



Tax Controversy & Dispute Resolution (TCDR) series

Rules of Statutory Interpretation

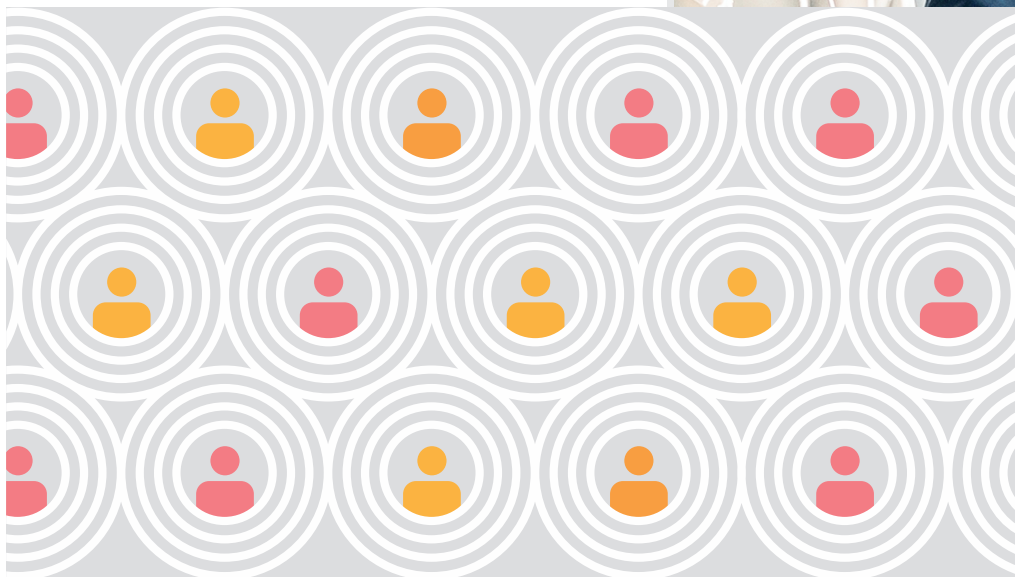
Issue 1

TCDR

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Introduction



Interpreting laws can be a difficult process and interpreting tax laws can even be more complex. To overcome this challenge, tax practitioners need to be familiar with the fundamental rules of interpretation.

These rules will help practitioners determine the true intent and meaning of tax laws. Interestingly, the rules are not restricted to tax laws but can be applied to other types of legislation. They are by no means exhaustive but they will help practitioners arrive at logical and reasonable constructions of the law.

The rules in this quick reference material are divided into two broad categories – The Rules/Canons of Interpretation and Rules of Language. To help you master the rules, we have included case law and a few examples from different jurisdictions when discussing each rule.

If you are already familiar with the rules, I am confident that your understanding will further improve after reading this material and if you had no prior knowledge or understanding of the rules this material will help you immensely.

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Canons of Interpretation



Introduction

The Canons or Rules of Interpretation are basic tools that help us interpret legislation. They are:

Literal rule,

Golden rule,

Mischief rule, and

Purposive rule or approach.

1

The Literal Rule

As with interpreting other types of laws, the Literal rule is the primary rule for interpreting tax laws. It simply means that where the words of a statute are plain and unambiguous, they must be given their ordinary and natural meaning. For obvious reasons, this rule does not require any inquiry into the intention of the legislature or the aim of enacting the law.

The idea behind the rule is that the lawmakers intended the exact words used in a law. Therefore, the literal rule follows what the law says and not what it intended to say.

Note that when interpreting anti-avoidance provisions in a law, the Mischief Rule sometimes overrides the Literal Rule.

Example 1 – Whitely v. Chappel¹

A statute aimed at election rigging made it an offence to impersonate '...any person entitled to vote' at an election. The Defendant was arrested for impersonating a dead person in order to cast an extra vote.

