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Purpose of the Enactment and the Mischief Rule

An Act or other legislative instrument is enacted for a reason, and each of its provisions serves a function within the legislative scheme. In construing a provision, the court must therefore consider both its particular purpose and its relationship to the broader purpose of the instrument. Identifying these purposes assists the court in understanding why the legislature adopted the words in question and what those words are intended to achieve.[1]

This approach has a longstanding foundation in the mischief rule formulated in *Heydon's Case* (1584). The court directed judges to examine the common law before the Act, the mischief or defect that it failed to address, the remedy adopted by Parliament, and the true reason for that remedy. These inquiries connect the legislation to the problem that prompted its enactment and explain the function of the legislative response. The resulting construction should suppress the mischief and advance the remedy, giving effect to Parliament's intention for the public good (*pro bono publico*).[2]

The rule also requires attention to attempts to evade the legislation. A construction that permits subtle devices to preserve

1 Bennion (2020), s 12.1.

2 Heydon's Case (1584) 3 Co Rep 7a, cited in Bennion (2020), p 434.

the very mischief Parliament sought to remedy would undermine the statutory purpose. Accordingly, *Heydon's Case* directs courts to counter inventions and evasions designed to perpetuate that mischief for private benefit (*pro privato commodo*). This aspect of the rule recognises that an effective remedy depends not merely on addressing the original form of the problem, but also on preventing its continuation through devices that frustrate the legislative response.[3]

The mischief rule thus provides a historical foundation for modern purposive construction. Its continuing significance lies in treating the statutory problem, the chosen remedy and the reason for that remedy as connected elements of interpretation. Understanding the mischief illuminates the enactment's purpose; understanding the purpose, in turn, guides a construction that gives practical effect to the remedy embodied in the legislation.[4]

This historical foundation introduces the relationship between the statutory problem and the legislative response. The concepts of mischief, purpose and remedy must first be distinguished before their role in modern purposive construction is examined.

Meaning of Mischief in Statutory Interpretation

In statutory interpretation, the mischief of an enactment is the defect or problem that prompts legislative intervention. Legislation ordinarily changes the existing law because the legislature considers it inadequate in some respect. The interpreter therefore seeks to identify that inadequacy and

3 Heydon's Case (1584) 3 Co Rep 7a, cited in Bennion (2020), p 434.

4 Heydon's Case (1584) 3 Co Rep 7a; Bennion (2020), p 434.

construe the enactment so that the remedy Parliament has provided operates effectively to address it.[5]

The mischief may be purely legal or may involve a social problem coupled with a deficiency in the law. A legal mischief is a defect in the existing legal framework, whereas a social mischief is a condition in society that gives rise to concern. The distinction matters because a social problem does not necessarily establish a defect in the law. An increase in street robberies, for example, may result from inadequate legislation, ineffective enforcement or other circumstances. Identifying the social concern alone is therefore insufficient: the interpreter must determine what deficiency the legislature sought to address through the particular enactment.[6]

Lawyers commonly use mischief to refer to a legal defect, although the term may also encompass the wider social problem underlying the legislation. In either sense, the inquiry is concrete and historically situated. As recognised in *R v Z (Attorney General for Northern Ireland's Reference)*, statutory interpretation concerns a particular enactment, adopted at a particular time, to address a particular problem. Understanding that problem helps explain both the decision to legislate and the form of the remedy chosen.[7]

The word mischief should not, however, suggest that legislation is concerned exclusively with suppressing wrongdoing or eliminating an evil. Legislative intervention may also seek to confer a benefit or improve an existing arrangement. Bentham's distinction between suppressing mischief and promoting benefit

5 Bennion (2020), ss 12.5–12.6 and p 448.

6 Bennion (2020), pp 448–449.

7 R v Z (Attorney General for Northern Ireland's Reference) [2005] UKHL 35.

highlights the need to understand the term broadly enough to accommodate these constructive objectives.[8]

Nevertheless, mischief and legislative purpose are related rather than interchangeable concepts. Mischief identifies the problem or deficiency that occasions intervention; purpose identifies what the legislature seeks to achieve in response; and the statutory remedy supplies the means chosen to achieve it. The interpretative task is to connect these elements, giving effect to the remedy embodied in the enactment so as to address the identified mischief and fulfil the legislative purpose.[9]

The mischief rule and purposive construction are therefore related without being identical. Identifying a defect is an important way of understanding legislative purpose, but the wider inquiry also accommodates legislation directed towards conferring benefits or improving existing arrangements.

