by the government of the day. Most government Bills are introduced in the House of Commons, going later to the House of Lords and finally for the Royal Assent. However, some of the less controversial government Bills are introduced in the House of Lords, going later to the Commons and then for the Royal Assent. Money Bills, i.e. those containing provisions relating to finance and taxation, e.g. the annual finance Bill, and other Bills with financial clauses must start in the Commons.

Private members' Bills

Members of either House whether government supporters or not have a somewhat restricted opportunity to introduce *private members' Bills*. Such Bills are not likely to become law unless the government provides the necessary parliamentary time for debate. Some, however, survive to become law – for example, the Murder (Abolition of Death Penalty) Act 1965. Those that are lost usually fail to be debated fully because influential and anonymous objectors work behind the scenes to ensure that they are taken towards the end of the session when parliamentary time is at a premium. In addition, the severe restriction of debating time for private members' Bills makes such time as is available an ideal stamping ground for the determined filibuster who wishes to talk the Bill out. In spite of all this, many more private members' Bills have reached the statute book in recent times.

Prorogation and its effect

A session of Parliament is brought to an end by the Monarch by prorogation and a Bill which does not complete the necessary stages and receive the Royal Assent in one session will lapse. It can be introduced in a subsequent session but must complete all the necessary stages again. This lapse is not, however, inevitable since there is a procedure under which the government of the day can by negotiation with the Opposition allow a Bill to carry on with its remaining stages in the next session. This procedure was used, e.g., with the Financial Services and Markets Act 2000 when it was at the Bill stage. The Bill was of great length and dealt with fundamental changes in the regulation of the financial services industry and the City of London as a financial market. By agreement it was carried over after the end of the 1998/9 session to the 1999/2000 session in order to complete its stages. Bills also lapse when Parliament is dissolved prior to a General Election. The above provisions do not apply to *private Bills* (see below) which because of the costs involved in promotion can complete their remaining stages in a new session. The sittings of Parliament within a session are divided by periods of 'recess'. Bills do not lapse when Parliament goes into recess.

Public and private Bills

Bills are also divided into *public* and *private* Bills. *Public Bills*, which may be government or private members' Bills, alter the law throughout England and Wales and extend also to Scotland and Northern Ireland unless there is a provision to the contrary. *Private Bills* do not alter the general law but confer special local powers. These Bills are often promoted by local authorities where a new local development requires compulsory purchase of land for which a statutory power is needed. Enactment of these Bills is by a different parliamentary procedure.

The Speaker of the House of Commons rules whether a Bill is public or private if there is doubt as where, e.g., the Bill might affect areas beyond that of the local authority concerned, as would be the case if a seaport authority forbade the export of live animals from the port.

Enactment of Bills

A public Bill and a private members' Bill follow the same procedure in Parliament. These Bills may be introduced in either House, though, as we have seen, a money Bill, which is a public Bill certified by the Speaker as one containing provisions relating to taxation or loans, must be introduced in the Commons by a Minister and not a private member. The following procedure relates to a public or private members' Bill introduced in the Commons.

The various stages

On its introduction the Bill receives a purely formal first reading. Only the title of the Bill is read out by the Clerk of the House. The purpose of this stage is to tell members that the Bill exists. It is then printed and published. Later it is given a second reading, at which point its general merits may be debated, but no amendments are proposed to the various clauses it contains. There is an alternative procedure for the second reading stage of *Public Bills in the Commons*, which is designed to save parliamentary time. A Minister may move that the Bill be referred to a Standing Second Reading Committee of between 30 and 80 MPs. They report to the Commons recommending with reasons whether or not the Bill should be read a second time. The report of the Committee must be put to the House for a vote without debate or amendment. This procedure does not apply if 20 Members rise in their seats to object. Private members' Bills are automatically referred to the Second Reading Committee.

The Second Reading Committee procedure has saved a lot of parliamentary time and assisted the passing of many non-controversial Bills for which the government would otherwise have had to find debating time. There is also a rule limiting speeches in second reading debates in the Commons to 10 minutes which also saves time.

