

~~~~~ **Interpreting Taxing Statutes # 33 – Purpose of the enactment**

An Act or other legislative instrument is passed or made for a reason. Similarly, there is a reason for the inclusion of each enactment in the legislative instrument. In construing an enactment, the court will have regard to these reason.¹

SYNOPSIS

Heydon's case

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In interpreting legislation, the court seek to identify and give effect to its purpose. The reason for the passing of the Act and for each enactment of that Act. The court have for a long time held that legislation should be interpreted according to the 'mischief' that it is intended to address. This is sometimes known as the 'mischief' rule. In **Heydon's case** the Barons of the Exchequer resolved as follows:

“That for the sure and true interpretation of all statutes in general (by the penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

- (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 remedy the parliament hath resolved and appointed to cure the diseases of the commonwealth; and
- (4) The true reason of the remedy,

And then the office of all the judges is always to make such construction as shall:

¹ Bennion 2020 s 12.1

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- (a) Suppress the mischief and advance the remedy and
- (b) Suppress subtle inventions and evasions for continuance of the mischief *pro privato commodo* (for private benefit), and
- (c) Add force and life to the cure and remedy according to the true intent of the makers of Act *pro bono publico* (for the public goods).”<sup>2</sup>

Although it is the predecessor to purposive construction, judges still refer to the mischief at which an enactment is directed. Indeed, judges sometimes refers to the mischief and purpose in the same breath.

Finally, paragraph (b) of the resolution in Heydon’s case set out above indicates that an enactment should be construed in such a way as to counter subtle inventions and evasions.

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<sup>2</sup> Heydon’s case (1584) 3 Co Rep 7a cited in Bennion 2020 p 434

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