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Nature and Purpose of Interpretative Criteria

Interpretative criteria are the body of common law principles and statutory rules that guide the interpreter in ascertaining legislative intention. They provide a framework for determining the legal meaning of an enactment by directing attention to the considerations relevant to its construction. The expression, used by Bennion as a collective term, encompasses rules, principles, presumptions and canons of construction developed by the courts, together with rules prescribed by legislation.¹

These criteria operate as aids to understanding the legislative text. The interpreter must remain focused on the words chosen by the legislature, using the criteria to determine the meaning conveyed by those words. They do not constitute an independent source of legislative intention detached from the enactment. The primacy of the text is reflected in *R v A (No 2)*, where the text

¹ Bennion (2020), s 11.1 and p 390. “Interpretative criteria” is the collective terminology used by Bennion.

was described as the primary source of interpretation and other sources as subordinate to it.²

Judicial and Statutory Sources

Most interpretative criteria have emerged through judicial practice over centuries. Except where they derive from statute, criteria laid down or adopted by the courts may be regarded as part of the common law. Their function is to discipline interpretation through established legal reasoning rather than leave the meaning of legislation to an interpreter's individual preference. The historical foundation of this approach appears in Harbert's Case, which associated the exposition of general statutes with the reason of the common law rather than private or sudden opinion.³

Legislation also supplies interpretative rules, particularly through Interpretation Acts and provisions contained in other enactments. One principal purpose of such rules is to shorten legislative language: a general rule of construction can apply across enactments without being repeated in each one. Judicial and statutory criteria thus contribute to the same interpretative framework, although they differ in their source of authority.⁴

Operation and Effect

Interpretative criteria differ from legal rules that directly regulate the conduct of citizens. Their immediate operation is to guide courts in construing and applying enactments. Their consequences nevertheless extend to everyone governed by legislation. Because a court applies statutory language in

2 R v A (No 2) [2001] UKHL 25, cited in Bennion (2020), p 390.

3 Harbert's Case (1584) 3 Co Rep 13b, cited in Bennion (2020), p 391.

4 Bennion (2020), pp 390–391.

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accordance with the relevant interpretative criteria, those seeking to understand their rights and obligations must read that language in the same legal setting. The criteria therefore guide judicial interpretation directly and influence the conduct of those subject to the enactment indirectly.<sup>5</sup>

### Interpretative Factors

An interpretative criterion is a general rule or principle; an interpretative factor is the specific legal consideration that arises when that criterion is applied to an enactment and the facts of a particular case. The factor connects the general interpretative framework with the concrete question of construction. It guides the determination of how the enactment applies to the circumstances before the court.<sup>6</sup>

For example, the requirement to read an enactment in its context is a general interpretative criterion. A particular feature of that context may then produce an interpretative factor. If a neighbouring provision uses the disputed expression in a clearly identifiable sense, that usage may support a corresponding construction of the provision under consideration. The general requirement directs the inquiry towards context; the particular contextual feature supplies a reason relevant to the competing readings.<sup>7</sup>

A factor may favour one construction or weigh against it. In that relational sense, it may be described as positive or negative. These descriptions do not identify an inherent quality of the factor: they indicate its bearing on the construction being

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<sup>5</sup> Bennion (2020), p 391.

<sup>6</sup> Bennion (2020), p 392.

<sup>7</sup> Bennion (2020), p 392, on contextual criteria giving rise to particular factors. The neighbouring-provision example illustrates that distinction.

examined. A consideration supporting one reading may count against an opposing reading.<sup>8</sup>

## Relationship between Criteria and Factors

The distinction between criteria and factors is therefore a distinction between a general guide and its particular application. Criteria identify the kinds of consideration that are legally relevant to interpretation; factors express the reasons that arise from those considerations in the case at hand. An interpreter should accordingly identify the applicable criterion, explain the factor produced by its application and assess how that factor bears on the available constructions.

Where several factors point in different directions, their significance must be assessed together in relation to the legislative text. The analysis is not completed by naming a canon or listing presumptions. It requires an explanation of how the relevant considerations support the meaning attributed to the enactment. Interpretative criteria provide the framework for that reasoning, while interpretative factors give it concrete content.

## Conclusion

Interpretative criteria and factors perform complementary functions in statutory interpretation. The criteria supply the general judicial and statutory guides to legislative intention; the factors translate those guides into specific considerations bearing on an enactment and the facts to which it must be applied. Together, they structure the interpreter's reasoning while preserving the legislative text as the primary source of meaning.

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<sup>8</sup> Bennion (2020), p 392.

## 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.<sup>9</sup> 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.

### Sanctity of the person and of property

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<sup>9</sup> Dias

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Both sanctity of the person and of property yield to the safety of the nation or society.¹⁰ 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.¹¹ 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.¹² 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.¹³ Public safety influences the law in many other ways.

