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# **ENGLISH LEGAL SYSTEM**

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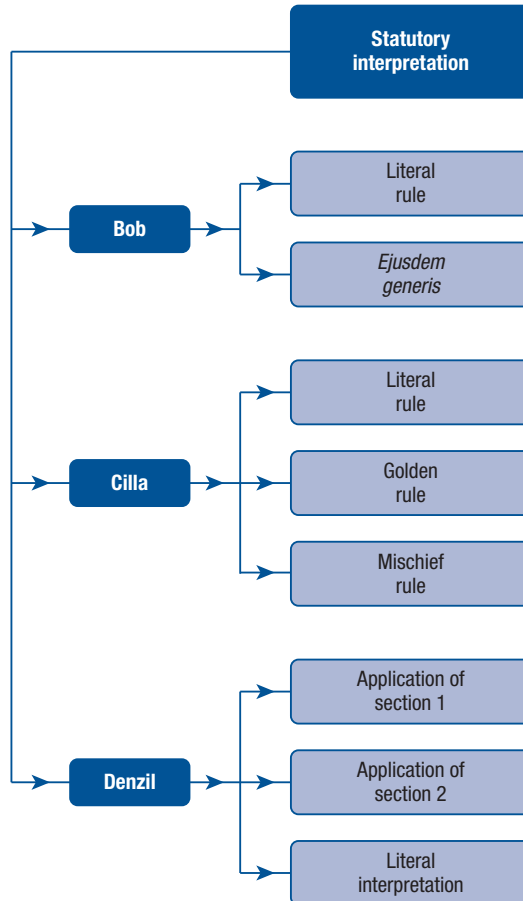
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## Diagram plan



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## Answer

Although theoretically the role of judges is simply to apply statutes that have been enacted by Parliament, this will not always be a straightforward task. The natural ambiguity of language, poor drafting of statutory provisions, and developments that were not contemplated

### 3 STATUTORY INTERPRETATION

<sup>1</sup> Although you should not engage in lengthy general discussion of the various approaches and aids to statutory interpretation, it serves as a useful introduction to briefly explain why judges are required to interpret statutes and the main resources which assist them in this function.

<sup>2</sup> You should usually begin your consideration of each scenario with reference to the literal rule, as ordinarily its application is non-controversial. Only where this produces an undesired result would you be expected to entertain other approaches to interpretation. On the first mention of a rule of interpretation you should illustrate its operation with a practical example.

<sup>3</sup> Students often overlook the relevance of rules of language such as the *ejusdem generis* rule, yet this is clearly of potential relevance here in understanding the meaning of section 1. Ensure that you pay careful attention to the scenarios provided in order to ensure that you spot areas where rules such as *ejusdem generis* could be applied.

<sup>4</sup> It is important in answering these kinds of problem questions to have regard to the purposes of the Act in deciding upon the most appropriate approach to the interpretation of its provisions. You can usefully note that Hansard can be cited as an external aid to interpretation in order to adduce evidence of the purpose behind a statutory provision.

at the time a statute was made are all factors that can lead to judges having to embark upon the task of deciphering the proper meaning to be given to statutory provisions. To assist them in this, judges can make use of a number of tools.<sup>1</sup> The literal, golden and mischief rules set out approaches that can be followed when interpreting statutory provisions. There are also a series of rules of language and presumptions that can be applied to the process of statutory interpretation, and judges can make use of a number of aids both intrinsic and extrinsic to statutes.

Bob has been charged with an offence under section 1 of the Act. If we apply the literal rule to this scenario, prima facie he will be guilty of an offence.<sup>2</sup> The literal rule requires that words are given their ordinary, grammatical meaning, even if this produces an absurd outcome. Thus, in ***Whiteley v Chappell*** (1868) LR 4 QB 147, a person charged with 'impersonating any person entitled to vote' at an election was acquitted because the person impersonated was deceased, and thus not entitled to vote. On a literal interpretation of section 1, Bob may be guilty as he operates a business selling food for consumption off the premises. The only question to consider is whether his burger bar is 'on any road, street, lane or other place where a school is situated', as we are told it is 'located on an alley off the road on which the school is situated'. The *ejusdem generis* rule may be helpful here,<sup>3</sup> as it requires that when words with a general meaning follow a list of specific words within a statute, those general words are to be construed to apply only to things of the same type as the specific words used. For example, a 'house, office, room, or other place' would only cover indoor places (***Powell v Kemptown Park Racecourse*** [1899] AC 143). As the places listed in section 1 all refer to thoroughfares, an alley could arguably amount to an 'other place' within its ambit.

