



## Identify and compare the differences in statutory interpretation in US and in UK

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**Abstract:** This paper compares legislative interpretation in the UK with the US. It investigates the essential rules and methodologies used by courts in both jurisdictions to interpret law, such as the literal, golden, and mischief rules in the UK and textualism and purposivism in the United States. In addition, examines how judicial discretion, legislative intent, and interpretive tools like canons and legislative history affect the interpretation of statutory law. Furthermore, it emphasizes the impact of different constitutional frameworks on interpretive procedures, with parliamentary sovereignty dominating in the UK and constitutional supremacy influencing the US system.

**Key words:** literal rule, golden rule, mischief rule, purposive approach, textualism, judicial discretion, interpretive canons

### Introduction

This paper provides a transparent definition of statutory interpretation in two countries, namely the United States and United Kingdom along with the fundamental approaches related to it.<sup>1</sup> The first section of the paper describes the rules of statutory interpretation in the United Kingdom, followed by introducing the methodologies, tools and theories used to interpret statutes in the United States. The second section compares the key differences of statutory interpretation between the two countries.

The statutory law is the mechanism or method by which legislation is understood and implemented. It is the concepts which the courts have established to understand the statutes.<sup>2</sup> The definitions in a law often have a simple, clear sense. In some cases, the terms of the law involve some confusion or vagueness which the judge has to overcome.<sup>3</sup> The judges use different tools and techniques of statutory interpretation, including traditions canons of statutory interpretation, legislative context, and intent,

<sup>1</sup> Ruth Sullivan, *Statutory Interpretation* (2nd edn, Irwin Law 2007).

<sup>2</sup> William Baude & Stephen E. Sachs, The Law of Interpretation, 130 HARV. L. REV. 1079, 1116 (2017).

<sup>3</sup> W.N. Eskridge, Jr. & P.P. Frickey, "Statutory Interpretation as Practical Reasoning" (1990) 42 Stanford L. Rev. 321.



to determine the definitions<sup>4</sup> of the laws which will be described in this paper.  
Statutory Interpretation in the United Kingdom

Statutes of law, also referred to as legislation, are considered as the written laws of the United Kingdom. The legislation is created and enforced by Parliament, and implemented by varied authorities.<sup>5</sup> Statutory interpretation is definitely a matter for the courts. In English law there are three rules that exist to help a court within the interpretation of the Act of Parliament. These rules are the foremost common approach in analyzing the meaning of the language used or the relevance to that the statute was presumed or a combination of both.<sup>6</sup> These rules are vital to the reader of the statute, as they help interpret what is meant and how it applies to a specific situation in different circumstances of a modern society<sup>7</sup>. The reader, therefore, has to apply what is called statutory interpretation.<sup>8</sup>

The above-mentioned rules for examining the wording of the particular statute and also the most common approaches of interpretation are the *literal rule*, *golden rule* and *mischief rule*.<sup>9</sup>

### Literal Rule

The literal rule implies the words in a statute are given their normal and natural meaning. These words are read literally and need not to be analyzed similarly for exclusive meanings. For instance, in the *Berriman* case (1946) the plain reading led to an unjust outcome, where a railway worker got himself killed while he was 'oiling' on a railway line because there were no 'beware' point. *Mrs Berriman* was not given any reimbursement from the judge for her husband's death since the Act only mentioned that the beware points had to be issued for employees 'repairing' or 'relying' the railway line. Oiling did no longer come within either of the above-mentioned categories.

This outcome was found harsh and unjust.<sup>10</sup>

Another case of literal interpretation that leads to absurdity can be seen within the case of *R v Harris* (1836) where a statute made it an offence to 'stab, cut or wound' some

<sup>4</sup> William N. Eskridge, Jr., Phillip P. Frickey & Elizabeth Garrett, *Legislation and Statutory Interpretation* 5 (2d ed. 2006).

<sup>5</sup> Rupert Cross, *Statutory interpretation*, 3rd Edition, p.34.

<sup>6</sup> Michael P. Healy, "Legislative Intent and Statutory Interpretation in England and the United States" (1999).

