

Interpreting Taxing Statutes # 21 – Legislative intention

The legislative intention is the effect intended by the legislature through the words used in the enactment.^{^1}

SYNOPSIS

Cause and effect

Text is the primary source of legislative intention

Context is the secondary source of legislative intention

Non-encroachment of legislative function

Contrary intention

Cause and effect

Every voluntary movement of our body is an act. Involuntary movement whether conscious or not does not amount to an act. Instances of involuntary movements are: beating of the heart, heaving of the chest, coughing up, jerks which one make to save oneself from falling, struggles of a person in a fit of epilepsy, etc. So, a body movement cannot mature into an act if it lacks volition.

Act = cause + effect

An act is **motivated** by the cause and **manifested** by the effect. One may observe the act through its effect, for instance if one draws a line on the paper then the line manifests (shows) the act of drawing. The cause of such effect as expected in causal relationship, however, remains hidden and can be best explained by the actor and is said to be the motive (or purpose or object or aim) of the act. So, a line may be drawn for the purpose of drawing a picture on the paper or setting the margin of the paper or even wantonly. The motive which induces the actor to act may

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be **good** or **bad**. Robbing Paul to pay Peter may show a good motive on the part of the actor but the effect of robbing is not appreciated by the society. Since motive is best explained by the actor the **professed** motive may be different from the **concealed** one; for instance, distribution of subsidy may be professed as help to the poor but virtually it may be to garner the vote of a particular class.

**Intended or unintended effect** - Effect may be intended or unintended. Whether the line was drawn as intended or some external force quirked the hand of the actor who was holding the pencil in his hand and the hand was on a paper and the line was thus drawn. Volition of the act requires that the effect of an act must be intended. Unintended effect makes the act involuntary. When a gun was fired in air for fun but the bullet killed the flying bird in the sky the killing was unintended if the actor was not knowing of any bird nearby. But when the shooter knows that by the sound of the firing gun the birds sitting nearby may fly over the sky and may get killed, it will be said that the effect of killing was intended. So, the effect intended includes not only the **desired** consequence but also the **foresight** (knowledge) of the repercussive consequence.

**Immediate and mediate / ulterior attention** - Intention is the immediate attention of the actor whereas the motive is the mediate or ulterior attention. In the formula depicting act as combination of cause and effect it may be noted that intention is concerned with the effect whereas motive is concerned with cause. In other words, intention is the immediate attention of the actor whereas the motive is the mediate or ulterior attention. Law

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<sup>1</sup> Bennion 2020 s 10.9

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is concerned with this immediate attention (intention) which the mediate attention (motive) may only help in deciphering.

Text is the primary source of legislative intention

When the legislature sets a proposition of law, the legal texts manifest the effect intended by the legislature. The intended effect must have been preceded by a cause which may be the purpose of or motive behind the enactment such as to redress certain mischief or to augment certain conduct. The effect intended of the legal text is called as legislative intention and is of immense help in construing that legal text. The motive or purpose of the enactment may throw light or help in deciphering the legislative intention. The paramount rule remains that every statute is to be expounded according to its manifest and expressed intention. The court's duty as identified by Coke is to interpret an Act according to the intent of those who made it.^{^2}The court ascertains the intention of legislature expressed in the language under consideration. The primary indication of legislative intention is the legislative text, read in context. So, it may be said that statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.^{^3} Statutory interpretation is concerned with written texts, in which an intention is taken to be embodied, and by which that intention is communicated to those it affects. The idea that a society should govern itself by verbal formulas, frozen in the day of their originators yet continuing to rule. It is pregnant with unreality, yet scarcely be improved upon. Those concerned with working out its effect have an important role of giving just effect to that statement. So, the text is the first

² 4 Inst 330 as quoted in Bennion 2019 p 275

³ Bennion 2019 p 287

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indication of what was intended, though there may be implied meanings enlarging the scope of the expressed words.<sup>4</sup>

### **Context is the secondary source of legislative intention**

Context here is meant in its widest sense, to include the context of the Act as a whole, and its legal, social and historical context. The interpreter should treat the words of the enactment as illuminated by consideration of its context. The words are not deployed in a vacuum. The overall context of the Act provides the colour and background to the words used, and thus helps the interpreter to arrive the meaning intended by the legislature.<sup>5</sup> The court may take note of the political reasons without canvassing their merits to ascertain the context that may throw light on intention. One cannot construe a legal text (or indeed any other text) without regard to its context. Moreover, any new legal regime created by a particular piece of legislation needs to work as harmoniously as possible with the surrounding law and practice. If desired one could also pray in aid the assumption that the legislature was fully informed. That being the case, consideration of the context puts the interpreter in the same position as the legislature was when it approved the legislative text.<sup>6</sup>

Legislation though may be government-inspired or government-backed is the work of the people's representative for a government always retains support of the legislative body. When considering a Bill, the legislature can consider the principle of the Bill and merits of each provision of it. If it wishes to change the effect of the Bill, amendment to the text may be tabled,