In deciding whether he was guilty or not, the court applied the Literal rule. The Court held that as the statute required a person to be alive in order to be entitled to vote, the Defendant was found not guilty as dead people are not entitled to vote.

Example 2 – Oando v. FIRS²

Section 19 of the Companies Income Tax Act (CITA) provides that where a company pays dividends from profits on which no tax is payable either, as a result of there being no total profits or total profits which are less than the dividends, such dividends would be taxed as though they were profits of the company.

The Appellant paid dividends in excess of its profits for some years. The dividends were paid from profits that had been taxed in prior years. The Tax Appeal Tribunal (Tribunal) held that the dividends should be treated as profits and taxed accordingly. The Tribunal did not consider that this could amount to double taxation not intended by section 19.

Example 3 – Unipetrol Nigeria Plc v. Edo State Board of Internal Revenue³

The Revenue initiated criminal proceedings against the taxpayer for failing to deduct and remit taxes under the Pay As You Earn (PAYE) scheme. The taxpayer challenged the suit on the ground that the Revenue had no powers to initiate criminal proceedings given that the phrase “sue and be sued” in the law establishing the Revenue relates only to civil proceedings.

The Supreme Court held that the word “sue” included both civil and criminal proceedings. In applying the literal rule, the Court held that courts must “must give the words and the language used their simple and ordinary meaning, and not to venture outside it by introducing extraneous matters that may lead to circumventing or giving the provision an entirely different interpretation to what the law maker intended it to be”

¹(1868) LR 4 QB 147

²(2014) Volume 9 All NTC 513

³(2006) 4 S.C. (Pt. 1) 41

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The Golden Rule

The Golden rule is applied where the application of the literal rule results in absurdity.

In other words, where the ordinary and natural meaning of a word results in absurdity, the courts would resort to finding out the intention of the legislation to arrive at a meaningful interpretation of the law. From the examples under the Literal Rule above, it is clear that the application of the literal rule may sometimes result in absurdity – in the first case, election would not have been free and fair and in the second case, the law resulted in double taxation.

Where this is the case, it would be appropriate to apply the Golden rule. This rule looks beyond the ordinary words and looks to the intention of the law.

Example 1 – Re Sigsworth⁴

A son murdered his mother. She had not prepared a will. Under the law setting the law on intestacy, as her sole issue he was entitled to inherit her entire estate. He sought to benefit under the law.

The Court held that applying the literal rule would lead to a repugnant result. Therefore, the Court applied the Golden rule. Under the Golden rule, the forfeiture rule applied so he was entitled to nothing.

Example 2 – Keene v Muncaster⁵

In order to park cars in a certain way, permission was required from a policeman in uniform. The Defendant, a policeman in uniform, parked his car without the permission of a policeman. He argued that he could park in the manner he parked because he was a policeman in uniform and had given himself permission.

His defence was rejected. The court held that “permission” had to be given by one person to another – that is, another policeman in uniform.

Example 3 – Kofa v. Kaita & Ors⁶

Section 141 of the Electoral Act 2006 required election petitions to be filed within 30 days from the date of declaration of the results of the election. The 30th day from the declaration was a Sunday so the Petitioner could not file its petition given that the registries would not open. Per section 15 (2) of the Interpretation Act which provides that where the last day slated for the happening of an event is a public holiday, the limited period is extended or prolonged to the next working day, the Petitioner filed its petition on Monday being the next working day.

The Respondents objected that the petition was not filed within the 30 day period therefore was null, void and of no effect.

In applying the Golden rule, the Court of Appeal held that following the 30 day rule literally would result in absurdity. Therefore, the petition though filed a day after the 30th day was validly filed. According to the court,

It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used ... unless that is at variance with the intention of the legislature,...or reads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience,.... It is absurd to expect a petitioner to file his or her petition at the Tribunal on a Sunday which the law maker regards as a "public holiday, with the secretariat closed to public business.