The problem here is that section 1 requires the business concerned to be on the same thoroughfare as the school, whereas Bob's burger bar is on an alley which runs off the thoroughfare. On a literal interpretation this would mean there is no offence. However, this would arguably be absurd as this scenario is exactly the kind that the Act aims to address. The statement of the government minister reinforces this, and will be published in *Hansard*,<sup>4</sup> which a court can consult as an aid to interpretation since the decision in ***Pepper v Hart*** [1993] 1 All ER 42. Application of the golden or mischief rule here may be more

<sup>5</sup>Where the literal rule produces absurdity you should initially consider whether the application of the golden or mischief rule may be preferable. Here you can make a useful comparison with a case that bore some similarity to the present scenario and was satisfactorily resolved through the application of the golden rule.

<sup>6</sup>Likewise, you can apply a case which applied the mischief rule demonstrating some similarity to the present case. It is worth making the point that of the three traditional approaches, this looks most closely at the underlying purpose of the statutory provision in question.

<sup>7</sup>Having explained the main approaches to statutory interpretation in discussing the first scenario, you are able to apply these with greater ease to the other scenarios to be addressed. This is a perfect example of the absurdity that can arise where a literal application of a statute is completely at odds with its purpose and you can make this point effectively.

<sup>8</sup>These do not require lengthy discussion here, but you are able to effectively show how these further the objectives of the Act.

appropriate.<sup>5</sup> The golden rule permits an alternative meaning to be given to a provision where its literal application will produce absurdity. Thus, in **Adler v George** [1964] 1 All ER 628, it was an offence to obstruct a member of the armed forces in the vicinity of designated locations. The defendant was actually caught within such a location. A literal interpretation of the provision would acquit him. This being absurd, the term 'vicinity', therefore, was taken to extend to the specified place itself. In Bob's case, the places referred to in section 1 could thus be extended to include places adjacent to these. The mischief rule seeks to ascertain the mischief the statute was intended to address and remedy it. In **Smith v Hughes**, prostitutes were convicted of soliciting in the street under the Sexual Offences Act 1959. Although the statute made it an offence to solicit 'in the street', the prostitutes actually solicited men who were in the street from a window overlooking the street. As the mischief addressed by the Act was soliciting in general, conviction was deemed appropriate.<sup>6</sup> Considering the aim of the 2014 Act, a court may apply the mischief rule to convict Bob.

On a literal approach, Cilla would appear to have committed an offence under section 1 as she sells food from a business operated on the same road as a school, to be consumed away from her premises. This outcome would clearly be absurd, given that the Act is concerned with addressing childhood obesity through placing restrictions upon the sale of fast food near schools.<sup>7</sup> The operation of a business selling fruit and vegetables is actually complementary to furthering the objectives of the Act. A court is more likely to apply the golden or mischief rule in order to acquit Cilla.<sup>8</sup> Applying the golden rule, an alternative meaning could be substituted for 'food to be taken away for consumption off the premises' which considers this only to encompass fast food. The mischief rule would also support such an approach, as the sale of fruit and vegetables is clearly not the mischief that the Act is intended to address.

Denzil's liability hinges upon the appropriate interpretation of sections 1 and 2 of the Act. Section 1 refers to businesses selling food to be taken away for consumption off the premises, whereas Denzil's business is described as a pizza restaurant. This might be taken to imply that it does not sell takeaway food and is not within the ambit of the

### 3 STATUTORY INTERPRETATION

<sup>9</sup>You are not always provided with all the information that you need in order to definitively address a given situation. Where further information would be helpful you are right to point this out.

<sup>10</sup>This is a reasoned conclusion of the likely outcome of the prosecution of Denzil, drawing upon the objectives of the Act and their divergence from the kind of scenario with which you are faced here.

Act's objectives.<sup>9</sup> However, if takeaway food is sold, then as it is located on the same street as a school there would prima facie be an offence under section 1. However, even if this is the case, Denzil may be absolved of any liability by the content of section 2. This provision states that businesses are not bound by section 1 where they only operate outside of school hours. School hours may vary across schools and to apply section 2 literally a court would need to ascertain what might typically constitute school hours, but generally they do not extend as late as 5 pm and, although school pupils used Denzil's restaurant recently, they were atypically late leaving school due to a football match. It would also not arguably be within the aims of the Act to convict people like Denzil. The Act is concerned with the supply of fast food to children near schools, presumably at lunchtimes and after school, and his opening hours mean that he would not generally be expected to count many children among his customers.<sup>10</sup>



#### Make your answer stand out

- Make reference where appropriate to relevant similar cases.
- Make reference to rules of language and aids to interpretation as well as the general approaches to statutory interpretation.
- Relate each scenario back to the objectives underpinning the Act.
- Refer to academic commentary on the use of *Hansard* as an aid to interpretation, for example, Steyn, J. (2001) *Pepper v Hart*: A re-examination. *Oxford Journal of Legal Studies*, 21(1): 59.



#### Don't be tempted to . . .

- Write an essay about approaches to interpretation, which only touches on the problem scenarios at the very end.
- Assume that there is a definitive correct answer to each scenario.



