CANONS OF STATUTORY CONSTRUCTION: A COMPARATIVE ANALYSIS

Emmanuel Q. Fernando

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I. INTRODUCTION

In common-law jurisdictions, there are generally considered to be three distinct and basic canons of statutory construction: the literal rule, the golden rule and the mischief rule. These three rules, in turn, may simplistically be laid out in a linear spectrum in terms of the degree or extent of its being formalist or anti-formalist in orientation. The literal rule is then situated at the formalist end of the spectrum, the mischief rule at the anti-formalist, substantivist or purposive opposite end, and the golden rule lies somewhere in between.

There are two perspectives, therefore, with which to view these three rules. Under the formalist perspective, the golden rule and the mischief rule are viewed from the literal end of the spectrum. The literal rule, in more elaborate terms, is considered to have some dominance or primacy, and the other two rules are merely intended to augment or supplement it in so far as resort to plain meanings may be inappropriate or inadvisable. This is the currently accepted view, referred to as the orthodox view or position.

Contrary to the orthodox position is the anti-formalist, substantivist or purposive view, which takes the perspective of the opposite 'mischief rule' end of the spectrum. Under this view, the golden and mischief rules are not only interpreted independently of literal or plain meanings; the mischief rule even challenges the primacy and dominance of the literal rule and is taken as fundamental. The literal rule thus is merely a supplement to the mischief rule, while the golden rule is considered but a limited variant of it. Both rules, the

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literal and the golden, therefore are to be interpreted from the viewpoint of the mischief rule.

The degree or extent of a theory of interpretation's formalist or anti-formalist orientation depends therefore on which canon of construction is taken as dominant or primary. If it is the literal rule, then the theory is formalist in orientation; if the mischief rule, then anti-formalist. But that does not completely explain matters. If a given theory of interpretation adopts the literal rule as primary, the extent of its formalist character will also depend on how much it allows the golden and mischief rules to be used in interpretation. Conversely, if the mischief rule is primary, the anti-formalist character of the theory depends on the extent literal meanings are allowed to determine the purpose of the law.

This article endeavors to explain and analyze these three canons of statutory construction, with the ultimate aim of arriving at a deeper understanding of Philippine judicial practice in terms of the actual use and application of the three canons. In the process, the Philippine practice will be compared with and contrasted against that of other legal systems. Thus, the exposition and analysis of the three canons will initially be conducted against the background of its roots and origins, the common-law jurisprudence of mainly the American and English legal systems.

In this historical analysis, two types of formulations of the literal and mischief rules will be distinguished, depending on which of the two will be taken as dominant or primary so that the other becomes merely supplemental or secondary. The golden rule is to be construed either as secondary to or independent of the literal rule, and, if the latter, it qualifies as an alternative formulation of the mischief rule. Emphasis will also be placed upon the formalist and anti-formalist interplay in the application of the three rules. Finally, the article will explain and analyze how Philippine jurisprudence avails and makes use of these canons of statutory construction, as Philippine jurisprudence is compared with the judicial practice in common law history and the formalist and anti-formalist character of both are noted.

Before the three rules or canons of statutory construction are to be analyzed, therefore, a brief *excursus* into formalist and anti-formalist interpretations needs to be made.

II. FORMALIST AND ANTI-FORMALIST INTERPRETATION

It is axiomatic in legal systems that "(t)he cardinal rule in the interpretation of laws is to ascertain and give effect to legislative intent."[1] The point and purpose therefore of all interpretation is to determine such intent, of which there exist two highly contrasting and opposed ways or modes: the formalist and anti-formalist.

The distinction between the two modes is traditionally made in terms of the 'letter' and the 'spirit' of the law. The formalist attempts to determine intent by means of the law's letter, whereas the anti-formalist is guided by the law's spirit.

The intuition behind this distinction is that there are two elements in the process of legislation, the internal and external. The external refers to the form or letter of the law; the internal to the legislator's intent. Ideally the two jive. In the felicitous circumstance that it does, then all the interpreter needs to do, in conformity with his "duty in construing a law to determine legislative intention from its language,"[2] is to consult the law's letter and to fathom the law's spirit. However that does not always produce the desired results.

> In the interpretation of a legal document, especially a statute, unlike in the interpretation of an ordinary written document, it is not enough to obtain information as to the intention or meaning of the author or authors, but also to see whether the intention or meaning has been expressed in such a way as to give it legal effect and validity. In short, the purpose of the inquiry, is not only to know what the author meant by the language he used, but also to see that the language he used sufficiently expresses that meaning. The legal act, so to speak, is made up of two elements - an internal and an external; it originates in intention and is perfected by expression. Failure of the latter may defeat the former.[3]

It is thus when the internal and external elements do not jive or when the legislature fails to communicate its intent successfully by the words it uses in expressing that intent, that appeal is made to the law's spirit:

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[1] Hemmani v. Export Control Committee, 100 Phil. 973, 979 (1957) *citing* Roldan and Daza v. Villaroman, 69 Phil. 12 (1939).

[2] Village of Glencoe v. Hurford, 148 N.E. 69, 73 (1925).

[3] Nilo v. Court of Appeals, G.R. No. 34586, April 2, 1984, 128 SCRA 519, 529, *citing* 59 C.J.S. *Mortgages* §§ 593-594, and Manila Jockey Club, Inc. v. Games and Amusement Board, 107 Phil. 151 (1960).

> As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. 'Courts are apt to err by sticking too closely to the words of a law,' so we are warned by Justice Holmes again, 'where these words import a policy that goes beyond them.' While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read *into* the law a purpose that is not there, we nevertheless have the right to read *out of it* the reason for its enactment. In doing so, we defer not to 'the letter that killeth' but to 'the spirit that vivifieth,' to give effect to the lawmaker's will.[4]

> 'The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the statute although it is not within the letter thereof, and that which is within the letter but not within the spirit, is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if it is within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.'[5]

Other jurists have used as synonymous to 'spirit', words like 'purpose', 'policy', 'reason', rationale', 'substance', or even 'mischief' and 'equity':

> [A]nd it is said in Bacon:
>
> 'by an equitable construction a case not within the letter of a statute is sometimes holden to be within the meaning, because it is within the mischief for which a remedy is provided. The reason for such a construction is that the law-makers could not set down every case in express terms. In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose that the law-

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[4] Alonzo v. Intermediate Appellate Court, G.R. No. 72873, May 28, 1987, 150 SCRA 259, 265-266, at n. 13 *citing* the dissenting opinion in Olmstead v. U.S., 277 U.S. 438 (1927).

[5] *Id.*, *citing* RUBEN AGPALO, STATUTORY CONSTRUCTION 64-65 (1986) *citing* Manila Race Horse Trainer's Association v. de la Fuente, 88 Phil. 60 (1951); Go Chi Gun v. Co Cho, 96 Phil. 622 (1955); Roa v. Collector of Customs, 23 Phil. 315 (1912); Villanueva v. City of Iloilo, G.R. No. 26521, December 28, 1968, 26 SCRA 578; People v. Purisima, G.R. No. 36084, August 31, 1977, 86 SCRA 542; U.S. v. Go Chico, 14 Phil. 128 (1909).

> maker present, and that you have asked him this question, did you comprehend this case? Then you must give yourself such answer as you might imagine he, being an upright and reasonable man, would have given. If this be that he did mean to comprehend it, you may safely hold the case within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto.' In some cases the letter of a legislative act is restrained by an equitable construction; in others it is enlarged; in others the construction is contrary to the letter.[6]

In summary, an interpreter may search for the elusive legislative intent in two ways. In interpreting the statute, he may be guided exclusively by the words used to express or communicate that intent; and, if he is so guided, then his mode of interpretation is formalist in orientation. On the other hand, he may go beyond the words to look for the purpose, spirit or reason behind the law as indicative of that elusive intent. Then he has opted for the anti-formalist, substantivist or purposive mode.

This insight into the difference between the two modes can be translated into a distinction based on two separate and distinct criteria, the first in terms of its authoritative formality or lack of it, and the second in terms of its inference formality. The two criteria can be further explained in terms of the two stages in the process of statutory interpretation or reasoning. The first concerns the identification of the law, statute or premises to be applied to the facts of the case, while the second involves the inference to be made from these premises in deducing the judgment or conclusion. Authoritative formality refers to the first or identification stage of this process, and inference formality to the second. If the interpreter is guided strictly by the letter of the law in the identification and inference stages of the process, then he is essentially a formalist; if he relies mainly on the spirit of the law, then he is an anti-formalist. Put in contemporary language, the more mechanical the stages of identification and inference are, the more formal the mode of interpretation or of reasoning.

To elaborate, in determining authoritative formality the question to be asked is: can the law or the legal premise covering the facts of the case be mechanically identified? In other words, can it be found from legal sources, like legislative statute or judicial precedent, in a manner similar to retrieving a

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[6] Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188, 5 L.R.A. 340, 345-346 (1889).

telephone number and address from a telephone directory? Or must the interpreter venture beyond the law to consult extra-legal sources, like moral, social, economic or political considerations? On the other hand, in determining inference formality, the question is: can the inference or deduction be done mechanically, purely as a process of strict logical deduction from the premises? For inference formality to exist, there must be a fixed and precise literal meaning to the words used in the law, so that the interpreter is left with no discretion in applying it.

This is in essence how Professor David Lyons made the distinction, when he defined formalism as a complete theory of interpretation and not simply as a mode of interpretation.[7] According to him, formalism asserts three doctrines about the law: first, that it is source-based; second, that it is complete and univocal; and third, that it is mechanical.

A law is source-based if it, "is rooted in authoritative sources, like legislative and judicial decisions." It is complete and univocal when the "law provides sufficient basis for deciding any case that arises. There are no 'gaps' within the law, and there is but one sound legal decision for each case."[8] It is the third and final characteristic which ultimately renders it formalistic:

> But what makes it 'formalistic'? That label turns on a third doctrine – namely, that law decides cases in a logically 'mechanical' manner. In other words, sound legal decisions can be justified as conclusions of valid deductive syllogisms. Because law is believed to be complete and univocal, all cases that arise can in principle be decided in this way. This is the formalistic model for legal justifications.[9]

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[7] David Lyons, *Legal Formalism and Instrumentalism —A Pathological Study*, 66 CORNELL L. REV. 950 (1981).

[8] *Id.* at 950.

[9] *Id.* at 952. Compare this with the author's more theoretical and abstract definition of a purely formal model of adjudication.

Under a purely formal model of adjudication, it is intended that every case arising for adjudication be resolved by means of a 'mechanical' derivation of the subsumptive norm dispositive of the case from standards found in the institutional sources of law. A system of legal norms therefore must be available from which the norm appropriately covering the case can be mechanically deduced or identified and then formally applied by means of logical deduction to derive the answer to the given case. In its entirety, this formal decision procedure would require (i.) that the institutional sources of law provide a gapless, consistent and closed system of norms or, if containing gaps or inconsistencies, an internal purely formal procedure to remedy this exists, and (ii.) that from this gapless, consistent and closed system, the legal norm which subsumes the facts of the case can be mechanically deduced or identified so that it can then be

Lyons also distinguished between the formalistic model for legal justification and the "formalistic method" in judicial practice. The formalistic method is literalist, and this explains why literalism is often considered synonymous to formalism. The formalistic or literal method assumes "that law is fundamentally a linguistic entity."[10] Law in other words is but "a mere collection of words."[11] so that in judicial practice "the substantive content of the law (can be determined) in terms of its authoritative words and literal implications."[12] Law is "derived from authoritative texts using (only) literal readings and strict implications."[13]

Although Lyons and my characterizations of formalism are essentially similar, two relatively minor differences can be made between them. The first is due to the fact that this article is not concerned about defining formalism as a somewhat complete theory of interpretation. Rather, it merely intends to distinguish formalism and anti-formalism as a mode of reasoning or interpretation. Thus, the second characteristic of completeness and univocality is unnecessary for the purposes of this article. The second difference refers to the characteristic of "mechanicalness." The term is used as practically synonymous with "formality" and therefore as a characteristic informing the entire process of interpretation, while Lyons apparently limits the use of that term to refer only to the inference or deductive stage of the process. No conclusion of substance can really be made from this second difference, since it is undeniable that the characteristic of mechanicalness does apply to the identification stage of the process of interpretation.

To illustrate vividly the feature of mechanicalness, no description is perhaps more apt than that found in Chaim Perelman's article,[14] which dealt with formal justice, even if he did not use precisely that term and even if he was referring only to the inference stage of the process:

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mechanically applied. If both these complex conditions are satisfied, then a purely formal model of adjudication exists. *See* Emmanuel Fernando, *Models Of Adjudication And The Naturalist-Positivist Debate*, 47 Oxford D. Phil. Thesis. To be published in amended form by the U.P. Law Center under the title, LEGAL REASONING, LEGAL THEORY AND PHILIPPINE JURISPRUDENCE.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 961.

[14] Chaim Perelman, *The Three Aspects of Justice*, *in* THE IDEA OF JUSTICE AND THE PROBLEM OF ARGUMENT 62 (1963).

> 2. If we remain exclusively at the level of the act, of the manifestation of a will, we shall characterise the act as just if it is in conformity with the correct application of a rule. At this level the ideal of justice tends to be modeled on the more elementary operations of arithmetic and physics: it is desired that decisions should conform to weighing, measuring or calculating. The judge apportioning to each his due in accordance with the law can be assimilated to those advanced machines which indicate the total the customer is to pay by multiplying the quantity of goods delivered by the price per unit. On this view the perfect judge would be like an infallible machine, giving the answer when furnished with the elements of the problem, without being concerned to know what is at stake or who might benefit from possible error. The bandage covering his eyes of the statute of Justice symbolises this disinterested attitude: it is not persons -- and they are not seen as such -- who are judged, but beings falling into one or another legal category. The judge is impartial because he pays no respect to persons. The judgment will be the same whether friends or enemies are involved, the powerful or the wretched, rich or poor. All those to whom the same rules apply are to be treated alike, whatever the consequences. The machine is without passions: it cannot be intimated, or corrupted, or, for that matter, moved to pity. *Dura lex, sed lex.* The rule is equality, that is, interchangeability of those who are subject to justice: their personal particularities will be taken into account only to the extent that doing so is a legal condition of the application of the law. This is the view of formal justice, the very formalism which confers on it a logical structure encouraging correct deduction and more particularly the use of syllogism: what is valid for all members of a category applies to any particular member of that category. Nothing should be allowed to interfere with the strict development of the train of reasoning: this is the condition on which it will be possible to maintain a legal system so well worked out, laws so clear and complete, that ultimately law could be administered by an automaton. Such an attempt at clarifying and improving the legal system is the object to which the exegetic school has devoted itself.[15]

Roscoe Pound, on the other hand, provided a concrete example of how the process of legal inference may deteriorate into even greater mechanicalness. Depicting 'mechanical jurisprudence' as exhibiting "a rigid scheme of deductions from *a priori* conceptions," he illustrated "the development of mechanical legal doctrine," in terms of the construction of wills, thus:

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[15] *Id.* at 62-63.

> Successive decisions upon the construction of wills had passed upon the meaning of particular words and phrases in particular wills. These decisions were used as guides in the construction of other wills. Presently rules grew up whereby it was settled that particular words and phrases had prescribed hard and fast meanings, and the construction of wills became so artificial, so scientific, that it defeated the very end of construction and compelled a series of sections in the Wills Act of 1836.

As a last illustration, Atiyah and Summers,[16] contrariwise, approached the problem from the other end of the spectrum, by first defining a substantive (or anti-formalist) reason and then contrasting that definition with a definition of a formal one. Thus, to them a substantive reason is nothing but "a moral, economic, political, institutional or other social consideration."[17] From this, they define a formal reason as "a different kind of reason from a substantive reason that has not yet been incorporated in the law at hand. A formal reason is a legally authoritative reason on which judges and others are empowered or required to base a decision or action, and such a reason usually excludes from consideration, overrides or at least diminishes the weight of, any countervailing substantive reason at the point of decision or action."[18]

Again, this characterization is in consonance with the distinctions made in this article. When a decision is based on "a moral, economic, political, institutional or other social consideration," it lacks in authoritative formality and therefore in mechanicalness since resort to extra-legal sources in identifying the law, or indeed even in making inferences from the law, may need to be consulted. And when "a reason usually excludes from consideration, overrides or at least diminishes the weight of, any countervailing substantive reason at the point of decision or action," it possesses inference formality.

When discussing the three canons of construction therefore, the extent or degree of its formality depends on whether and how much it possesses the characteristics of authoritative formality and inference formality. If the rule or canon possesses it to a great degree, then it is formalist in orientation; if not, it is essentially anti-formalist, substantivist or purposive.

