

# Mischief rule essay



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The Mischief Rule is a rule of construction that judges can apply in statutory interpretation in order to discover Parliament's intention. In applying the rule, the court is essentially asking the question: what was the " mischief" that the previous law did not cover, which Parliament was seeking to remedy when it passed the law now being reviewed by the court? The Mischief Rule is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and, strictly speaking, only when the statute was passed to remedy a defect in the common law.

Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. It can be argued that this undermines Parliament's supremacy and is undemocratic as it takes law-making decisions away from the legislature. The way in which the mischief rule can produce more sensible outcomes than those that would result if the literal rule were applied is illustrated by the ruling in *Smith v Hughes* [1960] 2 All E.

R. 859. Under the Street Offences Act [1959], it was a crime for prostitutes to " loiter or solicit in the street for the purposes of prostitution". The defendants were calling to men in the street from balconies and tapping on windows. They claimed they were not guilty as they were not in the " street. " The judge applied the mischief rule to come to the conclusion that they were guilty as the intention of the Act was to cover the mischief of harassment from prostitutes.