Social welfare as a criterion of interpretation

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.¹⁴ Thus, in deciding whether statutory authority to exercise a power justifies interference with private

¹⁰ Dias 1985 p 199

¹¹ Liversidge v Anderson [1942] AC 206 quoted in Dias 1985 p 199

¹² R v Secretary of State for the Home Department, ex p Hosenball [1977] 3 All ER 45 quoted in Dias 1985 p 200

¹³ Francis v Chief of Police [1973] AC 761 quoted in Dias 1985 p 200

¹⁴ Dias 1985 p 204

rights the old criterion was whether 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.¹⁵ 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.¹⁶ 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.¹⁷ On the other hand, even the social utility of an authorised activity will not justify causing widespread inconvenience.¹⁸ 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.¹⁹

Context

Meaning through Context

The text of an enactment must be read in its context. Words do not convey legislative meaning in isolation; their meaning emerges from the setting in which they are used. Context supplies the background against which the interpreter

¹⁵ *Vaughan v Taff Vale Rly Co* (1860) 5 H&N 67 quoted in *Dias* 1985 p 205

¹⁶ *Metropolitan Asylum District Managers v Hill (SB)* 6 App Case 193 quoted in *Dias* 1985 p 205

¹⁷ *Edgington, Bishop and With, e Swindon Borough Council* [1939] 1 KB 86

¹⁸ *Birmingham and Midland Motor Omnibus Co Ltd, Worcestershire County Council* [1967] All ER 544

¹⁹ *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

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understands the statutory language and identifies the intention expressed by the legislature. It is therefore an integral part of interpretation, rather than an additional consideration brought into play only when the words appear unclear.<sup>20</sup>

Statutory interpretation accordingly requires the court to identify the meaning borne by the particular words in their particular context. As recognised in *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd*, the inquiry concerns the meaning of the language in its statutory setting. The interpreter must examine the words as part of the enactment in which they perform their legal function, rather than treat them as detached verbal expressions.<sup>21</sup>

### **Context as Part of the Interpretative Inquiry**

Because legal language conveys meaning according to the circumstances in which it is used, the relevant context must be identified and considered before or during construction. It cannot properly be postponed until after a supposedly complete meaning has been assigned to the words in isolation. The approach reflected in *R v National Asylum Support Service* recognises that understanding the language and identifying its context are connected parts of the same interpretative exercise.<sup>22</sup>

The importance of context was acknowledged even when literal approaches to construction held greater influence. In *River Wear Commissioners v Adamson*, the court explained that the object of interpretation is to ascertain the intention expressed by the words used, but that the imperfection of language makes it necessary to

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<sup>20</sup> Bennion (2020), s 11.2 and p 393.

<sup>21</sup> *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349, cited in Bennion (2020), p 393.

<sup>22</sup> *R v National Asylum Support Service* [2002] UKHL 38, cited in Bennion (2020), p 393.

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consider the circumstances in which those words were employed and the object disclosed by those circumstances. The meaning of an expression may vary with its setting; examining that setting assists in understanding the language rather than displacing it.<sup>23</sup>

### Scope of the Relevant Context

Context extends beyond the words immediately surrounding a disputed expression. It includes the structure of the enactment, its other provisions and its preamble, as well as the relevant legal background. In *Attorney-General v Prince Ernest Augustus of Hanover*, the court rejected the suggestion that enacting words should be construed in isolation and explained that general words derive their colour and content from their context. The discussion embraced the existing state of the law, statutes in *pari materia*—that is, statutes dealing with the same subject matter—and the mischief that the enactment was intended to remedy, as disclosed by legitimate interpretative means.<sup>24</sup>

The relevant inquiry therefore brings together the immediate verbal setting and the wider legislative and legal setting. A provision’s relationship with the rest of the Act may illuminate its function, while the existing law and the mischief addressed may explain why particular language was chosen. These considerations remain directed towards understanding the intention expressed in the enactment; the breadth of context does not remove the need to establish the relevance of each consideration to the words being construed.

### Context and Ambiguity

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<sup>23</sup> *River Wear Commissioners v Adamson* (1877) 2 App Cas 743, cited in Bennion (2020), p 393.

<sup>24</sup> *Attorney-General v Prince Ernest Augustus of Hanover* [1957] 1 WLR 436, cited in Bennion (2020), p 394.

Context is relevant not merely to resolving ambiguity or other uncertainty, but also to determining whether such uncertainty exists in the first place. Words that appear clear in isolation may become uncertain when read alongside related provisions. Conversely, an expression capable of several meanings in ordinary usage may convey only one plausible meaning in its statutory setting. It follows that ambiguity cannot always be identified through an examination of the words alone.<sup>25</sup>

The interpreter should therefore consider text and context together from the outset. Context helps identify the available meanings, assess whether competing constructions are reasonably open and determine the meaning appropriate to the provision. Its role is not confined to choosing between meanings already established without reference to the enactment as a whole.

## Conclusion

Context is essential to the ascertainment of statutory meaning. The words chosen by the legislature remain the focus of interpretation, but they must be understood through their relationship with the surrounding provisions, the enactment as a whole and the relevant legal background. Context both informs meaning and reveals whether ambiguity exists. Reading text and context together enables the interpreter to identify the intention expressed by the legislative language.

## Presumption of ideal, rational legislature

Statutory interpretation proceeds on the assumption that the legislature acts purposefully, reasonably and with competence in expressing its intentions. These related presumptions encourage

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<sup>25</sup> Bennion (2020), p 394.

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courts to read legislation as a coherent legal instrument and to give effect to its provisions. They guide the ascertainment of legislative meaning; they do not permit the interpreter to replace the enacted language with a rule considered more desirable. An interpretation attributing error or oversight to the legislature is therefore approached as a last resort.

Concept of the Ideal Legislature

The concept of the ideal legislature expresses a judicial assumption that legislation should be approached as the work of a rational and informed lawmaking body. The interpreter does not begin by supposing that an apparent difficulty must result from a legislative mistake. *Richards v McBride* illustrates this reluctance to assume error in an Act of Parliament.²⁶ In turn, *Income Tax Special Purposes Commissioners v Pemsel* expresses the idea that a court proceeds on the assumption of an ideal legislature that does not make mistakes.²⁷

Properly understood, this is an interpretative assumption rather than a factual claim that legislation is invariably flawless. It encourages respect for the legislature and its commands, supports public confidence in the law and directs courts to seek an effective meaning for the provisions enacted. A court encountering difficult language should therefore strive to understand its legal function and purpose rather than readily conclude that the provision is meaningless.

