

Discuss the strengths
and weaknesses of
the mischief rule
essay



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A strength of the mischief rule is that it helps to avoid absurd or harsh results. This is good because someone can be charged with something but if the literal rule was applied they could get away, but if the mischief rule is applied then the judge can change the meaning of the word and they wouldn't get away with it. This happened in *Smith v Hughes* when prostitutes were soliciting men from a balcony but the act said they couldn't do it from the street.

The judge changed the law so they prosecute them. Another strength of the mischief rule is that it is flexible because judges can decide what Parliament intended. A case which uses the mischief rule and shows that it has flexibility is *Royal College of Nursing V DHSS*. The wording of the Abortion Act stated that pregnancies must be terminated by a medical professional, which didn't include nurses, but nowadays with modern technology nurses can actually do one of the processes in an abortion.

But the mischief rule does come with its disadvantages. A disadvantage of the mischief rule is that it gives too much power to judges because judges shouldn't make law, it is up to Parliament. A case which uses the mischief rule and shows that judges have too much power because they are making law is *Smith V Hughes*. Under the street offences act it was an offence to solicit in the street or a public place. So prostitutes solicited men from their balconies.

But they judge changed the act so that the prostitute could be prosecuted - This shows their power. The final disadvantage is that the mischief rule can be difficult to find in an case. How can judges decide what parliament

intended when they weren't present when the Act was made. This means that the judges won't know what parliament intended when they interrupted the act so they have to take a guess and interpret the act themselves and so this could lead to them interpreting the act incorrectly.