

The Purposive Approach and Interpretation of Law Courts

2 pages | 394 words

There are many advantages to the purposive approach. Firstly, it gives effect to Parliaments intentions and avoids injustice, so the judges can avoid obvious absurdities and injustices so enables them to comply with Parliamentary sovereignty by doing what Parliament would have wanted; even though it's ignoring the clear meaning of the words Parliament used. For example, in *Coltman V Bibby Tankers* when they had to interpret the word 'equipment'. Secondly, it give flexibility and can fill in the gaps, so looks to the spirit of the law rather than to the letter, therefore leaning towards a potentially just approach. However words can be ommitted/added if the court were certain of the act, if it was draftsmen/parliaments mistake that the act was written wrong, or that the judges were sure of the substance of the provision Parliament would have made. For example in *Inco Europe Ltd. v First Choice Distribution* 2000 H of L.

Thirdly, it allows for new technology/developments, and also allows the judges to keep the legislation in line with modern thinking and new technological developments, for example in *R (Quintaville) v Sec of State for Health* 2002. The purposive approach also allows our judges to comply with the Human Rights Act 1998. Under s3 of this Act, judges must try to reach an interpretation that doesn't breach human rights. A literal interpretation might reach a result that breached human rights. Instead, provided a different interpretation doesn't go against the whole purpose of the legislation, the judges can interpret the Act more creativley (*Ghaidan v Godin-Mendoza*).

The last advantage is that the purposive approach is consistent with the European approach. So it allows the judges to fulfil our obligations under EU Law. (*Bulmer v Bolinger*)

There are also many disadvantages to the purposive approach. Firstly, it involves too much judicial law making as it allows them too much freedom as seen in *Royal College of Nursing v DHSS* 1981, the judges weren't interpreting the Act but 'redrafting it with a vengeance'. Secondly, it creates uncertainty as it is subjective law making and is difficult to anticipate when judges will decided to use the purposive approach (*Bentham*). It isn't possible to know for sure what result using the purposive approach might lead to (*Yemshaw*). Finally, it is difficult to discover Parliaments intentions. It relies of looking for Parliaments purpose, yet this may not even exist.

Purposive Interpretation In Law

Sarah Worthington



Purposive Interpretation In Law:

Purposive Interpretation in Law Aharon Barak, 2005 This book presents a comprehensive theory of legal interpretation by a leading judge and legal theorist Currently legal philosophers and jurists apply different theories of interpretation to constitutions statutes rules wills and contracts Aharon Barak argues that an alternative approach purposive interpretation allows jurists and scholars to approach all legal texts in a similar manner while remaining sensitive to the important differences Moreover regardless of whether purposive interpretation amounts to a unifying theory it would still be superior to other methods of interpretation in tackling each kind of text separately Barak explains purposive interpretation as follows All legal interpretation must start by establishing a range of semantic meanings for a given text from which the legal meaning is then drawn In purposive interpretation the text s purpose is the criterion for establishing which of the semantic meanings yields the legal meaning Establishing the ultimate purpose and thus the legal meaning depends on the relationship between the subjective and objective purposes that is between the original intent of the text s author and the intent of a reasonable author and of the legal system at the time of interpretation This is easy to establish when the subjective and objective purposes coincide But when they don t the relative weight given to each purpose depends on the nature of the text For example subjective purpose is given substantial weight in interpreting a will objective purpose in interpreting a constitution Barak develops this theory with masterful scholarship and close attention to its practical application Throughout he contrasts his approach with that of textualists and neotextualists such as Antonin Scalia pragmatists such as Richard Posner and legal philosophers such as Ronald Dworkin This book represents a profoundly important contribution to legal scholarship and a major alternative to interpretive approaches advanced by other leading figures in the judicial world

Human Dignity Aharon Barak, 2015-01-29 An analytical study of human dignity as the humanity of a person as a constitutional value and a constitutional right [Interpreting Discrimination Law Creatively](#) Alice Taylor, 2023-08-24 This book explores the judiciary s role in achieving substantive equality utilising statutory discrimination law The normative literature suggests that to eliminate discrimination courts have to adopt a more substantive interpretation of discrimination laws but the extent to which this has occurred is variable The book tackles the problem by exploring the idea that there needs to be a creative interpretation of discrimination law to achieve substantive results The author asks is a creative interpretation of statutory discrimination law consistent with the institutional role of the judiciary The author takes a comparative approach to the interpretation of non discrimination rights by considering the interpretation of statutory discrimination law in the UK Canada and Australia The book explores the differences in doctrine that have developed by considering key controversies in discrimination law Who does discrimination law protect What is discrimination When can discrimination be justified The author argues that differences in the case law in each jurisdiction are explained by the way in which the appropriate role for the courts in rights review norm elaboration and institutional competence is conceived in each

studied jurisdiction It provides valuable reading for academics policy makers and those researching discrimination law and statutory human rights

