

SYNOPSIS

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Opposing construction

Opposing Constructions as the Starting Point of Statutory Interpretation

Statutory interpretation ordinarily arises when the parties to a dispute attribute **different legal meanings** to the same statutory provision as applied to the facts of the case.¹ The task of interpretation, therefore, is not undertaken in the abstract but in the context of a concrete controversy where competing constructions of an enactment are advanced. Bennion describes these competing interpretations as "**opposing constructions**," which constitute the starting point of the interpretative process.

Since each party contends for a particular legal meaning, the competing constructions must be stated with precision. Advocates, and ultimately the court, should identify in clear terms the precise construction for which they contend, including any interpretation that departs, however slightly, from the ordinary or literal meaning of the statutory language.² Even a subtle or seemingly tenuous departure from the natural meaning must be expressly articulated rather than left implicit.³

¹ Bennion, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed., 2020), s 10.3

² *Ibid.*, p. 364

³ *Secretary, Department of Social Security v Clear* (1991) 23 ALD 22, cited in Bennion (2020), p. 364.

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The court's function is to resolve the *lis* by determining which of the rival constructions correctly reflects the meaning of the enactment. Before doing so, the court must acquaint itself with the relevant legal and factual context and then consider whether the statutory language is reasonably capable of bearing the competing interpretations advanced by the parties.<sup>4</sup> The process is therefore one of evaluating competing legal meanings in light of the statutory text, its context, and its purpose.

The nature of the opposing constructions depends upon the language of the enactment. Where the statutory provision is genuinely **ambiguous**, the rival constructions usually represent two or more grammatically plausible meanings of the same words. However, where the language is grammatically capable of only one meaning, the opposing construction generally involves an attempt to qualify, restrict, or expand that grammatical meaning through a **strained or purposive interpretation** rather than by offering an alternative grammatical reading.<sup>5</sup> Thus, whether the dispute concerns ambiguity or the permissible limits of construction, the interpretative exercise begins with the identification and evaluation of the competing constructions placed before the court.

### Consequences of each opposing construction

When considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, the court should assess the likely consequences of adopting each construction, both the parties in the case and for the law generally (ie when similar facts

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<sup>4</sup> *Attorney-General v HRH Prince Ernest Augustus of Hanover* [1957] AC 436, cited in Bennion (2020), p. 363.

<sup>5</sup> Bennion (2020), p. 364

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arise in future cases). If on balance the consequences of a particular construction are more likely to be adverse than beneficial this is a factor telling against that construction.<sup>6</sup>

The consequences of a particular construction may be regarded as **adverse** if they are such that in the light of the principles of interpretation the court views them with disquiet in the sense that it frustrates the purpose of the Act, or works injustice, or is contrary to public policy, or is productive of inconvenience or hardship, and so on. The legislature is presumed not to intend such consequences.

Any other consequences (whether merely neutral or positively advantageous may be called **beneficent**. However, a consequence clearly intended by the legislature is to be treated as beneficial even though the judge personally dislikes it.

The court is not permitted to canvass the merits of what the legislature has undoubtedly willed. It is only where there is ‘real doubt’ as to the legislature’s true intention regarding the meaning of the enactment in relation to the facts of the instant case that the **adverse-beneficent test** comes into play.

In judging consequences, it is important to distinguish consequences to the parties in the instant case and consequences for the law generally. It will usually be a straightforward matter to determine the effect on the court’s final order of a finding in favour of one possible construction rather than the other. The court must also bear in mind that under the doctrine of precedent its decision may be of binding, or at least persuasive, authority for future cases. Before reaching any decision on a new point of

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<sup>6</sup> Bennion 2017 p 302 Sec 9.6

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principle, whether in common law or statute, the court must carefully weigh its **future effect** on the law.

Sometime the advocate opposing a particular finding paint, in grim contours, the likely consequence. Counsel says, in effect, that if the court adopts the opponent's view of the legal rule in question this will open the floodgates to a spate of unmeritorious future claims. Such argument is properly called as the **floodgate argument**.

The court may be less unwilling to adopt an 'adverse' construction where some official is interposed whose discretion may be so exercised as to reduce the practical ill-effects.