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[16] PATRICK S. ATIYAH & ROBERT S. SUMMERS, FORM AND SUBSTANCE IN ANGLO-AMERICAN LAW: A COMPARATIVE STUDY OF LEGAL REASONING, LEGAL THEORY, AND LEGAL INSTITUTIONS 1 (1987).

[17] *Id.* at 1.

[18] *Id.* at 2.

III. THE LITERAL RULE

The literal or plain meaning rule is conventionally or traditionally considered, at least ever since the 18th Century in England, to have dominance or primacy. This is the orthodox view. However, there is an approach which treats the literal rule merely as secondary. The present section will deal thoroughly with the literal rule as the primary canon of construction, and will only deal briefly with the rule as secondary.

A. The literal rule as primary

As its name suggests, the literal or the plain-meaning rule is the prototype of the formalist mode of interpretation. According to it, when a statute is clear, plain and free from ambiguity or absurdity, it must be given its plain, ordinary or literal meaning and applied without attempted interpretation. *Cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio.* Or, in the words of the U.S. Supreme Court, "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain ... the sole function of the courts is to enforce it according to its terms."[19] "Under the plain meaning rule, '[i]f the words convey a definite meaning, which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted....'"[20] Put in essentially the same way, "where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended."[21] For there is no room for interpretation when the meaning is plain:

> Time and time again, it has been repeatedly declared by this court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[22]

> For nothing is better settled than that the first and fundamental duty of courts is to apply the law as they find it, not as they

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[19] *See* Caminetti v. U.S., 242 U.S. 470, 61 L Ed 442, 37 S Ct 917 (1916).

[20] Kelso, *Appeals in Federal Courts By Prosecuting Entities Other than the United States: The Plain Meaning Rule Revisited, in* IIA JABEZ GRIDLEY SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 733 (5TH ED., 1992).

[21] U.S. v. Missouri Pacific Railroad Company, 278 US 269, 278 (1929).

[22] Cebu Portland Cement Company v. Municipality of Naga, Cebu, G.R. No. 24116-17, August 22, 1968, 24 SCRA 708, 712.

> like it to be. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it.[23]

More succinctly, it is not allowable to interpret what has no need of interpretation.[24]

The literal rule is otherwise known in legal parlance by the Latin term *verba legis*, and is expressed in the maxim, *index animo sermo est*, or speech is the index of intention. Hence it conforms to and is consonant with the cardinal rule of statutory interpretation. This is borne out by Chief Justice Tindal's classic formulation, during the 19th Century after the rule had emerged a century earlier and began to experience its heyday as the dominant rule in English statutory interpretation. Indeed, the approach of the courts in the earlier 16th and 17th centuries was anything but literal, as the mischief rule and considerations of equity were heavily relied upon. The articulation by Chief Justice Tindal of the literal rule is therefore as follows:

> The only rule for the construction of the Acts of Parliament, is that they should be construed according to the intent of Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more need be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the lawgiver.[25]

Under this rule, it is assumed that there is generally a literal or plain meaning and it is the court's function to give effect to it. In the most extreme versions, the court is not even allowed, in the search for meaning, to go beyond the very statutory words under consideration, whether these sources be internal to the statute or extraneous in character, thus laying emphasis on authoritative formality:

> [W]hen words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added or subtracted from by considerations drawn from titles or designating names or reports, accompanying their introduction, or from any extraneous source . . .. In other words the language being plain, and not

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[23] Resins, Inc. v. Auditor General, G.R. No. 17888, October 29, 1968, 25 SCRA 754, 757.

[24] Kodiak Electric Association, Inc., v. Delval Turbine, Inc., 694 P2d 150 (Alaska 1984), among others too numerous to mention.

[25] Sussex Peerage Case, 11 Cl. & Fin. 85, 143; 8 E.R. 1034, 1057 (1844).

> leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.[26]

In less extreme versions, resort to extraneous sources is allowed but strictly limited:

> It is sufficient to say that the general proposition that it is the duty of court to find the intention of Parliament - and not only of Parliament but of ministers also - cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and the duty of the court to travel outside them on a voyage of discovery is strictly limited: see, for instance, *Assam Railways & Trading Co., Ltd., v. Inland Revenue Commissioners*, and particularly the observations of Lord Wright ([1935] A.C. 445, 458).[27]

> We are obliged by our prior holdings to ascertain and carry out the legislative intent; to consider the language of the enactment in its natural and ordinary signification; to not insert or omit words to make a statute express an intention not evidenced in its original form; and, if reasonably possible, absent a clear indication to the contrary, to read a statute so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.[28]

Moreover, the practice of letting the words of the statute speak for themselves is encouraged, and that of substituting the court's own words for the words of the statute discouraged. Thus Justice Stone said, "As the words of the section are plain, we are not at liberty to add or to alter them to effect a purpose which does not appear on its face or from its legislative history.[29]

For there lurks a danger if such liberties are taken:

> [I]f an act uses ordinary words, a court should normally refrain from formulating its own elaborate definitions, or composing judicial paraphrases, of those words, for there is a danger that these definitions and paraphrases may become more important than the words themselves. Parliament's words should be left to speak for themselves. Likewise, it is dangerous to rephrase the policy or philosophy of an act

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[26] Caminetti v. U.S., 242 U.S. 470, 490 (1916), per Justice Day.

[27] Magor and St. Mellons v. Newport Corporation, 2 All E.R. 839 (1951), per Lord Simonds.

[28] Rome v. Lowenthal, 290 Md. 33, 428 A2d 75 (1981).

[29] Matson Nav. Co. v. U.S., 284 US 352 (1932).

> in the court's own words. Let it emerge from parliament's own words in the act.[30]

The more extreme formalist versions of the rule also call for its strict application when the words are clear, despite a resulting absurdity, this time laying emphasis on inference formality. Lord Esher put the point rather starkly by saying, "If the words of an Act are clear, you must follow them even if they lead to an absurdity. The Court has nothing to do with the question as to whether the Court has committed an absurdity."[31]

The remedy against such absurdity or injustice is left to the hands of the legislature. The judge's role is simply to interpret the laws the legislature has made according to its supposed intention, this intention being most reliably ascertained by giving the words the Parliament has used their plain, ordinary or literal meaning:

> At the time when more and more cases involve the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interprets them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of 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 its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is Parliament's opinion on these matters that is paramount.[32]

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[30] J.F. Burrows, *Statutory Interpretation in New Zealand*, in J. G. SUTHERLAND, *supra* note 20, at 651.

[31] R. v. Judge of the City of London Court, 1 Q.B. 273, 290 (1892).

[32] Dupont Steels Ltd. v. Sirs, 1 W.L.R. 157, 1 All E.R. 529 (1980), per Lord Diplock.

Thus, due deference is paid to the constitutional doctrine of separation of powers:

> The preference for literalism in determining the effect of a statute is based on the constitutional doctrine of separation of powers. The courts owe fidelity to the will of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.[33]

Adherence to the rule is rendered more imperative by the length of modern day statutes, which suggests that the legislature had, by means of the statute, already expressed its full meaning, leaving no need or scope to supply any additional meanings. In the words of Lord Evershed, "[t]he length and detail of modern legislation has undoubtedly reinforced the claim of literal construction as the only safe rule." Lord Brougham supplied the reason why:

> If we depart from the plain and obvious meaning on account of such views, we in truth do not construe the Act but alter it ... are really making the law and not interpreting it. This becomes peculiarly improper in dealing with a modern statute because the extreme conciseness of ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words; and the prolixity of modern statutes is still more remarkable than the shortness of the old.[34]

B. The literal rule as secondary

It has previously been mentioned that during the 16th and 17th Centuries the mischief rule enjoyed primacy or dominance. Necessarily, therefore, the literal rule was merely considered as secondary. However, its elucidation as a secondary rule cannot be adequately accomplished without an elaborate account made of both the golden and mischief rules, and hence must await such account before elucidation. It is to this which the discussion will now turn.

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[33] J. G. SUTHERLAND, *supra* note 20, at 94 *citing* Isbrandtsen Co. Inc., v. Johnson, 343 U.S. 779, 96 L Ed 1294, 72 S Ct 1011 (1952), among others.

[34] Gwynne v. Burnell, 6 Bing. N.C. 453, 561 (1840).

IV. THE GOLDEN RULE

The literal rule itself acknowledges that it is not a complete rule in the sense that it is to be applied in all cases. As the rule itself categorically states, it applies only when the statutory provision is clear, plain or free from some ambiguity or absurdity. Absent these conditions, resort to another rule is necessitated. Such a rule is the golden rule, which is not meant to supplant or replace the literal rule, but merely to augment or complement it.

The golden rule avails of both the formalist and purposive approaches to interpretation. When the rule is clear, plain and free from ambiguity or absurdity, the letter of the law is to govern; when it is not, purposive or substantive considerations are consulted. The degree or extent of the formality or lack of it of the golden rule depends therefore on where the line is to be drawn between clarity and ambiguity. The more readily a statutory provision is characterized as unclear or ambiguous, the greater the leeway for introducing anti-formalist considerations.

Consequently, the golden rule may be defined in varying degrees of generality for allowing purposive or substantive considerations to intrude into the process. The more general the formulation, the more anti-formalist the rule. Indeed, one such broad formulation is intended not just to augment or supplement the literal rule, but to utterly supplant or replace it.

There are thus two main versions of the golden rule: the currently accepted or orthodox view, which recognizes the primacy of the literal rule and is meant merely to supplement it; or the independent variationwhich means to supplant or replace the literal rule, in which case it may be taken as an alternative formulation of the mischief rule. For, as will be shown later, the golden rule construed in its independent sense is but a limited variant of the mischief rule in its primary sense. Both versions will be presented later in this section of the article.

A. The golden rule as secondary to the literal rule

Under the orthodox view, the golden rule is meant merely to augment or supplement the literal rule. Its use was clearly accepted and recognized in England as early as 1836 in the case of *Becke v. Smith*:

> It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical

> construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid inconvenience, but no further.[35]

A further classic statement of this approach was given by Lord Blackburn in 1877 in *River Wear Commissioners v. Adamson* when he said:

> I believe that it is not disputed what Lord Wensleydale used to call the golden rule is right, *viz.*, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary significance, and to justify the Court in putting them some other signification, which, though less proper, is one which the Court thinks the words will bear.[36]

Given these classic formulations, several essential characteristics or requisites of the golden rule in its orthodox sense can be discerned to form a strict and somewhat technically precise rendition of it. First, the literal rule is given primacy, and is absolutely to be applied in the absence of any equivocation, ambiguity, absurdity, repugnance, incongruity, inconsistency and the like, no matter the consequences. This is called the literal primacy requisite. Secondly, the statutory words must at least be capable of bearing some secondary or less usual meaning, which must be a reasonable further interpretation of those words. This is referred to as the 'secondary meaning' requisite. Finally, the non-application of the literal rule in deference to a more reasonable interpretation is dependent on certain other strictly specified conditions first being fulfilled, usually that of the just mentioned resulting absurdity, repugnance, incongruity and inconsistency, and the like. This is the 'prior anomaly' requisite.

Examples of the golden rule, albeit in looser versions, abound. A more recent formulation from English jurisprudence is due to Lord Reid:

> In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to

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[35] 2 M. & W. 191, 195 (1836).

[36] 2 App. Cas. 743, 764-765 (1877).

> have been the intention of the legislature that it is proper to look for some other meaning or phrase.[37]

American jurisprudence has likewise formulated the golden rule in this orthodox sense:

> Unambiguous words call for no construction, but when unambiguous words are used in such a manner as to produce ambiguous or uncertain results, or to produce a manifest injustice or absurdity, not within the reasonable contemplation of the Legislature, then it is the duty of the court, in applying the law, to give it such application as is reasonably within the intent of the law.[38]

B. Uncertainties in interpretation

The golden rule in the orthodox sense, even if formulated in terms of the above strict and more technically precise rendition, may still be construed in varying degrees of generality. Thus it is still prone to uncertainty or variability in interpretation. There exist three such areas of uncertainty: those of plain meaning due to vagueness and context, those due to the requirement of a reasonable secondary meaning and those due to the existence of some anomaly.

1. Uncertainties of plain meaning: problems due to vagueness and context

As mentioned above, the orthodox version of the golden rule is dependent on plain or literal meaning, since it is to apply only when the latter is inapplicable or, what amounts to the same thing, when the statute is not clear, plain or free from ambiguity or absurdity. This presupposes that statutory words and provisions have a plain, ordinary and literal meaning that is easily or readily discoverable. This implies in turn a patent lack of understanding and appreciation of language and its complexity. It ignores, in other words, the uncertainties inherent in language, those due to vagueness and context.

It is not always clear what constitutes a word or a sentence's plain or literal meaning. There is, first of all, the problem of vagueness. Plain meaning is often associated with the word's core meaning; and there is often no clearly defined boundary between a word's core and its penumbra of fringe meanings. It

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[37] Pinner v. Everett, 3 All E.R. 257, 258 (1969).

[38] Tillinghast v. Tillinghast, 25 Fed. (2d) 531, 533-534. *See, also,* State v. Thomson (Mo.) 5 S.W. (2) 57.

is inevitable that there will occasionally be disagreement as to what the proper scope of the plain meaning of a word actually is.

More importantly, there is the problem of context. It is now a truism that "words do not interpret themselves, and that their meaning depends upon their context." And yet, it was at one time presupposed that acontextual interpretation or construction in complete isolation was not only possible, but proper. Hence, it was deemed wrong for the court to look beyond the words with which it was immediately concerned if their meaning was clear when considered in isolation. No less distinguished an authority than Blackstone had entertained this notion when he opined that recourse should only be had to the context if the words "happen still to be dubious."[39] This notion derived further support from the advice given by Chief Justice Tindal in the *Sussex Peerage* case:

> [I]f the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense ... but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting that intention to call in aid the ground and cause of making the statute.[40]

a. Criticism of a contextual meaning

This notion of acontextual meaning has been criticized, and rightly so. Thus, Lord Greene maintained:

> In the present case, if I might respectfully make a criticism of the learned judge's method of approach, I think he attributed too much force to what I may call the abstract or unconditioned meaning of the word 'representation' ... The real question which we have to decide is what does the word mean in the context in which we find it here, both in the immediate context of the subsection in which the word occurs and in the general context of the Act, having regard to the declared intention of the Act and the obvious evil that it is designed to remedy.[41]

Viscount Simonds further asserted:

> [W]ords and particularly general words, cannot be read in isolation, their colour and content are derived from their context. So it is that I

[39] State v. Thomson (Mo.) 5 S.W. (2) 57 at 18.
[40] Sussex Peerage Case, 11 Cl. & Fin. 85, 143; 8 E.R. 1034, 1057 (1844).
[41] 2 All E.R. 995, 998 (1948).

> conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy.[42]

Lord Somervell added:

> It is unreal to proceed as if the court looked first at the provision in dispute without knowing whether it was contained in a Finance Act or a Public Health Act. When a court comes to the Act itself, bearing in mind any relevant extraneous matters, there is, in my opinion, one compelling rule. The whole or any part of the Act may be referred to and relied on. It is, I hope, not disrespectful to regret that the subject was not left where Sir John Nicholl left it in 1826.
>
> 'The key to the opening of every law is the reason and spirit of the law - it is the "*animus imponentis*" the intention of the lawmaker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed, detached from its context in the statute: it is to be viewed in connection with its whole context - meaning by this as well as the title and preamble as the purview or enacting part of the statute.'[43]

Thus, whereas the statute's text is the most important consideration in statutory interpretation, and a clear text ought to be given effect; yet because the meaning of the text critically depends *upon its surrounding context*, sometimes that context will suggest a meaning at war with the apparent acontextual meaning, if indeed such a meaning exists, suggested by the statute's language.

Moreover, the introduction of context puts into serious doubt the existence of a unique and objectively determinable plain or literal meaning:

> The more basic point, however, is that the assumption upon which the predictability argument is based, that the words of a statute can be taken to possess a single necessary 'plain meaning', apart from their full context, is open to serious question. When judges apply the plain meaning rule in the decision of an actual case, they are saying not only

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[42] Attorney General v. Prince Ernest Augustus of Hanover, A.C. 436, 461 (1957).

[43] *Id.* at 473. The citation from John Nicholl is from Brett v. Brett, 3 Add. 210, 216 (1826).

