

Interpreting Taxing Statutes # 82 – Technical legal terms

If a word or phrase has a technical meaning in a certain branch of law, and is used in a context dealing with that branch, it is to be given that meaning.^{^1}

SYNOPSIS

Technical legal meaning

Any system of law contains terms which can be used without definition because they stand for well-understood concepts within that system. For example, the term ‘highway’ has an established meaning at common law and is often used in legislation without definition.

A common law meaning may be more or less precisely worked out by the decided cases. For example, the term ‘contempt of court’ ‘though very widely used, has always been a source of confusion’.^{^2}

If legislation uses a technical legal term or expression that is not given a statutory definition, the legislature is taken to have intended its meaning to correspond to its general legal meaning unless the contrary intention appears.^{^3}

Different branches of law have different technical language. If an enactment is dealing with a particular branch, the relevant meaning is the meaning that the term or expression has in that branch of law.^{^4}

¹ Bennion 2020 s 22.4 – 22.5

² Whitter v Peters [1982] 1 WER 389 cited in Bennion 2020 p 660

³ Bennion 2020 p 660

⁴ Bennion 2020 p 660

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The principles explained above necessarily apply only where a term clearly has a technical legal meaning.

For example, the term ‘miscarriage of justice’ is an expression which, although very familiar, is not a legal term of art and has no settled meaning. The court compared it to the term ‘wrongful conviction’.<sup>5</sup>

As always, it is necessary to consider the context in which a term is used in order to determine whether it is being used in a technical sense.<sup>6</sup>

### Contrary intention

A contrary intention indicating that the legislature does not intend a term to be given its usual technical meaning may be express (for example where there is a statutory definition). Alternatively, a contrary intention may be apparent from the context. For example, the term ‘jointly’ was held from the context not to have its technical meaning but to be meant to be more widely construed.<sup>7</sup>

However, a contrary intention will not be lightly inferred. For example, when it was argued that the term ‘indictment’ applied to any form of criminal proceeding. The contention was rejected. The court said:

‘It always requires the strong compulsion of other words in an Act to induce the court to alter the well-known meaning of a legal term’.<sup>8</sup>

The court further added,

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<sup>5</sup> R (on the application of Mullen) v Secretary of State for the Home Department (2004) UKHL 18 cited in Bennion 2020 p 661

<sup>6</sup> Bennion 2020 p 661

<sup>7</sup> Jerome v Kelly (Inspector of Taxes) (2004) UKHL 25 cited in Bennion 2020 p 661

<sup>8</sup> R v Slatore (1881) 8 QBD 267 cited in Bennion 2020 p 661

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‘The whole of the argument fails if it is not shown that there is a popular use of the term “indictment” as including “information”. There is certainly no such popular use of the term among lawyers, and if there is among persons ignorant of the law, it is an incorrect use of the term’.⁹

Similarly, where the court was faced with an argument that ‘irrevocable’ in a Finance Act was intended to bear an enlarged meaning. Said as follows:

‘It seems to me quite illegitimate to take a word which has a technical and precise meaning in conveyancing and then to argue that it has some extended meaning. If the legislature wished to give the word “irrevocable” some unusual and extended meaning of this sort, I ask myself why in the world it did not do so’.¹⁰

Meaning uncertain

Occasionally it may happen that the legal meaning of a technical term used in an Act is uncertain. Since the court is obliged to take judicial notice of the term, it must, where the decision in the case requires it, determine the meaning. For example, where the question as to exactly what constituted the laying of an information for the purposes of the Magistrates’ Courts Act 1952 of England, the court held that the essence of the matter is the doing by the prosecutor of all that lies in the prosecutor’s power to initiate the proceedings. Accordingly, an information is laid when its contents are brought to the attention of a magistrate or the clerk to the justices as a part of the prosecution process, whether or not they are taken into account by him or her.¹¹

⁹ R v Slator (1881) 8 QBD 267 cited in Bennion 2020 p 661

¹⁰ Jenkins v Inland Revenue Commissioners (1944) 2 All ER 491 cited in Bennion 2020 p 662

¹¹ R v Leeds Justices, ex p Hanson (1981) QB 892 cited in Bennion 2020 p 662