References to the consequences can rarely change the interpretation of an enactment if the grammatical meaning is incontrovertibly clear. The consequences may, however, sometime be so dire as virtually to compel the court to depart from it, even where the grammatical meaning is clear.⁷

Grammatical construction

The starting point of statutory interpretation is the ascertainment of the **grammatical or ordinary linguistic meaning** of the words employed in an enactment. This is commonly referred to as the **literal construction** of the statute. At this stage, the provision is read as a piece of ordinary prose and interpreted according to the accepted rules of grammar and established linguistic canons of construction, without regard to legal or policy considerations.⁸

The grammatical meaning represents the meaning that the statutory language bears in ordinary usage. From a purely

⁷ Bennion 2017 p 305

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linguistic perspective, that meaning may be **clear, ambiguous, or obscure**. However, grammatical meaning is only the starting point of interpretation and should not be confused with the **legal meaning** of the enactment. Even where the ordinary meaning of the words is clear, it may not necessarily correspond to the legal meaning intended by the legislature when the provision is read in its statutory context and in light of its purpose.^{^9}

Accordingly, there is a clear conceptual distinction between the **grammatical meaning**, which is derived solely from the language of the enactment, and the **legal meaning**, which emerges after considering the statutory context, legislative purpose, and other accepted principles of interpretation. The interpretative process therefore begins with the literal meaning of the words but does not invariably end there.

Resolving ambiguity through opposing construction

A grammatical ambiguity may be best resolved by considering it in light of opposing construction of the enactment on the particular facts of the case. If the opposing constructions are evenly balanced grammatically then other interpretative criteria will wholly decide the issues. If they are not, then one meaning will have more claim than the other to be the grammatical meaning and will carry more weight accordingly (though other interpretative factors may of course displace that meaning).^{^10}

Strained construction

There are occasions when it is necessary to depart from the grammatical meaning in order to give effect to the legislative

⁸ Bennion, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed., 2020), §10.4

⁹ Ibid., p. 365

¹⁰ Bennion 2020 p 367

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intention. And such ascertainment of legal meaning is called as 'strained construction'.<sup>11</sup>

### 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 statutes that you may not for any reason attach to a statutory provision a meaning which the words of 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.<sup>12</sup>

Similarly, one can find dicta to the effect that the grammatical meaning must be followed, irrespective of the consequences<sup>13</sup> and even in case of absurdity<sup>14</sup>, and that the court has no power to read words into a statute<sup>15</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>16</sup>

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<sup>11</sup> Bennion 2020 s 10.5

<sup>12</sup> Jones v DPP [1962] AC 635 cited in Bennion 2020 p 368

<sup>13</sup> Warburton v Loveland (1832) Dow & CL 480 cited in Bennion 2020 p 368

<sup>14</sup> R v City of London Court Judge and Payne [1892] 1 QB 273 cited in Bennion 2020 p 368

<sup>15</sup> R v Wimbledon Justices, ex P Derwent [1953] 1 QB 380 cited in Bennion 2020 p 368

<sup>16</sup> Bennion 2020 p 368

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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.¹⁷

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.¹⁸

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

¹⁷ Southern Line Publishing Company Limited v Caxton Publishing Limited [1938] Ch 174 cited in Bennion 2020 p 368

¹⁸ Bennion 2020 p 368

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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 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

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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.¹⁹

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.²⁰

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 constructions are applied in accordance with clearly-defined principle rather than judicial whim.²¹

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

¹⁹ Bennion 2020 p 370

²⁰ Bennion 2020 p 371

²¹ Bennion 2020 p 372

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simply methods or technique by which the court applies the interpretive criteria.<sup>^22</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>^23</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>^24</sup>

### Interpreter's duty to arrive at legal meaning

#### Legal Meaning of an Enactment

The ultimate objective of statutory interpretation is to ascertain the **legal meaning** of an enactment, namely, the meaning that gives effect to the **legislative intention**. Legal meaning is distinct from the **grammatical meaning** of statutory language. While grammatical meaning is derived from the ordinary rules of language, legal meaning emerges only after the statutory words are considered in their legal context and interpreted in accordance with recognised principles of statutory interpretation.<sup>^25</sup>

Every enactment is expressed through words which ordinarily possess a grammatical meaning. An inexperienced reader may assume that this grammatical meaning represents the complete meaning of the statute. However, the distinction between

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<sup>22</sup> Bennion 2020 9 373

<sup>23</sup> A-G v Sillem (1864) 2 H & C 431 cited in Bennion 2020 p 373

<sup>24</sup> Bennion 2020 9 375

<sup>25</sup> Bennion, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed., 2020), §10.8