Having survived the second reading, the Bill passes to the Committee stage. Here details are discussed by a Standing Committee chosen in proportion to the strength of the parties in the House of Commons. The number of members varies but is in general between 20 and 30. Amendments to the clauses are proposed, and, if not accepted by the government, are voted on, after which the Bill returns to the House at the Report stage. The Committee mentioned may be a Committee of the Whole House, if the legislation is sufficiently important. Certain Bills in the Commons may be sent to a Special Standing Committee which is given power to hear evidence from outsiders, thus following to some extent the procedure for private Bills (see below).

At the Report stage the amendments may be debated, and the Bill may in some cases be referred back for further consideration. It is then read for the third time, when amendments may strictly speaking be moved but in practice only verbal alterations are taken.

After passing the third reading, the Bill is said to have 'passed the House'. It is then sent to the House of Lords where it goes through a similar procedure and must pass through all stages successfully *in the same session of Parliament*. If the Lords propose amendments, the Bill is returned to the Commons for approval. At one time the House of Lords had the power to reject Bills sent up by the Commons. Now, under the provisions of the Parliament Acts 1911 and 1949, this power amounts to no more than an ability to delay a public Bill (other than a money Bill) for a period of one year; a money Bill may be delayed for one month only (and see below). The supremacy of the Commons stems from the fact that it is an elected assembly, responsible to its electors and coming periodically at intervals of not more than five years before the public for re-election. The Lords may veto a private Bill and have retained the power to reject a Bill which attempts to extend the duration of Parliament beyond five years.

Parliament Acts 1911 and 1949 – the procedure

The procedure involved where the Commons wishes, in effect, to pass legislation without the consent of the Lords is as follows:

Money Bills. Where a money bill has passed the Commons, it shall receive the Royal Assent without the approval of the Lords unless it has been passed by the Lords within one month of being sent to the Lords, provided that the Bill was sent to the Lords at least one month before the end of the relevant session.

Other public Bills. If a Bill has been passed by the Commons and then rejected in the Lords, and *in the next session of Parliament* it is again passed by the Commons but the House of Lords does not pass it without amendments (except those that are approved by the Commons), the Commons has the power to send the Bill for the Royal Assent, despite the opposition by the Lords. However, it is also provided that at least one year must have elapsed between the second reading of the Bill in the Commons in the first session and the third reading in the Commons in the second session.

As we have seen, the power of the Lords to veto any Bill which attempts to extend the life of Parliament beyond five years remains.

Parliament Acts 1911 and 1949 – a challenge

A challenge to the validity of the Hunting Act 2004, which banned hunting with dogs, reached the House of Lords, where an instructive judgment was given on the validity of Acts passed into law without the consent of the Lords. The Hunting Act 2004 did not receive the consent of the Lords (see *R (Jackson and others)* v *Attorney-General* [2005] 2 WLR 866).

The government contended that the 2004 Act was valid, since it was passed under procedures laid down in the Parliament Act 1911, as amended by the Parliament Act 1949. The 1911 Act was passed by the Lords largely because the King promised he would create, if necessary, sufficient new peers who would support its passage through the Lords.

As we have outlined, s 2(1) of the 1911 Act provided that, after a period of two years had elapsed, a Bill that had still not received the consent of the Lords, being a public Bill other than a money Bill or a Bill to extend the maximum duration of a Parliament beyond five years, could become an Act of Parliament without being passed by the Lords. The 1949 Act amended the 1911 Act by reducing the period of two years to one year. The provisions of the Parliament Act 1911 as amended were used to enact the 1949 Act.

The claimants seeking to make void the ban on hunting with dogs under the Hunting Act 2004 said that the 1911 Act was passed by the Lords and could only be lawfully amended with the consent of the Lords. Thus, since the 2004 Act was passed under the amended 1911 Act, and since the amending Act of 1949 was unlawful, the 2004 Act was also unlawful.

Their Lordships did not agree. The basis of their ruling that the 2004 Act was valid was based in the main on the fact that the Parliament Act 1949 was valid because it did not fundamentally change the relationship between the Commons and the Lords. A Bill could, as before, under the 1911 Act, be enacted without the consent of the Lords. It was merely that the period in the procedure had been reduced from two years to one year. The Lords' delaying power was maintained, but for a shorter period.