The Politics of the Common Law Adam Gearey, Wayne Morrison, Robert Jago, 2013-05-02 The Politics of the Common Law offers a critical introduction to the legal system of England and Wales Unlike other conventional accounts this revised and updated second edition presents a coherent argument organised around the central claim that contemporary postcolonial common law must be understood as an articulation of human rights and open justice The book examines the impact of the European Convention and European Union law on the structures and ideologies of the common law and engages with the politics of the rule of law These themes are read into normative accounts of civil and criminal procedure that stress the importance of due process The final sections of the book address the reality of civil and criminal procedure in the light of recent civil unrest in the UK and the growing privatisation of public services The book questions whether it is possible to find a balance between the requirements of economics and the demands of justice

The Judge in a Democracy Aharon Barak, 2009-01-10 Whether examining election outcomes the legal status of terrorism suspects or if or how people can be sentenced to death a judge in a modern democracy assumes a role that raises some of the most contentious political issues of our day But do judges even have a role beyond deciding the disputes before them under law What are the criteria for judging the justices who write opinions for the United States Supreme Court or constitutional courts in other democracies These are the questions that one of the world's foremost judges and legal theorists Aharon Barak poses in this book In fluent prose Barak sets forth a powerful vision of the role of the judge He argues that this role comprises two central elements beyond dispute resolution bridging the gap between the law and society and protecting the constitution and democracy The former involves balancing the need to adapt the law to social change against the need for stability the latter judges ultimate accountability not to public opinion or to politicians but to the internal morality of democracy Barak's vigorous support of purposive interpretation interpreting legal texts for example statutes and constitutions in light of their purpose contrasts sharply with the influential originalism advocated by U S Supreme Court Justice Antonin Scalia As he explores these questions Barak also traces how supreme courts in major democracies have evolved since World War II and he guides us through many of his own decisions to show how he has tried to put these principles into action even under the burden of judging on terrorism

Universals of Legal Reasoning by Judges Thomas Lundmark, 2024-03-28 Universals in Legal Reasoning by Judges explores and expounds the usage of rules to justify judicial decisions It argues for judicial transparency and candour to enhance the persuasiveness and efficacy of judicial precedents to foster democratic legitimacy and to permit political accountability

The Oxford Handbook of International Tax Law Florian Haase, Georg Kofler, 2023-10-13 International Tax Law is at a turning point Increased tax transparency the tackling of Base Erosion and Profit Shifting BEPS the reconstruction of the network of bilateral tax treaties the renewed discussion about a fair and efficient allocation of taxing rights between States in a global digitalized economy and the bold push for minimum corporate

taxation are some expressions of this shift This new era also demonstrates the increased influence of international standard setters such as the OECD the UN and the EU Each of these developments alone has the potential of being disruptive to the traditional world of international tax law but together they have the potential to reshape the international tax system The Oxford Handbook of International Tax Law provides a comprehensive exploration of these key issues which will shape the future of tax law Divided into eight parts this handbook traces the history of international tax law from its earliest days until the present including reflections on the developments that have characterized the last one hundred years The second section places tax law within the broader international context considering how it relates to public and private international law as well as corporate trade and criminal law Sections three and four consider key legal principles and issues such as regional tax treaty models OECD dispute resolution and transfer pricing versus formulary apportionment Subsequent analysis places these issues within their European and cross border contexts providing an assessment of the role of the ECJ state aid and cross border VAT Section seven broadens the scope of this analysis asking how trends in recent major economies and regions have helped shape the current outlook The final section considers emerging issues and the future of international tax law With over sixty authors from 28 different countries the Oxford Handbook of International Tax Law is an invaluable resource for scholars academics and practitioners alike

Stem Cell Research and the Collaborative Regulation of Innovation

Sarah Devaney, 2013-12-13 Hopes are high that stem cell SC research will lead to treatments and cures for some of the most serious diseases affecting humankind today SC science has been used in a treatment setting in the replacement of patients windpipes and in restoring sight to patients who were blind in one eye and in future it is hoped that when the body is injured it will be able to be stimulated to produce those types of SCs necessary to repair the particular damage caused In the meantime research into specific treatments for a wide range of serious conditions is being undertaken including Alzheimer s disease cancer and diabetes The book considers the regulatory governance of stem cell research setting out a readily understandable account of the science and the challenges it poses for regulators as the research is increasingly being clinically applied It provides a critical account of those elements of a regulatory system which will be required for any jurisdiction aiming to facilitate innovative and productive SC research while maintaining appropriate ethical and legal controls The book addresses the specific failings in the current regulatory approach to SC research in the UK and goes on to look at the regulatory approaches in the US The book systematically analyses the roles and responsibilities of the three key participants who collaborate in this process regulators scientists and tissue providers arguing that a regulatory system which fails to recognise and facilitate the vital role which each of these three groups plays runs the risk of impairing the chances of the hopes for SC research being realised The book places a particular emphasis on ensuring that those who contribute their bodily tissues to this endeavour are treated fairly involving a recognition that their tissues are their property