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grammatical and legal meaning lies at the heart of statutory interpretation. If statutory interpretation consisted merely of reading words according to their ordinary linguistic sense, there would be little need for the well-developed principles of interpretation or the extensive body of jurisprudence governing statutory construction.^{^26}

The legal meaning of an enactment is therefore reached through the application of recognised **interpretative criteria**, sometimes described as the **guides to legislative intention**. These include the statutory context, the purpose of the enactment, the mischief sought to be remedied, and other accepted principles of interpretation. Such considerations may reinforce the grammatical meaning or, in appropriate circumstances, justify a departure from it. Frequently, these interpretative factors pull in different directions. For example, although the grammatical meaning of a provision may appear clear, its literal application may fail to remedy the mischief that the legislature intended to address. The legal meaning is therefore the result of interpreting the statutory language in its proper legal and contextual setting so as to give effect to the legislative intention.^{^27}

Duty of the Interpreter

Every person or authority entrusted with the application of an enactment is under a legal duty to ascertain its **legal meaning**. Since every enactment forms part of the *corpus juris* (the body of law), interpretation requires legal knowledge and an understanding of the principles governing the legal system. Consequently, an interpreter cannot refuse to interpret a statutory provision on the ground of *non liquet* ("it is not clear"). The law

²⁶ Ibid., p. 378

²⁷ Ibid., p. 378

requires the interpreter to resolve uncertainty and determine the legal meaning of the enactment.²⁸

This duty was emphasised by the court in **Attorney-General v. Sillem**, where it observed:

"It is our duty to ascertain the true legal meaning of the words used by the legislature."²⁹

The interpreter's task is therefore not confined to identifying the ordinary linguistic meaning of statutory words. Rather, the interpreter must consider the language of the enactment in light of its statutory context, legislative purpose, and established interpretative principles, and then adopt the construction that best gives effect to the intention of the legislature. The duty of interpretation is thus a duty to ascertain **legal meaning**, not merely grammatical meaning.

Legislative intention

The legislative intention is the effect intended by the legislature through the words used in the enactment.³⁰

Cause and effect

Every voluntary movement of our body is an act. Involuntary movement whether conscious or not does not amount to an act. Instances of involuntary movements are: beating of the heart, heaving of the chest, coughing up, jerks which one make to save oneself from falling, struggles of a person in a fit of epilepsy, etc. So, a body movement cannot mature into an act if it lacks volition.

²⁸ Bennion (2020), §10.8

²⁹ *Attorney-General v. Sillem* (1864) 2 H & C 431, cited in Bennion (2020), p. 378

³⁰ Bennion 2020 s 10.9

Act = cause + effect

An act is **motivated** by the cause and **manifested** by the effect. One may observe the act through its effect, for instance if one draws a line on the paper then the line manifests (shows) the act of drawing. The cause of such effect as expected in causal relationship, however, remains hidden and can be best explained by the actor and is said to be the motive (or purpose or object or aim) of the act. So, a line may be drawn for the purpose of drawing a picture on the paper or setting the margin of the paper or even wantonly. The motive which induces the actor to act may be **good** or **bad**. Robbing Paul to pay Peter may show a good motive on the part of the actor but the effect of robbing is not appreciated by the society. Since motive is best explained by the actor the **professed** motive may be different from the **concealed** one; for instance, distribution of subsidy may be professed as help to the poor but virtually it may be to garner the vote of a particular class.

Intended or unintended effect - Effect may be intended or unintended. Whether the line was drawn as intended or some external force quirked the hand of the actor who was holding the pencil in his hand and the hand was on a paper and the line was thus drawn. Volition of the act requires that the effect of an act must be intended. Unintended effect makes the act involuntary. When a gun was fired in air for fun but the bullet killed the flying bird in the sky the killing was unintended if the actor was not knowing of any bird nearby. But when the shooter knows that by the sound of the firing gun the birds sitting nearby may fly over the sky and may get killed, it will be said that the effect of killing was intended. So, the effect intended includes not only the

desired consequence but also the **foresight** (knowledge) of the repercussive consequence.

Immediate and mediate / ulterior attention - Intention is the immediate attention of the actor whereas the motive is the mediate or ulterior attention. In the formula depicting act as combination of cause and effect it may be noted that intention is concerned with the effect whereas motive is concerned with cause. In other words, intention is the immediate attention of the actor whereas the motive is the mediate or ulterior attention. Law is concerned with this immediate attention (intention) which the mediate attention (motive) may only help in deciphering.