> that a particular designated meaning of the statute is plain, but also that the statutory language is not reasonably capable of suggesting any other meaning.[44]

For the plain meanings of a word or provision are as numerous as the number of different contexts within which it may be interpreted. Thus, it is not unexpected that jurists like Justice Frankfurter to have made and Justice White to have reiterated the following insightful comment about plain meaning: "The notion that because the words of a statute are plain, its meaning is also plain, is merely a pernicious oversimplification."[45]

b. The background communicative framework

Context, moreover, depends upon the background communicative framework of the statute. Taking that into consideration, the uncertainty or variability of plain meaning is further amplified or explained:

> [A]ny ascertainment of the meaning of language requires consideration of the atmosphere in which the conveyance originated, and ascertainment of the associations or connections understood by the conveyor to exist between the terms of the conveyance and the various possible objects in the external world. By this process, selected symbols which imperfectly symbolize the conveyor's idea are made more understandable, and the danger, that a selected symbol will call up in the mind of the construer a different idea from that which the conveyor intended to symbolize, is lessened. Language is capable of clear meaning only when read in the light of the circumstances of its employment.[46]

Understood against this background, it is not immediately clear what the literal or plain meaning of any given word or provision in a statute is. For there exists difficulty in ascertaining the usage of the word taken to represent the usage meant or intended by the legislature, the so-called 'standard sense' by which plain meaning is to be determined. The chosen standard sense should not correspond to slang usage, nor should it necessarily correspond to the customary usage of the judicial community. It may well be that an appropriate dictionary definition is the

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[44] Harry W. Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. UNIV. L. QUARTERLY 219 (1939).

[45] Federal Bureau of Investigation v. Abramson, 456 US 615, 72 L. Ed 2d 376, 102 S Ct 2054 (1981).

[46] R. Powell, *Construction of Written Instruments*, 14 IND. L.J. 199, 231 (1934), *citing* Restatement, Property, Explanatory Notes (Tent Draft No. 7, 1937), sec. 241.

best guide to it. Of course, evidence of meaning so derived will be subject to contrary indications of the relevant statutory context.

The following questions therefore need to be addressed by the interpreter. What is the proper background or context with which the absurdity, repugnance, incongruity or inconsistency is to be determined? Is the statutory norm set against the context of plain or ordinary understanding, or of technical meaning? Must the purpose of the statute as a whole be referred to? Must the statute's history, in the sense of previous statutes or other authoritative enactments by government on the matter, be consulted? Must extrinsic aids or extra-legal considerations, like the historical, sociological, economic or political background, be relied upon? Must parliamentary debates, newspaper accounts, historical and political treatises be examined? Are results or consequences relevant? An affirmative or negative answer to these questions depends upon the context with which the plain meaning is to be determined, for the proper application of the golden rule.

c. Linguistic register

As an aid to problems of uncertainty associated with context, the notion of the 'appropriate linguistic register' has been introduced. Plain meanings being relative to linguistic register, which may not necessarily coincide with the context of ordinary meaning, it is crucial to determine what the appropriate linguistic register is. In other words, since the plain or ordinary meaning may alter or vary depending on the context upon which it is based, reliance need not be placed so strongly on the context of what the ordinary reader would understand, but in terms of what the appropriate linguistic register should be. This is not a question, however, to which a straightforward answer is readily available:

> It is inevitable that there will occasionally be disagreement as to what the ordinary meaning of a word actually is. It is unfortunate that the phrase 'ordinary meaning' implies a simple either/or choice; either something is an ordinary meaning or it is not. For this reasons some writers prefer to talk of 'obvious' meaning. The latter term readily lends itself to description in terms of degrees of obviousness.
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> Similarly, it is not immediately clear what usage of a word is to be taken to be representative of the usage of society as a whole. The chosen standard of speech should not correspond to the customary usage of the judicial community. It may well be that an appropriate dictionary meaning is the best guide to a word's 'standard sense.' Evidence of meaning so derived will of course be subject to contrary indications in the relevant statutory context. Where legislation is

> aimed at one particular group in society, for example legislation dealing with the regulation of a specific professional group, then obviously the ordinary meaning of the statutory language should be taken as the ordinary meaning of that particular speech community. This has not always been done. It is only within the last few years that certain members of the judiciary have shown an awareness of the need to take account of linguistic register.[47]

The importance of locating the appropriate linguistic register, so as to suitably situate the context within which a provision in a statute is to be interpreted, is recognized by English courts. Thus, Lord Simon of Glaisdale, in *Maunsell v. Olins*,[48] displayed a contextualized approach to ordinary or plain meaning relative to linguistic register:

> Statutory language, like all language, is capable of an almost infinite gradation of 'register' - *i.e.*, it will be used at the semantic level appropriate to the subject matter and to the audience addressed (the man in the street, lawyers, merchants, etc.). It is the duty of a court of construction to tune in to such register and so to interpret the statutory language as to give to it the primary meaning which is appropriate in that register (unless it is clear that some other meaning must be given in order to carry out the statutory purpose or to avoid injustice, anomaly, absurdity or contradiction). In other words, statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances.[49]

Lord Simon again emphasized this doctrine in the more recent House of Lords case of *Stock v. Frank Jones (Tipton) Ltd*: "Nowadays, we should add to 'natural and ordinary meaning' the words 'in their context and according to the appropriate linguistic register."[50]

2. Uncertainties due to the 'secondary meaning' requisite

There exist, furthermore, variable criteria as to how far the interpreter may go in his search for meanings alternative to the plain meaning. Thus, it has been required that the alternative must at least be a secondary, less usual

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[47] JOHN H. FARRAR & ANTHONY M. DUGDALE, INTRODUCTION TO LEGAL METHOD 136 (2nd ed. 1984).

[48] A.C. 373 (1975).

[49] *Id.* at 391E.

[50] 1 W.L.R. 231, 235 (1978).

meaning. This also means that it cannot just be any other possible meaning, like a tertiary or more remote meaning:

> It must be emphasised at the outset that it is only when a secondary meaning is available that there can be any question of the courts' abandoning a primary meaning because it produces an absurdity. No judge can decline to apply a statutory provision because it seems to him to lead to absurd results nor can he, for this or any other reason, give words a meaning that they will not bear."[51]

Furthermore this secondary meaning must at least be a reasonable interpretation of the provision in question:

> It is a cardinal principle applicable to all kinds of statutes that you may not for a reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning, then you can choose between those meanings, but beyond that you must not go.[52]

However, what qualifies as a reasonable secondary meaning to one judge may not so qualify to another. Indeed the requirement may be so stringently applied, that a judge may feel constrained to stick to the statutory provision's plain or literal meaning, "however unreasonable and unjust the consequences":

> What we must look for is the intention of Parliament, and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the appellant's contention. But we can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable and unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament. ... One is entitled and indeed bound to assume that Parliament intends to act reasonably and therefore to prefer a reasonable interpretation of a statutory provision if there is any choice. But I regret to say that I am unable to agree that this case leaves me with any choice.[53]

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[51] RUPERT CROSS, STATUTORY INTERPRETATION 75 (1st ed. 1976).

[52] Jones v. Director of Public Prosecutions, A.C. 635, 668 (1962).

[53] Inland Revenue Commissioners v. Hinchy, A.C. 748, 767-768 (1960).

Conversely, this requirement may be applied from the opposite perspective.

> To apply the words literally is to defeat the obvious intention of Parliament and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of the enactment must prevail.[54]

Indeed this does not prevent a judge from interpreting the words so liberally as to abandon on the flimsiest grounds the provision's literal meaning. Without a doubt therefore, no clear criteria exist for determining what qualifies as a reasonable secondary meaning.

a. Secondary meaning and ambiguity

The availability of a secondary meaning depends on the existence of an ambiguity:

> In the context of statutory interpretation the word most frequently used to indicate the doubt which a judge must entertain before he can search for and, if possible, apply a secondary meaning is 'ambiguity'. In ordinary language this term is often confined to situations in which the same word is capable of meaning two different things, but, in relation to statutory interpretation, judicial usage sanctions the application of the word 'ambiguity' to describe any kind of doubtful meaning of words, phrases or longer statutory provisions.[55]

And the task of determining whether an ambiguity exists is not an easy one, and in the end, is highly subjective.

> Each one of us has the task of deciding what the relevant words mean. In coming to that decision he will necessarily give great weight to the opinion of others, but if at the end of the day he forms his own clear judgment and does not think that the words are 'fairly and equally open to divers meanings' he is not entitled to say that there is an ambiguity.

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[54] Luke v. Inland Revenue Commissioners, A.C. 557, 577 (1963).

[55] R. CROSS, *supra* note 51, at 76.

> For him at least there is no ambiguity and on that basis he must decide the case.[56]

Moreover, in ordinary language, "ambiguity' is often confined to situations in which the same word is capable of meaning two different things. Were that to be the applicable criterion in statutory interpretation however, then practically any word or provision of a statute is ambiguous. To make the criterion more stringent therefore, it has been proposed that the ambiguity must be one based on "real doubt" that exists "after full inquiry and consideration":

> But it only applies where after full inquiry and consideration one is left in real doubt. It is not enough that the provision is ambiguous in the sense that it is capable of having two meanings. The imprecision of the English language, and so far as I am aware of any other language, is that it is extremely difficult to draft any provision which is not ambiguous in that sense. This section [s. 37 of the Criminal Justice Act] is clearly ambiguous in that sense, the Court of Appeal (Criminal Division) attach one meaning to it, and your lordships are attaching a different meaning to it. But if, after full consideration, your lordships are satisfied, as I am, that the latter is a meaning which Parliament must have intended the words to convey, then this principle does not prevent us from giving effect to our conclusion.[57]

There is also the proposal that the 'ambiguity' must spring from some sort of "true knowledge about the use of words," whatever that means. Thus, *Inland Revenue Commissioners v. Hinchy*[58] prompted the suggestion that, if in a particular context, words convey to different judges a different range of meanings derived from, not fanciful speculations or mistakes about linguistic usage, but from true knowledge about the use of words, they are ambiguous.

Finally, it must be pointed out that there is a view, as previously noted, that the existence of an ambiguity is not even a requisite for the application of a secondary meaning, the production of "ambiguous or uncertain results or ... a manifest injustice or absurdity, not within the reasonable contemplation of the legislature,"[59] being sufficient.

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[56] Kirkness v. John Hudson & Co., Ltd., A.C. 696, 712 (1955), per Lord Simonds.
[57] Director of Public Prosecutions v. Ottewell, A.C. 642, 649 (1970), per Lord Reid.
[58] A.C. 748 (1960).
[59] 2 M. & W. 191, 195 (1836).

Due to the uncertainties inherent in the term 'ambiguity' or indeed even of its necessity, the criterion for determining the existence of a secondary, less usual meaning are thus rendered just as vague and uncertain.

b. Reasonableness

Not only must a secondary, less usual, meaning exist, but that secondary meaning must be one that the words of the statute must reasonably bear. However, the term "reasonable" is even more obviously highly subjective and variable as the term "ambiguity". This does not call for any further elucidation.

In summary, therefore, the requirement of the existence of a reasonable, secondary meaning does not provide clear-cut standards, and thus affords much leeway for the court to avail of either highly formal or highly purposive interpretations.

3. Uncertainties due to the 'prior anomaly' requisite

The requirements of a prior anomaly, in the sense of an absurdity, repugnancy, inconsistency or incongruity before a secondary, less usual meaning is to be resorted to provide another occasion for variability and uncertainty in the application of the golden rule. This is because, just as in the case of secondary meanings, there exist no clear-cut criteria of what constitutes such anomalies. This uncertainty is further amplified by the uncertainties inherent in language, the earlier-mentioned problems due to vagueness and context.

The English House of Lords, aware of such a problem, has recently devised some sort of anomalies test.

> [A] court will only be justified in departing from the plain meaning of the words of the statute were it satisfied that:
>
> (1) there is a clear and gross balance of anomaly;
>
> (2) Parliament, the legislative promoters and the draftsmen could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; ...

> (4) the language of the statute is susceptible of modification required to obviate the anomaly."[60]

The above test, however, has not prevented discretion or leeway being afforded the interpreter in determining when an anomaly exists or not. This is to be discerned from the use of such terms as 'clear and gross balance of anomaly' and the like in the test, which in themselves also contain ambiguities or uncertainties.

a. Absurdity

The term 'absurdity' is vague and uncertain:

> One serious objection to the golden rule is therefore that it is erratic. One can never know whether a particular conclusion will be so offensive to the particular judge to qualify as an absurdity and, if so, whether the court will feel moved to apply the golden rather than the literal rule.[61]

b. Repugnancy, inconsistency, incongruity and the like

The use of the terms 'repugnancy', 'inconsistency' 'incongruity' and the like does not seem to help either. For the question still needs to be asked as to what the relation of these terms are to 'absurdity'. Are they additional criteria meant to widen the application of the golden rule beyond mere 'absurdity', or are they meant as elucidations of the meaning of 'absurdity' and thus to restrict or qualify its meaning? If the former, then the word 'absurdity' as used in the various statements of the golden rule provides but one criterion among several alternatives for discarding the literal rule in favor of the golden rule. If the latter, 'absurdity' means something wider than 'repugnancy or inconsistency with the rest of the instrument'. Such words as 'repugnancy' 'inconsistency' 'anomaly' and 'contradiction' can then be properly subsumed under the word 'absurdity' for the purposes of a brief exposition of the rules of statutory interpretation:

> We are now in a position to answer two questions which have been left open. (i) Does the word 'absurdity' as used in various statements of the golden rule mean something wider than repugnance or inconsistency with the rest of the instrument? (ii.) Can such words as 'repugnancy',

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[60] Stock v. Frank Jones (Tipton) Ltd., 1 W.L.R. 231, 236 (1978), per Lord Simon of Glaisdale.

[61] MICHAEL ZANDER, THE LAW-MAKING PROCESS 57 (2nd ed. 1985).

> 'inconsistency', 'anomaly', and 'contradiction' be properly subsumed under the word 'absurdity' for purposes of a brief exposition of the rules of statutory interpretation? If the answer to the first question is in the affirmative, the answer to the second must also be in the affirmative for our rules of interpretation have fortunately not reached such a degree of sophistication as to require distinctions of so great a subtlety to be drawn.[62]

And even if such questions have been settled, the terms themselves are not exactly free from vagueness and uncertainty either.

4. The effect of the above uncertainties

The above uncertainties result in the variability of application of the golden rule. For it must first be made clear when plain or literal meaning is deemed inapplicable or inappropriate so that the golden rule may then be resorted to. This depends in turn upon whether the literal meaning can be accurately determined, with the concomitant problems of uncertainty arising from vagueness and context. After the literal meaning of the statutory provisions has been determined, the existence of some ambiguity and absurdity, repugnancy, inconsistency or incongruity, must next be established. There is again no clear-cut and definitive criteria for accurately or precisely determining when this occurs. Finally, upon concluding that some ambiguity and absurdity exists, the lack of precise criteria specifying when an allowable secondary meaning exists or what a 'reasonable' interpretation of the provision is, leads to further uncertainty. Depending therefore on how extensive the proper background or context is to be construed, the interpreter has as much free play in his search for the said ambiguity and absurdity, repugnancy, inconsistency or incongruity and for a reasonable interpretation which qualifies as a secondary meaning, so as to abandon the use of the plain-meaning rule in favor of the golden rule and so as to apply the latter rule.

It is no surprise therefore that there have been posited a variety of formulations of the golden rule, bearing differing degrees of generality and thus of formality, in actual practice.

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[62] R. CROSS, *supra* note 51, at 81.

5. The variability of formulations in actual practice

In actual practice as a result, there have been many distinct formulations of the golden rule, each specifying its own conditions, with differing levels of generality in terms of liberality or strictness, as to when the literal rule is not to be applied. But in some of them, the proper context for determining absurdity, repugnance, incongruity or inconsistency is not specified. In *River Wear Commissioners v. Adamson*,[63] for example, Lord Blackburn in attributing the rule to Lord Wensleydale, listed down these conditions to consist either of "an inconsistency, or an absurdity or inconvenience so great." But the question remains to be asked: Against what context is the greatness of "inconsistency", "absurdity" or "inconvenience" to be determined? The complete quote of Lord Blackburn is as follows:

> I believe that it is not disputed that what Lord Wensleydale used to call the golden rule is right, *viz.*, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could 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.[64]

Lord Esher, in postulating the conditions for the non-application of the literal rule, requiring, apart from a manifest absurdity, a lack of clarity, nevertheless did not specify the context against which the manifest absurdity is to be determined:

> If the words of an Act are clear, you must follow them even if they lead to a manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity. In my opinion the rule has always been this - if the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity and the other does not, the court will conclude that the legislator did not intend to lead to an absurdity, and will adopt the other interpretation.[65]

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[63] 2 App. Cas. 743 (1877).

