

~~~~~

## **Interpreting Taxing Statutes # 34 – Every enactment to be given purposive construction**

**A purposive construction of an enactment is a construction that interprets the enactment's language, so far as possible, in a way which best gives effect to the enactment's purpose. A purposive construction may accord with a grammatical construction, or may require a strained construction.<sup>^1</sup>**

### SYNOPSIS

Purpose of an enactment

Role of purpose

Changes in approach over time

Regard to purpose is taken as read now

Nature of purposive construction

Strained construction to achieve the legislative purpose

### **Purpose of an enactment**

There is a purpose for the passing of every Act. Similarly, each enactment that forms part of an Act has its own purpose, to be understood within the large purpose of the Act. The same applies to other legislative instruments. In order to construe an enactment, it is necessary to ascertain its purpose and to understand its place within the legislature relating to the matter in question. Said as follows:

“The modern approach to statutory construction is to have regard to the purpose of a particular provision and its language, so far as possible, in a way which best gives effect to that purpose”<sup>^2</sup>

### **Role of purpose**

---

<sup>1</sup> Bennion 2020 s 12.2

<sup>2</sup> Barclays Mercantile Finance Ltd v Mawson (2004) UKHL 51 cited in Bennion 2020 p 435

~~~~~

The role of purpose in statutory construction has been described in following terms:

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provision which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidation statute is, after all, enactment to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provision should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.”³

Changes in approach over time

The attention given to the purpose of an enactment increased during the second half of the twentieth century. Said as follows in 1975:

“If one looks back to the actual decisions of the House of Lord on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of trend away from the

³ R (Quintavalle) v Secretary of State for Health (2003) UKHL13 cited in Bennion 2020 p 435

~~~~~  
purely literal towards the purposive constructions of statutory provisions.”<sup>4</sup>

### **Regard to purpose is taken as read now**

That the court should have regard to the purpose of an enactment is now taken as read. Said as follows:

“No explanation for resorting to a purposive construction is necessary. One can confidently assume that Parliament intends its legislation to be interpreted not in the way of black-letter layer, but in a meaningful and purposeful way giving effect to the basic objective of the legislation.”<sup>5</sup>

### **Nature of purposive construction**

The court’s function is to construe the words in the enactment. It ascertains (and pay regard to) the legislative purpose in order to interpret those words. Said as follows:

“Words and phrases to the English language have an extraordinary range of meaning. This have been a rich resource in English poetry but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law). The first way of eliminating legally irrelevant meanings is to look to the statutory objective. It is essential to bear in mind what the court is doing. It is not declaring ‘Parliament has said X: but it obviously meant Y; so we will take Y as the effect of statute.’ What the court is declaring is ‘Parliament has used words which are capable of meaning either X or Y: Although X may be the primary, natural and ordinary meaning of the words the purpose of the provision shows that the secondary sense, Y, should be given to the words. The final task of construction is still, as always, to ascertain the

---

<sup>4</sup> Carter v Bradbeer (1975) 1 WLR 1204 cited in Bennion 2020 p 435

<sup>5</sup> Attorney-General’s Reference (No 5 of 2002) (2004) UKHL 40 cited in Bennion 2020 p 435

~~~~~  
meaning of what the draftsman has said, rather than to ascertain
what the draftsman mean to say.”⁶

Strained construction to achieve the legislative purpose

There are the times when the language of an enactment will provide a clear answer to the issue before the court and other times when it does not. In cases where it does not, one might expect the courts to pay particular regard to the purpose of the enactment. Further, even where the grammatical meaning is clear, the court might need to give the words a strained construction in order to achieve the legislative purpose.⁷

⁶ Stock v Frank Jones (Tipton) Ltd (1978) 1 WLR 231 Bennion 2020 p 436

⁷ Bennion 2020 p 436