<sup>7</sup> GP Singh, *Principles of Statutory Interpretation*, 13th Edition, p.4.

<sup>8</sup> Abnerj. Mikva & Eric Lane, *An Introduction to statutory Interpretation and the Legislative process* 7 (1997).

<sup>9</sup> *Ibid* (Law Commission).

<sup>10</sup> *London and North Eastern Railway v Berriman* [1946] AC 278 ([literal rule](#) of statutory interpretation).



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other man or woman.<sup>11</sup> In a fight Harris bit her friend's nose, after which the policeman's finger as well. Harris was not punished and found guilty on the basis that the words in the statute pointed towards using a weapon, however, teeth are not weapons.

In order to overcome such consequences, the Golden rule was introduced.

The literal rule additionally engages two useful rules. One of it is the 'noscitur a sociis' rule states that the meaning of the phrase or word has to be chosen by its context. The second rule is 'ejusdem generis', which means that any term is relied on phrases that precede it.

## Golden rule

In order to prevent absurdity and inconsistency when defining an Act literally, the judges apply the golden rule.<sup>12</sup> It can be implemented narrowly or broadly. The narrow approach describes that if one meaning is apparent it should be adopted. In the case of *Adler v George* (1964),<sup>13</sup> the accused was charged under the *Official Secrets Act 1920*.<sup>14</sup> Despite the fact that the defendant had accomplished the obstruction within the vicinity, the court did not limit itself to literal wording of the Act. He was found guilty. As for the wide approach, the courts can change the words to avoid problems, as in cases where there is a clear meaning, but this meaning can bring to an absurd outcome. In the case of *Re Sigsworth* (1935), the accused had murdered his mother.<sup>15</sup> According to the relevant Act of Parliament, the nearest kin would obtain the deceased's estate. Whilst this was obvious, the literal rule could produce a harsh result. For the nearest kin not to inherit the property of the deceased as the person was murdered, the golden rule was employed.

## Mischief rule

Occasionally, statutes can be described more widely by the courts to handle unforeseen ambiguity within the laws of the government, that may avoid parliament's initial intention being fulfilled. The mischief rule is applied, where there is an uncertainty of meaning. Compared to the golden rule, this rule is narrower and is mainly used to determine the mischief and defalcate that the statute was intended

<sup>11</sup> *R v Harris* [2836] 7 C & P 446 ([literal rule](#) of statutory interpretation).

<sup>12</sup> Driedger, E.A. Construction of Statutes. Butterworth & Co. Publishers Ltd., 1983, p. 87.

<sup>13</sup> *Adler v George* [1964] 2 QB 7 ([Golden rule of statutory interpretation](#)).

<sup>14</sup> Official Secrets Act 1920.

<sup>15</sup> *Re Sigsworth* [1935] 1 Ch 98 ([Golden rule of statutory interpretation](#)).



to remedy.<sup>16</sup>

The mischief rule was established in *Heydon's case 1584* where the court stated four problems that needed to be considered whilst interpreting statutes.<sup>17</sup> These four issues were: prior to the Act examine the common regulation, find the mischief or defeat within the common law, determine the solution Parliament suggested to eliminate the mischief and the last but not least, provide outcome to that remedy.

#### The judges' discretion

Judges have the foresight to use any of those rules of statutory interpretation previously mentioned as they view applicable. There are imperfections in each of the rules, however it provides judges with the flexibility to interpret legislation within the best possible approach to attain the outcome as intended by Parliament once it had been enacted.

The courts can follow the rules of statutory interpretation as they provide a coherent and established framework. By applying the rules, in accordance to the legislation, courts accomplish the most effective suitable outcome of a case.<sup>18</sup>

#### Purposive Approach

The main focus of the purposive approach is on what Parliament engaged when passing the new law. The modern modified version of the mischief approach is the purposive approach that provides scope for judicial law-making. The judge is allowed to choose what he/she thought the Parliament intended the Act to state instead of what actually the Act states.<sup>19</sup>

It is entirely the decision of the individual judge who is hearing the case to apply the suitable rule or approach. However, this may lead to difficult decision-making for lawyers to advise on what meaning will be employed on a disputed phrase of an Act of Parliament.

