Interpreting Taxing Statutes # 43 – Absurd result

The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature.^[1]

SYNOPSIS

Absurd result

Avoiding an impossible result

- Logical impossibility
- Legal impossibility
- Discretionary powers
- Self-induced impossibility

Avoiding unworkable or impracticable result

Avoiding an inconvenient result

- Basis of the principle
- Unnecessary technicality
- Inconvenience in business
- Inconvenience and delay in legal proceeding
- Inconvenience both ways

Avoiding an anomalous or illogical result

- Like cases shall be treated alike
- Trivial difference in like cases

Avoiding a fertile or pointless result

- *Lex nil frustra facit*
- Difficulty in attributing meaning
- Sensible construction
- Duplicated legal duty
- Pointless legal proceedings

Avoiding an artificial result

- Less artificial result
- Wholly artificial results
- Corporation
- Legal fiction

Avoiding a disproportionate counter-mischief

- Abolishing one mischief at the cost of another
- Greater public mischief
- Custom compared with written law
- Interpreter to mitigate legislative defect

Absurd results

The presumption against absurdity may require:^[2]

[1] Bennion 2020 s 13.1

- Avoiding an impossible result
- Avoiding un workable or impracticable result
- Avoiding an inconvenient result
- Avoiding an anomalous or illogical result
- Avoiding a fertile or pointless result
- Avoiding an artificial result
- Avoiding a disproportionate counter-mischief

Avoiding an impossible result

The presumption against absurdity means that the courts assume that the legislature does not at a general rule intend to require a person to do that which is impossible and will, if necessary, adopt a strained construction to avoid such a result. An enactment by implication imports the principle of maxim *lex non cogit ad impossibilia* (law does not compel the impossible).^[3] Accordingly, it was held that a driver who was unaware that an accident had occurred could not be liable for a statutory offence or failing to report it. Said as follows:

> "If the duty to be report, he cannot report something of which he has no knowledge.'^[4]

Impossibility may be logical or legal.

Logical impossibility: Where the grammatical meaning presents a logical impossibility, some other meaning will need to be given to the enactment.^[5]

Legal impossibility: If a literal reading would require what is legally impossible, the court will assume that the legislature

[2] Bennion 2020 p 478

[3] Hob 96 cited in Bennion 2020 p 479

[4] Harding v Price (1948) 1 KB 695 cited in Bennion 2020 p 480

[5] Bennion 2020 p 480

intended to be modified so as to remove the impossible element.^[6]

Discretionary powers: Impossibility may also operate as an implied limitation on the exercise of statutory powers, on the basis that the legislature did not intend a power to be exercised in a manner that would require the impossible.^[7]

Self-induced impossibility: The court will generally give short shrift to arguments that an enactment should be construed so as to relieve people against the effects of impossibility that they have brought upon themselves.^[8]

Avoiding unworkable or impracticable result

The presumption against absurdity means that the courts will be slow to find in favor of a construction that leads to unworkable or impracticable results.^[9]

Avoiding an inconvenient result

The presumption against absurdity means that the courts will generally avoid adopting a construction that causes unjustifiable inconvenience to person who are subject to the enactment.^[10] Said as follows:

> "Where the words of a statute are clear, they must, of course, be followed, but in their Lordships' opinion where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative to

[6] Bennion 2020 p 480

[7] Bennion 2020 p 480

[8] Bennion 2020 p 481

[9] Bennion 2020 p 482

[10] Bennion 2020 p 484

> be rejected which will introduce uncertainty, friction or confusion into the working of the system." ^[11]

In cases involving inconvenience, the strength of the presumption against absurdity is likely to be weaker than in cases involving unworkable or impracticable results. This is because a construction involving inconvenience is likely to involve a lesser degree of unreasonableness than one involving unworkable or impracticable results.^[12]

Basis of the principle: The courts, reluctance to adopt an interpretation that would result in inconvenience arises in part from the coercive nature of legislation. Where an Act intrudes on the property, time or freedom of citizens, the court may reasonably assume that the legislature intended that this intrusion, while no doubt necessary in the interests of society generally, should be accomplished without inflicting unnecessary inconvenience.^[13]

