Interpretation

Introduction To The Law Of Interpretation

Meaning Of Interpretation

- Professor Zander, "Law making process": Interpretation is not something that happens in cases of doubt or difficulty; it happens whenever anyone tries to understand language used by another person.
- Black's law dictionary: The process of determining what something especially the law or legal document means. The ascertainment of meaning to be given to words or other manifestations of intentions.
- Edzie, "Modern Purposive Approach in Ghana": It is a rational process ascertaining the meaning of language used in a legal text and the determination subject to any rule of law of the scope or legal effect of language used in a specific context and for the purpose of applying it to a specific set of facts or situations before the court.

Meanings

I. **Sentence meaning:** The sentence meaning is the plain meaning plus the context of the sentence as opposed to the meaning of the speaker or author. Sentence meaning is the meaning of language from the viewpoint of a typical member of the linguistic community.

II. **Speaker's meaning:** It is the intention or suggestion the speaker wants to put across. The distinction between speaker's meaning and sentence meaning is that speaker's meaning is the meaning of language from the viewpoint of the author or speaker of the specific language.

III. **Ordinary meaning:** The common meaning, the meaning as known to ordinary individuals; It is the meaning in its plain and popular sense although that sense may be a sense among a particular group of persons. If a statuary provision is intelligible in the context of ordinary language it ought without more to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation.

IV. **Legal meaning:** Interpretation that will convey the true intent of the law. It is the meaning intended by the author or writer of a DSE. According to Bennion, the legal meaning is the meaning that truly reflects the legislative intention. Often, the legal meaning corresponds to the ordinary/grammatical meaning but that is not always the case. The words may be given an expanded or constricted meaning depending on the context of their use. Essentially, the task of the interpreter is to determine and apply the legal meaning of a DSE to the facts/situation before the court or interpreter.

V. **Implicit meaning:** The meaning of the text is conveyed to the reader even though it is not part of the dictionary meaning of the language

VI. **Implied meaning:** It has dual meaning. The first meaning is implicit and the second meaning is to fill in the gap in the text. The judge asks what is and what is not in the sentence that is defeating the true intention of its maker.

VII. **Explicit meaning:** Where the dictionary meaning conveys the actual meaning of the text

VIII. Exceptional and special language/unique language: words that are expressed in a form that the ordinary person will not understand. It is normally used in informal non-statutory interpretation

IX. **Technical meaning**: The meaning assigned to a word by a specialized group of people such as lawyers and doctors. If a word is of a technical or a scientific character, then its primary meaning is its technical or scientific meaning.

X. **Fringe meaning:** The extent to which words extend their meanings in ordinary sense

XI. **Dictionary meaning:** It helps to determine the general or legal language of the word. It gives a range of possible semantics within which to gather the appropriate meaning.

Approaches To Interpretation

Originalism

- The originalist looks for the original meaning of the text and apply it to the new and unforeseen circumstances. Judges are restrained from introducing their own values into interpretation to defeat the neutral nature of the Originalist approach to interpretation
- The original meaning is the common meaning as known to ordinary individuals. It is the meaning in its plain and popular sense although that sense may be a sense among a particular group of persons. Blackstone on the meaning of words stated that words are generally to be understood in that usual and known signification.
- The approach is neutral in defining principles because the interpretation to every deed or statute must be within the context of text and history.
- Justice Scalia, in "A matter of Interpretation" justifies originalism in the following words: "But the originalist at least knows what he is looking for: the original meaning of the text. Often-indeed, I dare say usually that is easy to discern and simple to apply. Sometimes (though not very often) there will be disagreement regarding the original meaning; and sometimes there will be disagreement as to how that original meaning applies to new and unforeseen phenomena."
- **Dyson Holding v Fox**: The Court held that, the word 'family' should not be construed in a technical or legal sense, but in the sense that would be attributed to it by the ordinary man in the street at the time relevant to the decision of the particular case. The defendant lived cohabited with the deceased (Wright) during his lifetime as his wife (taking on his name-Wright), the two lived as tenants in the plaintiff's house. Subsequently, it was discovered after his death that, the defendant was not his wife. The plaintiffs refused to receive any rent from her and brought proceedings against her for possession on the ground that she was not protected by the Rent Acts (As a widow of the deceased, the defendant would have been afforded protection under the Rent Act), and was thus a trespasser. The defendant alleged that she was a family member of the decease, having cohabited with him
- **Ghana Lotto Operators Association & Ors. v National Lottery Authority**: Mentioned in passing, an originalist approach (to borrow a term from United States constitutional law) looks no further than the framers' intention

Textualism

- The textualists are of the opinion that when it comes to interpretation of deeds and documents, context is everything.
- Words have a limited range of meaning and any interpretation that goes beyond that range, beyond the framer's intention is not permissible. Extraneous matters and external aids are excluded
- They use rules of interpretation known as the cannons of interpretation and presumptions to interpret the text of statutes and non-statutory documents.
- Old Textualists interpret the document/law as expressed in the text. They would depart from the use of ordinary or literal meaning where the meaning would be absurd. Emphasis is on what was written and not what the author intended to write. The new textualists on the other hand, focus on the meaning a reasonable author would give to the text at the time it was written and not was written per se.

Intentionalist

- Intentionalists include use the Purposive Approach, Creative Approach and Modern Purposive Approach inter alia to look for the legislative intent and mischief the law seeks to cure. They take into consideration

factors such as the legislative history, the preamble, long title, marginal notes and the mischief the law seeks to cure.

- **Rep v High Court, Koforidua, Ex Parte Eastern Regional Development Corporation**: The SC quoted with approval the Intentionalist's approach adopted in the Heydon case thus:
  1. What was the common law position before the making of the Act?
  2. What was the mischief and defect for which the common law did not provide?
  3. What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?
  4. The true reason of the remedy
- **Biney v Biney:** The construction must be as near to the mind and intention of the author as the law would permit; The intention must be gathered from the written expression of the author's intention
- Where the intention of the legislature is not clear, the natural import of the words should be applied but where the legislative intention is clear, the Court is bound to give effect to it irrespective of some apparent deficiency in the language used.
  - **Sasu v Amua-Sakyi:** The court had to construe the wording of section 3(2) of the now repealed Courts Act. 1971 as inserted by the Courts (Amendment) Law, 1987 which provided " where a decision of the CA confirms the decision appealed against from a lower court, an appeal shall lie against such decision of the CA which may on its own motion or on an oral application made by the aggrieved party decide whether or not to grant such leave, and where the CA refuses to grant the leave to appeal, the aggrieved party may apply to the SC for such leave". The Court held, that, the wording of section 3(2) in the context of other provisions of PNDCL 191-in particular, a comparison of sections 3(2) and 10(3)(b). The CA then concluded that there was an obvious omission of the words "with the leave of the CA" without which the whole of section 3(2) would be rendered unintelligible; that those words must be inserted immediately after the words "an appeal shall lie against such decision of the CA". Such an insertion would not only make section 3(2) sensible; it would reflect and give effect to the apparently true legislative intent, namely, an appeal from the judgment of the CA which had confirmed that of a lower court had to be with the leave of the CA.

Literalism

- Words should be given their ordinary meaning but where the subject matter of the interpretation was prepared by a lawyer, expert, its technical meaning should be given irrespective of its consequences. There is no distinction between the letter and the spirit, words are interpreted as they appear.
- **Republic v High Court Accra Ex Parte Chraj (Anane's Case):** Per Mensah Boison J, Where a provision of the constitution conferred power, such provision should be given a narrow and strict interpretation.
- **Ransford France (No 3) v Electoral Commission And Ag (No 3):** A literal interpretation which suggests that an effect should be given to a statute that is clear and unambiguous regardless of its consequences should be rejected as being outmoded.
- It does not correct errors by the draftmen, the interpreters duty is to interpret despite how ridiculous it may sound.
  - **Whitely v Chappell:** Where the words of an act are not clear they must be followed even though they lead to a manifest absurdity.
  - **Danso-Acheampong v Ag:** "… a literal approach to statutory and constitutional interpretation is not recommended. Whilst a literal interpretation of a particular provision may in its context, be the right

one, a literal approach is always a flawed one, since even common sense suggests that a plain meaning interpretation of an enactment needs to be checked against the purpose of the enactment if such can be ascertained. A literal approach is one that ignores the purpose of the provision and relies exclusively on the alleged plain meaning of the enactment in question".

Pragmatism

- Interpretation without being bound by text or precedent.
- Where there are two conflicting interests, the court will resolve the issue in favor of the one with the higher interest. Where the competing interests are of different values, the one whose outcome would have better consequences should influence the decision of the court.
  - **Roe v Wade:** The SCOTUS decision on abortion was determined based on competing interests in the matter. The court considered the right to privacy under the Amendment which covered a woman's decision to abort or terminate pregnancy against the protection of pre-natal life and the protection of women's health. The court considered the competing interests in the case and held that the State's interest became stronger over the course of a pregnancy than the right to have an abortion. The state was thus tied to regulate abortion to the trimester pregnancy.

Living Constitutionalism

- The past view of the lawmakers are bridged with the present values or future consequences of the decision on the society.
  - **NPP v Ag, (The 31st Dec Case):** The applicant sought a declaration that the use of state funds finance 31ST December celebrations and declare the day a holiday; in remembrance of a past coup d'erat was unconstitutional. Per Abban JSC, A' Constitution is a living piece of legislation and its provisions are vital living principles; and the spirit of every Constitution must be collected from the Constitution itself"
  - **Tuffour v Ag:** Per Sowah JSC, a Constitution is "a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time."
- The constitution is upgraded at any point in time without formal amendments to meet the intent of the system. The Memorandum to the interpretation act has given legal backing to this approach. This approach is limited to the constitution. The spirit of the constitution is taken into consideration.

Political Process Theory

- In democratic governance, there are the majority and minority groups with policies usually reflecting the interests of the majority and neglecting the interests of the minority. Under this approach the court intervenes when legislators inflict inequality on the target group.
  - **Minister Of Health v Treatment Action Campaign:** The Treatment Action Campaign brought an action against the government on the distribution of antiretroviral drugs to pregnant women in certain "pilot sites" alleging that it infringed the right to health and that the drug ought to be distributed across the country and not in specific sites.

- **Quartson v Quartson:** The court stated that the intention of Parliament to enact laws to regulate the distribution of properties jointly acquired during marriage in accordance with article 22(2) of the 1992 Constitution should not prevent the court from doing justice.

- The main criticism of this approach is that judges freely substitute their personal beliefs for that of the people and that is likely to affect the tents of democracy.

Purposive Approach

- The Interpretation Act 2009, Act 792 particularly the memorandum the Act, enjoins judges to use Purposive Approach to Judicial Interpretation. The Purposive approach requires that the purpose of the law be ascertained.
  - **Appiah v Biani:** Lutterodt J (as she then was) rejected the strict constructionist or grammatical approach and adopted the purposive approach and held that an uncompleted house is a house within section 3 of PNDCL 111. She reasoned that the purpose of the law was not merely to provide a shelter or place of habitation for a surviving spouse and of the deceased's children but starting them off financially well by giving them a larger portion of the deceased's estate to enable the surviving spouse to look after the children well and provide them with all necessaries of life.
  - **Pepper v Hart:** The House of Lords had to decide whether a private teacher's perk in the form of reduced school fees was taxable. The Court held per Giffith's J that, "…These days…the courts use a purposive approach which seeks t ogive effect to the purpose of legislation…"
- The Purposive Approach to interpretation takes account of the words of the Act according to their ordinary meaning as well as the context in which the words are used. Reliance is not placed solely on the linguistic context, but consideration is given to the subject-matter, the scope, the purpose and, to some extent, the background. Factors which among others, must be taken into consideration when construing laws, are the title of the Act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Parliament and the reports of the Committee of the House.
- According to Benion, "A purposive construction of an enactment is one which gives effect to the legislative purpose by: following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."
- According to Aharon Barak, "In carrying out a purposive interpretation of a constitution or a statute, it is necessary to distinguish between its subjective and objective purposes. *The subjective purpose of a constitution or statute is the actual intent that the authors of it,* namely, the farmers of the constitution or the legislature, respectively, had at the time of the making of the constitution or the statute. On the other hand, *the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values, etc. of the society for which he is making law.* This objective purpose will thus usually be interpreted to include the realization, through the given legal text, of the fundamental or core values of the legal system."
- The main criticism of this approach is that the subjective intent of the author or the authorial intent is what a reasonable person would have intended. Thus, it appears that an interpretation would not reflect the intention of the author but rather the intention of a reasonable man.

Modern Purposive Approach To Interpretation (MOPA)

- MOPA as propounded by Aharon Barak is an approach to interpretation which is made up of both subjective and objective intents working simultaneously. *The subjective purpose is the intent of the author at the time the document or the law was made or created. The objective intent is the intent of a hypothetical reasonable* man at the time of interpretation and it is immaterial as to which one is considered before the other. The interpreter may start the interpretative process with either the objective or subjective elements or end with the other. According to Aharon Barak, the judge must decide between the subjective intent and the objective purpose to arrive at the ultimate purpose and not that interpretation should end with the objective purpose.
  - **Ghana Lotto Operators Association v National Lottery Authority:** Per Date-Baah, "A more modern approach would be to see the document as a living organism. As the problems of the nation change, so too must the interpretations of the Constitution by the judiciary. Interpreting the Constitution as a living organism implies that sometimes there may be a departure from the subjective intention of the framers of it. The objective purpose of the constitution may require an interpretation different from that of the original framers of it". The SC failed to give reasons for its refusal to expressly apply the third test that is the ultimate purpose and rested its case under the second test-the objective purpose.
  - **Ransford France (No 3) v Electoral Commission & AG:** Per Date-Bah, Constitutional interpretation should never be mechanical, oblivious of the destructive results or implications of a particular interpretation, when an alternative interpretation is available that could avert the identified mischief…Interpreting the Constitution as a living organism implies that sometimes there may be a departure from the subjective intention of the framers of it. The objective purpose of the Constitution may require an interpretation different from that of the original framers of it
  - **Adofo & Others v AG and another**
  - **Republic v High Court, Ex parte Yalley (Gyane and Another Interested parties):** The applicant caused a writ of summons to be issued against the interested parties in respect of a plot of land he claimed the respondents have trespassed on, and successfully applied for an order of interim injunction against them for the statutory ten day maximum period. The Respondent commenced contempt proceedings against the applicant. The contempt action was transferred twice by both parties without the required permission of the CJ for a transfer of venue. The applicant contends that while he required leave of the CJ to transfer courts, he came under an exception owing to the dire nature of the circumstances. Per Wood JSC, "The subjective purpose of a constitution or statute is the actual intent that the authors of it, namely the framers of the constitution, or the legislature, respectively, had at the time of the making of the constitution or the statute. On the other hand, the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values etc of the society for which he is making law". The court endorsed the two-tier approach and further discussed Bennion's new Purposive Approach to Interpretation…In the construction of statutes, if the subjective would bring out the legislative intent, leaving no ambiguities, absurdities or injustices that the purely literalist approach would result in, the objective purposive approach that does not constitute the actual intent of the authors but rather the intentions of a hypothetical reasonable man, should only be deployed if upon application of the subjective-purposive approach, the statute is still clouded in absurdity, irrationality, mystery or will prove unworkable. The objective purpose is a useful guide, where with the best of efforts, namely, reading the statute as a whole and conscientiously applying all the known guides to

interpretation, the meaning of the statute still remains unclear, or has elements or even traces of the absurd, the irrational, the unjust or the like".