⁴(1935) Ch. 89

⁵(1980) RTR 377

⁶(2011) LPELR-8952(CA)

3

The Mischief Rule

The rule is applied by identifying the problem or mischief which existed before the law came into existence after which the law is applied in a manner to cure that problem or mischief.

In applying this rule, the following must be taken into consideration:

- What was the common law before the making of the Act?
- What was the mischief and defect for which the common law did not provide?
- What remedy did Parliament resolve to cure the disease of the Commonwealth?
- The true reason of the remedy and the office of the judges to apply the construction that will suppress the mischief and advance the remedy.

Example 1 – Smith v Hughes⁷

The Defendants were prostitutes soliciting customers from the windows and balconies of their brothel. They were charged under the Street Offences Act (Act) which made it an offence to solicit in a public place (such as streets, roads etc).

The court applied the Mischief rule and held that the activities of the Defendants were within the mischief the Act was aimed even though under a literal interpretation they would be in a private place.

Example 2 – Corkery v Carpenter⁸

The Defendant was riding his bicycle under the influence of alcohol. Section 12 of the Licensing Act 1872 (Act) made it an offence to be drunk when in charge of a carriage on the highway. He was charged under section 12.

He argued that a bicycle was not a carriage.

The court applied the Mischief rule and held that riding a bicycle was within the mischief of the Act as the Defendant represented a danger to himself and other road users.

Example 3 – Mobil Oil v. FBIR⁹

Section 30 of the Companies Income Tax Act allows the Revenue to subject a company to tax on a fair and reasonable percentage of its turnover where a company had no assessable profits, or assessable profits which were lower than expected in the estimation of the Revenue or where it was difficult to ascertain the profits of a company.

The taxpayer was charged to tax under section 30. Though the Supreme Court upheld the application of section 30 against the taxpayer, it held that it was not in all cases that a taxpayer suffered a loss that the section should be applied. Applying the Mischief rule the Supreme Court held that

Bello JSC recognized ...section 30 of the Companies Income Tax Act as an anti-avoidance mechanism. He did not accord any special place to tax statute interpretation, as conventional wisdom (or folly?) holds. He adopted neither the Literal Rule nor the Strict Constructionist paradigm. He followed the Mischief Rule and the Purposive Approach, two interpretative methodologies uniquely suited, in our view, to tax statute construction. The Mischief Rule is virtually tailor made for tackling tax avoidance, and it an excellent anti-avoidance judicial gadget.

⁷[1960] 1 WLR 830

⁸[1951] 1 KB 102

⁹2 All NTC 203

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Purposive approach

The purposive approach is an extension of the Mischief rule.

This rule seeks to determine the purpose of the law before interpreting the words. In determining the purpose, the courts could resort to extrinsic aids to interpretation such as Hansard (transcripts of parliamentary debates) and other relevant material to understand the legislative history or background to a piece of legislation.

The rule is usually adopted in the Court of Justice of the European Union (CJEU) to interpret national/domestic law to bring them in line with European law. This is as a result of different national laws and the need to mitigate inaccuracies arising from translation.

Example 1 – Pepper v. Hart¹⁰

The House of Lords had to determine whether a teacher of a private school who enjoyed concessionary school fees for the benefit of his children was liable to pay tax for the concession.

After ruling against the teacher, the judges subsequently became aware of parliamentary debate which expressly excluded such concessionary fees from tax. They reconvened, referred to the Hansard, reversed their earlier decision and gave judgment for the teacher.

Example 2 – Attorney General of Lagos State v. Attorney General of the Federation & others¹¹

In this case, the Supreme Court per Uwaifo JSC made a notable pronouncement on purposive approach when he stated as follows:

“...The court is entitled to take account of and use such materials or information which it considers will help it to determine the true intendment of a statutory or constitutional provision in a purposive interpretative approach; This is particularly so of a provision which is either ambiguous or seems to have become controversial.”

In this case, the Supreme Court considered the proceedings of the Constitutional Committee when construing certain provisions of the Nigerian Constitution.

