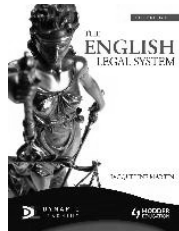


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Statutory Interpretation

Prior to these lessons, you should have read and précised chapter 7 of "*The English Legal System*" by Jacqueline Martin.



PRECIS NOTES WILL BE CHECKED

Silence in this Lecture

- Ensure your mobile is switched off.
- Take notes – you can annotate your PDF printout.
- If you wish to ask a question raise your hand ...

Statutory Interpretation

Many cases come before the courts because there is a dispute over the meaning of an Act of Parliament.

Why might the meaning of a word or phrase be unclear?

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 – e.g. grievous
- Statute can be hurried and not thought out fully: e.g. Dangerous Dogs Act 1991
- Language differences (EU).
- Draftsmen cannot foresee everything

Activity....

Read the activity on page 82 and answer the questions.

Judge starts with a presumption ...

- That common law has not been changed.
- That *mens rea* is required in criminal cases.
- That Parliament has not changed the law retrospectively.

Rules of Language ...

- *Ejusdem generis* rule – General words following a list are interpreted in the context of that list, e.g. Powell v Kempton Park Racecourse (1899).
- *Expressio unius exclusio alterius* – Where particular words are expressed, others are excluded.
- *Noscitur a sociis* – Words are interpreted in context.

Powell v Kempton Racecourse ...

Powell v Kempton Racecourse (1899)

The words 'other place' were held to mean 'other indoor place' because the list referred to a 'house, office, room or other place' and 'house', 'office' and 'room' are all indoors.

Activity....

- Read the activity on page 87 and answer the questions.

Approaches to Interpretation

- **Literal Rule**
- **Golden Rule**
- **Mischief Rule**
- **Purposive approach**

The Literal Rule

- Courts give words their plain, ordinary or literal meaning.
- This can sometimes lead to results which are not very sensible.
- See Lord Esher's comments in R v Judge of the City of London Court (1892)

Fisher v Bell (1960)

- Shopkeeper displayed a knife in his window. 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.

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'.

London & North Eastern Railway Co v Berriman(1946)

- Railway worker killed while doing maintenance work.
- Widow tried to claim compensation but the court said the worker had been *maintaining* the line, not "relaying" or "repairing" as per the Fatal Accidents Act.
- The claim for compensation therefore failed.

The Golden Rule

Starts by looking at the literal meaning but the court avoids an interpretation that would lead to an absurd result.

See...

- R v Allen (1872) (narrow application)
- R v Sigsworth (1935) (wider application)

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.

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.

The Mischief Rule

The literal and golden rules 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).

Also see...

- Smith v Hughes (1960).
- Royal College of Nursing v DHSS (1981)

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.

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.

Royal College of Nursing v DHSS
(1981).

The wording of the Abortion Act 1967 was in issue - "registered medical practitioner"

Court of Appeal took a literal approach and said doctors needed to take medical action as per the legislation. This prevented nurses carrying out the procedure.

Royal College of Nursing v DHSS
(1981).

- However, the House of Lords decided that the Abortion Act 1967 was designed to prevent the mischief of 'back-street abortions'. Hence, so long as the doctors supervised induced abortions they would be within the statute and operating legally.
- This case emphasises the danger that judges may be tempted to allow their moral convictions to interfere.

J Martin's comment

- Do you agree with J Martin on p.86? Which rule of interpretation is best in your opinion. Give reasons for your decision

Purposive Approach

EU link. Judges are deciding what they believe Parliament meant to achieve. See Lord Denning's comments in Magor & St Mellons v Newport Corporation (1950).

- How do the judges know what Parliament's intentions were?

R v Registrar General ex parte Smith (1990)

The court had to consider s.51 of the Adoption Act 1976 which enables a person to obtain a birth certificate when 18 – subject to certain conditions.

R v Registrar General ex parte Smith (1990)

- Smith wanted a certificate in order to find his mother – problem he was a dangerous murderer in Broadmoor Mental Hospital.
- Literal rule said he could have the certificate – purposive approach applied since 'Parliament could never have intended to promote such serious crime.'

R (Quintavalle) v Secretary of State for Health (2003)

H of L used purposive approach in deciding that organisms created by cell nuclear replacement came within the definition of "embryo" in the Human Embryology and Fertilisation 1990.

See Lord Bingham's comment...

Activity...

- What are the advantages and disadvantages of the Purposive approach?
- How does it fit in with the traditional approaches to interpretation?

Finding Parliament's Intention

Intrinsic aids – matters within the statute itself that may help make its meaning clearer.

Extrinsic aids – external sources that can help explain the meaning of an Act.

➤ **List some examples**

The Use of Hansard

- Look at the judges' comments in Davis v Johnson (1979) and Pepper v Hart (1993).
- When may *Hansard* be considered by the courts?
- What are the arguments against using *Hansard* as an aid to interpretation?

Do the following ...

- Plan an answer to examination questions 1 (b) on page 96

What should students do next?

- Do the Statutory Interpretation 'Prostitutes Exercise' exercise.
- See the Intranet for these materials.
