

Interpreting Taxing Statutes # 86 – Question of law or fact

The question of what the legislature intended a word or phrase to mean in its context within an Act is a question of statutory interpretation, and therefore of law, though the law may indicate that it is to be given its ordinary meaning. But if, as a matter of law, a word or phrase is being used in its ordinary sense then it is for the tribunal of fact to determine and apply that meaning to the facts as found.^{^1}

SYNOPSIS

Where the question was whether the defendant had been guilty of ‘insulting behavior’, the court said as follows:

‘The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word “insulting” being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved.’^{^2}

The points the court made were that:

- (1) whether a word or phrase is being used in its ordinary sense or in some other sense is a question of law;

¹ Bennion 2020 s 22.10

² Brutus v Cozens (1973) AC 854 cited in Bennion 2020 p 669

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- (2) if, as a matter of law, a word or phrase is being used in its ordinary sense then it is for the tribunal of fact to determine and apply that meaning to the facts as found.

It was therefore a question of law whether the word ‘insulting’ was to be given its ordinary meaning but a question of fact whether the conduct complained of was insulting within that meaning. ³

Questions of fact and degree

In some cases, it may be unclear whether a statutory provision applies to particular factual situations – the issue is said to be a question of fact and degree. In such cases, the view taken by the fact-finding tribunal is beyond challenge so long as it has directed itself properly in law, reached its decision in good faith, and its decision is one that could reasonably be arrived at. The court put it in this way:

‘The meaning of a word or phrase in an Act of Parliament is a question of law not fact; even though the law may then declare that the word or phrase has no statutory meaning beyond its common acceptance and that it is a question of fact whether the circumstances fall within such meaning (Cozens v. Brutus [1973] A.C. 954). But many words and phrases in English have many shades of meaning and are capable of embracing a great diversity of circumstance. So, the interpretation of the language of an Act of Parliament often involves declaring that certain conduct must as a matter of law fall within the statutory language (as was the actual decision in Edwards v. Bairstow [1956] A.C. 14); that other conduct must as a matter of law fall outside the statutory language; but that whether yet a third category of conduct falls within the statutory language or outside it depends on the evaluation of such conduct by the tribunal of

³ Bennion 2020 p 669

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fact. This last question is often appropriately described as one of  
“fact and degree.””<sup>4</sup>

For example, where the issue was whether certain persons were members of a ‘household’ within the meaning of the Act the court said:

‘The position as I see it is as follows: there are three categories of situation which can arise before the tribunal of fact. The first category are those where the only decision which the tribunal can, as a matter of law, come to is that the persons concerned are members of the household. The second category of cases are those where the only decision which the tribunal of fact can come to is that persons concerned are not members of the household. The third category of cases, which in practice will be the largest, are those where it is proper to regard the persons concerned either as being members or not being members of the household, depending on the view which the fact-finding tribunal takes of all the circumstances as a matter of fact and degree.’<sup>5</sup>

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<sup>4</sup> Ransom v Higgs (1974) 1 WLR 1594 cited in Bennion 2020 p 670

<sup>5</sup> England v Secretary of State for Social Services (1982) 3 FLR 222 670