

Interpreting taxing Statutes # 19 – Strained construction

There are occasions when it is necessary to depart from the grammatical meaning in order to give effect to the legislative intention. And such ascertainment of legal meaning is called as 'strained construction'.¹

SYNOPSIS

Emphasis on literal construction

Need for strained construction

Metaphorical construction

Equitable construction

Strict and liberal construction

Relevance of quality of drafting to interpretation

Emphasis on literal construction

It is easy to find dicta, particularly in older cases that suggest the court's interpretation of an enactment is limited by the grammatical meaning of the enactment. For instance, one may observe the dicta of an English case:

It is a cardinal principal applicable to all kinds of statues that you may not for any reason attach to a statutory provision a meaning which the words or that provision cannot reasonably bear. If they are capable of more than one meaning, they you can choose between those meanings, but beyond that you must not go.²

Similarly, one can find dicta to the effect that the grammatical meaning must be followed, irrespective of the consequences³

¹ Bennion 2020 s 10.5

² Jones v DPP [1962] AC 635 cited in Bennion 2020 p 368

³ Warburton v Loveland (1832) Dow & CL 480 cited in Bennion 2020 p 368

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and even in case of absurdity<sup>4</sup>, and that the court has no power to read words into a statute<sup>5</sup>.

### Need for strained construction

The aforesaid dicta reflect the so-called literal rule of statutory interpretation. But it is not always enough for a lawyer, however, to say *ita lex scripta est* (thus the law is written) as observed by Blackstone in his “Commentaries on the Laws of England”.<sup>6</sup>

When the purpose of an enacted is clear, it is often legitimate, because it is necessary, to put a strained interpretation upon some words which have inadvertently used.<sup>7</sup>

**Cases where strained construction is used:** The following reasons may justify (and in some cases require) the strained construction of an enactment:

- (a) An inconsistency between the word of the enactment and those of some other enactment;
- (b) An error in the text which plainly falsifies the legislature’s intention; or
- (c) Consequences of a literal construction so undesirable that the legislature cannot have intended them.

The abovesaid reasons are illustrative only, the categories of case in which a strained construction may be appropriate are not closed as the overriding objective is of course to give effect to the legislative intention.<sup>8</sup>

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<sup>4</sup> R v City of London Court Judge and Payne [1892] 1 QB 273 cited in Bennion 2020 p 368

<sup>5</sup> R v Wimbledon Justices, ex P Derwent [1953] 1 QB 380 cited in Bennion 2020 p 368

<sup>6</sup> Bennion 2020 p 368

<sup>7</sup> Southern Line Publishing Company Limited v Caxton Publishing Limited [1938] Ch 174 cited in Bennion 2020 p 368

<sup>8</sup> Bennion 2020 p 368

## Metaphorical construction

Metaphor is a figurative language intended to convey a different meaning than the literal denotative meaning of the word used. For example, "He was drowning in paperwork" is a metaphor in which having to deal with a lot of paperwork is being compared to drowning in an ocean of water. Metaphor derives from the Greek *metapherein* (*meta*, beyond; *pherein*, to bring or carry over) meaning "transfer." The tenor or basic meaning of the word is carried over or transferred to a new meaning. So, when one says, "His words cut deeper than a knife.", the 'words' don't materialize into sharp objects rather it is understood that someone has said something hurtful to another.

Where the meaning is plain that is where in relation to the fact of the instant case the enactment in question is grammatically capable of one meaning only, and the relevant principles of interpretation raise no real doubt about that meaning or does not point away from that meaning, the plain meaning must be given. In other words, the legal meaning of the enactment corresponds to the literal or grammatical meaning where there is nothing to modify, alter or qualify it.

Where the literal interpretation does not resolve the ambiguity or remove the vagueness that is on an informed interpretation a doubt arises about the meaning then attempt is made to discover the meaning intended by the legislature in the given case by reading the enactment as a metaphor that is **beyond the literal meaning** of the text. The tenor or basic meaning of the expression is carried over to meet the effect intended by the legislature gleaned from the text. The feature that distinguishes literal interpretation from the metaphorical construction is

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 reading of legislative intention in between the text of the enactment. Bennion names this as the **strained construction**.

The significance of such kind of interpretation may be better understood by anonymous poetic couplet:

एक ही मतलब नहीं रखती है तेरी हर नहीं

कभी मुस्का के नहीं कभी झुँझला के नहीं

[ek hee matalab nahin rakhatee hai teree har nahin

kabhee muska ke nahin kabhee jhunjhala ke nahin]

Equitable construction

In former times, the practice of a giving a strained meaning to statutes was known as equitable construction. This term had no more than an oblique reference to the technical doctrine of equity, but mainly indicated a free or liberal construction. The old doctrine of equitable construction has no application today.⁹

Formerly equitable construction was felt to be required for two reasons. The first concerned the need to soften the harshness of some general rules laid down by the legislature. The other reason arose from the fact that early statutes lacked precision of language.¹⁰

Thus, some of the grounds on which it is nowadays regarded legitimate to depart from the grammatical meaning find their counterpart in old doctrine of equitable construction. The difference is that present day judges give unquestioned acceptance to the supremacy of the legislature, and strained

⁹ Bennion 2020 p 370

¹⁰ Bennion 2020 p 371

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constructions are applied in accordance with clearly-defined principle rather than judicial whim.<sup>^11</sup>

### **Strict and liberal construction**

A strict construction narrows the operation and effect of an enactment whereas a liberal construction broadens it. Principles of legal policy such as principle against doubtful penalisation and that in favour of the public interest tend to indicate that the court should be ready to narrow the effect of a coercive enactment, and widen that of a relieving enactment. However, strict and liberal construction are not in themselves interpretive criteria they are simply methods or technique by which the court applies the interpretive criteria.<sup>^12</sup>

The distinction between strict construction and more free one has, no doubt, in modern time almost disappeared, and the question now is, what is the true construction of a statute?<sup>^13</sup>

### **Relevance of quality of drafting to interpretation**

If the legislative tax is verbose, confused, contradictory or incomplete, the interpreter must take this into account when construing it. It may therefore be necessary to assess the style of drafting of an Act or other legislative instrument.<sup>^14</sup>

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<sup>11</sup> Bennion 2020 p 372

<sup>12</sup> Bennion 2020 9 373

<sup>13</sup> A-G v Sillem (1864) 2 H & C 431 cited in Bennion 2020 p 373

<sup>14</sup> Bennion 2020 9 375