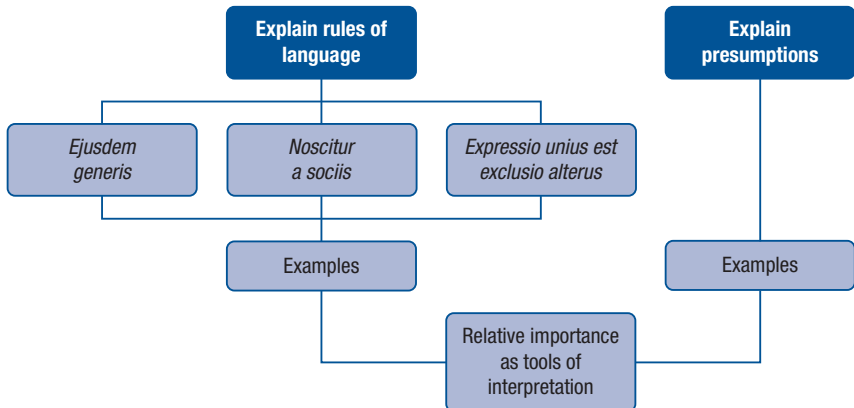
## Question 3

Discuss, with examples, the rules of language and presumptions applicable to statutory interpretation.

### Answer plan

- ➔ Explain that three main rules of language and a series of presumptions are used by judges in interpreting statutes.
- ➔ Explain the main rules of language and provide examples of their use from relevant case law to illustrate how useful they are in practice.
- ➔ Explain some of the main presumptions applied by the courts when interpreting statutes and provide examples of some of these being applied from relevant case law to show their significance.
- ➔ Conclude on the significance of the rules of language and presumptions in aiding statutory interpretation.

### Diagram plan



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### Answer

Judges use various mechanisms in order to ascertain the appropriate meaning to be given to uncertain statutory provisions. In addition to intrinsic and extrinsic aids to interpretation, judges employ three

### 3 STATUTORY INTERPRETATION

<sup>1</sup>In the introduction, the wider context to statutory interpretation – of which rules of language and presumptions are a part – is alluded to. Like intrinsic and extrinsic aids, these are also effectively means of assisting judges to understand the appropriate meaning to give to statutory provisions.

<sup>2</sup>By providing examples you show clearly how the rules of language apply in practice, and also evidence that you are aware of the operation of these rules. Citation of relevant cases evidences both knowledge and understanding.

<sup>3</sup>Most of the cases concerning the rules of language being applied are not particularly widely known. You will need to ensure you have some relevant examples in mind beforehand. Knowledge of a good range of cases on this area is very impressive.

main rules of language and a series of presumptions in interpreting statutes.<sup>1</sup>

The first rule of language used by judges is the *eiusdem generis* rule, meaning that when words with a general meaning follow a list of specific words within a statute, those general words are to be construed to apply only to things of the same type as the specific words used. Examples illustrate the rule well.<sup>2</sup> In ***Powell v Kemptown Park Race-course*** [1899] AC 143, the phrase ‘house, office, room or other place’ could not extend to an outdoor betting ring. The specific words listed were all indoors, so ‘other places’ was to be construed to encompass only indoor places. Similarly, in ***Wood v Commissioner of the Police of the Metropolis*** [1986] 2 All ER 570, a weapon was defined as ‘any gun, pistol, hangar, cutlass, bludgeon or other offensive weapon’. A piece of glass could not be regarded as an ‘other offensive weapon’, as the specific weapons listed were all of a type designed specifically for use as a weapon, which a piece of glass was not.

The *noscitur a sociis* rule provides that a word is known by the company it keeps. Words in lists having related meanings are to be interpreted in relation to each other, so in ***Pengelly v Bell Punch Co*** [1964] 1 WLR 1055, a requirement that ‘floors, steps, stairs, passages and gangways’ be kept free from obstruction was not applicable to factory floors used for storage, the other words in the provision clearly envisaging areas used for passage. The final rule of language is the *expressio unius est exclusio alterius* rule, meaning that to express one thing is to exclude others. If a number of specific things are expressed, others are implicitly excluded. For example, in ***Tempest v Kilner*** (1846) 3 CB 249, a provision relating to contracts for the sale of ‘goods, wares and merchandise’ was taken to exclude contracts for the sale of stocks and shares by implication. Similarly, in ***R v Inhabitants of Sedgely*** (1831) B & Ald 65, it was held that a poor rate levied on owners of ‘lands, houses, tithes and coal mines’ did not apply to owners of limestone mines. The express inclusion of coal mines explicitly excluded limestone mines.<sup>3</sup>

A series of presumptions is made by judges when interpreting statutes. In the absence of clear evidence to the contrary, these apply. It is presumed that Parliament does not intend to alter the common law. In ***Beswick v Beswick*** [1968] AC 58, the House of Lords refused to interpret section 56 of the Law of Property Act 1925 to overturn the long established common law doctrine of privity of contract, in the absence of any express intention by the statute to do so. There is also a related