NOTES

ON

INTERPRETATION OF STATUTES

AN APPROACH

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References : Cross - Statutory Interpretation (2nd Edition)

Dreidger - Composition of Legislation (Chapters X and XI)

Bennion on Statute Interpretation (3rd Edition)

Interpretation is the process for determining the meaning of a provision for the purpose of applying it to a given situation.

Interpretation is concerned with the text as it is, drafting with the making of that text.

Drafting and Interpretation, though separate, are closely related and are interacting.

The object of the interpretation of a written instrument is to discover the intention of the author as expressed in the instrument. The interpreter must arrive at a legal meaning of the enactment.

A statute is an expression of the legislative will (intention). It is a legal instrument and it is the legal meaning that the interpreter seeks.

Interpretation of the law is a matter for the courts.

The function of the court is to interpret the statute according to the expressed intention of Parliament.

The intention of Parliament is to be sought in the words used in the statute itself.

Interpretation of a statute must be done in accordance with the rules, principles, presumptions and cannons, which govern statutory interpretation.

The courts have a duty to ascertain the true legal meaning of the words used by the legislature.

In the interpretation of a statute the court must faithfully endeavour to give effect to the expressed intention of Parliament as gathered from the language used and the apparent policy of the enactment under consideration in its context. The making of the law however, is a matter for the legislature and not for the courts.

There is no material distinction between "interpretation" and "construction". The terms are used interchangeably.

Dreidger has submitted that today there is only one principle of interpretation:-

> *"The words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act and the intention of Parliament."*

"entire context" is in the context of the whole statute, the circumstances that give rise to it and the body of the law generally.

"grammatical and ordinary sense" means that the words are to be given their ordinary or primary meaning in relation to the subject matter of the statute according to the rules of grammar.

Words are not used in a statute without meaning. Effect must be given to all the words used.

Generally the legal meaning normally corresponds to the literal or grammatical meaning of the words used in the enactment.

On an informed interpretation if there is no real doubt that a particular meaning is to be applied that is to be taken as its legal meaning.

If there is a real doubt it is to be resolved by applying the rules of interpretation.

Certain rules have been relied upon over the years until recently. These rules are:

- The Literal Rule -
- The Mischief Rule
- The Golden Rule
- The Purposive Rule

For these rules see Appendix.

The law recognises a doubt over the legal meaning as "real" only where it is substantial.

If the words are plain and unambiguous, the court is bound to construe them in their ordinary sense and may not modify or bend their meaning simply to avoid absurdity, mischief or injustice.

Tindal Chief Justice in Sussex Peerage Case (1844) states:

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in there natural and ordinary sense."

Words should generally be given the meaning which the normal speaker of the English language would understand them to bear in the context in which they are used.

Words are generally to be understood "in their usual and most known signification". Words are taken to be used correctly.

However, when a statute is aimed at a particular business or activity, then the words are to be read in the sense given to them by the people engaged in that business or activity.

Further, words in a technical statute should be read in their technical sense.

General words must receive a general construction, unless there is in the in the statute itself some ground for restricting their meaning.

Dreidger states that:-

> *"If in reading the words in their grammatical and ordinary sense this results in disharmony, i.e. in some inconsistency, incongruity, repugnance or illogically within the statute, between the statute and its manifest purpose or object or between the statute and another statute, then the courts will modify the strict grammatical or ordinary meaning so far as it is necessary to produce harmony."*

The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but even if they are, the power and duty of the courts to travel outside them on a voyage of discovery are strictly limited – Lord Simmonds in Seafood Court Estates Ltd. v Asher (1949). The remedy against injustice or absurdity lies in the hand of the legislature and not the courts.

Primary meaning of the words must be followed. Words are primarily to be construed in their ordinary meaning or common or popular sense.

In determining the meaning of any word or phrase in a statute, the first question to ask is what is the natural or ordinary meaning of that word or phrase in its context in the statute.

When the meaning leads to that result which cannot reasonably be supposed to have been the intention of the legislature, then it is proper to look for some other possible meaning of the word or phrase. Departure from the natural or ordinary meaning will only be allowed where the words are capable of bearing a secondary meaning.

If there is doubt as to the meaning of the words, then the courts will read the words to give it a meaning in harmony with the intention or purpose of Parliament. There must be some doubt however, as to which meaning is intended.

A word may be capable of more than one ordinary meaning. In such a case the court will have to decide whether they are all admissible or whether one particular meaning is to be preferred. Reasonableness of the consequences will be a proper consideration in the ascertaining of meaning.

