



Legal Systems

CPA Ireland Skillnet

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Legal Systems

○ The Law of Equity

- Historical Development, Purpose and Rules

○ Statutory Interpretation

- Necessity and Rules

The Law of Equity



The Law of Equity

- Inherent problems with the common law system led to the establishment of the Courts of Chancery in the UK – which administered the law of equity



The Law of Equity

- Although Ireland has been independent from the UK since 1937, nonetheless the law of equity has survived in Ireland
- Equity is aimed at finding the fairest and most just solution to a legal dispute – and in providing remedies in situations in which precedent or statutory law might not apply or be equitable
- However, the right to an equitable remedy is not obligatory and the granting of equity is purely at the discretion of the Court

The Law of Equity

- According to Lord Chelmsford in *Lamare v Dixon* (1873) LR 6 HL 414 (at p.424):
- *“The exercise of the jurisdiction of equity ... is not a matter of right in the party seeking relief, but of discretion in the Court – not an arbitrary or capricious discretion, but one to be governed as far as possible by fixed rules and principles.”*

The Law of Equity

- Historical Development of the Law of Equity:
- Where issues arose in the common law system (including non-writable offences, rigidly of writable offences and lack of enforcement powers) aggrieved parties would often appeal to the King to deal with legal complaints in a fair and reasonable manner



The Law of Equity

- In essence the King was being asked to make decisions based on what was considered right, by applying the principles of natural justice, rather than based on legal writs
- The King would pass on these appeals to the Lord Chancellor, who acted as the King's conscience in relation to these matters, and ultimately this led to the establishment of the Courts of Chancery, who applied the law of equity

The Law of Equity

- These Courts were empowered to provide additional remedies, such as injunctions, an account for profits etc ... and to apply natural justice to decisions

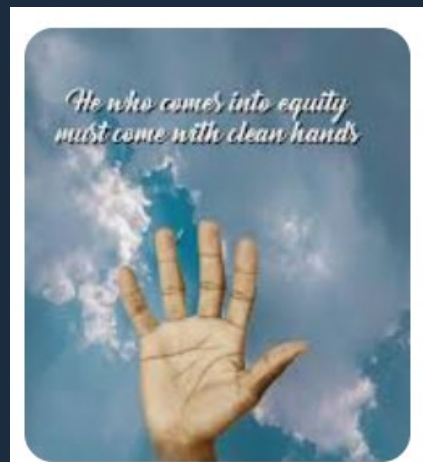


The Law of Equity

- The basic principles of equity (known as maxims of equity) that these Courts applied include:
 - A. Those who come to equity must do so with clean hands
 - B. Those who seek equity must do equity
 - C. Equity looks to the intent rather than to form
 - D. Equality is equity, and
 - E. Justice delayed is justice denied

The Law of Equity

- A. Those who come to equity must do so with clean hands
- In essence this means that where a party is seeking an equitable remedy, they cannot have acted in a dishonest manner (even if their actions were legal) and they must have acted in good faith



**HE WHO COMES INTO EQUITY MUST COME
WITH CLEAN HANDS**

This maxim underwrites all the rest in that if we expect to have Equity in our lives we must come clean and not expect rewards based on hidden agendas, underlying fraud or denial of responsibility. The inherent and substantive nature of equitable rights is that they are fair, just, equal and balanced. If we want a stable world we must come into it with clean hands, which requires true self-honesty, to take responsibility for our mistakes, our transgressions and our participation in the wrongs of this world.