#### Statutory Interpretation in the United States

Statutory interpretation is the method of discerning the meaning of the legislation, and United States law has allowed courts to determine meaning through a number of opposing approaches to interpretation. As a consequence, U.S. litigants are unsure

<sup>16</sup> Professor Helen Xanthaki, "Legislation and statutory interpretation" University of London.

<sup>17</sup> *Heydon's Case [1584]* 76 ER 637 (mischief rule of statutory interpretation).

<sup>18</sup> Nicola Laver LLB, "Statutory Interpretation" In Brief Helping with Life's Legal Issues.

<sup>19</sup> Katzmann, *supra* note 19.



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regarding a court's interpretative approach to a law, even if the decision of the interpretative approach can determine the results of the legal action.<sup>20</sup>

In the U.S. federal government's tripartite system, it is the responsibility of the judiciary to determine what the statute is, as declared in 1803 by Chief Justice John Marshall. As the courts make conclusions about the interpretation of the laws, the common opinion is that the responsibility of a judge is not to write the rule, but rather understand the rules created by the Congress. The two main concepts of purposivism and textualism of statutory interpretation differ about whether judges should better conform to this principle of legislative supremacy.<sup>21</sup> The issue is very crucial in situations where Congress is unable to foresee and legislate for the particular conditions being challenged before the court.<sup>22</sup>

Meanwhile purposivists assert that judicial institutions should offer preference to definitions that serve the intent of the law, textualists insist that the attention of a judge should be strictly limited to the language of the legislation. Whatever their interpretative concept, judges utilize several equivalent methods to collect facts of substantive meaning. To begin with, judges sometimes start their analysis by looking at the common meaning of the statutory content. Next, courts construe specific provisions by examining broader statutory context. Moreover, magistrates can appeal to the canons of construction, that are assumptions on how statutes are generally read by courts. Next, courts can imply a provision's legislative history.<sup>23</sup> Finally, a magistrate must determine whether a statute was or will be brought into action. While all textualists and purposivists can utilize both of these instruments, the substantive interpretation hypothesis of a judge can affect the order in which such instruments are used, and how much burden each tool is granted.<sup>24</sup>

U.S. judicial practice also allows judges to create laws and enforce them in particular situations and controversies. Judicial definition of a statute's context in the case before the court is definitive. Besides this, the courts' methodologies and strategies in a discerning way will help direct policy drafters, legislators, implementing entities and private parties. The Supreme Court expressed a concern "that Congress should legislate against a context of simple standards of definition, so that it could

<sup>20</sup> P Singh, *Principles of Statutory Interpretation*, 13th Edition, p.4.

<sup>21</sup> "Practical Reasoning", *supra* note 2 at 340. 14 R. v. Canadian Pacific Ltd., *supra* note 8.

<sup>22</sup> Hart & Sacks, *supra* note 17, at 1125.

<sup>23</sup> See S.F. Ross & D. Tranen, "The Modern Parol Evidence Rule and Its Implications for New Textualist Statutory Interpretation" (1998).

<sup>24</sup> See, e.g., Richard A. Posner, *Pragmatic Adjudication*, 18 CARDOZO L. REV. 1 (1996).



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recognize the impact of the language it adopts." While the feedback stream of interpretive activities emanating from the courts does not necessarily translate directly to current Parliamentary procedure and preferences, the judiciary has established its own collection of interpretive methods and methodologies, taking into consideration that there is no single, systemic methodology for extracting significance in all situations.<sup>25</sup>

While schools of statutory analysis vary on what considerations should be weighed, both methods begin with the language and form of the law itself (if not automatically end). In this direction the Court embraces the idea that, wherever possible, a law will be viewed as a harmonious whole, with individual sections being understood in their wider legislative sense. Even, the meaning of the legislative terminology is not always apparent. In order to better explain ambiguity, judges created numerous interpretive mechanisms in the form of building canons. Canons are usually classified into two groups. "English" canons are informative "thumb rules" for implying based on grammar and tradition. These canons are also referred as "linguistic". For example, when determining the definition of certain words and statements, canons allow to choose context that terms are employed within. In particular, whether the statements and words are intended as elements of linguistic art having unique definitions, or used in "dictionary" sense.<sup>26</sup>