The assumption is more fully expressed by treating the legislature as rational, reasonable and informed, pursuing an identifiable purpose in a coherent and principled manner. In *R*

²⁶ *Richards v McBride* (1881) 8 QBD 119, cited in Bennion (2020), p 395.

²⁷ *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531, cited in Bennion (2020), p 395.

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(on the application of N) v Walsall Metropolitan Borough Council, the court explained that this approach respects Parliament, assists the achievement of legislative purposes and promotes the integrity of the law. The interpretative inquiry seeks the meaning that best explains the legislative choice on that basis; attributing the choice to error or oversight is an interpretation to be adopted only as a last resort.<sup>28</sup>

### **Presumption that the Legislature Intends to Act Reasonably**

A related presumption is that the legislature intends to act reasonably. Where the statutory language admits a choice between constructions, this presumption supports the reasonable interpretation. *Inland Revenue Commissioners v Hinchy* recognises that the interpreter is entitled, and indeed bound, to approach the legislation on that basis.<sup>29</sup>

The presumption remains a guide to legislative intention, not an independent power to revise statutory outcomes. It does not qualify every enactment by an implied requirement that its operation satisfy the court's view of reasonableness. The wording may demonstrate that the legislature intended a result that some would regard as unreasonable. In that situation, the presumption cannot by itself justify departing from the meaning conveyed by the enactment.<sup>30</sup>

### **Presumption of Competent Drafting**

The presumption of competent drafting complements the assumptions of legislative purpose and reasonableness.

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28 R (on the application of N) v Walsall Metropolitan Borough Council [2014] EWHC 1918, cited in Bennion (2020), p 395.

29 *Inland Revenue Commissioners v Hinchy* [1960] AC 748, cited in Bennion (2020), p 396.

30 Bennion (2020), p 396.

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Legislation is ordinarily read on the basis that accepted principles of language, grammar, syntax and punctuation have been observed, and that its preparation reflects sufficient knowledge of the relevant law. The interpreter therefore begins with the expectation that the words were selected and arranged competently.<sup>31</sup>

Accordingly, a construction flowing from correct drafting is preferred to one that depends on an assumed drafting error. In *Spillers Ltd v Cardiff Assessment Committee and Pritchard*, the court emphasised the rule that words in Acts of Parliament are used correctly and exactly, rather than loosely or inexactly, and placed a heavy burden on those asserting a departure from that rule. The point is that an allegation of defective drafting requires convincing justification; it should not be the interpreter's starting position.<sup>32</sup>

Taken together, these presumptions direct the interpreter towards a purposeful, coherent and linguistically sound reading of legislation. The ideal-legislature concept supplies the general assumption of rational lawmaking; reasonableness guides the choice between available constructions; and competent drafting supports careful attention to the enacted words and their arrangement. Their shared function is to make the legislative text effective while reserving an attribution of mistake for cases in which the interpretative inquiry warrants it.

## **Presumption in favour of grammatical meaning**

### **The Initial Presumption**

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<sup>31</sup> Bennion (2020), p 396.

<sup>32</sup> *Spillers Ltd v Cardiff Assessment Committee and Pritchard* [1931] 2 KB 21, cited in Bennion (2020), p 397.

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Statutory interpretation begins with the presumption that the grammatical meaning of an enactment is the meaning intended by the legislature. The legislature is taken to mean what it says, so the words it has chosen provide the starting point for identifying its intention. This gives grammatical meaning a position of particular importance within the interpretative process.<sup>33</sup>

The presumption has long been recognised. In *Caledonian Railway Co v North British Railway Co*, the court affirmed a presumption in favour of the simpler and more literal interpretation of statutory words.<sup>34</sup> The same starting point is reflected in *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd*, where the ordinary meaning of the language was considered within the general context of the statute. The presumption therefore concerns the meaning of the words as used in the enactment, rather than a meaning assigned to them in isolation.<sup>35</sup>

### Weight of Grammatical Meaning

Grammatical meaning is not merely one consideration of equal standing with every other interpretative criterion. Bennion describes it as pre-eminent: in general, the weight attached to it is substantially greater than that accorded to other criteria. This reflects the central role of the enacted language in expressing legislative intention and restrains the interpreter from too readily substituting a different construction.<sup>36</sup>

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<sup>33</sup> Bennion (2020), s 11.4.

<sup>34</sup> *Caledonian Railway Co v North British Railway Co* (1881) 6 App Cas 114, cited in Bennion (2020), p 398.

<sup>35</sup> *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349, cited in Bennion (2020), p 399.

<sup>36</sup> Bennion (2020), p 398.

