

LET 1/1999 [MAKARAMBA/ MUKOYOGO]
LEGAL METHOD OLW 104

REVISED COURSE OUTLINE (DRAFT)

1. **GENERAL CONTENT AND SUBJECT MATTER OF THE COURSE:**

The course involves a study in how to find and apply the law. The course outline has been revised and updated to accommodate social changes in the country's history over the past decade.

Objectives:

To help students to acquire basic knowledge of how legal forms arise and change and an understanding of the relationship between law and socio-economic environment in which it operates.

To equip students with legal technique of how to find and apply the law; and how to handle facts and apply abstract legal concepts to factual situations.

2. **BASIC LITERATURE FOR THE COURSE:**

JOHN FARRAR, An Introduction to Legal Method

GRAVILLE WILLIAMS, Learning the Law

EDWARD LEVI, Introduction to Legal Reasoning

FRIEDMAN, W., Law in a changing society and Legal Theory

ALLEN, Law in the Making

SWAYERR, G.F.A. & HILLER, The doctrine of Precedent in the Court of Appeal for East Africa.

CROSS, Rupert, Statutory Interpretation, Butterworths, London, 1976

CRAIES On Statute Law, 7th ed., S.G.G. Edgar (ed)., Sweet & Maxwell, London, 1971.

PART 1

THE NATURE, CLASSIFICATION AND SOURCES OF LAW

References:

COLE & DENISSON, Tanganyika Development of its Laws and Constitution, Stevens & Sons, London, 1964, Chaps. 2 & 5

FARRAH, J., Introduction to Legal Method, (London: Sweet & Maxwell, 1971) P.5

HART, H.L.A., The Concept of Law, 1961

JAMES, P.S., Introduction to Law

MENSAH - BROWN, A.K., Introduction to Law in Contemporary Africa (New York, 1976) P.62

LENIN, V.I., The State and Revolution

MAINE, Sir Henry Summer, Dissertations on Early Law and custom, John Murray, London, 1901 Ancient Law

MORRIS & READ, Indirect Rule and Search for Justice: Essays in East African Legal History, Clarendon Press, Oxford, 1972

KAREN K.P. (ed.) Introduction to Legal Writing & Advocacy, Mathew Nender & Co., 1989

HELEN S. Shapo (ed.) Writing and Analysis in the Law, Westbury, N.Y., The Foundation Press, 1989.

HOHFELD, Westley Newcomb, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" 23 Yale L.J. 16-59 (1913): 26 Yale L.J. 710-770 (1899)

ROSE, W.M. Pleadings Without Tears: A Guide to Legal Drafting, 2nd (ed.) Blackstone Press, 1990

CALLENS, C.R., Legal Method and Writing, Little Brown & Co., 1990

CHARROW, V.R. & Myra Eihardet, Clear Effective Writing, Little Brown & Co., Boston, Toronto, 1986

N. BRAND et al, Legal Writing - The Strategy of Persuasion, St. Martin's Press Inc., N.Y., 1976

LASWELL & Mc DOUGAL, Legal Education and Public Policy: Professional Training in the Public Interest, 52 Yale L.J. 203 (1943) PP.208-211, 216-217

MELLINKOFF, David, The Language of the Law, Little Brown & Co. Boston, Toronto, 1963, Chs. II, III, XII & XIII-XVI

WYDICK, Richard C., "Plain English for Lawyers" 66 Cal. L. Rev. 727 (1978)

ZECHARIAH, CHAFFEE, Jr., "The Disorderly Conduct of Words" 41 Col.L. Rev. 381-404 (1941)

Royal Sluis v. Kitomari [1980] T.L.R. (on the use of Kiswahili in standard form contracts).

New Great Insurance Coy of India Ltd. V. Cross & Another [1965] ALR Comm. 449 (Kenya) - the Insurance (Motor Vehicles Third Party Risks) Act, Cap. 405 (K).

1. THE LANGUAGE OF THE LAW

- (i) Introduction to some basic legal terminology
- (ii) Some important characteristics of the Language of the Law:
use of uncommon words, Latin, French and Old English terms
of art, use of phrases and expressions.
- (iii) Use of Plain English

2. THE LANGUAGE OF THE COURT

Subordinate Courts

Higher Courts

3. LEGAL RESEARCH

- (i) Law Reports
 - (a) East African
 - (b) Tanzanian
 - (c) English and other Commonwealth Countries
- (ii) Statutes
 - (a) Tanzanian
 - (b) East African
 - (c) English
 - (d) Indian and other Commonwealth countries
- (iii) Books and Journals
- (iv) Parliamentary Bills and Proceedings (Hansard Reports)

4. LEGAL WRITING

- (i) The Art of Legal Writing (Style)

- (a) Language as a Professional Tool
- (b) The Art forms of Legal Writing (Style):
Clarity/Brevity, Uniformity
- (c) Citation and Quotations: books, journals, newspapers,
handouts, citation to cases and citation to statutes:
footnotes/endnotes, references and bibliography;
avoidance of plagiarism; use of abbreviations.

(ii) Content of Legal Writing

- (a) The Purpose of a Memorandum of Law
 - Statement of Facts (Material Facts)
 - Questions Presented (Contract with “Issues”)
 - Discussion of Authority
 - Cases (Precedent)
 - Statutes
 - Books, journals and other materials
- (b) Various Formats used for Legal Memos
 - Office Memoranda
 - Motion Memoranda
 - Appellate Briefs
 - Case Note or Briefing a Case
 - Written Submissions
- (c) The Art of Writing Examinations
 - Essay type questions
 - Problem type questions

(d) The Art of Writing and Presenting Research Results

4. FORMS AND PRECEDENTS: SOME EXAMPLES

- (i) Complaint and Written Statement of Defence
- (ii) Charge Sheet & Summons
- (iii) Affidavits
- (iv) Deed Polls
- (v) Judgement, ruling & order/decrees

5. THE LEGAL PROFESSION IN TANZANIA

- (a) Qualifications
- (b) Ethics and Discipline
- (c) Professional responsibility/liability
- (d) The Role of Lawyers in Society
- (e) Relationship between the Bar and the Bench

PART III

COMPARATIVE STUDY OF SELECTED METHODS

AND

PROCEDURES OF DISPUTE SETTLEMENT

Students are introduced to different methods and procedures of settling disputes. The aim is to show that there are as different methods and procedures as there are different societies and social systems. This section deals with three systems of dispute settlement.

The Common Law (adversarial), Customary Law (traditional) and Civil Law (inquisitorial) systems respectively.

The Common Law (adversarial) and the Civil Law systems share a common tradition in that both developed in the Western European cultures. They are products of Western civilization (per Von Mehren). Despite the above stated common element, the two systems differ in their approaches to dispute settlement methods and procedures. This section intends to highlight on each.

