

# **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

**Kuźniacki, Błażej**



## **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

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**Populist Challenges to Constitutional Interpretation in Europe and Beyond** Fruzsina Gárdos-Orosz, Zoltán Szenté, 2021-05-03 This book explores the relationship between populism or populist regimes and constitutional interpretation used in those regimes The volume discusses the question of whether contemporary populist governments and movements have developed or encouraged new and specific constitutional theories doctrines and methods of interpretation or whether their constitutional and other high courts continue to use the old traditional interpretative tools in constitutional adjudication The book is divided into four parts Part I contains three chapters elaborating the theoretical basis for the discussion Part II examines the topic

from a comparative perspective representing those European countries where populism is most prevalent including Austria Croatia the Czech Republic Greece Hungary Italy Poland Romania Spain and the United Kingdom Part III extends the focus to the United States reflecting how American jurisprudence and academia have produced the most important contributions to the theory of constitutional interpretation and how recent political developments in that country might challenge the traditional understanding of judicial review This section also includes a general overview on Latin America where there are also some populist governments and strong populist movements Finally the editors closing study analyses the outcomes of the comparative research summarizing the conclusions of the book Written by renowned national constitutional scholars the book will be essential reading for students academics and researchers working in Constitutional Law and Politics Chapter 1 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4 0 license

*The Foundations of the Aarhus Convention* Emily Barritt, 2020-10-29 This important new monograph offers an innovative new analysis of the Aarhus Convention Environmental law is dense with monolithic concepts from environmental democracy to intergenerational justice from sustainable development to stewardship Each concept generates its own mythology about what environmental law should aspire to Sometimes these ideas become so big that we lose hold of their meaning and therefore what we allude to when we describe environmental law in such terms No more so is this true than in relation to the Aarhus Convention an ambitious instrument of environmental law that promotes public participation and access to justice in relation to the environment Since its inception it has been revered in glowing terms and praised variously for its contribution to citizenship environmental responsibility and democratic legitimacy But how are we to know whether these descriptions are mere puffs or genuine statements about the Convention s character This book digs deep into the foundations of the Aarhus Convention examining its ambitious potential through the lens of three foundational purposes environmental rights democracy and stewardship In so doing it contributes to our understanding both of the Convention and our understanding of three important purposes that inhabit environmental law unravelling and reassembling them to build meaning into our broad brush descriptions

**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

Purposive Interpretation in Law , 2023-10-17

**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

The UNCITRAL Model Law on International Commercial Arbitration Gilles Cuniberti,2022-11-15 This Commentary provides rich and detailed analysis both of the provisions of the UNCITRAL Model Law on International Commercial Arbitration the Model Law and of its implementation including a comparative account of the operation of the Model Law in the numerous jurisdictions which have adopted it throughout the world

**The UNCITRAL Model Law after Twenty-Five Years: Global Perspectives on International Commercial Arbitration** Frédéric Bachand,Fabien Gélinas,2013-08-01 The UNCITRAL Model Law after Twenty Five Years Global Perspectives on International Commercial Arbitration is a celebration of the Model Law s significant contribution to international arbitration law It assesses and evaluates the Model Law s impact on the development of a universal arbitration law for a complex and mobile transnational community of lawyers judges and arbitrators Written from the perspective of counsel arbitrators legislators and judges this collection is bold in its coverage of Model Law practice It considers questions of legislative implementation pre award issues such as the review of arbitral jurisdiction and the production of evidence post award issues such as judicial review of arbitral awards interpretation and harmonization methods and questions of future reform This is one of the only books on the market that considers the application of the UNCITRAL Model Law in both great depth and breadth and from multiple perspectives It provides critical assessments and evaluations of the impact that the Model Law has had after 25 years in various aspects of the arbitral process The issues covered pertain to both substantive and procedural elements theoretical and practical historical and evolutionary The UNCITRAL Model Law after Twenty Five Years Global Perspectives on International Commercial Arbitration adopts a comparative approach and covers practice in nearly all Model Law countries and many others As a seminal critique of the progress that the Model Law has made to date this collection of articles will be of great benefit to judges arbitrators lawyers academics and anyone interested in the future of international commercial arbitration

Law and Outsiders Cian C Murphy,Penny Green,2011-03-16 Law and Outsiders is a collection of 13 essays from leading young scholars covering five important areas of legal scholarship adjudication European law and politics migration vulnerable minorities and legal values

The recurring theme in the volume is the way in which rules and processes are contributing to the creation of twenty first century others in areas such as domestic constitutional systems international security and migration and global human rights discourses The essays are drawn from the second International Graduate Legal Research Conference held at King s College London in June 2008

Judicial Recourse to Foreign Law Basil Markesinis, Jorg Fedtke, 2012-12-06 Accessible and clearly structured this is the first book to include examinations of public and private law in the discussion about access to foreign laws With commentaries by an international collection of leading judges in the field it looks at the practice in a range of countries spread across the globe In jurisprudence an exchange of ideas is essential as there is no monopoly of wisdom Legal convergence is particularly beneficial to both public law as constitution building is done in so many parts of the world and to commercial law where enhanced communication trade and information mean that people have to work more closely together This book examines the theme of judicial mentality and how it helps or hinders recourse to foreign ideas raises and addresses the dangers that accompany comparative law and judicial creativity looks at the practice in America Canada England France Germany Italy Israel South Africa and at the European Court of Justice Ideal for practitioners and academics it is an essential read for those working in or studying jurisprudence at undergraduate or postgraduate level

*Tackling Militant Racism* Peter Jepson, 2020-07-26 This title was first published in 2003 Militant racism is concerned with antagonism and hostility associated with racist activity Within a society it is expressed by material that may stir up racial hatred and or discrimination It can also be seen on the streets and indeed the alleged racist criminality orchestrated by militant gangs After examining the possible causes of militant racism and its effects this book considers the new laws designed to tackle racially motivated crime found in the 1998 Crime and Disorder Act A central theme of the book is the balance between freedom of expression and penalizing racially offensive expression