The Law of Equity

The Law of Equity



- In *Walters v Morgan* (1861) 45 E.R. 1056, M granted W a mining lease over land that he had purchased – M subsequently repudiated the lease and W made an application to the Court for the specific performance of the contract to enforce the terms of the lease – specific performance was not granted as W had induced M to sign the lease knowing that M was ignorant as to the true value of the land and had attempted to take advantage of that ignorance

The Law of Equity

- According to the Lord Chancellor, Lord Campbell (at p.725):
- *“... a purchaser who so conducts himself cannot be said to have proceeded with the good faith, which even jurists require in such a transaction.”*
- *“... a single word, or (I may add) a nod or a wink, or a shake of the head, or a smile from the purchaser intended to induce the vendor to believe the existence of a non-existing fact, which might influence the price of the subject to be sold, would be sufficient ground for ... equity to refuse a decree for a specific performance of the agreement.”*

The Law of Equity

- Similarly, in *Chappell v Times Newspapers Ltd* [1975] 1 WLR 482, the Court of Appeal refused to grant an injunction in circumstances where the plaintiffs refused to give an undertaking not to behave in a certain manner – as per Lord Denning (at p.502):
- “[I]f one party seeks relief, he must be ready and willing to do his part in it.”

The Law of Equity

B. Those who seek equity must do equity

- This rule means that where a person seeks an equitable remedy from the Court, they must act in an honourable and honest manner
- This rule does not require every plaintiff to have an unblemished background in order to prevail, but the court will refuse to assist anyone whose cause of action is founded on his or her own misconduct toward the other party

The Law of Equity



- In *Lamare v Dixon* (1873) LR 6 HL 414, L induced D to agree to take a lease of cellars, by verbally promising they would be made dry – D breached the lease when he discovered the untruth of this statement and L sued to enforce the agreement – the court refused as L had made no attempt to perform his promise and therefore had not done equity in this situation
- According to Lord Chelmsford: "*The conduct of the party applying for relief is always an important element for consideration.*"

The Law of Equity

- C. Equity looks to the intent rather than to form
- In practice this means that equity looks to the reality of what was intended, rather than the way in which it is expressed
- In this regard, equity is aimed at providing substantive justice, and not just following rigid technical rules

The Law of Equity

- According to Justice Cox in *Badgerow vs Manhattan Trust Co.* (1896) 74 F. 925:
 - *"It must be remembered that the form of the agreement ... is not as material as the ultimate intent of the parties. Equity looks through form to substance ..."*

The Law of Equity



- In *Parkin v Thorald* (1852) 16 Beav.59, a contract was entered into for the sale of land, to be completed on an agreed date – thereafter the vendor requested a postponement and the buyer agreed – title was not transferred on the new agreed date and the vendor sought specific performance to compel the purchaser to complete the contract as agreed – this order was granted as the time originally set for completion is not, in equity, of the essence

The Law of Equity

According to Justice Lord Romilly (at p 66-67):

- *“Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it find that by insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance.”*

The Law of Equity



D. Equality is Equity

- This means that the Courts are inclined to apply the principle of equality, wherever possible – and in this regard, where a property dispute arises, equity favours the equal division of property, unless there is evidence that the contrary was agreed by the disputing parties
- It is often applied in disputes as to whether a joint tenancy or a tenancy in common exists

The Law of Equity

E. Justice delayed is justice denied

- This means that where a person delays in seeking an equitable remedy, the greater likelihood that such remedy may not be granted
- This is important in contract law, when trying to get a contract set aside based on the existence of duress, fraud or misrepresentation

The Law of Equity

- According to Lord Camden LC in *Smith v Clay* [1767] 3 Bro CC 639 (at p. 640):
 - *“A court of equity....has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence.”*

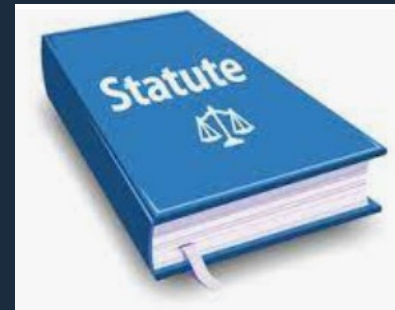
The Law of Equity

- Other miscellaneous rules of equity include:
 1. Equity Follows the Law
 2. Equity will not Suffer a Wrong to be Without a Remedy
 3. Equity Looks on that as Done Which Ought to have been Done
 4. Equity Imputes an Intention to Fulfill an Obligation