The two Western European systems of settling disputes are compared and contrasted with the customary methods and procedures of dispute settlement. This is so because despite the fact that both systems play an important role in resolving disputes and conflicts in societies where they originated, the adversary and civil law systems were imposed on various societies in Africa through colonization. However, it should be noted that methods and procedures of dispute settlement of any given society are determined by its socio-economic development as illustrated below.

REFERENCES:

- ALLOTT, A.N. The future of Law in Africa, Butterworth & Co. (Pub.) Ltd., London, 1960
- CARDOZO, B.N., The Nature of the Judicial Process, 1921
- DAMASKA, M.R., The Faces of Justice and State Authority: A Comparative Approach to the Legal Process (1986)
- FREELEY, "The Adversary System", in Encyclopedia of the American Judicial System, 735 (1987)

GULLIVER, Social Control of an African Society: A Study of the Arusha "Agricultural" Masai of Northern Tanganyika, London, 1963

GULLIVER, Neighbours and Networks: The Idiom of Kinship among the Ndendeuli of Tanzania, Berkeley, 1971

GLUCKMAN, Max, The Judicial Process among the Barotse of Northern Rhodesia (Zambia), Manchester, 1955

GLUCKMAN, Max, African Traditional Law in Historical Perspective, OUP, London, 1974

LLEWELLYN, K.N. & HOEBEL, E.A., The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence, Norman, 1941

MORRIS, H.F., Crime in East Africa: 3 Some Perspectives of East African Legal History, Scandinavian Institute of African Studies, Uppsala, 1970.

MERRYMAN, J.H., The civil Law Tradition, 2nd (ed.), 1985.

NIJBOER, J.F., "Common Law Tradition in Evidence Scholarship Observed from a Continental Perspective" 41 Am.J. Comp. L. 299 (1993) - particularly at PP.308-310 on adversarial and non-adversarial aspects of procedures.

POUND, Roscoe, The Spirit of the Common Law, Marshall Jones Coy., Boston, 1921

DISPUTES SETTLEMENT METHODS AND PROCEDURES

I. COMMUNAL SOCIETIES

Basic Principles

- (1) Land valued for its use i.e. has use value
- (2) Main issue in land disputes - "Who has the legal right to use the land?"
- (3) Question of ownership absolute or otherwise does not arise only possession is considered.

- (4) Ownership = a right to land as against the whole world (rights in rem).
- (5) A right to possession is relative. Land rights in such society are relative and depending on who is suing whom for what (trespass).
- (6) Lack of distinction between law of tort and the law of property. The right to possession is protected by an action by one person against another for the wrong of possession.

CASES:

- (i) Issack c/o Nguvumali v. Petro s/o Bikulako (substituted by Mtalikwa s/o Bikulako), (LC) Civ.APP. 1-DSM - 67, 22/6/72 Onyiuke J. [1972] H.C.D.n. 139
- (ii) Swalehe v. Salim [1972] H.C.D.n. 140 Kwikwima Ag. J.
- (iii) Kadume's case
- (iv) Kapasyu v. Mwandilemo (1968) H.C.D. n. 88 Mwakasendo, J.

PROCEDURE FOR DISPUTE SETTLEMENT UNDER CUSTOMARY LAW

- (1) Dispute before village elders at the Indaba
Swalehe v. Salim [1972] HCD n. 140 Kwikwima, Ag. J.
- (2) The lineage counsellor who convenes a conclave of the inner lineage and an internal moot held
Kadume's case
- (3) Drumming contests before the Mbatarev ("Drumming the Scandal")
Paul Bohamman, Justice and Judgement among TIV, OUP, London, 1957, PP. 142 - 144
- (4) Trial by Ordeal

Palamba s/o Fundikira v. R 14 EACA 96 (Tanganyika) 1947

End Results in Traditional Dispute Settlement

- (a) Reconciliation
- (b) Compromise
- (c) Compensation

Basis: "WIN A LITTLE LOSE A LITTLE"

II. MARKET ECONOMY SOCIETIES

Basic Principles

- (a) Land a commodity bought and sold for money in a land market, i.e. has exchange value
- (b) Land acquired can be owned in perpetuity as freehold
- (c) Purchaser of land must ensure that has a good title i.e. acquiring an ownership which must be good against the whole world.
- (d) There arises a necessity for the law to recognize the right to buy and sell land. Land becomes alienable; the conception of ownership also changes.
- (e) Ownership confers title: legislation must provide the registration of titles so that a purchaser acquires a title which is free of third party interests.
- (f) The distinction between law of contract, law of tort and criminal law as well as procedure for vindicating one's rights is very clear.
- (g) There are well established institutions for settling disputes manned by specialists.

COMMON LAW DISPUTE SETTLEMENT METHODS

- (1) An Overview of the Litigation Process

CIVIL CASES

Pleadings and Service Process

[The Plaintiff's Statement of Claim (at Common Law is called a declaration)]

- (i) Particulars of the Claim and the legal basis
 - (ii) Between Pleadings and Trial
 - (iii) Statement of Defendant's Defence(s) (a) A Traverse (b) Confession or Avoidance (c) Objection on point of law
 - (iv) Trial
 - (v) Post-trial motions: execution of judgement decree/order
 - (vi) Appeal
 - (vii) Post-appeal proceedings
- (2) Define Procedure for Settlement of Disputes and the Importance of Understanding it.
- (3) The Adversary System

The Court leaves the parties to fight their case (the adversary system arises from this character).

Basis: "WINNER GETS ALL"

NOTE:

Pleadings are Statements of bare facts on a piece of paper on which a party in a civil action depends or relies. They are exchanged between parties in a trial in order to reveal the apple of discord (litis contestatio or cause of action) to the parties and the court. At common law the plaintiff's statement was called a declaration, now the plaint.

In Tanzania a plaint is governed by the Civil Procedure Code, Act No. 49 of 1996, S.22 and order VI. A Plaint must state the facts, disclose a cause of action and a prayer or state what is being sought for (relief/remedy). The defendant must be furnished with information that he is in defence. The forms which the defendant's defence take have already been outlined.

To institute proceedings the [plaintiff/appellant] must consider matters relating to jurisdiction is determined by the subject matter, geographical situation, pecuniary interests and the personal jurisdiction of the magistrate in cases of a magistrate court. Even after filing a plaint amendments are allowed as long as they do not prejudice the other party. For clarification the following statutes may be referred to:

The Civil Procedure Code, 1966

The Magistrates' Courts Act, 1984

The Law of Marriage Act, 1971

Criminal Cases

- (a) Parties
- (b) Procedure: Charge sheet/information
- (c) Public and Private Prosecution

The Criminal Procedure Act, 1985

The Ward Tribunals Act, 1985

III. Alternative Dispute Resolution (ADR)

- (1) Mediation
- (2) Conciliation
- (4) Arbitration

PART IV

COMMON LAW CASE-TECHNIQUE

References :

DEWEY, "Logical Method and Law" 10 Corn. L. Rev. 17 (1924) P.24

FULLER, Lon L. "Reason and Flat in Case Law" 59 Harv. L. Rev. 376 (1946)
379

....., The Morality of Law, Rev.ed., (1969)

LLEWELLYN, The Bramble Bush, 2nd ed. 1951, Pp.45-69

LLEWELLYN, The Common Law Tradition, 1960 cites 14 reference points major steadying factors' of the Appellate Courts.

