



May 20, 2009

Pringles too much like potato crisps to escape VAT, appeal court rules

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The taxman took a multimillion-pound bite out of Pringles today after winning a VAT legal battle.

Three judges at the Court of Appeal were asked to decide whether Pringles were similar to potato crisps, being made from potato — and therefore liable for Value Added Tax.

A VAT tribunal decided that they were, but a High Court judge disagreed.

Today, the appeal judges reinstated the tribunal decision, leaving Procter & Gamble, makers of the snack, liable for £106 million in past VAT and £20 million a year in the future. However, a spokesman for Procter & Gamble said that the company had an agreement with Her Majesty's Revenue & Customs and had continued to pay VAT on the product while the appeal was pending, so that there were no back-taxes left to pay.

Food products are usually zero-rated for VAT, but one of the exceptions is the humble potato crisp.

The VAT Act 1994 makes it tax-liable by including it in the clause: "Any of the following when packaged for human consumption without further preparation, namely, potato crisps, potato sticks, potato puffs and similar products made from the potato, or from potato flour, or from potato starch, and savory products obtained by the swelling of cereals or cereal products, and salted or roasted nuts other than nuts in shell."

During the hearing of the case last month, Rodrick Cordara, QC, argued that the product must have enough potato content to give it a quality of what he called "potato-ness". He said that Regular Pringles, which contain 42 per cent potato and 23 per cent fat and flour could not be said to be "made from potato".



Statutory Interpretation

By the end of this unit you will be able to explain (AO1):

- What the rules of interpretation are and give a number of examples for each
- What is meant by the two 'approaches'
- The presumptions that the judges apply
- And describe the intrinsic and extrinsic aids which a judge may use to interpret an Act.
- What the effect of EU membership has been on SI

You will also be able to evaluate (AO2):

- The use of each of the rules and the approaches
- The use of Hansard as an extrinsic rule.

Homework

Law has no coursework, and as such, the homework is an important assessment tool to evaluate your work in the subject. You are reminded that if a homework is not handed in on time, you will have **24 hours** to get it to your teacher; otherwise you will receive a **U** for your work, which may result in your withdrawal from the examination:

1. Revise sentencing for a DRAG and end of Unit, and revise precedent and delegated legislation for your mock exams.
2. Write up your response to the pre-planned response on statutory interpretation

End of Unit Test

You will be assessed using a DRAG test and the past question, which will be planned in class time, using your prior knowledge, progress and learning.

Introduction to Statutory Interpretation

We've looked at how the Act of Parliament is made, and now we are looking at how the courts **interpret** those words. The Judges have to **balance** the need to give effect to the intentions of Parliament, and potential injustice or ridiculous situations which may arise because of poor drafting.

Linking your knowledge

Remember: Parliament is _____, therefore the job of the judges should be to **interpret** the law, not create it. As we go through this unit, start to consider whether the judges have too *much* power – are they interpreting or are they creating the law?

Where else have we met this problem in the law?

So, what is statutory interpretation all about?

Well, words can often have more than one meaning, and judges have to decide which meaning to adopt. Take a look at the following common words below. According to the Oxford English Dictionary, how many meanings does each of them have?

Set

Take

Run

HINT: In total, the 500 most commonly used words have over 14000 meanings between them!

It can't be that much of a problem surely?

Sexual Offences Act 2003 s68(1)(a)

Contains the offence of 'voyeurism':

a private act which involved parts of the body for which people would normally expect privacy, as defined by s 68(1)(a), and:

"The person's genitals, buttocks or breasts are exposed or covered only with underwear"

R v Bassett

D drilled a hole in the changing room at some swimming pools and filmed men undressing (it was at a height to see their chests)

He was convicted at first instance and appealed.

What is meant by the word 'breasts'?



Why was the word in question to begin with?

On a 'strict' reading of the Act... what should happen to D?

What were the implications of the Court of Appeal's decision in this case?