Statutory Interpretation



Statutory Interpretation



- Statutory Interpretation is the process of interpreting and applying legislation
- Sometimes the words of a statute have a plain and straightforward meaning
- But in some cases, there is some ambiguity or vagueness in the words of the statute, which means that the implications of a statute for the case before the court are not clear
- In these instances, the judge must make a decision on what the legislation means in order to decide the case

Statutory Interpretation

- There are a number of reasons why the meaning of a particular word or phrase is unclear:
 1. The provision may contain a broad term
 2. The word used may have more than one meaning
 3. There may be a drafting error
 4. There may be changes in the use of language over time
 5. New technology may mean that an old act does not seem to cover present day situations

Statutory Interpretation

- However, the Court has no power to intervene if the terms of the Statute are clear and precise, and they cannot substitute their opinion for that of the drafters of the legislation
- According to *Craies on Statute Law* (7th Ed., 1971) at p. 65:
- *"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense."*

Statutory Interpretation

- However, the rules of statutory interpretation can be applied where the precise meaning of the words of the statute are ambiguous – according to Justice Barr in *Shannon Regional Fisheries Board v An Bord Pleanala* [1994] 3 IR 449:

“Statutory interpretation is solely a matter for the courts and no other body has authority to usurp the power of the court in performing that function ... [I]n the present case the meaning [of the provision] is not free from doubt and, therefore, it is a matter for the court to interpret the regulation”

Statutory Interpretation

- Therefore, the main rules that the Courts must abide by when interpreting statutes are as follows:
 1. The courts are not allowed to substitute their preference for that of the Oireachtas/Parliament
 2. In interpreting legislation the Court seeks to discover and give effect to the intention of the Parliament

Statutory Interpretation

3. Even if the Court believes that a more equitable result would be achieved by adding text it cannot do so, because it would then be engaged in law making
4. Even where the court has identified an obvious oversight by Parliament in legislation, it cannot supply the omission through interpretation

Statutory Interpretation

- Similarly, Lord Diplock in *Duport Steel v Sirs* [1980] 1 All ER 529 stated that:
- *“... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention, what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral ... Under our constitution it is Parliament’s opinion on these matters that is paramount ...”*

Statutory Interpretation

- In the same case Lord Scarman also stated:
- *“If Parliament says one thing but means another, it is not, under the historic principles of the common law, for the courts to correct it ... We are to be governed not by Parliament’s intentions but by Parliament’s enactments’ and in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and un-makes, the law: the judge’s duty is to interpret and to apply the law, not to change it to meet the judge’s idea of what justice requires.”*

Statutory Interpretation

- There are THREE primary methods of Statutory Interpretation applied by the Courts in interpreting legislation passed by the Oireachtas:
 1. The Literal Rule
 2. The Golden Rule
 3. The Mischief Rule

Statutory Interpretation

1. Literal Rule of Interpretation:

- Under this rule courts will give words their plain ordinary, everyday or literal meaning, even if the result is not very sensible
- Underlying the literal rule is the view that the intention of the legislature should be sought, in the first instance, from the text of the legislation itself, which are the words the legislature chose – if the legislation is unambiguous on its face it is to be given its literal meaning even where this leads to an undesirable or unjust result