- **Asare v AG,** the SC per Date-Bah JSC: between subjective purpose and objective purpose as follows: "The subjective purpose of a constitution or statue is the actual intent that the authors of it, namely the framers of the constitution or the legislature, respectively, had at the time of the making of the Constitution or the statute. On the other hand, the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values etc of the society for which he is making law. This objective purpose will thus usually be interpreted to include the realization, through the given legal text, of the fundamental or core values of the legal system…"

- Purposive interpretation is not free range interpretation because the judges are constrained by the text, the purpose of the law and not the least judicial discretion. This is also called the three pronged approach by Barak: Language, Purpose and judicial discretion

Subjective Purpose

- There are two sources of subjective purpose: internal or Textual and External or Contextual Sources.
- The internal purpose is the intention expressed in the text by the author.
- The external source is dependent on the context and the circumstances under which the text was created. It is the context in which the text was created. It includes the circumstances up to the creation of the text, and the totality of circumstances related to its creation. It may include circumstances in existence after the text was created, to the extent that they reflect the intent on the basis of the text's creation"
- Judges rely on both the internal and external sources to arrive at the intention of the author. The text is read as a whole to assist the judge to know the purpose of the law to properly ascertain the intention of the author. Where the text is plain and unambiguous, the interpreter is still required to consider the whole text to be able to clearly identify the subjective purpose of the author.
- The interpretation Act, 2009 (At 792), S 10, makes it possible for the courts to seek assistance from legislative antecedents of the statutory provisions under considerations, pre-parliamentary materials relating to the provisions in the Act in which it is contained such as reports of committees and of commissions reviewing the existing law and recommending changes, parliamentary materials such as the text of a bill and reports on its progress in parliament taking note also of explanatory memoranda, proceedings in committee and parliamentary debates. In addition, it permits the courts to take into account cultural, economic, political and social developments without recourse to amendments when construing the 1992 Constitution.
- It is presumed that the meaning from the text should be given more prominence or weight than the meaning ascertained or gathered from the context. It is further presumed that the text is interpreted in its ordinary, popular and natural meaning. Aharon Barak refers to the above as the "golden presumption" in contrast to golden rule as used in the normal interpretation of statute. The third presumption is that the subjective purpose emanating from the text is presumed to determine its ultimate purpose. However this presumption is rebuttable because in most cases, an interpreter cannot ascertain the authorial intent without reference to the context.

Objective Purpose

- The objective intent is not the intention of the author but that of a hypothetical reasonable man who has taken into consideration the intent of the system. Aharon Barak explains the intent of the system as values, objective, interests, policy and function of that text designed to actualize in a democracy. The intent of the system determines the values, policies, interest and objectives of the law in every society. The determining factor for the objective purpose is the intent of the system. The needs of every society are likely to differ from one to the other and the interpreter who fails to consider the needs of a particular society in his interpretive process would produce a wrong and misleading objective purpose
- The interpreter's objective Purpose is controlled by the text and the intent of the system. Where the text and the system cannot bear the Objective Purpose, the interpreter would be imposing his own Objective Purpose and not that of a hypothetical reasonable man
- The objective purpose must always promote justice and fairness. Interpretation aims at solving current problems and situations.
- Like the subjective purpose, the sources of the objective purpose could be internal or external. The internal source consists written and unwritten words. The text is made up of implicit and explicit meaning, the text plays an important role in objective purpose not by only setting the limits of interpretation but also by determining the content of the text's purpose. The external source includes similar texts or related texts. Where similar words or identical words were used in another statute or a will or a contract, it may help to understand the text well. Where words in a statute are repeated in a similar statute the text is said to be in pari materia. Aharon Barak refers to the external source as "nearby texts" or "natural environment" and according to him it includes "the immediate normative layout in which the text in question operates".
  - **Afendza III v Tenga V:** The SC held that it is trite law that when generally speaking, the same or similar words in the statute have received judicial construction by a superior court, and repeated in subsequent statute, those words are in pari materia.
- Other external sources are general, social and historical background, case law, jurisprudence and legal culture and basic values of the system, the basic fundamental human rights, the objectives for the rule of law, freedom of speech, respect for human dignity of the judiciary, doctrine of separation of powers, peace and security and the principles of natural justice. The interpreter cannot bring his own objective purpose to represent the objective purpose as it will not reflect the societal needs of the people.

Ultimate Purpose

- The ultimate purpose is formulated from the subjective and objective purposes.
- In most cases, the subjective and the objective purposes disclose the same or similar purpose.
- Where there is conflict between the two purposes, presumptions are used to resolve it or to arrive at the ultimate purpose.
- The ultimate purpose is made up of a synthesis of the subjective purpose and the objective purpose. The subjective part is made up of the text and context and the objective part is made up of the intention of the hypothetical reasonable man and the intention of the system. The circuitous processes go on until the ultimate purpose is realized.

Interpreting National Constitutions With Mopa: Application In Ghana

- A constitution is interpreted differently from the other texts. To Aharon, "the key question in formulating a constitution's ultimate purpose is the relationship between subjective and objective purpose and the internal relationship between various objective purposes".

- Aharon notes that, "In a clash between subjective and objective purposes, the objective purpose of a constitution prevails. It prevails even when it is possible to prove subjective purpose through reliable, certain and clear evidence. Subjective purpose remains relevant, however in resolving contradictions between conflicting objective purposes."

Bennion's Modern Version Of Purposive Approach

- According to Francis Bennion, the foundation of Purposive Interpretation is the Mischief Rule enunciated in the Heydon's case which required judges to go to the common law to find the purpose for which the law was enacted. In cases where the existing statute repealed an earlier one, the interpreter would inquire into the basis and the circumstances which gave birth to the repealed statute to know the mischief the statute was enacted to cure.
- Bennion's approach to interpretation sets up two conditions for interpretation
  - The first principle is that words should be given their ordinary plain or literal meaning where the literal meaning is in accordance with the legislative purpose.
  - The second principle is that strained meaning should be given to an enactment or document where the literal meaning is not in accordance with legislative purpose.
- The duty of the court in statutory interpretation is not "to determine the meaning of an enactment in the abstract but only when applied to the relevant facts of the case before the court…the practical question for the court is not what does this enactment mean in the abstract, but what does it mean on these facts? A question of construction arises when one side submits that a particular provision of an Act covers the facts of the case and the other side submits that it does not or it may be agreed it applies, but the difference arises as to its application"

Hart And Sachs Approach To Interpretation

- There are two presumptions which are indispensable in the Hart and Sachs approach to interpretation.
- The first presumption is that the interpreter shall presume that Congress is made up of reasonable people who seek to achieve a reasonable goal in a reasonable manner and secondly, that there is an unrebuttable presumption that Congressmen or members of the legislature perform their Constitutional mandate in good faith.
- The text is not about the subjective purpose of the author as he may not have acted reasonably. The text is that of a reasonable man. That is, the interpreter must act objectively and imagine himself in the shoes of the author.

Basic Rules Of Interpretation

Construction Of Deeds And Documents

1. Interpretation must be as near as possible to the intention of the makers of the document ad the law permits
   - **In Re Amarteifio (Dec'd) Amarteifio v Amarteifio:** The testator in his will said £20 should be given to his wife and the rest shared equally among his children. At the time, the rent was £100. At the time of his death 26 years later the rent stood at £1,440 and the plaintiffs argued that only £20 and not 20% of the rent should go to the wife. The Court held it to be consistent with the testator's intention to construe clause six as meaning that the wife was to be given 20% of the total rents at all times.
   - **Biney v Biney:** "The construction must be as near the mind and intention of the author as the law would permit."
2. The intention must be ordinarily gathered from the express words of the document itself
   - **Biney v Biney:** "… the intention must be gathered from the written instrument itself."
   - **Allan Sugar (Products) Ltd v Ghana Export Co Ltd**: The National Investment Bank entered into two sales agreements in respect of 200 acres of irrigated farmland. Under the first agreement, they sold 50 acres of the land to the plaintiff-company. No provision was made in the agreement about the plaintiff-company's entitlement to use the irrigation facilities installed on the land. However, in the second sale agreement, the Bank sold the remaining 150 acres of the land to the defendant-company together with the exclusive use of the irrigation system. The plaintiff-company sued claiming that they, as sugar-cane growers, were also entitled to the use of the irrigation facilities. The High Court dismissed the action and on appeal the plaintiff-company contended among others that the High Court had erred in not taking into account the negotiations between all the parties and the government as to their need for the use of the irrigation facilities prior to the conclusion of the sale agreement between the Bank and the defendants. In dismissing the appeal, the Court of Appeal held that although the events and surrounding circumstances preceding an agreement could be considered in ascertaining the real intentions of the parties to the agreement, once the parties had reduced their intentions into writing they would be held to their written word and the use of extraneous matters such as antecedent or subsequent negotiations could not be resorted to in construing the agreement between NIB and the defendants, except in cases of genuine doubt.
3. The document must be read as whole
   - **Manu v Emeruwa:** The plaintiff borrowed ¢1,000 from the defendant. As security for the payment of the loan within three weeks, the plaintiff deposited his car with the defendant together with all the documents on the car. The terms of the transaction were embodied in a written document signed by both parties who were illiterates. The car was subsequently damaged by the defendant's son whilst being used by him to learn how to drive. In an action for damages for the defendant's use of the vehicle, the issue turned on whether the transaction as embodied in the written agreement was a pledge or a mortgage. In holding that the transaction in the circumstances of the case constituted a pledge, Abban J said: in cases of this kind, all the terms of the document must be looked at and whatever may be the phraseology adopted or used in some particular part of the document, if on the consideration of the whole document there are grounds appearing on the face of the document affording proof of the real intention of the parties, then that intention ought to prevail against the obvious and ordinary meaning of those words. The court concluded that the agreement between the parties was a pledge.

- **Boateng v VALCO:** The appellant's employment was and terminated and he brought the instant action that it was unlawful under clause 3 of his conditions of service which provided that he had to be given a month's notice before the termination. The HC held that it was not unlawful because termination with notice implied that the employment could be terminated on payment of one month's salary. He appealed and the CA "regard should be given to all the four clauses dealing with termination…every clause must be compared with the other and an entire sense made out of them with a view to discovering the true meaning and intention of the parties."
- **In Re Amarteifio (Dec'd) Amarteifio v Amarteifio:** "A will should be read as a whole to realize the true intention of the testator. It would be ludicrous to accept that the testator who at clause 8 of his will directs that all documents pertaining to his house at Kokompe should be handed over to his wife, Rosina, and who at clause 12(f) gives the said wife a bigger share of the said house, could have intended that only £20 annually should be paid to Rosina irrespective of any rent appreciation."
- **Najat Metal Enterprises Ltd v Hanson:** The government by a letter directed in furtherance of an earlier confiscation order) that a state institution, MDPI, should take over the management of a group of companies known as Dakmak Group of Companies. A company listed in the letter was described as a 'Najat Company'. The plaintiff company sued claiming that it was not the same company described as 'Najat Company' in the government's letter. The court having established that the plaintiff company was in fact one of the Dakmak Group of Companies, held that looking at the document as a whole and in all the circumstances of the case, the description 'Najat Company' was referable to no other entity than the plaintiff company and that any other interpretation would not give effect to the intention as expressed by the government in the letter.

4. Words or phrases at their first instance must be given their ordinary meaning in context
   - **Addai v Donkor** unreported, per Adade JSC: "When a person chooses a particular language to express himself, he must be presumed to mean what the words he has used normally mean in that language…"
   - Where the words are technical, they must be given their technical meaning
     - **Arbenser v Hesse**: The plaintiff took out an action for the interpretation of certain paragraphs of his grandfather's will. The defenders were the daughters of the testator and the plaintiff was the son of the first defendant. By para. 6 of his will the testator devised his land to "unto and to the use of my daughters and to their heirs being issues of their respective bodies as tenants in common". The plaintiff contended that those words when properly construed meant that all the heirs took immediate interest with the devisees and that their interest vested in equal shares. Held, dismissing the action that technical words and expressions appearing in a will should be taken in their technical sense. The words "and to the use of my daughters and to their heirs being issues of their respective bodies as tenants in common" were terms of art and should be given their technical meaning.
     - **Monta v Paterson Simons (Gh) Ltd:** Per Mensa Boison J, obiter "it is a rule of construction that where legal terms or words of well-known legal import are used by lawyers, especially by conveyancers, they will have their technical legal import…. This rule applies even if by mistake of the draftsman there is a manifest failure to fulfill the intention of the testator. The subject-matter of construction in this case was a deed of settlement executed in 1910. The deed contained a clause by which the settlor conveyed his landed property to three persons as life tenants and thereafter to his four children as remaindermen "their heirs and assigns" forever. It was held that the words "their heirs and assigns" were technical words of limitations and must bear their technical meaning in

pre-1881 English conveyancing law, i.e. they imported the creation of joint tenancy with the sole surviving child taking the property absolutely".

5. Where the plain or ordinary meaning will lead to absurdity, repugnancy or inconsistency with the purpose, then you have a warrant to depart from the ordinary or plain meaning to a secondary or less usual meaning the words are capable of bearing.
   - **In Re Amarteifio (Dec'd) Amarteifio v Amarteifio** per Striggner-Scott J " Where the literal sense of words create an absurd situation they may be properly discarded or modified."
   - **Appiah v Biani**
   - **Ababio v The Republic:** Held, where words are plain, their literal and simple meaning is to be adopted, but the more literal construction ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute. Further a statute must be read as a whole, every section should be construed with reference to the context and as far as possible a consistent enactment should be made out of the whole statute or series of statutes relating to the subject-matter.
   - (NB) However, where the ordinary meaning sits with the purpose of the DSC you are not allowed to depart from it however absurd, repugnant or capricious it may seem.
     - ❖ **Hume v Randell.**
6. The courts have limited powers in order to give effect to the intention of the parties to do the following;
   A. Correction by Reading in Words Necessarily Implied
     - ❖ **Adler v George:** The defendant who had obtained entrance to the Royal Air Force Station, a prohibited place within the meaning of the Official Secrets Act, 1920, was actually within its boundaries when he obstructed a member of Her Majesty's Forces, engaged in security duties. He was charged with having in the vicinity of the prohibited place obstructed a member of Her Majesty's Forces, contrary to section 3 of the Act. He contended that as he was actually in the prohibited place, he could not be said to be in the vicinity of the prohibited place. He was convicted. On appeal it was held that on the true construction of the section 3 of the Official Secrets Act, the words "in the vicinity of" were to be read as "in or in the vicinity of" and accordingly the defendant had committed the offence charged.