Example 3 – Central Bank of Nigeria v. Doma¹²

Mr. D initiated garnishee proceeding against the Central Bank of Nigeria (CBN) and several other banks after judgment debtors refused to liquidated the judgment sum. The garnishee order was made absolute against the Central Bank of Nigeria (CBN). CBN appealed

Section 84 of the Sheriffs and Civil Process Act requires the consent of the Attorney General of the Federation (AGF) to be sought and obtained before an order nisi is made where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity.

CBN challenged the order absolute on the ground that it was a public officer so the consent of the AGF should have been obtained. In resolving the appeal, the court applied the purposive approach holding that the purpose of Section 84 was only to give prior knowledge to the AGF that funds will be used to settle judgement debts. In this appeal, CBN was not holding the money as a public officer but as a banker to the judgment debtors.

¹⁰[1992] UKHL 3

¹¹[2003] 6 S.C. (Pt. 1) 24

¹²

Rules of Language

Rules of language are usually in form of Latin maxims. They can be applied to interpret laws and other legal documents. They are adopted by courts the world over and are reliable aids to interpretation. Some of the most commonly applied rules of language are discussed in the following chapters.

Ejusdem generis rule

Noscitur a sociis rule

Expressio unius est exclusio alterius

Contra fiscum rule

Contra proferentum rule

Generalia specialibus non derogant

Ut res magis valeat quam pereat

Lex non cogit impossibilia rule

The latest in time rule



5

Ejusdem generis rule

The phrase literally means 'of the same kind or nature'.

This rule demands that where specific words are followed by a general expression, the general expression is limited to the shared characteristics of the specific words even though the general expression may ordinarily or typically have a much broader meaning.

However, the rule is not to be applied where the context manifests a contrary intention or where the general word follows a single specific word.

Example 1 – Powell v Kempton Park¹³

The Betting Act 1853 made it an offence to keep a house, office, room or other place for the purposes of betting. The House of Lords had to decide if the statute applied to Tattersall's enclosure (an outdoor ring/area).

The court applied the ejusdem generis rule and held that the other items mentioned in the statute related to indoor places whereas Tattersall's enclosure was outside. Thus no offence was committed.

Example 2 – McBoyle v United States¹⁴

The Appellant was convicted under the National Motor Vehicle Theft Act 1919 for stealing an airplane and moving it across State lines. The Act defined 'motor vehicle' to include 'an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails'.

He appealed that an airplane was not within the definition of a motor vehicle.

The court, applying the ejusdem generis rule, allowed the appeal and quashed the conviction. The court also applied the purposive approach by considering debates in Congress in answering the question that an airplane was not designed for running on rails. Airplanes were not included in the debates.

Example 3 – Jammal Steel Structures v African Continental Bank Ltd.¹⁵

The company defaulted in the repayment of an over-draft facility granted by the bank. The bank commenced an action to recover the debt at the State High Court. The High Court overruled the company's objection challenging the jurisdiction of the High Court to hear the action. The company had argued that the Federal Revenue Court (FRC) had exclusive jurisdiction.

On appeal, the Supreme Court, in deciding whether the FRC had exclusive jurisdiction interpreted banking, foreign exchange, currency or other fiscal measures" in section 7(1)(b)(iii) of the FRC Act. The Court held that the words "other fiscal measures" must be construed ejusdem generis with the words "banking", "foreign exchange" and "currency" which were objects within the exclusive legislative competence of the Federal Government.

Therefore, other fiscal measures could not have contemplated normal banking transactions / relationships between a bank and its customers. For this reason, the High Court rightly exercised jurisdiction over the suit.

¹³[1897] 2 QB 242

¹⁴283 U.S. 25

¹⁵[1973] All NLR (Pt.1) 222

6

Noscitur a sociis rule

Noscitur a sociis literally means 'it is known by its associates/company it keeps'. It is broader in scope than the ejusdem generis rule.