OLIPHANT, A Return to Stare Decisis (1928) American Bar Association Journal, PP. 71-73

GOODHART, "Determining the Ratio Decidendi of a Case", (1930) 40 Yale Law Journal 161

STONE, "The Ratio of the Ratio Decidendi" (1959) 22 Modern Law Rev. 597, 603-608

1. Inputs in the Judicial Decision - Making Process

- (i) The Ratio Decidendi in Theory and Practice
- (ii) Dealing with Facts: Material Facts
- (iii) Obiter Dictum

2. The Common Law Cases Technique: Development of the Law of Negligence.

(a) Case Technique A:

Langridge v. Levy (1837-8) 2 M & W 519; Ex. Ch.4 M & W 337

Winterbottom v. Wright [1842] 10M & W 109, 152 E.R. 402
[1842]

F. Longmeid v. Holliday [1851] 6 Ex.752

George v. Skivington [1869] L.R. 5 Ex.1

(b) Case Technique B:

Heaven v. Pender [1883] 11 Q.B.D. 503; [1882] 9 Q.B.D. 302

Derry v. Peek [1889] 14 App. Cas.337

(c) Case Technique C:

Le Livre v. Gould ([893] 1 Q.B. 491

Nocton v. Lord Ashbarton [1914] A.C. 932

Donoghue v. Stevenson [1932] A.C. 562

Farr v. Buttlers [1932] 2 K.B. 606

(d) Case Technique D:

Grant v. Australian Knitting Mills [1936] A.C. 85

(e) Case Technique E:

Candler v. Crane Christmas & Co.[1951] 2 K.B. 164

Clayton v. Woodman [1962]

(f) Case Technique F:

Hadley Bryne v. Heller [1964]

Francis Ngair v. N.I.C. [1970]

PART V

LOGIC AND LEGAL REASONING

References:

BELL, J., Policy Arguments in Judicial Decisions [1983]

EISENBERGER, M.A., The Nature of the Common Law [1988]

EMMET, The Use of Reason

CARDOZO, The nature of the Judicial Process

DWORKIN, R.M. Taking Rights Seriously [1977]

..... The Law Empire (1986)

GOODHART, A.L., "Determining the Ratio Decidendi of a Case" 40 Yale L.J. [1930] 161

GOUTAL, J.L., "Characteristics of Judicial Style in France, Britain and the U.S.A." Am. J. Comp. L. 43 [1976]

GUEST, Logic in the Law

HOHFELD, Fundamental Legal Conceptions as Applied in Judicial Reasoning [1923] 23 Yale L.J. 16

HOHMANN, Hanns, "The Nature of the Common Law and the Comparative Study of Legal Reasoning" 38 Am. J.C.L. 143 [1990]

HOLMES, "The Path of Law" 10 Harv. L.R. 457 ([896]

LAWSON, F.H., "Comparative Judicial Style" 25 Am. J. Comp. L. 364 [1977]

LLEWELLYN, K.N., "The Normative, the Legal and the Law-Jobs", 49 Yale L.J. [1940] 1355

MACCORMICK, D.N., "Why cases have Rationes and What these are" in Lawrence Goldstein (ed.), Precedent in Law, Clarendon Press Oxford, 1987, P. 155

MACCORMICK, N., Legal Reasoning and Legal Theory [1978]

STEVENS, R., Law and Politics, The House of Lords as a Judicial Body, 1800 - 1979 [1978]

STONE, J., Legal Systems and Lawyer's Reasoning, 1968, Chap. 7

RAZ, J., The Authority of Law [1979]

LEVI, E.H. An Introduction to Legal Reasoning ([949]

TWINING, How to do Things with Rules

WARNER, Kenneth, "Trouble Cases and Socio-legal Processes 32 Am. J. of Jur. [1987] P.71

....., "Changing Fact Formation in Legal Rule Structures: On the Nature of Common Law Development" 40 Am. J. of Jur. [1995] 347-360

1. Rule-based Reasoning

(i) Forms and Styles and Systems of Reasoning

(a) Forms of Reasoning

(1) Logic:

- pure based on facts of the case:
syllogisms and sorities
- analogical (authorities)

(2) Inductive: from particular to general (major and minor premise)

(3) Deductive - from general to particular

(4) Analogical - by examples

(5) Intuition or Judicial "Hunch" after Hutcheson J.

(b) Three Different Styles of Judicial Opinions

- Grand Style (policy-validation of decisions)
- Formal Style (formalistic/legalistic)
- Realistic Style (empiricistic life of law experience not logic - Justice Oliver Wendell Holmes)

- (ii) Types of Cases and Styles of Judicial Opinions
 - (a) Cases of first impression (grand style)
 - (b) Clear case (rule of recognition - formal style)
 - (c) Trouble case (rule of recognition - choice)

Note: Rule of recognition or primary rules is a norm if followed permits a judge/lawyer to recognize an authoritative rule of law and its formulation (Hart, The Concept of Law).

- (iii) Legalism and the two Basic Activities in Law
 - (a) Law Making: Legislator
 - (b) Law Finding: Judge

Query: Which judicial style of opinion is best suited to our circumstances and why?

PART VI

STARE DECISIS

References:

ALLEN, Law in the Making, Chapter III & IV

CROSS, Rupert, Precedent in English Law, Clarendon Press, Oxford, 1977, Chapter III & IV

HILLER, J., "The Law-Creative Role of Appellate Courts in Developing Countries: An Emphasis on East Africa", 255 Int. & C.L.Q. 205 [1975]

Hiller, J., "The Law-Creative Role of Appellate Courts in the Commonwealth", 27 Int. & C.L.O. 85 (1978)

Lord Chancellor: PRACTICE STATEMENT [1966] 1 W.L.R. 1234; [1966] 3 All E.R. 77

SAWYER, G. & J. HILLER, The Doctrine of Precedent in the Court of Appeal for East Africa, Tanzania Publishing House, Dar-es-Salaam, 1971

STONE, J., "1966 and All That, Loosing the Chains of Precedent" 69 Col.L.Rev. 1196 [1969]

A. Stare Decisis in England

HOUSE OF LORDS

Old Rule: Binding

Beamish v. Beamish [1961] 2 H.L. 274

London Street Tramways v. London City Council (LST v.LCC) [1898] A.C. 375

Exceptions:

(a) Ignorance of a statute: LST v.LCC

(b) Conflicting decisions

Caledonia Railway v. Walker's Transport Co. [1882] 7 App. Cas. 259

(c) Public Policy

Decisions based on some public policy particularly commercial, was not binding if social conditions changed.