   B. Correction by Construction
     - ❖ **East v Pantiles (Plant Hire) Ltd**. per Brightman J: "The principle of rectification by construction is said to apply only to obvious clerical blunders or grammatical mistakes. I agree to that approach. Perhaps it might be summarized by saying that the principle applies where a reader with sufficient experience of the sort of document in issue will invariably say to himself 'of course x is a mistake for y"

   C. Correction by Rectification
     - ❖ **Naught Circular Properties Ltd v Internal Systems Organisation Ltd**: "Of course the courts will not likely, as part of the process of construction, tamper with the actual words used in a commercial document such as a lease. On the other hand the law is not such an ass as to compel the courts to hold the parties to the actual words used when it is as in this case, clear from the document itself without looking at extrinsic evidence that such words were used only by virtue of a draftsman's blunder. Such a process of correction of obvious drafting errors in the process is of course distinct from the equitable doctrine of rectification. The former can only be adopted where the fact that a mistake has been made and the nature of the mistake can be ascertained with certainty from a consideration of the relevant instrument in the context of the objective circumstances surrounding its

execution. Rectification on the other hand will be appropriate in many other cases where the existence and the nature of the mistake are apparent only from extrinsic evidence of the actual intention of the parties."

The Rule In Doe D' Leicester; Doe D' Leicester V Biggs

- "If there be a repugnancy, the first words in a deed and last words in a will shall prevail."

Construction Of Wills

- Wills in Ghana are governed by the Wills Act, 1971 (Act 360).
- Where a will is made in accordance with the wishes of the testator, effect should be given to it unless there are overriding legal obstacles
  - **Re Mensah (dec'd); Barnieh v Mensah: The will of the deceased, an illiterate, contained the required jurat. The signatures of the attesting witness came after the jurat. Upon a motion for the grant of probate of the will by the executors, a caveat was filed by the appellant, a maternal nephew of the testator on the grounds that the will was not executed in conformity with S 2 of the Wills Act. The Court held that, the policy of the courts in matters affecting testamentary dispositions was to give effect to the last wishes of the deceased and to uphold them unless there were overriding legal obstacles in the way**
  - **S 13, Act 360**
- Extrinsic evidence is generally not admissible in the interpretation and construction of wills. However, such evidence may be admitted where there is a latent ambiguity or the evidence so admitted is explanatory if a meaning which the testator attributed to a word.
  - **In re Offner; Samuel v Offner:** The testator made a will and bequeathed an amount of 200 pounds to his grandnephew "Robert Offner" but he had no grandnephew by that name. With the aid of a document, the court was able to hold that the money was bequeathed to Richard and not Robert. Farwell J held that any evidence is admissible when in its nature it simple explains that the testator has written and no evidence can be admissible for the purpose of showing what he really intended.
- S 7 of the Wills Act
  - A will shall take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the will.
  - A disposition of immovable property without words of limitation shall pass the whole of the estate or interest in the estate which the testator has power to dispose of by will.
  - A general disposition of the land of a testator or of the testator's land at a place, or in the occupation of a person or otherwise described in a general manner, includes lands of any estate or tenure, unless a contrary intention appears from the will
  - A general disposition of the movable or immovable property of a testator includes a property to which the testator may have power to appoint in a manner the testator thinks fit.
  - A general or residuary disposition shall operate to confer a power to exercise a power of appointment, unless a contrary intention appears from the will.
  - A residuary disposition includes property comprised in lapsed and void dispositions, unless a contrary intention appears from the will.

- Where a testator and a beneficiary under the will, die in circumstances in which it appears that their deaths were simultaneous, or rendering it uncertain which of them survived the other, the beneficiary shall be deemed to have survived the testator for any purposes affecting the entitlement to property under the will of that testator; but for the purposes of the entitlement of the testator to that property under a will of that beneficiary, that beneficiary shall be deemed to have survived that testator

Armed Forces Wills

- S 6, Wills Act:
  - The formal requirements in section 1, 2, and 5 of the Wills Act do not apply to members of the armed forces while 'on active service'.
  - A member of the Armed Forces of whatever age may, while engaged on active service, make a will in written and unattested form, if the material provisions and signature are in the handwriting of the testator, or in written form, whether or not in the handwriting of the testator, and attested by one witness, or orally before two witnesses.
  - A beneficial disposition of or affecting a property, other than charges or directions for the payment of a debt given by a will made under this section to a witness to that will, is void unless the will is duly executed, if written, or witnessed, if oral without attestation and without the attestation of any other person.
  - A will made in accordance with this section remains valid even though the testator ceases to be a member of the Armed Forces. A will made in accordance with this section may be revoked by another will made in accordance with this section or by means of a revocation. A will made in accordance with this section may revoke an earlier will made by the testator
- The term 'soldier' as interpreted under the concept of the privileged will has been given a broad meaning by the courts. It is applicable to all divisions of the armed forces, including infantry, navy and air force, it also includes both full time professional soldiers and part time soldiers and applies to typists, nurses, etc.
  - **Re Hale**
  - **In Re Jones**
- Where after the cessation of hostilities, troops are still left in occupation of foreign territory, the soldiers may come within the privilege as long as the occupation lasts.
  - **Re Boothe**

Aids To Interpretation

- S 10, Act 792
  - Where a Court is concerned with ascertaining the meaning of an enactment, the Court may consider the indications provided by the enactment as printed, published and distributed by the Government Printer; a report of a Commission, committee or any other body appointed by the Government or authorised by Parliament, which has been presented to the Government or laid before Parliament as well as Government White Paper; a relevant treaty, agreement, convention or any other international instrument which has been ratified by Parliament or is referred to in the enactment of which copies have been presented to Parliament or where the Government is a signatory to the treaty or the other international agreement; and the travaux preparatoires or preparatory work relating to the treaty or the agreement, and an agreement which is declared by the enactment to be a relevant document for the purposes of that enactment.
    - ❖ GTP v Ankujeah: Legislative or pre-enactment history becomes useful when the meaning of the enactment is shrouded in obscurit. Not when the meaning is clear.
  - A Court may, where it considers the language of an enactment to be ambiguous or obscure, take cognisance of the legislative antecedents of the enactment; the explanatory memorandum as required by article 106 of the Constitution and the arrangement of sections which accompanied the Bill; pre-parliamentary materials relating to the enactment; a text-book, or any other work of reference, a report or a memorandum published by authority in reference to the enactment, and the papers laid before Parliament in reference to the enactment; the parliamentary debates prior to the passing of the Bill in Parliament.
  - Subject to Article 115 of the Constitution, a Court shall have recourse to parliamentary debates where the legislative intention behind the ambiguous or obscure words is clearly disclosed in the parliamentary debate.
  - A Court shall construe or interpret a provision of the Constitution or any other law in a manner that promotes the rule of law and the values of good governance, that advances human rights and fundamental freedoms, that permits the creative development of the provisions of the Constitution and the laws of Ghana, and that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana
- Aids may be external or internal

Internal Aids

Long Title

- S 13, Act 792: The long title forms part of an Act intended to assist in explaining the intent and object of the Act.
- Rules of parliamentary procedure require no more than that the long title should cover everything in the Bill as introduced; and, if necessary, it is amended to accommodate changes made in the content of the Bill before it is enacted. In modern times all Acts have long titles.
- Where something is doubtful or ambiguous the long title may be looked to resolve the doubt or ambiguity
  - **Donovan J in R v. Bates**

Short Title

- The need for brevity often results in a short title that does not cover everything in the Act.

- **R v Galvin:** The short title of the Official Secrets Act of 1911 did not prevent s. 2(1) being construed as including the communication of a document which was arguably neither 'official' nor 'secret'. The drafter may occasionally seek to make the title formally comprehensive.z and less to the short title than to the full title, for the short title being a label, accuracy may be sacrificed to brevity; but I do not understand on what principle of construction I am not to look at the words of the Act itself to help me to understand its scope in order to interpret the words Parliament has used, by the circumstances in respect of which they were legislating".

- May be looked at as a guide to interpretation nonetheless
  - **Per Scrutton LJ, Re Boaler**

Preamble

- Preamble sets out the facts and assumptions upon which the statute is based.
- S 13, Act 792: The preamble forms part of an Act intended to assist in explaining the intent and object of the Act.
- Per Lord Normand, **A-G v Prince Ernest Augustus of Hanover:** 'when there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid in construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even related Acts'.
- **Republic v Jackson:** The court referred to the preamble in construing section 10(1) of the Factories, Offices and Shops Act, 1970. The accused, the factory manager of a factory was arraigned before the court on a charge of failure to report an accident which caused injury to a mechanic at the factory. The mechanic was incapacitated from working for more than three days but received full salary for the whole period of incapacity to work. At the hearing, counsel raised a preliminary objection arguing inter alia that on a proper construction of S 10(1)b of the Act, the accused was bound to make a report to the inspectorate only where the injured was disabled from earning his full wages for more than three days. It was held that the words "at which work he was employed" in S 10(1)b of the Act had strong operative import considering the intent of the legislature as a whole as revealed in its preamble.
- **Den v Urison:** The court held that, "The preamble cannot control the enacting part of the statute, in cases where the enacting statute is expressed in clear, unambiguous terms; but in the case any doubt arises on the enacting part, the preamble may be resorted to explain it and show the intention of the law maker."
- Where there is any ambiguity in the operative part and the preamble is clear, the preamble governs the construction.
- If the operative part is clear and the preamble is ambiguous, the operative part prevails.
- If both the preamble and the operative part are clear but are inconsistent with each other, the operative part prevails.

Marginal Notes/Side-Notes

- Marginal notes do not form part of the law and under common law, judges could not refer to them as aids to interpretation.
  - Per Upjohn LJ; **Stephens v Cuckfield RDC**: 'while the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of [the section's] general purpose and the mischief at which it aimed with the note in mind'

- **Osei v Siribour II**: The court per Adade JSC observed: we are aware that marginal notes do not form part of statutes but they have been looked at, from time to time, for help in construing statute.
- **Republic v High Court, Accra; Ex parte Adjei**: Per Taylor JSC, dissenting, marginal notes may be used as an aid in appropriate situations. He cited with approval the dictum of UpJohn LJ as well as the dictum of Lord Reid in DPP v Shildkamp, "it may be more realistic to accept the Act as printed as being the product of the whole legislative process, and to give weight to everything found in the printed Act…In such a case, it is not very meaningful to say that the words of the Act represent the intention of Parliament but that punctuation, cross-headings and side-notes do not." Taylor JSC also cited the dictum of Adade JSC in **Bilson v. Apaloo:** "I concede that the marginal note is not part of the enactment, but in appropriate situations it can be an aid to interpretation."

Headings

- S 15 of Act 729: A heading is not part of the provision but it is intended for convenience of reference. It may be used as an aid to construction of the enactment.
- Where there is a conflict between the headings and the provisions, the provisions prevail
  - **Dixon v British Broadcasting Corporation:** Both Shaw and Brandon LJJ referred to the heading 'Unfair Dismissal' of Part II of Schedule 1 to the Trade Union and Labour Relations Act, 1974 and to the heading 'Right of employee not to be unfairly dismissed' underneath as giving the purpose in the light of which paras 5 and 12 were to be interpreted.
  - **Antie & Adjuwuaah v Obo**

Descriptive Words

- S 16, Act 792: They are not part of the law but are aids to interpretation.

Punctuation

- S 14, Act 792: Punctuation forms part of the statute and can be used as an aid to interpretation

Provisos

- Provisos are part of the law and they control the operative part. Until the condition precedent to the proviso is fulfilled or performed, the operative part would remain suspended unless there is a contrary provision in the instrument or the document.

Definitions

- The definition and interpretation sections form part of the law. If there is any ambiguity, the court would resort to the interpretation given of the words by the parties or the author. In cases where the custom of a particular place or special words are used in an instrument and the author provides a definition and interpretation section, the definitions provided by the parties would be used as they are in accord with the intentions of the parties. Such special meaning takes the place of the custom, special or exceptional meaning for the purposes of interpreting the instrument.

Footnotes

- Footnotes are not part of the law. It is extra information that is printed at the bottom of the page without the provision. It is an aid to interpretation and it helps in referencing. Footnotes in our laws are mostly used to disclose repealed and amended legislations or statutes.

- **Kuenyehia v Archer:** Per Hayfron Benjamin, The Interpretation Act was silent on footnotes, however conceded that whilst although footnotes are unknown to the Act, they could still be used as useful guides to the interpretation.

Schedules

- Where in a statute, schedules are incorporated by way of reference and they are in conflict with the provisions in the statute, the provisions of the statute take precedence over the reference made to the statute. Schedules are considered part of the law
  - Kuenyehia v Archer: The court held that, "The schedule was as much a part of a statute and as much an enactment as any other part, including the section which introduced it. Hence, where positive directions were given in a schedule as to the mode of performing an act, it would be wrong, in the absence of any conflict or repugnancy, to amend or add to the directions so expressly given. Furthermore, the provisions of a schedule were to be read as a whole with the other parts of the enactment."

Interpretation Clause/Provisions

- S 38, Act 792: Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment which contains those definitions or rules of interpretation. An interpretation section or provision contained in an enactment shall be read and construed as being applicable, only if the contrary intention does not appear in the enactment; and to the enactments relating to the same subject-matter, unless a contrary intention appears in the enactment.
- **Okwan v Amankwa II:** The Court of Appeal held that, "The general rule of interpretation is that where an enactment has clearly defined particular words in its interpretation section it is uncalled for and most unnecessary to look elsewhere for the meaning of the words."
- **R v. Calder & Beyers**

Recitals

- Where the operative part is clear but recitals are unclear; Operative part prevails.
  - **Re Moon; Exparte Doves**
- Where the operative part is unclear but recitals are clear; Recital prevails.
  - **Re Moon; Exparte Doves**
  - **Leggot v. Barret**
- Where both operative part and recitals unclear and inconsistent; Operative part prevails.
  - **Young v Smith**
- Where there is a conflict between the operative parts and non-operative parts, the operative parts prevail.
  - **Re Moon; Exparte Doves**

The Parcel & Plans /Maps Annexed

- The introducing words determine which should prevail over the other. Where the inducing words state that the Property is "more particularly delineated or described" then the plan or map will prevail over the verbal description where there is conflict, but if introducing phrase is to the effect that the plan or map is for purposes of identification only, then the verbal description will prevail.
  - **Eastwood v Ashton per Lord Wrenbury**
  - **Willington v Townsend**

External Aids To Construction

- External aids include historical settings; practices of classes or groups to which the document or statute relates; textbooks, dictionaries and other literary sources; administrative interpretations, contemporary exposition; legislative history of a statute (pre-enacting history of the enactment), international conventions as well as the general common law principles relevant to interpretation-such as the contra proferentem rule the falsa demonstratio rule and the ut res magis valet quam periat rule.

