

# Observation of court visit law general essay

Law



The English legal system is based on the adversarial trial system. In such a system, the parties are represented by barristers who advocate the cause of their clients in an aggressive, opposing manner. The English criminal trial is the epitome of a no-holds barred battle fought out in the courtroom before a neutral arbiter, the judge who decides on questions of law. Another feature of this trial system is the presence of the jury, a panel of lay members who will decide the guilt of the defendant[1]. The prosecution representing the Crown will bring a case against the defendant, bearing the onerous burden of proof to establish the defendant's guilt beyond a reasonable doubt. The defendant, on the contrary, is presumed to be innocent[2] until proven guilty[3]. This model is distinct from the inquisitorial system practiced in most European continental countries such as France and Germany. In an inquisitorial system, the criminal trial resembles an inquiry. In stark contrast with the English adversarial system, the civil law jurisdictions employ a less than neutral judge who assumes an active role in determining the guilt of the accused. Lawyers are less of an advocate. Instead, they are primarily responsible for the proper submission of court and other legal documents. As such, English barristers are primarily trained in courtroom advocacy skills whilst civil lawyers receive less emphasis on advocacy during their legal training[4]. In view of this background, I would not discuss a case which I had the opportunity of hearing first-hand at the Old Bailey, London's Central Criminal Court. The Old Bailey is a Crown Court located at the heart of the City of London. Heading down the historic aisle of Warwick passage, I was soon seated at the public gallery of a joint trial of two accused, Bora and Dennis. The prosecution's case was that the defendants handled stolen goods pursuant to section 22(1) of the Theft Act 1968. The parties were <https://assignbuster.com/observation-of-court-visit-law-general-essay/>

represented by their own counsel and were found guilty. The defendants are brothers who run a small family business of selling watches. However, Bora had control over the business and was responsible for soliciting business as he organized frequent trips to Switzerland. Dennis, on the contrary played the role of the shopkeeper whilst his brother is away. The brothers pleaded their innocence, insisting that they do not have such knowledge that the watches they sold were stolen. However, in light of the clear evidence presented by the police officer who conducted the raids on the business premises of the brothers a few times in the space of 1 month and five stolen Rolex watches found, the jury returned a guilty verdict. The Crown Court judge, Mr. Recorder Levett, after considering the aggravating factors and mitigating factors in the case passed a custodial sentence of 3 years imprisonment on Bora and 2 years imprisonment on Dennis. However, in view of the fact that the other employees of the business were innocent and imprisonment of both brothers with immediate effect will have an adverse effect on the employees, the judge suspended the sentence for 2 years and warned the brothers not to commit any more crimes within this operational period. Otherwise, the custodial sentence will take effect with immediately. The judge also imposed a period of unpaid community service on the brothers to remind themselves of their duty to the general public not to engage in such acts which encourages theft. From my observation, the atmosphere during the criminal trial was solemn and during cross-examination, the atmosphere became tense. The English criminal trial is in essence a forum. This is because there is a lot of discussion between the judge and the barristers and a judge relies heavily on the assistance of counsel in reaching his conclusion on the issues. One can say that the judge

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consults the barristers before deciding on a particular issue in the case. As a result, the barristers are heavily engaged with the judge on the issues in the case. A crucial observation which I made during the trial of Bora and Dennis was the nature of advocacy. It is very distinct from the aggressive debates one experience at high school whereby there is a lot of sarcasm and wit involved. Insofar as courtroom advocacy is concerned, the atmosphere is controlled and more civilized. For example, a barrister and other characters in a courtroom trial always address the judge with " My Lord...". Courtroom etiquette and protocol demands that barristers conduct themselves with the utmost polity and respect when answering the legal challenges posed not only by the judge, but also from their respective opponents and witnesses. There are times of course whereby barristers engage in a more aggressive stance, employing a higher tone to emphasize a point or challenge a witness' evidence. However, this is done at very subtle in a fully-controlled manner. I can therefore conclude that advocacy has a lot of elegance to it and a skillful barrister knows the timing as to when he should speak with more aggression and when to tone down in assisting the judge reach a correct decision. After all, barristers are officers of the court and their duty is first and foremost owed to the court in assisting the court achieve justice on the set of facts. A striking feature during the criminal trial of Bora and Dennis is the dynamic relationship between the judge and the jury. The jury constantly receives directions and explanations from the judge regarding the legal issues involved in the case. It is almost as if the jury depends on the judge for instructions and directions. In most cases, some of the jurors appear boggled and could not grasp the issues involved and during some intervals of the trial, can be seen to take down notes furiously. This spectacle amuses me