Statutory Interpretation

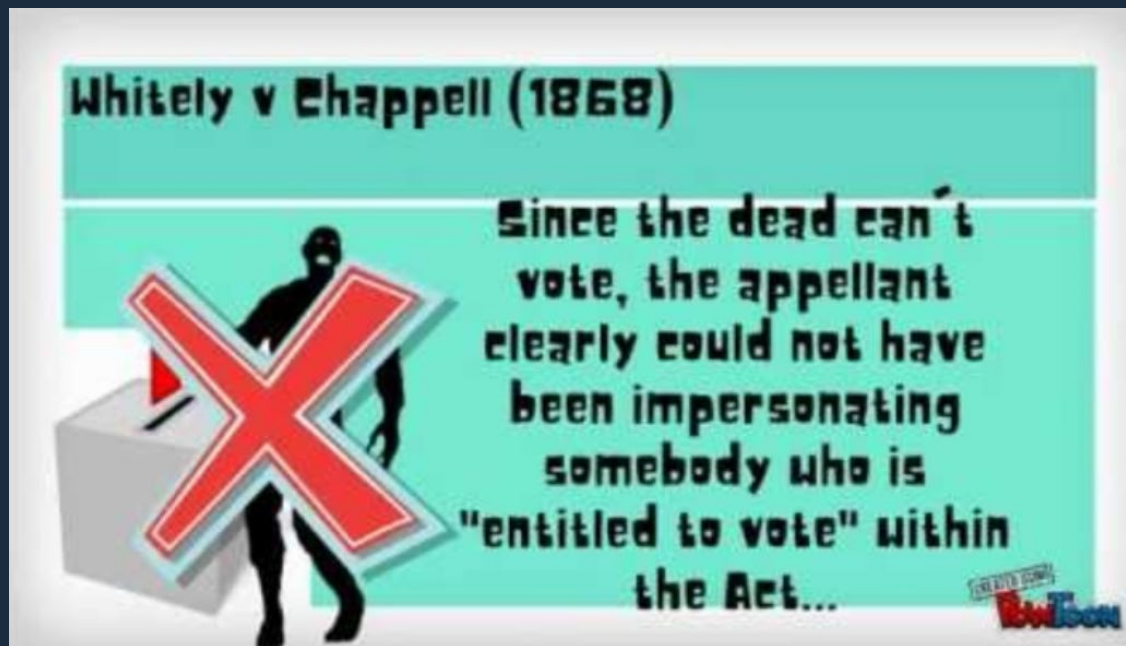
- According to Justice Budd in *Rahill v Brady* [1971] I.R. 69 – which dealt with the meaning of the term “special event” for the purpose of obtaining a licence to sell alcohol:



- *“The term “special event” is not defined in the statute and it must, therefore, be interpreted according to the ordinary rules for the construction of a statute. In the absence of some special technical or acquired meaning, the language of a statute should be construed according to its ordinary meaning and in accordance with the rules of grammar.”*

Statutory Interpretation

- In *Whitely v Chappel* (1868) LR 4 QB 147 a statute made it a criminal offence to impersonate “any person entitled to vote” – C impersonated a deceased person – the issue was whether on a strict literal interpretation C had committed the offence



Statutory Interpretation

- In the *Inspector of Taxes v Kiernan* [1982] ILRM 13, a provision of the Income Tax Act, 1967, which applied to an occupier of land who was a “dealer in cattle”, was applied to K, who did not deal in cattle, but was a pig breeder
- The key issue was does the word cattle include pigs?



Statutory Interpretation

- According to Henchy J:
- *“... one’s experience is that in its modern usage the word, as it would fall from the lips of the man in the street, would be intended to mean and would be taken to mean no more than bovine animals. To the ordinary person, cattle, sheep and pigs are distinct forms of livestock.”*



Statutory Interpretation

- This position was supported by Justice McWilliam (affirming the comments of Justice Budd):
- *“... while the objects and intention of the legislature may be looked at, the intention of the legislature may not be investigated for the purpose of altering or adding to the words used.”*



