INCLUDE, INCLUDES, INCLUDING

Words Of Art For Law Writers?

For the normal man, or woman, these words are rather simple to understand while reading something, but when it comes to legal writings I have found that these words don't have the same meaning. If there is any root word which needs to be understood by a person attempting to understand legal paperwork, it has to be this word ***include*** and its different versions. I've come to that conclusion after having thoroughly studied thousands of laws and legal writings -- no other word comes close to its importance.

Again, for normal people we would use the word ***include*** similar to the use I found recently in the September 2002 issue of The Reader's Digest, on page 135. *"She is feeling fine, beaming in front of 60 people,* ***including*** *her father."* A rather simple sentence for a normal reader to understand, but if it was written by an attorney, it would mean something totally different. This sentence would actually mean that only *her father* was there to see her beaming. Sounds crazy, huh? I know it seems crazy, but that is the actual way the word is defined in law dictionaries because it is defined as a word of exclusion not inclusion - as in our sentence from The Reader's Digest.

For a more detailed explanation of this word usage let me quote from my paper on the Texas Sales Tax Fraud. "If you haven't yet read my book, *THE STATE OF TEXAS is a LIAR!!*, some of you may not understand my reference here to the importance of the term ***include***, but it is extremely important when reading laws. As stated earlier, laws are written specifically and the term ***includes*** is used by these law writers to refer to the exact place, thing, or entity referred to. When they use the term ***includes***, it ***excludes*** everything not listed. As an example of this type of writing we can look for uses of the terms ***also includes, including, but not limited to,*** or ***including, without limitation***. These specifically used common terms make me conclude that the use of the terms ***include, includes, including*** are almost always exclusionary when read in "law books."

This style of legal writing follows the "doctrine" of ***inclusio unius est exclusio alterius***. You will find this term defined in ***Black's Law Dictionary, 6th Edition***, page 763, but it is found in other volumes of Black's as well. [I was rather surprised with Bouvier's for being such a large Dictionary—three volumes for the 1914 Edition—it did not define this term at all!]

> ***"The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. This doctrine decrees that where law***

expressly describes particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded."

But I think I like the definition for this Latin term in Black's 3rd Edition better for the simple reason the writers of this dictionary give credit to Edward Coke for the original definition for this Latin term.

The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. 11 Coke 58b.

Now, how does the second part of that definition fit into the definition of ***person*** in the ad valorem taxation statutes from 1876? Black's 3rd came out in 1933 so this definition for ***include*** must have been recognizable by all attorneys and judges from that time period; a period in which our term ***person*** had not changed at all in the Revised Statutes. Plus to top that off, this 1933 definition appears to have been quoted from the legal commentary by Coke which was from way back! Even back further than Black's 1st Edition from 1891 in which we find ***include*** defined the same as the 3rd Edition. Wouldn't it be logical that if the original Property Taxation act was enacted in 1876, and Black's 1st Edition was printed in 1891, that this dictionary would have printed the true legal definitions in use in that time period?

So, when was Mr. Coke around on the legal scene to give the boys from West Publishing of Minnesota the idea to quote his definition in their First, probably Second, Third, and Fourth Editions? For some odd reason the definition didn't change, but they stopped mentioning 11 Coke 58 in the Fifth Edition from 1979. According to information gathered from the web site of ***The Locke Institute***, Sir Edward Coke *"in 1628, published the first of four volumes of Institutes, which delineated some of the basic rights of an individual in a stable legal order."* So, it would appear that Mr. Coke wrote his definition of our Latin term a long time before the Property Taxation act was enacted by the Texas Legislature In my opinion, that would require that the word ***include*** be defined as inclusive of what is listed and exclusive of what is not listed. The logic follows!

Then if you keep following the logic, you won't find any in Black's 5th Edition because that is where the scam begins with the attempts to change the meaning of the word. That volume is where they begin the programming of the readers that ***include*** can be a word of enlargement rather than restrictive. That's bulloney! In legal writings the word is almost always used in terms of excluding everything that was not listed. If you don't believe me let me give you an example of a contract I read recently; a contract which obviously was written by a lawyer.

Throughout this contract our term ***include*** is used and never, as you'll see, was it used as a term of enlargement as was suggested by the liars of Black's 5th Edition. See for yourself how the term is used, but I think you'll agree with me after seeing each of 17 uses of forms of this word in this four-page document exactly how the word is used in legal writings. After all, in this contract for a merchants account, the attorney who wrote it up could have used any terms he wanted, how ever he wanted to use them. He chose to use ***include*** as a restrictive term each time out of 17. Here they are, you decide.