Textbooks And Other Literary Or Academic Publications

- These have persuasive effect and only become binding after a court has quoted them with approval.
  - **In re Wenchi Stool Affairs; Nketia v Sramengyedua III:** The Supreme court in discussing what constitutes a valid nomination to be a chief made reference to R. S. Rattery's Ashanti Law and Constitution.
  - S 155, 156, NRCD 323: Reference books, newspapers and periodicals are admissible
  - **Asare v AG:** The court heavily relied on the Article by Aharon Barack entitled "A Judge on Judging: The Role of a Supreme Court in a Democracy".
- The courts must evaluate textbooks and other literary or academic publications before relying on them or quoting them with approval or using them as an aid to interpretation
  - **Hilodge v George**

Dictionaries

- In some cases, the Judge must resort to the dictionary meaning to construe a text. The ordinary word may not always be synonymous to dictionary meaning.
  - **The Richard Anane Case:** Aninakwah JSC resorted to the dictionary to look for the dictionary meaning of the word "complaint".
  - **Opremreh v EC & AG**: The SC court referred to Baron's Law Dictionary and held that the word "annul" means "to make void, to dissolve that which once existed."
- Dictionaries are commonly used by the textualists and the literalists. Interpreters who use purposive or modern purposive occasionally use dictionaries to look for ordinary meaning of words as they always take into consideration the context in which the words are used.
- Where parties in their agreement provide an interpretation clause, or a statute provides its interpretation, the interpreter may use the meaning assigned to it in the interpretation clause but where the same word appears again, the court may decide to use the ordinary or the dictionary meaning.

Practice

- Practice in court has been accepted as one of the three yardsticks in which justice is dispensed.
- Holmes J stated in "The Common Law" that the life of the law has not been logic. It has been experience. Thus, long standing practice of the courts has been accepted as one of the three modes by which justice is administered.
- **Harlley v Ejura Farms Ghana Ltd**: Taylor J described practice of the court as part of the adjudication system in the following words: "The law does not always and at all times deal with logic and common sense… in these courts, we dispense justice in accordance with three and only three yardsticks, statute law, case law and well known practices of the courts."

Legislative Or Parliamentary History

- S 10(2)&(3), (Act 792): Parliamentary debates prior to the passing of the Bill in parliament, pre-parliamentary materials relating to the enactment and legislative antecedents of the enactment are admissible to clear ambiguities or in cases where the language is obscure. The Court is permitted to have recourse to parliamentary debates where the legislative intention is ambiguous or where obscure words were used and need to be construed subject to Article 115 of the Constitution.

The Contra Proferentum Rule

- The expression "contra proferentum" derives from the Latin Maxim "***verba fortuis accupuntor contra proferentem***" (words are to be construed strongly against those who profess them).
- Where a number of possible meanings remain after all possible strategies to arrive at the true meaning have been employed , then the meaning which is most against the person using the words or expressions given rise to the difficulties in construction will be adopted provided that the construction thus adopted does not work a wrong.
  - **Meill v Duke Of Devonshire:** "It is well settled that words of a Deed, executed for valuable consideration ought to be construed as far as they probably may, in the interest of the grantee".
  - Burton v English: Per Brett MR, "The general rule is that where there is any doubt as to the construction of any stipulation in the contract, one ought to construe it strictly against the party in whose favour it has been made".
  - **Roger v Comptoir d'escompte de Paris**
- The authorities tend dominantly to favour the position that the preference is the person for whose benefit the clause was inserted rather than the person who actually did the drafting. Where the proference cannot be identified or where both parties may with equal force be described as the proference, the maxim will not apply.
  - **Levinson v Farin**
- The maxim applies only where there is a doubt or ambiguity or where all other rules of construction fail, i.e. it is a rule of very late or last resort.
  - **Parkinson v Barclays Bank Ltd:** The bank leased to a dental surgeon the upper floor of the premises for 21 years. The bank operated on the lower floor of the same premises. The bank was empowered by clause 6 of the lease to determine the tenancy after 14 years on condition that the bank required the premises for operation of their business. After the service of notice to quit in accordance with the lease, the surgeon claimed the bank had no right to determine the lease, because the bank did not establish that they required all the rooms. The surgeon claimed that the deed must be construed contra proferentem. Held per Cohen LJ, If applying the ordinary principles of construction, we arrive at a clear conclusion as to what the parties meant by the language which they used, then the maxim does not come into action. One principle of construction is that if of two constructions one gives business efficacy to a document, while the other leads to an improbable conclusion, the court must prefer the former.
  - **Patching v Dubbins:** The Contra-Proferentem Rule is qualified by the rule that if any doubts could be removed by way of construction, there is no room for the rule.

Falsa Demonstratio Rule

- The falsa demonstratio rule is derived from the Latin maxim "falsa demonstratio non nocet" (a false description does not harm). The maxim will not apply where all the words of description can be reconciled by a process of construction.
- The maxim was restated by Lord Summer as "***falsa demonstratio non nocet cum de corpore constat***" (a false description does not vitiate where there is no doubt which person or thing is meant). Where the words of description in a document apply in part correctly and in part incorrectly to the same subject matter etc, the incorrect parts will be rejected as falsa demonstratio and the correct part read as if it stood alone.
  - **In Re Brocket: Per Joyce J** "A false description of a person or thing will not vitiate a gift in a deed or will if it be sufficiently clear what the person or thing was really meant"
  - **Llewelyn v Earl of Jersey per Park B:** As soon as there is an adequate and sufficient definition, with certainty of what is intended to pass by a deed, and erroneous addition will not vitiate it according tot he Falsa demonstratio rule
  - **Cowen v Truefilt Litd:** Per Romer, "In construing a deed purporting to assure property, if there be a description of the property sufficient to render certain what is intended, the addition of a wrong name or of an erroneous statement as to quantity, occupancy, locality, or an erroneous enumeration of particulars, will have no effect."

1. There must be an adequate and sufficient description of the property, even in the absence of the rejected part. Hence where the rejected words are themselves part of the essential description of the subject, the maxim must not be applied
   - **Magee v Lavell**
   - **Eastwood v Ashton:** Lord Sumner, "As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by deed, any subsequent erroneous addition will not vitiate it; according to the maxim falsa demonstratio non nocet, to which the words cum de corpore constat should be added to do the maxim full justice"
2. There should not be a subject which fits the whole of the description contained in the instrument; It must not be applied where there is no subject which fits any part of the description.
   - **National Society For The Prevention Of Cruelty To Children v Scottish National Society For The Prevention Of Cruelty To Children**
3. False description cannot vitiate a gift. Where the context of the will and the circumstances of the case show unambiguously whom or what the testator meant, the description is rejected and the intention of the testator is effected.
   - **Wilberforce v Wilberforce:** It was a rule of construction applicable to all written documents, including wills, that if a term used to describe a subject matter was sufficient to ascertain that subject matter with certainty but other terms add a description which was not true, these other terms would not be allowed to vitiate the gift. And if such false description could not vitiate a gift, then it certainty could not nullify a whole will. The children of the testator sought to invalidate his will because he referred to his nephews as sons in his will.

- Where the description is only inaccurate or would be unclear once the false elements are rejected, the maxim cannot apply.
  - **Cowen v Truefitt Ltd**

The Expression Eorum Rule

- The Latin maxim "***Expressio eorum quae tacite insuat nihil operatur"*** translates as "the expression of what is implied has no operation". The essence of this rule is that the law takes its course and that no notice is taken of words used by the maker(s) of a document, if what he has said is exactly what is implied by law. The expression of a term which the law implies as a necessary part of a contract has no greater effect than the implied term would have had.
  - **Surey v Cole:** Rent was reserved in the lease to the lessor and after his death, to his assigns. It was held that the addition of the assigns was unnecessary because it was implied by law.
  - **Nicolene v Simonds:** A prospective seller accepted a prospective buyer's order of a quantity of reinforced bars, stating: "I assume that we are in agreement that the usual conditions apply". Singleton LJ noted "those words may be thought by some to refer to the conditions as to the quality of the goods- an implied condition that they must be reasonably fit for the purpose for which they are required; an implied condition that they shall be of merchantable quality etc… for all I know, the defendant may have intended that; in which case they were unnecessary. The words "I assume that we are in agreement that the usual conditions of acceptance apply" are to my mind meaningless and words which are meaningless can be ignored".
- An express clause which varies from an implied clause excludes it in accordance with the maxim "expression facit cesare tacitum" (An express statement excludes any other).
- Where a grant of property confers by implication powers which are essential to its enjoyment, these are not cut down by the express conferment in positive terms of restricted powers to the same effect
  - **Stuckeley v Butler**
  - **Ellis v Noakes**

Linguistic Canons Of Construction

The Ejusdem Generis Rule

- Where general words follow an enumeration of specific items, the general words are read as applying to other items akin to those specifically enumerated
- When a general word of phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed
- For the rule to apply, it must be possible to construct a category (commonly called a 'genus') out of the specific words to delimit what is to be considered as 'of the same kind'
  - **Quazi v. Quazi:** Per Lord Diplock, "the presumption then is that the draftsman's mind was directed only to [the genus indicated by the specific words] and that he did not, by his addition of the word "other" to the list, intend to stray beyond its boundaries, but merely to bring within the ambit of the enacting words those species which complete the genus but have been omitted from the preceding list either inadvertently or in the interest of brevity"
  - **Jebeile v Norwich Union Fire Insurance Society Ltd:** A company carrying on an ice cream manufacturing business in a factory, insured under two different policies, the business against losses with an insurance company. Under the second policy, described as the "miscellaneous expenses" the property insured to the tune of £800 was described as "contents, consisting of stocks of sugar, milk powder, syrup, essence and the like." The factory was destroyed in a fire outbreak. The company sued, claiming, inter alia, under the second policy, loss of bicycles and stock of ice cream destroyed by the fire. The trial judge found for the company. On appeal, the SC held that the claim for the value of the bicycles must fail because it could not come within the meaning of property described under the second policy, on application of the ejusdem generis rule. Whereas the ice cream destroyed by the fire was covered by the second policy, the bicycles were not so covered. Per Apaloo JSC: "the property insured under this item was described as 'contents, consisting of stocks of sugar, milk powder, syrup, essence and the like.' Bicycles cannot be the like of sugar, milk powder, etc. True bicycles may be used with advantage in the ice cream trade but to say that it is of the same genus as sugar, milk powder and essence, would be doing too much violence to language. I think the two bicycles were not insured and ought to be held excluded from the property insured… by the rule of construction known as ejusdem generis rule"
  - **Republic v Saffour II:** The accused, a chief had collected sums of money from persons to whom he had granted portions of his stool land. He was arraigned before a circuit court for the offence of "unlawful receipt of stool revenue" in contravention of sections 17(1) and 27 of the Administratioon of Lands Act, 1932 which vested the sole right to collect such stool lands revenue in the Minister of Lands. In his defence, the accused argued that the moneys collected by him were customary drinks, not falling within the definition of revenue in section 17(2). The accused succeeded and was acquitted. On appeal to the HC, Counsel for the State argued that the trial judge had put a wrong interpretation on the meaning of the word "revenue"; that the general words or payments in section 17(2) were so wide to cover the moneys or customary drinks received by the accused and therefore such moneys were caught by definition of revenue in section 17(2). The court held, per Okunor J that, When such general and rather sweeping expressions as have been used in the definition under discussion stand by themselves they carry their full complement of meaning and effect; but when, as in the present case, they follow a series of specific and particular words, such general words shed a good measure of their popular meaning, and only bear that portion of it which would make them consistent with the specific words to which they are appended. This is the rule of construction popularly referred to as the ejusdem generis

rule. Applying this, the court concluded that all the words in the section, "rents, dues, fees, royalties, revenues, levies, tributes" were in the same genus or class of payments, ie the genus of "periodic payments for the use of another's property".

- **Republic v High Court; Ex parte Ploetner:** The court had to construe Order 5A, r 1 of the High Court (Civil Procedure) Rules, 1954. It was held that, "other written instrument" must be construed ejusdem generis to include only written material belonging to the class of deeds, wills, etc. thus construed the words "other written instrument" would cover such documents as agreements, contracts, powers of attornet, deed of gifts, personal declarations, etc but certainly such as the Companies Code, 1963 as wrongly contended by counsel for the respondent.

- The Mischief rule applies in ejusdem generis
- Conditions for the application of the rule
  - The general words must not by their nature exclude themselves from the category, class or genus.
  - The class or genus inferred from the list of items must be narrower than the general words that follow the list.
  - The general words must have something to apply to. Hence where the general words exhaust a whole genus the general words would be construed as referring to some longer genus, class or category.
    - **Republic v Ghana Cargo Handling Co. Ltd; ex parte Moses:** An employee of a limited liability company was dismissed from the services of the company on the basis of a disciplinary committee of inquiry into the alleged insulting conduct of the employee. The disciplinary committee was set up under rule 88 of the terms and conditions of service which provided: "an officer who commits an offence necessitating his dismissal such as stealing, embezzlement of funds or other serious offences shall be made to appear before a committee of enquiry" On application for a certiorari, counsel for the employee contended that, the specific words "stealing, embezzlement of funds" involve acts leading to financial loss to the employer and therefore the general words "other serious offences" must be construed ejusdem generis with the words stealing or embezzlement of funds" as involving offences creating financial loss. When so construed, the alleged insulting conduct of the employee not being an act not intending to cause financial loss to the employer could not fall within the general words "other serious offences". Such an act could not therefore be the subject of investigation by the disciplinary committee. In rejecting the invitation to apply the maxim, the HC per Mensa Boison J held: "what this submission comes to is that the words 'other serious offences' are to mean offences of the same kind as stealing and embezzlement. I think the class or category of offences mentioned do not sufficiently form a genus to admit of 'and other serious offences' being read ejusdem generis"
- Exceptions to the application of the Ejusdem generic rule
  - Where the rule is outweighed by other indicators of the intention of the author(s) of a document or enactment.
    - **A-G v Abdullah**
  - Where there are alternative explanations for the list of specific items
    - **Skinner & Co. v Shew & Com.**
  - Where there is more than one class. A court may also refuse to apply the Ejusdem generis rule where it is convened that the drafter intended to establish more than one class.
    - **Eggers v. College Of Dental Surgeons (Bristol)**

- Grammatical structure dictates against application of the rule. In deciding whether the Ejusdem Generis rule is applicable or not attention must be paid to the grammatical structure of the provision in question to see whether inter alia makes sense grammatically and accords with the legislative purpose to apply the rule.
  - ❖ **Brampton Jersey Ent. Ltd. V Ontario Milk Control Boar**d

The Noscitur A Sociis Rule

- The rule posits that a word or phrase must always be construed in the light of its surrounding words.
- The meaning of words is known from its associates or the meaning of a word depends on its environment.
- Per Stamp J, English words derive Court from those which surround them. Sentences are not mere collection of words to be taken out of the sentence, defined separately by reference to the dictions or decided cases and put back into the sentence with the meaning which you have assigned to them as separate words
- While of general application and validity the maxim has given rise to specific precepts such as the example rule and the rank principle.
  - **Republic v Minister of Interior; ex parte Bombelli:** Per Cecilia Koranteng-Addo by the canon of interpretation, i.e. the noscitur a sociis rule, the "Orders" in article 4(7)(a) of the Constitution 79 meant "orders" in the form of rules and regulations – not a command such as the order issued by the minister. According to that rule of interpretation, a word took its meaning from the company it kept, and "Orders" in article 4(7)(a) had to be interpreted as "orders" such as rules and regulations. Consequently, to fall within the definition of article 4(7)(a) an order must be a legislative order. The applicant, an Italian, was deported under an order embodied in an Executive Instrument No 80 of 1980 issued by the Minister of Interior under section 12(1)(f) of the Aliens Act, 1963. The applicant challenged the deportation order by an application for certiorari. His counsel argued that the order contravened article 4(7) of the 1979 Constitution because it was not laid before Parliament for the mandatory 21 days.
- Application of Maxim
  - The words must be used in the same sense
    - ❖ **Miller V F.A. Sand & Sons Ltd.**
  - The maxim may still be applied even where the general words precede the specific words.
    - ❖ **Rep v Minister of Interior; Ex Parte Bombelli**
- Circumstance in which the rule may Not apply
  - Where the maxim is outweighed by other indicators of the intentions of the legislature or drafter of a document as well as other considerations.
    - ❖ **Letang v Cooper**
  - Where there are alternative explanations
    - ❖ **IRC v Parker**

The Expressio Unius Exclusio Alterius Rule

- This maxim is basically to the effect that the express mention of one of more persons, things or matters of a particular class may be regarded as silently of by implication excluding all other members of the class which are not mentioned.

