Statutory Interpretation: Advantages and Disadvantages
The Literal Rule

Advantages:

The literal rule follows the words of Parliament.

Parliament is our law-making body and it is therefore correct that judges should apply the law as written by Parliament without changing it.

Using the literal rule therefore prevents unelected judges from creating law.
The Literal Rule

Advantages:

Using the literal rule will make the law more certain as the law will be interpreted exactly as it is written every time that it is used.

This makes the law easier to understand for the general public as they will know what the law is and how judges will interpret it.
The Literal Rule

Disadvantages:

The literal rules assumes that every Act is written perfectly without any mistakes or drafting errors.

It is not always possible to write an Act so that it covers every possible situation Parliament intended it to.

Whiteley v Chappell illustrates this where the D was not guilty of voting under someone else's name.
The Literal Rule

Disadvantages:

Words may be ambiguous and therefore the use of the literal rule may make the meaning of an Act unclear.

Dictionaries often list words with several different meanings. Use of the literal rule in this situation may lead to absurd results.
The Literal Rule

Disadvantages:

Following the literal meanings of the words in the Act can also lead to unfair and unjust decisions like the one in London & North Eastern Railway Co. v Berriman.

Decisions like this have led to academics like Professor Michael Zander to denounce the literal rule as being "mechanical and divorced from the realities of the use of language".
The Golden Rule

Advantages:

The golden rule still respects the words of Parliament (and interprets them in a literal way) except in limited situations.

Where there is a potential absurdity in the use of the literal rule, such as ambiguity, the golden rule can provide an 'escape route'.
The Golden Rule

Advantages:

The golden rule allows judges to choose the most sensible meanings in situations where the word of an Act potentially have more than one meaning.

The use of the golden rule prevents potentially repugnant situations. It would clearly have been unjust to allow the son in Re. Sigsworth to benefit from the murder of his mother.
The Golden Rule

Disadvantages:

The golden rule is very limited in its use as it is only used when the literal rule leads to absurdities and, therefore, it is only used on rare occasions.

It is also not always possible to predict when the courts will use the golden rule and this leads to the law being uncertain and unclear for lawyers and the general public alike.
Disadvantages:

Michael Zander has described the golden rule as a 'feeble parachute'.

This means that the golden rule is an escape route from the absurdities and unjust decisions of the literal rule but it is a very limited escape route that cannot do very much.
The Mischief Rule

Advantages:

The mischief rule promotes the purpose of the law as it does not just rely on the literal meanings of the words contained within it.

This allows judges to look back at the law and fill in the gaps that the Act was created to cover.
The Mischief Rule

Advantages:

By concentrating on 'filling in the gaps' in the law it is much more likely that a 'just' result will occur.

It will also mean that judges will be trying to interpret the law in the way that Parliament intended it to work.
The Mischief Rule

Advantages:

The mischief rule is The Law Commission's preferred method of interpretation.

As far back as 1969 The Law Commission recommended that the mischief rule should be the only rule used in statutory interpretation.
The Mischief Rule

Disadvantages:

There is a risk of judicial law making.

Unelected judges are filling in the gaps in the law with their own views on how the law should remedy particular situations.

Royal College of Nursing v DHSS shows that judges do not always agree on how to 'fill the gap' as the case was decided on a majority of 3 judges with 2 judges dissenting.
The Mischief Rule

Disadvantages:

Use of the mischief rule could lead to uncertainty in the law.

It is impossible to predict when judges will use the rule and what the result of the interpretation will be.

This makes it increasingly difficult for lawyers to advise their clients on what the law might be.
The Mischief Rule

Disadvantages:

The mischief rule's scope is not as wide as the purposive approach's scope.

The mischief rule is limited to looking back at the old law and filling in the gaps rather than looking for a more general consideration of what the law actually is.
The Purposive Approach

Advantages:

The purposive approach leads to justice being done in more individual cases.

As it has a broad approach it allows the law to cover more approaches than simply applying the words literally.
The Purposive Approach

Advantages:

The purposive approach is particularly useful where there is new technology that was unknown when the Act was originally created.

In the case of *R (Quintavalle) v Secretary of State* Parliament would have to have created new law to cover new technology concerning 'cloning' embryos if the purposive approach had not been used to simply adapt law that already existed.
The Purposive Approach

Advantages:

The purposive approach gives judges more discretion than simply using the literal meanings of the words.

If the purposive approach had been used in *Whiteley v Chappell* then it is likely that the D would have been found guilty as Parliament's purpose was surely to prevent people voting in another person's name.
The Purposive Approach

Disadvantages:

In using the purposive approach judges are refusing to use the clear, literal words of Parliament.

How do judges know what Parliament's intention was?

Opponents of the approach say that only the words of the Act can show Parliament's true intention and judges using the purposive approach ignore these words.

The approach allows unelected judges to 'make' law and this is wrong.
The Purposive Approach

Disadvantages:

It is difficult to discover the intention/purpose of Parliament.

There are records of debates in Parliament in Hansard but this records everything that was debated, including the views of MPs who did not agree with the law under discussion.

The only record of the final intention of Parliament is the words of the Act itself.