In what way can the different 'rules' of statutory interpretation be understood as forming a coherent process of interpretation, or is any act of statutory interpretation an arbitrary choice by a judge?

It has been said that there are three 'rules' of statutory interpretation – the literal, the golden, and the mischief rule. It is clear that contrary to the label of 'rules' widely given to them, they are more sensibility regarded as approaches. The moot point has rather been on the way judges utilize these three approaches. Do they give each one equal consideration in a religious way, or do they simply use them as post hoc justification to their decisions? In looking for an answer to the question of how judges interpret statutes, history would always prove to be an appropriate source to start with.

The English legal history starts with the defeat of the Saxon king by Norman William the Conqueror in 1066. At that point, law, if any, was transmitted in the form of local customs, informal and merely used for the practical end of enforcing compensation in order to preventing bloodshed. It is largely agreed by historians that William left the laws alone. Nevertheless, gradually local customs gave way to one unified body of laws. In a contest for power with the church's courts and the attempt to centralize power, King Henry II, great-grandson of William, soon after his accession in 1154 sent his judges of the Curia Regis, the central court out on circuit to administer justice and unify the law of the land. The judges acknowledged local customs and applied them in settling cases.

The common law tradition then on developed as a living, organic system. Students of law learnt it through apprenticeship at one of the Inns of Court in London. The language and processes were learnt through practice and experience. With the declaratory theory and the notion of judges being 'oracles of the law' either as a subterfuge or misconception, the judges made the common law.

Throughout the medieval era, social justice was hence upheld mainly by the judges and common law. There was statute law, albeit few and of meagre significance. As Heydon's Case (1584) records, statute law at that time constituted mainly of the King's regulations, and were easily understood to be intended to suppress whatever 'mischief' that had not been catered for by common law. Using that as a guide, and the long preamble included, these statutes were easy to apply.

Nevertheless, the Parliament had been increasing in prominence and independence from the Tudor period. The beginning of the 19th century saw the acceptance of the doctrine of Parliamentary Supremacy, and the relationship between the judiciary and the Parliament defined – Parliament is sovereign in making law and the role of the judge is to interpret.

Statute law thereafter proliferated. But these statutes are difficult to interpret. They are different from the King's regulations of the past. They are concise and attempts to legislate on a great scope of matters. They are meant to speak not only to the present time of enactment but also intended to cope with the future. Given the indeterminacy of language, spatial limits, and inevitable development of technology and society the capacity of the draftsmen is limited in fulfilling all these functions. To fulfil this difficult task of interpretation, judges had to thus devise some approach or guidelines of statutory approach. It is generally understood already by students that these are not laws or 'rules' per se, but only guidelines, because they point to different solutions for the same problem, and judges are not bound by any higher order to follow them.

Traditionally, the courts had taken a 'literal approach' to statutory interpretation. The origin of its use is traceable from the words of Lord Tenterten CJ in Brandling v Barrington (1827). "It is much better and safer to rely on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them." This means that words in a statute were to be given their plain, ordinary or dictionary meaning, even if in so doing absurdity is produced. It was a period in which it was thought that "Parliament changes the law for the worse" and that a legislative enactment was an "alien intruder in the house of the common law". Hence one reason for the approach is thought to be because the courts wanted to force Parliament adopt more specific drafting. Another more readily admitted reason was that since it is fictitious to speak of a Parliamentary intention, for Parliament is not a single entity but a group of people, what can be found is only the true meaning of the words used by Parliament. A corresponding reason is for deference to Parliament's sovereignty.

Unsurprisingly, absurd results were produced. In R v Harris, merely because the word 'wound' in the statute was used with the word 'stab' which has a dictionary meaning of 'to pierce or wound with or as if with a pointed weapon', an

accused was acquitted on the ground that teeths were not weapons. Zander criticized the literal approach as being 'mechanical, divorced both from the realities of the use of language'. The reason why an issue of statutory interpretation was raised in court was precisely because the words in questions were capable of having two or more meanings. To use the literal approach is to ignore the indeterminancy and ambiguous nature of the english language.