Text is the primary source of legislative intention

When the legislature sets a proposition of law, the legal texts manifest the effect intended by the legislature. The intended effect must have been preceded by a cause which may be the purpose of or motive behind the enactment such as to redress certain mischief or to augment certain conduct. The effect intended of the legal text is called as legislative intention and is of immense help in construing that legal text. The motive or purpose of the enactment may throw light or help in deciphering the legislative intention. The paramount rule remains that every statute is to be expounded according to its manifest and expressed intention. The court's duty as identified by Coke is to interpret an Act according to the intent of those who made it.³¹ The court ascertains the intention of legislature expressed in the language under consideration. The primary indication of legislative intention is the legislative text, read in context. So, it may be said that statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in

³¹ 4 Inst 330 as quoted in Bennion 2019 p 275

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question in the particular context.<sup>^32</sup> Statutory interpretation is concerned with written texts, in which an intention is taken to be embodied, and by which that intention is communicated to those it affects. The idea that a society should govern itself by verbal formulas, frozen in the day of their originators yet continuing to rule. It is pregnant with unreality, yet scarcely be improved upon. Those concerned with working out its effect have an important role of giving just effect to that statement. So, the text is the first indication of what was intended, though there may be implied meanings enlarging the scope of the expressed words.<sup>^33</sup>

### **Context is the secondary source of legislative intention**

Context here is meant in its widest sense, to include the context of the Act as a whole, and its legal, social and historical context. The interpreter should treat the words of the enactment as illuminated by consideration of its context. The words are not deployed in a vacuum. The overall context of the Act provides the colour and background to the words used, and thus helps the interpreter to arrive the meaning intended by the legislature.<sup>^34</sup> The court may take note of the political reasons without canvassing their merits to ascertain the context that may throw light on intention. One cannot construe a legal text (or indeed any other text) without regard to its context. Moreover, any new legal regime created by a particular piece of legislation needs to work as harmoniously as possible with the surrounding law and practice. If desired one could also pray in aid the assumption that the legislature was fully informed. That being the case, consideration of the context puts the interpreter in the same

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<sup>32</sup> Bennion 2019 p 287

<sup>33</sup> Bennion 2019 p 277

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position as the legislature was when it approved the legislative text.<sup>35</sup>

Legislation though may be government-inspired or government-backed is the work of the people's representative for a government always retains support of the legislative body. When considering a Bill, the legislature can consider the principle of the Bill and merits of each provision of it. If it wishes to change the effect of the Bill, amendment to the text may be tabled, debated and made. To become an Act, the Bill's text must be approved by the legislative body. So, it does not seem unreasonable to say that the text is the manifestation of the legislature intention. The nature of an Act as the product of a complex democratic process must carry weight with the interpreter.<sup>36</sup>

The drafter of legislation, as a composer of the text, has an intention as to its meaning. The drafter's work in carrying out broad government policy is modified and controlled by the views of the civil servants instructing the drafter as agreed by ministers at all stages. So, what is submitted to the legislature is a team product. The same team is responsible for the wordings of amendments made to the Bill in the course of its passage. Obviously, the intention of the drafter should correspond to that of the legislators. Judges assume that this is so.

Where, in relation to the facts of the instant case, it appears that neither the legislators not the drafter possessed an actual intention, legislature is nevertheless taken to have had an intention; and the enactment is to be construed accordingly. This involves expounding the verbal formula of the enactment

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<sup>35</sup> Bennion 2019 p 288

<sup>36</sup> Bennion 2019 p 278

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creatively, using its wording as a guide to the imputed intention. The test is ‘What the legislature mean by these words?’ rather than ‘What did the legislature mean in abstract?’ – thus the text holds that answer to the application of the enactment to the facts of the case. In such cases the court should **pay particular regard to the purpose of enactment** for the wording have not been framed with facts in mind.<sup>^37</sup>

**Opinions of persons involved in law making are not admissible as an aid to construction** - It must be remembered that the intention of legislature is an objective concept, not subjective. It is neither the subjective intention of the minister or promoter of the legislation nor of the draftsman or individual members or even majority of members of legislative body. These individuals will often have widely varying intentions; their understanding of the legislation and of words used may be impressively complete or woefully inadequate. Thus, when the courts say that such-and-such a meaning ‘cannot be what legislature intended’, they are saying only that the words under consideration cannot reasonably be taken as used by legislature with that meaning.<sup>^38</sup> Though legislative intention is not to be equated with the subjective intention of the drafter, minister, promoter or other member of the legislative body ie their views are not admissible as an aid to construction. But it may be nonetheless be helpful to consider elements of legislative process as drafting, enactment and interpretation are integral parts of the process of translating the volition of the electorate into rules which will bind themselves.<sup>^39</sup>

