

STATUTE LAW SOCIETY CONFERENCE

BELFAST, OCTOBER 2008

Skating on thin ice: What happened to 'strict' interpretation of criminal and tax legislation?

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Introduction

(1) What is 'strict' interpretation in criminal and tax law?

- (a) The prohibition of 'reasoning by analogy' or 'extensive interpretation'
Smith v Hughes [1960] 1 WLR 830, 832 per Parker LCJ (QBD)
- (b) Measures to counter tax avoidance
WT Ramsay Ltd v IRC [1982] AC 300, 323 per Lord Wilberforce (HL)
Barclays Mercantile Business Finance Ltd v Mawson [2005] UKHL 51 [32]; [2005] 1 AC 684, 695 per Lord Nicholls (for the court)
- (c) The interpretation of terms of art from other areas of law
Fisher v Bell [1961] 1 QB 394, 399-400 per Parker LCJ (Divisional Court)
- (d) 'Strict' interpretation in the strict sense
In the face of an unclear or ambiguous provision: *in dubio pro libertate*, *in dubio pro re publica*, or recourse to other aids of interpretation?
R v Chapman [1931] 2 KB 606, 609 per Hewart LCJ (CCA)
IRC v Ross and Coulter (Bladnoch Distillery Co, Ltd) [1948] 1 All ER per Lord Thankerton (HL, Sc): '... if the provision is reasonably capable of two alternative meanings, the courts will prefer the meaning more favourable to the subject.'
Structural similarities: *ut res magis valeat quam pereat* and the *contra proferentem* rule; presumptions

(2) The rise and fall of strict interpretation

- (a) No strict interpretation until the early 19th century
Partridge v Strange (1553) 1 Plowd 77, 82 per Saunders, arguendo (CP)
R v Royce (1767) 4 Burr 2073, 2082 per Lord Mansfield (KB)
R v Inhabitants of Hodnett (1786) 1 TR 96, 101 per Buller J (KB)
W Blackstone, *Commentaries on the Laws of England*, vol I (19th edn, 1836) 324 n 66

(b) The rise of strict interpretation during the 19th century

Gildart v Gladstone (1809) 11 East 675 per Ellenborough LCJ

Hubbart v Johnstone (1810) 3 Taunt 177 per Heath J

The Stockton and Darlington Railway Co v Barrett (1844) 7 Man & G 870, 879 per Lord Brougham (HL): 'It must be observed that, in dubio, you are always to lean against the construction which imposes a burthen on the subject: the intention of the legislature to impose a tax must be clear'.

AG v Sillem (1864) 2 H & C 431, 510 per Pollock CB (Ex)

Clifford v IRC [1896] 2 QB 187, 193 per Pollock B (QBD): '... if the statute is so indefinite and uncertain that it can be treated in two ways, and the true construction of it is open to two views, the one more favourable to the Crown and the other to the subject, then the latter construction should be adopted.'

(c) The decline of strict interpretation from the middle of the 20th century onwards

Lord Howard de Walden v IRC [1942] 1 KB 389, 397 per Lord Greene MR (CA)

Reeves v Evans Boyce and Northcott Syndicate (1971) 48 TC 495, 513 per Megarry J (ChD): 'There is high authority for saying that it scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers. Nor, I may add, need any special tenderness be shown to taxpayers who, seeking to eat their cake and have it too, achieve neither.'

Greenberg v IRC [1972] AC 109, 137 per Lord Reid (HL)

Knuller (Publishing, etc) Ltd v DPP [1973] AC 435, 463 per Lord Morris (HL): 'It is said that the rules of law ought to be precise so that a person will know the exact consequences of all his actions and so that he can regulate his conduct with complete assurance. This, however, is not possible under any system of law. ... In many cases there can be no certainty as to what the decision will be. But none of this is a reflection upon the law. Nor do I know of any procedure under which someone could be told with precision just how far he may go before he may incur some civil or some criminal liability. Those who skate on thin ice can hardly expect to find a sign which will denote the precise spot where they may fall in.'

R (Haw) v Secretary of State for the Home Department [2006] EWCA Civ 532 [27]; [2006] QB 780, 793 per Clarke MR (for the court) (leave to appeal refused in [2007] 1 WLR 669)

(3) An attempt at explanation

(a) Liberalism and welfarism

(b) A comparative cross-check: the maxim *in dubio contra fiscum* in continental legal history

Conclusions