The ordinary meaning of the words will depend on a consideration of the language used within the context of the provision taking into account the purpose or mischief of the enactment.

Maxwell on the Interpretation of Statutes (12th Edition) states that:-

- The rule of construction is "to intend the legislature to have meant what they have actually expressed".
- The object of all interpretation is to discover the intention of Parliament but the intention of Parliament must be deduced from the language used.
- Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.
- Where by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be.
- The duty of the court is to expound the law as it stands.
- Nothing is to be added or taken away from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.
- It is a wrong thing to read into an Act words which are not there, and in the absence of clear necessity it is a wrong thing to do.
- We are not entitled to read words into an Act unless clear reason for it is to be found within the four corners of the Act itself.
- A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted and the omission appears in consequence to have been unintentional.

MODERN APPROACH – REFERENCE TO CONTEXT AND PURPOSE

Maunsell v Olins (1975) AC 373 sets out the modern approach. The House of Lords approved the unified contextual approach devised by Prof. Cross. This approach still gives primacy to the literal meaning of words within their context.

However, the statute must be construed as a whole in its entire context and ordinary meaning is to be ascertained from its context.

The following passages from speeches of Lord Reid in the House of Lord may be cited in support of how to interpret a statute:

A. (i) "In determining the meaning of any words or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase."

(ii) "Then [in case of doubt] rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants, not our masters. They are aids to construction, presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular "rule".

(iii) "It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning, then you can choose between those meanings, but beyond that you must not go."

B. It is submitted that the following is a reasonably brief and accurate statement of the rules of English statutory interpretation:

1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.

2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.

3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute.

4. In applying the above rules the judge may resort to the aids to construction and presumptions.

Lord Simon of Glaisdale in Maunsell v Olins states as follows:

> *"... in statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some extraordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly or contradiction or fulfil the purpose of the statute: while, in statutes dealing with technical matters, words which are capable of both bearing an ordinary meaning and being terms of art in the technical matter of the legislation will presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified, some secondary meaning as terms of art)."*

CONTEXT

Context is both internal and external.

1. Internal context includes all elements of the Act, i.e. other sections, subsections, schedules, long title, preamble and parts and headings.

2. External context includes:-

- date of enactment (but note that statute is "always speaking").
- existing state of the law,
- statutes in pari materia,
- mischief or object or purpose.
- parliamentary materials and reports (see Pepper v Hart (1992) 3WLR 1032 HL and (1993) 1 All ER 42,
- the Constitution and Interpretation Act,

- practice.

Viscount Simmonds in A.G. v Prince Ernest Augustus of Hanover (1957):

> "... words and particularly general words, cannot be read in isolation, their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context and I used "context" in its widest sense ... as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which I can by those and other legitimate means, discern the statute was intended to remedy."

The context includes not only the particular phrase or section in which the words occur but includes the whole of the statute in which it is contained, title and preamble if any, as well as the enacting parts; the place occupied by the provision within the statute: other statutes on the same subject; the circumstances in which the statute was passed and its purpose. The ordinary meaning of the words should only be determined after the statute has been read as a whole in its entire context. The words used should always be considered in their broadest statutory context.

PURPOSIVE APPROACH

"Purposive approach" is a construction which would promote the general legislative purpose underlying the provision in question – much in common with the "mischief" rule except that actual wording must be looked at. (A combination of the literal, golden and mischief rule).

The court is to presume that the legislature intended to enact provisions consistent with the legislative purpose.

Lord Scarman in Duport Steels Ltd. v Sirs (1980) 1 WLR 168-169:

- *"In this field Parliament makes and unmakes the law. The judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires."*

- *In the "purposive approach" the judges seek the interpretation which will promote the underlying purpose of the statute, rather than being content to apply the ordinary meaning to the words read. It can be said that the origin of the purposive approach has its beginnings in the "mischief rule".*

- *Interpretation does of course imply in the interpreter a power of choice where different constructions are possible. But our law requires the*

judge to choose the construction which in his judgment best meets the legislative purpose of the enactment."

- *"If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its position. But he must not deny the statute.*

- *Unpalatable statute law may not be disregarded or rejected merely because it is unpalatable.*

- *Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires.*

- *Judges must apply, not torture, the language of the statute.*
- *The court does not decide whether or not any real doubt exists as to the meaning of an enactment until it has first discerned and considered the purpose and contents of the enactment.*

- *Without exception statutory words require careful assessment of themselves and their context if they are to be construed correctly. The ground and cause of the statute is referred to as before deciding whether the words are clear and unambiguous.*

- *"The court should take an overall view, weight all relevant factors, and then arrive at a balanced conclusion."*

Lord Diplock in Duport Steels Ltd. v Sirs (1980) 1 All ER 529 said:

> *"... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient or even unjust or immoral..."*

It is a rule of law that the interpreter is to infer that the legislator when settling the wording of an enactment intended it to be given a fully informed rather than a purely literal interpretation.

