

Interpretation in Law

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Scheme of Presentation

- Understanding Interpretation in your discipline
- Why a familiarity with the process of interpretation in law beneficial?
- How to understanding Interpretation in Law
 - Institutionally
 - Technically
 - Contextually
 - Precedential

Law and Interpretation

- Law is supposed to be certain, same and predictable
- At the same time it needs to be fair and just and contextual
- One size does not fit all
- Interpretation is the process of customisation in law

Why beneficial?

- Despite claims of certainty and fixity there is free play in joints
- Explains how the same law plays out differently in different situations
- Acknowledge that internal change is possible
- Most importantly, the interpretational choice is not just available with judges

Interpretation is a composite process

- Rules of interpretation are inextricably woven into how a system functions
- Rules cannot be understood as standalones
- A whole range of factors influence their operation
- And they influence each other
- No one way of doing things
- There is flexibility
- Flexibility comes from skills of navigation

Institutional Structures and Interpretation

- The relationship between the legislature, executive and the judiciary
- There is a hierarchical relationship
- There is separation of powers
- It is not a mechanical separation

Ideological Approaches and Interpretation

- How are the judicial and legislative roles envisaged?
 - Essentialist
 - Metademocratic

In Metademocratic

- Preservationist
- Complementarian
- Reconstructionist
- Disciplinarian

Technical Rules and Interpretation

- Canons of Construction
 - literal
 - mischief
 - golden
- Nature of Statute
 - Constitution
 - Penal / Tax
 - Welfare
- Presumptions / Maxims

Precedents and Interpretation

- Similar kinds of cases should be decided in the same way
- Rule of fairness and predictability
- Yet change happens and earlier decisions are altered, sidelined overruled
- Strict and liberal construction of the reason for the decision

Administration and Interpretation

- Courts undertake interpretation when people go to Court
- People go to Court primarily for dispute resolution and Courts interpret in a conflict situation
- Unlike Courts, administrators have to interpret on a day to day basis because implementation cannot happen without interpretation
- How should administrators undertake this task when you operate under a constitution which has a Bill of Rights?
- Should you be guided by legislative intention? Or judicial interpretation ?
- What about statutes which never go to Court

What should administrators do?

- Uphold the letter or the spirit of the law
- Protect the rights of the people
- Uphold the interests of the Government
- May be all of the above
- Interpretation is the exercise of making meaning and each one of you has to decide for whom are you going to find that meaning?