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JUDICIAL INTERPRETATION: A CONCEPTUAL ANALYSIS

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ABSTRACT

The executive's lamentation is best borne out in these words of Dr Mahatir Mohamad:

'Judicial review empowers the interpreters of the law with unlimited scope such that they can deny the effectiveness or smooth enforcement of whatever law. No one can predict the result of a review of a judge because the end result depends on maintenance of this relationship is that the judiciary will decline to his discretion. Having arrived at the decision that anyone can bring the Government to court, the Government can no longer decide anything with exactitude. Each decision can be challenged and perhaps be rejected. So the Government is no longer the executive power. Other parties have taken over the task.'

The role of the judges in interpreting the laws is innovative and creative. The paper is aimed to discuss the methods of judicial interpretation; and to analysis the extent of its application in Malaysia context. The methodology used in order to achieve the above objective is qualitative in the form of descriptive study. A large number of decided cases have been studied extensively to gain comprehensive understanding. It is hoped that this paper will contribute towards better understanding of the role of the judges in achieving a fair judgment.

Keywords: interpretation, methods, statutes.

INTRODUCTION

The difficulties in interpreting statutes and applying them in particular cases stems from the ambiguity of the most legislative enactments (Levi, 1948). Even if statutory language appears to be straightforward, questions of the meaning of the words may arise. Thus, the statutory interpretation involves of making a choice between uncertainties (see *Burnet v Guggenheim*, 288 U.S. 280 (1993)) that allow the judges to employ a variety of methods to find the message of the legislature and decide in concrete cases what the law means. Landis (1930), for example contends that legislative history provides in many instances "accurate and compelling guides to legislative meaning" The use of extrinsic aids to statutory interpretation according to him has a real and not illusory significance. There have been those judges who take the view that, without usurping the functions of Parliament, a judge has a duty to interpret the law, as far as he can, in a way which accords with social and personal justice. This is an interpretation which upholds rather than destroys the civil liberties of the individual, which looks with suspicion and not equanimity on the encroachment of the state and other power-groups in the lives of citizens

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(Tan, 2007). The most illustrious examples of such judicial activists are English judges Lord Denning and Lord Mansfield.

There is another kind of judge who sees his task as maintaining the authority of the state, interpreting Acts of Parliament narrowly, supporting the words of the law in preference to the justice of the case, and affirming that it is for Parliament to change the law that turns out to be unjust or absurd, and not for the judges to achieve that result through statutory interpretation (Tan, 2007).

RULES OF STATUTORY INTERPRETATION

Plain Meaning Rule:

The rule is often referred as the literal rule, the grammatical rule or ordinary rule. The rule is that if the statutory words are unambiguous and clear on their face, the words should be construed and applied in accordance with their ordinary meaning. The judges do not look to materials extrinsic to the statute to guide them in their interpretation, instead they determine the statute's meaning on the basic of their statutory words themselves (Henschen, 1985). Lord Tindal CJ observed in *Sussex Peerage case* (1884, 8 ER 1034) that if the words of a statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary senses. The words themselves alone do, in such a case, best declare the intention of the lawgiver. Therefore, where the language of a statute is clear and explicit, the court must give effect to it because in that case the statute speaks the intention of the legislature (Craise, 2004).

The approach of the court is based on the assumption that legislature understands the meaning of the word it used when enacting the concerned provision and expressed its intention by the use of those words (Anwarul Yakin, 2007, 113). The rule gives an irrebuttable presumption that parliament intends the ordinary and the natural meaning of the words it employs. As Higgins J said in *Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd* (28 CLR 129 at pp 161-162):

> The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

Thus, where a particular word is defined in a statute which narrows and restricts its ordinary meaning the meaning given in the definition must be applied to the word wherever it appears in the statute, unless the contrary is clearly indicated. The Federal Court observed in *Kerajaan Malaysia v Yong Siew Choon* ([2006] 1 MLJ 1 at p 11):

> As the definition is clear and unambiguous it cannot be ignored. As Bindra's Interpretation of Statutes (7th Ed) says at p 39: When a Legislature defines the language it uses, its definition is binding upon the Court and this is so even though the definition does not coincide with the ordinary meaning of the word used. It is not for the Court to ignore the statutory definition and proceed to try and extract the true meaning of the expression independently of it (*Nand Rao v Arunachalam* AIR 1940 Mad 385). If the Legislature's intention is clear and unambiguous, it is obviously outside the jurisdiction of the court to correct or amend the definition in the interpretation clause (*Mordhwaj Singh v State of UP* 24).

