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## 4.2 The rules of statutory interpretation

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## 4.2 The rules of statutory interpretation

In this part we will explore the number of rules developed by the courts to assist with the interpretation of a statute. These are:

- the literal rule
- the golden rule
- the mischief rule
- the purposive approach.

These rules each take different approaches to interpretation of a statute. Some judges prefer one rule, while other judges prefer another. Some judges also feel that their role is to fill the gaps and ambiguities in the law whilst others think that it should be left to Parliament as the supreme law-maker. As the rules can result in very different decisions, it is important to understand each of them and how they may be used.

### 4.2a The literal rule

Under this rule the judge considers what the statute actually says, rather than what it might mean. In order to achieve this, the judge will give the words in the statute a literal meaning, that is, their plain ordinary everyday meaning, even if the effect of this is to produce what might be considered as an otherwise unjust or undesirable outcome. The literal rule says that the intention of Parliament is best found in the ordinary and natural meaning of the words used. As the legislative democratic part of the state, Parliament must be taken to want to effect exactly what it says in its laws. If judges are permitted to give an obvious or non-literal meaning to the words of parliamentary law, then the will of Parliament, and thereby the people, is being contradicted. Lord Diplock once noted:

*“Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral.”*

Duport Steel v Sirs (1980)

The use of the literal rule is illustrated by the case of *Fisher v Bell* (1960). The Restriction of Offensive Weapons Act 1959 made it an offence to offer for sale certain offensive weapons including flick knives. James Bell, a Bristol shopkeeper, displayed a weapon of this type in his shop window in the arcade at Broadmead. The Divisional Court held that he could not be convicted because, giving the words in the statute a tight literal meaning, Mr Bell had not offered the knives for sale. In the law of contract, placing something in a shop window is not technically an offer for sale; it is merely an invitation to treat. (An invitation to treat is an invitation to others to make offers, as by displaying goods in a shop window.) It is the customer who makes an offer to the shop when he proffers money for an item on sale. The court upheld that under the literal meaning of offer, the shopkeeper had not made an offer to sell and so was not guilty of the offence. Parliament subsequently changed the law to make it clear that displaying a flick knife in a shop window was an offence.

The literal rule has both advantages and disadvantages. Constitutionally it respects parliamentary supremacy and the right of Parliament to make any laws it might wish no matter how absurd they may seem. It also encourages precision in drafting and ensures that anyone who can read English can determine the law, which promotes certainty and reduces litigation. Some disadvantages, however, can also be identified. It fails to recognise that the English language itself is ambiguous and that words may have different meanings in different contexts. The use of this rule can sometimes lead to absurdities and loopholes which can be exploited by an unmeritorious litigant. Judges have tended to over-emphasise the literal meaning of statutory provisions without giving due weight to their meaning in a wider context. Placing emphasis on the literal meaning of words assumes an unobtainable perfection in draftsmanship. Finally, it ignores the limitations of language.

## 4.2b The golden rule

This rule is a modification of the literal rule. It states that if the literal rule produces an absurdity, then the court should look for another meaning of the words to avoid that absurd result. The rule was closely defined by Lord Wensleydale in *Grey v Pearson* (1857) HL Cas 61, who stated:

*“The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther.”*

The rule was used in the case of *Adler v George* (1964) to avoid an absurd result. Under section 3 of the Official Secrets Act 1920, it was an offence to obstruct HM Forces in the vicinity of a prohibited place. Mr Frank Adler had in fact been arrested whilst obstructing such forces within such a prohibited place (Markham Royal Air Force Station, Norfolk). He argued that he was not in the vicinity of a prohibited place as he was actually in a prohibited place. The court applied the golden rule to extend the literal wording of the statute to cover the action committed by the defendant. If the literal rule had been applied, it would have produced absurdity, as someone protesting near the base would be committing an offence whilst someone protesting in it would not.

*Re Sigsworth* (1935) concerned a case where a son had murdered his mother. The mother had not made a will and under the Administration of Justice Act 1925 her estate would be inherited by her next of kin, i.e. her son. There was no ambiguity in the words of the Act, but the court was not prepared to let the son who had murdered his mother benefit from his crime. It was held that the literal rule should not apply and that the golden rule should be used to prevent the repugnant situation of the son inheriting.

The golden rule provides no clear means to test the existence or extent of an absurdity. It seems to depend on the result of each individual case. Whilst the golden rule has the advantage of avoiding absurdities, it therefore has the disadvantage that no test exists to determine what is an absurdity.