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but I realise that this confirms partly the criticisms of the institution of the jury supporting the case for its abolishment. Although the time for their deliberation was not too long, it did have the effect of prolonging the trial and caused an adjournment. With the facts and reasoning of the decision above explored, I would seek to offer a brief summary of the role of the relevant institutions and legal actors involved in a criminal trial. Firstly, the judge is the master of the trial and he acts in an impartial manner deciding the questions of law raised. One of the key principles of the English legal system is the independence of the judiciary[5]. Although in a jury trial, the judge will relinquish the role of deciding the guilt of the accused to the jury, he plays a crucial role in directing the jury to the legal issues concerned and will play a residual role in sentencing when a guilty verdict is returned. After all, it is his or her courtroom and the judge maintains order in the trial, decide the questions of law and clarify the questions of facts which are raised. Secondly, in a criminal trial, there is the institution of the jury which is a panel consisting of lay members. Jurors are selected randomly from a list of eligible persons and they will then be summoned to do their service. The function of the jury in a criminal trial is to decide the guilt of the accused and return a verdict at the conclusion of the trial. Whether there is a trial by jury or otherwise will depend on the classification of the offence. In summary offences, the judge will hear the case alone whilst in indictable offences which usually consist of the most serious crimes, trial by jury is almost always guaranteed[6]. Although there are not many jury trials today due to the reforms, the institution of the jury represents the most visible icon of English justice[7]. Notwithstanding the romantic sentiments associated with jury trials, it is the vital piece of connection between the law which have <https://assignbuster.com/observation-of-court-visit-law-general-essay/>

always perceived to belong to the domain of the legal elite and the lay public whose conception of justice is real but is not invested with the requisite degree of legal knowledge. Yet, the true benchmark of justice is such that ' justice must not only be done, but should manifestly and undoubtedly seem to be done'[8]. During the trial of Bora and Dennis, the jury was responsible for the determination of the guilt of the accused and for the most part, they listened attentively to the evidences presented by the witnesses especially during cross-examination. When the judges give direction, they took down notes for deliberation. Thirdly, the barristers in the case represent the core of the legal profession involved in the criminal case. Barristers are trained in the art of advocacy and are largely responsible for advocating the points of law and present the facts to the court. They play a starring role and in a criminal trial, it is the prosecution who will set the trial running in its motion by presenting the case against the accused. At the end of the prosecution's case, the defence will have an option either to plead guilty or make a submission of no case to answer. If the latter course is chosen, the judge will then have to decide if there is indeed a case to answer. If the judge decides so, the defence will be heard[9]. Fourthly, supporting the judge are the legal clerks, the court interpreters and security personnel. They are the unsung heroes of the criminal trial. Although they do not play an overt role in the outcome of the trial, they are very well-versed with the conduct of the trial and are often the points of contact the judge reaches for whenever he needs a document or when he schedules the next hearing date. Last but not least, the public and lay people such as me also play a role in the criminal trial. The reason why criminal trials are usually heard in open courts is to encourage justice to be seen to be done. Although largely symbolic, the representation

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of the trial to the public demonstrates the fundamental tenets of a fair trial. It is to demonstrate the transparency in the criminal trial and to show that there are no clandestine elements to be hidden. In conclusion, based on the foregoing discussion, it is clear that there are many legal actors who play a pivotal role in the administration of criminal justice in England and Wales. Besides being steeped in historic tradition, the Crown Court is main first instance court of the criminal justice system dealing with a diverse variety of criminal cases, ranging from petty theft to complex commercial fraud cases[10]. It is also the best place for an interested legal scholar to survey the full spectacle of English justice and prosecution tradition. I, for one, has experienced first-hand the English adversarial trial system at the Old Bailey, the Central Criminal Court in London.