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In *Malaysian Bar V Dato' Kanagalingam A/L Veluppillai* ([2004] 4 MLJ 153) the Federal Court held that reading the wordings of s 103E of the Legal Profession Act 1976, there is no ambiguity therein, since the wordings used are 'Any party aggrieved by any decision or order made by the Disciplinary Board shall have the right to appeal to the High Court.' Hashim Yusoff JCA on the behalf of the court said that the court agreed with the sentiments expressed in the case of *Duport Steels Ltd & Ors v Sirs & Ors* [1980] 1 WLR 142 referred to by the learned judge in his grounds of judgment wherein Lord Diplock at p 157 held:

> Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to the plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.

In this connection, reference should be made to the following passage in the Federal Court's decision in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 (at pp 43-44):

> The court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded...
>
> We should perhaps reiterate that the starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question, that is its proper and most known signification ...we are of the view that the provisions of the Act under consideration before us call for a purposive literal construction which is one which allows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and reflects the purposes of the enactment...The provisions of the Act are abundantly clear to refute any resort to a purposive and strained construction which requires a strained meaning where the literal meaning is not in accordance with the legislative purpose.

This literal approach stems from the traditional theory that judges do not make law; they merely declare it. If a literal construction of the words in a statutory provision leads to an absurdity or injustice, it is the duty of Parliament, not the court, to amend the statute (Wan Arfah, 2009, 42).

Mischief Rule:

Mischief rule is an important rule of construction and is that when the meaning of a provision is obscure and it is not certain as to what the objective the provision seeks to achieve, then the role of the court is to ascertain what was the mischief as conceived by the legislature for which the statute sought to provide a remedy (see *Associated newspapers Group Ltd v Flemming* [1973] AC). The court has to ascertain the state of the law before the statute in question was passed, the mischief or defect which existed before the statute in question was passed, the nature and the scope of the remedy provided by the statute to cure the mischief or defect, and the true purpose of the remedy (Anwarul Yakin, 2007, 114). The rule applies in the circumstances where the meaning of a particular provision is ambiguous or has some defect or the statute itself set out the mischief or defect that is supposedly sought to remedy. In such a case the function of the court is to interpret the provision in order to cure the mischief and to avoid of injustice and unfairness.

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To properly apply the mischief rule, a court must have regard to what was said in *Heydon's case* (1584) 76 ER 637. In this case it was resolved by the judges that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered: (i) What was the common law before the making of the Act;(ii) What was the mischief and defect for which the common law did not provide; (iii) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and (iv) The true reason of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo* [for private convenience] and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico* [for public benefit].

Accordingly, the court should consider the common law as it stood before the legislation was enacted, the mischief and the defect that give rise to the legislation, the remedy provided by the legislation and the rationale for the legislation. The court must consider not only the mischief that led to the passing of the statute but must give effect to the remedy as stated by legislation in order to achieve the purpose of legislation (Oshio, n.d). The main obstacle with this approach to interpretation is "the restrictions places on the ability of the courts to use extrinsic materials to discover what mischief was to be remedied by the statute" (Wan Hamzah, 2009, 287).

Golden Rule:

This is modification of the literal approach: used in order to avoid an absurdity or repugnancy. Lord Blackburn in *River Wear Commissioners v William Adamson* ((1877) 2 App Cas 743) described the rule as that we are to take the whole of the statute together and giving to words their ordinary signification, unless when so applied they produce an consisting, or an absurdity or inconsistency so great as to convince the court that the intention would not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which though less proper, is one which the court thinks the words will bear.