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The precision of modern legislative drafting reinforces this presumption, because carefully selected and arranged words provide a strong indication of the meaning intended. Nevertheless, the presumption retains substantial weight even where the drafting is less precise. An apparent lack of drafting refinement does not, by itself, justify disregarding the grammatical meaning.<sup>37</sup>

### **Departure from the Presumption**

The strength of the presumption does not make it conclusive. Departure from grammatical meaning is possible, but mere speculation about what the legislature might have intended is insufficient. As the discussion associated with *Lumsden v Inland Revenue Commissioners* indicates, there must be real doubt before the court will entertain the question of departing from that meaning.<sup>38</sup>

Real doubt opens the inquiry; it does not automatically establish that a departure is justified. The interpreter must consider whether the relevant interpretative considerations provide sufficient grounds for adopting another construction. There is consequently no absolute literal rule requiring grammatical meaning to prevail invariably. Determining when its substantial weight is overcome remains one of the most difficult tasks in statutory interpretation.<sup>39</sup>

The governing position is therefore a strong but rebuttable presumption. The grammatical meaning, understood in the statutory context, is the initial and ordinarily predominant guide

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<sup>37</sup> Bennion (2020), p 399.

<sup>38</sup> *Lumsden v Inland Revenue Commissioners* [1914] AC 877, cited in Bennion (2020), p 399.

<sup>39</sup> Bennion (2020), p 400.

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to legislative intention. A different construction requires a reasoned basis grounded in genuine interpretative doubt, rather than conjecture or preference for another outcome.

## **Implication**

### **Meaning beyond Express Words**

The legal meaning of an enactment comprises both what it expressly states and what may properly be implied. Language communicates through shared assumptions, contextual relationships and applicable rules or principles, as well as through explicit words. Identifying legitimate implications is therefore a necessary part of statutory interpretation. The interpreter must nevertheless distinguish meaning conveyed implicitly by the enactment from provisions that might merely have been desirable for the legislature to include.

### **Ellipsis and Legislative Drafting**

In ordinary communication, speakers and writers commonly express only what is needed to make their meaning clear, leaving obvious implications unstated. The omission of something that the writer means, or must be understood to mean, is described as ellipsis. Legislative drafting also relies on this technique. As Reed Dickerson observed, communication cannot operate without leaving part of its meaning to implication; a demand that a drafter leave nothing implied is therefore unrealistic.

Legislation must remain reasonably concise and readable while governing varied circumstances over time. A drafter cannot expressly address every intended application or qualification. Deciding what can safely remain implicit, and what requires express provision, is consequently an important and difficult drafting judgment. Although a particular qualification might have

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been easy to state, that does not explain why it should have been singled out from all the matters that could have been made explicit.

For this reason, an argument that the legislature could easily have expressed a proposed qualification is not, by itself, a reliable ground for rejecting it. The drafter may have considered the qualification self-evident, or may have avoided an enumeration that could not be comprehensive. Equally, silence does not automatically establish the suggested implication. Its legitimacy must be demonstrated through the language, context and relevant interpretative principles.

Recognition of implied statutory meaning is longstanding. Blackstone's discussion of legislation governing Sunday observance, for example, treated certain innocent amusements after divine service as implicitly permitted rather than prohibited. Legislation may also expressly exclude a particular inference. Such provisions acknowledge the possibility of implication while controlling what may be inferred in the particular statutory setting.

### **Necessary and Proper Implication**

Judicial formulations sometimes state that legislative intention may be ascertained only from express words or from reasonable and necessary implication. In its strict sense, a necessary implication follows from the express provisions construed in context. It is distinguished from a provision that would have been sensible to include, or that the legislature might probably have adopted had it considered the question. The inquiry concerns what the enactment requires, rather than a reconstruction of hypothetical legislative preferences.

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A strictly logical account of necessity must, however, accommodate the role of statutory purpose. Where context and purpose both inform the inquiry, the assessment is not simply a deduction from isolated words. The discussion therefore raises a broader question: whether it is proper or legitimate to recognise the suggested implication as part of the enactment’s legal meaning. On this view, “necessary implication” does not invariably identify a separate category independent of the ordinary interpretative process.

This approach does not make necessity irrelevant. It distinguishes the general inquiry into a proper implication from circumstances in which particularly strong justification is required. The court must determine the appropriate standard in light of the statutory setting and the interests affected, rather than assume that any reasonable addition is an implication already contained in the enactment.

### **Assessing a Suggested Implication**

Whether an implication is proper depends on the accepted guides to legislative intention. The inquiry may involve linguistic rules, legal principles or both. Where relevant considerations point in different directions, the court must weigh their significance and explain why the proposed meaning is legitimately attributable to the enactment.

The consequences of the implication matter to that assessment. An implication imposing onerous burdens may require particular caution. Where fundamental rights would be affected, the relevant interpretative principles may demand necessity rather than mere convenience or plausibility. The existence of a potentially useful qualification or power does not alone establish that the legislature conferred it.

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Imprecise statutory language may make implications especially important, but it may also support competing inferences. The task is then to identify which suggested implication is justified by the enactment as a whole. Imprecision does not give the interpreter unrestricted authority to supply whatever the text leaves unstated.

Express Language as a Limit

An implication cannot properly contradict an express statement. This limit is captured by the maxim *expressum facit cessare tacitum*: what is expressed displaces an inconsistent implication. Implied meaning supplements what the enactment communicates; it cannot be used as a disguised means of denying what the enactment expressly says.

Accordingly, where a court adopts a legal meaning that departs from the grammatical meaning, that operation must be distinguished from finding an implication. In the terminology used in this discussion, it involves a strained construction rather than the recognition of something left unexpressed. The distinction matters because an appeal to implication cannot itself justify overriding express language.

Giving Effect to Implied Meaning

Once an implication has been properly established, the enactment may be applied as though the relevant qualification or addition were expressed. A meaning necessarily contained in the provision does not lose force merely because it is unstated. The maxim associated with Coke—that inferred words are treated as incorporated—expresses this practical consequence.