Nordenfeld v. Maxim Nordinfeldt Co. (1894) A.C. 533 at p. 553

New Rule:

Extra-judicial statement by the Lord Chancellor "Practice Statement" [1966] 3 All E.R. 77 - The House of Lords is "free to

depart from its own decision where it appears right to do so" e.g. Conway v. Rimmer [1968] A.C. 910. But whether previous case overruled or merely distinguished not very clear.

COURT OF APPEAL

(a) House of Lords decisions binding

EXCEPTIONS:

- (1) Conflicting decisions
- (2) Per Incuriam

Broome v. Cassell ([1971] 2 Q.B.. 354

The House of Lords in the case of Rookes v. Barnard held per incuriam on the ground that it was in conflict with earlier H.L. decisions, and at that time the H.L. was bound by its own decisions.

(b) Own decisions: Binding

Young v. Bristol Aeroplane Co. [1944] 2 All E.R. 293 approved [1946] A.C. 163 at P. 169. Also bound by decisions of old court of coordinate jurisdiction, i.e. Court of Exchequer Chamber.

Exceptions to the Rule:

Morelle v. Wakeling [1955] 2 Q.B. 37

R.v. Taylor (1950) 2 K.B. 368

- (1) Conflicting decisions of its own must choose which one to follow.

- (2) Constructive overruling: Bound to refuse to follow decisions of its own which although not expressly overruled cannot stand with a decision of House of Lords.
- (3) Per Incuriam: not bound to follow a decision of its own given in ignorance or forgetfulness of a statutory provision or precedent binding on the court.
- (4) Disapproved by Privy Council: not bound to follow own decision if disapproved by the Privy Council per Denning, M.R. in Worcester Works Finance Co. v. Gooden [1971] 3 All E.R. 708.
- (5) In the Criminal Division one additional exception that it may depart from previous decision if law “misapplied” or “misunderstood” and if to follow the decision would lead to a conviction in present case. Cf. R.v. Gould [1968] 1 All E.R. 849.

PRIVY COUNCIL (Not within the hierarchy of English Court system)

Not bound by own decisions. Privy Council decisions do not bind courts in English legal system, e.g. In Port: Line Ltd v. Ben Line [1958] 2 Q.B. 146, a single high court judge refused to follow a Privy Council decision.

B. STARE DECISIS IN EAST AFRICA: COURT OF APPEAL FOR EAST AFRICA

- (1) PRIVY COUNCIL DECISIONS
 - (a) Before the abolition of appeals to Privy Council, i.e. before independence of respective states.

Privy Council decisions binding:

Chacha s/o Wambura v. R. [1953] 20 E.A.C.A. 339

Nelson v. E.A. Newspapers [1963] E.A. 35

Origin of decision not important, particularly in three areas:

(i) Common Law e.g. Chacha s/o Wambura (above)

(ii) Mohammedan Law

Shallo v. Maryam

Bakshwen v. R. [1949] 16 E.A.C.A. 11

(iii) In pari materia e.g. Privy Council decisions interpreting similar statutes in other courts of the empire

Abdillah J. Awden v. R. [1958] E.A. 20

Choqlev v. Bains

After abolition of appeals, i.e. after independence, Tanzania 1962; Kenya 1965 and Uganda 1966.

At first spry J.A. in Rashid Moledina [1967] E.A. 195
“existing law” maintained Privy Council decisions part of existing law and binding.

Later in Dodhia v. National Grindlay Bank [1970] E.A. 195

Privy Council decisions not binding:

“Rule of guidance” more likely to depart Privy Council decisions on “Fundamentals question of law”, common law or

equity or custom of the people. Less likely “if minor matter of the interpretation of a statute or a recent decision”. But value of such rules of guidance doubtful - see Dodhia’s case.

(2) ENGLISH DECISIONS

I. General Reception

(A) Before Independence

O’Connor P. in *Kiriri Cotton v. Dewani* [1958] “established decisions” on common law and doctrines of equity given before the date of reception by the superior courts in England were binding.

“Established decisions”: decisions “which must be taken to have correctly declared the common law or the doctrines of equity at the date of reception because such decisions are either unreversed decisions of an appellate court; or being decisions of a superior court other than an appellate court, stand unreversed and have either been affirmed or approved by an appellate court or have been accepted as corrected in principle by other superior courts in England”.

That is to say:

- (a) Single decision of House of Lords, Court of Appeal in England unreversed at reception date

was binding unless reversed or overruled by a decision after reception date.

- (b) Single decision of House of Lords not binding - not “established” - unless affirmed or approved by House of Lords, Court of Appeal etc.
- (c) English decisions after the reception date had power to “disestablish”, i.e. reverse or overrule, a decision given before the reception date.
- (d) English decisions after the reception date had power to “establish”, i.e. affirm, approve or accept in principle, a decision given before reception date.

A judge still had to look at English decisions after the reception date because of (c) and (d) above. In practice, the date is not important, see *Elgood v. K*. But, subject to the PROVISIO in the reception clause: English law only applies so far as circumstances of country and inhabitants permit and subject to such qualifications as local circumstances render necessary, see *Denning M.R.*, in the *Nyali Bridge* case on the English oak analogy. O’Connor does not mention this.

(B) After Independence

Not Binding:

Spry J. in *Rashidi Moledina v. Holma Ginneries* ([1967] E.A. 645)

Newbold in *Jivraj v. Devraj* (1968) E.A. 263 and in *Dodhia v. National & Grindlays Bank Ltd and Another* [1970] E.A. 195 at PP. 198-200

But Newbold there at one point seems to limit the power to depart from decisions on the common law to the proviso i.e. circumstances of country concerned.

Dodd v. Nanda [1971] E.A. 58, English law applied where “reasonable, relevant and applicable”.

II. Special Reception

(A) Before Independence

(i) With reception date

e.g. Tanganyika, Land (Law of Property and Conveyancing) Ordinance - express reference to common law same as I before, binding; after, not binding.

(ii) With no reception date

e.g. Uganda - Contract Act, Cap. 75; Kenya - Registered Land Act, Cap. 300, imported current English law - superior courts only.

Indirect authority: *Jupiter General Insurance v. Kasanda*, in obiter, if contract made after new Uganda Act, English case after reception date would bind.

- (B) After Independence
 - (i)& (ii) above not binding
 - Newbold in Dodhia's case - no foreign decisions bind the court.

III. Decisions interpreting statutes in pari materia

- (A) Before Independence

Binding:

Thimble v. Hill [1879] 5 A.C. 342 (PC)

Mahmohandas Kalyani [1950] (Aden)

- (B) After Independence: Two Views

Binding:

Spry J. in Rashid Moledina v. Holma Ginneries [1967] E.A. 645 - when Kenya Act passed, legislature assumed to have English cases in mind.

