

Interpreting Taxing Statute # 56 – Nature, purpose and examples

In construing legislation, the significance to be attached to a provision is determined according to the nature and function of the provision.^{^1}

A purpose clause is an operative part of the Act that provide a guiding principle for interpreting the text but is unlikely to override the clear word of other operative provisions.^{^2}

Where an Act includes an example, that is a strong indication of how the legislature intended it to work but in the event of conflict with the proposition that it is intended to illustrate it is unlikely in itself to justify the departure from the meaning of that proposition.^{^3}

SYNOPSIS

Significance of different components of legislation

Purpose clause

Significance of different components of legislation

The significance to the attached to different components of legislation varies according to the function of each component and (in the case of an Act) the degree to which it is amendable while a Bill is going through the legislative process. In a similar way, the significance that should be attached to a legislative proposition set out in a section or Schedule will depend on its function.^{^4}

¹ Bennion 2020 s 17.1

² Bennion 2020 s 17.2

³ Bennion 2020 s 17.4

⁴ Bennion 2020 p 551

Purpose clauses

Purpose clauses are rare in Acts but are sometimes included. A purpose clause is an operative part of the Act and will colour the interpretation of the provisions that it governs. Its function is to provide a guiding principle for interpreting the text. However, it is unlikely to override the clear words of other operative provisions, partly because of the application of the principle that the general gives way to the specific.⁵

Examples

Examples may be relied on when interpreting an Act. If an Act contains an example this is a strong indication of how the legislature intended it to work. The inclusion of an example may also colour the interpretation of the proposition of which it is illustrative. For example, an act may include a particular example of the use of a power to make it clear that a broad form of words is intended to be taken at face value even though other principles of interpretation might otherwise result in it being read more narrowly.⁶

Although a useful interpretative tool, an example is unlikely in itself to justify departure from the clear meaning of the proposition to which it relates.⁷

Examples not exhaustive: It is in the nature of example that they are illustrative, not exhaustive (whether ‘example’, ‘in particular’ or some other form of words is used). There are many authorities to the effect that the words ‘in particular’ point to a provision being non-exhaustive. Moreover, examples are often

⁵ Bennion 2020 p 552

⁶ Bennion 2020 p 557

⁷ Mahomed Syedol Ariffin v Yeoh Ooi Gark [1916] 2 AC 575 cited in Bennion 2020 p 557

expressed in general terms so the fact that a case falls within the wording of an example does not necessarily mean that it falls within the proposition of which the examples are illustrative.

Illustrations

Lord Shaw in delivering the opinion observed: It is the duty of a court of law to accept, if that can be done, the Illustrations given as being both of relevance and value in the construction of the text. The Illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the section themselves. It would be the very last resort of construction to make this assumption. The great usefulness of the Illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.⁸

Illustrations appended to sections 39, 64, 65 and 75 of the Indian Contract Act were used by the Privy Council in construing these sections and in deciding that a contract which may be “put an end to” under section 39 is “voidable” under section 64.

Similarly in interpreting section 113 of the Indian Succession Act, 1925 and in deciding that “later” bequest to be valid must comprise of all the testator’s remaining interest, if the legatee to the later bequest is not in existence at the time of the testator’s death, and that a conferment of a life estate under such a bequest

⁸ Muralidhar Chatterjee v International Film Co, AIR 1934 PC 34

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is not valid, the Privy Council took the aid of Illustrations appended to that section.<sup>9</sup>

It is not to be readily assumed that an Illustration to a section is repugnant to it and rejected.<sup>10</sup>

Nor can an Illustration have the effect of modifying the language of the section which alone forms the enactment.<sup>11</sup>

The words of the section are not ambiguous. It is well-settled that just as Illustrations should not be read as extending the meaning of a section, they should also be read as restricting its operation especially so when the effect would be to curtail a right which the plain words of the section would confer.<sup>12</sup>

Bose J observed: We recognise that an Illustration does not exhaust the full content of the section which it Illustrates but it can neither curtail nor expand its ambit.<sup>13</sup>

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<sup>9</sup> Sopher v administrator General of Bengal, AIR 1944 PC 67

<sup>10</sup> Jumma Masjid v Kodimaniandra Deviah, AIR 1962 SC 847

<sup>11</sup> Bengal & Nagpur Railway v Ruttanji Ramji, AIR 1938 PC 67

<sup>12</sup> Aniruddha v Administrator General of Bengal, AIR 1949 PC 244

<sup>13</sup> Shambhu Nath Mehra v State of Ajmer, AIR 1956 SC 404