[64] *Id.* at 764-765.

[65] R. v. City of London Court Judge, 1 Q.B. 273, 290 (1892).

In others, the background of the entire statute is offered as the proper context within which to determine the absurdity or incongruity. Thus, in *Grey v. Pearson*,[66] the conditions for the non-application of the plain meaning rule are "some absurdity, or some repugnance or inconsistency with the rest of the instrument". Hence, Parke B. said:

> I have long been deeply impressed with the wisdom of the rule now, I believe, universally adopted, at least in the courts of law in Westminster Hall, that in construing wills and indeed, statutes, and all written instruments, the grammatical and ordinary sense of the words 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 the absurdity and inconsistency but no farther.[67]

Sir Rupert Cross continued with this theme:

> The judge may read in words which he considers to be necessarily implied by words which are already in the statute, and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible or absurd or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute.[68]

Other cases may specify the context with respect to one condition, and leave it unspecified with respect to another. Hence, in A.G. *v. Lockwood*, the context for determining a contradiction is "the apparent purpose of the Act," while that for determining absurdity is unspecified, implying that the context is other than the Act's apparent purpose:

> The rule of law I take it upon the construction of all statutes is, whether they be penal or remedial, to construe them according to the plain literal and grammatical meaning of the words in which they were expressed unless that construction leads to a plain and clear

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[66] 6 H.L. Cas. 61, 106 (1857).

[67] *Id. See, also*, Becke v. Smith, 2 M. & W. 191, 195 (1836), for a similar formulation by Parke B, to wit: "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless this is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."

[68] R. CROSS, *supra* note 51, at 43.

> contradiction of the apparent purpose of the Act or to some palpable and evident absurdity.[69]

Lord Simon of Glaisdale, while mentioning the context of the statute's purpose against which to determine when to abandon the use of literal meaning, nevertheless leaves open the possibility for other contexts with which to determine that "injustice, absurdity, anomaly, or contradiction," sufficient for a secondary meaning to be applied:

> [I]n statutes dealing with ordinary people in their ordinary lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly, or contradiction, in which case some secondary ordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly, or contradiction, or fulfil the purpose of the statute: while, in statutes dealing with technical matters, words which are capable of both bearing an ordinary meaning and being terms of art in the technical matter of the legislation would presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified, some secondary meaning as terms of art).[70]

Other cases appeal to results or consequences. Thus, Lord Reid referred to "a startling or inequitable result" in one case, a failure to "accord with the apparent intention of the provision (or to) avoid a wholly unreasonable result" in another, and "some result which cannot reasonably be supposed to have been the intention of the legislature," in still another:

> Where a statutory provision in one interpretation brings about a startling or inequitable result, this may lead the court to seek another possible interpretation to do justice.[71]

> It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of the enactment must prevail.[72]

> In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary

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[69] Attorney-General v. Lockwood, 9 M. & W. 378, 398 (1842).

[70] A.C. 373, 391 (1975).

[71] Coutts and Co. v. Internal Revenue Commissioner, A.C. 281 (1953).

[72] Luke v. Internal Revenue Commissioner, A.C. 577 (1963).

> meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other meaning or phrase.[73]

C. *The golden rule as independent*

There exist some broad formulations of the golden rule, found in the jurisprudence of the United States, which do not presuppose plain or literal meanings, and are thus meant not as a subsidiary or a complement to, but as independent or as a replacement of, the literal rule. In its most general and independent terms, the rule is merely about reasonableness, or about the application of the most reasonable interpretation. The unreasonableness of the result produced by one among alternative possible interpretations of a statute is (sufficient) reason for rejecting that interpretation in favor of another which would produce a reasonable result.[74] Indeed the golden rule is otherwise called, by some authorities on statutory construction, as the reasonable consideration standard.[75]

This broad formulation requires only that between a number of possible interpretations, the unreasonable ones are to be rejected and the reasonable one chosen. Plain or ordinary meaning is not necessarily given primacy. And although the interpreter's search is limited to reasonable meanings beyond which he must not go, the discretion afforded to him is rather extensive. In his search for reasonableness, he may cite considerations of injustice, unfairness, inconvenience, hardship or oppression, as among the many possible grounds for bypassing ordinary or plain meanings.

Viewed from this perspective, the golden rule is a limited variant of the mischief rule in its primary sense, and may be considered as practically equivalent to it. Indeed this is probably what the English and Scottish Law Commissions meant when they stated that the golden rule "on closer examination turns out to be a less explicit form of the mischief rule."[76] This brings us to the next canon of interpretation.

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[73] Pinner v. Everett, 3 All E.R. 257 (1969).

[74] Commissioner of Internal Revenue v. Brown, 380 U.S. 563, 14 L Ed 2d 75, 85 S Ct 1162 (1965).

[75] *See, for example*, Sutherland, *supra* note 20, at 61.

[76] Law Com. No. 21, at 19.

V. THE MISCHIEF RULE

The mischief rule is a canon of statutory construction which openly and directly appeals to the evil or mischief that the statute is intended to address, or more generally to its purpose or objective, in the process of interpretation. As previously mentioned, the rule may be taken either as a primary or a secondary canon of construction. As a primary canon, other rules of interpretation, and in particular the literal rule, is secondary or subordinate to it. As a secondary canon, it is, conversely, subordinate to the literal rule.

As previously mentioned, the mischief rule may be considered as practically equivalent to the golden rule. This occurs when the golden rule is taken in its independent sense, where it becomes a limited variant of the mischief rule in its primary sense. But that is not all. When the mischief rule is this time taken in its secondary sense, it is but an expanded version of the golden rule in its orthodox sense. Indeed for the mischief and golden rules to be distinct from each other, the mischief rule must be taken in its primary signification and the golden rule in its orthodox meaning.

A. The mischief rule as primary.

1. A brief history of its origin and development

The mischief rule was originally formulated as early as the 16th Century, when until the 17th Century, it experienced its heyday. This is substantiated by Plowden's Report of a 1560 case, *Stradling v. Morgan*, which cited various authorities:

> [F]rom which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach some persons only, which expositions have always been founded on the intent of the legislature which they have collected sometimes by considering the calls and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been

> guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is constant to reason and good discretion.[77]

Some twenty years later, its classic formulation was articulated in *Heydon's Case*:

> And it was resolved by them, 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:
>
> 1st. What was the Common Law before the making of the Act.
>
> 2nd. What was the mischief and defect for which the Common Law did not provide.
>
> 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.
>
> And, 4th. The true reason of the remedy; and then the Office of all 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*, and to add force and life the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.[78]

The mischief rule, in the above classic formulation, was clearly intended as a primary rule or as *the* canon of interpretation. In other words, it was the rule to be availed of by the courts in interpretation as against any other rule. Moreover, it was proposed not only as the primary, but also as the correct, if not the sole, method by which courts should decipher legislative intent and construe statutes.

As a primary canon, it explicitly placed direct and immediate reliance upon the evil or mischief the statute was intended to address, in construing the statute. 'Mischief' however was not meant in a limited, narrow or negative sense, but in its broader positive import which embraced the purpose or objective of the

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[77] 1 Plowd. 199, 204; 75 E.R. 305, 315 (1560).
[78] 3 Co. Rep. 7a, 7b; 76 E.R. 637,638 (1584).

statute, or the spirit or rationale behind the law. As such, it was otherwise known as a canon of equity, as Lord Coke himself acknowledged in his Institutes:

> Equity is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provided; and the reason hereof is, for that the law-makers could not possibly set down all cases in express terms.[79]

In his note to *Eyston v. Studd*,[80] Plowden spoke of equity in this manner:

> [It is something which] enlarges or diminishes the letter according to its discretion . . . experience shows us that no lawmakers can foresee all things which may happen, and therefore it is fit that if there be any defect in the law, it should be reformed by equity. ... It is a good way, when you peruse a statute, to suppose that the lawmaker is present, and that you have asked him the question you want to know touching the equity, then you must give yourself such an answer as you imagine he would have done, if he had been present.[81]

The mischief rule, although not as dominant or prevalent as it once was, is still availed of by the courts. A relatively recent application of it is found in the earlier quoted U.S. case of *Riggs v. Palmer*,[82] where appeal to its use in the 16th Century was mentioned:

> [A]nd it is said in Bacon:
>
> > 'by an equitable construction a case not within the letter of a statute is sometimes holden to be within the meaning, because it is within the mischief for which a remedy is provided. The reason for such a construction is that the law-makers could not set down every case in express terms. In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose that the law-maker present, and that you have asked him this question, did you comprehend this case? Then you must give yourself such answer as you might imagine he, being an upright and reasonable man,

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[79] I Inst. 24b.

[80] 2 Plowd. 459 (1574).

[81] *Id.*

[82] 115 N.Y. 506, 22 N.E. 188, 5 L.R.A. 340 (1889).

> would have given. If this be that he did mean to comprehend it, you may safely hold the case within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto.' In some cases the letter of a legislative act is restrained by an equitable construction; in others it is enlarged; in others the construction is contrary to the letter.[83]

2. The subordination of the literal rule

As previously mentioned, the mischief rule, taken as a primary or fundamental canon of construction, renders the literal rule merely as an auxiliary or a subsidiary adjunct to it. It only remains to show how this is realized. The answer to this question has already been anticipated by our discussions in the previous section on the golden rule, when the problems of uncertainty associated with acontextual meaning, background communicative framework and linguistic register were explored. These problems not only give rise to uncertainty in the use of the literal rule, but also provide arguments why the literal rule ought to be treated as subordinate to the mischief rule.

To elaborate, it is instructive to consider the case of *Maunsell v. Olins*,[84] where the distinction between the mischief rule as a primary and as a secondary canon of construction was explained by Lord Simon.

> The rule in *Heydon's Case*, 3 Co. Rep. 7a itself is sometimes stated as a primary canon of construction, sometimes as secondary (*i.e.*, available in the case of an ambiguity): *cf. Maxwell*, pp. 40, 96, with *Craies in Statute Law*, 7th ed. (1971), pp. 94, 96. We think that the explanation of this is that the rule is available at two stages. The first task of a court of construction is to put itself in the shoes of the draftsman - to consider what knowledge he had and, importantly, what statutory objective he had - if only as a guide to the linguistic register. Here is the first consideration of the 'mischief'. Being thus placed in the shoes of the draftsman, the court proceeds to ascertain the meaning of the statutory language. In the task 'the first and most elementary rule of construction' is to consider the plain and primary meaning, in their appropriate register, of the words used. If there is no such plain meaning (*i.e.* if there is an ambiguity), a number of secondary canons are available to resolve it. Of these one of the most important is the

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[83] *Id.* at 510.

[84] A.C. 373 (1975).

> rule in *Heydon's case*. Here, then, may be a second consideration of the 'mischief'.[85]

The distinction therefore is manifest. The mischief rule, being available in two distinct stages, is treated as a primary canon of construction, when it is availed or made use of by the courts at the initial, primary stage. On the other hand, when it is availed of at the second stage, then it is but secondary.

In its use at the primary stage, the rule directly appeals to the statutory purpose and objective. Literal meanings therefore are not the starting points of the interpretation. Rather, because it is claimed that there is no such thing as acontextual meaning and that meaning always presupposes a context, then the appropriate linguistic register has first to be fixed so as to know the background context against which meaning is to be determined. Context is thus immediately taken into account in interpretation and not literal meanings. On the basis of the context as set by the appropriate linguistic register, the objective or purpose of the statute can then be known.

> The mischief rule is a very great improvement on the other two, in that it at least encourages the court to have regard to the context in which the doubtful word appears. It is therefore entirely different from the literal or golden rules which direct attention purely at the words themselves. Language cannot be properly understood without some knowledge of the context, ('Teach the children a game' is not likely to be understood as strip poker.) It is therefore obviously sensible to permit and even encourage the court to go beyond the narrow confines of the disputed phrase itself. The mischief rule is designed to get the court to consider why the Act was passed and then to apply that knowledge in giving the words under consideration whatever meaning will best accord with the social purpose of the legislation."[86]

The procedure with which the mischief rule renders the literal rule subordinate may now be more elaborately specified. The purpose or objective of the statute is first determined, by adopting the perspective of the legislative draftsman, so as to discover why, or for what purpose, the statute was enacted. Thus, the background context, which may include considerations extrinsic and not just intrinsic to the statute in accordance with the appropriate linguistic register, is probed and surveyed. After the statutory purpose has been so ascertained, then the particular provision requiring interpretation is to be

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[85] *Id.*

[86] M. Zander, *supra* note 61, at 57.

examined so as to determine its literal or plain meaning. The literal meaning is thereafter to be construed in the light of this statutory objective. Thus, the determination of the literal meaning ultimately rests on the appropriate linguistic register, the background context and the purpose. The background context and purpose so guiding and informing the interpretation, the literal rule is thus made to depend on the mischief rule, so that the former is merely secondary or subordinate to the latter, which remains primary.

3. Formalist intrusions in the application of the mischief rule

By the rule's direct appeal to statutory purpose and objective or to equity, much leeway is naturally afforded the interpreter to introduce other considerations, apart from what is explicitly stated in the statute, so as to arrive at legislative intent. It is no surprise therefore, that whereas the literal rule is taken as the prototype of the formalist approach, the mischief rule on the other hand is considered the prototype of the anti-formalist or substantive approach to interpretation.

Understandably, the wider the background context consulted, the more substantive or anti-formalist the interpretation. This is nothing but the previously referred to problem of determining the appropriate linguistic register. Constraints or limits on too substantive or purposive an application may therefore be imposed simply by contracting the linguistic register.

At the extreme substantive end, there is no limitation as to what extraneous aids or guides to interpretation are to be considered, except perhaps for relevance. Thus, the background context is all-extensive and includes any or every aid or guide, so long as it is relevant. At the other extreme, the linguistic register is taken to be the word or phrase itself and nothing more. Context being so narrowly defined under this extreme, it is practically equivalent to a simple application of the literal rule. Between these two extremes lies a plethora of modes of interpretation which impose some restrictions on the use of extrinsic, as well as intrinsic, aids. Mischief rule advocates usually situate themselves within this range between the two extremes, as they wisely avoid the Scylla of too undisciplined an interpretation or the Charibdis of too formalistic and artificial a mode. One moderate and popular mode, whose elaboration here does not necessarily imply its endorsement, proposes that judges look no further than the words of the act or the statute itself in applying the mischief rule:

> Statutes in the sixteenth century and for long thereafter in addition to the enacting words contained lengthy preambles reciting the particular

> mischief or defect in the common law that the enacting words were designed to remedy. So, when it was laid down, the 'mischief' rule did not require the court to travel beyond the actual words of the statute itself to identify 'the mischief and defect for which the common law did not provide', for this would have been stated in this preamble. It was a rule of construction of the actual words appearing in the statute and nothing else. In construing modern statutes which contain no preambles to serve as aids to the construction of the enacting words the 'mischief' rule must be used with caution to justify any reference to extraneous documents for this purpose.[87]

The reason for its popularity is that the entire act or statute provides a natural background context against which interpretation is to be undertaken:

> A statute is passed as a whole and not in parts or sections, and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. It is not proper to confine its intention to the one section construed. *It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from the context, some particular meaning to be attached to any word or phrase usually to be ascertained from the context.*[88] (emphasis supplied)

There are, of course, other plausible candidates for the appropriate linguistic register. Whatever that may be, the mischief rule's formality or lack of it greatly depends on the narrowness and wideness of scope of the chosen register.

B. The mischief rule as secondary.

The above-cited *Maunsell v. Olins* quote of Lord Simon explains how the mischief rule may be taken as a secondary canon of construction. As cited, the rule as a secondary canon is to be made use of or is "available in the case of an absurdity". This means that the literal rule is first applied, and it is only when an anomaly, like an absurdity, and an ambiguity surface that appeal to the evil or mischief the statute was intended to address is made.

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[87] Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschafenburg AG, A.C. 591, 638 (1975).

[88] J. G. SUTHERLAND, *supra* note 20, at 386.

