OVERALL METHOD

1. Introduction to Basic Concepts

1.1 Construction v Application of a statutory provision

- Construction/ interpretation
- Application
  - '…one may say that interpretation is the process by which the courts determine the meaning of a statutory provision for the purpose of applying it to the situation before them….It is assumed (slide 8)

> *Virgin Blue Airlines Pty v Commissioner of Taxation* [2010]
>
> Dealt with a dispute over fringe benefits. Provided car parking for staff at carpark over 2km from Terminal 3, then shuttled to the Terminal. Fringe benefits ensures that the carpark must be in the vicinity of the main place of business ('…the car is parked at, or in the vicinity of, that primary place of employment'— s 39A(1)(f) of the *Fringe Benefits Tx Assessment Act 1986* (Cth)). Question was whether the carpark is within the 'vicinity' of the the place of employment. Full Federal Court held that the carpark was not in the vicinity of the primary place of employment.

2. Principle Situations in Which Interpretation is Practised

- When there are opposing constructions there are rival contentions made in the meaning of the provision.
- Typical situation: opposing constructions
- Variation: interpretation of broad terms: *Virgin Blue Airlines v Commissioner of Taxation*
  - *'…*the car is parked at, or in the **vicinity** of, that primary place of employment'
  - *How broad terms are approached somewhat differently:*
    - (1) Ordinarily their ordinary meaning counts for comparatively little — so much depends on the circumstances of the case.
      - 'One must be guided in a great degree by the circumstances of each case…' (*Samuels v Stubbs* (1972))
    - (2) The starting point with a term, that is on its face a broad term, is that it should be read broadly:
      - General words are to be understood generally (Bennion 2008).
      - Broad terms are very common.
      - Catch a number of things that might be relevant.

- (3) A court or other interpreter does not essay an exhaustive interpretation because, inherently, these terms do not usually admit of this.
    - 'The expression "just and equitable"…does not admit of exhaustive definition. It is not possible to chart its metes and bounds.' (*Stanford v Stanford* [2012])
    - 'It seems to me that it is difficult to lay down any very general and, at the same time, precise and absolute rule as to what constitutes "damage"' (*Samuels v Stubbs* (1972)).
    - 'It is not for the court to lay down a definition of a broad term which parliament has chosen not to define.' (Bennion 2008).
    - 'It is a rule of law (in this code called the informed interpretation rule) that the person who construes an enactment must infer that the legislator, when settling its wording, intended to it to be given a fully informed, rather than a purely literal, interpretation (though the two usually produce the same result)' (Bennion 2009).
    - 'It is well settled that at common law, apart from any reliance upon s 15AB of the *Acts Interpretation Act 1901* (Cth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure. Moreover, the modern approach to statutory interpretation (a) insists that **the context be considered in the first instance**, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy' (*CIC Insurance Ltd v Bankstown Football Club Ltd* (1997)).

3. The basic rule in relation to overall method: the informed interpretation rule

- 'It is a rule of law that the person who construes an enactment must infer that the legislator, when settling its wording, intended it to be given a fully informed, rather than a purely literal, interpretation (though the two usually produce the same result)' (Bennion).

4. What if having taken a fully-informed (contextual) approach, the language is susceptible of only one meaning?

- 'It is a rule of law, sometimes call **the plain meaning rule**, that where, in relation to the facts of the instant case, the enactment under inquiry is grammatically capable of one meaning only, and on an informed interpretation of that enactment the interpretative criteria raise no real doubt as to whether that meaning is the one intended by the legislator, the legal meaning of the enactment corresponds to that meaning' (Bennion 2009).

Higgon v O'Dea **[1962]**

s 84 of the *Police Act 1892* (WA) made it an offence to:

> 'knowingly permit or suffer persons apparently under the age of sixteen years to enter and remain therein…'

Held: there was only one meaning (even though it lead to a result that was 'clearly absurd'):

> …where the language is clear and susceptible of only one meaning it is not permissible for the court in effect to legislate by refusing to accept the plain meaning of the words used by Parliament, and this is especially so in the present case where the only effective emendation is to drop the entire expression 'or knowingly permit or suffer persons apparently under the age of sixteen to enter and remain therein'…In the present case the words of s 84 as too intractable to permit of any alternative choice of meaning.

5. Step-by-Step Model for Interpreting Legislation

(1) Locate the relevant law

- 'Trawling for rules and canons of interpretation is not the correct starting point. The starting point should always be to look at the words, their context, and the purpose of the legislation' (Middleton 2016)

(2) Read the relevant statute carefully, analysing the elements and structure of key provisions.

- As the High Court says, it is necessary to give legislative provisions 'close attention' (*Muslimin v The Queen* [2010]).