Other challenges to the Hunting Act 2004 were made in *R (on the application of Countryside Alliance and others)* v *Attorney-General* (2005) *The Times*, 3 August (judicial review) and in the House of Lords on appeal from a failed judicial review in the Divisional Court of Queen's Bench and the Court of Appeal in *R (on the application of Jackson) and others* v *Attorney-General* [2006] 1 AC 262. The claimants failed in both hearings and the Hunting Act 2004 remains valid.

Private Bills – a judicial stage

The main difference between the enactment of a *private Bill* and a *public Bill* is that the committee stage of a private Bill may be judicial. Any person whose interests are specifically affected by the Bill, normally in relation to property or business interests, may lodge a petition against the Bill in accordance with the procedure set out in Standing Orders. In such a situation the Bill is referred to an Opposed Committee consisting of four MPs of all parties appointed by the House. They must be entirely disinterested in a material sense, in the matters with which the Bill is concerned. The Committee hears both the petitioner and the promoter, who usually appear by counsel. If the petition succeeds the Bill is amended to take account of it. There is no appeal against the decision of the Committee. Since this is a somewhat lengthy procedure, some statutes allow Ministers to grant special powers to local authorities by what is called a Provisional Order. Such an order does not take effect unless and until it is embodied (usually along with others) in a Provisional Order Confirmation Bill which is passed by Parliament and given the Royal Assent. There are also radical proposals to change the Private Act of Parliament procedure because the parliamentary timetable is becoming clogged up by the number of these Bills, many of which are concerned, e.g., with new powers for docks and harbours. The suggestion is that power of approval be given to local authorities and/or public inquiries followed by a parliamentary debate only. This could well be an improvement since public inquiries are more accessible than the Private Bill procedure though the above proposals have not, as yet, been taken further.

Royal Assent

When a Bill has passed through both the Commons and the Lords, it requires the Royal Assent. It is not customary for the Monarch to consent in person, and in practice consent is given by a committee of three peers, including the Lord Chancellor. The Royal Assent Act 1967 provides that an Act is duly enacted and becomes law if the Royal Assent is notified to each House of Parliament, sitting separately, by the Speaker of that House or the acting Speaker.

The former Bill is then referred to as an Act or a statute, and may be regarded as a *literary* as well as a *legal* source of law. However, an Act may specify a future date for its coming into operation, or it may be brought into operation piecemeal by ministerial order. The courts have no power to examine proceedings in Parliament in order to determine whether the passing of an Act or delegated legislation has been obtained by means of any irregularity or fraud.

British Railways Board v *Pickin*, 1974 – The courts and parliamentary proceedings (**21**)

Short title – numbering and citation

It should be noted that, as well as having a title setting out what its objects are, each Act has, under the provisions of the Short Titles Act 1896, a short title to enable easy reference to be made. Each Act has also an official reference. The Law of Property Act 1925, is the short title of an Act whose official reference is 15 & 16 Geo 5, c 20, which means that the Law of Property Act 1925 was the twentieth statute passed in the session of Parliament spanning the fifteenth and sixteenth years of the reign of George the Fifth.

The Acts of Parliament Numbering and Citation Act 1962 provides that chapter numbers assigned to Acts of Parliament passed in 1963 and after shall be assigned by reference to the calendar year and not the session in which they are passed. For example, the official reference of the Sale of Goods Act 1979 is 1979, c 54.

Statute law and case law distinguished

The essential differences between statute law and case law are apparent from the definition of a statute. It is:

> an express and formal laying down of a rule or rules of conduct to be observed in the future by the persons to whom the statute is expressly or by implication made applicable.

Thus a statute openly creates new law, whereas a judge would disclaim any attempt to do so. Judges are, they say, bound by precedent and merely select existing rules which they apply to new cases (but see Chapter 7). A statute lays down general rules for the guidance of future conduct; a judgment merely applies an existing rule to a particular set of circumstances. A judgment gives reasons and may be argumentative; a statute gives no reasons and is imperative.

Delegated legislation

Modern statutes may require much detailed work to implement and operate them. In such a case the Act is drafted so as to provide a broad framework, the details being filled in by Ministers by means of delegated legislation. For example, much of our social security legislation gives only the general provisions of a complex scheme of social benefits and an immense number of detailed regulations have had to be made by civil servants in the name of and under the authority of the appropriate Minister. These regulations when made in the approved manner are just as much law as the parent statute itself. This form of law is known as *delegated* or *subordinate* legislation.

