

# Statutory Interpretation

## Types of ambiguity:

### Sematic Ambiguity:

Unclear as to what definition to use.

*Go to the bank. River bank? Money bank?*

### Syntactic Ambiguity:

Relationship between words and clauses of a sentence do not make sense

*Incorrect use of commas and full stops ect*

### Contextual Ambiguity:

No context given or context of the words are unclear

*It is unlawful to kill any Australian magpie that has attacked or attacked a person. What constitutes an attack?*

### Closed definition: Only is, limited to ect.

### Open definitions: Includes, not limited to ect. *Will you take a broad or narrow interpretation?*

## Rules of Interpretation:

Begin with literal rule then move to golden and mischief rule. It is the two latter that aid the literal rule in working.

### Literal rule / Ordinary meaning:

"The question is, what does the language mean, and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable." (Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129, 161-2)

### Golden rule:

Interpret the act where necessary to avoid an absurdity arising

*"In the vicinity of" means around and in, not just around*

### Mischief rule / purposive approach:

What was the 'mischief' the act was actually trying to remedy? Precursor to the purposive approach

## Aid to interpretation – Maxims of interpretation:

### Noscitur a sociis:

The meaning of the word is known from accompanying words

*Go to the bank and sit under the tree (must be a riverbank)*

### Ejusdem generis:

General words are limited to the same kind as the particular words

*And other like services. Other services have similar characteristics to the examples.*

*"If no genus or general category is established, the rule cannot apply. A single word followed by a general expression, such as 'a stone or other missile', cannot generally give rise to a genus." (Field v Gent (1996) 67 SASR 122.)*

# Legal Positivism

Contrast to natural law and was developed from a secular view and during the rise of the scientific method in the 19<sup>th</sup> century

The idea that the state is the ultimate source of authority and there is no divine creator

The law is what the legislators say it is

## What makes a law valid:

The morality of the law will not be taken into account. Does not mean that they ignore it, but morality is not the sole guiding principle.

### Austin:

Who or what will back up the law with force? If there is no sovereign, there is no law. As long as the law can be enforced and breaches punished, then there is a valid law.

### Hart:

Looks at the existence of primary and secondary rules which the lower rules draw their authority and validity from.

## John Austin:

Took a utilitarian view on positivism

Commands made by a sovereign and able to distinguish between what law is and should be

Must establish who the sovereign is, otherwise there is not threat of breaching the law in which case there is no law

Even if the law takes away freedoms and rights, it must be obeyed as the law exists and is a valid law:

*This is evident when it was stated 'A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation.'* (John Austin, *Lectures on the Jurisprudence of the Philosophy of Positive Law* (OUP, 1994) 157)

If one does not like the law, then they must challenge the law not through civil disobedience, but rather through a firm and empirical basis to show why the law must be changed, based on the legal evidence that suggests it is wrong.

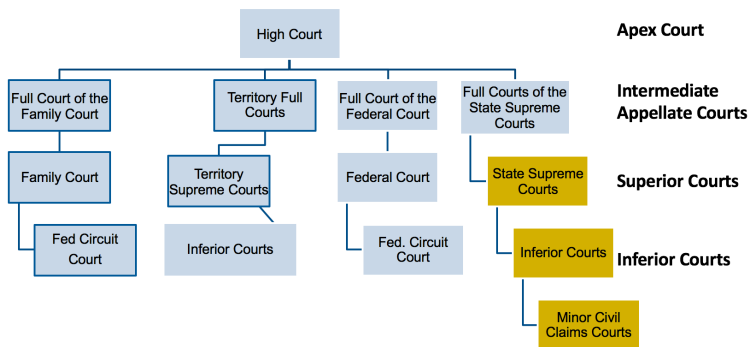
### Critiques:

Relies on the notion that there must be a sovereign, however, modern legal framework makes the 'sovereign' figure difficult to pinpoint and also, difficult to identify the clear sovereign/subject relationship.

Insists that the sovereign is a rational being who can be identified in a legal system, but this favours heavily the monarchical government system. Does not take into account situations where a sovereignty is vested in a number of bodies who can all override one another as per the constitution.

# The Law

## Australian Courts



**Stare decisis (Doctrine of precedent):** An inferior court must follow similar decisions made by a superior court

### Advantages:

- Creates consistency and certainty
- Curbs arbitrary decision making
- Provides a rational basis for decision making

### Disadvantages:

- Is inherently conservative
- Law tends to be inflexible, particular in the lower courts
- Encourages hair splitting arguments

## Ratio decidendi

*Ratio* - only thing that's binding because that's the ultimate outcome of the case

*Decidendi* - other things that happened in the case

**Obiter Dictum:** Other reference the judge made but is not binding

## Legal Practitioner:

- Legal Practitioners Act 1981 (SA) S 15
  - "fit and proper person of good character"
- Re: AJG [2004] QCA 88*
  - Persuasive*
  - Academic dishonesty in final year, adjourned for six months
  - Distinguish case as not being relevant to the case.
    - First year,
- Re: Application for admission as a legal practitioner [2004] SASC 426*
  - Binding*
  - 22 years old, two counts of larceny, one receiving stolen property and given false name and address.
    - Pled guilty, convicted on each count, good behaviour bond
    - PAR disclosed many more counts of dishonest acts
    - Was accepted to practice law
- Re: B [1981] NSWLR 373*
  - Numerous Political protests
  - "Politically motivated and socially aware are good lawyers"
  - Application was denied