This rule of language implies that the meaning of an unclear word may be known from other accompanying words. That is, the meaning of an obscure word or phrase in a statute may be ascertained by reference to the meaning of words or phrases surrounding it. Furthermore, the meaning of a term may be enlarged or restricted by referring to the object of the whole clause in which it is used.

Example 1 – London Drugs Ltd. v. Truscan Realty Ltd¹⁶

The British Columbia Supreme Court had to give meaning to the word "supermarket" but stated as a "food supermarket"

It held that the wording which accompanies the words 'food supermarket' indicates that food supermarket in the lease means a supermarket limited to the selling of items of food.

Example 2 – Foster v Diphwys Casson Slate Company¹⁷

The Metalliferous Mines Regulation Act prohibited gunpowder from being carried into mines except it was in a case or canister.

The Defendant carried gunpowder into a mine in linen bags. The question arose whether the bags were included in the definition of 'case or canister'

Applying the noscitur a sociis rule, it was held that the bag could not have been within the statutory definition, because parliament's intention was referring to a case or container of the same strength as a case or canister.

Example 3 – Garba v. Federal Civil Service Commission¹⁸

After a fire incident in which two people died, the Appellant along with 19 other firefighters present at the scene was arrested, charged with murder of the two men. The Appellant was subsequently interdicted.

He challenged the interdiction. However, before judgment the Respondent brought an application based on section 3(3) of a new legislation – the Public Officers (Special Provisions) Decree No. 17 of 1984 – that the court could not hear the case.

Section 3(3) provides that *"No civil proceedings shall lie ... in any court ... in respect of any act, matter or thing done or purported to be done ... under this Decree"*.

In interpreting the phrase "no civil proceedings", the Supreme Court applied the noscitur a sociis rule to hold that the phrase should not be interpreted in general terms but must be qualified by acts done under the Decree. Therefore, since the case was filed prior to the Decree, the filing was not an act done under the Decree so the court could validly hear the case.

¹⁶[1988] 3 RPR (2d) 60

¹⁷[1887] 18 QBD 428

¹⁸[1988] NWLR (Pt.71) 449

7

Expressio unius est exclusio alterius

This Latin maxim literally means the 'expression of one thing is the exclusion of the other'.

The idea behind this rule is that an exclusion of a certain item, object or thing may be inferred or implied where a statute expressly mentions specific items, objects or things. The rationale behind the rule is that had the legislature intended to include a particular thing in a statute, it would have referred to that thing expressly.

Example 1 – Sign on a lavatory door

The 'men' sign on the door of a restroom excludes 'women' from using the particular restroom.

Example 2 – Tempest v. Kilner¹⁹

A statute required that contracts for the sale of 'goods, wares and merchandise' of 10 pounds or more had to be evidenced in writing. The court had to determine whether this law applied to a contract for the sale of 'stock and shares'.

The court held that they did not apply as stocks and shares were not mentioned in the statute.

Example 3 – R v. Inhabitants of Sedgely²⁰

A statute raised taxes on 'lands, houses and coalmines'. The question before the court was whether this included limestone mines.

The court held that it did not apply to limestone mines as these were not specifically mentioned nor did the statute suggest that it would apply to other types of mines.

Example 4 – NB Plc v. Abia State Board of Internal Revenue²¹

The 1996 amendment to the Personal Income Tax Decree 1993 deleted "gratuities" from the list of taxable income in charging section.

In 2017, the Revenue imposed tax on gratuities of the former employees of the company. The company challenged the Revenue's decision to impose the tax because the express mention of the other types of income means "gratuities" are excluded from tax.

The Tax Appeal Tribunal agreed with the company stating that "since gratuity has been deleted or excluded from the charging section, it is safe to apply the maxim of expressio unius est exclusio alterius."