- To rely on the maxim, one must first identify an express provision in the statute or document creating the expressio unius. It cannot be implied, it must be express
  - **A-G of Trinidad & Tobago v Milleod**
  - **Asibey Iii Ayisi**
  - **CFAO v Zacca**
  - **Patu-Styles v Amoo Lamptey**
- The maxim is also applicable to construction of documents
  - **In Re Impraim v Baffoe:** Per Okunor J said: the fact that [the testator] expressly identified members of his family who should benefit from his property is proof that the other members of the family are excluded especially when he went on and expressed in no uncertain terms what the interest of all the other members of his family should have in that part of his will
- An enactment may provide for the exercise of jurisdiction upon the existence of specified conditions. The fact that the legislature had expressly stated those conditions meant that all other conditions were to be excluded
  - **Oppan v Frans & Co. Ltd,**
  - **Aldrich v AG**
- Circumstance in which the maxim is inapplicable
  - Where the maxim is outweighed by other indicators as to the intended meaning.
    - ❖ **Coltman V Bibby Tankers Ltd**
    - ❖ **Issoufou V GPHA**
  - Where there is an alternative explanation for the items mentioned. The items expressly mentioned may be used merely as examples or to emphasize the importance of items mentions, or out of excess caution to ensure for some other purpose.
    - ❖ **C. Morris & Co, Ltd v Min Of Labour**
  - Where there is a drafting error, The failure to expressly refer to a matter is often a drafting error or inadvertence rather than choice. Hence where such an error is clearly established the maxim may not apply.
    - ❖ **Utrgon V Dominion Bank**
  - Where arguments for the application of maxim is outweighed by other competing considerations such as fairness, justice, etc. The courts proceed on a strong assumption that the drafter of a document does not intend results that are unjust.
    - ❖ **Colquhoun v Brooks**
    - ❖ **Dean v Weisen Grund**
  - Where the intention of the parties seem contrary
    - ❖ **Boateng v Volta Aluminium Co:** The HC had ruled that clause 3 of the conditions of service in a contract of employment which specifically provided that an employment which specifically provided that an employment could be terminated on giving a month's notice, could be construed to imply that there could be termination on payment of a month's salary in lieu of notice. On appeal, counsel for the employee argued that any inference that the employee could also pay a month's salary in lieu of notice would fly in the face of the expressio unius maxim. In rejecting that argument, the CA held that great caution was necessary in dealing with the maxim for it was not of universal application. Its application would depend upon the intention of the parties discoverable upon the

face of the documents or the transaction and that the nature of the agreement in the instant case was such that the maxim could not be properly applied.

- The court will refuse to apply the maxim if it would lead to uncertainty, inconsistency, injustice, confusion and capriciousness
  - ❖ **Republic v Military Tribunal; Ex parte Ofosu-Amaah**: The appellant was convicted of conspiracy to commit subversion and subversion under sections 23(1) and 1(a) of the Criminal Code and Subversion Decrees respectively. The issue was whether the applicant could be charged with the offence of conspiracy to commit subversion when section 1(a) did not create the offence of conspiracy to commit subversion. It was held that having regard to section 5 of the Code, which made provisions of the Code applicable to any offence created by any law, it was unnecessary for the legislature to incorporate the offence of conspiracy in section 1(a) of the Subversion Decree, 1972.

Ut Res Magis Valeat Quam Pereat

- The maxim translated into literal English, meaning, it is better that a thing should have effect than be made void.
- The essence of the rule as an aid to statutory interpretation is, that Parliament cannot be said to have stultified itself by enacting a law which is null and void, unworkable or simply deprived of all effect. Thus where a court is faced with two possible interpretations to a statutory provision, one of which makes the provision unworkable, ineffective, or unjust; the other workable or effectual or just, the court, on the application of the maxim, should adopt the latter. The court must not opt for an interpretation which would make the passage of the statutory provision an exercise in futility.
  - **Nokes v Doncaster Amalgamated Collieries Ltd:** In apparent reference to the ut res magis valeat quam pereat maxim, Viscount Simon LC in support of the HLs majority decision said: "if the choice is between two interpretation, (one) of which would fail to achieve the manifest purpose of the legislature, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result".
  - **Republic v HC, Accra; Ex Parte Adjei:** The applicant brought an application before the SC for an order of certiorari to quash an earlier order in respect of a liquidated claim made by the HC. The applicant raised an objection founded on want of jurisdiction, namely, that the panel (consisting of the CJ, three Justices of the SC and a Justice of the CA invited to sit in the SC by the CJ) was not properly constituted. Counsel for the applicant argued that under article 115(1) of the 1979 Constitution as amended by PNDCL 42, s.19, SC was regarded as duly constituted when there was a CJ and not less than four Justices of the SC; that it was only when that condition had been satisfied that the CJ could exercise his power under PNDCL 42, s. 19 to invite a Justice of the CA to sit in the SC for the hearing of a particular case; that since at the time of the application, the full complement of the SC Justices had fallen below the prescribed number of four, the SC had ceased to exist and that any addition to the membership by the appointment of a justice of the CA by the CJ in terms of PNDCL 42, could not cure the defect. The SC by a 4-1 majority decision (Taylor JSC dissenting) overruled the objection founded on want of jurisdiction. In the words of Adade JSC: "this is the interpretation that can make s. 19 of PNDCL 42 effectual. Any other interpretation will make S 19 inoperative. But we must interpret ut res magis valeat quam pereat."
- This maxim is applicable not only in construing statutes but also deeds and documents.

- **Akim Akroso Stool v Akim Manso Stool:** It was held (obiter) on the application of the maxim that where one interpretation of the words in a document or deed was consistent with what appeared to have been the intention of the parties and another repugnant to it, the court should give effect to the apparent intention provided it could do so without violating any of the established rules of construction. The court must also lean on the alternative interpretation which would effectuate rather than invalidate the document. There must be the existence of a real doubt as to the meaning of the document before the maxim can apply. Where the court decides that one interpretation or construction is clearly preferable to the other, the maxim does not apply.

AMENDMENT

- An amendment occurs when a new enactment or statute is used to make changes to an existing statute by substituting, deleting or inserting words to change the meaning of the existing statute. The new statute is usually referred to as the amending statute/enactment, the existing statute as the principal enactment/ statute or the old law or amended statute. The amending statute takes effect from the date it comes into force and it is read together with the unamended section of the principal enactment.
  - **Attorney-General (WA) v Marquet:** The central meaning of "amend" is to alter the legal meaning of an Act or provision, short of entirely rescinding it and that the central meaning of "repeal" is to rescind the Act or provision in question. An amendment may take the form of, or include a repeal. Thus if a section is deleted it can be said that it has been repealed whilst the statute itself has been amended.

Types Of Amendments

Textual Amendment

- The principal statute is altered by adding or inserting or striking out; or by striking out and inserting or substituting; or deleting particular words. Some textbooks treat textual amendment as six different amendments: amendments by adding, deletion, inserting, striking out, by striking-out & inserting and substitution.
- In most cases, textual amendments are often contained in the schedules to the amending enactment.

Indirect Express Amendment Or Referential Amendment

- The amending enactment states that the principal enactment is to be read differently from what it actually says. Under this amendment, the principal and the amending enactments are read and construed together to ascertain the true position of the law. The amending enactment cannot be used in isolation and it is enacted to give proper directions as to how the principal enactment is to be construed.

Henry Viii Powers/Amendments

- The principal enactment confers power on a body exercising delegated legislation to amend the enactment. The amendment made by the delegated body has the same legal effect as amendment by the legislature.
- It was a special power conferred on Henry VIII by the English Parliament to amend some laws which needed regular amendments.
- In Ghana an example is the power to amend the civil jurisdiction of the lower, particularly as to the amount it could entertain in contract, tort, liquidated claims etc.
  - S 42(4) & 47(4) of the Courts Act, 1993 (Act 459) which are applicable to the Circuit Courts and District Courts respectively empower the AG to use legislative instrument to amend the amount or value representing the jurisdiction of the Courts.

Principles Governing Construction Of Amending Enactment

- A repealed enactment would cease to have effect on the coming into force of the amending enactment.
- S 32 of Act 792: Where in an enactment it is declared that the whole or a part of any other enactment is to cease to have effect, that other enactment shall be deemed to have been repealed to the extent to which it is declared to cease to have effect.
- In cases of implied repeal, where part of the principal enactment is inconsistent with an amending enactment on the same subject matter, the latter statute is deemed to have repealed the principal

enactment on the subject-matter. It is stated in the Latin Maxim, leges posteriones prones contrarias abrogant.

- **Kowus Motors v Check Point Ghana Ltd and ors**: The SC repeated the position of the law that where two Acts conflict irreconcilably, and the Acts are of the same character, the latter one is deemed to have repealed or amended the earlier one

- Where there is a disagreement or inconsistencies between a general provision and a special provision on the same subject matter, the special provision is presumed to have amended the general provision on that subject-matter. It is stated in Latin as ***generalia specialibus non derogant*** *which is literally translated as a general statutory provision does not repeal a specific one.*
- There is a rebuttable presumption that where there are general words in a latter enactment which are capable of reasonable and sensible application without extending them to a subject specially dealt with by an earlier enactment, the latter enactment does not impliedly repeal the earlier enactment.

The Effect Of An Amending Statute

- S 35 of Act 792
  - Where an enactment is repealed or revoked and a new legislation is enacted, any reference to the enactment shall be made to the new enactment or the amending enactment
  - Where a person is appointed under the old enactment which has been amended, repealed, revised or consolidated, he/she shall continue to hold the office as he did under the old enactment. The new enactment cannot change his/her status, rights, privilege or liabilities under the old law.
  - Where a bond or security is given by an employee under the old enactment and it is substituted by a new enactment, the bond or the security given under the old enactment shall continue to remain in force together with books, papers and things under the old laws in so far as they are consistent with the substituted enactment.
  - Proceedings under the old law shall continue under the substituted law in so far as it is consistent with it. For the enforcement of penalties and forfeitures incurred or the recovery of penalties etc, the procedure under the new enactment shall be used. The reason is that no one has a vested right in procedure and it has to operate retroactively.
  - Where an old enactment reduces or mitigates a penalty or forfeiture or a punishment and it is subsequently substituted, the sentence or the punishment shall be in accordance with the one under the old enactment and not the new one.
  - Statutory instruments or statutory documents made or issues or granted under old enactments and anything under it, before it was substituted by an amendment, revision or consolidation shall remain in force and would be treated as if they were done under the new enactment
  - Where an enactment is substituted by way of amendment, revision or consolidation and it is not related to the subject-matter stated in the principal enactment, the old enactment shall stand good and would be read and construed as not repealed.
- Article 106: When an enactment or law is made to amend the common law position, the position of the common law shall cease to have effect on the day the enactment shall come into force.

Saving Provisions

- Where certain matters are to be saved after the principal enactment has been repealed, the amending provision shall save them from repeal. The saving clause or the provision would provide for the continuation of some matters of a repealed Act and shall be operational and be treated as different from the repealed principal enactment.

Consolidating And Revised Enactments

- In consolidation the principal enactment is replaced by a consolidating enactment without making any substantial change. The entire law is repackaged in an organized structure and language. In Ghana, the consolidated law assumes the name of the principal enactments.
- In the case of revision, the laws are to be re-enacted in plain language without changing the substance unless the enactment providing for the revision of the laws states that amendment could be made.
- There is a rebuttable presumption that consolidated enactments do not intend to make any change in the law. A consolidating enactment is a strict consolidation where it reproduces the existing language in an organized and a modern language without making any change. Where it makes some amendment when organizing the structure and language to make it modern and internally consistent it is known as consolidation with amendment. Eg the amendment in the law of Conspiracy
- The purpose of consolidation is to bring all the laws on the subject that have not been amended or repealed together.
- Consolidation does not include amendment or alteration of the existing law and the consolidated or revised laws should not adopt the judicial interpretation given to the laws before they were revised or consolidated or both to ensure certainty in the law.
- A Revised Act should not be construed without reference to the predecessor Acts except where there is an ambiguity in the revised Act and the type of revision is a straight revision, that is, without amendment.
- Where the consolidation is with amendments and there is an ambiguity, the judge cannot make reference to the predecessor Act for any assistance. The predecessor Act would cease to exist after the revised enactment has come into being.

Codification Enactment

- The legislature brings together all laws on the subject-matter to facilitate easy reference. There is a rebuttable presumption that a code restates the existing law without amending any part of it.
  - Bank of England v Vagliano Brothers: The Court held that a code should be interpreted according to its natural meaning without any presumption that it was intended to do more than restating the existing law.

