

Final FOL Summary Notes – Exam

Common law statutory interpretation approaches

Literal approach

The fundamental rule of interpretation is that a statute is to be explained according to the intention of the Parliament that made it;

And that intention is to be found by an examination of the language used in the statute as a whole... when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, however inconvenient the result. (Engineers case)

Higgon v O'Dea [1962]

Under 16 yo entering an amusement arcade

“such a result is clearly absurd but where language is clear and susceptible of only one meaning it is not permissible for the court to legislate by refusing to accept the plain meaning of the words”

Golden rule

A corrective principle, allowing courts to modify the literal meaning

It provides a limitation of the effect of the literal rule

Where application of the literal rule causes an absurd result, or a result inconsistent with the rest of the legislation, the court may attempt to resolve the absurdity

Mischief rule

This allows the court to consider the parliament's purpose in passing the legislation, or provision, and allows the court to adopt an interpretation of the ambiguous words that is consistent with that purpose (from Heydon's case)

Purposive approach

Application of the purpose approach – **Maritime Services Board of NSW v Poseidon Navigation Incorporated [1982]**

Yeldham J

“ the choice here is between a narrow construction of the two sections... or a broad construction which would enable the MSB to recover in full the actual cost to it, whether or not it uses its own men or equipment in the clean up operation”

How do you determine what the purpose is?

Need reliable evidence of purpose

- Preamble
- Purposes section of the act?

But purposes can be stated at different levels of generality and there are often multiple and conflicting purposes

“purpose” is the objective intention of parliament

- Purpose is not what the members of parliament thought as they passed the act
- Purpose is not the same as the policy behind the legislation
- Start by looking at the provision and the purpose clause or preamble
- Other evidence regarding the purpose may be admitted by the court