Argumentation in Statutory Interpretation
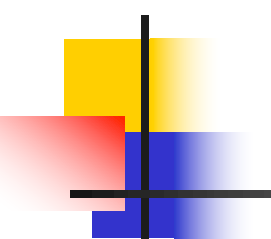
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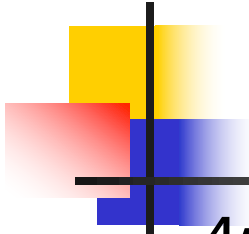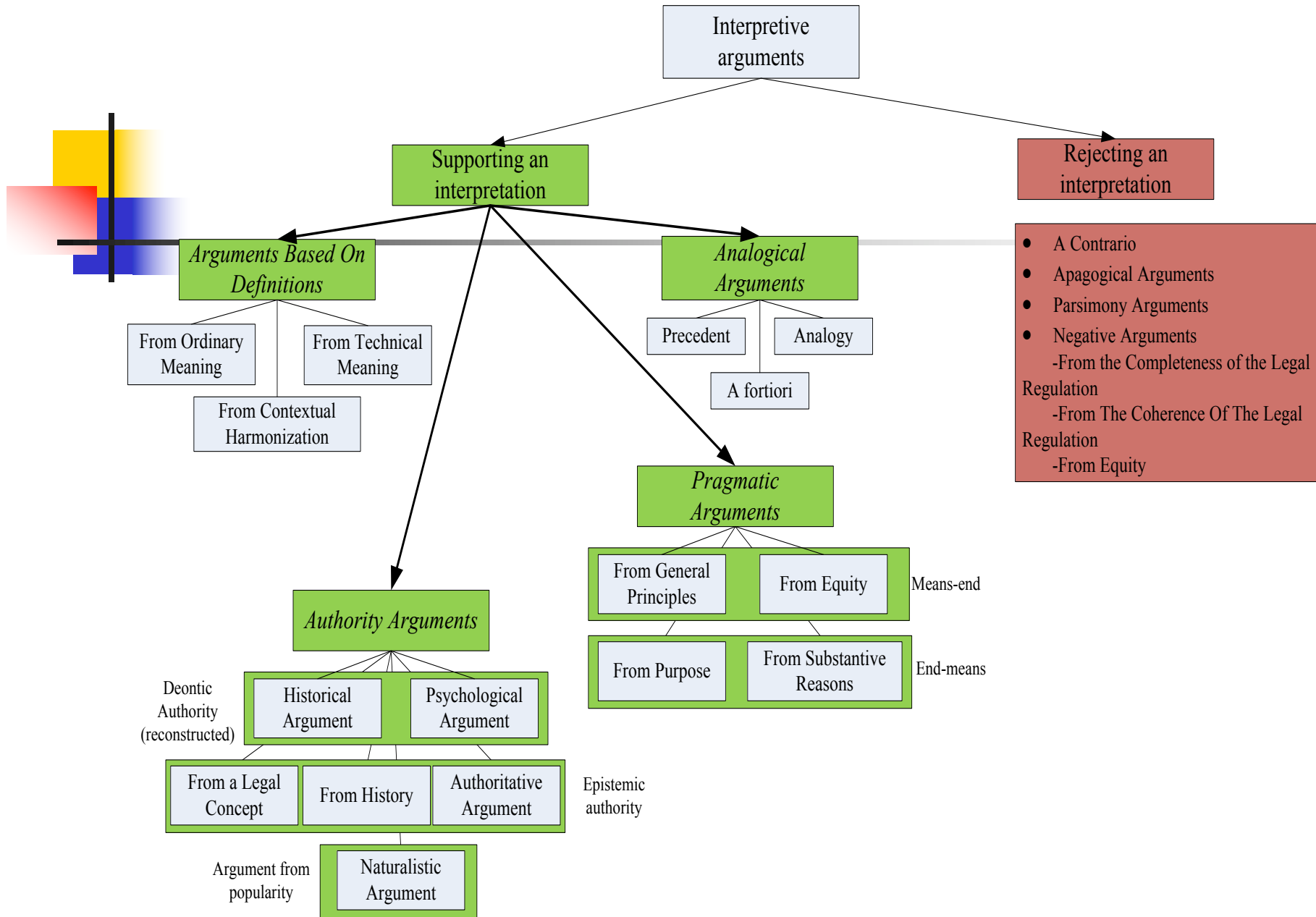
Guangzhou, China, April 2018

Kinds of interpretive arguments

- *Argument from ordinary meaning* requires that a term should be interpreted according to the meaning that a native speaker would ascribe to it.

- *Argument from technical meaning* requires that a term having a technical meaning and occurring in a technical context should be interpreted in its technical meaning.

- *Argument from contextual harmonization* requires that a term included in a statute or set of statutes should be interpreted in line with whole statute or set.