Mtatiro Mwita v. Mwita Marianya [1968] H.C.D. n.82

Tanganyika Garage V. Marceli Mfuruki [1975)]LRT 23

Not Binding:

PC in National & Grindlays Bank v. Ballabhji [1966] E.A. 186, adopting Newbold's view in CA, i.e. "regard would be had" to them, but: (a) not binding; and (b) to follow they must show consistent interpretation.

(3) OWN DECISIONS

(i) Before Dodhia

Followed practice of English Court of Appeal, set out in Young v. Bristol Aeroplane Co. [1944] 2 All E.R. 293, i.e. bound, except where:

- (a) Conflicting decisions: must choose
- (b) Constructive overruling:

“Bound to refuse to follow” own decisions if in conflict with later PC decision

(c) Per Incuriam

Not bound by decision given in ignorance or forgetfulness of statutory rule- Riziki binti Abdulla v. Sharifa binti Mohamed Bion Hemed ([959] E.A. 1035 or judicial decision binding on court - Kiriri Cotton Co. v. Dewani [1958] E.A.239 - followed definition of per incuriam in Morelle v. Wakeling (Eng.)

Note:

Conflict between (a) and (b) - first decision of two conflicting decisions must bind because the second one is per incuriam!

(d) Criminal Appeals:

Additional exception - can depart from own decision if it considers it wrong and if to follow would result in

upholding an improper conviction, see *Pock v. R.*, and *Joseph Kabui v. R.* Also applies in any case, civil or criminal where liberty of subject involved - *In the Matter of Shah* [1955].

Full Bench (5 judges) had greater weight than a decision of three, i.e. where the court asked to depart from a decision, had to call 5b judges. But only practice e.g. *Opoya v. Uganda, Commissioner for Lands v. Bashir*, division departed from previous decision.

(ii) After *Dodhia*

Not binding - can always depart "where it appears right to do so".

Dodhia lays down no "rules of guidance" but note that in *Sango Bay Estates v. Dresdner Bank*, the court refused to depart from 35 years old practice - too well established. But compare with *Newbold* in *Dodhia* who refused to depart from PC decision because it was too recent!

(iii) After the collapse of the East African Community

- (a) The Court of Appeal of East Africa (Tanzania) Ad Hoc 1977 - 1979
- (b) The Court of Appeal of Tanzania 1979

Free to depart from own decision when "it appears right to do so" per Nyalali, C.J. in *Juwata v. Kiuta*, Civ. App. No. 29 of 1987 (unreported) citing with approval *Newbold's* statement in *Dodhia's*

case. The Court in Juwata's case overruled its own previous decision given per incuriam in Zambia Tanzania Road Services Ltd. V. J.K. Pallangyo, Civ. App. No.9 of 1982.

PART VII

STATUTORY INTERPRETATION

Note:

There are significant differences between East African and English practice in statutory interpretation and this should be borne in mind when reading English cases or books.

References:

ALLEN, Law in the making, 7th ed., pp.482-530

AMOS, 5 Cambridge L.J. 163

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CRAIES, Statute Law, 7th ed., S.G.G. Edgar (ed.) Sweet & Maxwell, London 1971

CRAWFORD, Statutory Construction pp. 217-218

CROSS, R., Statutory Interpretation, 2nd ed. 1987

Lord DENNING, The discipline of Law, Butterworths, London, 1979, P.9

Sir GOWERS, E., The Complete Plain Words, Her Majesty's Stationery Office, London, 1954

FALLON, "A Constructivist Coherence Theory of Constitutional Interpretation" 100 Harv. L. Rev. 1189, 1194-1209 (1987)

FRANKFURTER, "Reading of Statutes" 47 Col. L.R. 536

Halsbury's Laws of England, 3rd ed. Vol. 36, pp. 382-419

HARRY, Bloom, "A Modern Writer" M.L.R. (1970) 33

HOLMES, "The Theory of Legal Interpretation" (1899) 43 Harv. L.R. 417

LANDIS, "A Note on Statutory Construction" (1929-30) 43 Harv. L.R. 886

MAX RADIN, 'STATUTORY Interpretation" (1929-30) 43 Harv. L.R. 863

MAXWELL, Interpretation of Statutes, 12th ed.

ODGERS, The Construction of Deeds and Statutes

POUND, R., "Common Law and Legislation" (1908) 21 Harv. L.R. 383

SALMOND, Jurisprudence, 12th ed. PP. 131-140

SUTHERLAND, STATUTORY Construction 3rd ed. Vol. II, Horack (ed) PP. 176-177

The Small Birds Act, Judicial Humour - Construction of a Statute - The Criminal Law Quarterly (Canada) P. 138

TWINING, W., & MYERS, D., How to do Things with Rules, 1976, Chapter 7 & 10

WELLINGTON & ALBERT, Statutory Interpretation and the Political Process: A Comment on Sinclair v. Atkinson 72 Yale L.J. 1547 [1963]

WILLIS, 16 Canadian Bar Review [1938] 1

ZANDER, M., The Law Making Process, London, 1980

1. Introduction

References:

SHAKESPEARES" The Merchant of Venice, ACT IV Scene 1 (Portia);
 Twelfth Night, ACT III Scene 1 (the clown)

ZANDER, M., The Law Making Process, London, 1980, PP. 34-37

COODRICH, P., Reading the Law, Oxford, 1986, PP. 91-125

TWINING, W., & MYERS, D., How to Do Things with Rules, London, 1982, PP.167-169

FULLER, L.L., "Human Purpose and Natural Law" 53 Journal of Philosophy, 697 [1956] at P.700

KELSEN, H., The General Theory of Law and State, 1945, PP. 123-136; 128-129; 132-133; 134-136

Uganda v. Commissioner of Prisons Ex Parte Matovu [1966] E.A. 514 (CA)

1. What is a Statute?
2. Classification of Statutes
 - By Object
 - By Method
 - By Duration
3. Theoretical and Constitutional Assumptions with regard to Statutes.

References:

TWINING & MYERS, How to Do Things with Rules, Ch. 10

- (a) Jurisprudential: Fuller, Hart & Dworkin
- (b) Constitutional: Dickenson & Cross
- (c) Legislative control of statutes through interpretation acts: Zander

4. History of Legislation
 - (a) Post-19th Century England: Legislation and Parliament
 - (b) Legislation in the Colonies: Post 1884 Berlin Conference

5. A Brief Outline of the Legislative Process in Tanzania
 - (i) 1920 -1926: Governor sole legislative and executive authority
 - (ii) 1926-1961: Legislative Council Centre of Legislative activity
 - (iii) 1961-todate: Parliament Centre of Legislative activity

6. Mechanics of Enacting Statutes
 - (a) England
 - (b) Tanzania 1962-1978

7. The Structure of a Bill or an Act
 - (a) Stages in the Drafting Process
 - (b) The Scheme of the Statute: Content

8. Statute Law
 - (i) Subject-matter: Policy
 - (ii) Context of the Statute: Long title
 - (iii) Structure of Statutory Rules and Logical Trees
 - (a) Major Premise and Minor Premise

