

Presentation on the “Mischief” Rules of Interpretation

Introductory speech :

.....

Table of Contents :

- 1) Definitional ambit of the rule.**
- 2) Extent & applicability of the rule by emphasizing numerous landmark decisions.**
- 3) Shortly elucidating the merits & demerits of the rule.**
- 4) Shortly differentiating this rule with it's predecessors .**
- 5) Some Concluding thoughts .**

1) Definitional ambit of the rule :

This principle is used by the courts to determine the intention of the legislators. This principle aims at finding out the mischief and defect in a statute and to implement a remedy for the same & to put the provision in question in its proper perspective . The mischief rule was laid down in the 16th century by Lord Coke in the famous Heydon's Case (1584) 3 Co Rep 7a (76 ER637) and forms one of the cornerstones of a text-in-context approach to interpretation. It poses four questions that will help to establish the meaning of legislation

- **What was the existing law (the legal position) before the legislation in question was adopted?**
- **Which problem (mischief or defect) was not adequately addressed by the existing law before the new legislation was adopted?**
- **What remedy (solution) is proposed by the new legislation to solve this problem?**
- **What is the true reason for the proposed remedy?**

The aim of the rule is to examine the circumstances that lead to the adoption of the legislation in question. This rule gives judges the most discretion of all.

2) Extent & applicability of the rule by emphasizing numerous landmark decisions

The rule is intended to rectify 'MISCHIEF' in the statute and interpret the statute justly. The mischief Rule uses common law to determine how the statute is interpreted. Here are couple of landmark decision which shall proliferate the rule even further :

Smith v Hughes (1960) :

Fact : The defendants were prostitutes who had been charged under the Street Offences Act 1959 which made it an offence to solicit in a public place. The prostitutes were soliciting from private premises in windows or on balconies so could be seen by the public.

Verdict : The prostitutes were soliciting from windows, technically not a public place. The Mischief Rule was applied to interpret that the prostitutes were doing what the statute was trying to abolish so they were convicted.

Analogy : So the intention of the statute was complete eradication of illegal prostitution so even if the defendants were soliciting in a discrete place that itself didn't exonerate them from illegal solicitation which the act was aimed at suppressing from the ab initio.

Royal College of Nursing (RCN) v DHSS (1981) :

Facts : RCN challenged the involvement of nurses in abortions. Under the “offences against the person Act (1861)” which says “it is an offence for anyone to carry out an abortion”. However, the abortion act (1967) claims an absolute defence for medically registered practitioners to carry out abortions.

Verdict : Hormonal abortions are commonly administered by nurses. The Mischief Rule was used to interpret that the statute of 1861 was trying to combat backstreet abortions and therefore nurses fall within the 1967 abortion act.

Analogy : The said 1861 act aimed at prohibiting illicit “backstreet abortions” & as the defendant of the said case were legally registered medical personnel under the act of 1967 so that’s why their abortion practices were legalized & won’t fall under the 1861 act. And thus the plaintiff can’t super impose criminal liability upon the defendant

Corkery v Carpenter [1951] :

Facts : The defendant was riding his bicycle whilst under the influence of alcohol. S.12 of the Licensing Act 1872 made it an offence to be drunk in charge of a 'carriage' on the highway.

Verdict : The court applied the mischief rule holding that a riding a bicycle was within the mischief of the Act , as the defendant represented a danger to himself and other road users.

Analogy : It was the intention of the framers of the law to eradicate drunk driving as it poses serious threat to both the driver and the pedestrian so even if the defendant wasn't driving any automobile but riding a bicycle while under the influence of alcohol amounts to criminal liability under the said act.

3) Shortly elucidating the merits & demerits of the rule :

Merits : The main advantage of The Mischief Rule is that it closes loopholes in the law and allows laws to develop further. & it reduces ambiguities and critical verbal anomalies. “***Royal College of Nursing v DHSS***”

Demerits : The main disadvantage is that it creates a crime after the event has taken place, which can be seen in the ***Smith v Hughes (1960)*** case. It allows judges to apply their opinions and prejudices - an infringement on the separation of powers

4) Shortly differentiating this rule with it's predecessors

When comparing the three rules there are differences and similarities. The Literal Rule is the basis of all cases. By providing no scope for the judges input, it upholds the separation of powers and respects parliamentary supremacy. However, its inflexibility can also create injustices.

The Golden Rule tries to compliment the Literal Rule by allowing judges to change the meaning of statutes in order to give justice. However, this infringes the separation of powers.

The Mischief Rule gives the most discretion to judges and is suited to specific, often ambiguous cases. The rule allows statutes to be refined and developed. However, the increased role of the judge means that his views and prejudices can influence the final decision.

5) Some Concluding thoughts :

As it can be seen from the case, mischief rule can be applied differently by different judges. It is mainly about the discretion and understanding of the person applying it. Though, it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules. But this method of interpretation is slowly dying out . The rule can make the law uncertain, susceptible to the slippery slope. Therefore Purposive interpretation was introduced as a form of replacement for the mischief rule, which is the combination of the literal rule and the golden rule to provide the best possible result of a given dispute.

THANK YOU

Presentation prepared by :

**Samiur Rahman , Department of Law , Jagannath
University**