1. ***…including, but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.***
2. ***…including, but not limited to, those chargeback rights enumerated in the Rules;...***
3. ***…including, but not limited to, fees, fines, and chargebacks.***
4. ***…including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets").***
5. ***…including, without limitation, all outstanding/uncollected amounts and potential chargebacks.***
6. ***…including, but not limited to chargebacks, fines imposed by…***[too long to print]
7. ***…including, but not limited to: any additional location or new business,…***
8. ***…including[1] but not limited to those resulting from any transaction processed…***
9. *[Name of Company]****disclaims all implied warranties, including those of merchantability and fitness for a particular purpose.***[2]
10. ***You may be using special services or software provided by a third party to assist you in processing transactions, <u>including</u> authorizations and settlements or accounting functions.*** [What special services are allowed?]
11. ***(physical or electronic including but not limited to account numbers, card imprints, and TIDs)…***
12. ***…(including without limitation the terms of this Agreement),…***
13. ***This Agreement, including the Schedule of Fees, the completed Application, the Merchant Operating Guide, the Rules and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section___ below, all of which are incorporated into this Agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are merged in and superseded by this Agreement.*** [How huge is this Agreement now after this list? The part I read is only four pages of very small type, but the use of the word *including* listed several other features than just the four pages, don't you agree?]
14. ***…including, without limitation, specific performance, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process.***
15. ***The parties agree that anything communicated, exchanged, said, done or occurring in the course of the arbitration, including any private caucus between***

[1] No, I didn't forget the comma. That's the way it was written in the contract.
[2] So, what is included in what this company disclaims? I say it is **merchantability** and **fitness for a particular purpose** as that is what follows the word includes. See how easy it is to read this stuff?

the arbitrator and any party before or after any joint arbitration session, will be kept confidential.

16. ***All provisions of this Agreement that by their context are intended to survive termination of this Agreement, including, but not limited to, Sections _____ with survive the termination of this Agreement.***
17. ***…including, but not limited to, your obligation to pay any amounts due and owing to Member or _____.***

Anybody now want to disagree with me about the normal use of our suspect term? I'll give you #15 as maybe a reach on my part, but that's the only one. Without a doubt this sampling of a legal document is emblematic of the most common way the word ***include*** is used in legal writings. Admittedly, there were quite a few ***includes*** in the sample, but I loved it for that very reason so that I could give the reader a great example of how the word is used in almost all cases. I reservedly use the term *used in almost all cases* because there have only been maybe a handful of times I've read that word in a legal type document and honestly thought it was used in the way a normal person would use it. You have to admit that in 17 times the word ***include*** was used, not once was it used as a normal person would use it. If your view is still inconclusive, I'd say you are hopeless or a liar!

Again, as stated, this "doctrine" is one of the most important points to understand before you will ever gain insight as to how to read laws of all kinds, and it is one of the main contentions that I and other researchers have with lawyers, prosecutors, and judges. This problem is exacerbated by the fact that few of the members of these groups actually ever read any laws! I know that sounds crazy, but it is very true. And I say that, not just from my own experience with these types, but after many conversations with other researchers who have made the same type of comment.

As a general rule, the legal "experts" don't know what the laws say! They are seldom forced to go read a law, much less the history of a law as I have done on countless occasions and as I have with this subject of property taxation. So, because we researchers actually read the laws, we see patterns emerge in the writing of laws. Learn the patterns, and it's rather easy to understand what laws mean - usually, anyway.

And as these patterns go, the use of the words ***include, includes, including*** is one of the most important to understand. Before someone taught me this particularly simple pattern several years ago, I had thought myself rather intelligent. What a wake-up call and humbling experience that was! Within a short time, I realized that when it came to reading laws, I had been minor league, if not little league. After learning the ***include, includes, including*** pattern, I was convinced it is one of vital importance.

For me to prove each use of the word ***include, includes, including*** as exclusive rather than inclusive would be pretty difficult. The best suggestion I can use to demonstrate my interpretation of how "they" write laws over a long period of time is to follow the history of a "law" and watch its progression. The best *example* of this process is my chapter on the *Motor Fuels Tax.*

The best *proof* can be found in ***Black's Law Dictionary 4th Edition***, where it defines the word, ***include***.