A Modern Treatise on the Principle of Legality in Criminal Law Gabriel Hallevy, 2010-09-09 This book is a scientific treatise on the

principle of legality in criminal law It explores the relation between the principle of legality and the general theory of criminal law and contains definite rules emphasized for practitioners as well as academia *Commercial Law and Commercial Practice* Sarah Worthington, 2003-12-31 This book contains essays by legal experts which aim to prompt a critical and constructive reassessment of current commercial law and its practices **The 'War on Terror' and the Framework of International Law** Helen Duffy, 2015-04-09 Helen Duffy's analysis of international law and practice in relation to terrorism and counter terrorism provides a framework for analysing the lawfulness of the many legislative policy and judicial developments which have proliferated since 9 11 Among the many specific issues she addresses are targeted killings and the death of Osama bin Laden detentions including Guantanamo Bay sanctions regimes surveillance extraordinary renditions the prohibition on association or support for terrorism and the evolving preventive role of criminal law She also considers the unfolding responses to political and judicial wrongs committed in the war on terror such as the impact of the courts on human rights protection While exploring areas of controversy uncertainty and flux she questions post 9 11 allegations of gaping holes inadequacies or transformation in the international legal order and concludes by highlighting characteristics of the war on terror and questioning its longer term implications Insurance in European VAT Marta Papis-Almansa, 2016-11-30 Insurance constitutes a significant part of the financial services sector and is one of the foundations of modern economy and society In the design of tax laws however whether and how to tax insurance is a complex issue that has become particularly controversial in the area of value added tax VAT In the European Union as in most of the world insurance is exempt from VAT but New Zealand and Australia do not follow this practice Given that New Zealand's simple comprehensive goods and services tax GST called the world's purest value added tax and its modified Australian version do not appear to suffer from the shortcomings in efficiency and effectiveness that plague European VAT a comparison of the two systems is in order This book is not only the first comparative in depth study of the treatment of insurance in the two systems but also the first comprehensive legal research devoted to the treatment of insurance in EU VAT published in English Among the underlying issues and topics treated by the two systems covered are the following who has a right to deduct input VAT in relation to supplies inherent in insurance arrangements and to what extent what constitutes a supply of insurance and consideration for such a supply what transactions fall within the scope of the VAT Directive's exemption for insurance and drawing a line between insurance and saving The analysis is grounded in a methodology in which concepts of European VAT are compared with concepts performing the same function in the Australian and New Zealand GST laws The author concludes with proposals for reform in EU VAT in the light of experience in these two major non EU countries Given that it has been proven that exemptions from VAT such as insurance cause a significant number of economic distortions and inefficiencies this study represents a major contribution to a topical debate in European VAT law It will be welcomed by taxation authorities interested policymakers practitioners and scholars not only in Europe but worldwide **Beneficial**

Ownership in International Taxation Kuźniacki, Błażej, 2022-08-12 This authoritative book provides a structural global view of evolving judicial and doctrinal trends in the understanding of beneficial ownership in international taxation Błażej Kuźniacki presents a route towards an international autonomous meaning of beneficial ownership while also offering a comprehensive explanation of the divergent understandings and tax policy arguments underpinning its continuing ambiguity

GAARs and Judicial Anti-Avoidance in Germany, the UK and the EU Markus Seiler, 2016-06-28 GAARS the better insight into a country's tax system In a post BEPS tax world and in times of an ever increasing need for tax revenue policy makers are more willing than ever to tighten or adopt General Anti Avoidance Rules GAARs A GAAR is typically a broad principle based rule trying to establish the borderline between abuse and use of a law thereby addressing the phenomenon that as long as there have been taxes persons have been trying to reduce their tax bills This award winning book compares the GAARs and judicial anti avoidance approaches of Germany the UK and the EU It gives a deep insight into the predominant legal traditions of the Western World comprehensively analyses case law and offers unique perspectives on tax law across jurisdictions This book reveals that there is no other feature of tax law that provides a better insight into a country's tax system than its anti avoidance rules GAARs and their historical background reveal so much about judicial perspectives on taxation and legal interpretation citizens tax morale drafters inclinations for technical or principled drafting or legislators willingness to confront politically sensitive issues Understanding the role of GAARs ultimately also reveals whether they are a suitable means to counteract tax avoidance effectively The Book is the winner of the Wolfgang Gassner Wissenschaftspreis 2016