Unnecessary technicality: The courts may cut down technicalities attendant upon a statutory procedure where these are not necessary to the fulfillment of the purposes of the legislation. ^[14]

Inconvenience in business: Modern regulatory enactments bear heavily on business. The courts will assume that the legislature intends to avoid inconvenience which is not essential to the operation of the Act, and which may in addition have adverse economic consequences. In an English case, it was held that to avoid inconvenience to traders, this must be taken not to apply

[11] Shannon Realties Ltd v Ville de St Michel (1924) AC 185 cited in Bennion 2020 p 484

[12] Bennion 2020 p 485

[13] Bennion 2020 p 485

[14] Bennion 2020 p 485

where the weighing or measuring was to be done outside England. Otherwise a contract made in China would have to have English weights and measure sent out there.^[15]

Inconvenience and delay in legal proceeding: Courts strive to avoid constructions that would render legal proceeding inconvenient.^[16]

Inconvenience both ways: It sometimes happens that each of the constructions contended for involves some measure of inconvenience. In so far as the court uses inconvenience as a test, it then has no balance that effect of each construction and determine whether one inconvenience is greater.^[17]

Avoiding an anomalous or illogical result

The presumption against absurdity means that the courts will generally avoid adopting a construction that creates an anomaly or otherwise produces an irrational or illogical result.^[18]

An effective legal system seeks to avoid unjustified difference and inconsistencies in the way it deals with similar matters. Said as follows:

> "No system of law can be workable if it has not got logic at the root of it'."^[19]

Like cases shall be treated alike: Consistency requires that a statutory remedy or other benefit should be available, and should operate in the same way, in all cases of the same kind. The

[15] Rosserter v Cahlmann (1853) 8 Exch 361 cited in Bennion 2020 p 486

[16] Bennion 2020 p 486

[17] Bennion 2020 p 487

[18] Bennion 2020 s 13.5

[19] Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964) AC 465 cited in Bennion 2020 p 488

conserve of this principle is that a statutory duty or other detriment should be imposed in all like cases.^[20]

Trivial difference in like cases: Even though two cases are not exactly alike, it may still be anomalous to distinguish between them if the difference is immaterial or trivial.^[21]

Avoiding a fertile or pointless result

The presumption against absurdity means that the courts will generally avoid adopting a construction that produces a futile or pointless result.^[22]

***Lex nil frustra facit*:** The presumption is that the legislature does nothing in vain. The principle is also expressed as *lex nil frustra facit* (the law does nothing in vain).^[23]

Difficulty in attributing meaning: In cases where the court finds difficulty in attributing a meaning to the words used, it will strive for a meaning that achieves the purpose of the enactment.^[24]

Sensible construction: Similarly, given the necessity of drafting provisions in general terms and through the inevitable limitations of language, it sometimes happens that, in the events that have occurred in the instant case, the literal meaning of the enactment seems to demand the doing of something that would be futile or pointless. Here the court will strive to find a more sensible construction.

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[20] Bennion 2020 p 489

[21] Bennion 2020 p 490

[22] Bennion 2020 s 13.6

[23] Jenk Cent 17 cited in Bennion 2020 p 497

[24] Bennion 2020 p 496

Duplicated legal duty: Where an enactment appears to impose a legal duty that, by reason of some other enactment or rule of law, already exists, the court strives to avoid pronouncing in favour of such a duplication in the law. The law applies a maxim to this effect in the case of contracts and deeds: *lex rejicit superflua, pugnantion, incongrua* (the law rejects superfluous, contradictory, and incongruous things).^ [25] It must follow a fortiori that the law should turn against such duplication within its own texts.^[26]

Pointless legal proceedings: The court is always averse to requiring litigants to embark on futile or unnecessary legal proceedings. This includes a stage in proceeding that could without detriment to any party be done without.^[27]

Avoiding an artificial result

The presumption against absurdity means that the courts will generally avoid adopting a construction that leads to an artificial result.^[28]

Less artificial result: The law can deem any things to be the case, however unreal. The law brings itself into disrepute, however, if it dignifies with legal significances a wholly artificial hypothesis. In construing an ambiguous enactment "one can, and surely should, assume that Parliament intended the less artificial result."^[29]