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<sup>4</sup> Bennion 2019 p 277

<sup>5</sup> Bennion 2019 p 287

<sup>6</sup> Bennion 2019 p 288

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debated and made. To become an Act, the Bill's text must be approved by the legislative body. So, it does not seem unreasonable to say that the text is the manifestation of the legislature intention. The nature of an Act as the product of a complex democratic process must carry weight with the interpreter.⁷

The drafter of legislation, as a composer of the text, has an intention as to its meaning. The drafter's work in carrying out broad government policy is modified and controlled by the views of the civil servants instructing the drafter as agreed by ministers at all stages. So, what is submitted to the legislature is a team product. The same team is responsible for the wordings of amendments made to the Bill in the course of its passage. Obviously, the intention of the drafter should correspond to that of the legislators. Judges assume that this is so.

Where, in relation to the facts of the instant case, it appears that neither the legislators not the drafter possessed an actual intention, legislature is nevertheless taken to have had an intention; and the enactment is to be construed accordingly. This involves expounding the verbal formula of the enactment creatively, using its wording as a guide to the imputed intention. The test is 'What the legislature mean by these words?' rather than 'What did the legislature mean in abstract?' – thus the text holds that answer to the application of the enactment to the facts of the case. In such cases the court should **pay particular regard to the purpose of enactment** for the wording have not been framed with facts in mind.⁸

⁷ Bennion 2019 p 278

⁸ Bennion 2019 p 279

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**Opinions of persons involved in law making are not admissible as an aid to construction** -

It must be remembered that the intention of legislature is an objective concept, not subjective. It is neither the subjective intention of the minister or promoter of the legislation nor of the draftsman or individual members or even majority of members of legislative body. These individuals will often have widely varying intentions; their understanding of the legislation and of words used may be impressively complete or woefully inadequate. Thus, when the courts say that such-and-such a meaning 'cannot be what legislature intended', they are saying only that the words under consideration cannot reasonably be taken as used by legislature with that meaning.<sup>9</sup> Though legislative intention is not to be equated with the subjective intention of the drafter, minister, promoter or other member of the legislative body ie their views are not admissible as an aid to construction. But it may be nonetheless be helpful to consider elements of legislative process as drafting, enactment and interpretation are integral parts of the process of translating the volition of the electorate into rules which will bind themselves.<sup>10</sup>

**Non-encroachment of legislative function**

Court cannot encroach upon the legislative function in the name of determining legislative intention. Intention of the legislature is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law, what the legislature intended to be

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<sup>9</sup> Bennion 2019 p 275

<sup>10</sup> Bennion 2019 p 277

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done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. So, the court does not look for the intention of legislature rather it seeks the true meaning of the expressed words of the legislature. The interpreter may call to his aid all those external and historical material which are necessary for comprehension of the subject-matter and the words used by the legislature but cannot encroach upon the legislative function of the legislature by reading in some limitation which he thinks was probably intended but cannot be inferred from the words of the Act. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of legislature. But few jurists are of the opinion that language is not always a reliable vehicle for the complete or accurate translation of legislative intention. This suggests that the intention of the legislature is a distinct concept and the words used by the legislature were if possible to be interpreted so as to give effect to that intention. But such approach has not taken its hold because courts continue to regard the role as being to interpret the legislative text, determining the meaning to be ascribed to that text objectively, having regard to the context (including external aids to construction). The concept of legislative intention **expresses the constitutional relationship** between the legislature and judiciary. The judges acknowledge the supremacy of statute over common law and the reality that the legislators and those assisting them (being human) do not always express their meaning clearly when signing off on the legislative text.

Contrary intention

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Contrary intention must be expressly indicated by the legislature. 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 interpretation of the Act. Indeed, this is built into the statement of each principle of interpretation, which is always to be taken as including the phrase ‘unless the contrary intention appears’. The enactment must be accorded the meaning the court considers the principles of interpretation lead to unless there is some indication to the contrary. The presumption that this is the legislature’s intention is conclusive. 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. Where the principles of interpretation is not left to apply by itself ‘the contrary intention’ appears, even though (as some-time happens) the principle of interpretation is only partially disapplied. In other words, the phrase ‘unless the contrary intention appears’ really means ‘except where, and to the extent that, a different intention appears’.

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>11</sup> A contrary intention indicating that Parliament 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. A contrary intention will not be lightly inferred.<sup>12</sup>

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<sup>11</sup> Bennion 2019 p 538

<sup>12</sup> Bennion 2019 p 538



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Like all other linguistic canons of construction, the *ejusdem generis* principle applies only where the contrary intention does not appear. The principle is moreover but one of the principles of interpretation that may be applicable in a particular case. Accordingly, it may be overridden by any indication that the result it produces would not conform to the legislature's intended meaning of the enactment.¹³

¹³ Bennion 2019 p 566