Introducing Statutory Interpretation: Teacakes, Jaffa Cakes and Pringles

Task One: Make a list of what you would expect from a **cake** and what you would expect from a **biscuit**.

Cake	Biscuit

Task Two: Now list the **type of things** you would take into account or consider if you were the judge having to make this decision e.g. ingredients.

Task Three: Now decide... are JAFFA CAKES and TEACAKES cakes or chocolate biscuits? Why?

Teacakes are...



Jaffa Cakes are...



Applying the Law:

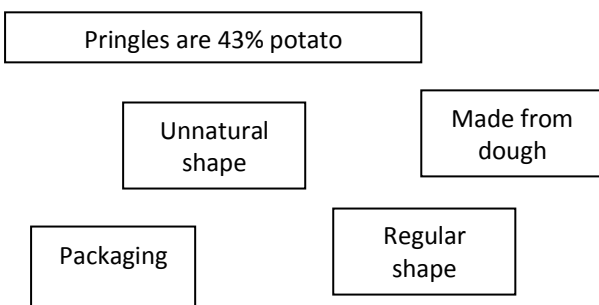
So, that's chocolate biscuits... how about the world of crisps?

You **don't** pay tax on most snack food... but you **do** on 'potato snacks' which are defined as:

"potato crisps, potato sticks, potato puffs and similar products made from the potato, or from potato flour, or from potato starch"

HMRC v Proctor & Gamble 2009

Your challenge: Are Pringles potatoey enough to be a crisp?



Pringles are...







So which words seem to cause problems for the courts?

Student Task:

Read the following cases, and decide whether or not the law has been broken and why!

This is really all about how we work out what words mean...

Has the law been broken in each one of the following situations...

<p>Employee</p> <p>Can a paper boy sue for unfair dismissal after the time he would do the round was moved and he refused to move, and was sacked?</p> 	<p>Vehicle</p> <p>Can a bicycle be a 'carriage' or vehicle under the Licensing Act 1872, and so it is an offence to be drunk on one?</p> 
<p>Building</p> <p>Cremations must take place in a building. Can that include a place without a roof or a place with no walls, but a roof?</p> 	<p>Ship</p> <p>Can a 'wave runner' be a ship for the purposes of the Merchant Shipping Act 1995, if it crashes into another, seriously injuring them.</p> 

Your decisions...

Employee	Vehicle	Building	Ship

How do we work out what the statute means then?

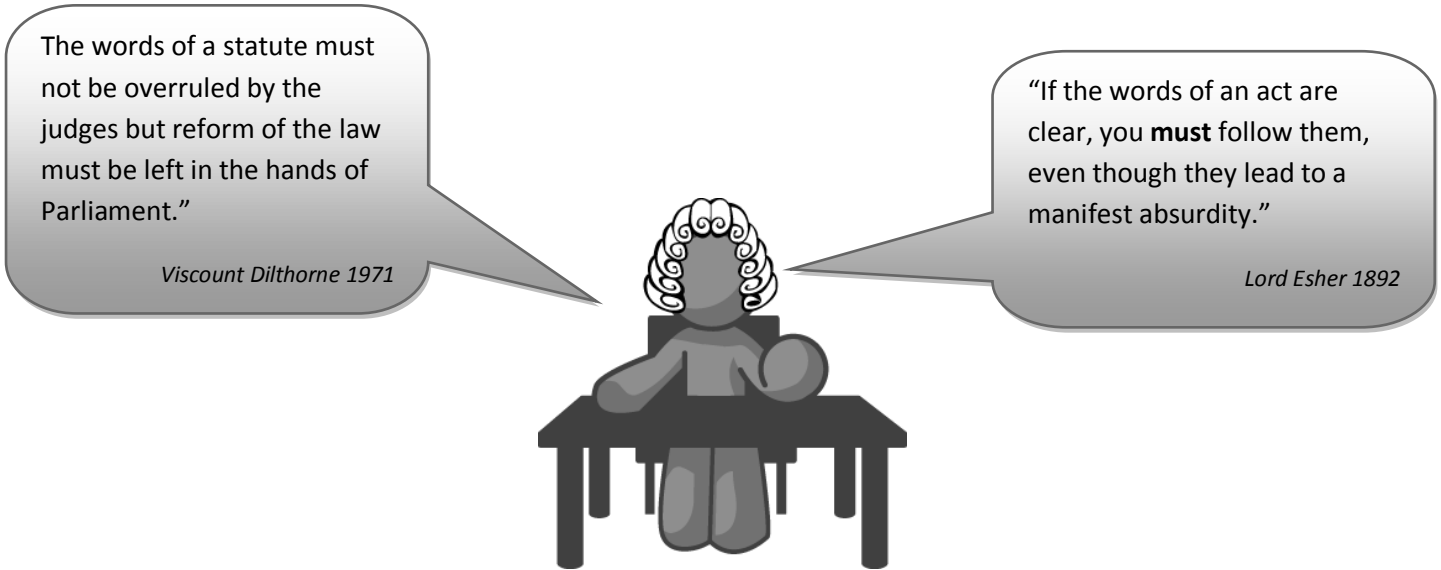
The courts have developed **two** approaches, and **three** rules to help them decide what a law actually means:

Approach	Rules
Literal	Literal
	Golden
Purposive	Mischief
	Purposive

*Except for EU law, we **always** start with the literal rule*

Rule One:
Literal Rule

This can be described as the “does-exactly-what-it-says-on-the-tin” rule. More legally, it means that they apply the **ordinary, natural meaning** of the word, even if it leads to **absurdity**.



The judges may use a _____ to help them find the meaning.

Example Case: Whitely v Chappell (1868)

Under the statute, it was an offence to “impersonate a person entitled to vote” and the defendant was acquitted of the offence.



Why?

Do you think this was the intention of Parliament in passing the Act?

Criticism (A02)

The Literal Rule works because...	The Literal Rule does not work because...
<p>1.</p> <p>2.</p> <p>3.</p>	<p>‘irresponsible’ <i>Professor Zander</i> “assumes unattainable perfection in legislative draftsman” <i>Law Commission</i> “Wrong in principle” <i>Lord Denning</i></p> <p>1.</p> <p>2.</p> <p>3.</p>

RULE TWO:
Golden Rule

This is an extension of the literal rule (well part of it is anyway!) and happens where the literal rule produces an _____ decision.

NARROW VERSION

It allows the judge to substitute another **reasonable** meaning to give effect to the words to Parliament's intention. They can chose another meaning of the word.

Example Case: R v Allen (1872)

D was charged with bigamy under Offences Against the Person Act 1861 s.57 which stated that 'any person being married who shall marry any other person during the lifetime of the former husband or wife is guilty of an offence'



The key word here is **marry**... what meanings does it have?

or

BROAD RULE

This is where the judge clearly understands the meaning of the word, but does not apply the literal meaning as its outcome would be **repugnant**. Then he 'reads in' another clause to give effect to the presumed intent of Parliament.

Example Case: Re Sigsworth (1935)

D's mother had died and left no will. This meant that in the law, her estate would have gone to her 'next of kin' under the Administration of Estates Act 1925

But... he **murdered** her!



There is clearly **no** ambiguity in the words of the Act, but the court obviously doesn't want D to benefit from the killing so the court has to imply a new clause. ["unless they kill the estate owner!"]

Criticism (A02)

The Golden Rule works because...	The Golden Rule doesn't work because...
1.	There is no clear definition of what 'absurd' is <i>Law Commission</i> It is (broad) nothing more than the mischief in disguise.
2.	1.
3.	2.
	3.

RULE THREE:
Mischief Rule



Again, if the literal rule leads to an absurd result, then the judge may chose to look at the mischief and give effect to it. Ok, so all this relies on you knowing what a **mischief** is!

If the other two rules are focused on what Parliament is saying, then this is focused on what they meant or intended. It allows the judge to, in effect, ignore the wording of Parliament in order to reach the desired outcome.

