Lord Greene MR considered absurdity to be a very unruly horse and cautioned that it is a doctrine which has to be applied with great care. In *Grundt v. Great Bolder Gold Mines Ltd.* [1948, 1 All ER 21, 29-30], Lord Greene MR had observed :

"Absurdity, I cannot help thinking, like public policy, is a very unruly horse... that although the absurdity or the non-absurdity of one conclusion as compared with another may be, very often is of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with very great care remembering that judges may be fallible in this question of an absurdity, and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed."

Where the situation demands application of the golden rule it is applied for construction with reference to consequences to avoid inconvenience and injustice or to prevent evasion and arrive at a correct interpretation which would bring out the true meaning of the language in the process of giving effect to the real intention of the legislature.

The short coming of the golden rule is that it does not lay down any objective criterion by which one can say that a particular interpretation is absurd. It is submitted that in this regard it would be safe to take valuable guidance from the view taken by Willes J. in Christopher's case. In *Christopher v. Lotinga* [(1864) 33 LJC 121, 123], Willes J., subscribed to every word of the 'golden rule' assuming the word 'absurdity' to mean no more than 'repugnance'. He had said, "with that modification, it seems to me that the rule thus laid down is perfectly consistent with good sense and law."

[C] Mischief rule

The rule laid down by Lord Coke in Heydon's case is called the Mischief Rule. [Heydon's case (1584) 76 ER 637 : (1584) 3 Co. Rep. 7a].

The *facts* of the case were : certain lands were the copyholds of a college. The warden and canons of the college granted a part of the land to W and his son for their lives and the rest to S and G at the will of the warden and canons in the time of King Henry VIII. While so, the warden and canons granted all the lands to Heydon on lease for 80 years. Thereafter, the warden and canons surrendered their college to the King. The Attorney General filed an information, on behalf of the Crown, for obtaining satisfaction in damages for the wrong committed in the lands, against Heydon, as an intruder on the lands.

The statute, 31 Henry VIII, provided that if a religious or ecclesiastical house has made a lease for a term of years, of lands in which there was an estate and not determined at the time of the lease, such lease shall be void.

It was decided by the Barons of the Exchequer that for the sure and true interpretation of all statutes in general be they penal, or beneficial restrictive or enlarging of the common law, *four* things are to be discerned and considered,

(a) what was the common law before the making of the Act,

(b) what was the mischief and defect for which the common law did not provide.

(c) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth and

(d) the true reason of the remedy,

and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to supress subtle inventions and evasions for continuance of the mischief and *pro-privato commodo,* and to add force and life to the cure and the remedy, according to the true intent of the makers of the Act, *pro bono publico.*

In this case the common law was that religious and ecclestial persons might have leases for as many years as they pleased.

The mischief was that when they perceived their houses would be dissolved they made long and unreasonable leases.

The remedy for this mischief was provided by statute 31 Henry VIII, the intent of this Act was to avoid doubling of estates, and to have but one single estate in being at a time; for doubling of estates implies (in itself) deceit, and private respect, to prevent the intention of Parliament.

Their reason was that it was not necessary to make a new lease so long as the former lease was subsisting.

Held : If the copy-hold estate for two lives and the lease for 80 years shall stand together, there will be doubling of estates. *Simul* and *Semal* (at one and the same time) which will be against the true meaning of the Act.

Consideration of the mischief aimed may lead to a wider or restricted interpretation of a statute. In a broader sense the mischief rule may be understood as the purposive construction of statutes.

In *Maunsel v. Olins* [(1975) 1 All ER 16, 29 (HL)], Lord Simon said, that "the rule in Heydon's case is available at two stages; first before ascertaining the plain and primary meaning of the statute and secondly at the stage when the court reaches the conclusion that there is no such plain meaning."

In *Kanailal Sur v. Paramnidhi Sadhu Khan* [AIR (1957) SC 907], it was observed that "this rule is most helpful in the interpretation of statutes, when the language of the statute is capable of more than one meaning."