The rule may be used in two ways: the narrow and broader ways. In narrow applications, the golden rule lays down that if the words are used are ambiguous, the court should adopt an interpretation which avoids an absurd result (Ahmad Ibrahim & Joned) 1995, 106). In its broader application, the golden rule is sometimes used in preference to the literal rule where the words used can have only one literal meaning. This is especially so where considerations of public policy intervene to discourage the obnoxious interpretation (Ahmad Ibrahim & Joned). In *Grey v Pearson* ((1857) 6 HL Cas. 61, 106) the court held that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but not further.

Although the golden rule provides an easy method to avoid a rigid application of the ordinary meaning of the words used in a statute if such application will lead to absurd result, the rule has not always been followed by English courts (Anwarul Yakin, 2007, 115). The reason is that the words such as inconsistency, absurdity, inconvenience, difficulty are themselves vague and have no definite meaning. What seems so to one person may not seem absurd to another (See *Hill v Est & West India Dock. Co* [1884] 9 App Cas 448).

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Purposive Approach:

The construction by reference to the purpose of the statute is relatively recent. But in concept it is not new. It has its origin in the mischief rule that requires judges to seek, and promote, the purpose underlying the legislation. In the word of Lord Denning (1983) said it means by at least this: the judge ought not to go by the letter of the statute. They ought to go by the spirit of it (Lord Denning,1983). Previously, Lord Diplock said that if one looks back to the actual decisions of this House…over the last thirty years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions (See *Carter v Bradbeer* [1975] 3 All ER 158).

Instead of adopting literal approach the court should adopted a purposive approach. In this way the judges interpret statutes by searching for legislative intent either by referring to legislative history or referring to legislative intent/ purpose. The judges may use legislative materials extrinsic to the statute to determine its meaning. Committee reports, statements by bill sponsors, and floor debates become sources of statutory meaning (Henschen, 357) In the latter cases, the judges look for the divining spirit behind the statute (Henschen, 358). Thus, in *Pepper v Hart* ([1993] 1 All ER 42 at p 50) Lord Griffiths said:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

The principles governing the application of the purposive approach to interpretation can be summarized as followed (*Craies on Legislation,* 566):

> Firstly; legislation is always to be understood first in accordance with its plain meaning; secondly; where the plain meaning is in doubt, the courts will start the process of construction by attempting to discover, from the provisions enacted, the broad purpose of the legislation; thirdly where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading; fourthly where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language; and lastly where the courts conclude that the underlying purpose of the legislation is insufficiently plain, or cannot be advanced without any unacceptable degree of violence to the language used, they will be obliged, however regretfully in the circumstances of a particular case, to leave to the legislature the task of extending or modifying the legislation.

STATUTORY INTERPRETATION IN MALAYSIA

In Malaysia, Parliament has given effect to the common law position by requiring a court to apply the purposive approach to all statutes. The relevant provision is s 17A of the Interpretation Acts 1948 and 1967. It reads: “In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object”. The provision of s. 17A is what is normally referred to as the "purposive approach" in statutory interpretation. The same approach was adopted by the Federal Court in *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn. Bhd. & Chan Teik Huat* [2002] 2 CLJ 57; *Lam Kong Co. Ltd. v. Thong Guan Co. Pte Ltd.* [2000] 3 CLJ

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769 and *Hokkien Cemeteries, Penang v. Majlis Bandaran Pulau Pinang* [1979] 1 LNS 122; [1979] 2 MLJ 121

However it should be noted that the purposive approach to the interpretation only applies in the circumstances where the doubt arise from the terms or words employed by the legislature. Where the words used are precise and unambiguous, the literal construction rule should be applied. As stated in *Manokaram a/l Subramaniam v Ranjit Kaur a/p Nata Singh* [2009] 1 MLJ 21 that the fundamental rule of interpretation is that a statute is to give effect to the intent of the legislature, and that intention has to be found by an examination of the languages used in statute as a whole. In the instance where the statute has an ordinary meaning and natural meaning, the court has a duty to enforce the meaning even if the result is inconvenient, impolite or improbable. In this regards, the writer disagreed with such a judgment. Every decision which affecting the fundamental rights of the citizen must conveniently and probably protects the citizen. To deny their rights mean we deny their fundamental rights. In this kind of cases, the reference to the legislative history or intent is necessary if the literally construed interpretation might lead to absurdity (see See *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69, FC held that in construing a statute, a reference to…Hansard, as an aid to statutory interpretation, should be permitted where the enactment…which if literally construed might lead to an absurdity".)