In this process, the first stage, the stage when the statutory purpose or objective is to be determined from its background context, is completely bypassed. This is because the point raised concerning acontextual meaning is dismissed for being inapplicable or irrelevant. On the contrary, it is presupposed that there exists some natural or ordinary background context against which the plain or literal meaning of a particular statutory provision may be directly known and which provides the so-called 'standard sense' of the provision. This, in lieu of purpose determination, is the first step in statutory construction. It is only when the literal meaning so ascertained gives rise to an ambiguity and an anomaly, that resort to the evil or mischief the statute was intended to prevent, is then made. This coincides with the second stage referred to in the quote. Clearly therefore the mischief rule is but subordinate or secondary to the literal rule, since it is to be used only when the latter is inapplicable. Thus, it has been asserted:

> In a perfect world the language employed in the Act would not be capable of more than one interpretation but due in part to the lack of precision in the English language, often more than one interpretation is possible. Then, to enable Parliament's intention to be determined, as I understand the position, one may have regard to what was the law at the time of the enactment and to what was the mischief to which it was directed.[89]

Lord Scarman, in emphatically and starkly enunciating the importance of purpose as fulfilling the judicial function of determining legislative intent, implied the same point as follows:

> [I]n the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law, the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment.[90]

The process by which the mischief rule may be treated as a secondary canon of construction has thus been detailed. As such, the rule becomes merely subordinate to the literal rule. Furthermore, it also becomes but an expanded

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[89] Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschafenburg AG, A.C. 591, 622 (1975), per Lord Dilhorne.

[90] Dupont Steel v. Sirs., All E.R. 529, 551 (1980).

version of the golden rule in its orthodox sense, since appeals to anomalies, like absurdity, and to ambiguity are made prior to any excursions into purposive considerations.

VI. PHILIPPINE JURISPRUDENCE

Philippine jurisprudence also makes use of the same three rules or canons of statutory construction, availed of by the above other common law legal systems. But differences exist as to how they are used. First of all, the literal rule has invariably been explicitly applied as a primary, and never as a secondary, canon of construction. Secondly, the golden rule is applied without the degree of technical precision or sophistication with which it is used in English jurisprudence. Thus, attempts to render this rule more definite and objective are lacking. In that regard, it is akin to American jurisprudence, which is not surprising since the Philippines imbibed common law principles during the American occupation. As a result, there appears to be no clear distinction between the golden rule and the mischief rule. Finally, as to the mischief rule, there is a lack of clarity and elaboration as to its use. There is oftentimes ambiguity as to its application so that it is uncertain whether the mischief rule in the primary or the secondary sense is meant. Whereas there exist cases where undoubtedly the mischief rule in the secondary sense is intended, this is not so with respect to the application of the mischief rule in the primary sense. Thus, unlike the situation in England, there lacks some elaborated theory as to the Philippine use of the mischief rule as primary. In other words, there is no sophisticated jurisprudential treatment of concepts such as "background context" and "linguistic register," with which the process of subordinating the literal rule to the mischief rule may be accounted for.

This last point is related to the first difference. Since the explicit use of the literal rule in Philippine jurisprudence has invariably been in the primary sense, there exists some substantial theory regarding its use. On the other hand, no clear challenge has been made to the primacy of the literal rule by the mischief rule, precisely because not even a hint of an elaborated theory regarding the use of the mischief rule has been jurisprudentially proposed. Thus, the most that can be said about the Philippine use of the mischief rule in the primary sense, is that it has been implicitly but not categorically adopted. This leads one to surmise that the mischief rule in the Philippine context is nothing but an expanded version of the golden rule (in its orthodox sense).

A. The literal rule

Just as in other common-law jurisdictions, the orthodox view regarding the primacy in status of the literal rule is generally accepted in Philippine statutory interpretation. This is not all. As previously mentioned, the literal rule has invariably been explicitly applied as a primary, and never as a secondary, canon of construction.

In the discussion which follows, the prevalence and invariable primacy of the literal rule will be demonstrated. This will be shown not only by means of examples, but also in terms of its relation to legislative intent, to extrinsic aids and to the interpretation of documents other than statutes. Clearly, the prevalence of the literal rule is unquestioned.

1. Examples of literal rule applications

There exists a plethora of cases, establishing the dominance and primacy of the literal canon of construction. Thus, it was held in *Fagel Tabin Agricultural Corp. v. Jacinto*:[91]

> It must be stated that the first and fundamental duty of courts is to apply the law and construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them (*National Federation of Labor v. Bisma*, 127 SCRA 419, 425 [1984]). ... Accordingly, it (a statutory provision) should be taken to mean exactly what it says. It is an elementary rule in statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says (*Insular Bank of Asia and American Employees Union (IBAAEU) v. Inciong*, 132 SCRA 663, 673 [1984]). Where the provisions of the law are clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.[92]

Luzon Surety Co., Inc. v. De Garcia[93] was no less forthright and categorical in enunciating this doctrine:

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[91] G.R. No. 55393, October 28, 1991, 203 SCRA 189.

[92] *Id.* at 194. Citations omitted.

[93] G.R. No. 25659, October 31, 1969, 30 SCRA 111.

> Its language is clear. It does not admit of doubt. No process of interpretation construction need be resorted to. It peremptorily calls for application. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed. So it is in this case. That is how the Court of Appeals acted, and what it did cannot be impugned for being contrary to law.[94]

This rule, moreover, is so imperative and so well-entrenched that it is to be stringently applied despite the resulting harshness:

> Verily, the interpretation of the law desired by the petitioner may be more humane but it is also an elementary rule in statutory construction that when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. (*Baranda v. Gustilo*, 165 SCRA 758-759 [1988]). The courts may not speculate as to the probable intent of the legislature apart from the words (*Aparri v. CA*, 127 SCRA 233 [1984]). When the law is clear, it is not susceptible of interpretation. It must be applied regardless of who may be affected, even if the law may be harsh or onerous. (*Nepomuceno, et. al., v. FC*, 110 Phil. 42).[95]

Indeed, this doctrine is of long standing:

> From *Lizarraga Hermanos v. Yap Tico* (24 Phil. 504 [1913]), this Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible.[96]

A plethora of other cases exists which substantiate the prevalence and dominance of the literal rule. Hence, it was held in *Espiritu v. Cipriano*,[97] that "where the law is clear, Our duty is equally plain. We must apply it to the facts as found."[98] "When the statute is clear and explicit, there is hardly room for any

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[94] *Id.* at 116.

[95] Pascual v. Pascual-Bautista, G.R. No. 84240, March 25, 1992, 207 SCRA 561, 567-568.

[96] Pacific Oxygen & Acetylene Co. v. Central Bank, G.R. No. 21881, March 1, 1968, 22 SCRA 919, 921, *citing* People v. Mapa, G.R. No. 22301, August 30, 1967, 20 SCRA 1164.

[97] G.R. No. 32743, February 15, 1974, 55 SCRA 533.

[98] *Id.* at 537.

extended court ratiocination or rationalization of the law."[99] "The law is unambiguous and clear. Consequently, it must be applied according to its plain and obvious meaning, according to its express terms. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."[100] It is a "professed canon of construction that when the language of the statute is clear it should be given its natural meaning."[101] "The law is unambiguous and its rationale clear. Time and again, this Court has declared that where the law speaks in clear and categorical language, there is no room for interpretation, vacillation or equivocation; there is room only for application. There is no alternative."[102] "It is an elementary principle of statutory construction that where the words and phrases of a statute are not obscure or ambiguous, the meaning and intention of the legislature should be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction."[103] "The provision is very clear and unambiguous ... Accordingly, we must adhere to the well-settled rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application."[104] Finally, "it is an elementary rule that when the law speaks in clear and categorical language, there is no need, in the absence of legislative intent to the contrary, for any interpretation. Words and phrases used in a statute should be given their plain, ordinary and common usage meaning."[105]

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[99] Segovia v. Sandiganbayan, G.R. No. 124067, March 27, 1998, 288 SCRA 328, 340, *citing* Libanan v. Sandiganbayan, 163 SCRA 163, 167.

[100] Cecilleville Realty and Service Corp. v. Court of Appeals, G.R. No. 120363, September 5, 1997, 278 SCRA 819, 825 *citing* Globe Mackay Cable and Radio Corp. v. NLRC, G.R. No. 74156, June 29, 1988, 206 SCRA 701, 711.

[101] Basbacio v. Office of the Secretary, Department of Justice, G.R. No. 109445, November 7, 1994, 238 SCRA 5, 11.

[102] Director of Lands v. Court of Appeals, G.R. No. 102858, July 28, 1997, 276 SCRA 276, 287.

[103] Allarde v. Commission on Audit, G.R. No. 103578, January 29, 1993, 218 SCRA 227, 230; *citing* Provincial Board of Cebu v. Presiding Judge of Cebu, CFI, Branch IV, G.R. No. 34695, March 7, 1989, 171 SCRA 1.

[104] Land Bank of the Philippines v. Court of Appeals, G.R. No. 118712, July 5, 1996, 258 SCRA 404, 407 *citing* Songco v. National Labor Relations Commission, G.R. Nos. 50999-51000, March 23, 1990, 183 SCRA 610, 616 *citing* Cebu Portland Cement Co. v. Municipality of Naga, G.R. No. 24116-17, August 22, 1968, 24 SCRA 708; Gonzaga v. Court of Appeals, G.R. No. 27455, June 28, 1973, 51 SCRA 381.

[105] Domingo v. Commission on Audit, G.R. No. 112371, October 7, 1998, 297 SCRA 163, 168 *citing* Mustang Lumber Inc. v. CA, G.R. No. 104988 and G.R. No. 123784, June 18, 1996, 257 SCRA 430.

2. The literal rule and legislative intent

The prevalence of the literal rule in Philippine jurisprudence may also be exemplified in terms of its relation to legislative intent. It is practically axiomatic in Philippine law that the intent of the legislature is best expressed by the words of the statute, and courts are therefore advised against assuming an intent not present in the words. The use of the literal rule therefore is but in keeping with the court's sworn duty to apply the law in accordance with the intent of the legislature.

> The intent of the Legislature to be ascertained and enforced is the intent expressed in the words of the statute. If legislative intent is not expressed in some appropriate manner, the courts cannot by interpretation speculate as to an intent and supply a meaning not found in the phraseology of the law. In other words, the courts cannot assume some purpose in no way expressed and then construe the statute to accomplish the supposed intention.[106]

Aparri v. Court of Appeals[107] put it more elaborately:

> The statute is undeniably clear. It is a rule in statutory construction that if the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction (Black on Interpretation of Laws, Sec. 51). The courts may not speculate as to the probable intent of the legislature apart from the words (*Hondoras v. Soto*, 8 Am. St., Rep. 744). The reason for the rule is that the legislature must be presumed to know the meaning of words, to have used words advisedly and to have expressed its intent by the use of such words as are found in the statute (50 Am. Jur. P. 212).[108]

This very thought was respectively reiterated in *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, as well as in the more recent case of *Republic v. Court of Appeals*, thus:

> Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule

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[106] Regalado v. Yulo, 61 Phil. 173, 179 (1935).
[107] G.R. No. 30057, January 31, 1984, 127 SCRA 231.
[108] *Id.* at 234.

> or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. (R. AGPALO, STATUTORY CONSTRUCTION, p. 94 [1990]). The legislature is presumed to know the meaning of the words, to have used the words advisedly, and to have expressed its intent by the use of such words as are found in the statute (*Aparri v. Court of Appeals*, 231 SCRA 241 [1984]). *Verba legis non est recedendum*, or from the words of the statute there should be no departure.[109]
>
> Under settled principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must given its literal meaning and applied without attempted interpretation. The *verba legis* or the plain meaning rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[110]

It is not surprising therefore that, even if an interpretation is "not totally devoid of plausibility", but constitutes an "evasion of (the statute's) literal language", it is not to be applied, for it has "a significance different from that intended by the lawmakers":

> Time and time again, we have stressed that where the law is clear, our duty is equally plain. We must apply it to the facts as found. What is more, we have taken pains to defeat any evasion of its literal language by rejecting an interpretation, even if not totally devoid of plausibility, but likely to attach to it a significance different from that intended by the lawmakers. A paraphrase of the aphorism of Holmes is not inappropriate. There can always occur to an intelligence hostile to a piece of legislation a misinterpretation that may, without due reflection, be considered not too far-fetched. The employer in this case, without impugning its motives, must have succumbed to such a temptation,

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[109] Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711; *see, also*, Victoria v. Commission on Elections, G.R. No. 109005, January 10, 1994, 229 SCRA 269, 273.

[110] Republic v. Court of Appeals, G.R. No. 103882, November 25, 1998, 299 SCRA 199, 270-271.

> quite understandable but certainly far from justifiable. It is quite obvious then why we find its stand devoid of merit.[111]

3. The literal rule and extrinsic aids

The prevalence of the literal rule is furthermore shown by explicit judicial pronouncements prohibiting courts from making use of extrinsic aids when the meaning of the statutory provision under interpretation is plain and clear. Thus, it has been held that the literal rule must be so stringently applied that it should preclude any excursion to extrinsic aids:

> And it is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.[112]

> Well-entrenched to the point of being elementary, is the rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application. So also, resort to extrinsic aids, like the records of the constitutional convention, is unwarranted, the language of the law being plain and unambiguous. Then too, opinions of the Secretary of Justice are unavailing to supplant or rectify any mistake or omission in the law.[113]

4. The literal rule and the interpretation of other documents

The use of the literal rule is so widespread that it extends to the interpretation of documents, like contracts, other than statutes. This has statutory basis. Rule 130, Sec. 14 of the Rules on Evidence regarding the Interpretation of Documents state:

> Sec. 14. *Peculiar signification of terms.*--The terms of a writing are presumed to have been used in *their primary and general acceptation*, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the

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[111] Vda. de Macabenta v. Davao Stevedore Terminal Company, G.R. No. 27489, April 30, 1970, 32 SCRA 553, 556-557.

[112] People v. Amigo, G.R. No. 116719, January 18, 1996, 252 SCRA 43, 51 *citing* People v. Muñoz, G.R. Nos. 38969-70, February 9, 1989, 170 SCRA 107.

[113] Republic v. Court of Appeals, G.R. No. 103882, November 25, 1998, 299 SCRA 199, 227.

> particular instance, in which case the agreement must be construed accordingly. (emphasis supplied)

The "primary and general acceptation" of a writing is considered equivalent to its ordinary or literal meaning.

The statutory basis for the use of the literal rule in the interpretation of contracts is even more explicit. Article 1371 of the Civil Code on the Interpretation of Contracts states: "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

Jurisprudence on the matter sustains this view:

> Furthermore, when the words and language of documents are clear and plain or readily understandable by an ordinary reader thereof, there is absolutely no room for interpretation or construction anymore. Courts are not allowed to make contracts for the parties; rather they will intervene only when the terms of the policy are ambiguous, equivocal or uncertain.[114]

> "When the words of a contract are clear and readily understandable, there is no room for construction."[115]

B. The golden rule

As previously mentioned, the golden rule has not been developed in the Philippines with the same degree of technical precision and sophistication as it has in England. Thus, no clear distinction between the golden rule and the mischief rule has been made either in jurisprudence or in textbooks. As such, it may be safe to assume that they are considered as practically equivalent and interchangeable with each other, both making appeals to the purpose or objective of the law, to its spirit or rationale or to equity.

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[114] New Life Enterprises v. Court of Appeals, G.R. No. 94071, March 31, 1992, 207 SCRA 669, 675 *citing* Marina Port Services, Inc. v. Iniego, et. al., G.R. No. 77853, January 22, 1990, 181 SCRA 304, and Pan Malayan Insurance Corporation v. Court of Appeals, et. al., G.R. No. 81026, April 3, 1990, 184 SCRA 54.

[115] Heirs of Dominga Tabora Vda. De Macoy v. Court of Appeals, G.R. No. 95871, February 13, 1992, 206 SCRA 244, 254 *citing* Dihiansan, et. al., v. Court of Appeals, G.R. No. 49539, September 14, 1987, 153 SCRA 712.

However, as has been explained, a clear distinction exists between them, when the golden rule is taken in its orthodox sense and the mischief rule in its primary sense. This is the first possible combination. With respect to the next two combinations, they are practically equivalent to each other. For the golden rule construed in its independent sense is but a limited variant of the mischief rule in its primary sense; and the mischief rule taken in its secondary sense is but an expanded version of the orthodox golden rule. The fourth combination, when the golden rule is independent and the mischief rule secondary, may be ignored, because it is nothing but the above first combination with the places of mischief rule and the golden rule transposed. Hence, for the golden rule to qualify as a distinct rule, it must be taken in its orthodox sense.