In *Anderton v. Ryan* [(1985) 2 All ER 355, p. 359, HL], Lord Roskill has given a more brief statement of the rule in the following words :

Statutes should be given what has become known as a purposive construction, that is to say that the courts should identify the 'mischief' which existed before the passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.

Dias is of the view that the propositions in Heydon's case were probably adequate to deal with the limited kind of legislation that then existed, but today on account of statutes putting into effect new social experiments and their altogether operation on a scale much larger than before, Heydon's case itself is somewhat inadequate and it should be broadened and adopted to meet the conditions.

Though it sounds very reasonable, the mischief rule has not received much favour in English Courts which lean more towards a literal interpretation. Salmond has stated that, judges vary, in the extent to which they make use of this rule, which allows a more functional approach to legislation. On the whole comparatively little use has been made of it. Moreover, this usefulness is limited by the fact that in seeking the intention underlying a statute, English Courts do not permit themselves to consider the preliminary discussions (called on the continent *travaux preparatoires*) that took place before the enactment was made law. [Salmond, Jurisprudence 12th edn., p. 140].

A few instances of application of mischief rule are examined below:

In the well-known case of *Smith v. Hughes* [(1960) 1 WLR 830], it was held that prostitutes who attracted the attention of passers by from balconies or windows were soliciting "in a street' within the meaning of sec. 1(1) of the Street Offences Act, 1959. Lord Parker took into consideration the mischief aimed at by this Act namely, to clean up the streets to enable people to walk without being molested or solicited by common prostitutes in view of which the precise place from which the solicitations were addressed to somebody walking in the street became irrelevant.

In *Gorris v. Scott* [(1874) LR 9 Ex. 125], the court was concerned with interpreting a statute providing that animals carried on board a ship should be kept in pens. The action was for breach of statutory duty against a shipping company by whose neglect some of the sheep of the plaintiff had been washed overboard during a storm. The defendant ship owner (company) had undertaken to carry the plaintiff's sheep from a foreign port to England and if he had penned them the mishap would not have occurred. The object of the Act was to prevent the spread of infection among animals and not to protect them against the perils of the sea. It was held that a loss of that kind caused by the shipowners neglect cannot give a cause of action. Where a statute (i.e. the Privy Council Order made under the Authority of the contagious Diseases (Animals) Act, 1869 Sec. 75) has been clearly enacted to suppress mischief of one sort this (i.e. mischief) rule will not allow it to be so interpreted as to suppress mischief of a different sort which was quite outside the intention of the legislature.

In Re *Newspaper Proprietor's Agreement* [(1962) LR 3 RP 360], it was held that the duty of the Registrar under sec. 1(2) of the (English) Restrictive Trade Practices Act, 1956 to maintain a Register of Agreements covered even those agreements which have expired or have been terminated by the parties. The court, in arriving at this decision took into consideration the mischief the Act was intended to remedy and the remedy which it had provided (by restraining agreements [in the future] to the like effect).

In *CIT, MP & Bhopal v. Sodra Devi* [AIR (1957) SC 832], the Supreme Court applied this rule for construing the word 'individual' in the context of sec. 16(3) of the Indian Income-Tax Act, 1922 after it came to the conclusion that the said word in its setting was ambiguous. Bhagwati J. pointed out that the evil which was sought to be remedied was the one resulting from the wide spread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. If this background of the enactment of sec. 16(3) is kept in view there is no room for any doubt that the words "any individual" in this provision is restricted to males and it was so construed accordingly.

In *RMD Chamarbaugwalla v. Union of India,* [AIR (1957) SC 628], the mischief rule was applied in construing the definition of 'prize competition' under sec.2(d) of the Prize Competitions Act, 1955. The question before the court was whether the Act applies to competitions which involve substantial skill and are not in the nature of gambling. It was held that the definition was inclusive of only those competitions in which success does not depend upon any substantial degree of skill. Thus, those prize competitions in which some skill was required, were exempt from the definition of prize competition under sec. 2(d) [In the instant case, the Supreme Court applied the rule in Heydon's case in order to suppress the mischief which was intended to be remedied, as against the literal rule which would have covered prize competitions in which no substantial degree of skill was required for success].