Analytical Essay on Parliamentary Sovereignty: Advantages and Disadvantages of Literal, Golden, Mischief and Purposive Rules

A Statute is an Act of Parliament, which is a law made by the Parliament. Statute most often begin as bills then go through both the pre-legislative and legislative stage. When there are disagreements about the meaning of the word statute, the matter can go to the court where the judge then goes onto interpreting the meaning of the law made. The judges are known to 'make' law through statutory interpretation. Statutory interpretation is the process that courts interpret and apply to legislation. However, interpreting legislation can be very complex to interpret making it hard for judges sometimes. Statutory interpretation is needed and important, as when it comes to complexity and uncertainty in law or legislation, Lawyers draft the bills for parliament and use their skills to make the legislation both clear and unambiguous. But sometimes the drafting can be poor or overcomplicated, another, reason would be because the draftsmen could've misunderstood what the politicians required.

Statutory interpretation is used in court by judges where there are a dispute and debate over the meaning and word or phrase in an Act of Parliament and piece of delegated legislation. The courts then decide the exact meaning and then apply the law effectively. It is argued that judges are 'making' law, this is because the courts are interpreting and applying the law and are creating precedents for future cases.

The Courts have used several different methods and rules to help understand the meaning of the legislation. The four rules of statue interpretation are:

- Literal Rule
- Golden Rule
- Mischief Rule
- Purposive Rule

The literal rule

The literal rule should be the first rule applied by judges. The literal rule is a fundamental rule of statutory interpretation according to the intention of Parliament, which was found by an examination of the language used in the statue as a whole. The literal rule is where they try and find the ordinary and natural meaning of the words used in the legislation and are applied without the judge seeking to put sense to the word. The literal rule must be followed, even if the meaning can be absurd.

An example is where the Literal Rule is used would be the case study Fisher v Bell (1960). The fisher case was when the defendant shopkeeper displayed a flick knife accompanied by a price ticket displayed behind it in the window of his shop. He was then charged for Restriction of Offensive Weapons Act 1959.

However, there was an issue with this legislation and that was whether the display of the knife

constituted an offer for sale (in which the defendant is guilty) or if it was an invitation to treat, in which that case he isn't guilty.

The ordinary language of the legislation considered the knife to be offered for sale, although, in the legal terms the flip knife was in the window inviting customers in to offer to buy it. The defendant was not guilty as the law states literally anything in the shop window is not on otter but is a literal treat.

There are many advantages and disadvantages to the literal rule

One of the advantages of the literal rule is that parliamentary sovereignty is respected and the role of the judges is to simply apply the law made by parliament and is strictly followed. Another advantage would be that the decisions made by the judges using this rule can highlight problems with the law and parliament can later pass an amending law to improve the law and make it clearer. The final advantage would be that when the literal rule has taken place to create or amend a law it becomes easier to understand for the general public.

On the other hand, there are many disadvantages when it comes to the literal rule, one of them being that if there is more than one possible meaning to the word or phrase and this rule cannot be helped or used in this instance. Another disadvantage would be that the literal rule assumes that the drafting of the law is perfect, and that parliament has got it right without making a mistake. Moreover, another disadvantage would be that its use can lead to absurd and unfair results, as many people can see this in different case laws that the literal rule has taken place in. Also, the literal rule limits the role of a judge in the making law. The final disadvantage would be that the language may be ambiguous and therefore the use of the law can be unclear.

The Golden rule

The golden rule takes place after the government looked at the literal rule first and if it gives an absurd result which the parliament could not have intended, and only then the judge can substitute reasonable meaning in the light of statue as a whole.

The Golden Rule has two approaches:

- Narrow Approach- can be used when the word has more than one literal meaning, so the judge can select the appropriate meaning that avoids absurdity.
- Broad Approach- can be used when there is only one literal meaning of the word but is absurd and challenging. Therefore, the court can modify the meaning of the word to avoid absurdity. (Law teacher)

A case study to support this the narrow approach would be R v Allen (1872). This was when the defendant was charged with the offence of bigamy under the offence against the Person act 1861. The statue had stated that' whoever is being married shall marry any other person during the lifetime of the former husband or wife is guilty of an offence'. The literal interpretation of these sections shows that the offence would not be able to be carried out and would lead to an absurd result.

However, the golden rule is now applied, and the narrow approach is used on the word 'marry'.

The word ‘marry’ should be interpreted as’ to go through a marriage ceremony’, leading to the defends conviction as not guilty and upheld. (Law Approach)

The legal principle would be that when there is a phrase or word that is capable of one or more literal meaning, the narrow application of the Golden rule allows the judges to select a meaning that helps avoid absurdity.

The case study to support the broad approach would be Adler v George (1964). Under the Official Secrets Act 1920 it was an offence to obstruct a member of the armed forces 'in the vicinity' of a prohibited palace. The defendant was actually in the prohibited place, rather than 'in the vicinity' of it, at the time of obstruction and was eventually caught. The court applied the golden rule and used a broad approach.

The broad approach was used and the court deduced that it would be absurd for the individual to be liable for being in or near a forbidden place and not if they were in it. The defendant’s conviction was therefore upheld. (Law teacher)

The legal principle is where there is only on the literal meaning of the word or act in an Act of Parliament, but the meaning would result in absurdity and then the court can apply a broad approach to help avoid the absurdity. (Pearson's Education).