Statutory Interpretation

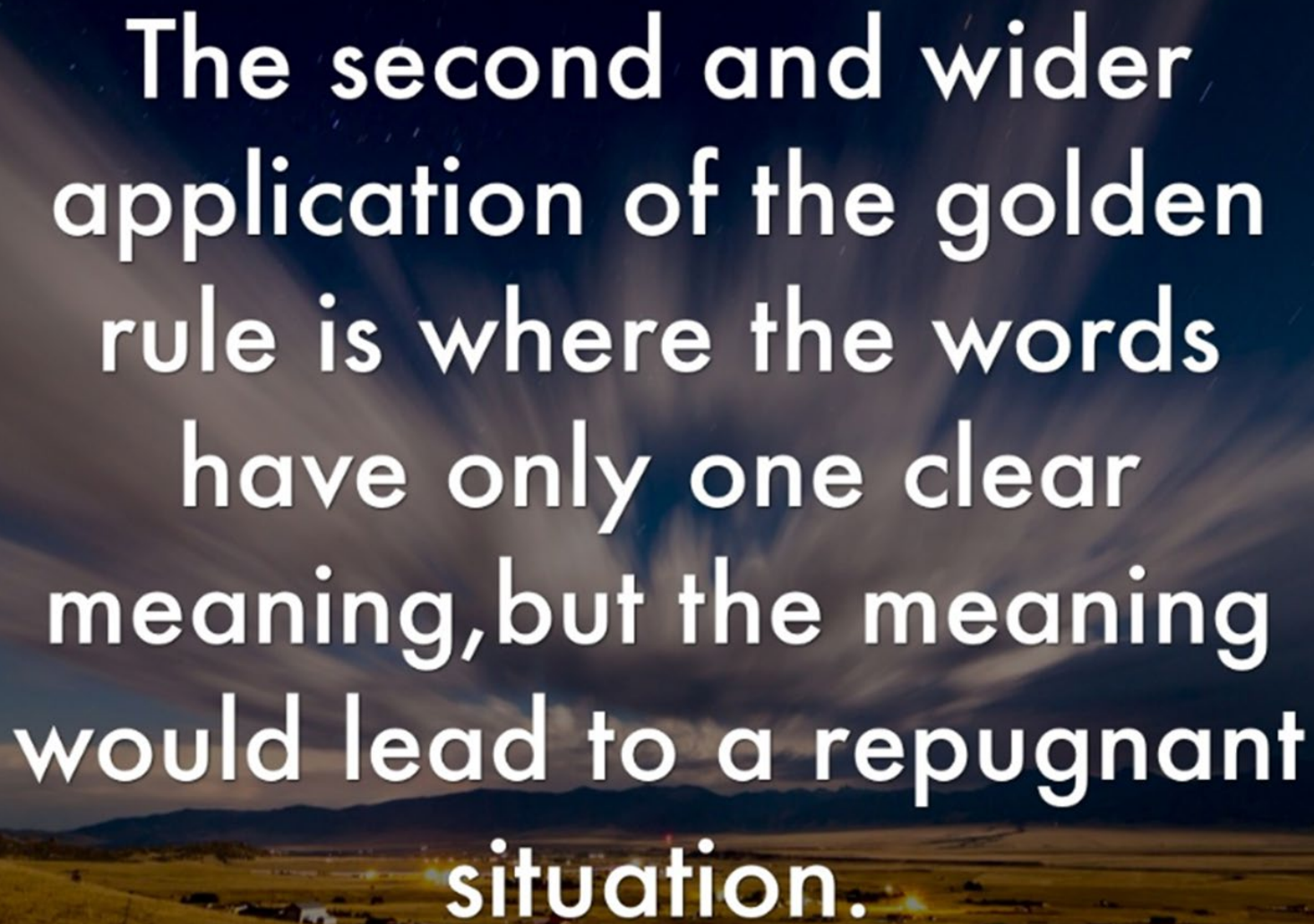
- In *Fisher v Bell* (1961) the Restriction of Offensive Weapons Act 1959 made it a criminal offence to offer for sale certain offensive weapons (such as flick knives) – the knife was displayed in the window of B's store – the issue was whether this action was in contravention of the terms of the legislation



Statutory Interpretation

2. Golden Rule of Interpretation:

- This rule is a modification of the literal rule – it starts by looking at the literal meaning but then allows the courts the flexibility to give a word or phrase a secondary or modified meaning in instances where the literal rule would lead to an absurd result



The second and wider application of the golden rule is where the words have only one clear meaning, but the meaning would lead to a repugnant situation.