Advantages

A number of advantages are claimed for delegated legislation as follows.

(a) It saves Parliamentary time in that Ministers are left, with the civil service, to make the detailed rules, Parliament concerning itself solely with the broad framework of the legislation.

(b) Speed. The Parliamentary procedure for enacting Bills is slow whereas rules and orders can be put more rapidly into law, particularly in a time of national emergency.

(c) Parliament cannot foresee all the problems which may arise after an Act has become law. Delegated legislation can deal with these if and when they arise.

(d) Delegated legislation is less rigid in that it can be withdrawn quickly by another statutory instrument if it proves impracticable.

(e) The aptitude of the legislature is limited and experts in the departments of state can better advise a Minister on the technicalities of a certain branch of law. It would be difficult to give this kind of advice to the Lords or Commons as a whole.

Disadvantages

However, there are disadvantages as follows.

(a) Parliamentary control over legislation is undoubtedly reduced. However, the power to make delegated legislation must be given by an Act of Parliament (sometimes referred to as the enabling statute) and so Parliament is to that extent in broad control because it must pass the enabling statute.

Beyond that much depends upon what the enabling statute says about reference to Parliament when instruments are made. There are different requirements and the inclusion of one rather than another in an enabling statute does not appear to be based upon any detectable principle.

The enabling Act may require:

(i) that the instrument be merely laid before Parliament. Where this is so, MPs and Peers have no right to change it but laying before Parliament does, at least, inform them that the instrument exists, and in any case there is a scrutiny committee. In some cases the instrument is already in force. However, Members may ask Parliamentary questions about instruments laid for information only;
(ii) that Parliament may annul the instrument, e.g. within 40 days of laying. Where this is so a resolution of either House to annul the instrument is effective, but if there is no such resolution the instrument passes into law. However, whether there is a debate leading to a resolution to annul, the instrument is entirely dependent upon the initiative of an MP or Peer to engineer the debate since the government is not obliged to find time for it;
(iii) that each House of Parliament must pass a resolution approving the instrument. Where this is so, the government must obviously find time for a debate and a resolution approving the instrument must be made in each House, otherwise it will not become law;
(iv) that the instrument be laid in draft before Parliament and may only be issued if an affirmative resolution is passed by each House in its favour;
(v) that the instrument be laid in draft without reference to affirmative resolutions, in which case by s 6 of the Statutory Instruments Act 1946 it may be made law after a period of 40 days if no resolution is passed during that period by either House against it.

It should be noted that if it is essential that an instrument comes into operation before copies of it can be laid before Parliament, then it may do so provided notification is sent to the Lord Chancellor and the Speaker of the House of Commons explaining why copies could not be laid before the instrument came into operation.

There is a special procedure for what are called Deregulation Orders. Part I of the Deregulation and Contracting Out Act 1994 gives power to amend or repeal by ministerial order primary legislation, i.e. Acts of Parliament, that impose an unnecessary burden on business. This somewhat extraordinary power is exercisable only after special scrutiny procedures have been followed. The 1994 Act provides a two-stage process for the parliamentary scrutiny of deregulation orders. A document containing the proposal is laid before Parliament under s 3(3) of the Act in the form of a draft of the order, together with explanatory material; and the Deregulation Committee in the Commons and the Select Committee on the Scrutiny of Delegated Powers in the Lords have 60 days in which to consider and report on it. The government then lay under s 1(4) of the 1994 Act a draft order, either in its original form or amended to take account of the views of the two Committees, for approval by resolution of each House. In the Lords a motion to approve a draft order can only be moved after the Lords Committee has made a second report on it. Thus, although the power to repeal or amend an Act of Parliament in this field rather than the requirement elsewhere to use another Act of Parliament seems to some a potentially dangerous and undemocratic process, the controls as listed above are very strict.

There are also other controls both by the judiciary and by Parliament itself (see below).

The 1994 Act has not been as successful as it might have been in removing red tape from business, because the Act provides that proposed changes to simplify procedures *must not impose fresh burdens of any kind*. If, therefore, it was decided to simplify an employment law procedure currently not applying to, say, employers with 20 or fewer employees, then if the

proposal to simplify would only work if the simplified proposals were extended to all employers to save the complication of dealing with some employers as exceptions, it would not be possible to make the change because a new burden, albeit a simplified one, would be placed on the relevant small employers. Parliament has expressed an intention to remove the restriction, but it requires primary legislation and none is, as yet, forthcoming.