Repealed And Retroactive Legislation

- The courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement. This is in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of the past conduct.
- A statute is retrospective where it either takes away or impairs any vested or accrued rights or privilege acquired or accrued under the previous law or creates a new obligation, duty, disability or liability in respect of past transaction (For e.g. section 67 PNDC Establishment Proclamation (Supplementary and Consequential Provisions Law, 1982 PNDCL 42 made in December 1982 were to be deemed to have come into force on 31st December 1981;
  - **onda v Dompre [1978] GLR 354, CA**. This was a case involving the Stool Lands Boundaries Settlement Decree, 1973 NRCD 172, s 4(1) and (2) The effect of section 4(1) was to vest exclusive jurisdiction in hearing disputes relating to boundaries of stools in the Stool Lands Boundaries Commission. Section 4(2) provided that all pending actions relating to stool land boundaries before any court were to cease and the court was to decline jurisdiction in the matter. In this case the trial judge has adjourned for judgment a case relating to boundaries of stool lands. The Decree was enacted before judgment could be delivered. The trial judge nonetheless delivered his judgment. On appeal from the judgment, the Court of Appeal held that the trial judge had no jurisdiction to proceed with the case because the effect of NRCD 172 was to retrospectively terminate the proceedings pending before the trial court as from the commencement of the Decree. In other words, enactments ought to be construed as prospective only. However, one must distinguish between the application of procedural statute and a statute which affects accrued rights.
  - **Yew Bon Tew v Kanderaan Bas Mara:** Lord Brightman held that: "A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in regard to events already past".
- At common law, statutes which are merely declaratory or related to matters of evidence or procedure were to operate retroactively except where the statute expressly makes it prospective. On the other hand, all substantive statutes are presumed to be prospective so as not to impair an existing right, obligations or liabilities.
- Article 107, Constitution: No substantive law could be retrospective except in case of one of the exceptions under articles 178-182 of the Constitution. The exceptions are on matters of financial nature
- If an enactment is expressed in language which is fairly capable of either interpretation (both orospective and retrospective) it ought to be construed as prospective only. The rule prevails where the enactment would prejudicially affect vested rights. Every statute which takes away or impairs vested rights, acquired under existing law or creates new obligation or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed out of respect to the legislature to be intended not to have a retrospective operation.
  - **Rep v Judicial Secretary, ex parte Torto** per Anin JSC: "The relevant rule of construction is that whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed even though the consequences may appear unjust and hard".
  - **Fenuku & Anor v John-Teye and Anor,** where it held: "The general rule was that statute, other than those which were merely declaratory, or which related only to matters of procedure or of evidence, were prima facie prospective; and retrospective effect was not to be given to them unless by express words or necessary implication, it appeared that, that was the intention of the legislature. In general courts would

regard as retrospective any statute which operated on cases or facts coming into existence before its commencement in the sense that it affected, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute was not retrospective merely because it affected existing rights nor was it retrospective merely because part of the requisites for its action was drawn from a time antecedent to its passing".

- Where there are clear words indicating that an enactment is made to repeal the enactment which was hitherto in existence, the repeal is said to be express
- Where the existing enactment does not expressly say that an enactment had been repealed but a careful consideration of the two enactments would reveal one has repealed the other
- Where a statute is said to have impliedly repealed another one is where two statutes conflict each other on the same subject-matter and the conflict is irreconcilable. Where there is a conflict between two Acts of Parliament and one is a special Act and the other one is general, the special legislation is deemed to have amended the general one. Where two Acts or subsidiary legislations are of the same character, that is both laws are general or special, the later one is deemed to have repealed the earlier one. A conflict between an Act of Parliament and subsidiary legislation is resolved in favor of the Act of Parliament.
  - **Industrial and Commercial Workers Union of the Trades Union Congress v Bank of Ghana**, the court held that the Labour Act 2003 (Act 651) did not show a clear intention to vary the substantive rights acquired by the plaintiff under the repealed Act, Industrial Relations Act, 1965 (Act 299). Therefore the rights accrued by the plaintiff under Act 299 were not affected by the repeal of the Act. The court however, held that Act 651 did not deal with finances and public funds as provided by article 107(b) and could not operate retroactively.
  - **Rep v HC, Accra; ex parte PPE and Juric** (Unique Trust Financial Services ltd interested party), the SC held that the special provisions override the general provisions on the same subject matter and the special legislation is deemed to have amended the general one.
  - **Bonney & Others (No 1) v Ghana Ports & Harbours Authority (No 1):** "Whenever there is a general enactment in a statute which if taken in its most comprehensive sense, would override a particular enactment in the same statute, the particular enactment must be operative, and the general enactment must be taken to affect only the parts of the statute to which it may properly apply."
- S 32 of Act 792: Where in an enactment it is declared that the whole or a part of any other enactments is to cease to have effect, that other enactment shall be deemed to have been repealed to the extent to which it is so declared to ceased to have effect.
- S 33, Act 792: Where the repeal or revocation of an enactment provides for a textual insertion in another enactment or amends any other enactment by operation of law, it shall not affect the insertion or the amendment and the words of the altered enactment shall be valid as altered in spite of the repeal or the revocation
- S 34, Act 792: Any statute or common law position or any Act repealed by the Statute would not be revived after the said statute has been repealed. Anything repealed or revoked by a statute would not be revived after the repeal of the amending statute. Anything done or suffered under a law would not be affected after the repeal of the law. All the acts validly done under the repealed Act would not be affected as the right would be deemed to have been acquired or accrued under it.
  - **Ghana Ports and Harbours Authority v Issoufou** the Court per Bamford-Addo JSC held: " I am afraid this argument cannot absolve the defendants from liability in view of the provisions of section 8 of the Interpretation Act, 1960 (CA 4) which applied to every legislation in this country unless of course

the contrary is specifically stated in any law….The liability for the loss of rice was incurred by the erstwhile Ghana Ports Authority and Ghana Cargo Handling Ltd in 1980 which was sued in 1981, long before the passage of PNDCL 160 in 1986. Therefore by virtue of Section 8(1)(b)(c) and (e) of CA, any liabilities which attach to the said companies would be transferred to the new authority created by PNDCL 160, ie Ghana Ports and Harbours Authority in accordance with Section 8 of CA 4. The SC discussed the effect of section 8 1(b)(c)(d) of CA 4 which is in pari materia to section 34 1(b)(c)(d) of Act 792. That PNDLC 160, 5,6 and 7 made no mention of transfer of liabilities does not affect the operation of CA 4 to all legislation in Ghana including PNDCL 160. This is rather a clear indication that rights and liabilities are to be preserved and pending legal proceedings to be continued in accordance with Section 8 of CA 4. If the legislature had intended to exclude the operation of section 8 of CA 4 to PNDCL 160, this would have been specifically stated in PNDCL 160.

- **Rep v Police Council, ex parte Kwagyiri,** it was held that the repeal of an enactment did not affect legal proceedings commenced before the repeal and continued thereafter.

- Unless there is a clear intention of the legislature expressed to the contrary, a new establishment which takes over an old one shall assume all its acquired, incurred and vested rights as well as liabilities and privileges of the old establishment. Where the act was incomplete or partially done under the repealed statute, no right would be said to have accrued under the repealed legislation.

Ouster Clauses

- Article 125(3) of Constitution 1992: The final judicial power to adjudicate in Ghana is exclusively vested in the judiciary. The courts are therefore the final arbiters in all matters including civil, criminal and constitutional matters. The effect of this constitutional provision is that other bodies, agencies and personalities may adjudicate as a domestic tribunal but they cannot completely oust the jurisdiction of the courts in any matter.
- An ouster clause is a provision embodied in a written contractual document (example, contracts, lease, international agreements, constitution and regulations of voluntary organisations, etc) or in a statute or a national constitution, which purports to oust the jurisdiction of the courts.

Classification Of Ouster Clauses

Non-Statutory Ouster Clauses:

- These are clauses in a written agreement that seeks to do away with the power of the courts to interfere in the determination of the parties' legal relations or the parties may agree to resort to the courts only after the breakdown of negotiations or arbitration
- Parties cannot by their own agreement oust completely the jurisdiction of the courts. Therefore, an agreement by the parties to an agreement to completely oust the jurisdiction of the courts is unenforceable
  - **Neequaye v Ghana Film Industry Corporation**
  - **Boyefio v NTHC Properties Ltd:** Where a person ignores the internal tribunal and comes to court in respect of any such internal dispute, the courts would invariably order him to go back to the internal tribunal if that person has no substantial reason for sidestepping the internal tribunal. For the law is clear that where an enactment has prescribed a special procedure by which something is to be done, it is that procedure alone that is to be followed
  - **Essilfie v Tetteh**
    - The plaintiffs and the first three defendants were members of the Assin Fosu branch while the fourth defendant was the Central Regional Chairman of the Ghana Private Road Transport Union (GPRTU). The plaintiffs alleged the first three defendants with the fourth defendant were in breach of certain provisions of the constitution of the GPRTU brought an action before the High Court for. The defendants entered conditional appearance and then applied to set the writ aside on the grounds, inter alia, that since the complaints of the plaintiffs were in respect of alleged violations of the constitution of the GPRTU and that they had not first resorted to the procedure for resolution of grievances under article 24 of the constitution of the GPRTU, thus the action was premature and should be struck out. The High Court dismissed the action.
      - On appeal, it was held that, public policy would not permit complete ouster of the jurisdiction of the courts. However, where the exclusionary clause provided for an initial recourse to the domestic tribunal, especially in disputes involving issues of fact before recourse to the ordinary courts, the court would generally recognize and give effect to it.
      - Where a party refuses to make use of the domestic tribunal before instituting an action in court, the court cannot proceed unless the plaintiff satisfies the court that the exclusionary clause was either a nullity or offends public policy or any one of the accepted reasons which permit him/her not to make use of the domestic tribunal. Accordingly, where in an action a defendant contended that the plaintiff should have exhausted the domestic remedies before coming to court, the proper order the defendant should apply for was a stay of proceedings.

- Circumstances under which one can side-step internal mechanisms
  - ❖ Where the constitution of the domestic tribunal did not make provision as to how initiate a particular dispute. In such instances, the party affected may resort to the courts for redress. Example: Where article 24 of the GPRTU constitution confers original jurisdiction in dispute resolution on the local and branch levels of the union and appellate jurisdiction on the regional, national levels. In the Essilfie v. Tetteh case, the matter to be resolved was not within the original jurisdictions of the local and branch levels. The constitution also did not make any provision for such a dispute as the other bodies have only appellate jurisdiction.
  - ❖ That there is a breach or threatened breach of the rules of natural justice.
  - ❖ That the parties have themselves evinced a clear intention not to use the internal mechanisms.
    - **Zastava v Bonsu**
    - **In Re Timber**
  - ❖ Where a guilty party to a contract has indicated (either expressly or by necessary implication) not to be bound by the contract, the innocent party may treat the contract as repudiated and make use of the courts.
  - ❖ Where there is a question of law to be determined by the courts.
    - **BCM Ghana Limited v Ashanti Goldfields Company:** The parties signed a contract that contained an arbitration clause to the effect that in the matter of a dispute, the aggrieved party was to submit a written complaint to the other party for resolution within 28 days. The Respondent without following this rule applied to the court on the 3rd day for monies allegedly owed him. The appellant entered conditional appearance for a stay of the proceedings.
  - ❖ That the dispute to be resolved is about the interpretation or construction of the constitution or regulation or contractual agreement between the parties and falls outside the arbitration clause.
  - ❖ That the matter is of criminal nature, which cannot be entertained by the domestic tribunals whether expressly conferred on it by the parties or by necessary implication. However, where a court of competent jurisdiction refers a criminal matter before it to a domestic tribunal to resolve, it may resolve it and report the settlement to the court for approval on the premise that the matter was resolved in accordance with section 73 of Act 459.

Ouster Clauses In Statutes

- The legislature by statute can oust some of the court's jurisdiction but it cannot oust all. Thus, any statute that ousts the jurisdiction of all courts or every court is a nullity.
  - **Adofo v AG**
    - ❖ The plaintiffs were former employees of the Ghana Cocoa Board and among a number of employees of the Board who were declared redundant and their employment terminated. In compliance with the provisions of sections 5 and 6 of PNDCL 125 the Board did not pay any of the affected employees the terminal benefits they were entitled to under their collective agreements. The plaintiffs therefore brought an action before the Supreme Court against the Board for a declaration that sections 5 and 6 of PNDCL 125 were unconstitutional and therefore ceased to exist or have any effect upon the coming into effect of the Constitution, 1992. Sections 5 and 6 of PNDCL 125 sought to indemnify the board from any liability for the payment of retirement benefits in accordance with the collective agreement of these employees and in a sense oust the jurisdiction of the courts.

- ❖ To the extent that S 5 of PNDCL 125, a mere statute purported to oust the general unlimited jurisdiction of the High Court under article 140(1) of the Constitution, 1992, it was in conflict with that article. Accordingly, section

- A statute can use definition to oust the jurisdiction of certain courts. Example is the Mineral and Mining Act, 2006 (Act 703), where the interpretation section defines a court as "the High Court".
- A statute can confer jurisdiction on a court, subject to some limitation (ie. jurisdictional capping). For example, per the provisions of Act 459, Circuit Courts have jurisdiction in all civil and criminal matters up to GhC 50,000; District courts to Gh 20,000.
- Where both the HC and the SC have concurrent supervisory jurisdiction over lower adjudicating bodies and the lower court, para 6 of the Practice Direction [1981] 1 GLR provides that the jurisdiction of the HC shall first be invoked. The administrative tribunals play a vital role in dispute resolution but the final judicial power is vested in the courts, and the decisions of the administrative tribunals are appealable to the regular courts

Ouster Clauses In National Constitutions

- An ouster clause in a national constitution, such as the 1992 constitution of Ghana can oust the jurisdiction in a matter by conferring the final appellate jurisdiction in a matter in the High Court or the Court of Appeal. The national constitution can only oust the appellate jurisdiction of the Supreme Court but not its supervisory jurisdiction. For example, in matters relating to fundamental human rights and freedoms, article 33(1) of the Constitution 1992 ousts the jurisdiction of the Supreme Court and vests jurisdiction to entertain such matters in the High Court.
  - **Edusei v Attorney-General (No. 2)**
    - ❖ The Supreme Court's power to declare any legislation a nullity under article 130(1)(b) of the Constitution 1992, is to be exercised subject to the ouster clause in section 34(3) of the Transitional Provisions of the constitution, 1992. The primary objective of the whole of section 34, particularly section 34(1) of the Transitional Provisions of the Constitution is to take away the power or jurisdiction of all the courts to entertain any proceedings or to grant any order in respect of any matter relating to the unconstitutional and violent overthrow of the democratically elected Governments of Ghana by the 1966, 1972, 1979 and 1981 coup d'etats. The effect of section 34(3) is to prohibit the courts from questioning whatever the executive, legislature or judicial action taken or purported to have been taken either by the PNDC, AFRC or any person appointed by these regimes even if the action was not taken in accordance with any procedure prescribed by law (see section 34(4)).
  - **Kwakye v Attorney-General**
    - ❖ The plaintiff, the former Inspector-General of police, sued in the Supreme Court for a declaration that he was never tried and convicted by the special court set up under the Armed Forces Revolutionary Council (Special Courts) Decree, 1979 (AFRCD 3)and that his purported imprisonment of 25 years by the special court was an infringement of his fundamental human rights under the 1979 constitution and therefore void. The defendant raised a preliminary objection that the application was founded on the ouster clause in section 15(2) of the 1979 constitution (the equivalent of section 34(3) of the constitution, 1992). The preliminary objection was initially dismissed by the Supreme Court on grounds that the date relying on the ouster clause must provide

the factual basis for the application of the ouster clause (that is to say that the state must produce facts showing that the AFRC took or purported to have taken judicial action against the plaintiff.