Fisher v. Bell [1960] 3 All E.R. 73

Opoya v. Uganda [1967] EACA 752 (U)

 - (b) The Hierarchy of statutory authority

Attorney General of Uganda v. The Kabaka Govt. [1965] E.A. 393

9. Guides and Approaches to the Interpretation of Statutes

In the process of interpreting statutes judges have to make choices between alternative interpretations thus go beyond formal logic because policy issues arise in the process. The choices involve:

- (a) express directions on interpretation;
- (b) main principles of interpretation which involve three pseudo-logical or text-book approach consisting of the literal, golden and mischief rules;
- (c) presumptions;
- (d) internal aids to construction;
- (e) external aids and
- (f) logical aids

I. INTRODUCTION

References:

DWORKIN, R., *Laws Empire*, Fountana Press, 1986, P. 314

..... "Political Judges and the Rule of Law" ([978] P. 25

CROSS, R., *Statutory Interpretation*, 1987,

Hawa Mohamed v. Ali Sefu, Civ. App. No.9 of 1983 PP. 11-16
(Unreported)

Salman v. Salan & Co. Ltd [1897] A.C. 22 at P. 38

Singida RTC v. TPTC

- (i) Context Rule
- (ii) Legislative history

(iii) Intention of the Legislator or Parliament

A. Express directions on interpretation

Kenya, Laws, Ref. 1964, Cap.2, Interpretation and General Provisions Act.

Tanzania, Interpretation and General Clauses Act No. 1995 repealed and replaced the Interpretation and General Clauses Act No. 30 of 1972.

Uganda, Laws, Rev. ed., 1964 1 P. 289, Chap. 16

Interpretation clauses in statutes e.g. Penal Code of Tanganyika, Cap. 16 of the Laws, section 4 (Amendment Act No. 14 of 1980).

John Nyamhanga Bisare v. R. [1980] TLR 6 - interpreting sections 4 of the Penal Code of Tanganyika, Cap. 16 of the Laws. See also Peter Musa v. R. [1973] LRT n. 68 per Makame J. construing section 293 & 294 of the Penal Code of Tanganyika, Cap.16 on "breaking" and "entering" a "dwelling, house", "with regard to Tanzanian conditions"

U.K. Interpretation Act, 1889.

HOLMES, O.W., Jr., "The Theory of Legal Interpretation" 12 Harv. L. Rev. 417-420 [1899]

CORWIN, "Marbury v. Madison and the Doctrine of Judicial Review", 12 Mich. L. Rev. 538 [1914] AT p.552 Marbury v. Madison 5 U.S. (1 Cranch) 137, 2 L. Ed. 60(1803) - Judicial power to review the

constitutionality of actions of other branches of the government (the executive & legislative).

PLUCKNETT, "Bonham's case and Judicial Review" 40 Harv. L. Rev. 30 [1926] and THORNE, "Dr. Bonham's case", 54 L.Q.R. 543 (1938)

The Constitution of the United Republic of Tanzania, 1977 as amended from time to time and the Constitution of Zanzibar, 1984.

Basic Principles:

- (1) Constitution as superior law - a written constitution with fundamental principles to bind the nation in the future.
- (2) Judiciary as the institution with the final responsibility to interpret the law.
- (3) If the Constitution is superior law, than an act repugnant to it must be invalid.

B. Main Principles of Interpretation

1. The Literal or Plain Meaning Rule

Magor and St. Mellons v. Newport Corporation [1952] A.C. 189; [1951] 2 All E.R. 839
R. v. El-Mann [1969] E.A. 357;
Commissioner of Customs v. Travel [1967] HCD n. 327
Whitely v. Chapell [1868] Q.B. 147
Mwinyimadi Ramadhani v. R. [1960] E.A. 407 (T)

2. The Golden Rule

This is a rule for avoiding absurdity. It involves revision or reconstruction rather than interpretation.

Re Sigworth [1935] Ch.89; [1924] All E.R. 113

Re Lockwood [1958] Ch. 231 at PP. 237 - 9

National and Gridlays Bank & Co. v. Kentiles & Co. (In liquidation) and
The official Receiver [1966] E.A. 17 (PC)

The Mischief Rule or the Rule in Haydon's Case [1584]

Note: The difference between this and the Literal rule is probably only one of degree.

Magor and St. Mellons v. Newport Corporation [1952] A.C. 189; [1951] 2
All E.R. 839

Eastman Photographic Co. v. Comptroller - General of Patents (1898) A.C.
571 at P. 573 & 576

NB: Some judges have reached same result without resort to the
mischief rule.

Jones v. Davies [1901] 1 K.B 118

Seaford Court Estates v. Asher [1949] 2 K.B. 481 at PP. 498-499

Smith v. Hughes [1960] 1 W.L.R. 830

Varner v. Metropolitan Police Commissioner [1968] 2 W.L.R. 1303

New Great Insurance Co. of India Ltd. V. Lilian Evelyn Cross & Another
[1966] E.A. 90

Presumptions applied in interpretation

1. Presumptions against retrospective operation

Maxwell On Statute Interpretation, Chapter 8

West v. Guyne ([1911] 2 Chapter 1 at P. 15R. v. Oliver [1944] 1 K.B. at PP. 75-76

Ibrahim v. Said [1963] E.A. 179

Municipality of Mombasa v. Nyali [1963] E.A. 373

Uganda v. Nyegonay [1967] E.A. 106

Jivraj v. Devraj [1968] E.A. 263

Patel v. R. [1968] E.A. 97

Benbros Motors v. Patel [1967] H.C.D. n. 435

Jariwala v. Empire Theatre [1970] H.C.D. n. 13

Empire Theatre v. Tanzania Distributors [1970] H.C.D. n. 325

NB: This presumption is not applicable to procedural statutes

Biytu v. Biytu [1965] P. 411

enbros v. Patel [1967] H.C.D. n. 435

Penal Statutes

Kavir v. R. [1968] H.C.D. n. 458

2. That the Republic or Crown in England is not bound

Kenya, Laws, Interpretation and General Clauses Act, Chapter 2 ss. 75 & 76

Tanzania, Interpretation of Laws and General Clauses Act, No. 1995
s. Uganda, Interpretation Act, Laws 1, Chap. 16 section 42

Premchand Nathu v. Land Officer [1962] E.A. 738

3. That a statute is not intended to conflict with obligations under
Public International Law

Maxwell on Interpretation of Statutes, Chapter 6

Solomon v. Commissioner of Customs and Excise [1967] 2 Q.B. 116

Colico Dealings v. L.R.C. (1962) A.C. 1; [1961] 1 All E.R. 762

4. Taxing statutes to be strictly construed, i.e. construed in favour
of taxpayer

Halsbury's Laws of England, Vol. 36, PP. 416-417

Kanjee Maranje v. Income Tax Commissioner [1964] E.A. 257 (PC)

Bemster & Gill v. A.G. (1923) K.L.R. 127

Commissioner General of Income Tax v. Noorani (1969] H.C.D. 202 R. v.
Ngomeni (1933) 15 K.L.R. 134

T.M. Bell v. The Commissioner of Income Tax (1960) E.A. 224

5. That Legislation is territorial in operation

This presumption does not apply to legislation on guardianship of
infants

R. v. Martin (1966) 2 Q.B. 272 at PP. 284-286

Draper v. Turner (1965) 1 Q.B. 424

6. That criminal statutes should be construed strictly, i.e. in favour of the accused

his presumption is no longer favoured in England, but it seems that it is still used in East Africa. However see the 1980 amendment to the Penal Code, Chapter 16 of Tanganyika, section e that the code shall be construed “ Without applying any principle of strict construction relating to penal legislation”.