## **Bibliography**

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In this essay, I will examine important judicial role in statutory interpretation. Judicial independence is a key element of a democratic government, but it is certainly true to say that the independence enjoyed by judges is not wholly unfettered[11]. British judges lacks any form of democratic mandate-British

judges are appointed not elected! Due to this, they are not equipped with the authority to differ from or countermand the express intention of Parliament, which is democratically elected and governing body of the UK. In simple terms, judges do not have power to override parliamentary will as set out in statute. Thus, judicial independence is restricted when it comes to statutory interpretation[12]. There are various different rules of interpretation[13] that guide judges in their role in this respect[14]. However, one canon stands head and shoulders above the others and it is applied on a daily basis in British courts, while the other canons are only rarely utilised. The Literal Rule is the primary guideline applicable to statutory interpretation and is explored in critical detail in the following section[15].

### **The Literal Rule[16]**

This is the first and main rule of interpretation and dictates that judges must be guided by the actual words employed in a piece of law rather than try to draw inferences, fill in gaps or second-guess its meaning themselves[17].

The Literal Rule requires that judges must give the words used in a statute their ordinary, everyday (literal) meaning, and that they must do so regardless of whether this seems to create an unjust, undesirable or illogical outcome: *Whiteley v Chappell*[18] and *Inland Revenue Commissioners v Hinchy*[19]. In the case of *IRC v Hinchy*, Lord Reid said " what we must look for is the intention of Parliament, and I also find it difficult to believe that the Parliament ever really intended the consequences which flow from the appellants' contention. But we can only take the intention of the Parliament from the words which they have used in the Act"[20] Therefore the Literal Rule requires strict, blinkered adherence to the actual express words used in



a statute and that its interpretation must not vary from its exact, literal construction[21]. The Sussex Peerage Case[22]held that judges must follow the ordinary meaning of statutory words and not be swayed by any factors or considerations external to the statute itself. Fisher v Bell[23], stands as a graphic example. Here, the defendant displayed flick knives in his shop window which was an offence to offer such knives under 'The Restriction of Offensive Weapons Act 1959' which was contradicting to the contract law principals of invitation to treat. However, the court applied the literal rule and ignored the legislation-the aim of the parliament[24]Nevertheless, the courts realised that the application of the literal rule will cause absurdity in some cases especially when the drafters of the legislation cannot foresee such circumstances. Therefore, to accord with common sense, the judges occasionally disapply the literal rule. R v MaGinnis[25]. Another good example is R v Goodwin[26]In this case a jet-ski rider faced prosecution under the Merchant Shipping Act 1995 after severely injuring another jet-ski rider. The Act in question stipulated that it is an offence for a ship's master to commit an act that inflicts injury on another person. Finding itself bound by the Literal Rule, the Court of Appeal resolved to quash the conviction that had been obtained, ruling that a jet-ski could not be defined as a 'ship'. It was held that a jet-ski was a leisure device rather than a vessel utilised in 'sea-going navigation' - an essential element in the definition of 'ship' under the statute[27].

## **The Golden Rule**

Slapper and Kelly assert[28]that this canon of interpretation should properly be considered a purposive extension of the Literal Rule. If the Literal rule

