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not the concern of the courts but rather of Parliament and the injustice can be remedied by Parliament.

- b. **Golden Rules:** A gloss on the literal approach is the **golden rule** which means you apply the literal approach unless that would lead to a manifest absurdity or injustice – which presumably Parliament did not intend.
- c. **Mischief Approach:** This involves a consideration of what Parliament intended, which is usually tied up with the question: What mischief does the Act attempt to stamp out?

None of these approaches has received universal acceptance by judges. However, the modern trend is towards the purpose approach, especially it has been recognised by statutes dealing with the interpretation of statute themselves. This development is explained below.

Let us talk more on some examples of these three approaches:

3.3.2 The Literal Approach

In *Prince Blucher, Ex parte Debtor* (1931) 2 Ch 70 is quite a good case in point. That decision turned on the interpretation of a section of the *English Bankruptcy Act* dealing with arrangements by debtors with creditors as an alternative to bankruptcy. The section provided that to avoid bankruptcy the debtor must within a certain period of time lodge with the Official Receiver a proposal in writing signed by him embodying the terms of the composition or scheme. In the particular case the debtor did not sign the proposal but rather his solicitor did – the reason being that the debtor was too ill at the time (this fact was not contested at the trial).

The court had to interpret the words **signed by him** in the relevant provision and did so by applying the literal approach. It was held that the debtor had not complied with the provision and could not gain the benefit of the section. The court recognised the injustice created by this interpretation but followed an earlier English case of *Warburton v Loveland* (1832) 6 ER 806 which expressed the rule that where the language of an Act is clear and explicit the court must give effect to it, whatever may be the consequences; in that situation the words of the Statute speak the intention of the legislature.

3.3.3 The Golden Rule Approach

While some judges still insist that you interpret statutes according to the letter of the law and leave it to Parliament to remedy any injustice arising from the particular provision, there is a strong body of opinion toward a more liberal approach. The golden rule is an example of such an approach.

In *Turner v Ciappara* [1969] VR 851, the defendant pulled up at a set of traffic lights because they were red in his direction. A minute or so passed and the lights did not change and it became apparent that they were jammed. After a number of other cars traveling in the same direction went through the intersection against the red light the defendant did also and collided with another car proceeding at right angles through the intersection with the green light.

The defendant was charged with failure to obey traffic control signals. The question of interpretation before the court was on the meaning to be given to traffic control signals so far as the Act was concerned. McInerney J held that these were not **traffic control signals** because, having jammed, they were incapable of exercising control or regulating traffic. He felt that to apply a literal interpretation on the section would result in the necessity for the defendant to sit at the traffic lights indefinitely until they were fixed and showed green in his direction. This was clearly an absurd situation and so the golden rule was applied.

The Mischief Approach: This is something of a sister to the Golden Rule and the two often work closely together. The mischief approach requires judges to examine what the law was before the particular Act was passed and to identify the defect in the law which the statute was supposed to remedy. The Act can be interpreted so as to eliminate the mischief or defect.

An example of the operation of the mischief approach occurred in a case involving legislation to prevent prostitutes soliciting in the public place. A law was passed to prevent this and the prostitutes retreated from the street to doorways and continued to solicit. The question which arose for consideration was whether the prostitutes were soliciting **in the public place** that is, even if they physically were not present in the street. The Court applied the mischief approach and looked at the purpose of the legislation which was aimed at allowing ordinary citizens to use the street without being approached. It was held the prostitutes were soliciting in the street.

You must realize that the mischief approach can only be applied if there is an ambiguity in a statute. Otherwise the literal approach will be adopted.

3.3.4 The Purposive Approach

While the basic step in interpreting a statute is to read the words and sections by giving them their literal meaning, Parliaments in recent times have given the courts legislative direction about the approach they should take if the literal reading of the statute results in some ambiguity or lack of clarity as to its interpretation.

It is now common place for courts in Nigeria to examine the circumstances surrounding introduction of the Act that promotes the purpose or object underlying the Act.

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not shall be preferred to a construction that would not promote that purpose or object).

The intention or purpose of the Legislature must be found in the statute itself but in special circumstances courts may use extrinsic material, eg Hansard, law commission reports, explanatory memoranda etc, to gather the intention or purpose of Parliament.

In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.

To assist this manner of interpretation, most recent statutes incorporate a purpose or object clause. Thus, Parliament has stated its purpose at the start of the statute and when faced with some difficulty of interpretation of subsequent provisions, the courts must interpret the provisions so that the act's stated object or purpose is achieved.

Whatever courts eventually do, they will always be obliged to exercise some kind of discretion – even in construing fairly ordinary words in a statute. This liberty would lead to considerable confusion but for the fact that, as we have seen, the judicial system has many built-in safe-guards. First, judges are above the thunder'; they are not personally involved in the controversies. They have the prudent of trained lawyers. They have experience of similar decision in other areas of law. They know that their judgments may be made the subject of an appeal; they may be reported and criticized by fellow lawyers and legal writers. They have the trained sense of what any given words mean to lawyers and of the limited range of meanings which any word in itself can have.