In *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701, the issue before the Federal Court is that does section 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 (the Act) oust the jurisdiction of the courts to entertain an application for judicial review? Alauddin Mohd Sheriff FCJ said that in attempting to answer the question posed the court would state from the outset that the Act is a special law specifically enacted to meet an economic exigency. It was passed in the public interest and for the public good. It is not out of place for the courts to take judicial notice of the financial crisis that the world underwent in the dying years of the last century. The court held that the object of Parliament in enacting this law has been clearly stated in the preamble to the Act. The Act was required in the public interest to promote the revitalization of the nation's economy. It was against this background that the Act was passed by Parliament in July 1998. The purpose is clear and unambiguous. In this regard, knowledge of the matters considered by the legislature in enacting this law is relevant.

In determining the constitutionality of the s 72 of the Pengurusan Danaharta Nasional Berhad Act 1998, the Federal Court referred to the policy speech of the then Minister of Finance in Parliament while introducing the Bill to the Act. Thus the judicial review by way of *certiorari* is not available by reason of s. 72 of the Act. The Act was passed by Parliament in July 1998 following the July 1997 financial and economic crisis that hit Malaysia along with a few other Asian countries. Parliament enacted the Act to ensure that the acquisition of non-performing loans by the appellant would ease the pressure upon banks and other financial institutions. The appellant was empowered to sell charged lands by private treaty without securing the usual court order as banks and other secured lenders are obliged to do under the National Land Code. Sales of these properties would be substantially delayed if injunctive relief was available. Therefore, s. 72 was introduced into the Act via an amendment in September 2000 to enable the appellant to carry out its operations more speedily so as to achieve its objectives without being inundated, saddled or slowed down by applications for injunctions with its inherent delay. Section 72 applies to all persons in the same position as the respondent. Thus, it applies equally to all persons who are similarly circumstanced.

Gopal Sri Ram in *Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors* [2005] 6 MLJ 289 case, the Court of Appeal quote the following passage from the speech of Lord Nicholls of Birkenhead in *R v Secretary of State for the Environment, Transport and the Regions, ex p*

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Spath Holme Ltd [2001] 2 AC 349 where he re-affirmed the availability of non-statutory material to a court interpreting a statute:

> Use of non-statutory materials as an aid to interpretation is not a new development. As long ago as 1584 the Barons of the Exchequer enunciated the so-called mischief rule. In interpreting statutes courts should take into account, among other matters, 'the mischief and defect for which the common law did not provide': *Heydon's Case* (1584) 3 Co Rep 7a, 7b. Nowadays the courts look at external aids for more than merely identifying the mischief the statute is intended to cure. In adopting a purposive approach to the interpretation of statutory language, courts seek to identify and give effect to the purpose of the legislation. To the extent that extraneous material assists in identifying the purpose of the legislation, it is a useful tool.

In this regard the Court should made use the method wisely for example for the detainee under Internal Security Act 1960. It should be noted that the ISA had its origins as early as 1930 during the British colonial regime. Essentially it was a political and administrative practice, exercised by the colonial government in power and aimed at individuals or groups who were deemed to be potentially dangerous to the State. In 1948, when the armed struggle of the Malaysian Communist Party began, the British High Commissioner proclaimed a state of emergency by passing the Emergency Regulations Ordinance, which enabled the colonial government to detain persons for any period not exceeding one year, primarily to counter acts of violence. When the Emergency ended in 1960 and the Emergency Regulations were repealed, the a parliamentary debate on the ISA established that the ISA was enacted for the sole purpose of fighting the communist insurgency and that it was intended as a temporary measure until the communist threat was removed (See *Review of the Internal Security Act 1969*-pdf-SUHAKAM).

