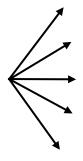


## Statutory interpretation. Aids to interpretation.

**Statutory interpretation** – the way judges understand a statute made by Parliament in the cases they hear; there are four rules of statutory interpretation: literal rule, golden rule, mischief rule and purposive approach.

Statutory interpretation – WHY?





Ambiguous words

**Drafting errors** 

New inventions (e.g. technology

Changes in the use of language

Broad terms

## NB: cases are stated only as examples, without the case summary being given.



Judges must follow the plain, ordinary and dictionary meaning of words and phrases that are used in statues.

Developed in the 19<sup>th</sup> century.

Lord Esher about the literal rule: 'If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity.'

## V

Case examples:

• Whitely v Chappell (1868)

Literal rule

- LNER v Berriman (1946)
- Fisher v Bell (1960)
- Follows the exact words parliament uses.
- Prevents absurdities and unelected judges making law.
- Certainty of laws.
- Easier to predict how judges will interpret the law.

Assumes every Act will be drafted perfectly.

- Ambiguity of words.
- May lead to unfair/unjust/ repugnant/absurd decisions.







A rule of statutory interpretation that modifies the literal rule and avoids absurd interpretations. Used when the literal rule has failed. Split into:

- narrow approach –
  looks at the different
  possible meanings of
  the word/phrase being
  used and choose the
  one that is least likely
  to cause absurdities; it
  is restricted by the
  existing meaning of
  words;
- broad approach may change the whole meaning of the word to avoid a repugnant decision.

Case examples:

- R v Allen (1872) [narrow approach]
- Re Sigsworth (1935)[broad approach]
- Adler v George (1964)
- Respects the exact words of Parliament (except in limited situations).
- Allows judges to choose the most sensible meaning where there is ambiguity of words.
- Avoids repugnant decisions.
- Limited use (rare occasions).
- Impossible to predict when it will be used (described as a 'feeble parachute).



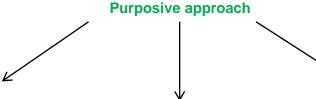
A rule of statutory interpretation that looks back to the gap in the previous law and interprets the Act so as to cover the gap. First used in *Heydon's Case* (1584), which raised the following questions:

- What was the common law before the Act was made?
- What was the mischief and defect for which the common law did not provide?
- What was the remedy that Parliament created to cure the commonwealth?
- What was the true reason for the remedy?

Case examples:

- *Smith v Hughes* (1960)
- Royal College Nursing v DHSS (1981)
- Eastbourne County Council v Stirling (2000)
- Promotes purpose of law.
- Fills in gaps in law.
- Produces a 'just' result.
- Risk of judicial law making.
- Not as wide as purposive approach.
- Limited to looking back at the old law.
- Can make the law uncertain.





An approach to statutory interpretation in which the courts look to see what the purpose of the law is.

Frequently use by the Court of Justice of the European Union.

Case examples:

- Jones v Tower Boot Co Ltd (1996)
- R v Registrar ex parte Smith (1990)
- R (on the application of Quintavalle) v Human Fertilisation and Embryology Authority (2003)
- Leads to justice in individual cases.
- Allows for new developments in technology.
- Avoids absurd decisions.
- Difficult to find Parliament's intention.
- Allows judges to make law.
- Leads to uncertainty in law.

<u>Intrinsic aids to statutory interpretation</u> – aids to interpretation found within the statute.

- Long and/or short title of the statute outlining the purpose of the statute.
- Preamble, a statement before the main body of the Act, setting out the aims/purpose of the statute.
- Schedules that can be referred to make sense of the main text to enable judges to understand a statute. Schedules are additions to the main body of the Act.
- Definition sections containing the meaning of key words used in statutes, e.g. in the Theft Act from 1968.
- Punctuation, which is usually limited so that interpretation can be left opened as it can affect the meaning of words
- Interpretation sections outlining the different interpretations of a word/phrase.

**Extrinsic aids to statutory interpretation** – aids to interpretation found outside the statute.

- Law Commission Reports, which can be referred to in order to discover the mischief that the legislation based on the report was seeking to deal with.
- Hansard, the official report of what was said in Parliament when the Act was debated.
- Interpretation Act 1978, which contains the meaning of words that are used in many statutes. It states that singular form includes the plural, and that 'he' is also referred to/includes 'she'.
- Explanatory notes, which are not part of the statute itself, and are written by the government departments responsible for the Act after it has been given Royal Assent.
- Dictionaries from the time of the statute used to find the literal meaning of words.