¹⁹[1846] 3 CB 249

²⁰[1831] 2 B & Ald 65

²¹Unreported. Delivered 20th June, 2019

8

Contra proferentum rule

Contra proferentem is a Latin phrase which literally means 'against the one bringing forth' or 'against the offeror'. It can also be loosely interpreted to mean 'interpretation against the draftsman'.

The rule primarily applies to interpretation of documents. When a term is included in a contract at the insistence of one of the contracting parties, any ambiguity in that term should be construed against the party who insisted on its inclusion or the party who stands to benefit from the ambiguity.

However, the rule is also applicable, with the same effect, when interpreting statutes – in which case they are interpreted against the drafter of the law.

The rationale for the rule is to encourage drafters of contracts (or legislation) to apply diligence and seek explicit clarity and avoidance of ambiguity and to carefully consider foreseeable circumstances during the drafting process.

The rule helps to mitigate unfairness by applying the interpretation that gives benefit of doubt to the party against whom the contract (or legislation) is sought to be enforced.

Example

The examples under the Contra fiscum rule are applicable to this rule.

It held that the wording which accompanies the words 'food supermarket' indicates that food supermarket in the lease means a supermarket limited to the selling of items of food.

9

Contra fiscum rule

The complete expression reads in dubio contra fiscum.

It means 'when in doubt, do not tax'. With respect to interpretation, it simply means that when there is any ambiguity in tax legislation, the ambiguous provision must be interpreted in a manner that favours the taxpayer.

An extension to this principle is that where a provision is capable of two reasonable constructions, the court will adopt the construction that imposes the smaller burden on the taxpayer. The exception to this is where the particular provision is an anti-avoidance provision in which case a broader interpretation should be given.

Example 1 – NB Plc v. Abia State Board of Internal Revenue²²

The 1996 amendment to the Personal Income Tax Decree of 1993 deleted "gratuities" from the charging section the list of taxable income. However, one of the Schedules exempted gratuities up to N100,000. Therefore, both the charging section and the Schedule are inconsistent.

In 2017, the Revenue, relying on the Schedule, imposed tax on gratuities of the former employees of the company. The company challenged the Revenue's decision because both provisions were ambiguous and should be interpreted in favour of the taxpayer.

The Tax Appeal Tribunal applied the contra fiscum rule and gave judgment for the company.

Example 2 – Badenhorst v. CIR²³

A notable pronouncement by a South African court is to the effect that:

In the case of ambiguity arising during the interpretation of fiscal legislation, the contra fiscum rule will be applicable. Should a taxing statutory provision reveal an ambiguity, the ambiguous provision must be interpreted in a manner that favours a taxpayer. When a taxing provision is reasonably capable of two constructions, the court will adopt the construction that imposes a smaller burden on the taxpayer.

Example 3 – AB CC v. CSARS²⁴

The taxpayer, involved in construction of low cost housing, had claimed a VAT refund on services it had charged and remitted VAT to the Revenue authority. It argued that its services fell within the Housing Subsidy Scheme which were subject to zero rate of VAT.

The Revenue objected.

The court found that there was no clear indication in the laws of whether the services provided by the taxpayer fell within the Housing Subsidy Scheme. The court also found that there was no consistency among various government departments on the interpretation of housing subsidy scheme. It therefore held that on the basis of conflicting interpretations, the law should be interpreted in favour of the taxpayer and ordered the VAT refund.

²²Unreported. Delivered 20th June, 2019

²³1955 (2) SA 207 (N) 215

²⁴[2014] ZATC 4 (9 December 2014)

10

Generalia specialibus non derogant

This maxim literally means 'The general does not derogate from the specific.'

The application of this rule can take a variety of forms. The first is in relation to the doctrine of implied repeal. Implied repeal means that where a latter law is in conflict with a former, the latter is presumed to have repealed the former. However, the generalia specialibus non derogant rule of interpretation is an exception to the doctrine of implied repeal.