It is nevertheless unnecessary to formulate the implication as a fixed set of inserted words. What the interpreter identifies is an implied meaning, not necessarily a particular verbal formula.

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Treating the enactment as expanded by suitable words may help explain its operation, but the proposed wording remains a means of expressing the conclusion rather than an independent source of statutory authority.

### **Implied Ancillary Powers and Limitations**

Statutory powers illustrate the operation of implication. An express power may carry ancillary powers needed to make its exercise effective. The same statutory setting may also imply limitations on the exercise of the power. In either direction, the implication must arise legitimately from the grant, its context and its purpose. The inquiry concerns the scope of the authority actually conferred, including its proper incidents and constraints.

### **Conclusion**

Implication enables legislation to communicate and operate without exhaustive expression of every qualification and consequence. Its use is legitimate where the inferred meaning is supported by the enactment and accepted interpretative principles. The interpreter must distinguish a proper implication from a merely desirable addition, respect the limits imposed by express language and apply particular care where burdens or fundamental rights are involved. Express and implied meaning thus form a coherent whole, while remaining subject to disciplined justification.

### **Regard to be had to consequences**

#### **Consequences as an Interpretative Consideration**

In determining which of the competing constructions of an enactment corresponds to its legal meaning, the court should assess the likely consequences of adopting each construction.

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The inquiry extends both to the parties before the court and to the operation of the law in future cases involving similar facts. Consequences are therefore part of the interpretative process: they help the court evaluate how the statutory language would operate in practice.<sup>40</sup>

A proposed literal reading should be tested against the practical outcome of giving effect to it. Considering that outcome can reveal difficulties that remain hidden when the language is examined abstractly. The observation in *ICI Ltd v Shatwell* that it may help to examine the results of a decision before assessing the legal principles said to support it illustrates the value of this practical perspective.<sup>41</sup>

### Comparison of Competing Constructions

The court will commonly be asked to choose between constructions advanced by opposing parties. Where both are reasonably available on the statutory language, their respective results may assist in identifying legislative intention. In *Fry v Inland Revenue Commissioners*, the court recognised that, where neither competing reading was obviously wrong, it was entitled to examine the consequences of each alternative in seeking Parliament's intention.<sup>42</sup>

This comparison requires attention to both adverse and beneficial consequences. A construction may produce advantages in one respect and difficulties in another, while its rival may involve a different combination of effects. The court must therefore weigh the relevant factors rather than assume that one undesirable result conclusively determines the issue. The assessment should take

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<sup>40</sup> Bennion (2020), s 11.6.

<sup>41</sup> *ICI Ltd v Shatwell* [1965] AC 656, cited in Bennion (2020), p 410.

<sup>42</sup> *Fry v Inland Revenue Commissioners* [1959] Ch 86, cited in Bennion (2020), p 411.

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account of the interests of the community at large, rather than remain confined to a narrow legal perspective.⁴³

Immediate and Wider Consequences

The consequences for the parties in the instant case must be distinguished from the consequences for the law generally. The immediate effect may be relatively straightforward: adopting one construction rather than another will alter the relief granted or the obligations recognised in the court's final order. The wider effect requires consideration of how the same interpretation will govern later disputes. Under the doctrine of precedent, a decision may bind future courts or carry persuasive authority. A new point of principle should accordingly be examined with its future operation in mind.⁴⁴

The statutory machinery may also affect the assessment. Where an official has discretion capable of mitigating the practical ill-effects of a construction, the court may be more willing to accept that construction. The availability of such discretion is relevant to the consequences of the statutory scheme as it actually operates, rather than merely to the effect of an isolated provision.⁴⁵

Grammatical Meaning and Its Displacement

The consideration of consequences operates alongside the initial presumption that statutory words bear their ordinary grammatical meaning. That presumption is strong, but it is not absolute. If the ordinary reading produces extraordinary results that cannot reasonably be attributed to legislative intention, those results may justify re-examining the words. The reasoning discussed in *Re*

⁴³ Bennion (2020), p 412.

⁴⁴ Bennion (2020), p 411.

⁴⁵ Bennion (2020), p 411.

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British Concrete Pipe Association's Agreement describes this movement from the *prima facie* ordinary meaning to a reconsideration prompted by its consequences.<sup>46</sup>

An adverse consequence does not, however, automatically displace the grammatical meaning. The question remains whether the consequence supplies a sufficient interpretative reason for preferring another construction. The inquiry is directed towards the meaning of the enactment, not simply towards selecting the outcome the court considers most attractive.

### Ambiguity and Strained Construction

Consequences can bear on interpretation in two distinct ways. First, where the language is grammatically ambiguous, comparing the reasonableness of the results may help the court choose between the available meanings. *Gartside v Inland Revenue Commissioners* recognises the propriety of construing ambiguous language in light of the reasonableness of its consequences.<sup>47</sup>

Secondly, where the consequences of the grammatical construction are sufficiently adverse, they may support a strained construction: a legal meaning that departs from the grammatical reading. This is a different interpretative step from choosing between meanings already available on the grammar. Its justification depends on the strength of the relevant considerations, including the nature and seriousness of the consequences.<sup>48</sup>

### Beneficial Consequences and Overall Assessment

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46 Re British Concrete Pipe Association's Agreement, cited in Bennion (2020), p 411.

47 *Gartside v Inland Revenue Commissioners* [1968] AC 553, cited in Bennion (2020), p 412.