## 4.2c The mischief rule

This third rule gives a judge more discretion than either the literal or the golden rule. This rule requires the court to look to what the law was before the statute was passed in order to discover what gap or mischief the statute was intended to cover. The court is then required to interpret the statute in such a way to ensure that the gap is covered. The rule is contained in *Heydon's Case* (1584), where it was said that for the true interpretation of a statute, four things have to be considered:

1. What was the common law before the making of the Act.
2. What was the mischief and defect for which the common law did not provide.
3. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth.
4. The true reason of the remedy; and then the office of the Judges is to make such construction as shall suppress the mischief and advance the remedy.

This rule gives the court justification for going behind the actual wording of the statute in order to consider the problem that the particular statute was aimed at remedying. At one level it is clearly the most flexible rule of interpretation, but it is limited to using previous common law to determine what mischief the Act in question was designed to remedy. The case itself concerned a dispute about legislation passed under Henry VIII in 1540 and a legal action against Heydon for intruding into certain lands in the county of Devon.

An example of the use of the mischief rule is found in the case of *Corkery v Carpenter* (1951). In 1951 Shane Corkery was sentenced to one month's imprisonment for being drunk in charge of a bicycle in public. At about 2.45 p.m. on 18 January 1950, the defendant was drunk and was pushing his pedal bicycle along Broad Street in Ilfracombe. He was subsequently charged under section 12 of the Licensing Act 1872 with being drunk in charge of a carriage. The 1872 Act made no actual reference to bicycles. The court elected to use the mischief rule to decide the matter. The purpose of the Act was to prevent people from using any form of transport on a public highway whilst in a state of intoxication. The bicycle was clearly a form of transport and therefore the user was correctly charged.

## 4.2d The purposive approach

This approach has emerged in more recent times. Here the court is not just looking to see what the gap was in the old law, it is making a decision as to what they felt Parliament meant to achieve. Lord Denning in the Court of Appeal stated in *Magor and St. Mellons Rural District Council v Newport Corporation* (1950), 'we sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment by opening it up to destructive analysis'.

This attitude was criticised on appeal by the House of Lords. Lord Simmons called this approach 'a naked usurpation of the legislative function under the thin disguise of interpretation'. He went on to say that 'if a gap is disclosed, the remedy lies in an amending Act'.

These comments highlight one issue with the purposive approach. How Parliament's intentions can be determined and whether judges should really be refusing to follow the clear words of Parliament. The purposive approach is one used by most continental European countries when interpreting their own legislation. It is also the approach which is taken by the European Court of Justice in interpreting EU law.

Since the United Kingdom became a member of the European Economic Community in 1973, the influence of the European preference for the purposive approach has affected the English courts in a number of ways. First, the courts have been required to accept that, from 1973, the purposive approach has to be used when deciding on EU matters. Second, as they use the purposive approach for EU law they are becoming accustomed to using it and more likely to use it to interpret domestic law. One example is *Pickstone v Freemans plc* (1998). Here, women warehouse operatives were paid the same as male warehouse operatives. However, Miss Pickstone claimed that the work of the warehouse operatives was of equal value to that done by male warehouse checkers who were paid £1.22 per week more than they were. The employers argued that a woman warehouse operative was employed on like work to the male warehouse operatives, so she could not bring a claim under section 1(2) (c) of the 1970 statute for work of equal value. This was a literal interpretation of the 1970 statute. The House of Lords decided that the literal approach would have left the United Kingdom in breach of its treaty obligations to give effect to an EU directive. It therefore used the purposive approach and stated that Miss Pickstone was entitled to claim on the basis of work of equal value even though there was a male employee doing the same work as her.

When using one of the rules of statutory interpretation the courts may rely on a presumption or secondary aids to assist them in making their decision.

## 4.2e Presumptions

When determining the meaning of particular words the courts will make certain presumptions about the law. If the statute clearly states the opposite, then a presumption will not apply and it is said that the presumption is rebutted. The main presumptions are:

1. A presumption against change in the common law.

It is assumed that the common law will apply unless Parliament has made it plain in the Act that the common law has been altered.

2. A presumption that *mens rea* ('guilty mind') is required in criminal cases.

*Mens rea* is one of the elements that has to be proved for a successful criminal prosecution. There is a common law rule that no one can be convicted of a crime unless it is shown they had the required intention to commit it.

3. A presumption that the Crown is not bound by any statute unless the statute expressly says so.
4. A presumption that a statute does not apply retrospectively. No statute will apply to past happenings. Each statute will normally only apply from the date it comes into effect. This is, however, only a presumption and Parliament can choose to pass a statute with retrospective effect. This must, however, be expressly stated in the

statutes, for example, the 1965 War Damage Act, the 1991 War Crimes Act and the 1976 Adoption Act.

The secondary aids are rules of language, intrinsic and extrinsic aids. These will be covered in the following sections.