

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

Thomas Lundmark



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

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 B a ej Ku niacki 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

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

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 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 Legal Order of the European Union* Timothy Moorhead, 2014-05-30 The objective of European integration serves as an ideal of the legal order of the European Union and invites reconsideration of law s conceptual features This book critically assesses the legal order of the European Union focusing on the operative aspects of the Union constitution with particular reference to the institutional practices of the Court of Justice in expressing the values underlying this constitution Drawing together positivist and non positivist accounts within an institutional understanding of law Timothy Moorhead breaks new ground in applying a range of analytic jurisprudential perspectives to the Union legal order and in employing the theoretical resources provided by the Union to model a revised conceptual viewpoint concerning legal order generally In offering this conceptual approach Moorhead emphasises the flexibility inherent in law s institutional character as the basis for a theoretical rationalisation of the Union legal order This book will be of great use and interest to scholars and students of European Union Law Jurisprudence and European Constitutionalism **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 **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

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