48 Bennion (2020), p 412.

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Consequential reasoning is not confined to avoiding undesirable results. A clearly beneficial consequence may also support a construction and influence the court towards giving effect to it. The assessment should therefore recognise positive effects as well as difficulties, while keeping both connected to the interpretative question.<sup>49</sup>

Taken together, these considerations require a balanced comparison of the practical operation of the competing readings. The court should examine their effects on the parties, their implications for future cases and the ways in which the statutory scheme may mitigate or intensify those effects. Consequences may resolve ambiguity and, in sufficiently compelling circumstances, support departure from grammatical meaning. Their ultimate role is to assist the ascertainment of legislative meaning through an understanding of how the enactment would work in practice.

## Interpreter to use common sense

### Role of Common Sense

Common sense is an established aid to statutory interpretation. Judicial references to good sense, native wit and the reason of the case express the expectation that legislation will be understood through practical judgment as well as linguistic analysis. In *Barnes v Jarvis*, the court recognised the need to apply common sense when construing a statute.<sup>50</sup> Similarly, *R v Home Secretary, ex p Naughton* endorsed interpreting legislation, so far as possible, in accordance with common sense.<sup>51</sup>

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49 Bennion (2020), p 413.

50 *Barnes v Jarvis* [1953] 1 WLR 649, cited in Bennion (2020), p 414.

51 *R v Home Secretary, ex p Naughton* [1997] 1 All ER 426, cited in Bennion (2020), p 414.

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This approach reflects the wider importance of common sense in legal reasoning. It encourages an understanding of statutory language that is attentive to ordinary communication and the practical operation of the provision. Common sense assists the interpretative inquiry; it does not replace attention to the enacted words and their context.⁵²

Legislative Silence and Unstated Detail

The absence of express provision for a particular matter does not necessarily indicate that the legislature intended to exclude it. The drafter may have regarded the point as sufficiently obvious to go without saying. Legislation cannot express every detail or anticipate every circumstance, and common sense may therefore be needed to understand how its provisions operate in matters left unstated.⁵³

The interpreter must nevertheless distinguish an obvious unstated assumption from an addition that would change the statutory rule. Common sense helps explain what the enactment communicates implicitly, but silence alone does not establish the content of an implication. The proposed understanding must remain consistent with the language and statutory setting.

Illustrations of Practical Reasoning

The examples discussed in Bennion demonstrate how common sense can clarify the operation of particular statutory expressions. In the discussion of *R v Shergill*, a power to extend a period was approached on the basis that, once the period had expired, there was no continuing period to extend. The example illustrates the reasoning applied to the power in question; it should not be

⁵² Bennion (2020), p 414.

⁵³ Bennion (2020), p 415.

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elevated into a universal rule that every statutory extension power must be exercised before expiry. The scope of any such power depends on its wording and context.<sup>54</sup>

Another illustration concerns the meaning of “showing” indecent photographs. In the example associated with *R v T*, showing photographs exclusively to oneself was not treated as falling within the prohibition. Common sense assists in identifying the communicative sense of “showing” relevant to the provision, rather than extending the expression mechanically to every situation in which a person looks at an image.<sup>55</sup>

### **The Greater Includes the Less**

Common-sense reasoning also underlies the principle that the greater includes the less. Where the statutory setting supports it, authority for a greater act may encompass a lesser act within it. The principle supplies a practical inference about the scope of the provision, rather than an automatic answer in every case: the lesser act must genuinely fall within the greater, and the enactment may indicate limits on that inference.<sup>56</sup>

### **Resolution of Ambiguity**

Formal or syntactical ambiguity may sometimes be resolved through common sense. A grammatical arrangement can admit more than one reading even though ordinary understanding of the statement in its setting favours one of them. Practical judgment can help distinguish a plausible legislative meaning from a

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<sup>54</sup> *R v Shergill* [1999] 2 All ER 485, cited in Bennion (2020), p 415.

<sup>55</sup> *R v T* [1999] Crim LR 432, cited in Bennion (2020), p 415.

<sup>56</sup> Bennion (2020), p 416.

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reading that arises only through an artificial treatment of the words.⁵⁷

Common sense thus connects statutory language with the ordinary assumptions necessary for meaningful communication. It can illuminate unstated detail, clarify the scope of an expression and assist in resolving ambiguity. Its proper use remains anchored in the enactment: it supports a reasoned understanding of the law rather than authorising the interpreter to substitute personal preferences for legislative meaning.

The principle of effectiveness

Ut res magis valeat quam pereat

The maxim *ut res magis valeat quam pereat* expresses the principle that an enactment should be construed so that its provisions have force and effect rather than become ineffective or nugatory. Commonly rendered as “it is better for a thing to have effect than to be made void”, the maxim directs the interpreter towards a construction that enables the statutory scheme to operate.

In *The Beta*, the court favoured a construction preserving the beneficial and reasonable operation of an Act where an alternative would produce serious consequences, unless the statutory words imperatively required that alternative. The principle is particularly important where competing readings are available: the court should prefer the reading that gives the enactment practical efficacy.⁵⁸ The observation in *Cannon Street Ltd v Singer & Friedlander Ltd* that, in cases of uncertainty,

⁵⁷ Bennion (2020), p 416.

