

## **Interpreting Taxing Statutes # 61 - Joining provision (Or / And)**

**The words 'or' and 'and' can be used in different senses. <sup>^1</sup>**

### SYNOPSIS

Conjunctive and disjunctive sense

Penultimate paragraph

Either...or / Neither...nor

### **Conjunctive and disjunctive sense**

In legal texts, ‘and’ act as a conjunctive ie it connotes togetherness whereas ‘or’ act as a disjunctive ie it creates alternatives eg ‘A and B’ means both A and B whereas ‘A or B’ means either A or B.<sup>^2</sup>

The classification of ‘and’ as conjunctive and ‘or’ as disjunctive is incomplete. It is important also to recognize the ambiguity of each term and the overlap of meaning which may occur in some contexts. This is illustrated by two examples:

- (i) A and B may do X.
- (ii) A or B may do X.

The expression (i) – ‘A and B may do X’ – conveys three possible meanings namely:

- (a) A and B jointly may do X.
- (b) A may do X, B may do X or both A and B may do X.
- (c) The single concept of A and B may do X (for example, if A=civil servant and B=doctor then a doctor who is a civil servant may do X).

The expression (ii) – ‘A or B may do X.’ – means:

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<sup>1</sup> Bennion 2020 s 17.11

<sup>2</sup> Scalia 2012 p 116

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- (a) Either A or B, but not both of them, may do X.
  - (b) A may do X, B may do X or both A and B may do X.

It may be noted that second meaning of first expression is the same as the second meaning of second expression.

Where the collective nature of the group consisting of A and B is predominant in the mind, then ‘and’ is likely to be used. If A and B are thought of as individuals rather than as members of a class or group, then ‘or’ is usual. Neither form is more correct than the other; the matter is vaguely one of emphasis.

Here is an example where it was held that ‘or’ was to be read in an inclusive or conjunctive sense.

A provision stated that ballot papers which had been marked ‘(a) elsewhere than in the proper place, or (b) otherwise than by means of a cross ...’ were not deemed to be void if the voter’s intention to vote for a particular candidate was clear. The court held that ‘or’ was to be read in an inclusive sense so that the provision applied to a ballot paper marked in both of those manners. The alternative construction would defeat the legislative purpose, which was to save votes where the intention of a voter is clear.<sup>3</sup>

There are also many instances where ‘or’ is used in an exclusive or disjunctive sense. An example is where it is used in relation to alternatives which are mutually incompatible, as where there is a power to ‘vary or revoke an order.

Similar issues can arise with ‘and’ which can be used in a joint and several sense or a joint sense, or, to put it another way, it may be used disjunctively as well as conjunctively.

### **Penultimate paragraph**

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<sup>3</sup> Pilling v Reynolds (2008) EWHC 316 (QB) cited in Bennion 2020 p 570

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For a provision consisting of several numbered paragraphs with the word 'and' or 'or' at the end of the penultimate paragraph, see ITS 52.

### **Either...or / Neither...nor**

‘Or’ should follow ‘either’ whereas ‘nor’ should follow ‘neither’. Attention must be given to deciding whether ‘or’ or ‘nor’ should follow a negative. Where the negative is ‘neither’, then ‘nor’ should follow. Conversely ‘nor’ should not follow ‘either’.

When the negative is ‘not’ or ‘no’ the position is less clear. ‘Nor’ should be used when the sentence is so constructed that the negative in the first part of the sentence does not carry through and refer to the second part. If it does, then ‘or’ should be used to prevent the appearance of a double negative.