Statutory Interpretation

- According to Lord Wensleydale in *Grey v Pearson* (1857) HL Cas 61:
- *“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 farther.”*

Statutory Interpretation

- In *R v Allen* (1872) 1 LR CCR 367, Section 57 of the Offences Against the Person Act 1861 stated that “Whosoever being married shall marry any other person during the life of the former husband or wife ... shall be guilty of bigamy.” This was given a golden interpretation to mean (1) to become legally married to a person; or (2) to go through a marriage ceremony



Statutory Interpretation

- In *Adler v George* [1964] 2 QB 7, Section 3 of the Official Secrets Act 1920 stated that it was an offence to obstruct a member of the armed forces 'in the vicinity' of a prohibited place – A was found obstructing the police in the prohibited place (Markham Royal Air Force Station, Norfolk)



Statutory Interpretation



- *Re Sigsworth* [1935] 1 Ch 98 a son murdered his mother and subsequently committed suicide – as the mother had not made a will, under the statute setting out the law on intestacy (the Administration of Estates Act 1925) the son was her sole issue and stood to inherit her entire estate (which would then pass on under his will and/or the law on intestacy to his next of kin) – the court applied the golden rule, holding that an application of the literal rule would lead to a repugnant result – therefore, he (and his successors) were entitled to nothing

Statutory Interpretation

3. Mischief Rule of Interpretation:

- This rule allows the court to examine the pre-existing common law in order to determine the defect, (or “mischief”), which the statute was designed to remedy
- The statute will then be interpreted in a manner consistent with remedying the particular mischief
- Under the mischief rule the court's role is to suppress the mischief the Act is aimed at and advance the remedy

Statutory Interpretation

- In *Heydon's Case* (1584) 76 ER 637, the key principles that guide the application of the mischief rule were summarised by Justice Coke as follows:

1. What was the common law before the making of the Act?
2. What was the mischief and defect for which the common law did not provide?
3. What remedy Parliament hath resolved and appointed to cure the problem?
4. What is the true reason of the remedy?

Statutory Interpretation



- In *Gorris v Scott* [1874] 9 L.R. (Exch.) 125, G was suing for damages for loss of his sheep that had been washed overboard from S's ship – there was a statutory duty under the terms of the Contagious Diseases (Animals) Act to provide the ship with pens, however, the action ultimately failed because the mischief that the statute was directed against was to avoid the spread of disease amongst animals during transportation rather than to prevent them being lost overboard

Statutory Interpretation

- In *Nestor v Murphy* (1979) IR 326, the issue revolved around the interpretations of the provisions of Section 3 of the Family Home Protection Act 1976 which required the prior written consent of a spouse for the sale of a family home



Statutory Interpretation

- According to the Court the basic purpose of the subsection is to protect the family home by giving a right of avoidance to the spouse who was not a party to the transaction – it ensures that protection by requiring, for the validity both of the contract to dispose and of the actual disposition, that the non-disposing spouse should have given a prior consent in writing – the point and purpose of imposing the sanction of voidness is to enforce the right of the non-disposing spouse to veto the disposition by the other spouse of an interest in the family home

Statutory Interpretation

- According to Justice Henchy:
- *“To construe the subsection in the way proposed on behalf of the defendants would lead to a pointless absurdity ... Such an avoidance of an otherwise enforceable obligation would not be required for the protection of the family home when both spouses have entered into a contract to sell it. It would therefore be outside the spirit and purpose of the Act.”*

Statutory Interpretation

- In *Corkery v Carpenter* [1951] 1 KB 102, CR was found to be drunk in charge of a bicycle and sentenced to one month imprisonment – Section 12 of the Licensing Act 1872 made it an offence to be drunk in charge of a 'carriage' on the highway – the court applied the mischief rule holding that riding a bicycle was within the mischief of the Act, as CR represented a danger to himself and other road users by travelling while intoxicated on a highway



Statutory Interpretation

Literal Rule	Golden Rule	Mischief Rule
Words in their ordinary grammatical meaning	If the literal rule gives an absurd result that the Oireachtas cannot have intended, then the judge can substitute a reasonable meaning in light of the statute as a whole	Look at the gap in the law prior to the Act and interpret the words to “suppress the mischief”

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