

Interpreting taxing statutes # 37 – Meaning of mischief

The legislature intends an enactment to remedy a particular mischief. It is presumed therefore that the legislature intends the court, in construing the enactment, to endeavour to apply the remedy provided by it in such a way as to suppress that mischief. The mischief that the legislature intends an enactment to remedy may be either a social mischief which is coupled with a legal mischief, or a purely legal mischief.^{^1}

SYNOPSIS

Defect as mischief

Legal and social mischief

Objection to the term

Defect as mischief

In almost all cases, an Act is passed in order to change the existing law. So, the reason for an Act's passing must lie in some perceived defect in the existing law. If the existing law were not considered defective, the legislature would not need or want to change it. That defect is the 'mischief' to which the Act is directed.^{^2}

Legal and social mischief

The term mischief, as used in statutory interpretation, has two different meanings. It may refer to a legal defect or to a mischief 'on the ground', that a factual condition that is causing concern

¹ Bennion 2020 s 12.5 and 12.6

² Bennion 2020 p 448

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(such as an increase in mugging or a decline in the birth rate) – this is referred to here as the “social mischief”.<sup>3</sup>

While of the mischief on the ground may corresponding to a defect in the law, this is not necessarily so. An increasing mugging may arise because the law is inadequate or because an adequate law is inadequately enforced. A decline in the birth rate may lie beyond the reach of the law altogether.<sup>4</sup>

While in the main lawyers intend, when referring to the ‘mischief of an Act, to point to defect in the law for which the Act aims to provide a remedy, they sometimes find it convenient to apply the term in the other sense of a mischief ‘on the ground’ or social mischief. Said as follows:

“The interpretation of statute is far from academic exercise. It is directed to a particular statute, enacted at a particular time, to address (almost invariably) a particular problem or mischief.”<sup>5</sup>

**Objection to the term**

The term “mischief” has been objected to because the concept of the social mischief embraces situation where the desire is to improve an already neutral or even beneficial state or affairs. The terms “tends to suggest that legislation is only designed to deal with an evil and not to further a positive social purpose”. This echoes Bentham who wrote:

“The end of the Law is suppression of the supposed mischief that gave occasion to it, when it is a mischief; or the procurement or advancement of the benefit, when it is a benefit.”<sup>6</sup>

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<sup>3</sup> Bennion 2020 p 448

<sup>4</sup> Bennion 2020 p 448

<sup>5</sup> R v Z (Attorney General for Northern Ireland’s Reference) [2005] UKHL 35 cited in Bennion 2020 p 449

<sup>6</sup> A Comment on the Commentaries p 107 cited in Bennion 2020 p 449

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The term “general legislative purpose” is preferred by few but the purpose of an Act is not the same thing as the mischief. The purpose rather is to provide a remedy for the mischief.⁷

⁷ Bennion 2020 p 449

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