

Statutory interpretation

Law



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STATUTORY INTERPRETATION What is the aim and why is it necessary?

Statutory Interpretation is there to help judges with general words

Parliament has passed, as some words can have different meanings. * Words

very often have more than one meaning i. e. they can be ambiguous * A

broad term may be used in a statute which can give rise to confusion and

uncertainty * There may be errors or omissions when the statute is drafted *

New developments in society can make the words used in a statute out of

date and they may no longer cover the current situation rule courts will give

words their plain meaning, even if the result is not very sensible. * Words are

an imperfect means of communication Literal Rule * Under this rule words

are given plain and ordinary meaning. * The rule developed in the early 19th

century and has been the main rule applied ever since then. * It has been

used in many cases even though the result has made nonsense of the law. *

This is illustrated in *Whiteley v Chapell* (1868); where the defendant was

charged under a section which made it an offence to impersonate ' any

personnel entitled to vote'. The defendant pretended to be a person whose

name was on the voters' list but had died. * The court held that the

defendant was not guilty since a dead person is not, in literal meaning of the

words; ' entitled to vote'. * Other cases include *Cheeseman* and *Fisher v Bell*

Golden Rule * Provides that if in exceptional circumstances the literal rule

produces a wholly unjust result, the meaning of words may be altered to

avoid that result. This rule has been used in two sorts of cases: * * The

Narrow Application: Where words are capable of having more than one

meaning the meaning which is least absurd should be used *R v Allen* (1872)

Where the words of statutes are ambiguous and it is very hard to see which

meaning is appropriate. * * The Wider Application : This is used to avoid a

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repugnant result Where words have only one meaning but to give them that meaning would be wholly unacceptable. *Re Sigsworth* (1935) Mischief Rule This rule was first set out in *Heydon's Case* (1584). It gives judges considerably more discretion than the other two rules. In its modern form the rule has 4 stages: 1. What was the common law before the making of the act? 2. What was the mischief and defect for which the common law did not provide? 3. What was the remedy the parliament hath resolved and appointed to cure the disease of the commonwealth? 4. The true reason of the remedy. Then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy. The role of the judges is then to give words a construction that would deal with the problem and implement the remedy. Case: *Smith v Hughes* (1960) to interdict section (h) of the Street Offences Act 1959. Purposive Rule * This is more concerned with the spirit and the intended purpose of legislation than the precise meaning of the language used in legislation, and allows judges to go further than the mischief rule. * The champion of this approach, Lord Deane stated in the case of *Magor and St Mellons v Newport Corporation* (1950), " We sit here to find out the intention of Parliament and carry it out. We do this by filling the gaps and making sense of the Act". Cases: *R v Registrar General, ex parte Smith* (1990); *R (Quintavalle) v Secretary of State* (2003). The advantages and disadvantages of the purposive approach

1. An advantage of the purposive approach is that it leads to justice in individual cases. * It is a broad approach which allows the law to cover more situations than applying words literally. This means it can fill in the gaps in the law.
2. The purposive approach is particularly useful where there is new technology which was unknown when the law was enacted. * This is

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demonstrated by *R (Quintavalle) V Secretary of State* (2003), the House of Lords used the purposive approach in deciding that organisms created by cell nuclear replacement came within the definition of ‘embryo’ in the Human Embryology and Fertilisation Act. * If the literal approach had been used in this particular case, Parliament would have had to make a new law to deal with the situation. 3. However using the purposive approach does have some disadvantages. * It makes the law less certain. * It also allows unelected judges to ‘make’ law as they are deciding what they think the law should be rather than using the words that Parliament enacted. * Another problem with the purposive approach is that it is difficult to discover the intention of Parliament. There are reports of debates in Hansard, but these give every detail of debates including those MP’s who did not agree with the law that was under discussion. The final version of what Parliament agreed is the actual words used in the Act. * It also leads to uncertainty in the law. It is impossible to know when judges will use this approach or what result it might lead to. This makes it difficult for lawyers to advise clients on the law.