The language canons guide that, whenever appropriate, all the terms of a law be given impact, that a phrase used more than once in a law is generally given the same sense throughout, and that specific legislative language typically overtakes the general language in dispute.<sup>27</sup>

"Ordinarily" is a crucial discretion because if context leads to the opposite interpretation, any of these "canons" can fall apart.

Not occasionally does the Court deceive, and subordinates the common, procedural canons of legislative creation, as well as certain interpretative concepts, to underlying presumptions that benefit particular outcomes. If either of these "substantive" canons occurs, the Court often demands a "clear statement" of Parliamentary intent to mitigate it.

A frequently appealed "substantive" canon is that Congress has no intention of modifying judge-made laws. Certain substantive canons in federal court dislike the

<sup>25</sup> In places, the report also refers to opinions of United States courts of appeals and scholarly discussion of statutory interpretation generally.

<sup>26</sup> Ruth Sullivan, *Statutory Interpretation* (2nd edn, Irwin Law 2007)

<sup>27</sup> See HART & SACKS, *supra* note 17, at 1148.



preemption of state statute and the removal of constitutional protection from litigation. In addition, Congress needs to show intent to the courts in case if it wants to enforce a rule retroactively, or veto current legislation. The Court is thus trying to prevent from an understanding which would create considerable questions regarding the constitutionality of a law.

The textual, or semantic canons describe "rules of thumb" for interpreting legal meaning. Since the abovementioned canons rely on substantive documents, textualists also prefer them. Moreover, the semantic canons represent the grammar rules that regulate the use of ordinary language.

As a consequence, these laws may overlap with measures of the common meaning of a provision and thus, certain writers mark the idea that terms should be assigned their ordinary meaning as a semantic canon.

Interpretive approaches that underline the primacy of language and work within the limits of the statutes to distinguish meaning are referred to as "textualist." However, other approaches including "intentionalism" are more likely to take extrinsic discussions into account." Few judges, in fact, might want to look into statutory history in order to explain unclear language.<sup>28</sup>

#### Comparative analysis and conclusion

Mentioning these two countries, in England, the law of statutory interpretation has historically been more certain and clearer than in the United States, since English courts overturned the intentionalism approach to interpretation by banning the use of legislative context to determine what the legislature intended by the statute. The House of Lords dismissed this exclusionary rule in *Pepper v. Hart*, and allowed the use of the intentionalism approach to legislative interpretation. The House of Lords insisted,

to be sure, that the statutory text must be inaccurate before a court would be able to review legislative history. Now that English courts have agreed that certain scope and document are dependent on the interpretation of a specific statutory language, they must depend on a defined sense to correct statutory interpretation. Although certain elements can be identified in the practice of statutory interpretation in the United States and the United Kingdom, we can clearly observe major variations between the two jurisdictions.

<sup>28</sup> See Anita S. Krishnakumar, Statutory Interpretation in the Roberts Court's First Era: An Empirical and Doctrinal Analysis, 62 HASTINGS L.J. 221 (2010-2011).



British and American judicial systems have been evolving with a considerable duration resulting in discrepancies between them as both may exercise relatively different principles, theories and methodologies. In the United Kingdom the Parliament's legislation is the primary source of law as the Constitution is not categorized. Meanwhile, in the United States, the Constitution serves as the supreme law. As a result, the Constitution triggers substantial discourses and frequent probing to the validity of the interpretive canons.

Currently the purposive approach is the prevailing method in the UK for several reasons and although it has been recognized to be relatively lawful. Distinguishing the application of purposivism in the United States and the United Kingdom judicial systems by comparison has further unique challenges. The U.S. judiciary practices purposivism and textualism in combination using interpretive canons despite the two contradictions.

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