A02: Student Thinking
Why might we need the mischief rule?

HOW DOES IT WORK?

It might surprise you to know that this is also the oldest rule! The rules on how it works actually come from an ancient case from 1584

Haydon's Case (1584)

The rules:

1. What was the common law before the Act?
2. What was the problem or mischief that the statute was trying to remedy?
3. What remedy was Parliament trying to provide?
4. What was the true reason for the remedy?

The role of the judge is to: “suppress the mischief and advance the remedy”



Case Example: Smith v Hughes 1960

Under the Street Offences Act 1959 s.1(1) it was an offence to “solicit in a street or public place for the purposes of prostitution.”

DD were in a house and from upstairs were tapping on the window and calling out from balconies to attract attention of men walking by.

The Mischief: “Everybody knows this was an Act to clean up the streets to enable people to walk along the streets without being molested or solicited by common prostitutes.” Parker LJ

The Mischief Rule works because...	The Mischief Rule doesn't work because...
<p>“Rather more satisfactory approach” <i>Law Commission</i></p> <ol style="list-style-type: none"> 1. 2. 3. 	<ol style="list-style-type: none"> 1. 2. 3.



APPROACH TWO:

The Purposive Approach

This is the approach used in most other European countries. This gives the power to the judges to decide what Parliament wanted to achieve and how it is best implemented. It goes **even further** than the mischief.

The aim is...

To produce decisions, which put into practice the spirit of the law

It has become even more important now, as this is the method used by both the European Court of Human Rights and the European Court of Justice.

Who are they the court for?

Under the European Communities Act 1972, the English courts must give effect to the European law, and this means using their methods. This was confirmed by Lord Denning (a strong defender of the purposive approach) in *Bulmer v Bollinger 1972* where he said that, “[judges] must look at the purpose or intent”

Some argue that as we use it for the European Union, we might as well use it for **all** decisions!

Case Example: R v Rogers 2007

Under s.31(1)(a) Crime and Disorder Act 1998, it is an offence to use racially aggravated, abusive or insulting words or behaviour with the intent to cause fear or violence. Under s.28, these must be aimed at a specific group.

D had tried to pass three Spanish tourists and got into an altercation with them. He pursued them and called them “bloody foreigners” and said “go back to your own country”



What is the problem?

Would they have had the same problem if he had called them “bloody Spaniards”?

A02 Criticism

The Purposive approach works because...	The Purposive approach does not work because...
1.	1.
2.	2.
3.	3.

So where does that leave us?

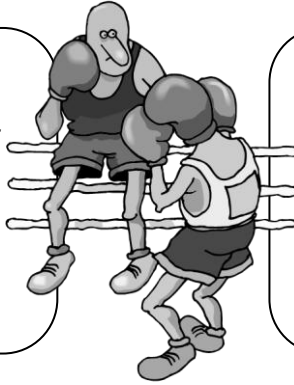
Different, judges, different courts, different rules! Even on the same case, they will disagree

Magor & St. Mellons v Newport Corp. (1952)

Court of Appeal

Denning LJ:

"We do not sit here to pull the language of Parliament to pieces & make nonsense of it...we sit here to find out the intention of Parliament & carry it out, & we do this better by filling the gaps... than opening it up to destructive analysis"



House of Lords

Simmonds LJ:

Filling in the gaps is *"a naked usurpation of the judicial function, under the guise of interpretation... If a gap is disclosed, the remedy lies in an amending Act."*

Who do you think is right?

The current law says that the judge can follow **any** rules...
it depends on what they want and what they like...

but in general, they look at the words in a statute and interpret them in their context, giving effect to underlying purpose of the statute.

Example Case: R v Registrar General (ex parte Smith) 1990

s.51 Adoption Act 1976 says that at the age of 18, an adopted child may apply for a copy of his birth certificate.

So what was the problem?

Why couldn't the court just apply the law?

What rule was applied in each of these?