Within these bounds, the range of discretion enables the courts to keep law reasonably fluid. After all, law is, in the words of an eminent American judge, Learned Hand: 'a political contrivance by which the

group conflicts inevitable in all society...find a relatively harmless outlet. The price of judicial freedom' and of a healthy, reasonable, flexible social order, is some degree of unpredictability in our statute law – just as it is in precedent.

SELF ASSESSMENT EXERCISE 2

Identify which of the maxims of statutory interpretation are being referred to in the following statements:

- a. The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is what does the language mean; and where we find what the language means, in the ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable. (*Higgins J in Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd (1920) 28 CLR. 129 at 161-2*)
- b. The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid the absurdity and inconsistency but no further (*Per Lord Vensleydale in Grey v. Pearson (1837) 6 HLC 61 at 106*)
- c. In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation (whether or not the purpose is expressly stated in the Act (*Interpretation Act*)).

3.4 Specific Rules of Interpretation

(a) Read Act as a Whole

Tied up with the **approaches** previously discussed is the rule that an Act must be read as a whole. In interpreting a section of an Act it is important that the words under scrutiny can be viewed in the context of the whole Act. If, however, the words of a section convey a clear meaning, effect should be given to that meaning.

(b) Definition of Words

One of the most frequent difficulties encountered in interpreting a statute is the meaning of particular words. The example was given earlier in this study guide of an Act dealing with **litter** – a word which is difficult to define.

If you encounter a word in a statute the meaning of which you need to determine then the following procedure should be adopted:

- Go first to the front of the Act to the definition section where the word in question may be defined.
- If it is defined then the definition will normally be preceded either by the word **includes** or **means**. If the word includes is used then the definition is not exhaustive and everything that falls within the ordinary meaning of the word in question is still included but the definition will normally extend the normal meaning of the word.

For example if the word **aeroplane** in a statute was defined: ‘aeroplane includes a glider’ then the normal meaning of aeroplane, which would be a powered plane, is extended to include a glider.

If the definition is preceded by the word **means** then the definition itself is exhaustive and all embracing – the presence of the word means closes the meaning of the word in question.

- If there is no definition, refer to a dictionary for the ordinary meaning of the word (subject of course to its context which may indicate for example that it should be given a technical meaning).

(c) Interpretation Acts

For commonly used words and for some definitions, the relevant State of Federal Interpretation legislation has to be considered. These cover the following types of concepts or words:

- Citation of Acts;
- Commencement;
- Repeal, expiration or amendment of Acts;
- Meaning of common words such as: ‘writing’, ‘gender’, ‘number’, ‘land’, ‘month’, ‘person’, ‘property’, ‘statutory declaration’, ‘contravene’, ‘corporation’;
- Meaning of more specialized words such as: ‘affidavit’, ‘gazette’, ‘Governor-in-Council’, ‘Industrial Court’, ‘Minister’, ‘public holiday’, ‘Financial year’;
- Reckoning of distance and time;
- Service by post;

- New or updated forms of expression. In the *Interpretation Act* for instance, there are specific provisions dealing with the use of gender, spelling, punctuation, conjunctives and disjunctives and even down to format and printing style.
- Some commonly used words. This allows drafting shorthand, for example, it is possible for statute to be drafted in either gender. On this point, the *Interpretation Act* relevantly provides words indicating a gender to include each other gender.

3.5 **The *ejusdem generis* Rule**

Is often used by judges in interpreting statutes. It provides that where there is a list of two or more specific words which form a class (or genus), and the list is followed by a more general word (or words), then the meaning of the general words is restricted to the same class of the words that preceded it.

The use of the *ejusdem generis* rule would be employed if a court was faced with this situation:

An Act reads: It is an offence to carry a knife, spear, bayonet or other weapon.

Does a person who carries a gun commit an offence?

The answer would probably be ‘no’ because the words ‘or other weapon’ would be read down to the class of the particular words before it so that only weapons which were pointed and did not propel a bullet would be included. A gun is not of the same class (in this context) as a knife, spear or bayonet.

You should note that this rule will **normally** only apply if you have two or more specific words to form the class.

Certain statutes by their nature are interpreted narrowly or strictly. Examples are those which impose a penalty (eg Criminal/Panel Code) or a tax.

3.6 **Hints on Interpretation**

3.6.1 **General Hints**

The following are some practical hints for reading and understanding statute. They will enable you to apply rules of interpretation to a given fact situation:

- (a) Read the section as you would a normal passage of prose to get a 'feel' for what it is about. Read some of the provisions around the section you are interpreting. (Actually the requirement is that you should read the Act as a whole but that is somewhat unrealistic).
- (b) Then read the section much more slowly. Look for what obviously are key words or concepts. You may need to re-read the section many times. It is surprising what new perspectives you can get after closer examination.
- (c) Next, you should break the provision down to its elements or parts. These are the elements that need to be satisfied before the section applies to, or covers, the conduct in question. There will invariably be at least two elements and perhaps as many as ten.
- (d) Look for the meaning of the key words that you have identified. To do that, you go to the definition section of the Act, where possibly the word is defined. The use of definitions from the statute has been described above. If the statute does not assist, you need to go to a dictionary.
- (e) If at this point the meaning of the section or provision is ambiguous you may find it helpful to call on some of the aids to interpretation that have been mentioned previously such as:
 - (f) Selecting the interpretation that best promotes the purpose or object of the Act.
 - (g) As part of that selection, to look at extrinsic material that can reveal the purpose or object;
 - (h) Apply any specific rules of statutory interpretation such as the *ejusdem generis* rule;
 - (i) Give any statute a narrow rather than a wide interpretation if it covers criminal conduct; and
 - (j) Consider whether any of the 'approaches' to statute interpretation might assist.