> ***"To confine within, hold as in an (i)nclosure, take in, attain, shut up, contain, (i)nclose, comprise, comprehend, embrace, involve..."***

If Black's 4th was our only evidence my position might be a bit shaky, but the other versions of Black's concur except the 5th Edition and maybe the 6th Edition. Even the 7th Edition, loaned to me by my associate Scott Thompson, a thorn in the side of the lying Texas Comptroller, is evasive and strays faaaaaaaaarrrrrrr from what Edward Coke originally taught us the legal use of the word actually means.

However, what Black's 7th does for us is to expand on the definition of our Latin term by referring us to the Latin term ***expressio unius est exclusion alterius***. Please understand that this is the first volume of Black's to list that connection of the two Latin terms. When I looked up that term, I located a couple others important to our discussion. In fact, as you'll see, we've already listed the interpretation of these Latin terms, only we didn't know it. In my opinion this definition listed just below from Black's 7th is not exactly an accurate definition, but to me is an amalgamation of all three Latin terms which mean basically the same. ***Expressio unius est exclusion alterius*** means:

> ***A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative. For example, the rule that "each citizen is entitled to vote" implies that noncitzens are not entitled to vote. –Also, termed inclusion unius est exclusion alterius; expressum facit cessare tacitum.***

Let me show you what the other versions of Black's have to say about these three slightly different Latin terms, and I think you'll see that each has a distinct meaning and can stand alone in regards to our subject of property taxation. Before I give you my opinion of which best fits our situation, form your own opinion about which defines and clarifies our property taxation dilemma. [Some of this you may want to skip, but if you're fighting the fight to save your property, I'm betting you need to study each of these listed cases. My purpose for such a list is for those of you who do not have access to the law dictionaries I have on hand. Some of these cases can be located on the Internet, and the rest can be pulled at a law school library when you're in that neighborhood.]

> **Black's 1st Edition—Expressio unius est exclusion alterius—*The expression of one thing is the exclusion of another.* Co. Litt. 210a. *The express mention of one thing [person or place] implies the exclusion of another.***
>
> **Expressio unius personæ est exclusion alterius. Co. Litt. 210—*The mention of one person is the exclusion of another.* See Broom, Max. 651.**

Expressum facit cessare tacitum—*That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant.* 4 Code, 80; Broom, Max. 651.

Black's 3rd Edition—Expressio unitus est exclusion alterius—*The expression of one thing is the exclusion of another.* Co. Litt. 210a. *The express mention of one thing [person or place] implies the exclusion of another.* Broom Max. 607, 651; 3 Bingh. N.C. 85; 8 Scott N.R. 1013; 12 M. & W. 761; Pearson v. Lord, 6 Mass. 84; Commonwealth v. Berkshire Life Ins. Co., 98 Mass. 29; Trustees of Methodist Episcopal Church v. Jaques, 3 Johns Ch. (N.Y.) 110; Commonwealth v. Mayor of Lancaster, 5 Watts (Pa.) 156; U.S. v Barnes, 32 S.Ct. 117, 222 U.S. 513, 56 L. Ed. 291.

Expressio unius personæ est exclusion alterius—Co. Litt. 210. *The mention of one person is the exclusion of another.* See Broom, Max. 651.

Expressio facit cessare facitum—*That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant.* 4 Coke, 80; Broom, Max. 651; 5 Bingh. N.C. 185; 6 B. & C. 609; 2 C. & M. 459; 2 E. & B. 856; Andover & Medford Turnpike Corp. v. Hay, 7 Mass. 106; Gage v. Tirrell, 9 Allen (Mass) 306; Weston v. Davis, 24 Me. 374; Scott v. Fields, 7 Watts (Pa.) 361; Galloway v. Holmes, 1 Doug. (Mich.) 330; American Well-Works v. Rivers (C.C.) 36 F. 880.

Black's 4th Edition—Expressio unius est exclusion alterius—*Expression of one thing is the exclusion of another.* Co. Litt. 210a; Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. *Mention of one thing implies exclusion of another.* Fazio v. Pittsburgh Rys. Co., 321 Pa. 7, 182 A. 696, 698; Saslaw v. Weiss, 133 Ohio St. 496, 14 N.E.2d 930, 932. *When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.* Little v. town of Conway, 171 S.C. 27, 170 S.E. 447, 448.

***Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.* People v. one 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P.8410, Cal., 159 P.2d 641, 642.** [In the dictionary it was smaller print!]

