Derek Bentley, says to Chris Craig “Let him have it, Chris”


**English Common Law: Structure and Principles**  
**Week Five: Statutory Interpretation**  
**Additional Notes, Quotes, Case Citations and Web Links for Week Three Lectures**

“No Vehicles in Park

“Such is the skill of parliamentary draftsmen that most statutory enactments are expressed in language which is clear and unambiguous and gives rise to no serious controversy. But these are not the provisions which reach the courts, or at any rate the appellate courts. Where parties expend substantial resources arguing about the effect of a statutory provision it is usually because the provision is, or is said to be, capable of bearing two or more different meanings, or to be of doubtful application to the particular case which has now arisen, perhaps because the statutory language is said to be inapt to apply to it, sometimes because the situation which has arisen is one which the draftsman could not have foreseen and for which he has accordingly made no express provision....

A revealing example is found in *Grant v Southwestern and County Properties Ltd*[1975] Ch 185, where Walton J had to decide whether a tape recording fell within the expression "document" in the Rules of the Supreme Court. Pointing out, at p 190, that the furnishing of information had been treated as one of the main functions of a document, the judge concluded that the tape recording was a document.”

Lord Bingham, *R (Quintavalle) v Secretary of State for Health*, [2003] 2 A.C. 687

“The natural and reasonable desire that statutes should be easily understood is doomed to disappointment. Thwarted, it shifts to an equally natural and reasonable desire for efficient tools of interpretation. If statutes must be obscure, let us at least have simple devices to elucidate them. A golden rule would be best, to unlock all mysteries.

Alas there is no golden rule. Nor is there a mischief rule, or a literal rule, or any other cure-all rule of thumb. Instead there are a thousand and one interpretative criteria. Fortunately, not all of these present themselves in any one case; but those that do yield factors that the interpreter must figuratively weigh and balance.”

Bennion *Statutory Interpretation* (1997)
The Presumptions of Statutory Interpretation

The presumptions are: against the alteration of the common law; that mens rea should be an element in criminal offences; against the retrospective application of statute; against the deprivation of individual’s liberty, property or rights; a presumption that legislation does not apply to the crown; a presumption against breach of international law and a presumption that words take their meaning from their context.
Pepper v Hart [1993] 1 All E.R. 42.

European Interpretation

“No longer must they [the judges] examine the words in meticulous detail. No longer must they argue about the precise grammatical sense. They must look to purpose or intent. To quote the words of the European Court in the Da Coasta case they must deduce from the wording and the spirit of the Treaty the meaning of the Community rules ... They must divine the spirit of the Treaty and gain inspiration from it. If they fill a gap, they must fill it as best they can. They must do what the framers of the instrument would have done if they had thought about it. So we must do the same”.


“It is important now to declare – and it must be made plain – that the provisions of Article 119 of the Treaty of Rome take priority over anything in our English statute on equal pay which is inconsistent with Article 119. That priority is given by our own law. It is given by the European Communities Act 1972 itself. Community law is now part of our law: and, whenever there is any inconsistency, Community law has priority. It is not supplanting English law. It is part of our law which overrides any other part which is inconsistent with it.”

Lord Denning, Macarthys v Smith [1979] 3 All ER 32, at 218

Pickstone v Freemans Plc [1988] 3 W.L.R. 265

Litster and Others Appellants v. Forth Dry Dock & Engineering Co. Ltd [1989] 2 W.L.R. 634

Grant v South Western Trains (Case –249/96) (1998) The Times, 23rd February
Purposive Interpretation Outside of a European Context

R. (on the application of Quintavalle) v Secretary of State for Health [2003] 2 AC 687
Statutory Interpretation and the Human Rights Act

Interpretation of legislation.

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

S4. Declaration of incompatibility.

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

White Paper, Rights Brought Home stated that s.3 would go ‘far beyond’ the rules prior to the HRA which had allowed the court to take into account the ECtHR in interpreting legislation and clarifying ambiguity: ‘The courts will be required to interpret legislation so as to uphold convention rights unless the legislation itself is so clearly incompatible with the Convention that it is impossible to do so.’


“Parliament and the judiciary must engage in a serious dialogue about the operation and development of the rights in the Bill ... this dialogue is the only way in which we can ensure the legislation is a living development that assists our citizens.”

Jack Straw, 314 HC 1141, June 24.

Attorney-General’s Reference (No. 4 of 2002) [2004] UKHL 43