

CASE LAW FOR ILR TOOLS AND TECHNIQUES SUMMARY

Tool or theory	Case
The literal approach	<i>Engineers case (Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920)</i> <i>Higgon v O'Dea (1962)</i>
Mischief rule: if words are ambiguous, the courts looks at the mischief that the legislation is attempting to remedy	<i>The rule in Heydon's case (1584)</i> The court must: suppress the mischief and advance the remedy
Purposive approach	Maritime Services Board of NSW v. Poseidon Navigation Incorporated
Reading words into the act:	*Taylor v Owners — Strata Plan No 11564 (No 2) 3 conditions must be met to argue this: <ul style="list-style-type: none"> ◦ Court must know the mischief with which the act was dealing ◦ Court has to be satisfied that parliament has inadvertently overlooked the eventually which must be dealt with if the purpose of the act is to be achieved. ◦ Court must be able to state with certainty what words parliament would have used to overcome the omission if its attention had been drawn to it Recently applied in <i>Victorian Workcover Authority v Wilson [2004]</i>
Use of trade meaning in certain industries	<i>Herbert Adams Ltd v Federal Commissioner of Taxation (1932)</i>
Acts in 'pari materia'	When a statute is ambiguous, its meaning may be determined in light of other statutes on the same subject matter.
Words may be given their legal as opposed to popular meaning	<i>Fisher v Bell (1961)</i>
Use of dictionaries	<i>Field v Gent (1996)</i> : definition of missile
Golden rule	Ordinary and grammatical sense of the words must be adhered to, unless it leads to absurdity, repugnance or inconsistency with the rest of the instrument or statute
Remedial approach (courts can modify or alter the words of the statute)	<u>Ghaidan v Godin-Mendoza [2004] 2 AC 557</u>
Not a "remedial approach" (courts cannot change the statute)	*Momcilovic v The Queen (2011) 245 CLR 1 Rather, s 32(1) directs courts to <u>ascribe statute with a meaning that is rights-compliant, if Parliament can be taken to have intended that meaning.</u>
Maxims	
<i>Ejusdem generis</i> : Where general words follow a list of specific items, the general words are read as applying to other items akin to those specifically enumerated.	<i>Malouf v Manly Council (2002)</i> <i>Stewart v Lizars (1965)</i> : the case did not define a single genus and so the EG rule did not apply.
<i>Noscitur a sociis</i> : A word is known by its associates.	<i>R v Ann Harris (1936)</i>
<i>Reddendo singula singulis</i> : Where a text exhibits the pattern "A and B are Y and Z", reddendo suggests that A should be matched with Y and B should be matched with Z, achieving a sort of symmetry in the text.	
<i>Expressio unius est exclusio alteriu</i> : The express mention of one thing is to the exclusion of others.	<i>Dean v Wiesengrund (1955)</i> <i>Salemi v McKellar (1977)</i>
<i>Generalia non specialibus derogant</i> : the provisions of a general statute must yield to those of a special one	

5.6 The Problem of Conflicting Statutory Provisions

Interpreting statutes as a whole

- “The fundamental object of statutory construction in every case is to ascertain the legislative intention by reference to the language of the instrument viewed as a whole.”
 - **Cooper Brookes v Federal Commissioner of Taxation**

***Project Blue Sky Inc. v Australian Broadcasting Authority (1998)**

- Looked at CONSEQUENCES of a decision
- Not only looked at text of legislation but the fairness is doing that
- Talked about duty of a court in interpreting a statute

Facts:

- Under the *Broadcasting Services Act 1992* (Cth) s 160 the Australian Broadcasting Authority (ABA) was given authority to develop codes and practice and program standards.
- The ABA implemented a local content standard, ensuring that television would have a minimum percentage of shows produced in Australia.
- Project Blue Sky, a New Zealand company, challenged the validity of the standard on the basis that the ABA had not performed its obligations under a trade protocol which provided that New Zealand producers would not be treated in a manner less favourable than Australian producers.
- The High Court held that the standard was in breach the protocol, but that it was not invalid.

Held: “The better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid.” The legislative purpose is to be ascertained by reference to factors such as the language of the statute, the subject matter and the consequence for those affected of a finding of invalidity.

Judgement:

- Primary object of statutory construction: to construe relevant provision so that it is consistent with the language and purpose of all the provisions of the statute
- A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. . . . Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. . . .“
- [T] He duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. **But not always.** The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.”

High Court’s conclusion

- Full Ct majority were in error in holding that relationship of s 160 and s 122 is that of a general and a special provision; are interlocking provisions
- S 160 - the dominant provision - directs how function conferred by s 122 is to be carried out. The power conferred by s 122 must therefore be exercised within the framework imposed by s 160.
- Australian content standard must be consistent with Trade Agreement and Protocol. They fall within the ordinary grammatical meaning of that paragraph.
- The Explanatory Memorandum that accompanied the Bill that became the Act stated that clause 160:
 - “Requires the ABA to perform its functions in a manner consistent with various matters, including Australia's international obligations or agreements such as Closer Economic Relations with New Zealand.”