Espressio unius personæ est exclusion alterius—Co.Litt. 210. ***The mention of one person is the exclusion of another.*** **See Broom, Max. 651.**

Expressum facit cessare tacitum—*That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant.* 4 Coke, 80; Broom, Max 651; 5 Bingh.N.C. 185; 6 B. & C. 609; 2 C. & M. 459; 2 E. & B. 856; Andover & Medford Turnpike Corp. v. Hay, 7 Mass. 106; Galloway v. Holmes, 1 Doug., Mich., 330.

Where a law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases. **Munro v City of Albuquerque, 48 N.M. 306, 150 P.2d 733, 743.**

Black's 5th Edition—Expressio unius est exclusion alterius—*A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another.* [Same cites as above.]

Expressio unius personæ est exclusion alterius—*The mention of one person is the exclusion of another.*

Expressum facit cessare tacitum—*That which is expressed makes that which is implied to cease [that is, supersedes it, and controls its effect]. Thus, an implied covenant in a deed is in all cases controlled by an express covenant. Where a law sets down plainly its whole meaning the court is prevented from making it mean what the court pleases.* **Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733, 743.**

Black's 6th Edition—Expressio unius est exclusio alterius—*A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another.* [Same cites as above.] ***Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from it operation may be inferred. Under the maxim, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.***

[Our other Latin terms from this edition have the very same definitions.]

The commentaries under the first Latin "maxim" in Black's 7th Edition puts these terms in a less than favorable light and at least suggest that these three terms are not canons or maxims at all. I am basically in agreement with the present day interpretation of these three terms, however, when reading our

suspect terms ***include, includes, including*** there is no other interpretation to have than one that excludes everything not listed as is historically consistent. No, these Latin terms cannot legitimately hold true in all cases, but when it comes to ***include***, it sure is valid without question, in my opinion.

Hopefully you have not fallen asleep by this time. I know it was a bit much, but how often do get the opportunity to read such boring non-fiction? Only when you're reading my books, you say?

As further proof in regards to our word ***include***, let me quickly quote from another dictionary I have around here. From a 1943 edition of Funk & Wagnall's ***The Practical Standard Dictionary of the English Language*** (that I picked up for 50 cents each of two volumes—a steal in my opinion) defines ***Include*** as:

> **1.** ***To comprise as a component part.*** **2.** ***To enclose within; contain.*** **3.** ***To bring to an end; conclude…****includible (a) inclusion (n)* **1.** ***The act of including; restriction.*** **2.** ***That which is included;…****inclusive* **1.** ***Including the things, times, places, limits, or extremes mentioned; as, from A to Z inclusive.*** **2.** ***Including within; surrounding; often with of; as, the list is inclusive of all the items.***

Shouldn't the words ***include, inclusive, inclusion***, since these terms spring from the same root, be defined very similarly? The attorneys of the world have defined our word ***include*** correctly all these many years of written laws, but I would have to conclude that the rest of the English speaking population has not been defining and using that word correctly. We've added a different definition to the original meaning of the word which was to be inclusive.

What I would suggest the reader do is to conduct your own informal survey as you are reading not just legal writings, but any book, magazine, or article; a great one to read is a contest legal disclaimer as usually there are several ***includes***. Pay attention to how the word ***include*** is used by the writer, then when reading legal writings, compare how the term is used. I'm convinced what you will find is that the legal writings only rarely do NOT use the word ***include*** as a word that encloses the items listed.

One other wrinkle in my position was put in by the Texas Legislature back in the 1997 session when they messed with the definition of ***include*** in the Code Construction Act, Chapter 311 of the Texas Government Code. The legislators, in their non-infinite wisdom, decided to say that from then on the words ***include*** and ***including*** could be words of enlargement rather than words of exclusion.

> ***(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.***

There was our Legislature, attempting to totally change all of legal history, at least back into the 1600's with Edward Coke. My opinion is that the liars from the Texas Attorney General's office figured out that a bunch of us Constitutionalists had figured out this term was the key to understanding most laws, and these liars got the Leg to do a pre-emptive strike against us. The Leg's definition of our terms is now a lie,

because as shown above this definition did not show up in legal writings until some 30 years ago in Black's 5th Edition! But, did we really expect anything other than lies from our Legislature?

But, why is this word so important in our study of property taxation? You mean you haven't figured out yet that the administration of the entire property tax system is dependant on that seven letter word? That's right, this entire multi-billion dollar tax all hinges on how that term is defined in the statute originally, and since it never changed until the 1979 Legislative session we have to assume that the meaning that word had in 1876 has to be the same in 1979. Either that or we have a fraud on our hands here because the Texas Legislature would have in actuality changed the law without passing a new act of the Texas Legislature amending or repealing the original act. Can't be lawfully done in Texas! Maybe in New York or some other place, but not Texas as it is forbidden by the Texas Constitution!

