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## **Interpreting Taxing Statutes # 75 – Same words, same meaning: different words, different meaning**

**There is a presumption that where the same words are used more than once in an Act, they have the same meaning. Similarly, where different words are used in an Act they have different meaning.<sup>^1</sup>**

### SYNOPSIS

Legislation is generally assumed to be put together carefully with a view to producing a coherent legislative text. It follows that the reader can reasonably assume that the same words are intended to mean the same thing and that different words mean different things. Like all linguistic cannons of construction this is no more than a starting point. These presumptions may be rebutted expressly or by implication. The presumption that different words have different meaning will generally be easiest to rebut since ‘the use of the same expression is more likely to be deliberate.’<sup>^2</sup>

### **Presumption that same words have same meaning**

The presumption that words or phrases used in an Act have the same meaning throughout the Act was described as follows:

‘... it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament.’<sup>^3</sup>

Given the presumption that words or phrases used in an Act have the same meaning throughout the Act, where the context makes it clear that an expression has a particular meaning in one place it

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<sup>1</sup> Bennion 2020 s 21.3

<sup>2</sup> Plevin v Paragon Personal Finance Ltd (No 2) [2017] UKSC 23 cited in Bennion 2020 p 635

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will be presumed to have that meaning elsewhere. The presumption may of course be rebutted.⁴

Presumption that different words have different meanings

The reverse presumption: different words or phrases are used to denote a different meaning unless the context otherwise requires. It is generally presumed that the drafter did not indulge in elegant variation, but kept to a particular term when wishing to convey a particular meaning. Said as follows:

‘It has been a general rule for drawing legal documents from the earliest times, one which one is taught when one first becomes a pupil to a conveyance, never to change the form of words unless you are going to change the meaning ...’⁵

Weight of presumptions depends on context

The weight to be given to the presumptions may depend on whether it appears that the provisions were produced by one or more drafters working together to produce consistency. As Pearce says:

‘The issue will ultimately turn on the view the court forms of the care exercised by the drafter in the choice of words. If it should be shown that a word has been used with different meanings in an Act, then the argument for consistent interpretation cannot stand. If, on the other hand, it is clear that a word is used throughout an Act to convey one meaning, then the burden of showing that there was an inconsistent use should be regarded as difficult to discharge.’⁶

³ Courtauld v Legh (1869) LR 4 Exch 126 cited in Bennion 2020 p 635

⁴ Bennion 2020 p 635-636

⁵ Hadley v Perks (1866) LR 1 QB 444 cited in Bennion 2020 p 636

⁶ Pearce and Geddes Statutory Interpretation in Australia (6th edn, 2006) at para 4.7 cited in Bennion 2020 p 637 - 638

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The exigencies of parliamentary amendment may lead to the use of different words for the same meaning.<sup>7</sup>

### Consolidation Acts

A consolidation Act brings together provisions derived from different Acts. In an ideal world an internally consistent Act will emerge from the consolidation process, but for various reasons this may not occur. For example:

- Where there is considerable doubts as to the effect of particular words, one course of action is to reproduce those words (ie to ‘consolidate the doubt’).
- A drafter of a consolidation Act may not appreciate that the same word, used in two existing Acts that are to be consolidated, is intended to have different meanings.

Accordingly, where two provisions of a consolidation Act derive from different Acts, the same word may have different meanings in each provision or different words in each provision may have the same meaning.<sup>8</sup>

For example, in an English case, it was held that ‘highway’ in the Highways Act 1980 s 265 had a different meaning from the same word in s 263 of that Act. Said as follows:

‘It is tempting but, in my view, wrong to assume that, where section 263 and 265 both refer to ‘highway’ as a label for real property rights which are to be vested in a highway authority, the word “highway” must therefore have precisely the same meaning in both sections. This is not merely because the word appears as part of two quite differently worded provisions. Rather, it is because, although now lying almost side by side in a

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<sup>7</sup> Lines v Hersom [1951] 2 KB 682 cited in Bennion 2020 p 638

<sup>8</sup> Bennion 2020 p 638

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consolidating statute, the two sections have completely different
ancestry, and serve two very different purposes.’⁹

Determining the different meanings

Where a difference of wording is inexplicable unless different meanings were intended, the court has to do its best to find those different meanings.

For example, in English case, where the Docks Regulations 1934, reg 19, required equipment to be ‘tested and examined’ before it was used in hoisting or lowering, and to be ‘inspected’ every three months, the court said:

‘Prima facie one would expect that when two different words, although practically synonymous in ordinary use, are employed in different parts of the same regulation dealing with the same kind of topic, they are intended to have some different meaning. It seems to me ... that “examination” ... is a more thorough and scientific process than “inspection” under those regulations. Indeed, “examination” ... may require technical qualifications ...’¹⁰

⁹ London Borough of Southwark v Transport for London (2018) UKSC 63 cited in Bennion 2020 p 638

¹⁰ Gibson v Skibs (1966) 2 All ER 476 cited in Bennion 2020 p 639