Purposive Construction

A purposive construction interprets the language of an enactment, so far as possible, in the way that best gives effect to its purpose. It may coincide with the grammatical meaning or, where justified, involve a strained construction. In either case, the object remains to ascertain the legal meaning of the enacted words through an understanding of the legislative objective.[10]

Development of the Purposive Approach

Judicial attention to legislative purpose became increasingly prominent during the latter half of the twentieth century. In *Carter v Bradbeer*, the court identified a trend in House of Lords

8 Bennion (2020), p 449.

9 Bennion (2020), ss 12.5–12.6 and pp 448–449.

10 Bennion (2020), s 12.2.

decisions over the preceding thirty years away from purely literal interpretation and towards purposive construction. The development reflects an increasing emphasis on understanding statutory language through the function it performs within the legislative scheme.[11]

Regard to purpose has consequently become an accepted feature of interpretation rather than an exceptional technique requiring separate justification. In *Attorney-General's Reference (No 5 of 2002)*, the court explained that Parliament is understood to intend legislation to be interpreted meaningfully, so as to give effect to its basic objective, rather than through a purely technical reading detached from that objective.[12]

Purpose as a Guide to the Enacted Words

Purposive construction remains an exercise in construing language. Words and phrases may bear several possible meanings, and the statutory objective helps distinguish meanings relevant to the enactment from those that are merely linguistically available. Purpose therefore assists the interpreter in identifying which meaning the words convey in their legal setting.[13]

Stock v Frank Jones (Tipton) Ltd explains the limits of this approach. The court does not replace what Parliament has said with what it considers Parliament obviously meant to say. Rather, where the words admit more than one meaning, the legislative purpose may support an alternative to their primary or ordinary sense. The task is to determine the meaning of the words actually

11 Carter v Bradbeer [1975] 1 WLR 1204, cited in Bennion (2020), p 435.

12 Attorney-General's Reference (No 5 of 2002) [2004] UKHL 40, cited in Bennion (2020), p 435.

13 Bennion (2020), p 436.

used, not to speculate about an unexpressed formulation that the drafter might have intended.[14]

Avoiding Excessive Literalism

The court's duty to give effect to what Parliament has enacted does not require exclusive attention to a literal reading of an isolated provision. Quintavalle explains that excessive literalism may frustrate legislative intention by allowing attention to verbal detail to obscure the statutory objective. It may also encourage unnecessarily elaborate drafting, as drafters attempt to anticipate and expressly address every possible contingency.[15]

The purposive approach addresses these difficulties by reading the provision in the context of the whole enactment and the circumstances that gave rise to it. Its object is to make the legislative purpose effective within the bounds of permissible interpretation, rather than demand exhaustive wording for every application of the statutory scheme.[16]

Grammatical and Strained Construction

Purpose and grammar frequently point towards the same meaning. Where the language leaves the issue uncertain, however, the legislative objective may carry particular weight in choosing between competing constructions. In a more difficult case, giving effect to that objective may require consideration of a strained construction even though the grammatical reading appears clear.[17]

14 Stock v Frank Jones (Tipton) Ltd [1978] 1 WLR 231, cited in Bennion (2020), p 436.

15 R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, cited in Bennion (2020), p 435.

16 R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, cited in Bennion (2020), p 435.

17 Bennion (2020), s 12.2 and p 436.

The latter step must be distinguished from selecting between meanings readily available on the wording. It requires justification for departing from the grammatical reading; the desirability of an outcome does not itself supply that justification. The emphasis in Stock on construing the words actually enacted and the qualification in Quintavalle concerning permissible interpretation preserve the limits within which purposive reasoning operates.[18]

These propositions describe three different operations: confirming grammatical meaning, selecting between available meanings and departing from grammatical meaning where additional justification exists. They should not be treated as interchangeable. Purpose supplies an interpretative reason, not an independent power to disregard the statutory text.