Accordingly, there is no implied repeal of an earlier legislation containing specific provisions on a subject by a latter legislation containing general provisions on the same subject. The effect of this is that the specific legislation is an exception to the more general legislation.

In the second instance, where a statute contains both general and specific provisions on a subject, the specific provisions will override the more general provisions.

Example 1 – Effort Shipping Company Ltd v Linden Management²⁵

The House of Lords was invited to consider whether a shipper of goods would be liable for carrying dangerous goods on a ship. The goods in question contained pests which caused damage to other goods on the ship and some delay.

The court considered 2 provisions of the Hague Rules – one specifically referring to liability of persons shipping dangerous goods (Article IV r. 6) and the other referring to general liability of a shipper (Article IV r. 3).

The court applied the rule of interpretation and held that since the goods in question were dangerous goods Article IV r. 6 would override the other provision.

Example 2 – Sections 4 and 5 of Personal Income Tax Act (PITA)

Section 4 of PITA applies to valuation of all employment related benefits except living accommodation which valuation is specifically dealt with by Section 5.

Applying the rule on valuation of accommodation, Section 5 would override Section 4.

Example 3 – Vascumi Investment Nigeria Ltd v. Muktar Ladan²⁶

A minority action was filed by way of a petition at the Federal High Court [FHC] under the Civil Procedure Rules 2009.

An objection was taken against the petition that, amongst other things, the suit was not initiated in the proper form. It should have been initiated by originating summons (and not by a petition) under the Companies and Allied Matters Act 2004 [CAMA] and the Companies Proceeding Rules 1992 [CPR]. The High Court overruled the objection holding that the Civil Procedure Rules, being the principal legislation regulating civil actions before the FHC, were superior to both the CAMA and CPR.

However, on appeal, the Court applying the generalia specialibus non derogant rule held that while the Civil Procedure Rules generally applied to all proceedings, the CPR were specific provisions governing applications under the CAMA and as such should overrule the operations of the Civil Procedure Rules in this instant.

²⁵[1998] UKHL 1

²⁶(2016) LPELR-40516(CA)

11

Ut res magis valeat quam pereat

This Latin expression means 'that the thing may rather have effect than be destroyed'. It is also referred to as the principle of effectiveness.

The intent of this rule is that courts are bound to interpret or give meaning to any statute. The rule is that a construction that would render a provision ineffective should be avoided.

Therefore, courts are enjoined to look at the substance of a law and not its form. The fact that a provision seems difficult to understand does not make the provision useless. An enactment must be construed in such a way as to implement, rather than defeat the legislative purpose. The rule requires inconsistencies in a statute to be reconciled, as far as it is possible.

Example 1 –Fawcett Properties Ltd v. Buckingham County Council²⁷

Lord Denning explained the rules as follows:

But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity.

Example 2 - Whitney v. Inland Revenue Commissioners²⁸

Lord Dunedin said:

A statute is designed to be workable, and the interpretation - thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.

Example 3 - Federal Civil Service Commission v Laoye (1989)²⁹

Mr. Laoye was dismissed from the Federal Civil Service Commission. He successfully challenged his dismissal on the grounds that the Civil Service Rules were not complied with and he was denied his right to fair hearing.

On further appeal, the Supreme Court relied on the Civil Service Rules and found that the numbering of paragraphs in the Rules were inconsistent given that the applicable provision – paragraph 04107 –contained wrong wording. The right wording was inserted against the wrong paragraph – 04108. Applying the Rules as they were would have rendered the Rules useless.

However, the apex court held:

It is accepted that where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness (or error?) or ignorance of the law.... Besides, it has always been accepted that a statute should be so construed as to achieve the object it was intended to serve. This is the basis of the construction ut res magis valeat quam pereat.

²⁷[1960] 3 All ER 503

²⁸[1926] AC 37

²⁹[1989] 2 NWLR (Pt.106) 652

12

Lex non cogit impossibilia rule

This maxim means that the law does not compel a man to do that which is impossible. It is also known as the doctrine of impossibility of performance.

