

Interpreting Taxing Statutes # 29 – Interpreter to use common sense

SYNOPSIS

Use of common sense

Drafter's silence

Instances of common sense

Use of common sense in law

Many judicial dicta say that common sense, or good sense, or native wit, or the reason of the case, are expected by the legislature to be applied in the interpretation of its laws. For example:

“A certain amount of common sense must be applied in construing statute.”¹

“An important canon of construction is to interpret legislation, so far as possible, to equate with common sense.”²

Indeed common sense is a quality frequently called for in law generally.³

Drafter's silence

When a particular matter is not expressly dealt with in the enactment this may simply be because the drafter thought that as a matter of common sense it went without saying.⁴

Legislation is often silent on points of detail, simply because it is not possible to express every aspect of a matter. Common sense may be needed in working out the details. ⁵

¹ Barnes v Jarvis (1953) 1 WLR 649 cited in Bennion 2020 p 414

² R v Home Secretary, ex p Naughton (1997) 1 All ER 426 cited in Bennion 2020 p 414

³ Bennion 2020 p 414

⁴ Bennion 2020 p 415

Instances of common sense

Common sense indicates that a power to extend a period cannot be exercised after the period has expired, because there is by then nothing to extend.⁶

Again common sense indicates that if it is forbidden to 'show' indecent photographs this does not include showing them exclusively to oneself.⁷

Greater includes less - The requirement that common sense is used in interpretation brings in such obvious principles as that the greater includes the less.⁸

Removal of ambiguity - Formal or syntactical ambiguity can sometimes be resolved by the use of common sense.⁹

⁵ Bennion 2020 p 415

⁶ R v Shergill (1999) 2 All ER 485 cited in Bennion 2020 p 415

⁷ R v T (1999) Crim LR 432 cited in Bennion 2020 p 415

⁸ Bennion 2020 p 416

⁹ Bennion 2020 p 416