Ascertaining Legislative Purpose and Identifying the Relevant Mischief

Identifying Purpose through Context

Purpose must be ascertained through the enactment and its setting. An Act may have an overarching objective, while an individual provision serves a more specific function within that broader scheme. Proper construction requires attention to both levels. A general statement of legislative purpose cannot substitute for examining the role of the particular provision being construed.[19]

In *Barclays Mercantile Business Finance Ltd v Mawson*, the court described the modern approach as interpreting a provision and its language so as to give full effect to its purpose. This

18 Stock v Frank Jones (Tipton) Ltd [1978] 1 WLR 231; R (Quintavalle) v Secretary of State for Health [2003] UKHL 13; Bennion (2020), pp 435–436.

19 Bennion (2020), pp 435, 444.

requires locating the provision within the legislative scheme governing the subject matter. The same approach applies to other legislative instruments: their provisions must be understood through their particular functions and the objectives of the instrument as a whole.[20]

R (Quintavalle) v Secretary of State for Health further emphasises the importance of the whole statute and its historical setting. Legislation, apart from a pure consolidation measure, ordinarily seeks to change the law, address a problem, remove a defect or improve an aspect of public life. Understanding the circumstances that prompted its enactment helps the court identify the purpose to which the disputed provision contributes.[21]

Establishing Purpose through Legitimate Materials

Legislative purpose must be identified through the enactment and legitimate interpretative material, rather than assumed from an outcome the court considers desirable. An Act may expressly state its purpose; where it does not, the court may ascertain that purpose by examining its provisions, structure and any admissible external aids to construction. The inquiry must establish a sufficiently clear foundation for the purpose attributed to the legislature, particularly where that purpose is relied upon to support departure from the grammatical meaning.[22]

The starting assumption is that Parliament acts as a rational, reasonable and informed body, pursuing its objectives coherently and deliberately. As recognised in *Astall v HMRC*, each

20 Barclays Mercantile Business Finance Ltd v Mawson [2004] UKHL 51, cited in Bennion (2020), p 435.

21 R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, cited in Bennion (2020), p 435.

22 Bennion (2020), s 12.3.

provision should therefore be understood as serving a purpose. That assumption, however, does not establish what the particular purpose is: it must be discerned from the statute rather than supplied through unsupported speculation. *HMRC v Trigg* clarifies that this requirement does not confine the court to the statutory text alone. Admissible external aids may assist in identifying the purpose that the enactment embodies.[23]

The inquiry consequently brings together the operative provisions, the wider legislative scheme and relevant interpretative material. The long title, preamble and recitals, where present, may illuminate the reasons for the legislation, while admissible external aids may clarify its background and objectives. As emphasised in *P & O Steam Navigation Company v HMRC*, a claimed purpose requires support from these legitimate sources. Otherwise, purposive reasoning risks becoming circular: the interpreter assumes a purpose that favours a preferred construction and then invokes that purpose to justify the construction. Requiring a demonstrable foundation guards against this form of confirmation bias.[24]

The Purpose of the Particular Provision

Care is also needed to identify purpose at the appropriate level. An Act may pursue an overarching objective while its Parts and individual provisions perform distinct, interacting functions. The general purpose of the Act cannot automatically be treated as a complete explanation of every provision. The interpreter must determine the particular function of the provision in dispute and its relationship to the broader scheme. Although this may be

23 Astall v HMRC [2009] EWCA Civ 1010; HMRC v Trigg [2016] UKUT 165; both cited in Bennion (2020), p 443.

24 P & O Steam Navigation Company v HMRC [2016] EWCA Civ 468, cited in Bennion (2020), p 443.

more difficult than identifying the Act's overall objective, the distinction can be decisive in selecting the correct construction.[25]

Where the legal meaning of an enactment is disputed, the interpreter must identify the precise mischief that the legislature intended it to remedy. This inquiry concerns the particular provision under consideration, read within its statutory setting, rather than an assumed purpose attributed indiscriminately to the Act as a whole. Some Acts address a single problem, while others, such as annual Finance Acts, contain provisions directed at several distinct matters. The relevant task is therefore to establish which defect the disputed provision addresses and how the statutory remedy responds to it.[26]