Parliament made the decision to continue with the ISA on the grounds that 600 armed terrorists still remained in the north and could still pose a threat. However, once the 1989 Bangkok Accord was signed and communist activity ceased altogether, the need to prolong with the ISA is no longer acceptable and becomes highly debatable (The Bangkok accord of 24 December 1989 was entered into by Malaysia, the CPM and the Thai Government concerning the remaining communist terrorists within the Malaysia-Thai border). Hickling, the original draftsman of the ISA, commented in 1962: "….I must hope that the practice of imprisonment without trial, charge or conviction admitted by the Act 1960 will not be regarded as a permanent feature of the legal and political landscape of Malaya or for that matter of Asia generally" (Hickling, 1962).

Since 1960, the ISA has been amended repeatedly to enhance the discretionary powers of the police and the Minister of Home Affairs. In 1989, an amendment was made to disallow judicial review in any court of law. As a result, the courts have adopted restrictive approach in their treatment of habeas corpus and judicial review applications. By invoking draconian laws like the ISA, human rights are violated and individuals deprived of their civil liberties. The meaning of the phrase "prejudicial to the security of Malaysia" has not been defined objectively. Its interpretation has been left to the political expediency of the executive. The courts have willingly complied and have divested themselves of the jurisdiction to question the subjectivity and discretion of the executive. And this should be stopped; the judge could express the unsuitable of the certain law. It was done by Justice Mohd Hishamudin in *Abdul Ghani Haroon v Ketua Polis Negara* [2001] 2 MLJ 689 [141] where he said: "It is perhaps time for Parliament to

[141] Abdul Ghani bin Haroon and Gobalakrishnan a/l Nagappan ('the applicants') were separately arrested under s 73(1) of the Internal Security Act 1960 ('the ISA'). The detention of the applicants was extended twice subsequent

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consider whether the ISA which was originally meant to counter communist terrorism in the early years of independence, is really relevant to the present day situation. If at all it is to be retained, its provisions may need to be thoroughly reviewed to prevent or minimize the abuses highlighted in this judgment", (see *Parliamentary Debates, Dewan Rakyat* 21 June 1960, 562). It should be noted that the communist insurgency has been ended and at the same time organised violence or acts of terrorism are not major problems in Malaysia. There is already sufficient legislation to deal with every imaginable eventuality relating to public order and security (Consequently, Najib in his Malaysia Day 2011 special address announced that the ISA would be abolished and two new laws introduced to ensure continued peace, order, prosperity and harmony in the country. In his address, Najib also announced the abolishment of the Banishment Act 1959 and comprehensive review of the Restricted Residence Act 1933, Publications and Printing Presses Act 1984 and Section 27 of the Police Act).

It is permissible for the courts, as held by the Federal Court in *Chor Phaik Har v Farlin Properties Sdn Bhd* [1994] 4 CLJ 285 to resort to Hansard as aid to interpretation. Rusniah Ahmad (2004) suggested the acceptance of parliamentary material as one of the method in determining the intention of the parliament based on the decision in *Pepper v Hart*. *Pepper v Hart* accepts the admissibility of Parliamentary material where legislation is 'ambiguous or obscure or lead to absurdity' which refers to the legislation text that is being evaluated by the court. Referring to Bates explanation obscure means a statutory provision is one that the court is unable to extract any interpretation. Legislation which leads to "absurdity" is that where its construction by the court may either result in a clear interpretation or in an ambiguity but in either case does not in the view of the court lead to a sensible meaning. According to Bates the concept of "ambiguity" is more complex in form because it goes to the heart of statutory interpretation. Therefore, as a matter of choice judges may alternatively use other methods to locate legislative intention judicially as an aid to the construction and interpretation of statutory provisions. To date existing use of methods of constitutional and legislative interpretation by the judiciary have ignored the application of legislative history as another alternative method to assist the search for legislative intention (Rusniah, 2004).

CASE STUDY

Below are the four cases that applying purposive approach in interpreting the statute. The content analysis of the cases indicated the intrinsic material as well extrinsic material used by the court as an aid in interpreting a statute.