For there to be a fully informed interpretation the court must look at the purpose of the Act and to construe doubtful provisions in accordance with that purpose.

The interpreter of an enactment needs to bring to bear an informed mind, a first glance at the provision is not a fully informed one. Without exception, statutory words require careful assessment if they are to be construed correctly.

The fully informed interpretation rule is a necessary one and is to be applied no matter how plain the statutory words may seem at first glance.

If after being fully informed, the interpreter holds that the words of a statute are clear and unambiguous, then the words themselves indicate what must be taken to have been the intention of Parliament and there is no need to look elsewhere to discover their intention or their meaning.

In Pepper v. Hart, Lord Griffith said:

> *"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts must adopt a purposive approach which seeks to give effect to the true purpose of legislation..."*

If there is nothing to qualify the language used, then effect is to be given to the ordinary or usual meaning of the words. It is the interpreter's function to give effect to it even though the result is unfair and unjust or absurd.

It is only when the meaning of the words is doubtful and leads to some result which cannot reasonably be supposed to have been the intention of the legislator that it is proper to look for some other possible meaning of the words. The words however, must be capable of the different meanings.

Then, where there is doubt, the various rules of or aids to construction and presumptions are resorted to, to arrive at a meaning which accords with the intention of Parliament.

The interpreter may not for any reason attach to a statutory provision a meaning which the words cannot bear.

It is only when a secondary meaning is available for the words used that the courts can abandon the primary meaning of the words. To decide which meaning is to be given the aids and presumptions will be resorted to.

AIDS AND PRESUMPTIONS AS TO INTENTIONS

These are pointers and approaches used by the courts to determine the meaning of the words used in the statute.

Lord Reid in Maunsell v Olins [1975] AC 373, 382 said:

> *"They are not rules in the ordinary sense of having binding force. They are our servants not our masters. They are aids to construction,*

presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular "rule".

A. AIDS TO CONSTRUCTION

(1) "Ut res magis valeat quam pereat"

"It is better for a thing to have effect than to be made void." (Parliament does not legislate in vain).

Statutes must be so construed as to make them operative. If possible, the words of the statute must be construed so as to give them a sensible meaning.

If the choice is between two interpretations ... we should avoid a construction which would reduce the legislation to futility. We should rather accept a construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

(2) Nosciter a sociis

The meaning of a word is to be gathered from its context.

Words are liable to be affected by other words with which they are associated. The words take there meaning from the other words with which they are associated.

The legislation is deemed not to waste its words or to say anything in vain.

(3) Ejusden generis (of the same kind)

Where particular words are followed by general words, the general words are limited to the same kind or genus as the particular words.

"Where general words are found, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to the things of that class or category, unless it is reasonably

clear from the context or the scope and purview of the Act that Parliament intended that they should be given a broader significance." - Driedger

General terms following particular ones apply only to such persons and things as ejusdem generis.

For the rule to apply it must be possible to construct a genus or category out of the specific words, e.g. "no tradesman, workman, labourer or other person whatsoever". It is difficult to construct a genus.

The rule does not apply when the general words precede the particular.

The rule is less rigidly applied in the current climate of enlightened liberal and purposive judicial construction and interpretation of statutes.

The rule is a secondary guide; secondary to the purpose of the statute. There is no presumption in favour of the rule.

The genus might be ascertained by reference to the object or mischief of the statute.

The general words are limited otherwise the particular words could be otiose or redundant in view of the general words.

Two different species are necessary to constitute a genus.

(4) **Expressio unius est exclusio alterius** (The mention of one thing is the exclusion of another).

(That which is expressed puts an end to that which is unspoken).

This rule should be applied with discretion.

Mention of one or more things of a particular class may be regarded as by implication excluding all other members of the class, e.g. "lands, houses and coalmines" may mean that no mines other than coalmines are included in the word.

NOTE
"It is often a valuable servant but a dangerous master to follow in the construction of statutes or documents. The exclusion is often the result of inadvertence or accident and the maxim ought not to be applied when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice." – Prestcold (Central) Ltd. v Minister of Labour (1969) 1 WLR 89.

(5) **Generalia specialibus non derogant** (General things do not derogate from special things).