Rules of language Eiusdem generis rule * This means that where particular words are used in a statute, (for example: ‘pen, pencil, crayon, felt tip pen’), and these words are followed by general words (for example: ‘writing instrument’), the general words are defined by reference to the particular ones. So, in the example given, chalk would not be a writing instrument as it is not used to write on paper. * This can be seen in *Powell v Kempton Park Racecourse* (1899); where the defendant was charged with keeping a ‘house, office, room, or other place for betting’! He had been operating betting at what is known as Tatlers adl’s Ring, which is outdoors. The court decided that the general words ‘other place’ had to refer to indoor places

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since all the words in the list were indoor places, and so the defendant wasn't guilty. * There must be at least two specific words in a list before the general word or phrase, for this rule to operate. Expressio unius est exclusio alterius rule * This phrase means 'the mention of one thing excludes others'. Where there is a list of words but no general words follow after them, the —
ine Act only applies to the particular items mentioned. * This can be illustrated by the case of *Tempest v Kilner* (1846). In this case, the court had to consider whether the Statute of Frauds 1677 applied to a contract for the sale of stocks and shares; the list 'goods, wares and merchandise' in the Act wasn't followed by any general words. The court held that the statute didn't, and therefore concerned stocks and shares. Noscitur a sociis rule * This phrase means that a word is known by the company it keeps. * The effect of this rule is that a word takes on meaning from other words around it. * This can be illustrated by the case of *Inland Revenue Commissioners v Frere* (1965). In this case, a section of an Act set out rules for 'interest, annuities or other annual interest' (an 'annuity' is an investment entitling the investor to a series of equal annual sums). * Did the first word include interest paid monthly or daily? The court held that only interest paid annually was affected by the Act. Extrinsic Aids Extrinsic aids to interpretation are those found outside the actual Act. The following extrinsic aids have been regarded as acceptable: 1. Dictionaries and legal textbooks * Dictionaries are an obvious tool to assist with the literal rule. 2. Other statutes. * Earlier Acts have relevance in tracing the mischief that an Act was designed to tackle. * The interpretation Act 1978 defines particular terms that are found in a range of statutes. 3. Reports of the Law Commission and other law reform bodies * An Act is often preceded by an investigation by one of the bodies
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set by the government to investigate options for referring the law. These bodies produce reports on their finding and recommendations, which the government may adopt in a Bill.

4. International treaties * It is presumed by the courts that Parliament doesn't legislate in a way that would be a clear breach of a treaty signed by the UK government.

5. Explanatory notes * Acts passed since 1999 have been accompanied by explanatory notes. These notes summarise the main provision of the Act and explain the background to ... The government department responsible for the legislation writes them after the Act has been passed. For this reason, they should be regarded as extrinsic aids. The Fur Trade Act 2000, for example, though it is quite a short Act has an explanatory note some eight pages long. This explains the main purpose of the Act ('to prohibit fur farming'), as well as summarising and commenting on the various sections. It also states where discussion of the Bill can be found in *Hansard. Explanatory notes are written in much more readable language than Acts. Between 1999 and April 2003, there were no cases in which their use was considered. As a result, the way in which judges might use them is not yet clear. Presumptions Courts will make certain presumptions about the law; unless the relevant Act makes it that the presumption is not meant to apply. The major presumptions are as follows: *

- * It is presumed that the common law will apply unless the Act makes it plain that the common law has been changed.
- * It is presumed that criminal offences require intention i. e mens rea to commit the offence; not just the physical process of committing it. Sweet v Parsley (1970)
- * It is presumed that the Crown will not be bound by any statute unless the statute expressly says so.
- * It is assumed that legislation doesn't apply retrospectively. So, a

new set doesn't change the legal position of people in relation to events that took place before the date the Act takes effect. e. g. War Crimes Act 1991