Name of the case	Purpose of the Statute	Aid Use
Kerajaan Negeri Selangor & Ors v Sagong Tasi &	The purpose of the 1954 Act was to protect and uplift	First, an article in the Malay Mail newspaper published on November 28, 1953. It reproduces the following two quotes from Dato Sir

to their arrests. The police denied family members, lawyers and members of the SUHAKAM ('Human Rights Commission of Malaysia') access to the applicants. Abdul Ghani's wife and Gobalakrishnan's brother respectively applied for the issue of a writ of habeas corpus. The respondent in both applications was the Inspector General of Police. Both applications were heard together by consent. On a preliminary issue, the High Court ruled that both applicants had the right to be present in court at the hearing of the applications. However, the Federal Court on application by the respondent stayed this ruling of the High Court. On the merits, the High Court had to consider whether the applicants were unlawfully detained.

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Ors ([2005] 6 MLJ 289	the First Peoples of this country. It is therefore fundamentally a human rights statute. It acquires a quasi constitutional status giving it pre-eminence over ordinary legislation. It must therefore receive a broad and liberal interpretation. That purpose is to be discovered from the proximately cotemporaneous material.	Onn Jaafar's speech in the Federal Legislature: (a) "Now I bring this bill for the protection and welfare of a community - a comparatively large community - who are peoples of this country," (b) "The aborigines are human beings with human reactions and the idea of this bill is to provide for their protection as human beings and not as museum pieces or exhibits," Federal Legislative Assembly: "*Tok Pangku Pandak Hamid* asks Minister of Education to state whether Government has taken any steps to ensure that the hereditary lands of the Aborigines are reserved for their use; and if so, what progress has been made. *Enche' Mohamed Khir Johari*: Yes. Under the Aboriginal Peoples Ordinance (No, 3 of 1954 Clause 7) there is provision for the gazetting of Aborigine Reserves. Steps are now being taken to create these reserves and there are also in existence others which were gazetted prior to the Sintroduction of the Ordinance. At the moment there are in existence in the Federation 58 Gazetted Aborigine Reserves covering in all approximately 30 square miles, and including some 5,200 aborigines. An additional 120 areas are currently under consideration, with a view to gazetting as Reserves. They cover about 389 sq. miles and include approximately 21,000 aborigines. *Tok Pangku Pandak Hamid* asks the Minister of Education to state whether it is Government policy to grant financial aid to the aborigines to enable them to develop their lands. *Enche' Mohamed Khir Johari*: Yes. It is Government policy to grant financial and material aid to the aborigines to enable them to develop their lands when this is considered necessary for the well-being of the Communities concerned, and within the limits of current financial restrictions." Second: The other document is the policy statement issued by the Jabatan Hal Ehwal Orang Asli (the Department of Aboriginal Affairs) (JHEOA). The 1955 document mentioned: "The JHEOA was set up pursuant to the Act and was charged with the responsibility of looking after the welfare of the orang asli. It made a significant policy statement in 1961 called 'Statement of Policy Regarding the Administration of the orang asli of Peninsular Malaysia' (see ikatan C at p 45-49), which it considers still applicable and forming the policy of the department (see DW 7 at p 171 of the notes of evidence). In respect of the land rights of the

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		aborigines, the statement states: '(d) The special position of aborigines in respect of land usage and land rights shall be recognized, that is, every effort will be made to encourage the more developed groups to adopt a settled way of life and thus to bring them economically in line with other communities in this country. Aborigines will not be moved from their traditional areas without their full consent.' In a 1955 document, the then adviser on aborigines in the Colonial Government expressly declared responsibility for the welfare of the orang asli in the Bukit Tampoi area .
Danaharta Urus Sdn Bhd V. Kekatong Sdn Bhd *(*[2004] 1 CLJ 701	The purpose is clear from the preamble that the Act was required in the public interest to promote the revitalization of the nation's economy.	First :the preamble of the Act which reads as follows: An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto. Second: The object of the Act was explained in clearer terms in the speech delivered by the then Minister of Finance in Parliament while introducing the Bill for the Act. The material parts of it (in the original text) read as follows: ...suatu akta untuk memberi kuasa kepada Pengurusan Danaharta Nasional Berhad untuk mengambil alih pinjaman-pinjaman ... seterusnya menguruskan pinjaman dan aset serta melaksanakan rancangan menyusun semula aset-aset ... .Dengan itu kerajaan telah memutuskan untuk menubuhkan sebuah syarikat yang dikenali sebagai Pengurusan Danaharta Nasional Berhad ... untuk mendapatkan kembali pembayaran ke atas hutang-hutang tersebut....Untuk berjaya mencapai objektifnya Danaharta perlu berupaya mengurus dan menyelesaikan ... Dengan itu syarikat ini tidak boleh beroperasi seperti syarikat biasa dan dikongkong oleh peraturan dan perundangan transaksi perniagaan. Untuk tujuan ini, Danaharta akan ditubuhkan sebagai sebuah syarikat berkanun yang diperbadankan di bawah Akta Syarikat 1965 dengan kuasa-kuasa yang akan diberikan oleh sebuah akta Parlimen. Status sebagai sebuah syarikat berkanun akan memberi Danaharta ... kuasa undang-undang yang khusus bagi memenuhi objektifnya...Justeru itu adalah difikirkan wajar kerajaan menggubal sebuah rang undang-undang dengan memberi kuasa-kuasa tertentu kepada Danaharta untuk melaksanakan