⁵⁸ *The Beta* (1865) 3 Moo PCCNS 23, cited in Bennion (2020), p 417.

sense may be preferred to nonsense and efficacy to impotence expresses the same approach.⁵⁹

Reconciliation of Inconsistencies

Giving effect to legislation requires its provisions to be read together. An apparent inconsistency should, where possible, be resolved by construing each provision in light of the others, so that the enactment can operate as a coherent whole. Blackstone expressed this approach by explaining that one part of a statute should be construed by another so that the whole may, if possible, stand.⁶⁰

The qualification “if possible” matters. The interpreter seeks a reconciliation supported by the statutory language and structure, rather than merely ignoring a provision that creates difficulty. The maxim encourages a reading that preserves the operation of the enactment as a whole while recognising that the available constructions remain constrained by its terms.

Difficulties of Implementation

The same principle applies where the evident intention of an enactment encounters practical difficulties in implementation. The court should endeavour to resolve those difficulties so that the legislative scheme can take effect. Difficulty in applying a provision does not, by itself, justify treating it as inoperative; the interpreter must consider how the enactment can be made workable within its legal framework.⁶¹

Implied Judicial Powers

59 Cannon Street Ltd v Singer & Friedlander Ltd [1974] Ch 229, cited in Bennion (2020), p 417.

60 William Blackstone, Commentaries on the Laws of England (1st ed, 1765–1769), vol I, p 89, cited in Bennion (2020), p 418.

61 Bennion (2020), p 418.

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One application concerns the jurisdiction and powers needed by courts to implement legislation. In an appropriate statutory setting, powers necessary to give effect to an Act may be recognised by implication even though they are not expressly conferred. *Buckley v Law Society (No 2)* illustrates this application of the principle.<sup>62</sup>

Such an implication must be justified by the enactment and the requirements of its implementation. The maxim does not independently confer an unrestricted power to enlarge judicial authority. The inquiry is whether the particular jurisdiction or power is properly understood as necessary to make the statutory scheme effective.

### Relationship with Grammatical Meaning

The preference for effectiveness ordinarily assists the choice between available constructions. A more difficult question arises where the grammatical meaning itself appears to frustrate the operation of the enactment. In that situation, an interpreter may need to consider whether a strained construction is justified. That step requires reasons sufficient to support departure from grammatical meaning; it does not follow automatically from invoking the maxim.

The distinction preserves both the practical force of the principle and its limits. *Ut res magis valeat quam pereat* directs courts to reconcile provisions, address implementation difficulties and recognise proper implications needed for the statutory scheme to function. It remains a guide to giving effect to legislative meaning, rather than a general authority to rewrite legislation in pursuit of a more effective result.

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62 *Buckley v Law Society (No 2)*, cited in Bennion (2020), p 418.

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Plain meaning rule

Where an enactment is grammatically capable of only one meaning, whether generally or in its application to the facts of a particular case, and an informed consideration of the relevant interpretative criteria raises no real doubt about that meaning, it must be given effect. The rule reflects the primacy of the statutory text as an indication of legislative intention. In those circumstances, the grammatical meaning is also the legal meaning.⁶³

Meaning is “plain” in this sense only when the relevant interpretative considerations disclose no basis for modifying, altering or qualifying the apparent reading. Clarity is therefore not established merely by observing that the words appear straightforward when read in isolation. It is a conclusion reached after the language has been understood in its statutory setting.⁶⁴

Ordinary Meaning in Context

The starting question is what the words or phrase would naturally or ordinarily mean in the context of the statute. In *Pinner v Everett*, the court explained that an alternative meaning should be sought where the ordinary meaning produces a result that cannot reasonably be supposed to have been intended by the legislature. This approach places ordinary meaning at the centre of the inquiry while recognising that its consequences may reveal a reason to reconsider it.⁶⁵

The importance of this starting point extends beyond cases that reach the courts. **Cross** emphasised that statutory words should

⁶³ Bennion (2020), s 11.9 and p 418.

⁶⁴ Bennion (2020), p 419.

⁶⁵ *Pinner v Everett* [1969] 1 WLR 1266, cited in Bennion (2020), p 419.

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generally receive the meaning an ordinary speaker would understand them to bear in their context at the time of use. Most statutes operate without becoming the subject of litigation over their meaning. Confidence that clear words will ordinarily be applied according to their contextual meaning enables lawyers and others to advise and act on legislation with reasonable certainty.<sup>66</sup>

### **Informed Interpretation**

The decisive question is not whether a literal reading initially appears to disclose a plain meaning. It is whether, on an informed interpretation, there is any real doubt that the grammatical meaning is the meaning intended by the legislature. The distinction prevents the plain meaning rule from becoming a reason to stop the inquiry before the relevant considerations have been examined.<sup>67</sup>

Informed interpretation requires attention to the statutory context, the mischief that the enactment was intended to remedy and any other relevant interpretative criteria. These considerations may confirm the apparent meaning, disclose a qualification or reveal a genuine uncertainty. Where they confirm the grammatical reading and raise no real doubt, the interpreter must give effect to that reading. Context and purpose thus help determine whether the meaning is plain; they are not excluded simply because the language initially seems clear.<sup>68</sup>

### **Judicial Restraint once Meaning Is Plain**

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66 Cross, *Statutory Interpretation* (3rd ed, 1995), p 1, cited in Bennion (2020), p 419.