- **Ellis & Anor v AG:**
  - ❖ The SC held that section 34(3) of the transitional provisions in the 1992 Constitution has ousted the jurisdiction of the courts to question the legislative action of PNDC in acquiring, by PNDCL 294, the plaintiff's family lands and vesting same in the state. The SC, speaking through Hayfron Benjamin held that in terms of section 34(3) of the transitional provisions, its validity cannot be "questioned" in any court. Section 34(3)-(5) of the transitional provisions therefore provides a complete ouster clause. The Indemnity Clause under section 34 of the transitional provision is a complete clause on the court.

- The high Court is ousted from entertaining any cause or matter affecting chieftaincy. The law does not however oust the supervisory jurisdiction of the High Court over the Judicial Committees of the traditional Council, Judicial Committees of the Regional Houses of Chiefs and that of the National House of chiefs.
  - S 57 of Act 459: The Court of Appeal, the High Court, Regional Tribunals, etch do not have jurisdiction to entertain either at first instance or on appeal any cause or matter affecting chieftaincy.

Transitional Provisions

- Transitional provisions are of temporary effect and cease to be operational after the circumstances it was passed to take care of have been dealt with.
- S 34 of the Transitional Provisions of the Constitution: The transitional provisions cannot be amended by parliament. The indemnity clause in section 34 of the Constitution is a transitional provision and would be dealt with after all the members of the NLC, NRC, SMC, AFRCD and PNDC whom the Constitution sought to protect have passed on.

Courts With Jurisdiction In Chieftaincy Matters

- The high Court is ousted from entertaining any cause or matter affecting chieftaincy. The law does not however oust the supervisory jurisdiction of the High Court over the Judicial Committees of the traditional Council, Judicial Committees of the Regional Houses of Chiefs and that of the National House of chiefs.
  - **Tobah v Kweikumah**
- S 76, Act 759; S 117, Act 459: A cause or matter affecting chieftaincy means any question or dispute that relate to the following:
  - Nomination, election, selection, installation or deposition of a person as a chief or the claim by a person to be nominated, elected, selected and installed as a chief.
  - The destoolment or abdication of any chief
  - The right of any person to take part in the nomination, election, selection, appointment or installation or any person as a chief or in the deposition of any chief.
  - The recovery or delivery of stool property in connection with the nomination, election, selection, appointment, installation, deposition or abdication

Ouster Clauses And Supervisory Powers

- Article 141 of the 1992 Constitution of Ghana confers supervisory jurisdiction on the HC over all lower courts and lower adjudicating authorities in the country. There is no exception to the constitutional provision and therefore any adjudicating authority, tribunals and courts established by Parliament come under the supervisory jurisdiction of the High Court.
- Section 43 of the Chieftaincy provides that the Judicial Committees of the various Houses of Chiefs are amenable to the supervisory powers of the HC.
- Parliament cannot oust the Supervisory jurisdiction of the High Court as that would be in conflict with article 141 of the Constitution
- That Article 99 of the Constitution has made the CA the final appellate court in parliamentary election petitions does not prevent the SC from exercising its supervisory jurisdiction over parliamentary election petition before or determined by the Court of Appeal. The Constitution itself may oust the appellate jurisdiction of the SC in a matter but would not affect its originality.

Constitutional Interpretation

- Article 2, 1992 Constitution
  - The Constitution is the supreme law of Ghana and any other law that found to be inconsistent with any provision of the constitution, to the extent of that inconsistency is void.
  - **Mensimah v AG:** The plaintiffs broke off from their union and formed a company to distil akpeteshie. They were prevented from doing so by the officers of the cooperative union; they were harassed and products seized on among other grounds that they did not belong to any registered distiller's cooperative union; and also for having no licence as required by regulation 3(1) of the Manufacture and Sale of Spirits Regulations, 1962 LI 239 which provided that: every applicant for the issue of a distiller's licence shall be a member of a registered Distiller's cooperative. Plaintiff sued under article 2(1) for a declaration that regulation 3(1) of LI 239 which made it mandatory for an applicant for a licence to belong to a distiller's union was inconsistent with the letter and spirit of the constitution particularly freedom of association. The Defendant argued that LI 239 and its parent Act the Liquor Licensing Act 1970, Act 331 were existing laws within the meaning of article 11 and that the Act and the regulations made under it had not been specifically repealed and must therefore be complied with. Rejecting the defence argument, the SC per Acquah JSC stated: "Article 1(2) of the 1992 Constitution is the bulwark which not only fortifies the supremacy of the Constitution but also makes it impossible for any law or provision inconsistent with the constitution to be given effect to…article 1(2) contains a built in mechanism which automatically comes into play whenever it is found that a law is inconsistent with the Constitution. It therefore follows that the submission based on the fact that the regulation has not been specifically repealed and therefore valid, misconceives the effect and potency of article 1(2) and thereby underrates the supremacy of the constitution".
  - Every Ghanaian has sufficient locus standi or capacity to bring an action for a declaration that any act or omission of any person or any enactment is inconsistent with, or in contravention of a provision in the constitution. This differs from actions to see redress under Article 33 of the Constitution.
    - ❖ **Sam (No.2) v Attorney-General:** The court held in that case that unlike actions under article 33(1), when it comes to actions under article 2(1), the plaintiff did not need to show a personal interest.
  - A citizen is not limited to a natural person and an artificial legal person also qualifies to sue by virtue of its citizenship through the process of incorporation.
    - ❖ **New Patriotic Party v Attorney-General (Ciba Case)**
- Article 130, 1992 Constitution: The SC is the only Court that has original Jurisdiction in interpreting all matters relating to the enforcement or interpretation of the constitution subject to Article 33 of Constitution and whether or not an enactment was made in excess of powers of Parliament or any authority or person by law. Where an issue that relates to a matter or question referred to above arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.
  - **Republic v High Court, Accra; Ex parte Attorney-General (Balkan Energy Ghana Ltd & Others)**
- Where the provisions of the Constitution are clear and unambiguous, any Court may enforce them, but where the provision to be enforced are not clear, it is the Supreme Court, which has exclusive jurisdiction to construe and enforce it. In the case of the former, the Supreme Court has Concurrent jurisdiction

- **Sumaila Bielbiel & AG v Adamu Dramani**
- **Okudzeto Abrakwa v AG & Obetsebi-Lamptey**
- **Republic v Maikankan**
- **Awoonor-Williams v. Gbedemah**

- An issue of enforcement or interpretation of the Constitution arises in any of the following eventualities:
  - Where the words of the provision are imprecise or unclear or ambiguous. In other words, it arises where one of the parties invite the court to declare that the words of the article have double meaning or are obscure or else mean something different from or more than what they say;
  - Where rival meanings have been placed by the litigants on the words of any provisions of the constitution;
  - Where there is a conflict in the meaning and effect of two or more articles in the constitution, and the question is raised as to which provision should prevail;
  - Where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the constitution and thereby raising problems of enforcement and of interpretation.
  - **Republic v Special Tribunal; Ex parte Akosa**
- Regardless of the manner in which they are clothed, where the real issues arising from a writ brought under article 2 or 130(1) of the Constitution, 1992 are not, in actuality, of such character as to be determinable exclusively by the SC, but rather fall within a cause of action cognizable by any other court or tribunal of competent jurisdiction, the court will decline jurisdiction.
  - **Yiadom I v Amaniampong; Ghana Bar Association v AG, Aduamoa II v Twum II**

Approaches To Interpreting The Constitution

- The Constitution 1992 is a legal and political document, which has its letter and spirit, capable of growth and must therefore be narrowly construed or interpreted differently from other laws that are inferior to the Constitution
  - **Tuffuor v AG**
  - **National Media Commission v AG:** Per Acquah JSC "It is important to remind ourselves that we are dealing with our national Constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers in them. It gives certain rights to persons as well as bodies of persons and imposes obligations as much as it confers privileges and powers. All these must be exercised and enforced not only in spirit of the Constitution. Accordingly in interpreting the Constitution care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework".
- The Constitution 1992 should be given a liberal and benevolent interpretation to meet the challenges of the country and the aspirations of the people from time to time.
  - **Danso-Acheampong v Attorney-General and Abodakpi**
  - **The memorandum to the Interpretation Act 2004, Act 792**

Originalism

- Proponents of this thought believe that the individual must look at the Constitution as the founders wanted it to be. To ascertain what the framers of the constitution intended, the originalists research several old sources such as writings of the framers, newspaper articles and the proposals of the

Committee of Experts of the Constitution. The original intent is the most pure way of interpreting the Constitution. The aim is to look at the original meaning of the text and apply it to the new and unforeseen circumstances. In essence, the originalists look no further than the framers intention, and this approach has the tendency of not producing the right interpretative results

- **Ghana Lotto Operators Association v National Lottery Authority**

Textualism, Aka Literalism, Plain Words Approach, Ordinary Meanings Of Words

- This approach doesn't look any further than the words of the Constitution itself; it doesn't try to infer any intended meanings. The reasoning is that justices should take the words as written and promulgated to the people of the country. Advocates claim it produces value-free jurisprudence and keeps justices in touch with the people. Critics claim it leads to inconsistent decision making, and represents a static, non-living document view of the Constitution.

The Purposive Approach

- Proponents look at the purpose of the provision. Per Benion, the aim is to give effect to the legislative purpose by: following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. Purposive construction simply denotes a construction which promotes the remedy the lawmaker has provided to cure a particular mischief
- **CHRAJ v Attorney-General & Baba Kamara:** The second defendant, one Baba Kamara objected to the jurisdiction of CHRAJ to investigate him in connection with allegations of corruption made against him. The defendant argued that at the time of the alleged acts of corruption, he was not a public officer. CHRAJ accordingly brought at the Supreme Court against the Attorney-General, as a nominal defendant, and the second defendant for a declaration that Mr. Kamara was within the mandate and jurisdiction of the plaintiff. The supreme Court, on these facts, had to interpret Article 218(e) of the Constitution to determine whether CHRAJ lacked the mandate to investigate the second defendant. The Supreme Court rejected the literal approach advocated by the second defendant and held that to insist that the plaintiff's mandate related exclusively to an investigation of public officials, even where a public officer has participated in a corrupt transaction with a private individual in circumstances where a comprehensive investigation of the transaction is needed in order to expose corruption, was unreasonable and unrealistic literal interpretation. The Supreme Court further stated that going by the literal interpretation would defeat one of the purposes for which Constitution made provision for the establishment of CHRAJ
- **Adjei-Twum v Attorney-General & Akwetey**: A petition was submitted to the President seeking the removal of the Chief Justice on grounds of judicial misconduct and abuse of power. Following this, the President's Press Secretary made a public declaration that in compliance with the Constitution, the President was setting up an impeachment committee to inquire into the petition. Invoking the original jurisdiction of the Supreme Court, the plaintiff complained that such a decision to appoint a committee to inquire into the petition was unconstitutional. The Supreme Court held, using the purposive approach that the establishment of a prima facie case against a Chief Justice was a precondition to the President setting up a committee to inquire into a petition for the removal of the Chief Justice. The reason being that to adopt a strict approach would make room for frivolous and vexatious petitions; leading to absurd results

- **Ex Yalley:** Per Woode CJ, "In other words the ordinary meaning projects the purpose of the statutory provisions and so readily provides the correct purpose oriented solution. Indeed the purposive rule of construction is meant to assist, unearth or discover the real meaning of the statutory provision, where an application of the ordinary meaning produces or yields some ambiguous, absurd, irrational, unworkable or unjust or the like…"

Fundamental Human Rights Under The 1992 Constitution

- Under article 12(1) of the 1992 Constitution, the fundamental human rights and freedoms as enshrined in Chapter 5 "shall be respected and upheld by the Executive, Legislature and the Judiciary". It is also provided under article 33(1), 130(1) and 140(2) of the Constitution that a person who alleges a breach of the fundamental human rights and freedoms as enshrined in chapter 5 of the Constitution, may apply to the High Court for redress. Under the 1992 constitution, fundamental human rights and freedoms are enforceable by the courts and are no longer moral obligations to be satisfied by the President.
- The fundamental human rights of an individual are enforceable under article 33 of the Constitution and it is exclusively vested in the High Court.
  - **Edusei (No.2) v Attorney-General**
  - **Adjei-Ampofo v Accra Metropolitan Assembly & Attorney-General:** The exclusion of its original jurisdiction applies only when the victim of a human right violation is suing in relation to the wrong done to him. Where however a plaintiff seeks an interpretation of a provision in Chapter 5 of the Constitution on fundamental human rights and freedom for the public good and not in relation to a specific wrong done to him, the Supreme Court's original jurisdiction could be validly invoked. Therefore, in exercising its original jurisdiction under article 33 of the Constitution, the High Court is required by law to refer appropriate cases to the Supreme Court for interpretation under the Supreme Court's reference jurisdiction.