- When Parliament in an earlier statute or provision has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute or provision the legistature lays down a general principle, that general principle is not to be taken as meant to rip up what the legislature had before provided for individually, unless an intention to do so is specifically declared.

  See Owens Bank Ltd. v Couche (1989) 36 WIR 221 at 226.

- Whenever there is a general enactment in a statute which would override a particular enactment in the same statute, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

- If two sections of the same statute are repugnant, the rule is that the last must prevail.

  However, you should endeavour to construe the provisions so as to avoid applying the rule as the legislature must be presumed not to contradict itself, but this is doubtful and the better view appears to be that the court must determine which is the leading provision and which is the subordinate provision and which must give way to the other.

B. PRESUMPTIONS

The common law has laid down various presumptions about what Parliament is likely to intend regarding the operation of a statute.

Presumptions are only to be called in aid where there is ambiguity. Where the words are plain and unambiguous there is no place to apply a presumption.

The implication is that a particular conclusion is likely to be drawn by the court in the absence of good reason for reaching a different one.

It can be assumed that the courts will give effect to any law Parliament sees fit to pass provided it is expressed in clear terms.
The courts attribute certain intentions to Parliament in the absence of an indication to the contrary.

If a well established principle is being overturned by legislation it must be overturned by clear words. Long standing principles are assumed to have been taken for granted. Allowance must be made for the fact that statutes are not enacted in a vacuum. A great deal remains unsaid and are taken to be well established.

Examples:

1. There is a presumption against interference with vested rights. (A man's rights are not to be taken away on an ambiguity).

2. There is a presumption against ousting the jurisdiction of the courts.

3. There is a presumption that statutes do not operate retrospectively.

4. There is a presumption in favour of strict construction of a penal statute – i.e., one that imposes a fine, penalty or forfeiture. Penal statutes should be construed strictly in favour of the citizen. A person should not be penalised except under clear law. A law that inflicts hardship or deprivation of any kind is in essence "penal".

5. There is a presumption that Parliament does not intend to take away property rights.

6. There is a presumption that the legislature does not intend to make any change in the existing law beyond that which is expressly stated in or follows by necessary implication from the language used.

7. Plain words are necessary to establish an intention to interfere with common law rights.

8. Where a provision sets out to alter the common law, its effect, where there is doubt, will be limited to what necessarily follows from the words used. Any departure from the existing general law should be clearly stated.

RETROSPECTIVE LEGISLATION

Unless the contrary intention appears, an enactment is presumed not to be intended to have a retrospective operation.

The principle against retrospective operation is an aspect of legal policy. The law should be practicable. Maxwell on the Interpretation of Statutes states:

> *"It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very*

> *clearly in the terms of the Act or arises by necessary and distinct implication."*

See also Carson v Carson [1964] 1 WLR S11 @ 516.

In R v Makrinjuola [1995] 3 All ER 730, Lord Taylor, Chief Justice said:

> *"A retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards procedure."*

It is a well recognised principle in the construction of statutes that they operate only on cases and facts which are in existence when the statutes were passed (prospective), unless a retrospective effect is clearly intended.

A statute is retrospective only if it alters the law as from a past date – West v Gwynne (1911).

The courts regard as retrospective any statute which operates on cases and facts in existence before the commencement of the statute, i.e. on past transaction or past conduct.

A provision will be retrospective if it provided that anything done before the Act came into existence should be void and a penalty imposed.

A statute should not be construed to have retrospective operation unless such construction appears very clearly from the provisions.

The rule against retrospective operation is a presumption only and as such it may be overcome not only by express words in the Act but also by circumstances sufficiently strong to displace it.

Whenever the operation of a statute depends upon the doing of something or the happening of some event the statute will not operate in respect of anything done on some event that took place before the statute was passed, but if the operation depends merely upon the existence of a certain state of affairs the statute will operate – R v Inhabitants of St. Mary, White Chapel (1848).

It is a question as to the scope of the provision. The basis of the principle against retrospectivity "is no more than simple fairness, which ought to be the basis of every legal rule".

The rule against retrospective operation has been applied chiefly in cases in which the statute in question if it operated retrospectively, would prejudicially affect vested rights or the legality of a past transaction or would impair contracts or would impose new duties or attach new disabilities in respect of past transactions.

In general when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute show a clear intention to vary such rights.

If the necessary intendment of the statute is to affect the rights of the parties to the pending action the court must give effect to the intention of the legislature.

The rights of the parties are to be determined according to the law in force at the date of the commencement of the proceedings - A.G. v Vernazza (1960) A.C. 965 per Lord Denning.