LNER v Berriman 1946

- The claimant was the wife of a man who died while cleaning and oiling the railway track.
- Under the Railway Employment (Prevention of Accidents) Act 1920, she could claim damages for a breach if he was “repairing or relaying” the line
- She was **not** able to claim

R v Bentham 2005

- Bentham broke into his ex-employer’s house, and put his finger in his pocket, to give the impression that he had a gun.
- He was charged with possession of an imitation firearm in the course of a robbery under s.17(2) Firearms Act 1968
- He was found not guilty.

Fisher v Bell 1960

- D had a flick knife displayed in the window of his shop.
- Under the Restriction of Offensive Weapons Act 1959, it was an offence to offer for sale a flick knife.
- He was found not guilty of the offence.

Adler v George

- D entered an RAF base and blocked members of the RAF on the airfield.
- Under Official Secrets Act 1920, it was an offence to “obstruct members of HM forces within the vicinity of any prohibited place”
- He was found guilty of the offence.

Corkery v Carpenter 1951

- D was arrested on a highway on a bike whilst drunk.
- Under the Licensing Act 1872, it was an offence to be “drunk in charge of carriage.”
- He was found guilty.

Royal College of Nursing v DHSS 1981

- The claimants were nurses, who wanted to know whether they could administer stages of abortion and whether they were a ‘registered medical practitioner’.
- Under the Abortion Act 1967, it was only legal for registered medical practitioners to give the drugs.
- The HL ruled that nurses were ‘RMP’s. (But the CA was a whole different ball game!)

R v Z (2005)

- D was a member of the Real IRA
- Schedule 2 of the Terrorism Act 2000 listed the IRA as one of the prohibited groups, whilst the real IRA is not specifically mentioned.
- D's conviction was upheld.

DPP v Bull

- D was a male prostitute.
- He was charged under s.1(1) of the Street Offences Act 1959 which makes it an offence for a 'common prostitute to loiter or solicit in a public street or public place for the purposes of prostitution'.
- Having looked at the Wolfenden report, D was found not guilty.

R v Porter 2006

- D had pictures of child pornography on the computer which had been deleted.
- possessing indecent photographs of children contrary to section 160(1) Criminal Justice Act 1988
- D was acquitted on appeal

R v Harris 1836

- D bit off a woman's nose.
- Under the Act, it was an offence to "stab, cut or wound" someone
- D was found not guilty.

R (Ghai) v Newcastle City Council (2009)

- D, a hindu, wanted to be cremated on an open fire, in line with his religious beliefs.
- s.2 Cremation Act 1902 said that a building was one "filled with appliances for purposes of burning human remains"
- D won his judicial review.

R v Maginnis 1987

- D was charged with possession of a controlled substance. The police had found a packet of cannabis resin in his car which he said his friend had left in the car for collection later
- Possession with intent to supply under s.5(3) Misuse of Drugs Act 1971
- Appeal allowed, and conviction quashed.

So what can they use to work out the intentions of Parliament?

Presumptions & Rules
of Language

Intrinsic Aids

Extrinsic Aids

Look at the following section of the Human Organ Transplant Act. What words or phrases do you think might cause problems for the court?

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) A person is guilty of an offence if in Great Britain he—

- (a) makes or receives any payment for the supply of, or for an offer to supply, an organ which has been or is to be removed from a dead or living person and is intended to be transplanted into another person whether in Great Britain or elsewhere;
- (b) seeks to find a person willing to supply for payment such an organ as is mentioned in paragraph (a) above or offers to supply such an organ for payment;
- (c) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, such an organ; or
- (d) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements.

Prohibition of
commercial
dealings in
human organs.

2.—(1) Subject to subsection (3) below, a person is guilty of an offence if in Great Britain he—

- (a) removes from a living person an organ intended to be transplanted into another person; or
- (b) transplants an organ removed from a living person into another person,

unless the person into whom the organ is to be or, as the case may be, is transplanted is genetically related to the person from whom the organ is removed.

