

Course Name- LL.B 6th sem
Subject- Interpretation of Statute
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Concept – General Rules of
Interpretation (next rules)

Mischief Rule

The literal and golden rules are concerned with finding out what Parliament SAID. The mischief rule is applied to find out what Parliament MEANT.

It looks for the wrong: the ‘mischief’ which the statute is trying to correct. The statute is then interpreted in light of this.

The rule is based on the Heydon’s Case [1584] – VERY OLD!...in which certain steps were identified as a way of interpretation

The mischief rule: Heydon's case 1584

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 is the remedy now provided by the Act of Parliament to deal with the mischief or defect for which the common law did not provide a cure?
4. The true reason of the remedy The court then interprets the Act in such a way as to cure the “mischief”

Heydon's Case [1584]

In this case it was stated that judges should

- (a) What was the common law before the enactment of the Act?
- (b) What was the mischief and defect for which the common law did not provide a remedy or redress?
- (c) What is the remedy now provided by the Act of Parliament to deal with the mischief or defect for which the common law did not provide a cure?
- (d) What is the rationale for the remedy?

Having answered these questions a judge then had the duty to construe the Act so as to

- (a) suppress the mischief;
- (b) advance the remedy;
- (c) suppress anything that would lead to the continuance of the mischief; and
- (d) advance the cure and the remedy according to the true intent of the makers of the Act for the public benefit.

Smith v Hughes (1960) aka Soliciting Case

Facts • Police officers preferred two information's against Marie Theresa Smith and four information's against Christine Tolan alleging that on various dates, they, being common prostitutes, did solicit in a street for the purpose of prostitution contrary to section 1(1) of the Street Offences Act, 1959.

- The defendant was a common prostitute who lived at No. 39 Curzon Street, London, and used the premises for the purposes of prostitution.
- On November 4, 1959, between 8.50 p.m. and 9.05 p.m. the defendant solicited men passing in the street, for the purposes of prostitution, from a first-floor balcony of No. 39 Curzon Street (the balcony being some 8–10 feet above street level)

- The defendant's method of soliciting the men was
 - (i) to attract their attention to her by tapping on the balcony railing with some metal object and by hissing at them as they passed in the street beneath her and
 - (ii) having so attracted their attention, to talk with them and invite them to come inside the premises with such words as 'Would you like to come up here a little while?' at the same time as she indicated the correct door of the premises.

- Issue
- It was contended on behalf of the defendant, inter alia, that the balcony was not ‘in a street’ within the meaning of section 1(1) of the Street Offences Act, 1959, and that accordingly no offence had been committed.

- Provision
- section 1(1) of the Act of 1959 are in this form: ‘It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution.’

- Interpreted literally, there would therefore be no offence. Applying the mischief rule, it did not matter that the women were not on the street themselves, as they were still soliciting men in the street, which was what the Act was designed to prevent. They were therefore found guilty. The mischief was them tapping on the balcony seeking attention from the street.
- Lord Parker said: ‘Everybody knows that this was an Act intended to clean up the streets... I am content to base my decision on that ground and that ground alone’

- Held

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Corkery v Carpenter 1951 aka Drunk n Ride case

- Law: S.12 of the Licensing Act 1872 made it an offence to be drunk in charge of a carriage on the highway.
- Facts: The defendant was riding his bicycle whilst under the influence of alcohol. Apply the mischief rule – what do you think is the mischief? And is the person guilty?
- Held: The court applied the mischief rule holding that a riding a bicycle is a carriage. This was within the mischief of the Act as the defendant represented a danger to himself and other road users.

Elliot v Grey 1960

Law: S.35(1) Road Traffic Act 1930: it is illegal to use an uninsured vehicle on the road.

Facts: The car was parked outside A's house; it had broken down some months before, the engine would not work, and there was no petrol in the tank. A had therefore cancelled his insurance, but said that he would have renewed it before driving the car again. It was jacked up and had its battery removed. The defendant argued he was not using the car on the road as clearly it was not driveable. Apply the mischief rule, do you think he was guilty? Was his actions contrary to what Parliament meant?

It was held that the car was being 'used on a road' and needed insurance, it was a hazard of the type which the statute aimed to prevent. The High Court affirmed his conviction. • Lord Parker CJ said the mischief was the protection of third parties, so "use" should be taken to mean "have the use of". Quite apart from the fact that another vehicle had collided with the stationary car, it was on a hill and could have rolled away if someone had let the brake off.

DPP v Bull [1995] QB 88

Law:s.1(1) of the Street Offences Act 1959; it an offence for a 'common prostitute to loiter or solicit in a public street or public place for the purposes of prostitution'.

Facts: A man was charged with an offence under above section.

The magistrates found him not guilty on the grounds that 'common prostitute' only related to females and not males.The Street Offences Act was introduced as a result of the work of the Wolfenden Report into homosexuality and prostitution. The Report only referred to female prostitution and did not mention male prostitutes.

The QBD therefore held the Act was aimed to control the behavior of only female prostitutes.