Legislative Selection and Secondary Mischiefs

The distinction between the broader social problem and the mischief selected for legislative intervention is fundamental. Parliament may address only part of a problem, proceed through successive enactments, or alter the scope of a proposed remedy during the legislative process. A Bill may be expanded to cover an additional mischief, narrowed through compromise, or substantially redirected before enactment. Consequently, the problem described in an earlier report or debate cannot automatically be equated with the problem addressed by the final legislation. The interpreter must identify the mischief reflected in the enacted scheme, without restoring proposals that Parliament omitted or overlooking matters that it ultimately included.[27]

The statutory scheme may also address secondary or prospective mischiefs arising from the operation of its principal remedy.

25 Bennion (2020), p 444.

26 Bennion (2020), pp 450–451.

27 Bennion (2020), pp 450–451.

Legislation establishing a social security benefit, for example, may include offences designed to prevent fraudulent claims. The social need addressed by the benefit and the risk of abuse addressed by the offence are related but distinct. Identifying the purpose of the offence therefore requires attention to its particular function within the wider scheme, rather than treating every provision as responding directly to the original social problem.[28]

External Aids and Uncertain Purpose

The mischief may be ascertained from the statutory language, structure and context, assisted by admissible external materials. *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* recognises the importance of understanding the legislative purpose when construing an enactment. Reports of law reform bodies and advisory committees, government white papers and other legitimate background materials may explain the perceived defect and the proposed legislative response. Their value in clarifying the scope and aim of legislation is reflected in *Wilson v First County Trust Ltd (No 2)*. Where legislation implements an international treaty, the treaty may likewise illuminate the problem and obligations to which the domestic provisions respond. Such materials assist the inquiry, but must be assessed against the legislation ultimately enacted.[29]

The available evidence may nevertheless leave the mischief uncertain, particularly where an older statute has little surviving explanatory material. The interpreter must then work from the enactment and the relevant legal context that can reliably be

28 Bennion (2020), pp 450–451.

29 Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591; Wilson v First County Trust Ltd (No 2) [2003] UKHL 40; Bennion (2020), p 453.

established. The conduct expressly prohibited, or the situation expressly regulated, may provide the strongest indication of the legislative concern. An absence of historical evidence does not justify inventing a broader purpose; it calls for restraint in defining the mischief and in using it to influence construction.[30]

Purposive interpretation therefore depends on disciplined identification of purpose before purpose can guide the attribution of meaning. Where the available material leaves the purpose unknown or genuinely doubtful, its force as a reason for departing from the grammatical meaning is correspondingly weakened. Judicial reluctance to depart in those circumstances reflects the need to give effect to a purpose supported by the legislation, rather than one constructed by the interpreter.[31]

The inquiry thus moves from the available evidence to the purpose and mischief of the enacted provision. Having identified that legislative choice, the interpreter can consider how the remedy is to operate without substituting the wider aspirations of an earlier proposal or a preferred policy.

Advancing the Statutory Remedy and Respecting Its Limits

Once the relevant mischief has been identified, the interpreter must determine the remedy Parliament chose and construe the enactment so as to make that remedy effective. Where an Act addresses a single mischief, its provisions may collectively constitute the remedy; where it addresses several, the provisions relevant to each must be identified. Understanding this relationship can assist in resolving doubtful language,

30 Bennion (2020), p 453.

31 Bennion (2020), s 12.3 and p 444.

determining the appropriate breadth of a provision and addressing operational difficulties that would otherwise frustrate the legislative scheme. This gives effect to the direction in *Heydon's Case* to suppress the mischief and advance the remedy.[32]

The endeavour to advance the remedy must, however, respect the limits of the legislative choice. A court may infer that Parliament intended an effective response to the mischief it selected, but cannot assume that Parliament intended to eliminate every aspect of the wider social problem. The objective is to give full effect to the remedy enacted, not to complete a legislative programme that Parliament left unfinished. Identifying the mischief and advancing the remedy are thus connected stages of a single inquiry: determining what problem the enactment addresses, what response it provides and how its language can give that response practical effect.[33]

This limitation also qualifies the earlier discussion of evasion. Countering devices that frustrate the enacted remedy is consistent with the mischief rule; extending legislation to problems Parliament deliberately left outside its scope is a different exercise. Effectiveness is assessed within the boundaries of the statutory response.