### **Non-encroachment of legislative function**

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<sup>37</sup> Bennion 2019 p 279

<sup>38</sup> Bennion 2019 p 275

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Court cannot encroach upon the legislative function in the name of determining legislative intention. Intention of the legislature is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. So, the court does not look for the intention of legislature rather it seeks the true meaning of the expressed words of the legislature. The interpreter may call to his aid all those external and historical material which are necessary for comprehension of the subject-matter and the words used by the legislature but cannot encroach upon the legislative function of the legislature by reading in some limitation which he thinks was probably intended but cannot be inferred from the words of the Act. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of legislature. But few jurists are of the opinion that language is not always a reliable vehicle for the complete or accurate translation of legislative intention. This suggests that the intention of the legislature is a distinct concept and the words used by the legislature were if possible to be interpreted so as to give effect to that intention. But such approach has not taken its hold because courts continue to regard the role as being to interpret the legislative text, determining the meaning to be ascribed to that text objectively, having regard to the context (including external aids to construction). The concept of legislative intention **expresses the constitutional relationship**

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<sup>39</sup> Bennion 2019 p 277

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between the legislature and judiciary. The judges acknowledge the supremacy of statute over common law and the reality that the legislators and those assisting them (being human) do not always express their meaning clearly when signing off on the legislative text.

Contrary intention

Contrary intention must be expressly indicated by the legislature. The legislature is entirely free to indicate in an Act that it does not wish a particular guide to legislative intention to apply to the interpretation of the Act. Indeed, this is built into the statement of each principle of interpretation, which is always to be taken as including the phrase ‘unless the contrary intention appears’. The enactment must be accorded the meaning the court considers the principles of interpretation lead to unless there is some indication to the contrary. The presumption that this is the legislature’s intention is conclusive. The contrary indication need not assume any particular form however, and may be express or implied. The reference to ‘the contrary intention’ includes any divergence from the rule laid down, however minor. Where the principles of interpretation is not left to apply by itself ‘the contrary intention’ appears, even though (as some-time happens) the principle of interpretation is only partially disappplied. In other words, the phrase ‘unless the contrary intention appears’ really means ‘except where, and to the extent that, a different intention appears’.

As always, it is necessary to consider the context in which a term is used in order to determine whether it is being used in a technical sense.⁴⁰ A contrary intention indicating that Parliament does not intend a term to be given its usual technical

⁴⁰ Bennion 2019 p 538

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meaning may be express (for example where there is a statutory definition). Alternatively, a contrary intention may be apparent from the context. A contrary intention will not be lightly inferred.<sup>41</sup>

Like all other linguistic canons of construction, the *ejusdem generis* principle applies only where the contrary intention does not appear. The principle is moreover but one of the principles of interpretation that may be applicable in a particular case. Accordingly, it may be overridden by any indication that the result it produces would not conform to the legislature's intended meaning of the enactment.<sup>42</sup>

### **Judicial acceptance of legislative intention**

The interpreter must give effect to the legislative intention even if he disagrees with it and considers the result unjust.<sup>43</sup>

The criteria developed to guide interpretation are intended to assist the court in ascertaining the legislature's intention. Where the intention is plain, it must be implemented. Obviously, a particular judge may find the policy of an enactment not to their person liking. It is axiomatic that the judge must resolutely thrust aside such consideration when arriving at a decision. What may not be so obvious is that judges, once they feel certain of the intention, must also put aside more general considerations. An enactment may strike a judge unjust. That cannot affect the judicial duty. As observed in an English case:

“In the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactment. In this field parliament makes and unmakes the law and the judge's duty is to

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<sup>41</sup> Bennion 2019 p 538

<sup>42</sup> Bennion 2019 p 566

<sup>43</sup> Bennion 2020 s 10.10

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interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgement best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must deny the statute. Unpalatable statutes law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suit his idea of what justices requires.”<sup>44</sup>

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<sup>44</sup> Duport Steels Ltd v Sirs [1980] 1 WLR 142 cited in Bennion 2020 p 386

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