A presumption does not apply to enactments which affect only procedure and practice of the courts.

Alterations in the form of procedure are always retrospective, unless there is some good reason or otherwise they should not be – Gardner v Lucas (1878) App. Cas. 582 at 603 per Lord Blackburn.

The presumption against retrospective legislation applies in general to legislation of a penal (or fiscal) character. It is to be presumed that a statute creating a new offence or extending an existing one is not intended to render criminal an act which was innocent when it was committed and that a statute increasing penalties for existing offences is not intended to apply in relation to offences committed before its commencement.

Even when a statute is clearly intended to have retrospective effect, it is not to be construed as having a greater retrospective effect than its language renders necessary.

PRESUMPTION AGAINST INTENDING WHAT IS INCONVENIENT OR UNREASONABLE

In determining either the general object of the legislature or the meaning of the language used in a particular provision the intention which appears to be most in accord with convenience, reason, justice and legal principles should be presumed to be the true one in all cases of doubtful significance.

An intention to produce an unreasonable result is not be imputed to a statute if there is some other construction available.

Where two possible constructions present themselves, the more reasonable one is to be chosen.

But, convenience is not always a safe guide to construction. However difficult, it may be to believe that Parliament ever really intended the consequences of a literal interpretation "we can only take the intention of Parliament from the words which they have used in the Act and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand however

unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament." – I.R.C. v Hinchy (1960) AC 748 per Lord Reid at 767.

PRESUMPTION THAT UPDATING CONSTRUCTION IS TO BE GIVEN TO AN ACT

An Act is to be treated as always speaking. This means that in its application on any date, the language of the Act, though embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

THE EXCLUSIONARY RULE

In Pepper v Hart [1992] 3 WLR 1032, [1993] 1 All ER 42, HL (E), the House of Lords abolished the "exclusionary rule" that reports of parliamentary debates could not be consulted by the courts when seeking guidance as to the meaning of a particular piece of legislation. The "exclusionary rule", which was one of the best established of our rules of statutory interpretation, has now been replaced by what will be termed the "inclusionary rule", that is, the rule that courts may, in certain circumstances, make use of *Hansard* as an aid to the construction of a statute. In making this change the House of Lords may have unwittingly set in motion a fundamental change in the nature of the British constitution. In Pepper the Court laid down a clear and strict rule as to which of the many speeches reported in *Hansard* are to be admissible as an aid to statutory interpretation: it is only ministerial statements which clearly disclose the mischief at which the legislation is aimed which may be cited:

> *"... reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the minister or other promoter of the Bill is like to meet these criteria."*

THE CONSTITUTION AND THE INTERPRETATION ACT

It is important to note that in construing a statute the provisions in the Constitution and the Interpretation Act are to be borne constantly in mind.

APPENDIX

THE TRADITIONAL RULES OF INTERPRETATION

1. THE MISCHIEF RULE

From Heydon's Case (1954) four questions were posed which have become the classic statement of the mischief rule:-

(i) What was the Common Law before making of the Act?

(ii) What was the mischief and defect for which the common law did not provide?

(iii) What remedy the Parliament both resolved and appointed to cure the disease of the Commonwealth? and

(iv) The true reason for the remedy, and then the office of all the judges is to make such construction as shall suppress the mischief and advance the remedy...

2. THE LITERAL RULE (THE ORDINARY MEANING APPROACH)

See: Sussex Peerage Case (1844)

According to this rule, the words used by the legislature in a statute should be given their ordinary or usual meaning.

This is a starting point in determining the meaning of the words in a statute. If the words are clear then the meaning of the words assigned to them must be applied however hard or unjust or absurd the result.

This approach to interpretation has been criticised on the grounds that it is not always possible to ascertain the ordinary or natural meaning of a word. In addition, the approach has been condemned for taking too narrow a view of the function of the judiciary.

3. THE GOLDEN RULE – AN APPROACH TO AVOID ABSURDITY

The essence of this rule is that if the wording of a statute is ambiguous and the application of the ordinary meaning or literal approach leads to some "absurdity or inconvenience", then the ordinary meaning can be departed from and another less usual meaning adopted in its place.

The literal rule thus remains the starting point, but a secondary meaning can be assigned to the words in question where the use of the ordinary meaning will lead to some inconsistency or absurdity.

See: River Wear Commissioners v Adamson (1877)

By examining the judgments in recent cases the three traditional approaches seems to be merging. Greater emphasis is being placed on the importance of context and purpose of the statute.