

## **ITS # 32 - Approach when plain meaning rule does not apply**

**The basic rule of statutory interpretation is that in the case of any doubtful meaning, the enactment in question is to be construed in accordance with the guides to legislative intention laid down by law; and where these conflict the problem is to be resolved by weighing and balancing the applicable interpretive factors.<sup>1</sup>**

### **SYNOPSIS**

Basic rule

Presumption as to the legislature and its contrary intention

Weighing of factors

Changes in legal policy affecting weight

### **Basic rule**

The said principle was stated in following terms,

“When doubt arises, rules of the construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one ‘rule’ points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgement, what weight to attach to any particular ‘rule’.”<sup>2</sup>

The word ‘rule’ in quotation marks meant to acknowledge that many of the interpretive criteria are not true rules in the rigid sense of something that must be followed in all cases. The task in a particular case is to determine (by reference to general criteria) the specific factors which, in the light of the facts of the instant

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<sup>1</sup> Bennion 2020 s 11.10

<sup>2</sup> Maunsell vs Olins (1975) AC 373 cited in Bennion 2020 p 421

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case, are relevant in construing the enactment for the purposes of that case where, as frequently happens, factors tend in opposite directions, the interpreter has to weigh or evaluate them.<sup>^3</sup>

In searching for the legal meaning of an enactment, the court proceeds by identifying, determining and weighing. It **identifies** the interpretive criteria that are relevant in the instant case, of which there may be many. It **determines** by reference to these relevant criteria the specific interpretative factors that, on the wordings of the enactment and the facts of the instant case, are decisive. It **weighs** the factors that tell for or against each of the opposing constructions put forward by the parties and then reaches a conclusion as to the legal meaning.<sup>^4</sup>

So, where a real doubt as to the meaning exist, the matter becomes one of judgement rather than predetermined response.<sup>^5</sup>

The said rule is to be obeyed by the court in every case. Said as follows:

“Judges are bound to have regard to any rules of the construction which have been established by the courts.”<sup>^6</sup>

### **Presumption as to the legislature and its contrary intention**

The courts in no way seek to dictate to the legislature but the legislature and its delegates are taken to know the surrounding law including the interpretive criteria, however.<sup>^7</sup>

The legislature is entirely free to indicate in an Act that it does not wish a particular guide to legislative intention to apply to the

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<sup>3</sup> Bennion 2020 p 421

<sup>4</sup> Bennion 2020 p 421

<sup>5</sup> Bennion 2020 p 421

<sup>6</sup> Ralph vs Carrick (1879) 11 Ch D 873 cited in Bennion 2020 p 421

<sup>7</sup> Bennion 2020 p 421

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interpretation of the Act and it is the duty of the court to accord the meaning to the enactment considering all the relevant interpretive criteria under the constraint of contrary intention indicated by the legislature.<sup>8</sup>

The presumption that this is the legislature's intention is conclusive, or *juris et de jure* (of law and from law). The contrary indication need not assume any particular form however, and may be express or implied. The reference to "the contrary intention" includes any divergence from the rule laid down, however minor. <sup>9</sup>

### **Weighing of factors**

Having assembled the interpretive factors, it is necessary to have regard to, and weigh in the balance every factor which can be said in any way to point towards or away from the construction in question. No one factor is overriding. A particular factor however, many in the end fall to be given no weight.

This kind of weighing and balancing is a common juristic feature. As Hart said,

“There is no reason why a legal system should not recognize that a valid rule determines a result in cases to which it is applicable, except where another rule, determined to be more important, is also applicable to the same case. So, a rule which is defeated in competition with a more important rule, like a principle. Survive to determine, the outcome in other cases where it is just to be more important than another completion rule.”<sup>10</sup>

The process of weighing or balancing in order to arrive at disputed rule or determine a dispute is common throughout law

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<sup>8</sup> Bennion 2020 p 422

<sup>9</sup> Bennion 2020 p 422

<sup>10</sup> Hart, The concept of Law (2<sup>nd</sup> ed 1994) p 262 cited in Bennion 2020 p 423

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and not limited to statutory interpretation. Wherever the law is doubtful, the court weighs or balances the factors telling in favor or against a particular formation of the rule, and arrives at its determination accordingly.

Although, a large number of interpretative factors may be relevant in practice relatively few of them are likely to be referred in the arguments or judgement.

### **Changes in legal policy affecting weight**

The weight given by the courts to a particular interpretative criterion may change from time to time. This is to be borne in mind when considering the weight to be attached in the instant case to a factor derived from the criterion. For example, until well into the nineteenth century the protection of private property received greater respect from the courts than the preservation of human liberty, whereas the position is reversed today. Again, the presumption that an enactment to be given its grammatical meaning varies from time to time in the weight accorded to it. At its height in the middle of the nineteenth century, it has declined somewhat in recent years. All legal doctrines are subject to this kind of temporal variation. <sup>11</sup>

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<sup>11</sup> Bennion 2020 p 425