EU Law Gerard Conway, 2015-07-03 EU Law provides a comprehensive examination of the law of the European Union in two distinct parts covering the institutions structure and processes of the EU as well as the substantive law as enacted by the Lisbon Treaty Beginning by examining its origins Conway locates EU Law within both an international and a domestic legal context He then explores the evolution of EU Law before providing a clear and accessible account of the structure and internal and international workings of the EU and the special role of the European Court of Justice The second half of the book explores the Four Freedoms of Goods Workers Capital and Movement and provides a detailed account of Competition Law and the Economic and Social contexts The Routledge Spotlights series brings a modern contemporary approach to the core curriculum for the LLB and GDL which will help students Move beyond an understanding of the law Refine and develop the key skills of problem solving evaluation and critical reasoning which are essential to exam success Discover sources and suggestions for taking your study further By focusing on recent case law and real world examples Routledge Spotlights will help you shed light on the law understand how it operates in practice and gain a unique appreciation of the contemporary context of the subject Companion Website This book is supported by a range of online resources developed to support your learning keep you up to date and to help you prepare for assessments including Key Case Flashcards to aid with recall Quizzes and practice questions [Crime and Punishment in Indonesia](#) Tim Lindsey, Helen

Pausacker,2020-12-14 Indonesia s criminal law system faces major challenges Despite the country s transition to democracy both the Criminal Code and the Criminal Procedure Code are badly out of date the former only superficially changed since colonial times and the latter remaining as it was under Soeharto s authoritarian New Order regime Law enforcement officers and judges are widely seen as corrupt or incompetent and new laws including new Islamic laws passed at the regional level often contradict the Criminal Code and national statutes including human rights laws This book based on extensive original research by leading scholars in the field provides an overall assessment of the state of criminal law law enforcement and penal policy in Indonesia considers in depth a wide range of specific areas of criminal law and discusses recent efforts at reform and their prospects for success Elements of Legislation Neil Duxbury,2013 Neil Duxbury combines analytical legal philosophy and legal history to explore the concept of legislation *Reforming Age Discrimination Law* Alysia Blackham,2022 This book offers a roadmap for the future development of age discrimination law in common law countries to better address workplace ageism It critically considers how the suggested four fold model of reform might address the limits of existing laws and the practical measures necessary to ensure their success **The Authority of Law in the Hebrew Bible and Early Judaism** Jonathan Vroom,2018-09-11 In The Authority of Law in the Hebrew Bible and Early Judaism Vroom identifies a development in the authority of written law that took place in early Judaism Ever since Assyriologists began to recognize that the Mesopotamian law collections did not function as law codes do today as a source of binding obligation scholars have grappled with the question of when the Pentateuchal legal corpora came to be treated as legally binding Vroom draws from legal theory to provide a theoretical framework for understanding the nature of legal authority and develops a methodology for identifying instances in which legal texts were treated as binding law by ancient interpreters This method is applied to a selection of legal interpretive texts Ezra Nehemiah Temple Scroll the Qumran rule texts and the Samaritan Pentateuch Law and the Culture of Israel Menachem Mautner,2011-01-27 For half a century a fierce struggle to shape Israeli culture has been waged in its legal system Should Israel be a secular liberal state or governed by traditional Jewish law and culture In this book Menachem Mautner tells the fascinating story of the political struggles to control Israeli law and through it the culture of Israel itself

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Table of Contents Purposive Interpretation In Law

1. Understanding the eBook Purposive Interpretation In Law
 - The Rise of Digital Reading Purposive Interpretation In Law
 - Advantages of eBooks Over Traditional Books
2. Identifying Purposive Interpretation In Law
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Purposive Interpretation In Law
 - User-Friendly Interface
4. Exploring eBook Recommendations from Purposive Interpretation In Law
 - Personalized Recommendations
 - Purposive Interpretation In Law User Reviews and Ratings
 - Purposive Interpretation In Law and Bestseller Lists
5. Accessing Purposive Interpretation In Law Free and Paid eBooks
 - Purposive Interpretation In Law Public Domain eBooks
 - Purposive Interpretation In Law eBook Subscription Services
 - Purposive Interpretation In Law Budget-Friendly Options
6. Navigating Purposive Interpretation In Law eBook Formats

- ePub, PDF, MOBI, and More
- Purposive Interpretation In Law Compatibility with Devices
- Purposive Interpretation In Law Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Purposive Interpretation In Law
 - Highlighting and Note-Taking Purposive Interpretation In Law
 - Interactive Elements Purposive Interpretation In Law
- 8. Staying Engaged with Purposive Interpretation In Law
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Purposive Interpretation In Law
- 9. Balancing eBooks and Physical Books Purposive Interpretation In Law
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Purposive Interpretation In Law
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Purposive Interpretation In Law
 - Setting Reading Goals Purposive Interpretation In Law
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Purposive Interpretation In Law
 - Fact-Checking eBook Content of Purposive Interpretation In Law
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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