This rule excuses a party from any duty or obligation imposed on him by law which he cannot possibly perform without any fault of his and over which he has no remedy.

The law should be interpreted in a manner which makes it possible for a party to adhere to the provisions of that legislation.

Example 1 – CIT v Prem Kumar³⁰

In this case, the court was faced with the question of whether a taxpayer can be in default for not declaring the amount of capital gain on sale of land when the amount of compensation was yet to be determined by a land assessor.

Quoting the maxim, the court held that requiring a taxpayer to file a proper and complete return would be impossible in such cases where a land assessor was yet to determine value of land.

Example 2 – Action to be taken on a public holiday

Where a statute provides that an act be done on a particular day and that day happens to fall on a public holiday such that a person cannot carry out that act on that day, it would be a violation of the lex non cogit impossibilia rule to interpret that law such that a penalty is imposed on that person for failing to carry out the act on that day.

Example 3 – Attorney General of Lagos State v. Mamman Keita³¹

Mr. K was remanded in police custody for 10 years without trial for manslaughter. Mr. K was robbed and stabbed by the deceased. After struggling with the deceased, Mr. K overpowered him, retrieved the weapon from him and stabbed him back. The deceased died a couple of days later.

The High Court granted Mr. K judgment in the sum of N7 million in a fundamental right enforcement action. The High Court held that the Attorney General (AG) was liable for the prolonged detention. In an appeal, the AG argued that it had no knowledge of Mr. K's plight as the police which arrested and remanded him did not inform the AG's office. The Court of Appeal held that it was acting too much of the AG to intervene when he was not aware of Mr. K or his situation. Giving judgment for the AG, the Court quoting the case of *Harding v Price*³², held

Unless a man knows that the event has happened, how can he carry out the duty imposed? If the duty be to report, he cannot report something of which he has no knowledge Any other view would lead to calling on a man to do the impossible.

³⁰[2008] 214 CTR 0452

³¹(2016) LPELR-40163(CA)

³²[1948] 1 All E.R. 283

13

The latest in time rule

Where there are two conflicting statutes, the one enacted later in time prevails over the previous one. This is known as the later in time rule. It is presumed that the legislators would have corrected any error in the previous statute with the enactment of the later legislation.

Before this rule would apply, both statutes must be plainly inconsistent and repugnant that effect cannot be given to both of them at the same time.

This rule also can also be applied to conflicting decisions of appellate courts. That is, where there are conflicting decisions of an appellate court on the same issue, all lower courts are bound to rely on the latter decision. This is because there is a presumption that the latter decision would have considered the earlier decision and decided not to follow it.

However, this rule is usually subject to the *generalia specialibus non derogant* rule.

Example 1 – Akintokun v. LPDC (2014)

The Supreme Court held thus:

I think, the law is that where a later enactment does not expressly amend [whether textually or indirectly] an earlier enactment, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication, amends the earlier so far as is necessary to remove the inconsistency between them.

This is because, if a later Act cannot stand with an earlier one, parliament, generally, is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid. If the entirety of the earlier enactment is inconsistent, the effect amounts to an implied repeal of it. Similarly, a part of the earlier enactment may be regarded as impliedly repealed where it cannot stand with the later. An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment. The Latin maxim puts it that LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT [later laws abrogate prior contrary laws].

Example 2 – Ellen Street Estates Ltd v Minister for Health (1934)

The UK Parliament enacted the Housing Act of 1925 which provided compensation for property compulsorily acquired. Section 46 was inconsistent with Section 7 of the Acquisition of Land (Assessment of Compensation) Act 1919.

The court held that Parliament can alter legislation by either expressly repealing or enacting inconsistent legislation which would override the former.

Conclusion

There are other rules and principles to interpreting tax laws. However, mastery of these fundamental rules will help practitioners understand the true intent of tax laws and help to build compelling arguments and cases.



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