

Interpreting taxing Statutes # 23A – Value Judgement

Value-judgment is the preference for a consequence that serves and balances the social considerations which are viewed as objectives of the legal order.

General propositions do not decide cases. The most important interpretive factor is a trained sense of discretionary justice for the meaning of legal precepts may vary in different contexts according to demands of justice.¹ This discretion does not call for personal whims and caprices of judges but their **shared sense of values** irrespective of their patent knowledge or approval. It is in this way that that they operate as checks on personal quirks and go towards preserving public confidence in the judicial settlement of dispute. ‘Values’ consists of those considerations, which are viewed as objectives of the legal order and which shape the decisions of the courts and guide their handling of the law by providing yardsticks for measuring the conflicting interests that are involved in a dispute. By ‘value-judgment’ is signified the choice of a particular yardstick as well as the result of measuring interests with reference to the chosen value. The principal yardsticks by which conflicting interest are evaluated may tentatively are: National and social safety; Sanctity of person; Sanctity of property; Social welfare; Equality; Consistency and fidelity to rules, principles, doctrine and tradition; Morality; Administrative convenience; and International comity.

Both sanctity of the person and of property yield to the safety of the nation or society.

¹ Dias

~~~~~

Both sanctity of the person and of property yield to the safety of the nation or society.<sup>2</sup> Thus, at the time of the 1939-45 war, the courts were not going to hamper the executive, and every consideration, including that of freedom from arbitrary arrest, was made to yield to the national interest.<sup>3</sup> Even in time of peace the sanctity of the individual may have to yield before national security. Thus, where the principles of natural justice were modified in the national interest, it was held that in the interests of security disclosure of the source of highly confidential information was unwarranted.<sup>4</sup> Similarly, where public order required that the public should be protected from excessive noise the use of a loudspeaker without obtaining police permission as required by a statute was held illegal despite the Constitutional guarantee of freedom of communication.<sup>5</sup> Public safety influences the law in many other ways.

**Increasing awareness of the interests of society embarks upon an era of social welfare as a criterion of interpretation.**

There is a detectable priority at least as between national and social safety, sanctity of the person and property in that order. Beyond this no hierarchy is discernible. It is difficult, for instance, to foretell in any given case, whether property rights or social welfare will be preferred, and the most that can be said is that there has been increasing awareness of the interests of society, especially within the past fifty years.<sup>6</sup> Thus, in deciding whether statutory authority to exercise a power justifies interference with private rights the old criterion was whether

---

<sup>2</sup> Dias 1985 p 199

<sup>3</sup> Liversidge v Anderson [1942] AC 206 quoted in Dias 1985 p 199

<sup>4</sup> R v Secretary of State for the Home Department, ex p Hosenball [1977] 3 All ER 45 quoted in Dias 1985 p 200

<sup>5</sup> Francis v Chief of Police [1973] AC 761 quoted in Dias 1985 p 200

<sup>6</sup> Dias 1985 p 204

~~~~~

interference was the inevitable consequence of the act which Parliament had authorised. If so, no action lay. Where power had been given to run a railway, it was held that this inevitably implied some interference with the comfort of individuals by way of noise, vibration and smoke.⁷ But the power to erect a smallpox hospital was held not to imply authority to erect it in such a place as to interfere with the amenities of individuals.⁸ In more recent years there has been a tendency to take account of the social utility of an operation. For instance, it has been held that the utility of a public shelter outweighed the degree of interference with private rights that it caused.⁹ On the other hand, even the social utility of an authorised activity will not justify causing widespread inconvenience.¹⁰ With regard to taxation, too, it is interesting to contrast the old attitude that taxation is an interference with the wealth of individuals and that evasions should be benevolently regarded with the modern attitude that takes account of the social need for taxation.¹¹

⁷ *Vaughan v Taff Vale Rly Co* (1860) 5 H&N 67 quoted in *Dias* 1985 p 205

⁸ *Metropolitan Asylum District Managers v Hill (SB)* 6 App Case 193 quoted in *Dias* 1985 p 205

⁹ *Edgington, Bishop and With, e Swindon Borough Council* [1939] 1 KB 86

¹⁰ *Birmingham and Midland Motor Omnibus Co Ltd, Worcestershire County Council* [1967] All ER 544

¹¹ *Levene v IRC* (1928) AC 217 reflected old attitude whereas the new attitude is reflected in *Howard de Walden v IRC* [1942] 1 KB 389 quoted in *Dias* 1985 p 206