Directive Principles Of State Policy And Interpretation Of The Constitution

- The Directive Principles enunciate a set of fundamental objectives, which a people expect all bodies and persons that make or execute public policy to strive to achieve. The Directive principles also constitute, in the long run, a sort of barometer by which the people could measure the performance of their government.
  - The Committee of Experts on the 1992 Constitution
- Article 34, 1992 Constitution: The Directive Principles, which include the political, economic, social, educational and cultural objectives, 'shall guide' not only the all citizens, Parliament, the President, the Council of State, the Cabinet and political parties but also the Judiciary – in applying or interpreting the constitution and other law. The word 'guide' in article 34(1) is construed in its ordinary meaning. In effect, the Directive Principles are aids to construction or interpretation of the Constitution or any other legislation. New Patriotic Party v Inspector-General of Police: The Supreme Court said that it was entitled to take into consideration, the political objectives in article 35, being one of the Directive principles in applying or interpreting the article 21(1)(d) (which deals with the enjoyment by all persons of the freedom of assembly, including the freedom to take part in possessions and demonstrations) of the Constitution.
- DPSPs can be used as aids to interpretation

Justiciability Of Directive State Principle

- **New Patriotic Party v Attorney-General (December 31 Case)**, the New Patriotic Party sought a declaration in the Supreme Court of Ghana that a public celebration of the overthrow of the legally constituted Government of Ghana on December 31, 1981 with public funds was "inconsistent with or in contravention of the letter and spirit of the Constitution," relying on Articles 35(1) and 41(b) of the Ghanaian Constitution. In a five-to-four majority decision, the Court ruled in favor of the petitioner and held that public financing of the December 31 celebration was inconsistent with the letter and spirit of the Constitution. The decision on the justiciability of the Directive Principles, though, was less forceful. Two members of the majority divided on the issue of justiciability: Justices Amua-Sekyi and G.E.K. Aikins, in a rare occasion, made no explicit reference to the Directive Principles. Two others in the majority, Justices R.H. Francois and Charles Hayfron-Benjamin, arrived at their conclusion by relying mainly on the spirit of the Constitution. Only Justice N.Y.B. Adade on the majority's side directly confronted the Directive Principles, stating: "I am aware that this idea of the alleged non-justiciability of the directive principles is peddled very widely, but I have not found it convincingly substantiated anywhere. I have the uncomfortable feeling that this may be one of those cases where a falsehood, given sufficient currency, manages to pass for the truth".
- **New Patriotic Party v Attorney-General (CIBA Case)**: The petitioner challenged the constitutionality of the Council of Indigenous Business Association Law of 1993, which required certain associations specified in its Schedule to be registered with the Council and subject to substantial monitoring and regulation by a Minister of State. The petitioner argued that the law infringed the right to freedom of association, relying on Article 21(1)(e) from Chapter Five (Fundamental Rights), as well as Articles 35(1), 37(2)(a), and 37(3) from Chapter Six (Directive Principles) of the Constitution, the Attorney General responded that the Directive Principles are not justiciable. Justice Bamford-Addo authored the majority opinion and sought to explain how the Directive Principles, though generally not justiciable, might be protected as enforceable rights when linked with other parts of the Constitution that are justiciable. After reviewing the Committee of Experts report, she concluded that the Directive Principles provide "principles of state policy" and "goals for legislative programmes" and "are not of and by themselves legally enforceable by any court." Qualifying this statement, she added that "there are exceptions to this general principle." Justice Bamford-Addo further observed that because the courts "are mandated to apply them in their interpretative duty, when they are read together or in conjunction with other enforceable parts of the Constitution, they then, in that sense, become enforceable."
- **Ghana Lotteries Association & Others v National Lottery Authority (Lotto Case):** The case was a reference from the High Court, for the interpretation and resolution of a contended conflict involving the provisions of articles 33(5), 34(1), 35(1), 36(1)(b), 296 of the constitution 1992 and sections 1, 2 and 4 of the National Lotteries Act, 2006 (Act 722). The central issue for determination was "whether the national Lotteries Act, 2006 (Act 722) violates articles 33(5), 34(1), 35(1), 36(1)(b) of the Constitution 1992." In giving effect to the constitutional provisions in relation to Act 722, the SC launched a critique of the judicial position of Bamford-Addo in the 31st December and the CIBA cases. In these two cases, Bamford-Addo took the position that the DPSP were not "of themselves enforceable by any court. They could only be enforceable where they coincide with any of the enforceable provisions of the Constitution. The SC held that the DPSP are prima facie legally binding, enforceable and justiciable.

Political And Legal Questions

- A political question is a non–justiciable issue committed to another branch of government.
  - **Baker v Carr:** One of the factors in determining an issue raises political question or not is textually demonstrable constitutional commitment of the issue to a coordinate political department.
- Political questions include such areas as the conduct of foreign policy, the ratification of constitutional amendments and the war powers or commander-in-chief powers of the President.
- Under the political question rule, courts may choose to dismiss the cases even if they have jurisdiction over them.
  - **New Patriotic Party v AG (31st December case)** per Archer CJ dissenting: The power to declare a public holiday was vested in the executive and the court has no constitutional power to prevent the executive from proclaiming 31st December as a public holiday. According to him, the matter was a political question which was not justiciable.
  - **Sallah v AG**
- What constitutes political question is an issue to be determined by the court.

PRESUMPTIONS

- A presumption is a legal inference or assumption that a fact exists, based on the known or proven existence of some other fact.
- S 18 of the Evidence Act, 1975 (NRD 323): A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in an action. A presumption may be either conclusive or rebuttable
- Conclusive presumptions are inference of fact which the law conclusively presumes to exist based on proven existence of some other fact.
- Rebuttable presumptions are inferences of fact which the law presumes to exist based on proven existence of some other fact but its existence may be rebutted by offering contrary evidence.

General Purpose Presumptions

- The law presumes that human rights of individuals are to be protected.
- It is presumed that the laws of the country are superior or supreme to all persons within the country. In Ghana, the law is that the Constitution is the supreme law of the land or act found to be inconsistent with any provision of the Constitution shall to the extent of the inconsistency be void. An act by any person should be in consonance with the law else it would be deemed to have been in conflict with the general presumption that all acts of persons should reflect rule of law. No one is above the law and all acts by individuals are to be regulated by law.

Presumption In The Interpretation Of Non-Statutory Documents

Presumption Of Consistent Expression

- The words used in one part of a non-statutory document will be presumed to be used int he same sense when the same word is used in other parts of the documents
  - **Re Birks per Lindley MR**
- The presumption will not apply where it is clear that the same word is used in different senses in the same document. The presumption only comes alive when there is an ambiguity arising
  - **Tea Trade Properties Ltd v CIN Properties Ltd per Hoffman**
  - **Watson v Haggit**

Presumption Against Tautology Or Redundant Expressions

- Unless there is compelling evidence to the contrary, effect must be given to every part of the document, no words must be left redundant
  - **Re Strand Music Hall Company Ltd per Romilly**
  - **Lewis v Barnett per Stephenson LJ**

Presumption Against Unreasonable Results

- The makers of a document do not intend absurd results, thus where there are rival constructions, the construction that makes the most sense or is most reasonable must be considered.
  - **Tillmans &Co v Ss Knutsford Ltd**
  - **The Antaios Case per Lord Diplock**
  - **Schuler (1); Ag v Wickman Machine Tools Sales Ltd**
- Where the provisions are clear in context, or there is an obvious absurdity, the court must give effect to it
  - **Glofield Properties Ltd v Morley (No. 2)**

Presumptions As To The Meaning Of Specific Words Or Expressions Or Provisions

- Parties to a document are free to use expressions that effectuate their intentions
- In the absence of a contrary intention, where there is an arbitration clause, it is presume that the parties to the document intend to resolve all disputes by the same arbitration tribunal provided in the clause
  - **Ashville Investments v Elmer Contractors Ltd**

Presumptions As To Alterations And Erasures

- Erasures and alterations in the absence of evidence to the contrary, are made prior to the execution of the document or deed and such alterations and erasures do not affect the validity o the document
  - **Doctor Leyfields Case**
- Where the deed is altered with the consent of all the parties thereunder, it may be enforced
  - **French v Patton**
- Where a deed is altered by a stranger, the alteration has no effect
  - **Henfree v Bromlye**
- S 5, Act 360: Where the instrument is a will, the presumption is that alterations and erasures in the absence of evidence to the contrary are made after the execution of the will and have no effect unless it is separately executed or made valid by the re-execution of the will

Presumption Of Non-Knowledge By Illiterates Of Documents Executed By Them

- It is presumed that an illiterate has no knowledge of the contents of a document executed by him and is thus not bound by the terms of the document, unless it was read and explained to him in a language he understands and that the illiterate understood the contents of the document
  - **Kwamin v Kuffour**
  - **Waya v Byrouthy**
  - **Brown v Ansah**
  - **In Re Kodie Stool; Adowaa v Osei**
  - **S 2, Act 360**
  - **Cap 262, S 4 & 2**
- Any document executed by a blind or illiterate person shall have a jurat clause else it would be invalid. However in Duodu and Others v Adomako and Adomako, the SC held that the presence of a jurat might be a rebuttable presumption and not conclusive

Presumption On The Application Of Ancillary Rules Or Maxims Of Law

- Unless there is evidence to the contrary, the interpretation of a non-statutory document by implication imports any legal rules, principles and maxims which prevail in the legal territory and with reference to which the deed may be fairly presumed to have been framed.

Presumptions In The Interpretation Of Statutes

Presumed Knowledge And Competence Of The Legislature

- The Courts presume that the legislature knows all that is necessary to produce rational and effective legislation

Legislature Does Not Make Mistakes

- It is presumed that the legislature does not make mistakes, where there is a mistake, the blame is on the draftsman not on the legislature
  - **Ex Parte Allgate**
  - **Sasa v Amua-Sekyi**

Presumption Against Tautology

- It is presumed that the legislature avoids meaningless words; every word in a statute is presumed to make sense and to have a meaning and role to play in advancing legislative purpose
  - **Hill v William Hill (Parker Lane)**
  - **National Media Commission v AG per Atugugba**

Presumption Of Consistent Expression

- It presumed that in the drafting of statutes, the legislature uses consistent language such that where the same words are used, they have the same meaning. This presumption may sometimes cut across statutes
  - **Tuffour v AG:** "And so a construction should be avoided which leads to absurdity. And when a particular interpretation leads to two, shall we say, "Inconsistent results" the spirit of the Constitution would demand that the more reasonable of the two should be adhered to. We must have recourse to the Constitution as a whole"
  - **NPP v GBC per Bamford-Addo**
  - **Ex Parte Korle II**
  - **Hamilton v National Coal Board**
  - **Okwan v Amankawa II:** The CA held that where enactment has clearly defined particular words in its section, the words wherever used in the Act should connote the same meaning.
- This presumption is rebutted by the common law position which was that the same words used in a document may have a different meaning particularly where the meaning if assigned to one of the words used may result in absurdity.
  - **Kumnipah II v Ayirebi:** The SC quoted with approval the common law position that where an enactment contains a definition section, it would not necessarily apply in all the context in which a defined word may be used. The rationale is that words are to be construed to give meaning to the text and where the use of the defined word would result in absurdity, it should not be used.
- All written documents should be construed as a whole and in such a way that it would be consistent with the language and intention or purpose of all the provisions of the enactment
- A conflict between a constitution and any other enactment would be deemed to have been amended by the constitution to the extent of the inconsistency
- A conflict between a substantive enactment and a subsidiary legislation would be resolved in favor of the substantive legislation as it is superior to the subsidiary legislation.

Presumption Of Coherence

- The provisions of legislation enacted by parliament are presumed not to contain contradictions and inconsistencies such that each provision can to work on its own without contradicting the other provisions
- **Toronto Railway v Paget per Anglin LJ**

- Where provisions of legislature overlap without conflict, the court will usually apply both in accordance with their terms unless one is more exhaustive.
- **R v Williams**
- Where there are inconsistencies in a text, the text must be construed as a whole by giving them their ordinary meaning. Where the ordinary meaning cannot displace the inconsistencies, a more benevolent meaning which would address the purpose of the law should be applied.

Presumption Against Interference With Vested Rights

- Where a person's rights have been acquired or accrued under a particular enactment, it is presumed those rights would be protected.
- Where an accused person is convicted and sentenced under an enactment and the enactment is repealed when an appeal is pending against the sentencing, the accused person's rights would be determined under the repealed enactment. On the other hand, where the accused person is being tried under an enactment and the enactment is repealed without being saved, the rights of the accused person would not have accrued under the repealed law and so the prosecution of the accused will terminate
  - **British Airways v AG**
- In civil matters, rights accrued or acquired under a substantive enactment shall not be interfered with.
  - Article 107: Parliament shall have no power to enact retroactive legislation to affect any right acquired under a repealed or amended enactment subject to articles 178 to 182 of the Constitution.

Presumption Against Unclear Changes In Common Law

- Where parliament decides to make a change or modify the common law, it must be clearly stated. Legislation will not be construed to interfere with fundamental common law rights, freedoms, immunities or principles; in the absence of unmistakable and unambiguous language, general words will rarely be sufficient
- Where the legislature does not make any clear changes in the common law, it shall be construed with any modification to bring it in conformity with the enactment.
- Where there is conflict between an enactment and the common law, the enactment prevails over common law
- A conflict between a known common law principle and a subsidiary legislation would be resolved in favor of subsidiary legislation.

Presumption Against Unclear Changes In Existing Law

- Changes in the existing law must be clearly expressed or be by necessary implication.
- Where the amending or repealing or new enactment on the same subject matter as the existing enactment is not clear, the existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it in conformity with the new enactment
- Where the old and the new statute conflict irreconcilably, the issue is resolved by determining which one is the leading and which is subordinate. This is usually referred to as the "hierarchy of the laws analysis"
  - **Kowus Motors v Checkpoint Ghana Ltd and Ors:** The SC held that where two statutes conflict irreconcilably, the latter one is deemed to have repealed or amended the earlier one. This applies where the two laws are of equal strength and form

- Where the conflict is between special legislation and general legislation, the former overrides the latter, whether or not the it is the new law or existing law
  - **Rep v High Court, Accra; Ex parte PPE & Juric** (Unique Trust Financial Services ltd [Interested party]): The SC held that special provisions override the general provisions on the same subject-matter. The special legislation is deemed to have amended the general one

Presumption Against Retrospective Law

- All substantive enactments are prospective unless the statute specifically states that it should be retroactive. All laws on procedure, evidence, validation, declaratory and consolidation are presumed to be retroactive unless the statute provided otherwise.
- Article 107 of the Constitution: Parliament shall have no power to pass any law which operates retrospectively to impose any limitation or which would adversely affect the personal rights and liberties or impose a burden, obligation or liability on any person except in matters of financial issues provided under Articles 178-182 of the Constitution.
- Article 19(5): Retroactive penal legislation is prohibited

Presumption Against Ouster Clauses

- No person or authority should be permitted to take a final decision in a matter without permitting the courts to pronounce on the matter. Final judicial power on a matter cannot be taken away from the court even though the invocation of the court's jurisdiction could be postponed.
- Any statute which seeks to oust the jurisdiction of the court should be expressly stated but no ouster clause shall take the final power of courts in their appellate or supervisory jurisdiction
- **Essilfie v Tetteh**

Presumption Against Extra-Territorial Extent Or Application Of Legislation

- S 7 of the Interpretation Act, (Act 792): An enactment shall unless the contrary intention appears, apply to the whole of the Republic
- S 40, NRCD 323: Where there is a matter involving a foreign law, the law presumes that law of a foreign country to be as the law of Ghana. This presumption is rebuttable.

Presumption Of Consistency Or Compliance With International Law

- This presumption applies to customary international law. The presumption of compliance with international law is important because laws, customs and usage of countries have become binding rules for the international world

Presumption Against Impairing Obligations(Nullus Commodum Capere Potest De Injuria Sua Propria)

The presumption is that any person who does an act contrary to public policy should not be allowed to benefit from his/her wrongful act and the courts are always advised not to construe any provision which would enable the wrong doer to benefit from his/her wrongful act.

Presumption Of The Application Of Ancillary Rules Of Law

- Constitutional law principles such as freedom, probity, justice, accountability, transparency, rule of law, supremacy of the constitution etc apply in all constitutional interpretations.

- **Aboagye v Ghana Commercial Bank ltd per Bamford JSC**: Article 23 says that administrative bodies and officials shall act fairly and acting fairly implies the application of the rules of natural justice which have been elevated to constitutional rights and are binding on all adjudicating and administrative bodies as well as courts and tribunals.

- Presumption that Public Law Decision Making Rules Apply: Public law decision making rules include rule making and adjudication of government agency action. Administrative law reforms part of public law and it deals with decision making of the administrative bodies of government
- Presumption that Rules of Equity Apply: The courts have always adopted the maxims of equity in order to do justice between the parties

Presumption Of Correctness (Omnia Praesamuntur Rite Et Solemniter Esse Acta)

- S 37 of NRCD 323: All official acts are deemed to have been regularly performed unless contrary evidence is introduced to rebut the presumption