John Nyamhanga Bisare v. R. [1980] TLR 6

English courts may apply the mischief rule in criminal cases

Smith v. Hughes [1960] 1 W.L.R. 830

R. v. Oakes [1959] 2 All E.R. 92

Changler v. D.P.P. [1962] 3 All E.R. 142

For the position in East Africa see

Opoya v. Uganda [1967] E.A. 752, at pp. 753-4

Crown Hassan [1924] 10 K.L.R. 4

R. v. Parpia 23 (2) K.L.R. 84 at p.85 - continuing breaches punishable only if express terms

Marwa v. R. [1967] H.C.D. n. 357

Lui v. R. [1969] H.C.D. n. 299

Mwinimadi Ramadhani v. R. (197) restrictive treatment of the Minimum Sentence Act. Also reported in R. Seidman, Criminal Law, at P. 458

Huber, "Statutory Interpretation and Judicial Discretion" 2 Journal of Denning Law Society 99 No. 1 [1967]

Other obscure/dubious presumptions

7. In favour of mens rea in criminal offences

This presumption is more in the realm of criminal law. Students should therefore consult cases in the criminal law course outline on this topic.

8. At least in peacetime there is a presumption in favour of the liberty of the subject.

This presumption is inapplicable where the majority of the population is favoured. The constitutions of the three East African countries contains an entrenched Bill of Human Rights the question therefore is likely to take the form of the relation between the statute in question and the relevant constitutional guarantee.

9. Presumption against interference with proprietary or contractual rights.

Allen v. Thorn Elec. Industries (1967) 2 All E.R. 1137, at P. 1142

Ministry of Housing and L.G. v. Hartnell (1965) 1 All E.R. 490

A.G. v. De Keyser's Royal Hotel (1920) A.C. 508

Halsbury's, Laws of England, Vol. 36, P.. 413, Para 627

Hussein v. Jethabhai (1952) 19 E.A.C.A. 162

R. v. Ngomeni (1933) 15 K.L.R. 134

10. When a “temporary” statute expires, rights die with it
Bawa v. Singh (1956) 23 Court of Appeal Monthly Bulletin 404

Presumption against substantial alteration of the previous law by
implication only.

The court may look at the previous general legal picture.

Chertsey U.D.C. v. Mixman (1965) A.C. 735, at P. 750

12. Presumption against the conferment of rights or imposition of
duties on foreigners

Maxwell, Chapter 6 section 3 Doubtful, at least in its application
to resident foreigners.

13. Express words required to oust jurisdiction of court

M.B. v. Commissioner General of Income Tax [1971] H.C.D. n. 267

14. Express words required to take away presidential prerogatives

D. International Aids to Construction

This part deals with aids that are used to interpret parts of the statute itself, and which were part of the Bill when debated by Parliament.

Note that English causes are explainable on ground of different procedure: in England before 1850, Bills had no punctuation, nor did they have marginal notes, hence these were not to be relied on as they were not before the legislature when the Bill was passed.

1. Long Title

Contact contradict an unambiguous express provision.

Ward v. Holman (1964) 2 All E.R. 729

2. Short Title

Not used in U.K. Usable, if useful, in East Africa.

3. Preamble

In East Africa the function of the preamble is carried out by the Memorandum of Objects and Reasons attached to published Bills.

Powell v. Kempton Park Racecourse Co. [1899] A.C. 143 NB. Lords disagreed as to whether the enactment itself was ambiguous.

4. Headings to groups of sections within a statute

Available in East Africa, Words in main text must be ambiguous.

R.V. Survey Assessment Committee [1948] 1 K.B. 28
ulmer v. L.R.C. [1966] 3 W.L.R. 672

Marginal notes

These are considered in East Africa

Murtahah v. R. [1954] E.A.C.A. 190

Visram v. Bhatt [1965] E.A. 789

Mugo v. R. [1966] E.A. 124

Ramadhani v. R. [1968] H.C.D. n. 244

Zephania v. R. [1967] H.C.D. n. 218

R.V. Lemki [1968] H.C.D. n. 229

In the Estate of Shamji (1965) E.A. 789

Huber, "Use of Marginal Notes in EA" (1969) 2 E.A.L. Rev. 107

6. Punctuation

Referred to in East Africa

New Great Insurance Co. or India v. Evelyn Cross [1966] E.A. 90,
at PP. 99 & 107

7. Division into sections and sub-sections

Helpful as a guide only in East Africa and U.K.

Sweet v. Passley [1968] 2 W.L.R. 1360, 1365, D.C. But the House of
Lords took a different view of the provision see [1969] A.C.

8. Schedules

These are not subordinate parts, or “internal aids” but are substantive parts of statutes. The creation of schedules is purely a matter of arrangement

E. External Aids to Construction

The General Rule has been that preparatory work, parliamentary debates, etc. may not be used. The authority for this rule:-

Halsbury's Law of England, Vol. 36, P. 410, Para. 622

Assam Railways v. L.R.C. [1935] A.C. 445

Katikiro of Bvuganda v. A-G [1960] 3 All E.R. 849, 855, [1959] E.A. at P. 397

Attorney General of Uganda v. Kabaka's Government [1965] E.A. 393.

But the position is not clear as there is a conflict of authority in some cases.

1. Objects and Reasons and other explanatory notes published with Bills.

Visram v. Bhatt [1965] E.A. 789

Tame v. Commissioner of Income Tax [1949] 16 E.A.C.A. 38
against

2. The Bill itself

Lewin v. Land Control Board [1948] 23 K.L.R. 15, 17

3. Reports of Commissions and Committees

Eastman Photographic Co. v. Comptroller General of Patents [1898] A.C. 571, 575 and PP. 573-576 Lord Halsbury rejected reports of Committees.

Ladore v. Bennelt [1939] A.C. 468, 477

Pillai v. Mudanayake [1953] 514, 528

Letang v. Copper [1964] 2 All E.R. 929, 933

Katikiro of Buganda v. A-G. [1960] 3 All E.R. 849 approves of Assam Rlwys v. L.R.C. [1935] A.C. 445

A-G. v. Kabaka's Government [1965] E.A. 393 (PC) and the cases cited, noted, disapproved of.