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		tugas dan tanggungjawabnya. ...
Sivarasa Rasiah v Badan Peguam Malaysia & Anor 2005 [CA]	The Legal Profession Act is to ensure the need for an independent Bar Council (BC) free from political influence and thus preventing a potential conflict of interest situation.	Policy speech of the then Minister of Law when tabling the Bill to amend the Act during the second reading before the Upper House of Parliament on 9 January 1978. The Honourable Minister in addressing the members of the House cited several reasons for the amendment. One of the reasons was the attempt by several members of the MB who were also active politicians, to influence members of the legal profession against representing ISA detainees. The statutory provision seeks to prevent a politician who holds office in a political party from acting in a manner which would bring his public duties "as a member of the BC" into conflict with his political interest. The Honourable Minster also emphasized the need for an independent BC free from political influence and whose functions were to be confined only to matters related solely to the profession.
Muhammad Hilman bin Idham & Ors v Kerajaan Malaysia & Ors - [2011] 6 MLJ 507	The purpose is to provide for the establishment, maintenance and administration of universities and for other matters connected therewith.	The Minister's speech in Parliament in moving the Bill as reported in *Hansard* (DR 10 December 2008) : Pindaan kepada AUKU tidak akan lengkap tanpa perubahan kepada aspek pengumsan kebajikan dan hak asasi pelajar. Perkara ini merupakan hasrat dan harapan setiap pelajar di universiti Negara ini. Pelajar merupakan stakeholder utama kepada sesebuah universiti Mereka juga merupakan bakal pewaris kepada kepimpinan negara. Justeru, kebajikan dan hak asasi pelajar hendaklah sentiasa dipelihara dan mengikut Perlembagaan Persekutuan dan amalan terbaik (best practices) antara bangsa. Justeru rang undang-undang ini akan memberi penekanan khusus kepada aspek kebajikan dan hak asasi pelajar tersebut. Antara perkara yang akan dilihat semula merangkumi: (i) kebebasan berpersatuan; (ii) kebebasan bersuara; (iii) pemansuhan peruntukan berkaitan kesalahan dan hukuman jenayah; (iv) pemansuhan peruntukan berkaitan penggantungan atau pembuangan secara automatik; (v) hak asasi pelajar kepada pendidikan; (vi) tatacara pengendalian kes

