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## **Interpreting Taxing Statutes # 106 – Earlier law as aid to construction**

**In order to understand the meaning and effect of a provision in an Act it is essential to take into account the state of the previous law and, on occasion, its evolution. [Ben 24.5]**

### SYNOPSIS

At its most basic level, the purpose of an Act is normally to make changes in the law. In order to understand the meaning and effect of a provision it is essential to understand the state of the law at the time the Act was passed. The court cannot soundly judge the mischief that a provision is intended to remedy unless it knows the previous state of the law, the defects found to exist in that law, and the facts that caused the legislature to pass the legislation. Moreover, an Act is drafted against the backdrop of general legal principles and with a view to the Act taking its place in the wider scheme of statutory and common law rules. The courts will often look to the previous law to support a particular construction.

The importance of the previous law as an aid to construction is by no means new, as indicated by the following passage from Plucknett quoting from a sixteenth-century text on statutory interpretation:

‘Thus to those who say that there is no need to know what the law was before the statute, “since it is certain what the law is now by statute” the author replies “yet are they much deceived ... for they shall neither know the statute nor expound it well, but shall as it were follow their noses and grope at it in the dark”.

For the most part the court will take judicial notice of the earlier law without the necessity of proof.

### EXAMPLE

In *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG* [(1975) AC 591] Lord Diplock, in considering the use that could be made of a committee report upon which the Foreign Judgments (Reciprocal Enforcement) Act 1933, s 8, was based, said:

‘The Act deals with a technical subject-matter—the treatment to be accorded by courts in the United Kingdom to judgments of foreign courts. The expressions used in it are terms of legal art which were in current use in English and Scots law at the time the Act was passed. In order to understand their meaning the court must inform itself as to what the existing law was on this technical subject-matter. In order to do this it may have recourse to decided cases, to legal text-books or other writings of recognised authorities, among whom would rank the members of the committee. Their report contains a summary of the existing law, as they understood it. As such it is part of the material to which the court may have recourse for the purpose of ascertaining what was the existing law on the subject-matter of the Act.’

### *Legislative evolution*

Where a subject has been dealt with by a developing series of Acts, the courts often find it necessary, in construing the latest Act, to trace the course of this development. By seeing what changes have been made in the relevant provision, and why, the court can better assess the provision’s intended meaning.