[25] Jenk Cent 133 cited in Bennion 2020 p 497

[26] Bennion 2020 p 497

[27] Bennion 2020 p 497

[28] Bennion 2020 s 13.7

[29] R (a child), Re, North Yorkshire Country Council v Wiltshire Country Council (1999) 4 ALL ER 291 cited in Bennion 2020 p 498

Wholly artificial results: The court decline to rule that a wife's having availed herself, without the husband's knowledge or consent, of AID (artificial insemination by a donor) constituted her adultery within the meaning of that term in the relevant Scottish divorce Act. To do so, the court argued, would lead to wholly artificial results. For example if the donor had happened to die before the date of insemination, the legally imputed adultery would be with a dead man - involving a kind of constructive necrophilia.^[30]

Corporation: Artificially need to be so extreme as this to rank as a significant factor in statutory interpretation. One area of importance here concerns corporations. Being entities of purely legal creations, these are imbued with a certain artificiality from the start. Sight must not be lost of the realities behind them.^[31]

Legal fiction: Whenever an Act sets up some fiction the courts are astute to limit the scope of its artificial effect. They are particularly concerned to ensure that it does not create harm in ways outside the intended purview of the Act.^[32]

Avoiding a disproportionate counter-mischief

The presumption against absurdity means that the courts will generally avoid adopting a construction that cures the mischief the enactment was designed to remedy only at the cost of establishing another mischief.^[33]

Abolishing one mischief at the cost of another: Reducing one Clearly it would be absurd to suppose that the legislature intended to abolish one mischief only at the cost of establishing

[30] MacLennan v MacLennan (or Shortland) 1958 SC 105 cited in Bennion 2020 p 499

[31] Bennion 2020 p 499

[32] Bennion 2020 p 499

[33] Bennion 2020 s 13.8

another which is just as bad, or even worse. So, for example, where another mischief would arise if the remedy provided by the Act were construed widely, the court may limit the remedy. For example, the Domestic Violence and Matrimonial Proceeding Act 1976 of England, s 1, empowered the county court to make orders excluding a person from the matrimonial home. No limit was specified for the duration of such exclusion order. It was held that, to reduce the mischief of keeping someone out of their home, exclusion orders should be made only for a brief period.^[34]

Greater public mischief: It may appear to the court that one construction of an enactment, if adopted, would create a mischief of its own. The prospect of this would constitute a negative factor as regard the construction in questions. For example, where one construction of an enactment, mean that the defendant escaped conviction for fraud because in earlier bankruptcy proceeding he had "disclosed" what was already known. The court rejected this construction as productive of 'great public mischief' overweighing the mischief at which the protective enactment was directed.^[35]

Custom compared with written law: Often it is reasonable to assume that a particular consequence was quite unforeseen by the legislature. Enacted law suffers by comparison with unwritten law in that it involves laying down in advance an untried remedy. This was pointed out by the seventeenth- century Scottish jurist Stair in following words:

> "Yea, and the nations are more happy whose law have been entered by long custom, wrung out of their debates on particular

[34] Davis v Johnson (1978) WLR 553 cited in Bennion 2020 p 501

[35] R V Skeen and Freeman (1859) 28 LJMC 91 cited in Bennion 2020 p 501

> cases, until it came to the consistence of a fixed and known custom. For thereby the conveniences and inconveniences thereof through a long track of time are experimentally seen. So that which is found in some cases convenient, if in other cases afterward it be found inconvenient, it proves abortive in the womb of time, before it attains the maturity of a law. But in statute the lawgiver must at the once balance the conveniences and inconveniences; wherein he may and often doth fall short …"^[36]

Interpreter to mitigate legislative defect: As interpreter of legislation, it is the function of the courts to mitigate this defect of the legislative process so far as they properly can. Where an unforeseen consequence becomes evident it may be appropriate to give the enactment a strained construction to avoid a mischief. This is one aspect of consequential construction.^[37]

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[36] Stair Inst 1.1.15 cited in Bennion 2020 p 502

[37] Bennion 2020 p 502