- *Argument from precedent* requires that a term should be interpreted in a way that fits previous judicial interpretations.

- *Argument from statutory analogy* requires that a term should be interpreted in a way that preserves the similarity of meaning with similar provisions of other statutes.

- *Argument from a legal concept* requires that a term should be interpreted in line with the way it has been previously recognized and doctrinally elaborated in law.

- *Argument from general principles* requires that a term should be interpreted in a way that is most in conformity with general legal principles already established.

- *Argument from history* requires that a term should be interpreted in line with the historically evolved understanding of it.

- *Argument from purpose* requires that a term should be interpreted in a way that fits a purpose that can be ascribed to the statutory provision, or whole statute, in which the term occurs.

- *Argument from substantive reasons* requires that a term should be interpreted in line with a goal that is fundamentally important to the legal order.

- *Argument from intention* requires that a term should be interpreted in line with the intention of the legislative authority.

(MacCormick and Summers 1991)

Interpretive arguments

Supporting an interpretation

Arguments Based On Definitions

- From Ordinary Meaning
- From Technical Meaning
- From Contextual Harmonization

Analogical Arguments

- Precedent
- Analogy
- A fortiori

Pragmatic Arguments

- From General Principles
- From Equity — Means-end
- From Purpose
- From Substantive Reasons — End-means

Authority Arguments

Deontic Authority (reconstructed)

- Historical Argument
- Psychological Argument
- From a Legal Concept
- From History
- Authoritative Argument — Epistemic authority
- Naturalistic Argument

Argument from popularity

Rejecting an interpretation

- A Contrario
- Apagogical Arguments
- Parsimony Arguments
- Negative Arguments
  -From the Completeness of the Legal Regulation
  -From The Coherence Of The Legal Regulation
  -From Equity

A pattern for interpretive arguments

- **Major premise (interpretive warrant):**
  - IF interpreting an expression in document in a certain way satisfies the condition of CANON,
    THEN the expression should/ should not be interpreted in that way.

- **Minor premise:**
  - interpreting this expression in this document in a this way satisfies the condition of CANON.

- **Conclusions:**
  - this expression in this document indeed should / should not be interpreted in that way

The problem of the interpretation of "loss"

- An employee dismissal case (from MacCormick)
  - An employee claimed to have been unfairly dismissed, and as a result to have suffered humiliation, injury to feelings and distress (but no money loss)
  - The Employment law says: "If an employee is unfairly dismissed, the employee has the right to compensation for their loss"

Interpretive issue. Should "loss" include:

- Only money loss? If so no compensation!
- Also emotional loss (injury to feelings)?If so, compensation!

Affirmative use of a canon

Major Premise:	OL: IF the interpretation of expression E in document D as meaning M fits with ordinary language , THEN E in D should be interpreted as M.
Minor premise:	The interpretation of "*loss*" in Employment Relations Act as *MoneyLoss* fits with ordinary language
Conclusion	"loss" in the Employment Relations Act should be interpreted as *MoneyLoss*.

Negative use of a canons

Major Premise:	NonRedundancy: IF the interpretation of expression E in document D as meaning M does not fit with , THEN E in D should NOT be interpreted as M.
Minor premise:	The interpretation of "*loss*" in Employment Relations Act as *MoneyLoss* would make the Act (the provision containing the act) redundant
Conclusion	"loss" in the Employment Relations Act should NOT be interpreted as *MoneyLoss*.

Inclusionary use of a canon

Major Premise:	TL: IF the interpretation of expression E in document D as including set S fits with technical language, then E in D should be interpreted as including S.
Minor Premise:	The interpretation of "loss" in the Employment Relations as including *InjuryToFeelings* fits with technical language.
Conclusion	"loss" in Employment Relations Act should be interpreted as including *InjuryToFeelings*

Inclusionary a-contrario use of a canon

Major Premise:	**TL: IF the interpretation of expression _E_ in document _D_ as excluding set _S_ conflicts with technical language, then E in _D_ should be interpreted as including S.**
Minor Premise:	The interpretation of "loss" in the Employment Relations as excluding _InjuryToFeelings_ conflicts with technical language,
Conclusion	"loss" in Employment Relations Act should be interpreted as including _InjuryToFeelings_

Exclusionary use of a canon

Major Premise:	OL: IF the interpretation of expression *E* in document *D* as excluding set *S* fits with ordinary language, , then *E* in *D* should be interpreted as excluding S.
Minor Premise:	The interpretation of "loss" in the Employment Relations as excluding *InjuryToFeelings* fits with ordinary language.
Conclusion	"loss" in Employment Relations Act should be interpreted as excluding *InjuryToFeelings*

Exclusionary a-contrario use of a canon

Major Premise:	**IF the interpretation of _E_ in _D_ as including S conflicts with ordinary language, THEN _E_ in _D_ should be interpreted as excluding _S_.**
Minor Premise:	The interpretation of "loss" in the Employment Relations Act as including _InjuryToFeelings_ conflicts with ordinary language.
Conclusion	"loss" in Employment Relations Act should be interpreted as excluding _InjuryToFeelings_.