The courts subsequently developed a modified version of this approach, the 'golden rule'. As stated by Lord Wensleydale in Becke v Smith(1836), where the application of the literal approach leads to a manifest absurdity, the judges could adapt the language of the statute in order to produce a sensible outcome. But that appeared to be no different from the literal approach. Both confined interpretation to the four corners of the statute paper. They prioitise what Parliament said over what it may have meant.

The question that has always occupied much academic discussion until today is: can we make sense of the various approaches taken practice to statutory interpretation in the English legal system? Is there coherence, or is the process based on a large discretion? The literal rule had obtained such a hold that it had come as a surprise when in 1938 a Canadian academic John Willis wrote a famous article pointing out that not only was there also a mischief rule but a so-called golden rule. Moreover, said Willis mischievously, a court invokes "whichever of the [three] rules produces a result which satisfies its sense of justice in the case before it". The evidence to to support this claim comes from the fact that interpretation differed from judge to judge and case to case, often with conflicting decisions on meaning between judges hearing the same case. Willis meant that the rules of interpretation functioned to provide the appearance of scientific method to what is in practice a largely subjective process in which judges exercise a wide degree of discretion to read statutes in the manner that seems to them most appropriate.

The disgruntled Sir Rupert Cross, intendedly to 'clarify his own mind as much as anyone else's', wrote that the English approach to statutes involves a progressive analysis or as he called it 'a unified contextual approach' rather than a choice among alternative rules. The judge first considers the ordinary meaning of words in general context of statute then moves on to consider other possibilities where ordianry meaning leads absurd results.

The courts subsequently approved of Cross's thesis. Although it remains difficult to generalise about what judges do, it seems safe to suppose that the judicial approach to statutory interpretation evolves with time. For previously bent on taking a literal approach, modern cases record great judicial consensus on a new approach, the purposive approach. The trend began with Lord Denning's revival of the mischief rule established in Heydon's Case (mentioned above). He argued in Magor v Newport Corporation(1952) that the mischief rule could be interpreted broadly to produce decisions that put into practice the 'spirit of the law' and carry out the intention of Parliament. He advocated for an interpretative approach which involves 'filling in the gaps and making sense of the enactment' to find out the intention of Parliament when there is ambiguity in the words of the statute, rather than 'making nonsense' of the statute by 'pulling the language of Parliament to pieces', using the literal approach.

Although initially criticizing Denning approach as a 'naked usurpation of the judicial function under the guise of interpretation', the House iof Lords became increasingly agreeable with the concept to finally approving it in Pepper v Hart, in which Lord Griffiths stated that , "The days… (of) a strict constructionist view of interepretation… have long passed. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation.

One of the factors which has encouraged the increasing popularity of this approach to statutory interpretation is the growth of cases involving the application of Eropean Law in the UK courts. In interpreting these more open-ended and concise provisions, the courts have found it necessary to adopt the more purposive approach which predominates in the European Court if Justice.

The contemporary problem is where are the courts to look for evidence in applying the purposive approach to discover the original intention of Parliament? In Pepper v Hart the HOLs decided to allow the courts to refer to Hansard. Lord Mackay, the then Lord Chancellor dissented and claimed that it would be meaningless to do so and it would lead to extra expenses, since lawyers will need to spend time searching the Hansard for ministerial statements. He proved to be correct. The courts subsequently admitted that Hansard proved to be slightest bit helpful and proved time consuming. Whether opening up the range of sources for intertepretation helps or hinders the process of SI is still very much open to question.

Hence, the conclusion that can be drawn in response to the question is thus, though there are still conflicting and

irresolvable opinions on the specific way judges interpret statutes by, it is safe to assume that the general judicial approach to statutes changes with time. Two centuries ago, the predominant approach is the literal or textualist approach, under which judges bicker about the dictionary meaning of a word in the statute and pretend ignorant to any external contextual information regarding its meaning; contemporarily, while the literal and golden approaches have lost their credibility, judges are more ready to look for meaning of words in statutes by taking a more purposive approach, via the inquisition of external evidence.