Now, back to my survey of which Latin term best fits our property taxation use of the word ***include***? After having read the definition of each of these terms, which do you think best fits? Though each one fits our discussion, my vote is on the ***expressum facit cessare tacitum***. My reasoning hinges on the first phrase of what is to be taxed in the original legislation from March 21, 1876 because that phrase *implies* that all property is to be taxed. But, the next phrase lists or *expresses* property—*firm, company or corporation*—that can be taxed. When these entities were expressed, *that which is implied ceases*! Another proof that the property of natural persons cannot be taxed as it was not mentioned. Don't you just love Latin phrases which can be used against the attorneys who have used these phrases against *pro se's* for so long?

So, where does that leave us? It can only leave us interpreting the word ***include*** as a word that excludes everything not listed with the word, unless a phrase similar to the ones we saw in our sample contract above is used: ***including, but not limited to*** or ***including, without limitation***. Our only other option is the concept that whatever follows the word "***include"*** are the only things to be ***included*** in the category mentioned. Thus in regards to property taxation, the only property lawfully required to be taxed can only be that property owned by fictitious entities, and not natural persons! There can be no other conclusion for this discussion.

Daniel Lee Schinzing
c/o 1248 Willow Wood
Cleburne, Texas 76033-4626
817-558-9811
daniels@cniemail.com

If you have not purchased a copy of the CD-Rom ***THE STATE OF TEXAS, Inc. is a LIAR!!*** you probably need to do so, as it will allow you to view your little corner of the world through different eyes! It is guaranteed to change your life.

Lagniappe:

“It is axiomatic that the statutory definition of the term excludes unstated meaning of that term.” Colatutti v. Franklin, 439 U.S. 379, 392, and n. 10 (1979)

As judges, it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it.

The first step is "to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” Barnhart v. Sigmon Coal Co., Inc., 534 U.S. at 450 (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997)). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" Id. (quoting Robinson v. Shell Oil Co., 519 U.S. at 340). in interpreting the plain meaning of the statute, it is the court's duty, if possible, to give meaning to every clause and word of the statute. *See*, TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (“It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'") (quoting Duncan v. Walker, 533 U.S. at 173); Williams v. Taylor, 529 U S 362, 404 (2000) (describing as a "cardinal principle of statutory construction" the rule that every clause and word of a statute must be given effect if possible). Similarly, the court must avoid an interpretation of a clause or word which renders other provisions of the statute inconsistent, meaningless, or superfluous. *See*, Duncan v. Walker, 533 U.S. at 167 (noting that courts should not treat statutory terms as "surplusage"). "[W]hen two statutes are capable of co-existence, it is the duty of the courts . . . to regard each as effective." Radzanower v. Touche Ross & Co., 426 U.S. 148, 155 (1976); *see also*, Hanlin v. United States, 214 F.3d 1319, 1321, reh'q denied (Fed. Cir. 2000).

A court must not stray from the statutory definition of a term. *See*, Whitfield v. United States, 125 S. Ct. 687, 691 (2005) (It is a "settled principle of statutory construction that, absent contrary indications, Congress intends to adopt the common law definition of statutory terms.") (quoting United States v. Shabani, 513 U.S. 10, 13-14 (1994)); *see also*, Stenberg v. Carhart, 530 U.S. 914.942 (2000); Meese v. Keene, 481 U. S. 465, 484-85 (1987); Colatutti v. Franklin, 439 U.S. 379, 392, and n. 10 (1979). "It is axiomatic that the statutory definition of the term excludes unstated meanings of that term." Meese v. Keene, 481 U.S. at 484-85. As the United States Court of Appeals for the Federal Circuit stated in AKSteel Corporation:

> When Congress makes such a clear statement as to how categories are to be defined and distinguished, neither the agency nor the courts are permitted to substitute their own definition for that of Congress, regardless of how close the substitute definition may come to achieving the same result as the statutory definition, or perhaps a result that is arguably better.

AK Steel Corp. v. United States, 226 F.3d 1361, 1372 (Fed. Cir. 2000). When a word is undefined, courts regularly give that term its ordinary meaning. *See*, Whitfield v. United States, 125 S. Ct. at 691 (2005); Asgrow Seed Co. v. Winterboer, 512 U.U. 179, 187 (1995); AK Steel Corp, supra, at 1371.