4. Use of preparatory materials as an aspect of the Mischief Rule.

Salmond on Jurisprudence, 12th Ed., P. 140

Glanville Williams, Learning the Law, 7th Ed., 101-102

Beard v. Beard [1946] P. 8, 26-27

Earl Fitzwilliam's Wentworth Estates v. Ministry of Transport & C.P. [1951] 2 K.B. 284, 310

Other external aids

5. Dictionaries

6. Statutes in part materia

Halsbury's Laws of England, Vol. 36, 402

Dharamshi v. Vallbhji v. National and Grindlays Bank [1964] E.A. 442

Carnie v. Carnie [1966] E.A. 233

New Great Ins. Co. of India v. Cross [1966] E.A. 90

7. Statutes expressly linked

Halsbury's Laws of England, Vol. 36, P. 404

Jafferli Alibhai v. Commissioner of Income Tax [1961] E.A. 610

8. Replacement of earlier statutes

The presumption that new provision does not apply to new subject matter applies to consolidating but not to codifying statutes.

Halsbury's, Law of England, Vol. 36, PP. 405 - 407

L.R.C. v. Littlewoods (1962) 2 All E.R. 279

Ismail v. R. [1963] E.A. 55, 279

9. Statutes replacing common law

Yorkshire Ins. Co. v. Nisbet Shipping Co. [1962] 2 Q.B. 330

10. International agreements

Ellerman Lines Ltd. V. Murray [1931] A.C. 126

P.O. v. Estuary Radio (1967) 3 All E.R. 663

Solomon v. Commissioner⁴ of Customs [1967] 2 Q.B. 116

11. Factual and Policy background

New Great Ins. Co. of India v. Cross [1966] E.A. 90 No motor Insurance bureau in East Africa. Meaning of "Marriage" in polygamy decisions.

12. Contemporaneous circumstances of statutes Halsbury's Laws of England, Vol. 36, P. 409, Para 620 Cf. Mischief Rule.

13. Contemporaneous exposition

Terms to be read in their meaning at date of the passing of the Act.

Halsbury's Laws of England, Vol. 36 P. 409, Para 619

Rarely applied to modern Acts and may not be applicable to pre-independence legislation in East Africa.

Governors of Campbell College Belfast v. Commissioner of Valuation for Northern Ireland (1964) 2 All E.R. 705 at PP. 717 and 727.

Bemister & Gill v. A-G. (1923) 9 K.L.R. 127

14. Subsequent legislation

May be referred to where ambiguity exist.

Jafferli Alibhai v. Commissioner of Income Tax (1961) E.A. 61

15. Oral evidence as to meaning of word

Generally not admissible. Court will take judicial notice.

Purshotam Kotak v. Abdullah (1957) E.A. 321

16. Construction in accordance with administration practice to be preferred

Strand Securities Ltd. V. Caswell (1964) 2 All E.R. 956

F. **Logical Aids to Interpretation**

1. Words presumed to be used consistently throughout a statute, i.e. bear same meaning
2. **Particular provisions override more general provisions.**

Reg. V. Ramasamy [1965] A.C. 1

R. v. Yusuf s?o Iman [1933] 15 K.L.R. 139

3. **Expressio unius exclusio alterius (the expression of one excludes the other)**

Expressum facit cessare tacitum e.g. statute refers to “buildings” and later refers to “land” without mentioning “buildings”. “Land” does not, then, include buildings.

These maxims are only rough guides and should be used with caution.

Halsbury’s Laws of England, Vol. 36, P. 397

Dean v. Wiesengrund [1955] 2 Q.B. 120, 131

In re Newspaper Proprietors' Agreement (1964) 1 W.L.R. 31,
38
Jones v. D.P.P. (1962) A.C. 635

4. **Ejusdem generis rules**

Where in a statute there are general words following particular and specific words, the general words are assumed to be confined to things of the same kind as those specified.

The rule is not always applied in the above circumstances. It is subject to other evidence of meaning, and to override policy considerations (although these may not be expressed and may be brought in under the guise of finding "other evidence of meaning" see particularly A-G. v. Abdulla [1960] E.A. 672 where the presumption was not applied.

Sardam v. Breach B & C 99

Halsbury's Law of England, Vol. 36, P. 397, Para 599

Allen v. Emmerson [1944] 1 K.B. 362

Brownsen Haven Properties v. Poole Corporation [1958] Ch. 574

Papworth v. Coventry [1967] 1 W.L.R. 663, 671-672

Powell v. Kempton Park Racecourse Co. [1899] A.C. 143

Culley v. Harrison [1956] 2 Q.B. 71

Howker v. Secretary of State 3 E.A.L.R. 56 - applied to restrict statute giving power to Governor to encroach on private property rights.

R. v. Hulu 1 T.L.R. ® 16

R. v. Msengi 1 T.L.R. ® 107

Charles s/o Mumba v. R. [1967] H.C.D. n. 221

Khimji v. R. [1970] H.C.D. n. 200

Mbugwa v. Mbugwa (1949) 16 E.A.C.A. 1

E.A. Power and Lighting v. Commissioner of Customs [1948] 23 (2)

K.L.R. 20 (rejected)

Devshi v. Transport Licensing Board [1971] E.A. 289

Hassan v. R. [1968] H.C.D. n. 457

5. **Reference to neighbouring words and phrases: Noscitur a sociis**

Halsbury's Laws of England, Vol. 36, P.. 395

Context as a guide to interpretation

Halsbury's Laws of England, Vol. 36, Para 593

Craies on Statute Law, 6th Ed., P. 179 treats noscitur a sociis (mistakenly) as a synonym for the Mischief Rule

6. **Use of analogy**

Postmaster General v. National Telephone Co. [1907] 1 Ch. 621

7. **Reference to background of general legal principles**

Nokes v. Dancaaster Collieries [1940] A.C. 1014

8. Construction to avoid collision with other provisions

Consistency presumed between various statutes on the same subject matter and between sections and subsections in the same statute.

Marwa v. R. ([1967] H.C.D. n. 357

9. Use of English decisions: General points

National and Grindlays Bank v. Dharamshi Vallabhji [1966] E.A. 186

D'Silva v. Rahimtulla [1968] E.A. 286, 291

Damani v. Ndarumaki [1968] E.A. 318

Bell v. Commissioner of Income Tax (1960) E.A. 224

G. Interpretation of Conventions and International Treaties.

1. Quazi v. Quazi [1980] AC 744 at 808 Per Lord Diplock.

2. Bernardo Ephraim v. Holaria Pastory & Gervazi

3. Kaizelega (PC) Civil Appeal No. 70 of 1989 (HC Unreported).
Director of Public Prosecutions v. Dancipele, Criminal Appeal No. 28 of 1990 (CA-Unreported).

4. Forthergill v. Monarch Airlines Ltd [1981] AC 251 or [1980] 2 All ER 696 or [1979] 3 All ER 445.