

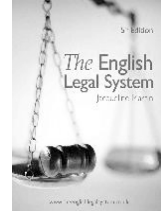
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Statutory Interpretation

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.



PRECIS NOTES WILL BE CHECKED

Silence in this Lecture

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

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.

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

Judge starts with a presumption ...

- That common law has not been changed unless Act shows a clear intention to do so.
- That *Mens rea* is required in criminal cases.
- That Parliament has not retrospectively changed the law.

Rules of Language ...

- If a list is followed by general words, the general words are interpreted in the context of the list ... **Powell v Kempton Racecourse (1899)**.
- If there are no general words at the end of a list, only things in the list are covered by the legislation. This is called *expressio unius exclusio alterius* (the expression of one, excludes others).

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.
- This is known as the ***ejusdem generis* rule**.

Rules of Language (contd)

- Words generally are interpreted in the context of the Section and Act as a whole. This is called *noscitur a sociis* (knowing a word by the company it keeps).

Approaches to interpretation

- **Literal Rule**
- **Golden Rule**
- **Mischief Rule** – Vanstone & Sherratt claim that a modern descendant of the Mischief Rule is the ... **Purposive Approach**. However, Dr J considers this to be a modern methodology which owes its development to European Law.

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.

ECHR compatibility ...

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

ECHR compatibility ...

- If legislation is not compatible – the Judge notifies the Govt Minister and leaves it to him/her.
- This interpretive approach, because it is laid down by Parliament, takes precedence over common law methods. But it does not make common law approaches redundant. For example, the relevant Q of law may not involve a human rights issue.

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 ...

See Page 92 of 'The ELS' - answer the Q's.

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.

Intrinsic & 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.

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), R v Judge of the City of London Court [1892] and other literal cases on the Intranet (see Case Notes).

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

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'.

R v Judge of the City of London Court [1892]

- In this case, Lord Esher said, in applying a literal approach ...
- "If the words in the Act are clear then you must follow them even if they lead to a manifest absurdity. The court has nothing to do with the question of whether the legislature has committed an absurdity."

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

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 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'.

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.

A possible moral dilemma...

- Royal College of Nursing v DHSS (1981).
- This concerned the Abortion Act 1967 . Court of Appeal applied a Literal Rule and said Doctors needed to take medical action as per the legislation. This prevented nurses from administering abortion drug via a drip.

A possible moral dilemma.

- 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, there is a danger that Judges may be tempted to allow their moral convictions to interfere.

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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.

Purposive Approach

- Used in Pickstone v Freeman in relation to equal treatment. Also in R v Registrar General ex parte Smith (1990).
- Note however, Cutter v Eagle Star (1998) and the caution, or conservatism, when it comes to changing the law
- See Page 96 of 'The ELS' for a case example

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.

R v Registrar General ex parte Smith (1990).

- s.51 of the Adoption Act 1976 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.'

Cutter v Eagle Star (1998)

- Defendant insurance company would be liable to pay damages if Cutter was injured on a road (he was on a car park).
- C of A decided that a car park was a road for the purposes of the Road Traffic Act (1988). H of L reversed this with Lord Clyde saying ...

Cutter v Eagle Star (1998)

"It may be perfectly proper to adopt a strained construction to enable the object and purpose of legislation to be fulfilled. But it cannot be taken to applying unnatural meanings to familiar words or to stretch the language that its former shape is transformed into something which is not only significantly different but has a name of its own. This must be particularly so where the language has no evident ambiguity or uncertainty about it."

Do the following ...

- Do you agree with J Martin's comment on page 95 of 'The ELS'? Discuss!
- Plan the examination questions on Page 102 of 'The ELS'.

What should students do next?

- Do the Statutory Interpretation '*Prostitutes Exercise*' exercise.
- See the Intranet and/or handout for these materials.