

Example by StudyDriver

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An Analysis of Statutory Understanding Example

ABSTRACT Statutory understanding is the methodology by which courts translate and apply enactment. Some measure of translation is frequently vital when a case includes a statute. Some of the time the expressions of a statute have a plain and straight forward meaning. But in many case, there is some vagueness in the expressions of the statute that must be determined by the judge. To discover the significance of statutes, judge use different apparatus and strategies for statutory elucidation, including universal standards of statutory translation, administrative history and reason. Within the jurisdiction of the same law, the judiciary may apply rules of statutory rules of administrative agencies. **INTRODUCTION Interpretation of Legislation** The principles applied by English judges in the interpretation of English legislation have been applied by Malaysian judges in interpreting local legislation. It must not be forgotten, however, that when local legislation is being considered, it is local legislation and that English decisions on similar words in English statutes are not necessarily in point. Thus, in *Re A Taxpayer Spenser Wilkinson J* said: the various portions of the English income tax law have to be construed in the light of the particular methods of assessment in the United Kingdom; so that even where the sections of our Ordinance are couched in wording similar to that of certain parts of the English income tax law it is by no means certain that those words will have the same meaning in the context of the local income tax law as they have in the context of the English income tax law. Literal request of English rules might guide to restricted variation. For

example, the English rule that a statute is not to be construed (in the absence of express words or necessary implication) as prejudicing the Crown might have given rise to the doubt in relation to the Malay States. Clearly the United Kingdom government, and those of Singapore, Penang, and Malacca were protected. But what of the government of the Malay States and of the Federation of Malaya (in relation to Penang and Malacca as well the other states)? They were not part of the Crown. Was the English rule to be taken as applying to the Crown only, or to its equivalents as well? The literal and restrictive application was adopted by Wilson J in *Planters' Loans Board v S. Mangalam*; where he said: The government of the Federation of Malaya is bound by the provisions of any general Enactment of law effective in the Federation unless expressly exempted. The different approaches used by court in England which has been adopted by the courts in Malaysia can be summarized under four main headings. **The Literal Approach** This approach assumes that the meaning and intention of the legislature have been expressed effectively by the actual words used in the act or enactment to be interpreted and the court needs to do no more than to give effect those words. In an English case, the *Sussex Peerage Case* the question before the Committee of Privileges was whether the Royal Marriage Act, 1772 extended to marriages celebrated outside England, Tindal CJ said: The only rule for the production of Acts of Parliament is that they should be interpreted in accordance with the will of Parliament which passed the Act. If the words of the statute are in themselves precise and clear, there is no more to explain the words in their natural and ordinary sense. The words themselves do, in such case, best announce the purpose of the law giver. In many cases, this approach enables the questions presented to the court to be answered quite confidently and no difficulties arise. It must be remembered however, that the literal meaning of the words almost always depends to some extent on their context and that the context of the words in a statute is the whole statute in which they are found. In *Commissioner of Stamps, Straits Settlements v Oei Tjong Swan & Ors* the respondents were executors of Oei Tjong Swan, who died in Singapore in 1924. The deceased was resident and domiciled in the Straits Settlements, and his will was proved there. The estate of the deceased included, apart from moveable and immoveable property in Singapore, also moveable property situated outside Singapore. The issue was whether estate duty was also payable on the deceased's moveable property outside Singapore. Section 68 of the Stamps Ordinance provided that: In the case of every person dying after the first day of February 1908, shall, in cases specified in article 1 of Table A, levied and paid on the principal value is determined as here in after provided the property is

passed on the death of the duty pass rates of stamp referred to in the article. Then section 2 of the Ordinance provided that "property" includes moveable and immoveable property. In case, the Privy Council held that the language of section 68(1) plainly covered the moveable property situated abroad as the section said "all property". The Privy Council made a classic remark which runs as follows: The answer to the question (regarding the construction of section 68(1) of the Ordinance) must be found from an examination of the Ordinance itself, for the best and safest guide to the intention of all legislation is afforded by what the legislature has itself said.