While on the matter of red tape, note can be taken of the *Better Regulation Task Force* that was set up in 1997 and published its initial programme of work at the end of that year. The task force is an independent advisory body appointed by a government Minister and the Chancellor of the Duchy of Lancaster. Its terms are to advise the government on improving the effectiveness and credibility of government regulation by ensuring that it is necessary, fair, affordable and simple to understand and administer, taking particular account of small businesses and ordinary people.

(b) It is said that there is too much delegated legislation so that it is difficult to know what the law is, particularly in view of the fact that little publicity is given to statutory instruments whereas most important Acts of Parliament are referred to at one time or another in the press. The difficulty is that a defendant's *ignorance of the law is no excuse*, though s 3(2) of the Statutory Instruments Act 1946 protects a person in respect of a crime contained in a statutory instrument *if the instrument has not been published*, unless it is proved that reasonable steps have been taken for the purpose of bringing the content of the instrument to the notice of the public or of persons likely to be affected by it or the person in fact charged. The section does not protect if the instrument has been published but a particular defendant does not know of its existence.

A way of dealing with the mass of delegated legislation is to introduce *'sunset' clauses* into regulations so that they would have to be reviewed or die after a specified period. This method is used in the United States with some degree of success and the UK government is looking at it and may introduce it here.

(c) The dangers of sub-delegation are on occasions quite real. One can find in some cases a pedigree of four generations of instrument emanating from a statute as follows:

(i) regulations made under the statute;
(ii) orders made under the regulations;
(iii) directions made under the orders;
(iv) licences issued under the directions.

When this happens it does reduce very seriously the control by Parliament of the making of new laws since Parliament would only see the parent statute and the first set of regulations.

Types of delegated legislation

In modern statutes delegated powers are exercisable by four main vehicles as follows:

(a) Statutory instruments. Most powers conferred on Ministers in modern statutes are exercisable by ministerial or departmental regulations or orders, called collectively statutory instruments.

(b) Orders in Council. Powers of special importance relating to constitutional issues, e.g. emergency powers, are conferred on the Queen in Council. These powers are in fact exercised by the Cabinet who are all Privy Councillors by means of an order in council.

(c) By-laws of local authorities. These are made by local authorities under powers given to them in Acts of Parliament and require the approval of the appropriate Minister.

(d) Rules of the Supreme Court and County Court. These are made by Rules Committees set up by statute specifically to make rules concerning the practice and procedure of the courts. The Rules Committees are made up of judges and senior members of the legal profession.

Judicial control

Delegated legislation takes effect as if it were part of the enabling statute. Therefore, it has statutory force and, as we have seen, the courts cannot declare a statute *ultra vires*. However, delegated legislation does not acquire statutory force unless it is *intra vires*, i.e. properly made in accordance with the terms of the enabling Act. The courts can declare delegated legislation *ultra vires* in this sense. There are two approaches to the *ultra vires* rule as regards delegated legislation as follows:

(a) Substantive *ultra vires*. This means that the Minister has exceeded the powers given to him in the parent statute. If a Minister is authorised to make regulations as to road traffic, clearly if he purports to make regulations under the same parent statute concerning rail traffic, they would be held by the courts to be *ultra vires* and invalid.

(b) Procedural *ultra vires*. This means that the instrument is invalid because the Minister has failed to follow some mandatory procedural requirement specified in the parent Act. For example, much social security legislation requires the Minister to consult various advisory bodies before making rules and orders. If a rule or order was made without the necessary consultation, then it would be *ultra vires* in procedural terms and invalid.