Purposive Construction of Taxing and Other Onerous Enactments

The principles of purposive construction apply to all legislation, including taxing Acts and other enactments that impose burdens, liabilities or penalties. The onerous character of a provision does

32 Bennion (2020), pp 454, 456; Heydon's Case (1584) 3 Co Rep 7a.

33 Bennion (2020), pp 450–451, 454, 456.

not exclude consideration of its purpose or, where properly justified, prevent the adoption of a strained construction to give effect to that purpose. The interpretative task remains to ascertain and implement the legislative intention expressed through the enactment, while recognising the importance of clear legal authority for imposing a detriment.[34]

Historically, taxing statutes were frequently associated with strict or literal construction, sometimes on the assumption that their purpose was irrelevant to their interpretation. Yet the rejection of a separate interpretative method for taxation has longstanding authority. In *Attorney General v Carlton Bank*, the court explained that its duty was the same whether the legislation concerned taxation or another subject: to give effect to the intention of the legislature. The requirement that taxation rest on statutory authority therefore does not entail reading statutory words independently of their context and purpose.[35]

Nevertheless, literalism retained a particular influence in tax law. The narrow approach associated with the *Duke of Westminster* doctrine encouraged reliance on the legal form of transactions and contributed to resistance to the broader development of purposive interpretation. A decisive change came with *W T Ramsay Ltd v Inland Revenue Commissioners*. While reaffirming that taxation requires clear statutory authority, the House of Lords recognised that the meaning of the statutory words must be determined by reference to the legislative context, scheme and purpose. *Inland Revenue Commissioners v McGuckian* subsequently identified this rejection of pure literalism as a

34 Bennion (2020), s 12.4.

35 Attorney General v Carlton Bank [1899] 2 QB 158.

critical step in bringing the interpretation of taxing statutes within the general approach to statutory construction.[36]

The same reasoning extends to other onerous enactments. In *R (Kelly) v Secretary of State for Justice; Re Gibson*, the court rejected the proposition that purposive interpretation should be avoided merely because legislation concerns criminal law. The potential severity of a provision's consequences calls for careful justification of the construction adopted, but does not make legislative purpose irrelevant. The protection against imposing a detriment under doubtful law must operate within an informed interpretation of the enactment, rather than through an assumption that the narrowest literal reading necessarily governs.[37]

Purposive construction must, however, be distinguished from strained construction. A purposive reading may confirm the ordinary grammatical meaning; it may also help select between meanings that the language reasonably bears. Only where the interpretation departs from the grammatical meaning does the question of a strained construction arise. Legislative purpose may support such a departure where sufficiently justified, including in an onerous enactment, but purposive interpretation is not inherently or invariably strained. The governing principle is that statutory burdens must be founded on the properly construed enactment: its purpose informs the meaning of its words, without independently supplying authority to impose liability.[38]

Conclusion

36 Inland Revenue Commissioners v Duke of Westminster [1936] AC 1; W T Ramsay Ltd v Inland Revenue Commissioners [1982] AC 300; Inland Revenue Commissioners v McGuckian [1997] 1 WLR 991.

37 R (Kelly) v Secretary of State for Justice; Re Gibson [2008] EWCA Civ 177.

38 Bennion (2020), ss 12.2, 12.4.

Purposive construction brings statutory language, context and legislative objective into a single interpretative inquiry. It requires the court to identify the purpose of the provision within the wider scheme and to give that purpose effect through the meaning attributed to the enacted words. The approach may confirm grammatical meaning, resolve uncertainty or support a justified strained construction. Throughout, legislative purpose guides the interpretation of the text rather than displacing it.[39]

The connected inquiries developed in this chapter require the interpreter to identify the relevant mischief, establish the purpose of the particular provision through legitimate materials and give practical effect to the remedy enacted. The same discipline applies to beneficial and onerous provisions alike. Fidelity to legislative purpose includes fidelity to the limitations, qualifications and compromises embodied in the statutory scheme.

39 Bennion (2020), s 12.2 and pp 435–436.