3.6.2 Learning Activity

At this point, it is worthwhile introducing a technique which is essential to a thorough application of a principle of law to a given fact situation

(whether in statutory interpretation, contract or whatever). It is important to be able to translate knowledge of a legal principle (eg *ejusdem generis* rule as outlined above) into an ability to apply it to given fact situation.

The *ejusdem generis* rule states:

When a series of particular words are followed by general words those general words are limited by being read in the context of the particular words preceding them; as a consequence their generality is read down as they confined to the same genus as the particular words.

Now, what are the **essential elements** to establish whether it applies to, and therefore has legal consequences for, the meaning of general words?

- Is there a series of particular words?
- If so, is the series followed by general words?
- If so, can the particular or specific words be classified as having a genus?

If the answer to all three questions is yes, then the legal consequence is that the meaning of the general words must be read down to fall within that genus.

This may seem an obvious process given the rule as stated above. However, you should develop the technique, once you have understood a legal principle, of translating it into a logical and thorough series of questions in order to apply it to a fact situation. (This technique will be referred to again in the topics concerned with Contract.)

4.0 CONCLUSION

Interpretation of the legislation is the function of the Court. Where the language is idea, the literal approach applies. However, where it is vague, the citizen has a right to proper interpretation, using golden rule, mischief, purposive, *ejusdem generis* rule or other approaches.

5.0 SUMMARY

Legislation is often couched in technical language. A situation may also arise where it is not certain whether or not a statute or regulation extends to a particular case, to assist the court, a number of principles, approaches and rules have been adopted over the years. Interpretation is wide or narrow. Approach ranges from Literal, Golden, Mischief, purposive, to *ejusdem generis* rules approaches or other. The Court may just read the Acts as a whole, resort to internal or external aids. It is a matter of judicial function.

6.0 TUTOR-MARKED ASSIGNMENT

The Law of Lagos State provides that “a person shall be guilty of an offence who throws down, drops or otherwise deposits and leaves any litter in or on any public place”

Section 2 of the law defines ‘Litter’ to mean ‘bottles, tins, cartons, packages, paper, glass, food or other refuse or rubbish and ‘public place’ is defined to mean ‘any street, road, lane or thorough fare’

Prince Waidi parked his motor vehicle on a reservation strip separating two carriage ways and drained a quantity of oil from the sump of his motor vehicle leaving a pool of oil on the carriage way.

Prince Waidi has been arrested and prosecuted under the law. What rules of statutory interpretation would be utilized by the prosecution to successfully prosecute Prince Waidi?

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 CRIMINAL AND CIVIL PROCEDURE

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1.0 INTRODUCTION

Before commencing a review of the steps associated with criminal procedure, it is useful to look at the role of the criminal trial as it gives us an insight into criminal law generally.

The purpose of the trial is to determine whether the accused is guilty of the offence as charged. As such, it is not a place for the victims to have the floor to air their grievances and this does cause some victim to feel cheated by the trial process. The prosecutor makes the decisions about what evidence to call and how the State case will proceed. There is no requirement whereby the victim is part of this process. In that sense, the

State or police prosecutor does not appear on behalf of the victim in the same way as the defence lawyers appear on behalf of the defendant. The prosecutor appears on behalf of the community and assumes the responsibility of proving the charges beyond reasonable doubt but essentially this is where his or her duty stops.

When the victim is called to give evidence, it is generally to establish the guilt or innocence of the accused. It is not usually a time when the impact of the defendant's conduct on the victim is dealt with. To the extent that this happens, it is left until the defendant is sentenced, assuming that person is found guilty. An action for criminal compensation can be brought by the victim but again that is a separate process from the criminal trial.

2.0 OBJECTIVE

On successful completion of this unit, you should be able to identify the main steps in a criminal trial.

3.0 MAIN CONTENT

3.1 Definition of Terms

To understand our criminal procedure, it is necessary to know some of the common terms that are used.

3.1.1 Summary and Indictable Offences

Summary offences are of a less serious nature and are ordinarily dealt with by a magistrate. The principal characteristic of these offences is that summary offences are strictly called 'simple' or non-indictable offences that are tried mostly in the magistrate courts. They are offences other than felonies and misdemeanours and may be punishable with imprisonment for less than six months.

However, the term 'summary' is often used within the legal system to indicate that the matter can be dealt with summarily and that expression is used here. Examples of summary offences are traffic matters, contraventions and the like.

3.1.2 Indictable Offences