

## **Interpreting Taxing Statutes # 79 – Broad terms [Elephant words]**

**An Act will sometimes use a broad term that indicates the general legislative intention while leaving it to courts to exercise their judgment as to how it is to be applied to particular facts.<sup>^1</sup>**

### SYNOPSIS

An Act will sometimes use a broad term that indicates the general legislative intention while leaving it to courts to exercise their judgement as to how it is to be applied to particular facts. There are two principal uses of this technique. The first is where a provision needs to deal with a broad range of circumstances and it is not possible to anticipate them all in advance (for example, a criminal offence with a ‘reasonable excuse’ defence). The second is where an expression has a clear everyday meaning and any attempt to define it is likely to create more doubt than it resolves. In either case the courts will need to determine how the broad term applies in relation to particular facts in the light of the interpretative criteria.

### **Courts not to give own definition**

It is not for the court to lay down a definition of a broad term which the legislature has chosen not to define. Said as follows:

‘The courts have repeatedly warned against the dangers of taking an inherently imprecise word, and by redefining it thrusting on it a spurious degree of precision’.<sup>^2</sup>

### **Narrowing of term by implication**

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<sup>1</sup> Bennion 2020 s 22.2

<sup>2</sup> South Yorkshire Transport Ltd v Monopolies and Mergers Commission (1993) 1 All ER cited in Bennion 2020 p 654

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The width of a broad term when read in context may be cut down by implication. For example, where the court considered regulations which enabled a destruction order to be made where food was ‘unwholesome’, it was held that the term ‘unwholesome’ had to be read in context and meant ‘unwholesome when used as intended’. A cargo of dates heavily infested with insects was regarded as unwholesome from the point of view of most uses but not for the intended use, namely the manufacture of brown sauce.<sup>3</sup>

### **Updating construction**

The meaning given to a broad term may be particularly susceptible to variation according to the time when it is considered. For example, the requirement to keep certain dwellings ‘fit for human habitation’ imports a standard which is likely to vary in time.<sup>4</sup>

### **Elephant word need not be defined by the court.**

Sometimes a word is like an elephant: its essence is difficult to put into words but recognizable when encountered, like an elephant: you know it when you see it, but you can’t describe it in words. The concept of ‘good faith’ is a form of judicial elephant.<sup>5</sup>

In the case of an ordinary English word, where Parliament chose not to give it any special meaning, it is inappropriate for the courts to define it and lay down its meaning as a rule of construction. For example it has been said that a word like

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<sup>3</sup> R v Archer, ex p Barrow, Lane & Ballard Ltd [(1983) 147 JP 503 cited in Bennion 2020 p 655

<sup>4</sup> Bennion 2020 p 655

<sup>5</sup> Bennion 2019 p 525

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*necessarily* is a 'linguistically irreducible' word which judges should not replace with a synonym or paraphrase.<sup>6</sup>

General words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.<sup>7</sup>

**'Public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act.**

The expression 'public interest' if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law. ... Public interest floats in a vast, deep-ocean of ideas, and "imagined experiences". It would seem to us wise for the courts not to venture into this uncharted minefield. We are not exercising our will. We cannot impose our own values on society. Any such effort would mean to make value judgments.<sup>8</sup>

The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have

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<sup>6</sup> Bennion 2019 p 524

<sup>7</sup> The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur vs. The Municipal Committee, Wardha AIR 1958 SC 341 Para 41

<sup>8</sup> Meerut Development Authority and Ors. vs. Association of Management Studies and Ors. (2009) 6 SCC 171 Para 33

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a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake.<sup>9</sup>

The term 'Public interest' has no rigid definition. It has to be understood and interpreted in reference to the context in which it is used. The concept derives its meaning from the statute where it occurs, the transaction involved, the state of society and its needs.<sup>10</sup>

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<sup>9</sup> Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Ors. (2012) 13 SCC 61 Para 23

<sup>10</sup> Small Industries Development Bank of India vs. Sibco Investment Pvt. Ltd. (2022) 3 SCC56 Para 8