

Question 3

Explain how judges construe legislations and describe how they use the rules of construction.

Judges have traditionally recognised three different rules of statutory interpretation: the mischief rule, the literal rule and the golden rule

See generally Glanville Williams, *Learning the Law* (London : Stevens 11th edn) and Wesley-Smith (note 18 above).

The Mischief Rule refers to the legal position before the statute was passed and the mischief that the statute was intended to cure. The statute is then construed in such a way as to suppress the mischief and to advance the remedy.

The Literal Rule applies words of a statute in their natural and ordinary sense with nothing added and nothing taken away, even if an inexpedient, unjust or immoral outcome occurs, i.e. the court can neither extend the statute to a casus omissus [an omitted case which should have been, but has not been, provided for in the statute] nor curtail it by leaving out a casus male inclusus [a case that the statute literally includes, though it should not have].

The Golden Rule so construes a statute as to avoid absurdity or anomalies by adopting a secondary (or less usual) meaning which is also linguistically possible in order to produce a reasonable result. Sometimes, a judge may read in words which he considers to be necessarily implied by words already in the statute. He may even, to a limited extent, alter or ignore statutory words for reconciling an unintelligible provision with the rest of the text (for example, judges have occasionally corrected an "and" in a statute when it meant "or").

(www.legislation.gov.hk/inpr.htm)