In its orthodox sense, the golden rule is clearly but an adjunct to the literal rule and imposes, as previously mentioned, three requisites as to its application. The first requisite, referred to as the 'literal primacy' requisite, requires that the literal meaning of the statutory provision in question must initially be considered and given primacy. The second, called the 'prior anomaly' requisite, insists that some anomaly, like an absurdity, must arise upon the determination of the literal meaning, so that an alternative meaning may then be considered. Finally, there is the 'secondary meaning' requisite, which calls for the alternative meaning to constitute a reasonable secondary, less usual meaning of the provision, for it to apply. These three requisites control the application of the golden rule.

The succeeding subsection will discuss the Philippine application of the golden rule with respect to the three requisites. Given the lack of a clear distinction in Philippine practice between the mischief and the golden rules, there therefore exists a problem in classification. In this regard, I will thus make use of the above three requisites. To be classified as a version of the golden rule therefore, a verbal formulation must make no explicit mention of any dependence on the literal rule, in terms of the three requisites.

The discussion of the Philippine application of the golden rule will furthermore show that these three requisites have not been sufficiently clarified and made precise, so that there is lack of clear and definite guidance available for the proper use of the golden rule. Furthermore, no substantial attempt has been made to render it more precise. It is therefore no surprise that there has been greater leeway and discretion to the use of the golden rule in the Philippines, as compared, let us say, to English judicial practice.

1. The Philippine application of the golden rule in terms of the three requisites

The use of the golden rule in the orthodox sense prevails in Philippine jurisprudence. However, because it has not been amply developed with the technical precision and sophistication as found in English jurisprudence, it has not been fully specified in terms of the above three requisites. Hence, only incomplete versions of its English counterpart exist, usually focusing only on the first two requisites, that is, on the primacy of the literal rule and on the existence of some anomaly. The third requisite, on the availability of a secondary, less usual, reasonable meaning is usually unstated, although it may reasonably be inferred.

a. The 'literal primacy' requisite

There is no significance in treatment between Philippine jurisprudence and other common law systems, with respect to the first requisite on the primacy of the literal rule.

b. The 'prior anomaly' requisite

It is with regard to the second requisite, on the existence of some prior anomaly, that a substantial divergence exists. Philippine jurisprudence expands the notion of an anomaly so as to include practically any undesirable consequence, and not just the standard anomalies found in English jurisprudence, like absurdities, repugnancies, inconsistencies, incongruities and the like. It is thus more substantive or anti-formalist in orientation than its English counterpart, for the literal rule is as a result more readily discarded in favor of purposive considerations. It may safely be concluded therefore that the Philippine use of the golden rule is very much akin to the mischief rule in result or substantive effect.

Absurdity has been jurisprudentially defined in the Philippines in a rather stringent manner:

> The plain meaning of a provision not contradicted by any other provision in the same statute, cannot be regarded as absurd. An absurdity means anything which is irrational, unnatural or inconvenient that it cannot be supposed to have been within the intention of ordinary intelligence and discretion. The plain meaning of the word must be one in which the absurdity and injustice of applying the

> provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application.[116]

Perhaps due to the rather stringent definition of "absurdity", the scope of "anomalies" has been expanded to include related concepts. Thus in *Casela v. Court of Appeals*,[117] the anomaly of "injustice" was appended to that of "absurdity":

> Conscience and equity should always be considered in the construction of statutes. The courts are not to be hedged in by literal meaning of the language of the statute; the spirit and intendment thereof must prevail over its letter. The rule of construction is especially applicable where the adherence to the letter of the statute would result in absurdity and injustice.[118]

In *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*,[119] the anomaly of 'injustice' was reiterated, and that of 'lack of reasonableness' added:

> Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or *unreasonable consequence*. That is a principle that goes back to *In re Allen* decided on October 29, 1903, where it was held that a literal interpretation is to be rejected if it would be *unjust* or lead to absurd results. That is a strong argument against its adoption. The words of Justice Laurel are particularly apt. Thus: 'The fact that the construction placed upon the statute by the appellants would lead to an absurdity is another argument for rejecting it ...'
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> It is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result. That has long been a judicial function. A literal reading of a legislative act which could be thus characterized is to be avoided if the language thereof can be given a reasonable interpretation consistent with the legislative purpose. In the apt language of Frankfurter: 'A decent respect for the policy of Congress must save us from imputing to it a self-defeating, if not ingenuous purpose.' Certainly, we must reject a construction that at best amounts

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[116] Republic v. Court of Appeals, G.R. No. 103882, November 25, 1998, 299 SCRA 199, 277.

[117] G.R. No. 26754, October 16, 1970, 35 SCRA 279, 283.

[118] *Id. See* Co v. Electoral Tribunal of House of Representatives, G.R. Nos. 92191-92, July 30, 1991, 199 SCRA 692, 706.

[119] G.R. No. 98310, October 24, 1996, 263 SCRA 490.

> to a manifestation of verbal ingenuity but *hardly satisfies the test of rationality* on which law must be based.[120] (emphasis supplied)

The case of *Automotive Parts & Equipment Co., Inc. v. Lingad*[121] added the anomaly of unconscionability:

> However, the law is not entirely bereft of solutions in such cases. In instances where a literal application of a provision of law would lead to injustice or to a result so directly in opposition with the dictates of logic and everyday common sense as to be *unconscionable*, the Civil Code admonishes judges to take principles of right and justice at heart. In case of doubt the intent is to promote right and justice. *Fiat justicia ruat coelum*. Stated differently, when a provision of law is silent or ambiguous, *judges ought to invoke a solution responsive to the vehement urge of conscience*.[122] (emphasis supplied)

Then there exist a plethora of cases where the non-application of the literal rule depends on the literal meaning's contravention of legislative intent. Hence, 'contravention of legislative intent' qualifies as a distinct and separate kind of anomaly. This point is very simply and clearly made in two cases as follows:

> It is settled *that in the absence of legislative intent to the contrary*, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning.[123] (emphasis supplied)

> Courts should not give a literal interpretation to the letter of the law *if it runs counter to the legislative intent*.[124] (emphasis supplied)

Its status as a distinct and separate kind of anomaly is better exemplified in the following quotation:

> Under the rules of statutory construction, it is not the letter but rather the spirit of the law and intention of the Legislature that is important and which matters. *When the interpretation of a statute according to the*

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[120] *Id.*

[121] G.R. No. 26406, October 31, 1969, 30 SCRA 248, 254.

[122] Amatan v. Aujero, A.M. No. RTJ-93-956, September 27, 1995, 248 SCRA 511, 516.

[123] Mustang Lumber, Inc. v. Court of Appeals, G.R. No. 104988, June 18, 1996, 257 SCRA 430, 448 *citing* RUBEN AGPALO, STATUTORY CONSTRUCTION 131 (1990).

[124] National Police Commission v. de Guzman, Jr., G.R. No. 106724, February 9, 1994, 229 SCRA 801, 807 *citing* Yellow Taxi and Pasay Transportation Workers' Assn. v. Manila Yellow Taxi Cab Co., 80 Phil. 833 (1948).

> *exact and literal import of its words would lead to absurd or mischievous results, or would contravene the clear purposes of the Legislature*, it should be construed according to its spirit and reason, disregarding as far as necessary, the letter of the law. Statutes may be extended to cover cases not within the literal meaning of the terms, for that which is clearly within the intention of the Legislature in enacting the law is as much within the statute as if it were within the letter.[125] (emphasis supplied)

On the other hand, 'contravention of legislative intent' has also been considered not as a separate kind of anomaly, but merely as informing the meaning of 'absurdity', which is sufficient to warrant the non-application of literal meaning.

> Moreover, petitioner's too literal interpretation of the law leads to absurdity which we cannot countenance. Thus, in a case, the Court made the following admonition:
>
> 'We admonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose *and defeat the intention of its authors*. That intention is usually found not in 'the letter that killeth but in the spirit that vivifieth.'
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> ...
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> The spirit, rather than the letter of the law determines its construction, hence, a statute, as in this case, must be read according to its spirit and intent.[126] (emphasis supplied)

Indeed, precisely the same point was reiterated and cited in a very recent case:

> It is a basic precept in statutory construction that a statute should be interpreted *in harmony with the Constitution* and that the spirit, rather than the letter of the law, determines its construction; for that reason, *a statute must be read according to its spirit and intent*. Thus, *a too literal interpretation of the law that would lead to absurdity* prompted this Court to –

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[125] Lopez & Sons v. Court of Tax Appeals, 100 Phil. 850, 855 (1957).

[126] Paras v. Commission on Elections, G.R. No. 123169, November 4, 1996, 264 SCRA 49, 55; *citing* People v. Salas, G.R. No. 35946, August 7, 1975, 143 SCRA 163, 167.

> '[a]dmonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose *and defeat the intention of its authors.* That intention is usually found not in 'the letter that killeth but in the spirit that vivifieth'.[127] (emphasis supplied)

Perhaps the most elaborate formulation of this point was made in *Commissioner of Internal Revenue v. TMX Sales, Inc.*[128] The anomalies of 'inconvenience' and 'injustice' were added to that of 'absurdity'. Moreover, it was even proposed that the four corners of the entire statute serve as the appropriate linguistic register with which to determine legislative intent.

> Section 292 (now Section 230) of the National Internal Revenue Code should be interpreted in relation to the other provisions of the Tax Code in order to give effect the legislative intent and to avoid an application of the law which may lead to *inconvenience and absurdity.* In the case of *People vs. Rivera* (59 Phil. 236 [1933]), this Court stated that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an *unjust or an absurd conclusion.* INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM. *Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity* is to be adopted. Furthermore, courts must give effect to the general legislative intent that can be discovered from or is unraveled *by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered. (Manila Lodge No. 761, et. al., vs. Court of Appeals, et. al.,* 73 SCRA 162 [1976]) Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. *The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.*[129] (emphasis supplied)

In *Hidalgo v. Hidalgo,*[130] a more complete list of possible anomalies was specified. It included not just "absurdities," but also a literal meaning that would result in "injustice and contradictions and that (which) would defeat the plain and vital purpose of the statute":

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[127] Pangandaman v. Commission on Elections, G.R. No. 134340, November 25, 1999, 319 SCRA 283, 298.

[128] G.R. No. 83736, January 15, 1992, 205 SCRA 184.

[129] *Id.* at 187.

[130] G.R. No. 25326, May 29, 1970, 33 SCRA 105.

> We have, here, then a case of where the true intent of the law is clear that calls for the application of the cardinal rule of statutory construction that such intent or spirit must prevail over the letter thereof, for whatever is within the spirit of the statute is within the statute, *since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.*[131] (emphasis supplied)

This list has acquired undoubted doctrinal or authoritative status since it was either favorably cited, quoted or reiterated in *Melchor v. Commission on Audit*[132] as well as in the more recent case of *Ursua v. Court of Appeals.*[133]

Indeed in the above *Melchor* case, the same list of anomalies was not only reiterated, but also expanded so as to include practically any undesirable consequence. Thus:

> It is a rule of statutory construction that the court may consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers.
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> ...
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> [T]here exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which a statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences.[134]

The expansion to include practically any undesirable consequence has likewise attained doctrinal status, as it was also enunciated in *People v. Purisima,*[135]

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[131] *Id.* at 115.

[132] G.R. No. 25326, May 29, 1970, 200 SCRA 704, 711.

[133] G.R. No. 112170, April 10, 1996, 256 SCRA 147,152.

[134] Melchor v. Commission on Audit, G.R. No. 25326, May 29, 1970, 200 SCRA 704, 711-712 *citing* People v. Manantan, G.R. No. 14129, July 31, 1962, 5 SCRA 864 and People v. Purisima, G.R. No. 36084, August 31, 1977, 86 SCRA 542, *both citing* 73 AM JUR 2D *Statues* § 258. *See, also,* the more recent cases of Ursua v. Court of Appeals, G.R. No. 112170, April 10, 1996, 256 SCRA 147 and Domingo v. Commission on Audit, G.R. No. 112371, October 7, 1998, 297 SCRA 163, 169, which reiterated the same quotation.

[135] G.R. Nos. 42050-66, November 20, 1978, 86 SCRA 542.

which in turn cited American Jurisprudence,[136] as well as in the above *Ursua v. Court of Appeals* and *Domingo v. Commission on Audit*[137] cases.

In summary, the 'prior anomaly' requisite is very liberally applied in the Philippine experience. Thus, anomalies such as "absurdity," "unconscionability," "injustice," "contravention of legislative intent," "lack of reasonableness," "inconvenience," "contradictions," and "all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences" all qualify as anomalies which may occasion the disregard of the literal rule in favor of the golden rule. Furthermore, no attempt has been made to transform this 'prior anomaly' requisite into a set of clear and definite standards. Consequently, there has been great variability in the application of the golden rule.

c. The 'secondary meaning' requisite

Finally, it remains to discuss the third requisite of a secondary, less usual and reasonable meaning. As noted above, such a requisite is normally unstated, and does not qualify as a clear and distinct requirement. It is, in other words, merely implicit. Oftentimes, reference is merely made to the existence of an ambiguity, or to the presence of other interpretations, without specifying that such an interpretation, in order to be a successful rival of literal meaning, must be based on a secondary, less usual, and reasonable meaning. In other words, the laxness in Philippine use allows for the possibility of just any kind of meaning, like a tertiary or more remote one, to qualify as a possible interpretation. No mention is made as to the requirements of possible, alternative meanings. Thus, it has been held that "(b)etween two statutory interpretations, that which better serves the purpose of the law should prevail."[138] In this quotation, no qualification is made as to how plausible or reasonable the alternative meaning must be.

Of course, there are cases such as *Sarcos v. Castillo,*[139] where some specification of the requisites of possible meaning were introduced. In that case, the observations of Justice Marshall in *Wayman v. Southard*[140] were quoted and

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[136] Am Jur 2d 428.

[137] Domingo v. Commission on Audit, G.R. No. 112371, October 7, 1998, 297 SCRA 163.

[138] Planters Association of Southern Negros, Inc. v. Ponferrada, G.R. No. 114087, October 26, 1999, 317 SCRA 463, 475, *citing* Salenillas v. Court of Appeals, G.R. No. 78687, January 31, 1989, 169 SCRA 829, 835.

[139] G.R. No. 29755, January 31, 1969, 26 SCRA 853.

[140] 10 Wheat. 1 (1825).

endorsed in that the possible meanings must, in a manner of speaking, have somewhat equal plausibility. Thus, it was ruled:

> The two subjects were equally within the province of the legislature, equally demanded their attention, and were brought together to their view. If, then, the words making provision for each, fairly admit of an equally extensive interpretation, and of one of which will effect the object that seems to have been in contemplation, and which was certainly desirable, they ought to receive that interpretation.[141]

The requirement that there be a secondary, less usual meaning, of course, implies and presupposes that an ambiguity exists. Appeals therefore as to the necessity of an 'ambiguity', before the literal rule is to be discarded in favor of purposive considerations, is tantamount to calling for the application of some alternative meaning. Such appeals exist:

> It is our duty in construing a law to determine legislative intention from its language. The history of events transpiring during the process of enacting a law, from its introduction in the legislature to its final validation has generally been the first extrinsic aid to which courts turn to construe an ambiguous act. We bear in mind, however, that extrinsic aids are resorted to only if the words of the statute are ambiguous. The clear, unambiguous and equivocal language of a statute precludes any court from further construing it and gives it no discretion but to apply the law. When a statute is clear, it must be taken to mean exactly what it says.[142]

Sometimes, "obscurity" has been added to and associated with 'ambiguity':

> The courts may not, in the guise of interpretation, enlarge the scope of a statute and embrace situations neither provided nor intended by the lawmakers. *Where the words and phrases of a statute are not obscure and ambiguous*, the meaning and intention of the legislature should be determined from the language employed, and where there is no

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[141] *Id.* at 161.

[142] Republic v. Court of Appeals, G.R. No. 103882, November 25, 1998, 299 SCRA 199, 270-271.