**Tax Avoidance and the Law** Selina Keesoony, 2022-05-30 Tax Avoidance and the Law is a helpful guide for undergraduate and postgraduate students who want a thorough understanding of this dynamic area of law The book is written in a way which is easy to follow and conveniently summarises complex case law on tax avoidance Tax Avoidance and the Law explores the evolution of the UK s General Anti Abuse Rule It provides a useful comparison with other Western jurisdictions anti avoidance legislation including the United States of America Australia New Zealand South Africa Canada and the EU The underlying theme of the book rests on the notion that the taxpayer s subjective motives intentions or purposes are irrelevant when assessing tax liability The book enables students to gain a good grasp of the fundamental issues in tax avoidance in a clear manner

Drafting Legislation Helen Xanthaki, 2014-10-16 This book constitutes the first thorough academic analysis of legislative drafting By placing the study of legislation and its principles within the paradigm of Flyvberg s phronetic social sciences it offers a novel approach which breaks the tradition of unimaginative past descriptive reiterations of drafting conventions Instead of prescribing rules for legislation it sets out to identify efficacy as the main aim of the actors in the policy legislative and drafting processes and effectiveness as the main

goal in the drafting of legislation Through the prism of effectiveness as synonymous with legislative quality the book explores the stages of the drafting process guides the reader through structure and sections in their logical sequence and introduces rules for drafting preliminary substantive and final provisions Special provisions comparative legislative drafting and training for drafters complete this thorough analysis of the drafting of legislation as a tool for regulation Instead of teaching the reader which drafting rules prevail the book explores the reasons why drafting rules have come about thus encouraging readers to understand what goal is served by each rule and how each rule applies The book is aimed at academics and practitioners who draft or use statutory law in the common or civil law traditions *Elements of Legislation* Neil

Duxbury,2013 Neil Duxbury combines analytical legal philosophy and legal history to explore the concept of legislation

*International Sales Law* Larry A. DiMatteo,2014-02-17 This book brings together the top international sales law scholars from twenty three countries to review the Convention on Contracts for International Sale of Goods CISG and its role in the unification of global sales law It reviews the substance of CISG rules and analyzes alternative interpretations A comparative analysis is given of how countries have accepted interpreted and applied the CISG Theoretical insights are offered into the problems of uniform laws the CISG s role in bridging the gap between the common and civil legal traditions and the debate over good faith in CISG jurisprudence The book reviews case law relating to the interpretation and application of the provisions of the CISG analyzes how it has been recognized and implemented by national courts and arbitral tribunals offers insights into problems of uniformity of application of an international sales convention compares the CISG with the English Sale of Goods Act and places it in the context of other texts of UNCITRAL and analyzes the CISG from the practitioner s perspective **The ABC of the OPT** Orna Ben-Naftali,Michael Sfard,Hedi Viterbo,2018-05-10 A lexicon of the legal

administrative and military terms and concepts central to the Israeli occupation of the Palestinian Territories **Vienna**

**Lectures on Legal Philosophy, Volume 3** Christoph Bezemek,Michael Potacs,Alexander Somek,2023-10-05 The third volume of the Vienna Lectures on Legal Philosophy series focuses on one of the most fiercely contested issues in contemporary legal philosophy the question of the importance of legal reasoning and how to properly engage with it This book considers legal reasoning from two different angles it revolves on the one hand around debates concerning interpretation and balancing but it also asks on the other whom we ought to entrust with decision making based on legal reasoning and how this relates to the very concept of law The book approaches these underlying problems from a variety of perspectives and against the backdrop of different academic traditions showcasing the rich landscape of critical debates around contemporary legal reasoning Comparative Tax Law Victor Thuronyi,Kim Brooks,2016-04-20 Although the details of tax law are literally endless differing not only from jurisdiction to jurisdiction but also from day to day structures and patterns exist across tax systems that can be understood with relative ease This book now in an updated new edition focuses on these essential patterns It provides an immensely useful introduction to the core common knowledge that any well

informed tax lawyer or policy maker should have about comparative tax law in our times The busy reader will welcome the compact nature of this work which is shorter than the first edition and can be read in a weekend if one skips footnotes The authors elucidate the commonalities and differences across countries in areas including much of the detail new to the second edition general anti avoidance rules court decisions striking down tax laws as violating constitutional rules against retroactivity unequal treatment of equals confiscation and undue vagueness statutory interpretation inflation adjustment rules and the allowance for corporate equity value added tax systems concepts such as tax capital gain tax avoidance and partnership corporate shareholder tax systems the relationship between tax and financial accounting taxation of investment income tax authorities ability to obtain and process information about taxpayers and systems of appeals from tax assessments The information and analysis pull together valuable material which is scattered over a disparate literature much of it not available in English Especially considering the dynamic nature of tax law whose rate of change exceeds that of any other field of law the authors clear identification of the underlying patterns and fundamental structures that all tax systems have in common as well as where the differences lie guides the reader and offers resources for further research



## Unveiling the Magic of Words: A Review of "**Purposive Interpretation In Law**"

In some sort of defined by information and interconnectivity, the enchanting power of words has acquired unparalleled significance. Their power to kindle emotions, provoke contemplation, and ignite transformative change is really awe-inspiring. Enter the realm of "**Purposive Interpretation In Law**," a mesmerizing literary masterpiece penned by a distinguished author, guiding readers on a profound journey to unravel the secrets and potential hidden within every word. In this critique, we shall delve into the book's central themes, examine its distinctive writing style, and assess its profound impact on the souls of its readers.

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