Hotel and Catering Industry Training Board v *Automobile Proprietary Ltd*, 1969 – Delegated legislation and *ultra vires* (**22**)

Henry VIII (or ouster) clauses

Sometimes a section of an Act will give a Minister or the Queen in Council very wide powers so that it is difficult to say that any instrument made or decision taken under it is *ultra vires*. These are referred to as 'Henry VIII Clauses' after the way in which that monarch used to legislate in arbitrary fashion by a proclamation. A more modern expression is an 'ouster clause', i.e. a clause attempting to prevent a decision being reviewed by the court. For example, s 4(7) of the Parliamentary Constituencies Act 1986 provides that 'The validity of any Order in Council purporting to be made under this Act . . . shall not be called in question in any legal proceedings whatsoever.' It was at one time thought that the courts were powerless to intervene to review any order made under such a provision. However, in more recent times the courts have taken power to overcome ouster clauses by saying, in effect, that if the exercise of such a power is not in accordance with the law, as where it is, e.g., *ultra vires* or made by misinterpreting the power given, the Minister or tribunal has lost jurisdiction and the court can intervene. In other words, the jurisdiction is to decide correctly but not incorrectly. An illustration is provided by the decision of the House of Lords in *Anisminic Ltd* v *Foreign Compensation Commission* [1969] 1 All ER 208. A Ltd applied to the Commission for compensation for property seized by Egypt in 1956 at the time of the Suez crisis relating among other things to the blocking of the Suez canal. The Foreign Compensation Act 1950 was relevant. It said that decisions of the Commission 'shall not be called into question in any court of law'. The Commission decided that A Ltd was not entitled to compensation but in doing so misinterpreted the statute. This said the House of Lords made the decision *ultra vires* and void. It was,

therefore, not a 'decision' and the court could question it. Being merely asked to say what the law was the court gave a declaratory judgment that the decision was void.

Parliamentary control

The main Parliamentary control is through a Joint Committee on Statutory Instruments between the House of Commons and the House of Lords. The Joint Committee is appointed to consider statutory instruments with a view to determining whether the special attention of Parliament should be drawn to the legislation on various grounds. The grounds, briefly, are that the legislation:

(*a*) imposes a tax on the public;
(*b*) is made under an enactment containing specific provisions excluding it from challenge in the courts;
(*c*) purports to have retrospective effect where there is no express authority in the enabling statute;
(*d*) has been unduly delayed in publication or laying before Parliament;
(*e*) has come into operation before being laid before Parliament and there has been unjustifiable delay in informing the Speaker of the delay under s 4(1) of the Statutory Instruments Act 1946;
(*f*) may be beyond the powers given by the parent statute or makes some unusual or unexpected use of those powers;
(*g*) calls for better explanation as to its meaning.

As regards law coming from the European Union, there is also a system of three standing committees consisting of 10 MPs to examine the proposals of the Union in terms of legal matters and to question Ministers about them. There are also Commons debates before the twice-yearly EU summit meetings to give MPs a chance to air their views on the agendas for the summit meetings.

By-laws of local authorities

These must be *intra vires*, i.e. within the powers given to the local authority in the enabling statute, and also reasonable. Thus, in *Kruse* v *Johnson* [1898] 2 QB 91 a local authority by-law making it an offence to sing within 50 yards of a dwelling house was upheld but the court decided that unreasonableness could be a ground for invalidating by-laws.

Burnley Borough Council v *England*, 1978 – By-laws: challenge in court (**23**)

Interpretation of statutes by the judiciary

The main body of the law is to be found in statutes, together with the relevant statutory instruments, and in case law as enunciated by judges in the courts. But the judges not only have the duty of declaring the common law, they are also frequently called upon to settle disputes as to the meaning of words or clauses in a statute.

Parliament is the supreme lawgiver, and the judges must follow statutes (but see *Factortame Ltd* v *Secretary of State for Transport (No 2)* (1991) 1 All ER 70). Nevertheless, there is a considerable

amount of case law which gathers round Acts of Parliament and delegated legislation since the wording sometimes turns out to be obscure. Statutes were at one time drafted by practising lawyers who were experts in the particular branch of law of which the statute was to be a part. Today, however, statutes are drafted by parliamentary counsel to the Treasury, and, although such persons are skilled in the law, the volume of legislation means that statutes are often obscure and cases continue to come before the courts in which the rights of the parties depend upon the exact meaning of a section of a statute. When such a case comes before a judge, he must decide the meaning of the section in question. Thus even statute law is not free from judicial influence.

The judges have certain recognised *aids to interpretation*, and these are set out below.

Statutory aids

Judges may get some guidance from statute law.

