

Statutory Interpretation

By Dr Peter Jepson.

You should 'read and précis' this area of law from a textbook such as 'The English Legal System' by Jacqueline Martin or the ILEX 'The Legal Environment' textbook.

PRECIS NOTES WILL BE CHECKED

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Silence in this Lecture

- Switch OFF mobile telephones
- Take notes
- If you wish to ask a question raise your hand ...

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What are the two most important sources of English Law?

- EU Law
- Acts of Parliament – and the considerable quantities of delegated legislation. For example: Statutory Instruments, By-Laws etc.

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Language is not a precise tool ...

- Words often take their meaning from context
- Shades of meaning (e.g. the word 'Park')
- Words can change over time - grievous
- Statute can be hurried and not thought out fully: e.g. Dangerous Dogs Act 1991
- Language differences (EU).
- Draftsmen cannot foresee everything

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Judge starts with a presumption ...

- That common law (what is it?) has not been changed unless Act shows a clear intention to do so.

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Approaches to interpretation

- **Literal Rule**
- **Golden Rule**
- **Mischief Rule**
- **Purposive Approach.** *Dr Jepson considers this to be a modern methodology which owes its development to European Law.*

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ECHR compatibility ...

- s.3 of the Human Rights Act 1998 says that judges **MUST** read all primary and secondary legislation in a way that is compatible with the ECHR.

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ECHR compatibility ...

- Thus, if the section or legislation has more than one meaning – the Courts must interpret in accord with the ECHR.

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The Literal Rule

- The role of the judge is to apply the law – not make it.
- The only difficulty is in deciding what Parliament has said...
- To help determine the judges use aids that help clarify precisely what Parliament has said ...

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Intrinsic & Extrinsic aids ...

- They use **Intrinsic aids** (definitions within the statute) and/or **Extrinsic aids** (things outside such as dictionaries).
- For an example of how this operates see Mandla v Dowell Lee [1983] HL. In this case a boy was excluded from school for wearing a turban. A Question of Law was whether a Sikh fell within the Race Relations Act 1976.

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Intrinsic and Extrinsic aids

- The statute (intrinsic aid) defined 'race' as including 'ethnicity' – but what does that mean? House of Lords used a dictionary (extrinsic aid) and eventually decided 'ethnicity' refers to a long shared history from a particular region. Hence, the ratio from Mandla v Dowell Lee now binds lower courts in relation to what 'ethnicity' means.

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The Literal Approach

- The literal approach concentrates on what Parliament has said. This can occasionally throw up odd results... See Fisher v Bell (1960), Whiteley v Chappell (1868).

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Fisher v Bell (1960)

- Shopkeeper displayed a knife in his window. While the Restriction of Offensive Weapons Act 1959 made it an offence to sell such a knife.
- D succeeded in arguing that a display in a shop window is not an offer for sale. Under contract law it is an invitation to treat with any offer made by customers. It was presumed that Parliament did not intend to change common law

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Whiteley v Chappell [1868]

- D was charged under a section which made it an offence to impersonate 'any person entitled to vote'.
- D had voted using a dead person's name.
- The Court held D was NOT guilty since a dead person is not, in the literal meaning of the word, 'entitled to vote'.

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The Golden Rule

- However, in some cases the Judiciary may apply the Golden Rule. This gives effect to the clear words used by Parliament, but will stop short of arriving at an absurd decision.
- See the cases of R v Allen (1872) and R v Sigsworth (1935). See also other Golden Rule cases on the Intranet

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R v Allen (1872)

- s.57 of the Offences Against the Person Act 1861 made it an offence to 'marry' whilst the original spouse was still alive (i.e. with no divorce).
- D claimed he could not 'legally marry' because he was not divorced. The court decided that in the Act the word 'marry' means 'to go through a ceremony of marriage'. To accept otherwise would produce an absurd result.

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R v Sigsworth (1935)

- A son had murdered his mother.
- Mother had not made a will but, as per rules in Administration of Justice Act 1925, her next of kin (her son) would inherit. No ambiguity in the wording of the Act, but the court refused to let a murderer benefit from his crime. Held that the literal rule should not apply and the golden rule was used to prevent a repugnant situation.

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The Mischief Rule ...

- The Literal and Golden Rule determine what Parliament said. The Mischief Rule is applied to what Parliament meant.
- This derives from an old rule going back to Hayden's Case (1584) and was applied in Smith v Hughes (1960). See Mischief Rule cases on the Intranet and read textbook 'AS Law'.

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Hayden's Case (1584)

There are four points a Court should consider ...

- 1. What was the common law before the Act?
- 2. What was the mischief and defect which the common law did not provide?
- 3. What is the remedy Parliament have resolved?
- 4. The true reason of the remedy.

The Judges should then suppress the mischief and apply the remedy.

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Smith v Hughes (1960)

- Prostitutes charged with soliciting on the streets contrary to the Street Offences Act 1958.
- Defence made that they were inside a building and tapping on a window to attract men (thus not on the street).
- Despite such, the Court applied the Mischief Rule and found them guilty because the SOA Act 1958 was designed to prevent prostitution.

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Purposive Approach

- EU link. Looks at the purpose behind the legislation so as to give effect to that purpose.
- Case of Pepper v Hart (1993) enables courts to look at Hansard where they consider the law is ambiguous.
- From 1999 a set of explanatory notes are issued with each Bill – these are designed to assist understanding and are not part of the Act.

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Purposive Approach

- Used in Pickstone v Freeman in relation to equal treatment.

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Pickstone v Freeman (1988)

In Pickstone v Freeman (1988) the Court of Appeal held that Article 119 of the Treaty of Rome on equality of treatment for men and women was clear and could be applied directly. Thus, they assumed that Parliament's intent was to comply with EU law.

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What should students do next?

- Break into Law Firms and agree/list the rules of language and presumptions.

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