67 Bennion (2020), p 419.

68 Bennion (2020), p 420.

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Once the meaning is established as plain, disagreement with its consequences does not justify inventing ambiguity. In *Duport Steels Ltd v Sirs*, the court rejected the creation of fanciful uncertainties as a means of avoiding clear statutory language merely because judges regarded the result as inexpedient, unjust or immoral. The reasoning recognises that controversial questions may admit different assessments, but that the legislative choice expressed by Parliament cannot be displaced by the court's preferred policy.⁶⁹

R v Bentham similarly illustrates the limits of interpretative technique. Purposive construction cannot create an offence that Parliament has not enacted, and an untenable construction is not justified merely because courts elsewhere have adopted it for comparable provisions. Interpretative rules assist in resolving uncertainty; they do not authorise a court to substitute a different rule once the statutory meaning is clear.⁷⁰

Conclusion

The plain meaning rule and informed interpretation are complementary. The latter establishes whether the former applies by testing the apparent grammatical meaning against context, the statutory mischief and other relevant criteria. Where no real doubt remains, the court must give effect to the meaning conveyed by the enactment. This approach preserves both careful interpretation and legal certainty: it avoids premature reliance on isolated words while preventing artificial ambiguity from becoming a means of evading the legislative text.

Approach when plain meaning rule does not apply

⁶⁹ *Duport Steels Ltd v Sirs* [1980] 1 WLR 142, cited in Bennion (2020), p 419.

⁷⁰ *R v Bentham* [2005] UKHL 18, cited in Bennion (2020), p 419.

Resolving Doubt through Interpretative Criteria

Where the meaning of an enactment is genuinely doubtful, it must be ascertained by applying the legally recognised guides to legislative intention. If those guides point in different directions, the interpreter must evaluate the relevant factors and explain why one construction is preferable. The basic rule therefore requires a structured exercise of judgment rather than a predetermined response to uncertainty.

Many interpretative criteria are described as rules, but do not operate as rigid commands that determine every case in which they are relevant. They may instead function as presumptions, pointers or aids to construction. A criterion favouring one reading may encounter another favouring a competing reading. The court must consider the relevant circumstances and assess the significance of each, rather than treat the mere invocation of a canon as conclusive.

This flexibility does not make established interpretative principles optional. The court must have regard to the applicable legal framework. The distinction is between the obligation to consider the relevant criteria and the weight that a particular criterion carries in the circumstances. Binding statutory directions must also be distinguished from presumptions whose force depends on context.

From General Criteria to Particular Factors

The interpretative process involves identifying criteria, deriving factors and evaluating competing constructions. A criterion is a general guide, such as the requirement to read statutory language in context. A factor is the specific consideration arising from the

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application of that guide to the wording of the enactment and the facts before the court.

The interpreter first identifies the criteria relevant to the disputed meaning. The next step is to determine what particular considerations those criteria disclose in the case at hand. Finally, the court assesses how those factors support or undermine the competing readings and reaches a reasoned conclusion as to the legal meaning. General principles thus acquire practical significance through their application to the particular statutory question.

### **Legislative Intention and Contrary Indications**

The interpretative framework rests on the assumption that the legislature, and those exercising delegated legislative authority, act against the background of the existing law, including established interpretative criteria. Applying those criteria is therefore a means of understanding the enactment within its legal setting, rather than an attempt to dictate what the legislature should have enacted.

A legislature may indicate that a particular default guide is not to apply, or is to apply differently. Subject to the governing legal framework, the court must give effect to that indication. Contrary intention need not take a prescribed verbal form: it may be express or arise by implication from the enactment. It may exclude a guide altogether or qualify its operation in a limited respect.

The reference to a conclusive presumption, or *juris et de jure*, must be understood in this setting. It concerns the legal basis for construing legislation through the recognised framework, including the obligation to respect a legally effective contrary

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intention. It should not be confused with a claim that every individual interpretative presumption is irrebuttable. The very possibility of an express or implied contrary indication shows why the scope of each guide must be examined in context.

### **Weighing Competing Factors**

Once the relevant factors have been assembled, the court must consider those that point towards or away from each construction. Their weight is not determined simply by counting how many support a particular result. A factor may be highly persuasive, of limited significance or ultimately carry no weight in the circumstances. Nor should a contextual presumption be treated as invariably decisive merely because it is conventionally called a rule.

The proposition that no single factor automatically overrides every other consideration describes this evaluative process; it does not erase binding legal requirements or differences in the ordinary weight of particular criteria. The court must distinguish between a rule that governs the issue and considerations whose relative force remains to be assessed.

Hart's discussion of competing legal rules illustrates the broader point that a rule may yield to a more important rule in one case without losing its validity in others. Similarly, an interpretative consideration that is outweighed in a particular dispute may remain influential in another statutory setting. The result depends on the relationship between the relevant considerations, not on permanently discarding whichever one fails to prevail.

Although many factors may be relevant, only a relatively small number will ordinarily require extended treatment in argument or judgment. The purpose of the analysis is to explain the

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considerations that materially affect the choice between constructions, rather than to produce an exhaustive catalogue of interpretative maxims.

### **Changes in the Weight of Interpretative Criteria**

The weight accorded to particular criteria may change as legal policy and interpretative approaches develop. Earlier decisions may attach different significance to such matters as property interests, personal liberty or grammatical meaning. A historical statement about the importance of a criterion should therefore be understood within its legal setting rather than assumed to determine its present weight unchanged.

Such developments do not permit an interpreter to disregard applicable authority. They require attention to the legal framework governing the case and to the continuing force of the authorities relied upon. The assessment of weight remains a legal judgment supported by reasons, rather than an expression of personal preference.

### **Conclusion**

The basic rule combines fidelity to established interpretative guides with judgment in their application. The court identifies the relevant criteria, derives the particular factors they disclose and evaluates those factors against the competing constructions. It also respects any legally effective contrary legislative intention. This method makes the resolution of doubt disciplined and explainable while recognising that genuine conflicts between interpretative considerations cannot always be resolved mechanically.