A logical model

- Conceptual are expressed with description logic symbols: $\equiv$ for conceptual equivalence, $\not\equiv$ for difference, $\sqsupseteq$ for inclusion
  - $BestInt(E, D) \equiv M$: the best interpretation of expression E in document D (the interpretation that should be adopted) is represented by meaning M.
  - $BestInt(E, D) \not\equiv M$: the best interpretation of expression E in document D differs from meaning M.
  - $BestInt(E, D) \sqsupseteq$ the best interpretation of expression E in document D includes class M.
  - $BestInt(E, D) \not\sqsupseteq M$: the best interpretation of expression E in document D does not include $class\ M$.

Affirmative use of the ordinary language canon

Ordinary language (affirmative):

- IF expression E occurs in document D, AND the interpretation of *E* in D as *M* fits *ordinary language*
THEN the best interpretation of *E* in D is M $(BestInt(E, D) \equiv M)$

Negative use of the ordinary language canon

Ordinary language (negative):

- IF expression E occurs in document D, AND
  the interpretation of *E* in D as *M* does NOT
  fit *ordinary language*
  THEN the best interpretation of *E* in D is NOT
  M ($BestInt(E, D) \equiv M$)

Inclusionary a contrario use of the ordinary language canon

Ordinary language:

- IF expression E occurs in document D, the interpretation of E in D as excluding class S conflicts with ordinary language

- THEN the best interpretation of E in D includes M ($BestInt(E, D) \sqsupseteq M$)

Interpretive priority:

Priority for ordinary language in criminal law:

IF an expression *E* in document *D* concerns Criminal law
THEN the ordinary language canon prevails over the technical language canon
$OL(E, D, M_1) \succ TL(E, D, M_2)$

A problem in Italian law

- The Italian civil code at Article 2043 says "if a person causes a damage, then the person has to compensate the loss"

- What does "loss" mean in the Italian civil code
  - Only money loss (pecuniary loss)
  - Also damage to health

- John's health was damaged by an accident caused by Tom, but John lost no money. Should John be compensated?

Two competing arguments

- According to the historical canon, the expression "loss" in the Italian civil code has to be interpreted as "money loss".
  - Following this interpretation, no compensation for John!
- According to the substantive reasons at stake (protection of health, security), the expression "loss" in the Italian civil code has to be interpreted as including damage to health
  - Following this interpretation, compensation for John!

Interpretive argument

$$Argument\ A_1$$

1. expression "Loss" occurs in document Art2043ICC
2. the interpretation of "Loss" in Art2043ICC as *MoneyLoss* fits legal history
3. *LH*: IF expression E occurs in document D, the interpretation of E in D as *M* fits legal history THEN the best interpretation of E in D is *M*

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the best interpretation of "Loss" in Art2043ICCis *MoneyLoss*

Interpretive counterargument

$$Argument\ A_2$$

1. expression "Loss" occurs in document Art2043ICC
2. the interpretation of "Loss" in Art2043ICC as including *DamageToHealth* contributes to substantive reasons
3. *SR*: IF expression E occurs in document D,
   the interpretation of E in D as including S contributes to substantive reasons
   THEN the best interpretation of E in D includes S

the best interpretation of "Loss" in Art2043ICC includes *DamageToHealth*

- Given that *MoneyLoss* $\not\supseteq$ *DamageToHealth* the two argument are in conflict

Interpretive conflict

The best interpretation of Loss in Art2043ICC) is *MoneyLoss* ⟷ The best interpretation of Loss in Art2043ICC) includes *DamageToHealth*

D

"Loss" occurs in document Art2043ICC

LH: IF interpreting E in D as M fits legal history THEN the best interpretation of E in D is M

interpreting "Loss" in Art2043ICC as *MoneyLoss* fits legal history

D

"Loss" occurs in document Art2043ICC

ISR: IF ìnterpreting E in D as including M fits substantive reasons THEN the best inerpretation of E in D is M