Restriction on
transplants
between persons
not genetically
related.

Presumptions:

These are assumptions which are assumed to be true. The court will enforce these, even if they are not clearly mentioned in the Act itself. They can be rebutted.

1. The common law has not been changed, unless it expressly says so in the Act

Means:

R v Shivpuri 1986

Under the common law it was impossible to be liable for attempts to do the impossible. However, s.1(3) of the Criminal Attempts Act 1981 said that it was now possible.

Facts:



2. The Queen isn't bound

Human Rights Act 1998

3. A criminal offence should have a mens rea, even if they forgot to put one in!

Sweet v Parsley 1970

Facts: D was convicted on a charge that she was “concerned in the management of certain premises, which were used for the purpose of smoking cannabis” contrary to section 5(6) of the Dangerous Drugs Act 1965.

B v DPP 2000



Facts:

4. The Law should not apply retrospectively.

Why?

There are a couple of exceptions to this:

Human Rights Act 1998

War Crimes Act 1991

Rules of Language

These are in Latin, but they are also complete common sense, and are really all about lists and how and what we can add to them!

Student Task: Look at the following situations. Using only your common sense decide whether it covers the situation.

Act	Situation	Is it covered? Why? Why not?
This Act covers jeans, trousers, and other clothes.	Does it include leggings?	
This Act covers coffee and tea.	Does it include hot chocolate?	
The Act is called the <u>Regulation of Air Travel Act</u> The section refers to vehicles.	Does it include a car?	

The Actual Rules...

Latin	Means	Example
Ejusdem Generis	General words which follow specific ones are only taken to include only things of the same type. e.g. dogs, cats and other animals	Powell v Kempton Racecourse 1899 "office, room or other place for betting"
Expressio unius est exclusio alterius	Express mention of one thing excludes all others. e.g. Alsatian dogs	R v Harris 1836 "stab, cut or wound"
Noscitur a sociis	A word draws its meaning from the other words around it. e.g. kittens, cats and food	Muir v Keay 1878 "public refreshment, resort and entertainment"

AO2: Applying the law.

Practicing what you've learnt

Applying the Law



Source A

The courts may also choose to look at other words in the statute to ascertain the meaning of specific words. To enable them to do this they have developed a number of rules of language to help make the meaning of words and phrases clear. There are three main rules of language. The first is *Ejusdem generis*. There is also *Expressio unius est exclusio alterius* - where there is a list of words which is not followed by general words, then the Act applies only to the items in the list and *Noscitur a sociis* which means the words must be looked at in the context and interpreted accordingly. This involves considering other words in the same section or other sections of the Act.

Adapted from open.ac.uk

Consider all three rules of language and explain (using cases to illustrate) which rule is likely to be applied to each situation:

1. An act uses the phrase "hamsters, dogs, cats and other animals" and the animal in question is a tiger

Decision	Reason	And.. Illustration...	AORP

2. An act states that it specifically applied to "hamsters, dogs and cats" and the animal in question is a tiger
3. An act mentions tigers, cages and food" and the food in question is domestic cat food.

Intrinsic Aids

Means? _____

These are things within the Act itself, which the Courts can use to work out the meaning.

Headings

Other sections of
the Act
B v DPP

Schedules

R v Z



Long and short title

RCN v DHSS

Definition sections

Draftsmen notes



Notes

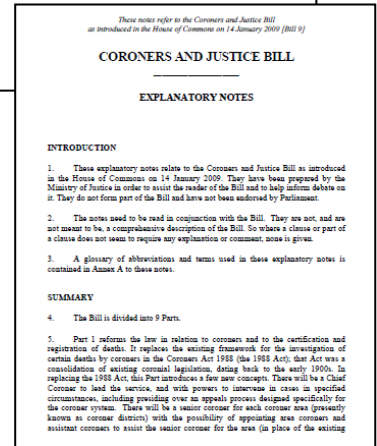
Extrinsic Aids

Means: _____

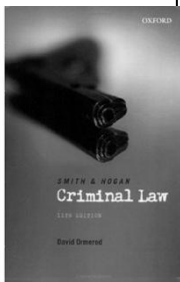
Dictionaries



Explanatory Notes (for Acts from 1999)