> ambiguity in the words, there should be no room for construction.[143] (emphasis supplied)

But "ambiguity' is a very weak and lax standard, since, as has been previously noted by our discussion on the English use of the golden rule, practically any word or phrase may give rise to an ambiguity. Thus, the existence of an ambiguity may not actually call for the use of some secondary, less usual, reasonable meaning, but is consistent with the use of practically any meaning, like some tertiary or more remote meaning. The weakness of the standard of ambiguity has been noted and echoed by our jurisprudence, in a case as early as *U.S. v. Go Chico.*[144] Thus, to offset its weakness, the ambiguity must be accompanied by some anomaly like 'absurdity', for appeal to the spirit of the law to be made:

> Language is so rarely free from ambiguity as to be incapable of being used in more than one sense, and the literal interpretation of a statute may lead to an absurdity, or evidently fail to give the real intent of the legislature. When this is the case, resort is had to the principle that the spirit of the law controls the letter, so that a thing which is within the intention of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers, and the statute should be so construed as to advance the remedy, and suppress the mischief as contemplated by the framers.[145]

The previously mentioned 'reasonable consideration' standard, which was introduced as a variant of the golden rule adopted in America, may be considered a paraphrase of the third requisite, in that the secondary, less usual meaning must also be reasonable. Philippine jurisprudence implicitly avails of the same standard, as has clearly been enunciated below:

> Such interpretation could not have been intended by the law. It is a familiar rule in statutory construction that 'the legal provision being therefore susceptible of two or more interpretations, we adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one

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[143] Libanan v. House of Representatives Electoral Tribunal, G.R. No. 129783, December 22, 1997, 283 SCRA 520, 532, *citing* Allarde v. Commission on Audit, G.R. No. 103578, January 29, 1993, 218 SCRA 227.

[144] 14 Phil. 128 (1909).

[145] *Id.* at 139-140, *citing* U.S. v. Kirby, 7 Wall. 487, among others.

> that will render them operative and effective and harmonious with other provisions of law.[146]

A less explicit formulation is as follows:

> It is a well-settled rule of legal hermeneutics that each provision of law should be construed in connection with every other part so as to produce a harmonious whole and every meaning to be given to each word or phrase is ascertained from the body of the statute. *Ut magis valeat quam pereat.* Consequently, laws are given a *reasonable construction* such that apparently conflicting provisions are allowed to stand and given effect by reconciling them, reference being had to the moving spirit behind the enactment of the statute.[147] (emphasis supplied)

Finally, such a standard was applied in a corporation law case:

> To repeat the objective of the law was to subject the foreign corporation to the jurisdiction of our courts. *The Corporation Law must be given a reasonable, not an unduly harsh interpretation* which does not hamper the development of trade relations and which fosters friendly commercial intercourse among countries.[148] (emphasis supplied)

In summary, since the 'secondary meaning' requisite has only been implicitly recognized, usually in the mention of some ambiguity or alternative possible meanings, it constitutes a very weak standard in the Philippine experience. Greater leeway is therefore afforded the courts to meet this standard. This, along with the point previously made that the 'prior anomaly' requisite is also very easily met, renders the Philippine use of the golden rule very lax and liberal indeed.

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[146] Sesbreño v. Central Board of Assessment Appeals, G.R. No. 196588, March 24, 1997, 270 SCRA 360, 374 *citing* Javellana v. Tayo, G.R. No. 18919, December 29, 1962, 6 SCRA 1042, 1050.

[147] Planters Association of Southern Negros, Inc., v. Ponferrada, G.R. No. 114087, October 26, 1999, 317 SCRA 463, 475 *citing* RUBEN AGPALO, STATUTORY CONSTRUCTION 182 (1986). Emphasis supplied.

[148] Home Insurance Co. v. Eastern Shipping Lines, 123 SCRA 424, 435 (1983).

C. The mischief rule

As previously explained, unlike the literal rule, no elaborated theory of the Philippine use of the mischief rule as a primary rule of interpretation exists. Thus, the most that can be said about the mischief rule's status as a primary rule is that it has merely been implicitly, but not categorically and unqualifiedly, adopted. It is true that there have been appeals to the mischief rule apparently alleging some primary status, but closer scrutiny of some of these cases reveals that it was used merely as a subsidiary to the literal rule. If so, the Philippine version of a mischief rule is not a true mischief rule, but appears more like a variant or extension of the golden rule, where the secondary, less usual alternative meaning is one which is determined in the light of the evil or mischief that the statute is intended to address, or which accords with the statutory purpose, objective, spirit or rationale, or which is in consonance with equity.

In the discussion which ensues, this article concerns itself essentially with the mischief rule as a primary canon of construction. If, in other words, a purported mischief rule is enunciated as a secondary canon, that is as subordinate to the literal rule, then its treatment properly belongs to the previous subsection on the golden rule. In that regard, consistent with the classification specified in the subsection on the golden rule, if a version of a rule, which makes appeals to evil, mischief, purpose, objective, spirit, rationale, equity of the statute, and the like, explicitly mentions any dependence on the literal rule in terms of the three requisites of a golden rule, then it ought to have already been classified and discussed in the previous subsection. This means that the versions of such rules to be taken up in this subsection ought not to make any explicit mention of dependence on the literal rule.

The ensuing discussion will establish a strong case for the point that the Philippine judicial practice has been to use the mischief rule essentially as a secondary canon of construction. In this regard, purported uses of the mischief rule as a primary canon will be examined. Then it will be shown that the use of the mischief rule as primary is only apparent, and that the rule ultimately is meant in its secondary sense. In this regard, the statutory as well as the jurisprudential basis for the use of the mischief rule as primary, the use of the rule by noted authorities and the Philippine use of equity will all be explored to reveal the same conclusion that the use of the mischief rule as a primary canon is merely apparent. In closing, the effect and significance of this judicial phenomenon will be initially explored.

1. The statutory basis for the mischief rule as primary

There appears to exist some statutory basis for the view that the mischief rule ought to be applied as a primary canon of construction. After all, there are specific provisions in statutes, explicitly calling for a purposive or substantive interpretation of its provisions. Thus, Article 10 of the Civil Code provides that "(i)n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." Indeed, this is much-quoted in jurisprudence.[149]

However, a careful look at Article 10 reveals that the appeal to "right and justice" is to be made "in case of *doubt*." That suggests that the literal rule is first to be considered, and only when a doubt surfaces upon its consideration, may substantive and purposive reasons be entertained. Indeed that is how Article 10 has been interpreted. If so, Article 10 supports the use of the mischief rule in its secondary, and not in its primary, sense.

The Labor Code contains a similar provision on the construction of its provisions. Article 4 states that "all doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor." Thus, the Code is to be construed liberally in accordance with its basic policy, as enunciated in Article 3, to "afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers," as well as to "assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work." Clearly therefore, purposive interpretation is called for in the application of the Code.

But again, Article 4 states that a liberal and purposive interpretation in favor of labor is to take effect in a situation of doubt. This means that the literal rule is once again presupposed.

The 1997 Revised Rules of Court, appear to be more categorically a proponent of the mischief rule as a primary canon of construction. Rule 1, Section 6 (previously Section 2) states:

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[149] *See, for example*, Frivaldo v. Commission on Elections, G.R. No. 120295, June 28, 1996, 257 SCRA 727, 758.

> Sec. 6. *Construction.--These Rules shall be liberally construed in order to promote their objective* of securing a just, speedy, and inexpensive disposition of every action and proceeding. (emphasis supplied)

This view appears to be supported by jurisprudence. Thus, as early as 1904, it was enunciated:

> With respect to the application of the provisions of the Code of Civil Procedure to cases submitted to the courts for their decision, the provisions of Section 2 (now Sec. 6) should always be borne in mind, *which in effect provides that in the interpretation of the code the controlling principle is to be the spirit and purpose of the law, as determined by reason and good sense, rather than the strict letter.*[150] (emphasis supplied)

However, jurisprudence on this provision on liberal construction, on the contrary, shows that the rules are to be interpreted primarily in terms of its literal import, and it is only again when some doubt, ambiguity and absurdity surfaces that the literal rule is discarded in favor of liberality. Thus, the liberal predilections of the said Article has been qualified in the case *of Garbo v. Court of Appeals,*[151] for example. It held: "The liberality in the interpretation and application of the law applies only in proper cases and under justifiable causes and circumstances."[152] This holding was even reiterated in precisely the same words in the recently decided case of *Don Tino Realty and Development Corporation v. Florentino.*[153]

Thus, although it appears that there is some statutory basis for the mischief rule to be treated as a primary canon of construction, that is not actually the case.

2. Jurisprudential basis for the mischief rule as primary

There also exist numerous cases where some appeal to the mischief rule as a primary canon of construction appears to be made. One noteworthy case is that of *U.S. v. Go Chico*[154] decided as early as 1909. In the earlier part of the

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[150] Garcia v. Ambler, 4 Phil. 81, 86 (1904).

[151] G.R. No. 107698, 5 July 1996, 258 SCRA 159.

[152] *Id.* at 163, *citing* Ilasco, Jr. v. Court of Appeals, G.R. No. 88983, December 14, 1993, 228 SCRA 413.

[153] G.R. No. 134222, 10 September 1999, 314 SCRA 197, 205.

[154] 14 Phil. 128 (1909).

opinion in that case, the mischief rule was cited in a manner that seemed unreservedly and unqualifiedly primary:

> The intention of the legislature and the object aimed at, being the fundamental inquiry in judicial construction, are to control the literal interpretation of particular language in a statute, and language capable of more than one meaning is to be taken in that sense which will harmonize with such intention and object, and effect the purpose of enactment.[155]

However, later in the same opinion, specific reference to "ambiguity" and "absurdity" was made in interpretation, and doubt therefore arose as to whether the mischief rule was meant to be applied in its primary rather than its secondary sense.

> Language is so rarely free from ambiguity as to be incapable of being used in more than one sense, and the literal interpretation of a statute may lead to an absurdity, or evidently fail to give the real intent of the legislature. When this is the case, resort is had to the principle that the spirit of the law controls the letter, so that a thing which is within the intention of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers, and the statute should be so construed as to advance the remedy and suppress the mischief as contemplated by the framers.[156]

In the same manner, the case of *Paat v. Court of Appeals*[157] seemed to avail of the mischief rule in its primary signification. Thus:

> In the construction of statutes, it must be read in such a way as to give effect to the purpose projected in the statute. Statutes should be construed in the light of the object to be achieved and the evil or mischief to be suppressed, and they should be given such construction as will advance the object, suppress the mischief, and secure the benefits intended.[158]

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[155] *Id.* at 140, *citing* 26 Am. & Eng. Ency. of Law 602.

[156] *Id.* at 139-140.

[157] G.R. No. 111107, January 10, 1997, 266 SCRA 167.

[158] *Id.* at 181.

But, once again, appearances are deceiving, for later in that case, it was held that, "when the statute is clear and explicit, there is hardly any room for any extended court ratiocination or rationalization of the law."[159]

Many other cases treat the mischief rule in a similar fashion. The rule straddles between a use that may be construed as either primary or as secondary, so that it is unclear which is actually meant. There may even be some articulations in the opinion which appear to champion the use of the mischief rule as a primary canon. Ultimately, however, the more plausible interpretation appears to be that it is intended to apply only as a supplement to the literal rule. Indeed, there appears to be no case wherein the mischief rule is categorically and unreservedly applied as a primary canon of construction. As stated earlier, no elaborated theory exists in substantiation of this.

3. The use of the mischief rule by noted authorities

Neither is support for the application of the mischief rule in its primary sense to be found in the opinions of the most prominent advocates of purposive interpretation.

Retired Chief Justice Enrique M. Fernando, for example, is notorious for unabashedly availing of purposive and substantive considerations in adjudication, and has been chided for transforming every legal question into a constitutional issue, so that he can then introduce reasons of principle and policy in his opinions. In *Bocobo v. Estanislao*[160] for example, he, in quoting from *Sarcos v. Castillo*[161] among others, detailed the history of the use of purposive interpretation in Philippine jurisprudence:

> Its purpose is therefore crystal clear. As noted in *Sarcos v. Castillo* (26 SCRA 853, 858-859 [1969]): 'It is fundamental that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. From Ty Suc Hord (12 Phil. 485), decided in 1909, it has been our constant holding that the choice between conflicting theories falls on that which best accords with the letter of the law and with its purpose. The next year, in an equally leading decision, *United States v. Toribio* (15 Phil. 85 [1910]), there was a caveat against a construction that would tend 'to defeat the purpose and object of the legislator.'

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[159] *Id.* at 184, *citing* Libanan v. Sandiganbayan, G.R. No. 112386, June 14, 1994, 233 SCRA 163, 167.

[160] G.R. No. 30458, August 31, 1976, 72 SCRA 520.

[161] G.R. No. 29755, January 31, 1969, 26 SCRA 853.

> Then came the admonition in *Riera v. Palmaroli* (40 Phil. 105 [1919]) against an application so narrow 'as to defeat the manifest purpose of the legislator.' This was repeated in the latest case, *Commissioner of Customs v. Caltex* (106 Phil. 829 [1959], in almost identical language.' Such an excerpt was quoted with approval in *Automative Parts and Equipment Company v. Lingad* (30 SCRA 248 [1969]). It is of the essence of judicial duty to construe statutes to reflect fidelity to such a concept. In the apt language of Justice Frankfurter: 'A decent respect for the policy of Congress must save us from imputing to it a self-defeating, if not disingenuous purpose.' Certainly we must reject a construction that best amounts to a manifestation of verbal ingenuity but is certainly at war with the policy enshrined in the law.[162]

His expertise is not confined to knowledge of Philippine authorities, as he was equally adept at quoting from American jurisprudence. In that same political law case of *Sarcos v. Castillo*, he likewise traced the constitutional history of purposive adjudication in the United States:

> So it is in the United States. Thus, in an 1898 decision, the then Justice, later Chief Justice, White minimized reliance on the subtle signification of words and the niceties of verbal distinction stressing the fundamental rule of carrying out the purpose and objective of legislation. (*Rhodes v. Iowa*, 170 U.S. 412 [1898]) As succinctly put by the then Justice, later Chief Justice, Stone: 'All statutes must be construed in the light of their purpose.' (*Haggar Company v. Helvering*, 308 U.S. 389, 394 [1940]) The same thought has been phrased differently. Thus: 'The purpose of Congress is a dominant factor in determining meaning.' (*United States v. CIO*, 335 U.S. 106, 112 [1948]) For, to paraphrase Frankfurter, legislative words are not inert but derive vitality from the obvious purposes at which they are aimed. (*Griffiths v. Helvering*, 308 U.S. 355 [1939]) The same jurist likewise had occasion to state: 'Regard for [its] purposes should infuse the construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words.' (*United States v. Dotterweich*, 320 U.S. 277, 280 [1943]) In the sixth annual Benjamin Nathan Cardozo lecture delivered by him, entitled "Some Reflections on the Reading of Statutes", he developed the theme further: 'The generating consideration is that legislation is more than composition. It is an active instrument of government which, for purposes of interpretation, means that laws have ends to be achieved. It is in this connection that Holmes said, 'words are flexible'. Again it was Holmes, the last judge to give quarter to loose thinking or vague yearning, who

[162] *Id.* at 524-525.

> said that 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' And it was Holmes who chided courts for being 'apt to err by sticking too closely to the words of the law where those words import a policy that goes beyond them.' Note, however, that he found the policy in 'those words'.' (47 COL. LAW REV. 527, 538 [1947])
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> It may be noted parenthetically that earlier, the United States Supreme Court was partial more to the term "objective" or "policy" rather than "purpose". So it was in the first decision where this fundamental principle of construction was relied upon, the opinion coming from Justice Marshall. Thus: 'The two subjects were equally within the province of the legislature, equally demanded their attention, and were brought together to their view. If, then, the words making provision for each, fairly admit of an equally extensive interpretation, and of one of which will effect the object that seems to have been in contemplation, and which was certainly desirable, they ought to receive that interpretation.' (*Waymen v. Southard*, 10 Wheat. 1, [1825])
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> So, too, with his successor, Chief Justice Taney. Thus: 'This construction cannot be maintained. In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the whole law, and to its object and policy.' (United States v. The Heirs of Boisdore, 8 How. 113, 122 [1850]) It should not escape attention that the above excerpt was quoted with approval by the present Chief Justice Warren as late as 1957. (*NLRB v. Lion Oil Co.*, 352 U.S. 282 [1957])[163]

But it was most notably in the field of labor law where he gave free reign to the use of the purposive approach in interpretation so as to accommodate his bountiful sympathies towards labor. Thus, in *Marcopper Mining v. Ople*,[164] he opined that employers are still obligated to pay 13th month pay, even if on the basis of a collective bargaining agreement, these employers granted mid-year and year-end bonuses which was equivalent in amount to a 13th month pay. Thus, the Supreme Court said that, "Time and time again, we have stressed that statutes intended to benefit labor should be accorded the most hospitable scope to attain their dominant purpose. Thereby fidelity is manifested to the constitutional policy embodied in the principle of social justice and the mandate of protection to labor."[165]

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[163] *Id.* at 860-862.

[164] G.R. No. 51254, June 11, 1981, 105 SCRA 75.

[165] *Id.* at 82.

