideration had been drafted and endorsed by the White House. The pertinent language was, “This legislation opposes any attempt to increase taxes, which would harm the recovery. ...”

The Democrats on the subcommittee vigorously insisted on just one modification, the deletion of the comma after the word “taxes.” Without that comma, the bill would read, “This legislation opposes any attempt to increase taxes which would harm the recovery. ...” If the Democrats had had their way, without that comma the bill would not oppose *all* tax increases, only increases that would hurt the economy. Thus, tax increases that did not “harm” the economy would be permitted. But with the comma that the Republicans wanted to retain, the bill would oppose all tax increases, as the White House intended.

One Democrat threatened to “take

that comma to the floor.” But the Republican majority prevailed. Despite the threat, the wrestling match was avoided, and the bill was approved without dissent (and with the comma). One losing Democrat gamely commented, “I like commas.”

Although modern courts minimize the importance of punctuation to determine the intent of the drafter, some cases rely on it. One case was decided against the Interstate Commerce Commission because of the absence of a comma between “New York” and “within” in the following Interstate Commerce Commission order:

[The plaintiff may ship] between points in Connecticut, Pennsylvania, New Jersey, and New York within 100 miles of Columbus Circle, New York, N.Y., on the one hand, and, on the other, points and places in Connecticut, Delaware, Maryland, Massachusetts, Pennsylvania, New Jersey, New York, and Rhode Island.

Because there was no comma between “New York” and “within,” an appellate court held that “as a matter of grammatical construction, there can be no question but that the 100 mile provision ... applies only to New York.”

My thanks to Attorney Howard L. Stovall, who sent the following item about a recent case, now being appealed, which indicates that commas continue to possess power. *New York Times* journalist Ian Austen reported the case in a column headed, “The Comma That Costs 1 Million Dollars (Canadian).” The dispute is about the meaning of this sentence:

This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless,

and until terminated by one year prior notice in writing by either party.

Citing the rule of the last antecedent, the Canadian telecommunications regulator said, “The meaning of the clause was clear and unambiguous,” because the second comma (before ‘unless’) meant that the one-year notice for cancellation applied to both the five-year term and its renewal.” However, the regulator had misinterpreted the clause, which is far from clear. The second, unnecessary, comma after “unless,” and the incorrect tense of the verb “is” are the culprits. They were the cause of the confusion, not the last antecedent rule. The sentence should read:

This agreement shall be effective from the date it was made, for a period of five (5) years, and thereafter for successive five (5) year terms, unless terminated by one year prior notice in writing by either party.

The plaintiff said that “one year earlier” it had “told” the defendant cable company it wished to breach the contract. But unless that “telling” had been in writing, it would not have been sufficient to breach the contract.

Readers who recall their grammar classes will recognize the similarity of the legal “Doctrine of the Last Antecedent” to the rule governing restrictive and nonrestrictive relative clauses. The so-called “that/which” rule is still endorsed by *Elements of Style* and others. But discussion of that rule will have to await another occasion. **TFL**

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