Legal Textbooks e.g. *Smith and Hogan's Criminal Law*



Human Rights Act 1998 s.3



European Communities Act 1972 s.2(4)



Similar Acts of Parliament, previous Act or the common law

e.g. *R v Z 2005*

Interpretation Act 1978

Law Commission or Royal Commission Reports

Only if the Act was based on a published report

e.g. Criminal Attempts Act 1981

Theft Act 1968

Coroners and Justice Act 2009

Extrinsic Aids: A Particular Problem **Hansard**

What is it? This is the record of everything that goes on in Parliament.

What was the problem? For a long time there was a debate over whether judges ought to be able to look at it. Some people argued that if they used it, it was like judges making the law as they would interpret what they thought Parliament was getting at, rather than applying the law. However, a more recent decision decided that they could use Hansard, but only in certain limited circumstances.

Why might it be useful to the judges?

[Greyed-out area for answer]

Case: *Pepper v Hart* 1993, which overrules the earlier decision of *Davis v Johnson* 1979

Facts:
[Greyed-out area for answer]


Rules:

1. The word must be ambiguous
2. They can only look at the statements made by the minister or the promoter of the bill
3. They may only use the statements if they are clear

Student Task: Write a paragraph evaluating the use of Hansard. Should judges be able to use it in court? Why? Why not?

[Lined area for student task answer]

Publications on the internet



House of Commons

Hansard (House of Commons Debates)

Below is the list of the five most recent editions of Hansard that are available for browsing on the Internet. They are arranged in reverse date order. You can also access other editions of Hansard from here. Clicking on the relevant entry will bring you a list of the contents for that day, from which the full text can be retrieved. If you are unsure of the date use the [search engine](#). The new edition of Hansard is made available each day at 12.30pm.

Session 1997-98

- ◆ Friday 16 May 1997
Debates Written Answers
- ◆ Thursday 15 May 1997
Debates



The Christmas Day Act 2010

This is an act to encourage the celebration of Christmas as a national holiday and time of charity

This Act provides that:

1. Christmas shall only be celebrated in the month of December
2. Every household shall buy a tree, wreath or other greenery.
3. Every household shall display a wreath at the entrance to their house
4. All deer shall be given a red nose for the occasion.
5. All adults shall be entitled to a free mince pie, Christmas cake or food in celebration
6. Breach of the sections will result in a summary conviction punishable by a maximum of £200 fine.

Applying the Law you've learnt

Apply your understanding of statutory interpretation, to the following scenarios using the appropriate aids or rules to come to a conclusion as to the liability of the following...

1. Bob owns a very large house with a long, windy drive. He has placed a wreath at the gate at the top of the drive.

2. The Smiths decide to purchase a holly bush to celebrate Christmas

3. Louise has decided to paint the noses of the deer in the local park red for Christmas

4. Carol does some research and discovers that Jesus was born in March. She decides to celebrate Christmas then.

5. James does not like mince pies and takes a turkey as his free food.

6. Pick two words from the act which you think will cause problems, and come up with a better definition!

a.

b.

End of Unit Revision Questions.

Use these to help you with your revision. If you are confident in this topic, you ought to be able to answer all of the following (without looking at your notes!)

1. Name the two approaches to the Golden rule
2. What is the main criticism of the Golden rule?
3. Which of the three rules is the European approach most like?
4. What is the difference between the extrinsic and intrinsic aids?
5. When are the judges allowed to use Hansard?
6. What are the main problems with using Hansard?
7. What type of aids does the mischief rule direct judges to use?
8. Which Act of Parliament should all newly written acts be compatible with?
9. Can the use of the literal rule be justified?
10. What problems of the literal rule does the golden rule overcome?
11. Explain the literal v purposive approaches in interpretation [*paragraph*]