A more elaborate articulation of the importance he placed on purpose as a guide to interpretation is found in another labor case, that of *Litex Employees Association v. Eduvala:*[166]

> If it were otherwise, its policy might be rendered futile. That is to run counter to a basic postulate in the canons of statutory interpretation. Learned Hand referred to it as the proliferation of purpose. As was emphatically asserted by Justice Frankfurter: 'The generating consideration is that legislation is more than composition. It is an active instrument of government which, for purposes of interpretation, means that laws have ends to be achieved. It is in this connection that Holmes said that 'words are flexible.' Again it was Holmes, the last judge to give quarter to loose thinking or vague yearning, who said that 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' And it was Holmes who chided courts for being 'apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them.' (Frankfurter, OF LAW AND MEN, 59-60 [1965]) What is intended by the framers of code or statute is not to be frustrated. Even on the assumption that by some strained or literal reading of the language employed, a doubt can be raised as to its scope, the interpretation should not be at war with the end sought to be attained. It cannot be denied that if through an ingenious argumentation, limits may be set on a statutory power which should not be there, there would be a failure to effectuate statutory purpose and policy. That kind of approach in statutory interpretation has never recommended itself.[167]

It was, however, the civil law case of *Matabuena v. Cervantes,*[168] which was generally considered to constitute his most radical use of the purposive approach in interpretation. Given its radical nature, perhaps this case finally provides the example we have been looking for of a mischief rule approach in its primary sense.

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[166] G.R. No. 41106, September 22, 1977, 79 SCRA 88.

[167] *Id.* at 91-92.

[168] G.R. No. 28771, March 31, 1971, 38 SCRA 284.

In this case, Chief Justice Fernando extended the statutory prohibition on the donation between the spouses during a marriage to include common-law partners. Under the clear wording of Article 133 of the Civil Code, only a "donation between spouses" was banned. Nonetheless, he managed to justify the extension of the prohibition on considerations of policy and morality. Thus, he argued that "policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a common-law relationship."[169]

He furthermore pointed out that this extension, although not within the law's letter, was in accordance with the statute's policy or purpose and, as a result, was definitely within the law's spirit.

> 2. It is hardly necessary to add that even in the essence of the above pronouncement, any other conclusion cannot stand the test of scrutiny. It would be to indict the framers of the Civil Code for a failure to apply a laudable rule to a situation which in its essentials cannot be distinguished. Moreover, if it is at all to be differentiated, *the policy of the law which embodies a deeply-rooted notion of what is just and what is right would be nullified if such irregular relationship instead of being visited with disabilities would be attended with benefits.* Certainly a legal norm should not be susceptible to such a reproach. *If there is ever any occasion where the principle of statutory construction that what is within the spirit of the law is as much a part of it as what is written, this is it. Otherwise the basic purpose discernible in such codal provision would not be attained. Whatever omission may be apparent in an interpretation purely literal of the language used must be remedied by an adherence to its avowed objective.*[170] (emphasis supplied)

As earlier noted, it may be supposed that this appeal to purposive considerations in the *Matabuena* case finally provides an example of the use of the mischief rule as a primary canon of construction. That would be a mistake, however. For, *Matabuena* is clearly consistent with the use of the mischief rule as a secondary canon. Since Chief Justice Fernando pointed out that an interpretation in accordance with the letter of the statutory prohibition would result in injustice, such an interpretation therefore must be discarded in favor of an interpretation in terms of its spirit. Such a line of reasoning is in accordance with the use of the mischief rule as a secondary canon of construction.

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[169] *Id.* at 287.

[170] *Id.* at 288.

In the same manner, all the previous excursions into purposive considerations quoted in his various opinions above are, despite his unreservedly purposive language, consistent with the use of the mischief rule in its secondary signification. Indeed this is borne out by a more comprehensive and well-rounded examination of his opinions. It has already been pointed out in the *Luzon Surety*[171] case that he acknowledges the primacy and dominance of the literal rule. Thus, he categorically stated in that case: "Its language is clear. It does not admit of doubt. No process of construction need be resorted to. It peremptorily calls for application. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed."[172]

J. M. Tuason & Co. Inc. v. Land Tenure Administration[173] is even more instructive. Although, this involved a case of constitutional construction, nonetheless its conclusions apply in general to statutory interpretation. In this case, he categorically reiterated his adherence to the primacy of the literal rule:

> We look to the language of the document itself in our search for meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their primary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.[174]

And yet, indicative of his purposive inclinations and despite "the need for construction (being) reduced to a minimum", he could not resist excursion into extrinsic aids which introduced historical and consequential considerations. "Reference to the *historical* basis of this provision as reflected in the proceedings of the Constitutional Convention, two of the extrinsic aids of construction along with the contemporaneous understanding and the consideration of the

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[171] G.R. No. 25659, October 31, 1969, 30 SCRA 111.

[172] *Id.* at 116.

[173] G.R. No. 21064, June 30, 1970, 31 SCRA 413.

[174] *Id.* at 422-423.

consequences that flow from the interpretation under consideration, yields considerable light on the matter."[175] And to round out his method of constitutional construction, he acknowledged as a third component "the inexorable need for the Constitution to have the capacity for growth and ever be adaptable to changing social and economic conditions".[176]

Indeed, the *J. M. Tuason* case conclusively shows that, despite considerations of purpose invariably permeating his method of interpretation, Justice Fernando nonetheless adheres to the primacy and dominance of the literal rule.

Another noted advocate of the purposive approach to interpretation is former Associate Justice Isagani A. Cruz. His most controversial use of such an approach is the *Alonzo v. Intermediate Appellate Court* case.[177] Because of its extremely substantive approach and conclusion, it might plausibly be expected that Justice Cruz availed of a variant of the mischief rule in this case which qualified as a primary canon of construction.

In the *Alonzo* case, Justice Cruz disregarded the statutory requirement found in Article 1088 of the Civil Code that for prescription to run in cases of redemption of co-owned inherited property, there must be *written notice* of the sale by the vendor to the other co-owners, *actual notice* not being sufficient. In contravention of the strict letter of that statutory provision and in disregard of judicial precedent, Justice Cruz found the actual notice that existed in that case to be sufficient. Thus he dispensed with the formality of written notice, because in any case actual notice was substantially complied with. The decision therefore was radically substantive in its method and conclusion, in the process possibly violating both the requirements of universalizability and the equal protection of the laws.[178] Indeed Justice Cruz dismissed these possible violations rather cavalierly: "In fact, and this should be clearly stressed, we ourselves are *not* abandoning the De Conejero and Buttle doctrines. What we are simply doing is adopting an exception to the general rule, in view of the particular circumstances of this case."[179]

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[175] *Id.* at 423 (emphasis supplied).

[176] *Id.* at 427.

[177] G.R. No. 72873, May 28, 1987, 150 SCRA 259.

[178] *See* Emmanuel Fernando, *Universalizability and Philippine Jurisprudence*, (last visited 15 November 2000) <http://www.bu.edu/wcp/Papers/Law/LawFern.htm>.

[179] Alonzo v. Intermediate Appellate Court, G.R. No. 72873, May 28, 1987, 150 SCRA 259, 268.

More importantly, he justified his substantive method and conclusion by appeals to results, purposes and the avoidance of injustice:

> But as has also been aptly observed, *we test a law by its results; and likewise, we may add, by its purposes.* It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is *to render justice.*[180] (emphasis supplied)

It therefore appears that Justice Cruz availed of a variant of the mischief rule in this case, as a primary canon. After all, direct appeals were made to results, to purposes and to justice, apparently bestowing such substantive considerations a hallowed primary place in interpretation.

However, just as in the previous cases, the mode of reasoning applied in this case is consistent with the use of the mischief rule as a secondary canon. This point is made manifest when the very next paragraph to the above quotation is reproduced.

> Thus, we interpret and apply the law not independently but in consonance with justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. *In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.*[181] (emphasis supplied)

Justice Cruz thus refers to finding "a balance between the word and the will." That suggests that there exists no dominance or primacy of the spirit over the letter, or of the mischief rule over the literal rule, and that they are roughly of equal weight. However, when this is prefaced by the admonition that "we are not bound" to apply a law generally valid "in slavish obedience to its language," because of the peculiar circumstances of the case, then it appears as if he grants literal meaning primacy, at least in point of chronology. Thus, the literal meaning

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[180] *Id.* at 264-265.

[181] *Id.*

is first to be determined before the substantive considerations introduced by the mischief rule are to be consulted.

This interpretation is supported by the following quotation, extracted from the succeeding paragraph:

> While we may admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. *While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment.* In doing so, we defer not to 'the letter that killeth' but to 'the spirit that vivifieth', to give effect to the lawmaker's will.[182] (emphasis supplied)

When Justice Cruz requires that "we may not read into the law a purpose that is not there," this suggests that we are constrained by the letter of the law. And when he talks of "the right to read out of (the law) the reason for its enactment," he presupposes that the law's intent is expressed by its words. This implies that resort to the letter of the law must first be undertaken to ascertain the law's purpose.

Despite the extremely substantive nature of this piece of adjudication therefore, it nonetheless appears that Justice Cruz ultimately did not intend, in this case, to make use of the mischief rule in its primary sense.

4. Equity

In the common law discussion on the mischief rule, it was explained that the English historical treatment of equity was to consider it as practically equivalent to a direct application of the mischief rule as a primary canon. This is not surprising. For when considerations of equity provide the dominant justification for the decision, then it is not significantly distinguishable from a decision based on the evil or mischief that the statute is intended to address, or the statutory purpose or objective.

It might therefore appear as if the Philippine experience with respect to the use of 'equity' in judicial decision-making is similar. If so, then an example of Philippine adjudication that avails of the mischief rule in its primary sense has been discovered. This hope is encouraged by various judicial *dicta*, such as: "What

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[182] *Id.* at 265.

is sought to be written into the law is the pervading principle of equity and justice above strict legalism."[183]

On closer examination however, this hope turns out to be in vain. For, the prevailing use of 'equity' in Philippine jurisprudence is simply as a kind of justice which is beyond the dictates of legality:

> For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists - and is now still reverently observed - is "*aequetas nunquam contravenit legis.*[184]

Moreover, there exists a plethora of cases which make precisely this point, or provide some equivalent paraphrase of it, so that its authoritative status as a doctrine is virtually unquestioned.[185]

When equity, therefore, is referred to as "available only in the absence of law" and described as "justice outside legality", then it follows that it can only supplement the law and not replace it. Hence, equity is to be used only in the gaps of the law, as determined by its letter. This therefore but attests to the primacy of the literal rule in the Philippine use of equity.

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[183] Sea Commercial Company, Inc. v. Court of Appeals, G.R. No. 122823, November 25, 1999, 319 SCRA 210, 222, *citing* SANGCO, TORTS AND DAMAGES 301.

[184] Aguila v. Court of First Instance of Batangas, Branch I, G.R. No. 48335, April 15, 1988, 160 SCRA 352, 359-360.

[185] *See, for example,* Republic v. Court of Appeals, G.R. No. 100709, November 14, 1997, 281 SCRA 639, 649; Conte v. Commission on Audit, G.R. No. 116422, November 4, 1996, 264 SCRA 19, 33; David-Chan v. Court of Appeals, G.R. No. 105294, February 26, 1997, 268 SCRA 677, 687; Causapin v. Court of Appeals, G.R. No. 107432, July 4, 1994, 233 SCRA 615, 625; Smith, Bell & Co. v. Court of Appeals, G.R. No. 110668, February 6, 1997, 267 SCRA 530, 542; Mendiola v. Court of Appeals, G.R. No. 122807, July 5, 1996, 258 SCRA 492, 502; Zabat v. Court of Appeals, G.R. No. 36958, July 10, 1986, 142 SCRA 587; Tankiko v. Cezar, G.R. No. 128287, February 2, 1999, 302 SCRA 559, 570; and Aguila v. Court of First Instance of Batangas, G.R. No. 48335, April 15, 1988, 160 SCRA 352, 359-360, to name but a few.

5. The mischief rule in closing

In the preceding discussion, it has been argued and successfully established that the Philippine use of the mischief rule, despite appearances to the contrary, has been as a secondary and not as a primary canon of construction. For sufficient basis has already been provided, in terms of the rather extensive examination of Philippine jurisprudence, to warrant the justifiable conclusion that Philippine jurisprudence has, at best only implicitly but not categorically or unqualifiedly, adopted the mischief rule as a primary canon of construction and that no elaborated theory of the mischief rule as a primary canon has been proferred.

Admittedly, the discussion on the Philippine use of the mischief rule was neither exhaustive nor comprehensive. Certainly, there exist many other cases which may plausibly be viewed as applications of the mischief rule as a primary canon. Be that as it may, the author feels confident that upon greater scrutiny of such cases, it will eventually be discovered that the mischief rule was used only in a secondary sense, or, at worst, it use was ambiguous between the two senses.

The upshot of all this is that the mischief rule has been used only as some sort of variant or extension of the golden rule. This has far reaching effects, but since these effects are tied up with the Philippine use of the other two canons, then their elaboration must await the succeeding subsection.

D. Towards a synthesis of the three canons

As previously stated, no elaborated theory of the mischief rule as a primary canon, which accounts for the role of the other canons of interpretation in terms of some synthesis or unitary approach, has been provided, or even suggested by Philippine jurisprudence. On the other hand, the beginnings of an elaborated theory based on the primacy of the literal rule which satisfies the requirements of a unitary approach, already exists. Of course, such a unitary theory has not been enunciated with sufficient detail and precision, but it is in any case capable, without too much extrapolation, of such articulation. The above entire situation is unfortunate.

For Philippine jurisprudence is much more substantive and purposive in result than English jurisprudence is, and yet it is reluctant to adopt an openly substantive method of interpretation. Courts, in other words, appear disinclined to challenge the dominance and primacy of the literal rule; and even as they

concede the relevance and importance of substantive and purposive considerations in interpretation, they do so by taking the mischief rule only as a secondary canon of construction. Thus, they treat the mischief rule as some sort of expanded variant of the golden rule; and it has been shown that courts already have the tendency to treat the golden rule in an extremely liberal fashion. Moreover, their use of the golden rule, and consequently of the mischief rule as well, has been such that no clear and definite guidance has been provided as to when a formal or literal reason is to be preferred against a substantive or purposive one, or vice-versa. Thus, great confusion results as to the appropriate use of a particular canon in lieu of another.

The upshot of all this is that, in using the mischief rule as a variant of the golden rule, the concept of 'ambiguity' has been unduly stretched, and the kinds of anomalies, which merit disregard of the literal rule, have been vastly expanded. For only in this way may the particular judge's substantive or purposive predilections be satisfied. It would therefore be beneficial, if only for the sake of intellectual honesty, that some plausible elaborate theory of the mischief rule, as a primary canon, be developed and articulated in Philippine jurisprudence, for the use of such purposive-minded judges.

The other unfortunate consequence of the above is that there is too much indeterminacy, uncertainty and variability in Philippine judicial decision-making. This is because, as mentioned above, no adequate guidance has been provided by the courts as to the choice of rule to apply. This situation may be in conformity with the courts' secret longings, since they may welcome the concomitant power and discretion that such a situation brings; but not so, for the public, who yearn for a legal system which establishes ample guidance in terms of clear and definite standards. An elaborated theory, in fulfillment of a unitary approach, will greatly contribute to satisfying the public's yearnings.

Indeed, there is a need for some sort of unitary approach that synthesizes these three canons into a systematic whole and delineates the proper role of each canon in the synthesis. The two prime candidates for such a unitary theory is, of course, the one which takes the literal rule as fundamental and the other which confers that status on the mischief rule. These two unitary theories should be fully developed so that they may be compared and contrasted against each other, in the hope that a choice between them may eventually be made. Only in this way will proper guidance for the courts in the use of the three canons be instituted, so that Philippine jurisprudence may attain a greater degree of certainty and stability.

Unfortunately, the issue of a unitary approach takes us beyond the scope of the present article. I hope it is sufficient to say that that is a topic of a future article, this author is currently working on.

VI. CONCLUSION

The article has explained and analyzed the three basic canons of statutory construction in terms of their history and development in the common law jurisdictions of England and the United States. Such an analysis has provided the framework with which to arrive at a deeper understanding of Philippine judicial practice in terms of the actual use and application of the three canons. In the process, certain conclusions have been arrived at and certain suggestions for the improvement of Philippine judicial decision-making have been made. The most significant suggestion, among them, is that two fully elaborated unitary theories, one taking the literal rule as a primary canon of construction and the other the mischief rule, should be articulated and developed so that they may be compared and contrasted against each other, in the hope that a choice between them may eventually be made. Such a development will aid greatly in making Philippine jurisprudence attain a greater degree of certainty and stability.

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