The Mischief Rule When it is not clear whether an act is included in what is forbidden by a particular piece of legislation, the judges can apply the mischief rule. Where there is ambiguity in the law, this rule allows the court to go behind the actual words of the statute to consider the problem that the statute was supposed to correct. The court will look at the law before the law was passed. After that, look at the overall intent of law as discovered from reading the whole and ask, "Any mischief to it that the law is intended to correct?" or "What social purpose?" To go beyond the text of the statute to determine the function of the act, damage or purposes are vastly different approach to the golden rule and literal approach in looking at this problem.

Elliot v Grey (1960) The defendant's car was parked on the road. It was jacked up and has the battery removed. He was charged with offenses under the Road Traffic Act 1930 using an uninsured vehicle on the road. Defendant argues he did not "use" the car on the road with clear he cannot drive. Held: The court applied the mischief rule and decided that the car used on the road as it represents danger and therefore the insurance will be required in the event of an incident. The statute is intended to ensure the compensation when injured by hazards created by others. In deciding the meaning of a phrase in the statute, the court can also be helped by maxims that are not a rule but an aid to construction. Two of the maxims that used are *noscitur a social* known as an associate. This is used where the words are vague or unclear in the particular word. Its meaning is limited to the class or kind of thing as certain words in common. Next, *ejusdem generic* means that the same kind, class or nature. Under this rule, a wide range of general words are restricted to the same class as a more specific word that precedes it.

The Golden Rule The golden rule is in fact an alteration of the literal rule; used in order to avoid an absurdity or repugnancy. As Parke B said in the English case of *Becke v Smith*: It is very useful rule in the construction of a law to comply with the ordinary meaning of the words used and the grammatical construction, unless that is contrary to the intent of the legislature, to be collected from the statute itself, or leads to any

manifest absurdity or repugnance increased, in where the language can be changed or modified to avoid inconvenience, but nothing more. It has also been said that the golden rule may be used in two ways; the narrow and broader ways. In a narrow application, rule stipulates that if the word is not clear, the court must adopt the interpretation that avoids absurd results. In its broader application, the golden rule is sometimes used in preferences to the literal rule where the words used can have only one literal meaning. This is especially so where considerations of public policy intervene to discourage the obnoxious interpretation. The rule, however, has mostly been used in a narrow way, and in this application, the golden rule can be used where there is a sensible alternative interpretation. The best case to illustrate the application of this rule is the case of *Re An Advocate*. In this case, respondent is an advocate in the roll of advocates for Sarawak. In November 1962, he visited Kuching in the course of practice, and as a favour to his friend, who imported women's clothing arranged his advertisement and representative. He also set the account and customs formalities attended in his own name and made use of in his hotel room to facilitate business. Any advocate can be suspended from practice in Sarawak, or his name may be struck off the roll of advocates of the order of a judge for any of the following reasons: if he does any act which if committed in England, would render him liable to be removed from the register of the court, or suspended from practise, if a lawyer in England. In conclusion, this report describes the facts and reality of law cases nowadays. As in this report is the interpretation and extrinsic act, the principles applied by English judges in the interpretation of English legislation have been applied by Malaysian judges in interpreting local legislation the literal approach, the meaning and intention of the legislature have been expressed effectively by the actual words used in the act or enactment to be interpreted and the court needs to do no more than to give effect those words. The golden rule, rule is in fact a modification of the literal rule; used in order to avoid an absurdity or repugnancy and the Mischief rule, even when read in the light of the whole statute, that the words bear a plain meaning. Sometimes, the words or phrases are vague. Sometimes in their application to particular circumstances, words or phrases though not perhaps strictly ambiguous in themselves are vague or uncertain. All these acts were discussed in the report above.

REFERENCE Books Ahmad I. and Ahilemah J. (1995) *The Malaysian Legal System: Interpretation of Legislation*. 2 edn, Malaysia: Kuala Lumpur

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Case Examples of the Golden Rule, 2013, retrieved on 2 April 2014, from

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