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		tatatertib; (vii) penggantungan atau pembubaran pertubuhan pelajar; (viii) hak pelajar pasca siswazah; (ix) perwakilan dalam jawatankuasa kebajikan pelajar; dan (x) penglibatan pelajar dalam Senat. Seperti yang dimaklumi AUKU sedia ada memperuntukkan bahawa mana-mana pelajar yang hendak menganggotai mana-mana persatuan atau organisasi di luar universiti hendaklah mendapat kebenaran pihak universiti terlebih dahulu atau dengan izin, *prior permission*. Peruntukan ini dilihat oleh sesetengah pihak sebagai agak negatif dan tidak memberi kebaikan kepada pelajar dalam peningkatan ciri-ciri kepimpinan dan sahsiah diri. Walaubagaimanapun, pelajar adalah dilarang untuk terlibat dengan entiti-entiti berikut: (i) parti politik sama ada di dalam atau luar negara; (ii) pertubuhan yang menyalahi undang-undang sama ada di dalam atau luar negara; (iii) pertubuhan, badan atau kumpulan yang dikenal pasti oleh Menteri sebagai tidak sesuai demi kepentingan dan kesentosaan pelajar atau universiti. Dalam menyediakan senarai pertubuhan yang tidak sesuai tersebut Menteri akan berunding dengan Lembaga Pengarah Universiti terlebih dahulu dan senarai yang akan disediakan adalah untuk kegunaan semua universiti. Meskipun terdapat larangan ke atas pelajar untuk berpolitik, rang undang-undang ini masih memberikan sedikit pengecualian. Kuasa untuk memberi pengecualian ini akan dilaksanakan oleh Naib Canselor. Dalam menjalankan kuasa tersebut Naib Canselor atas permohonan pelajar boleh memberi kebenaran untuk terlibat dalam parti politik. Ini akan membolehkan seseorang ahli politik yang bergiat dalam mana-mana parti politik mendaftar sebagai pelajar di universiti tanpa perlu melepaskan kerjaya politiknya. Rang undang-undang yang dicadangkan ini juga

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		akan memberi kebebasan kepada pelajar untuk bersuara dalam hal yang berkaitan dengan perkara akademik yang diikuti dan dilakukannya. Pelajar adalah dibenarkan untuk memberi pendapat dalam seminar, simposium dan sebagainya dengan syarat seminar atau simposium tersebut tidak dianjur atau diberi peruntukan kewangan oleh entiti-entiti berikut: (i) parti politik sama ada di dalam atau luar negara; (ii) pertubuhan yang menyalahi undang-undang sama ada di dalam atau luar negara; (iii) pertubuhan, badan atau kumpulan yang dikenal pasti oleh Menteri sebagai tidak sesuai demi kepentingan dan kesentosaan pelajar atau universiti. Fasal 8 bertujuan untuk menggantikan Seksyen 15 Akta 30 untuk memberikan kepada pelajar dan pertubuhan pelajar kebebasan berpersatuan tertakluk kepada sekatan berhubung dengan parti politik, pertubuhan yang menyalahi undang-undang dan pertubuhan, badan atau kumpulan orang yang dikenal pasti oleh menteri sebagai tidak sesuai demi kepentingan dan kesentosaan pelajar atau universiti itu. Sebagai tambahan, Naib Canselor boleh atas permohonan seseorang pelajar mengecualikan pelajar itu daripada sekatan yang disebut dalam perenggan 1(a) yang dicadangkan. Fasal 9 bertujuan meminda seksyen 15A Akta iaitu penalti jenayah dalam sub seksyen 2 digantikan dengan tindakan tatatertib.

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CONCLUSION

The most fundamental rule of purposive statutory interpretation requires that judges should examine the difficult words or provisions in their context—in the statute as a whole i.e., the intrinsic material. In considering the intrinsic material (things within the act) the judges developed certain principles that determined the importance of preambles and headings etc. Likewise, it allows recourse by the courts to extrinsic materials like parliamentary history, official reports or records of proceedings in parliament etc. in order to properly access legislative intention. The approach takes account of the words of the legislation according to their ordinary meaning and also the context in which they are used, the subject matter, the scope, the background, the purpose of the legislation in order to give effect to the true intent of the legislation and not just the intention of parliament only. Accordingly, the purposive approach is the modern approach to the mischief rule, but it is wider in scope than the mischief rule as the approach extends to applying an imputed intention of parliament (Oshio, n.d.). It enables the court to consider not only the letter but also the spirit of the legislation for "everything which is within the intent of the makers of the Act, although it be not within the letter, is as strongly within the Act as that which is within the letter and the intent also" (*Stowell v. Lord Zouch* (1969) E.R.536). It could be assumed that there was a clear trend in relation to the interpretation of statutes from a strict or literal approach towards a more purposive approach. This trend is evident in constitutional cases that mainly were brought to the court by the individual who claims that there was infringing of such rights by the government. After assessing the various approaches of interpretation it has been concluded that the purposive approach should be welcomed and applied accordingly.

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