

What is statutory interpretation?

- This is the process whereby a judge ‘works out’ the meaning of a statute (an Act of Parliament) and applies the law to a case before them.
- Why do we need statutory interpretation?
  - Parliament creates the law and judges apply it, but they must **respect Parliamentary sovereignty** when performing this role.
  - Once a judge makes a decision on how Parliament’s law is to be applied, a **precedent** is created.
  - When the laws of Parliament are clear there is no issue as to how the law is to be applied. It is only when the law is confusing or **ambiguous** that an issue of statutory interpretation is created.
  - Reasons for judges needing to interpret statutes:
    - **Broad terminology**
      - e.g., ‘vehicle’, ‘animal’, ‘type’. For example, **Brock v DPP** and the **Dangerous Dogs Act** – it was the word ‘type’.
    - **Ambiguity**
      - Some words simply have two or three meanings.
    - **Drafting Error**
      - An Act of Parliament is written by parliamentary draftsmen - human beings. None are perfect and a mistake can be made. This is rare because most Acts are amended through the Parliamentary process, but it may still occur.
  - **New Developments**
    - e.g., the **Theft Act** was lacking due to new issues within society (joyriding). Also, with developments in technology.
  - **Changes in the use of language**
    - Language can alter as society changes e.g., ‘sick’, ‘gay’, ‘cool’, etc.

The rules of interpretation....

When a judge encounters an Act of Parliament that has no **definite** meaning then they must make a decision as to the approach that they are going to take when interpreting the words or phrase. The judge can choose which rule to use unless precedent dictates otherwise.

- There are four **rules of interpretation** along with a number of other aids to interpretation. The four main rules are:
  - The **Literal Rule**
  - The **Golden Rule**
  - The **Mischief Rule**
  - The **Purposive**

| Literal Rule   | Golden Rule   |
|--|---|
| <p>This rule gives words in a statute their ordinary, grammatical meaning. It is based on the principle that this is the best way to interpret the will of Parliament even if it produces an absurd result.</p> <p>CASES:</p> <ul style="list-style-type: none"><li>• <b><u>Whiteley v Chappel</u></b> – electoral malpractice, impersonating a dead person, not ‘entitled’ to vote.</li><li>• <b><u>London &amp; NER v Berriman</u></b> – widow, no compensation as husband, maintaining not ‘repairing or relaying’ tracks.</li></ul> <p><b>Advantage:</b> It respects Parliamentary sovereignty as it is taking the words of Parliament literally.</p> <p><b>Disadvantage:</b> Some argue that Parliament could not have intended an absurd result. Words are also imperfect and can have more than one meaning.</p>  | <p>If the literal rule gives an absurd result which Parliament could not have intended, then (and only then) can the judge substitute a reasonable meaning in the light of the statute as a whole. Narrow and broad approach.</p> <p>CASES:</p> <ul style="list-style-type: none"><li>• <b><u>Adler v George</u></b> – ‘obstruction’ to member of the armed forces took place in the ‘vicinity’ of a public place rather than ‘within’. Literal meaning extended.</li><li>• <b><u>R v Allen</u></b> – bigamy – cannot literally ‘marry’ more than one person so statute is modified to include ‘shall go through a marriage ceremony’.</li></ul> <p><b>Advantage:</b> It can prevent the absurdity that can be caused by the literal approach.</p> <p><b>Disadvantage:</b> There is no clear meaning of an absurd result and is left to judges to decide if there is an absurd result under the literal.</p>  |
| Mischief Rule  | Purposive Approach  |
| <p>Laid down in Heydon’s case in the sixteenth century. Judges consider three questions:</p> <ol style="list-style-type: none"><li>1. <b>What was the law before the statute was passed?</b></li><li>2. <b>What was the problem, or ‘mischief’ the statute was trying to remedy?</b></li><li>3. <b>What was the remedy Parliament was trying to provide?</b></li></ol> <p>CASES:</p> <ul style="list-style-type: none"><li>• <b><u>Smith v Hughes</u></b> – Prostitute tapping on window not ‘on the street’ or in a public place but is guilty as she was performing the ‘mischief’ the state was intended to overcome.</li><li>• <b><u>Royal College of Nursing v DHSS</u></b> - An action challenging the legality of the involvement of nurses in carrying out abortions. Aim was to prevent back street abortions.</li></ul> <p><b>Advantage:</b> Law Commission, 1969, described it as a ‘rather more satisfactory approach’ for it helps avoid absurdity and uncertainty.</p> <p><b>Disadvantage:</b> Heydon’s case was a product of a time when statutes were a minor source of law. Drafting was not as exact as now and the supremacy of Parliament was not truly established.</p> | <p>This goes beyond the mischief rule in that the court is not looking to see what the gap was in the old law. The judges are deciding what they believe Parliament meant to achieve – the ‘purpose of the law’. The champion of this approach in English Law is Lord Denning.</p> <p>CASES:</p> <ul style="list-style-type: none"><li>• <b><u>Jones v Tower Boot</u></b> – The purpose of the law was to prevent ethnic minorities from suffering in the workplace. The employer had direct responsibility for this so they should be held liable if they have not taken steps to prevent it.</li><li>• <b><u>Pepper v Hart</u></b> – Permitted the use of Hansard as an extrinsic aid to interpretation. Teacher did not have to pay tax on the perk.</li></ul> <p><b>Advantage:</b> Judges are able to take a more creative approach in order to implement Parliament’s intention and the purpose of the law.</p> <p><b>Disadvantage:</b> Judges are arguably acting as law makers due to the fact that they are able to decide what Parliament intended to achieve when passing an Act.</p> |