interpreting "Loss" in Art2043ICC as including *DamageToHealth* fits substantive reasons (protection of health, solidarity, prevention, etc.)
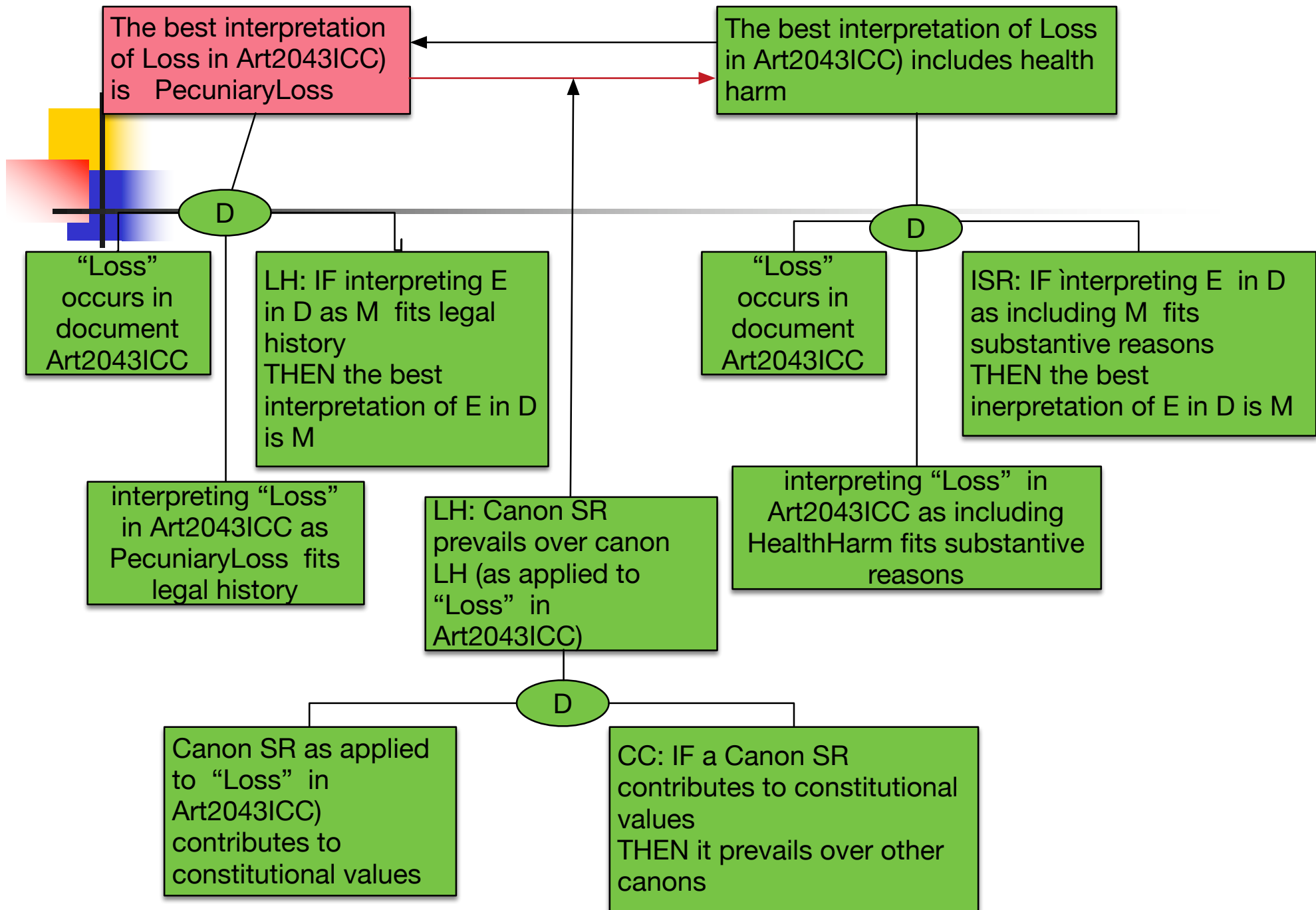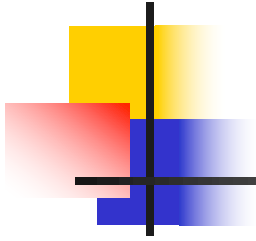
Interpretation priority arguments

- The interpretation of "loss" in the Italian civil code as health loss has to be preferred since it contributes to constitutional values (health, solidarity, etc.)

The best interpretation of Loss in Art2043ICC) is PecuniaryLoss

The best interpretation of Loss in Art2043ICC) includes health harm

D

"Loss" occurs in document Art2043ICC

LH: IF interpreting E in D as M fits legal history THEN the best interpretation of E in D is M

"Loss" occurs in document Art2043ICC

ISR: IF ìnterpreting E in D as including M fits substantive reasons THEN the best inerpretation of E in D is M

interpreting "Loss" in Art2043ICC as PecuniaryLoss fits legal history

LH: Canon SR prevails over canon LH (as applied to "Loss" in Art2043ICC)

interpreting "Loss" in Art2043ICC as including HealthHarm fits substantive reasons

D

Canon SR as applied to "Loss" in Art2043ICC) contributes to constitutional values

CC: IF a Canon SR contributes to constitutional values THEN it prevails over other canons

Thanks for your attention!

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Conclusion

Thanks for your attention!

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