(*a*) The Interpretation Act 1978, which is itself a statute, defines terms commonly used in Acts of Parliament, e.g. that 'person' includes a corporation as well as a human being.

(*b*) A complex statute will normally contain an interpretation section, defining the terms used in the particular Act, e.g. ss 735–744A of the Companies Act 1985 define, among other things, 'accounts' and 'director', and the judges have recourse to this.

(*c*) Every Act of Parliament used to have what was known as a preamble, which set out at the beginning the general purpose and scope of the Act. The preamble was often quite lengthy and assisted the judge in ascertaining the meaning of the statute. Modern public Acts do not have this type of preamble, but have instead a long title which is not of so much assistance in interpretation. For example, the Sex Discrimination Act 1975, which contains 87 sections and a number of schedules, says merely: 'An Act to render unlawful certain kinds of sex discrimination and discrimination on the grounds of marriage, and establish a Commission with the function of working towards the elimination of such discrimination and promoting equality of opportunity between men and women generally; and for related purposes.' All private Acts must have a preamble setting out the objects of the legislation, and this preamble must be proved by the promoters at the Committee stage in the House of Lords. So far as private Acts are concerned the preamble may be of assistance.

Hutton v *Esher UDC*, 1973 – Statutory interpretation and the Interpretation Act (**24**)

General rules of interpretation evolved by judges

There are a number of generally recognised rules or canons of interpretation, and some of the more important ones are now given.

The mischief rule

This was set out in *Heydon*'s Case (1584) 3 Co Rep 7a. Under this rule the judge will look at the Act to see what was its purpose and what mischief in the common law it was designed to prevent.

Broadly speaking, the rule means that where a statute has been passed to remedy a weakness in the law the interpretation which will correct that weakness is the one to be adopted.

The literal rule

According to this rule, the working of the Act must be construed according to its literal and grammatical meaning whatever the result may be. The same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been a change with the passage of time.

The Law Commission, in an instructive and provocative report on the subject of interpretation (Law Com 21), said of this rule that 'to place undue emphasis on the literal meaning of the words of a provision is to assume an unattainable perfection in draftsmanship'.

The rule, when in operation, does not always achieve the obvious object and purpose of the statute. A classic example is *Whiteley* v *Chappell* (1868–9) 4 LRQB 147. In that case a statute concerned with electoral malpractices made it an offence to personate 'any person entitled to vote' at an election. The defendant was accused of personating a deceased voter and the court, using the literal rule, found that there was no offence. The personation was not of a person entitled to vote. A dead person was not entitled to vote, or do anything else for that matter. A deceased person did not exist and could therefore have no rights. It will be seen, however, that the literal rule produced in that case a result which was clearly contrary to the object of Parliament.

The golden rule

This rule is to some extent an extension of the literal rule and under it the words of a statute will as far as possible be construed according to their ordinary plain and natural meaning, unless this leads to an absurd result. It is used by the courts where a statutory provision is capable of more than one literal meaning and leads the judge to select the one which avoids absurdity, or where a study of the statute as a whole reveals that the conclusion reached by applying the literal rule is contrary to the intentions of Parliament.

Thus, in *Re Sigsworth* [1935] Ch 89 the court decided that the Administration of Estates Act 1925, which provides for the distribution of the property of an intestate amongst his next of kin, did not confer a benefit upon the person (a son) who had murdered the intestate (his mother), even though the murderer was the intestate's next of kin, for it is a general principle of law that no one can profit from his own wrong.

The ejusdem generis *rule*

This is a rule covering things of the same genus, species or type. Under it, where general words follow particular words, the general words are construed as being limited to persons or things within the class outlined by the particular words. So in a reference to 'dogs, cats, and other animals', the last three words would be limited in their application to animals of the domestic type, and would not be extended to cover animals such as elephants and camels which are not domestic animals in the UK.

Expressio unius est exclusio alterius

(The expression of one thing implies the exclusion of another.) Under this rule, where specific words are used and are not followed by general words, the Act applies only to the instances mentioned. For example, where a statute contains an express statement that certain statutes are repealed, there is a presumption that other relevant statutes not mentioned are not repealed.

Noscitur a sociis

(The meaning of a word can be gathered from its context.) Under this rule words of doubtful meaning may be better understood from the nature of the words and phrases with which they are associated.