The advantages and disadvantages of the Golden rule

One of the advantages would be that it prevents absurd and unjust judgments that can result from the use of the literal rule and another advantage would be that is it more likely than the literal rule to produce a result that was intended by the parliament ad what they wanted for that legislation. The last advantage of the Golden rule is that it allows the court to choose the most appropriate meaning of the word in a statute. This is so the judges are sticking to the rule of applying the law and still respect and maintain the parliamentary sovereignty.

One disadvantage it would be seen as undemocratic as power is given to the judges to decide when and how to use this rule. Another disadvantage would be that there is no definition of what an absurd result is and the rule is unpredictable. The last disadvantage would be that it allows judges to escape from the literal rule, but they are still limited in what they can do.

The Mischief rule

The mischief rule of statuary interpretation is one of the oldest rule and was established in Heydon's case (1584). The mischief rule will be used where a legislation is ambiguous. The rule requires the court to look at what law before the statute was passed to discover what gap or mischief of the statute was intended to cover and then attempt to rectify the mischief. (Law teacher)

The mischief rule can be used in a real-life example in the case study Smith v Hughes (1960). In this case study, the defendants were prostitutes, who had been charged under the street offences act 1959, which made an offence to solicit in a public place. The prostituted were also soliciting from private premises in windows and on balconies so it could be seen by the public. The court then applied the mischief rule holding that the activities of the defendants were apart

of the mischief act. The mischief act was aimed at this even though under a literal interpretation they would be in a private place. This means that the defendants were soliciting to individuals in the street and had breached the act, consequently leading in the defendants being guilty. However, if the literal rule were to be applied to the wording' in a street or public place' the women would have been found as not guilty.

Lord parker's view on the mischief act and was trying to put it right, he stated 'everybody knows that this is an Act designed to clean up the streets'.

The legal principle here is using the rule to interpret an Act the judge will focus on what they think parliament was trying to put right in the law and not the literal meaning of the word. (Pearson's Education)

Another case study would be Elliott v Grey (1960). The law was s.35(1) Road Traffic Act 1930: it is illegal to use an uninsured vehicle on the road. The defendant parked the car on the road. It was jacked up and had its battery removed. He was charged with an offence under the Road Traffic Act 1930 of using an uninsured vehicle on the road. The defendant argued he was not 'using' the car on the road as clearly, it was not drivable. The mischief rule was applied and held that the car was being used on the road as it represented a hazard and therefore insurance would be required in the event of an incident that happened. The statute was aimed at ensuring that people were compensated when they were injured due to the hazards and dangers created by other people.

When it comes to the mischief rule, there are many advantages and disadvantages.

One of the advantages would be that the mischief rule closes up loopholes in the law and allows the law to develop. Another, advantage of the mischief rule would be that it helps avoid injustice and absurd decisions and allows the law to develop or adapt to changing needs. It is also flexible allowing the law to be applied as the parliament had intended. The final advantage would be that it was approved by the law commission in 1969 over the literal and golden rules.

A disadvantage would be that along with the golden rule it makes the law uncertain, meaning that lawyers and judges do not know how the law will be applied. The mischief rule is undemocratic as it gives unelected judges too much power to determine what parliament meant. But in some cases, the judges are known o be updating the law, which is the role of parliament because parliament is supreme. Also, the mischief rule is highly out of date as it was established back in the sixteenth century and the purposive approach would be more appropriate to use instead. The judges can bring their view, sense of morality, and prejudice to a case. Moreover, the mischief rule gives judges a law-making role infringing the separation of powers. Finally, it is not always easy to identify the mischief rule that the parliament id trying to put right.

The Purposive approach

The purposive approach looks for the purpose of the legislation as a whole and is an extension of the mischief rule. The purposive approach is known to be a more flexible approach and gives judges a greater scope to develop the law in what they think the parliament intended to do when introducing it. This approach is used in European courts of Justice. Domestic judges are

required to apply the purposive approach when they are applying anything to the EU law. Due to the case of Pepper v Hart (1193) the judged now have to look at the official record of parliamentary debates to help them understand and decide the parliament's intentions.

A case study where the purposive approach takes place in would be Jones v Tower Boot Company (1997).in this case study a young black male worker was physically and verbally abused by their fellow workmates in the workplace. The court had to decide whether this abuse fell within 'the course of employment' under the specific section s32 of the Race Relations Act 1976. Also, if it did then the employer would be liable to pay compensation to Jones. But the employer argued that the abusive actions fell outside the cause of the worker's employment, because such behaviour was not a part of their job, making them not liable. The court used the purposive approach to interpret a specific Section of the Act. First, they deduced the parliament's intention was to eliminate all racial discrimination in the workplace. This would not be achieved if the narrow construction was applied to the wording. Finally, the result was that the employers had eventually become liable and ha to pay compensation to Jones.

The purposive had many disadvantages when it comes to law

An advantage would be that it follows the approach used by judges in EU courts and another advantage would be that the purposive approach is flexible, allowing the law to be applied as the parliament had intended. The purposive approach also avoids absurd and unjust outcomes and allow judges to use their common sense as well as considering social and technological changes.

The disadvantages are that in some cases judges have updated the law based on public policy reasons rather than the word of the Act and this is a role of parliament, not the judges. The purposive approach can be undemocratic as it can give too much power to unelected judges and can cause uncertainty if a judge changes the meaning of the statute. In some cases, too it can be hard to find the intention of parliament. The final disadvantage would argue that it encroaches on parliamentary sovereignty and judges are updating law instead of applying it.