produces an absurd result, which parliament could not have intended, then judges can substitute a reasonable meaning in the light of the statute as a whole[29]as can be seen in Keene v Muncaster[30]. Therefore, in this manner, the literal rule is the default rule with respect to statutory interpretation but whenever it produces absurd results, the golden rule will be applied to override the literal rule. Adler v George[31]provides another illustration. This case concerns a trespass inside an Royal Air Force Base (the Official Secrets Act designated such installations as ' prohibited places'). A was thereafter prosecuted for an offence under s. 3 of the Official Secrets Act requiring that he was ' in the vicinity' of such a location. A asserted that he was not in its ' vicinity', but actually within it. If the Literal Rule had been strictly applied A's defence might well have succeeded. However, the Golden Rule was applied instead, lending the phrase ' in the vicinity of 'a wider and more purposive definition along the lines that it should be interpreted as meaning near, at or actually within a specified location. Accordingly A's defence failed and the OSA offence was given a more effective practical scope given that the aims behind the Act were to protect such installations. Re Sigsworth[32]and R v Allen[33]provide other examples of golden rule in operation. From the above examples, it is clear that the golden rule strikes a neat balance between the need to preserve the democratic role of the judges from refraining to make law and also the practical need to adjudicate and interpret the law to a set of facts.

## **The Mischief Rule**

This can be conceptualised as an off-shoot or variant of the Golden Rule. The Mischief Rule[34]provides that in situations where statute is clearly designed

to address a specific type of conduct or ' mischief' (and the common law is insufficient on the point), then an interpretation that guarantees that the mischief is properly dealt with is permissible[35]. The classic authority is provided by Heydon's Case[36]whereby the court sets out the criteria. Firstly, the court will consider the pre-existing before the statute and then identify the mischief which the statute is designed to address. The court will then consider the remedy Parliament intended and judges will interpret the statute to address the mischief. Smith v Hughes[37]offers a famous illustration of the Mischief Rule in application. This case saw entrepreneurially-spirited prostitutes concoct a scheme to avoid prosecution under the Street Offences Act 1959. The 1959 Act prohibited prostitutes from soliciting clients ' in the street'. The prostitutes in question decided to rent rooms with balconies overlooking crowded streets and to call down to people walking below, offering them their services. Obviously, blind adherence to the Literal Rule would have meant that no prosecution could be achieved because the prostitutes were, literally, no longer ' in the street'. Similarly the Golden Rule would have failed to secure prosecutions because no logical degree of purposive interpretative intent could infer that a building balcony is equivalent to a street.

## **Conclusion**

From the foregoing discussion, it is an oversimplification to state that the role of the judiciary ' is simply to interpret statute', as the title to this work seeks to assert. Nonetheless, it can be concluded that the primary role of the judiciary is one of controlled, literal interpretation - and although the Literal Rule is the chief precept, judges do command a degree of flexibility in

applying the canons of interpretation. However, inherent in this interpretative exercise lays a host of fine political and constitutional implications. Whilst a degree of creativity is necessary to avoid absurd results, the common law declaratory theory states that judges do not make law but merely declare the law as it stands. As Lord Simonds famously reminded in *Magor and St. Mellons R. D. C. v Newport Corporation*[38], judges should not usurp Parliament's sole preserve in law-making under the thin guise of interpretation. However, this proves to be a tricky issue as Britain's membership[39]of the European Union[40]and the enactment of the Human Rights Act 1998[41]has imposed imperative duties on the judge to apply a purposive interpretation[42]. The HRA 1998 now requires the courts to take into account all decisions, and rulings emanating from the ECHR when making rulings on human rights issues. These new developments inarguably loosens the grip of the Literal Rule on statutory interpretation, which requires courts to follow only the actual words of a statute (and not external factors such as ECHR output)[43]. In the final note, judicial independence is, generally speaking, impacted by the requirement to abide by strictly literal statutory interpretation, but this restriction has for many generations been softened by the secondary canons of interpretation and has been materially loosened in more recent times as a consequence of the intervention of EU and human rights law in their respective fields of application.

### **CASE TABLE (chronological)**

Heydon's Case (1584)Sussex Peerage Case (1844)Whiteley v Chappell (1868)Re Sigsworth (1935)Corkery v Carpenter (1950)Gardiner v Sevenoaks

RDC (1950)St. Mellons R. D. C. v Newport Corporation (1952)Inland Revenue  
Commissioners v Hinchy [1960]R v Allen [1960]Smith v Hughes [1960]Fisher  
v Bell [1961]Adler v George [1964]Keene v Muncaster [1980]R v MaGinnis  
(1987)R v Goodwin (2005)