

Why Taking A Doughnut, A Danish, and A Bagel Might Or Might Not Invite Gluttony - How Should The List Of Exceptions In Section 25103(e) Be Understood?

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Yesterday's [post](#) concerned the exemption from the qualification requirement of the California Corporate Securities Law for most changes in the rights, preferences, privileges, or restrictions of outstanding securities found in Corporations Code Section 25103(e). The statute includes a numbered list of 13 exceptions to the exemption if they materially and adversely affect any class of equity securities. This numbered list is linked by the conjunction "and". Because the word "and" is normally considered to be conjunctive, one could read the statute to provide an exception only when all thirteen exceptions are present.

The word "and", however, is sometimes considered to be disjunctive. As Vice Chancellor Sam Glasscock III observed in *Weinberg v. Waystar, Inc.*, 2022 WL 2452141 (Del. Ch. July 6, 2022), *judgment entered*, (Del. Ch. 2022), and *aff'd*, 294 A.3d 1039 (Del. 2023), the phrase "'You can take a doughnut, a danish, and a bagel' invites, but does not mandate, gluttony". In other words, you may take all three, a combination of any two (e.g., a danish and a bagel), or just one of the three. By my count this sentence permits seven possible takings as follows if "and" is not interpreted as strictly conjunctive:

Doughnut, Danish and Bagel
Doughnut and Danish
Doughnut and Bagel
Danish and Bagel
Doughnut
Danish
Bagel

Weinberg involved a dispute over right to purchase that was triggered "during the six (6) month period following (x) the (i) the Termination of such Participant's employment with the Service Recipient for any reason . . . and (y) a Restrictive Covenant Breach". The company argued that it could exercise the right "Termination . . . for any reason," *and also* during the six-month period following a "Restrictive Covenant Breach." The employee argued that the company's interpretation would transform the conjunctive "and" into a disjunctive "or." The Vice Chancellor agreed with the company's "plain language" interpretation of the call right provision.

For more on the ambiguity of "and", see ["Person And Its Affiliates" - Can "And" Be A Disjunctive Conjunction?](#) and Kenneth A. Adams and Alan S. Kaye, Revisiting the Ambiguity of "And" and "Or" in Legal Drafting, 80 St. John's L. Rev. 1167 (2006).

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