| Intrinsic Aids  | Extrinsic Aids  |
|---|---|
| <p><b>‘Internal aids’</b> found <b>inside</b> the statute.</p> <p>The Statute itself</p> <ul style="list-style-type: none"><li>• <b>The long title</b> - a small introductory sentence which may also contain a brief explanation of Parliament’s intentions.</li><li>• <b>The short title</b> e.g., <b><u>Dangerous Dogs Act</u></b>.</li><li>• <b>The preamble</b> - older statutes usually have a preamble, for example the Theft Act 1968 states that it is an Act to modernise the law of theft.</li><li>• <b>Headings before a group of sections</b> - sometimes an Act will include interpretation sections i.e., a part to the Act that sets out the meaning of words within the legislation.</li></ul> <p>Rules of Language</p> <p><b>Ejusdem Generis</b></p> <p>If a general word follows specific terms, then the meaning of the general word will be of the same kind. Therefore, if the Act states ‘dogs, cats and other animals’, ‘other animals’ would include other domestic pets, but not wild ones.</p> <p><b>Expressio unius est exclutio alterius</b></p> <p>Where an Act mentions specific words, it implies the exclusion of all others. For example, an Act that mentions ‘Persian cats’ only includes that breed of cat.</p> <p><b>Noscitur a sociis</b></p> <p>A word draws meaning from the other words around it. For example, if an Act mentioned ‘cat basket, toy mice and food’, ‘food’ means cat food and not dog food.</p> <p>Presumptions</p> <p>The courts assume that certain points are implied in all legislation. For example:</p> <ul style="list-style-type: none"><li>• Statutes do not change the common law.</li><li>• Existing rights are not to be interfered with.</li><li>• Laws which create crimes should not be interpreted in favour of the citizen where there is an ambiguity.</li><li>• Legislation does not operate retrospectively.</li><li>• Statutes do not affect the monarch.</li></ul> | <p><b>‘External aids’</b> found <b>outside</b> the statute.</p> <p>Historical setting</p> <p>A judge may consider the historical setting of the provisions that are being interpreted, as well as other statutes dealing with the same subjects.</p> <p>Dictionaries and textbooks</p> <p>These may be consulted to find the meaning of a word, or gather information about the views of legal academics on a point of law.</p> <p>Reports</p> <p>Legislation may be preceded by a report of a Royal Commission, the Law Commission or another official advisory committee. Official reports may be considered as evidence of the pre-existing state of the law and the mischief that the legislation was intended to deal with.</p> <p>Treaties</p> <p>Treaties and international conventions can be considered when following the presumption that Parliament does not legislate in such a way that the UK would be in breach of its international obligations.</p> <p>The Interpretation Act 1978</p> <p>This sets out some basic principles about the meaning of common words in statutes. For example, if an Act uses the word ‘he’ this can also mean ‘she’. It also states that singular words include the plural so ‘he’ also means ‘they’.</p> <p>Hansard</p> <p>This is the <b>official daily report of parliamentary debates</b> and a record of what was said during the introduction of legislation. Originally the courts were <b>unable</b> to use this (<b><u>Davis v Johnson 1979</u></b>) but this rule was relaxed in 1993 in <b><u>Pepper v Hart</u></b>.</p> <p>You are only able to use these as an aid to interpretation where the following conditions are met, laid down by Lord Browne-Wilkinson.</p> <ul style="list-style-type: none"><li>• The legislation is ambiguous or obscure or leads to an absurdity.</li><li>• The material relied or consists of one or more statements by a minister or another promoter of the Bill.</li><li>• The statements relied on are clear.</li></ul> <p>In <b><u>Wilson v Secretary of State for Trade and Industry 2003</u></b>, it was decided that Hansard could be used to look for the <b>meaning</b> of the words but not to read the general debates in order to find out why Parliament thought it was necessary to pass the Act. This appears to limit the use of Hansard to the Literal Rule and maybe the Golden Rule.</p> <p>Advantages of using Hansard:</p> <ul style="list-style-type: none"><li>• It is useful and judges can read media reports on the Parliamentary proceedings anyway, so why not the official document too?</li></ul> <p>Disadvantages of using Hansard:</p> <ul style="list-style-type: none"><li>• It can take time and be costly to look through. Debate evidence may not be reliable. Only a few views are revealed, not all of Parliament’s.</li></ul> |