

# **LAW1112 – PUBLIC LAW & STATUTORY INTERPRETATION**

## **COMPLETE LECTURE/READING NOTES**

Topic 1 – Foundational Concepts

Topic 2 – Relationships and Structures

Topic 3 – The Origins and Evolution of Australian Public Law

Topic 4 – Parliament

Topic 5 – The Executive

Topic 6 – The Courts and Judicial Power

Topic 8 – Human Rights and Public Law

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## **STATUTORY INTERPRETATION GUIDE**

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## **ESSAY QUESTION ANSWER GUIDE**

# Topic 1 – Foundational Concepts

## 1.1 WHAT IS PUBLIC LAW

- Public law is an umbrella concept that governs the relationship between the State and its citizens
  - administrative law
  - human rights
  - statutory construction
  - constitutional law
- It is the body of legal principles that constrain the exercise of public power
  - Parliament → make the law
  - Executive → carries out the law
  - Judiciary → interpret and apply the law
- Exercise of public power determines who and who cannot enter country, hold certain licences and permissions to mine or develop or operate businesses, how much we are taxed and on what basis, what can this money be spent on and how will the institutions that use this money (schools, public transport, hospitals) operate → enormous societal impact
- Underpinning values of freedom, equality and community
- Underpins almost every other legal discipline because its principles determine the scope of governments power to make, administer and adjudicate laws in every area (e.g. criminal law)

## Public Law v Private Law

- Private law regulates the legal relationships of individuals or private actors
  - Torts
  - Property
  - Contract
- Public power can be much more coercive than private power
  - public powers of imprisonment
  - laws about taxation where ordinary person are not empowered to take taxes
- Individuals are free to act until the law prohibits this → public power cannot be enjoyed inherently, it must be conferred by and exercised in accordance with the law

## 1.2 RULE OF LAW

- The rule of law is a foundational or fundamental concept that underpins public law
- Every person is subject to the law including the ruler
- Represents the antithesis of rule by men (or people)
- What distinguishes a healthy legal system from a despotic regime or anarchy
- It is a system in which public power is conferred and limited by law
- It is said that ‘the Australian Constitution is framed upon the assumption of the rule of law’
  - *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, 492 Gleeson CJ
- ...it may fairly be said that the rule of law forms an assumption.
  - *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1 at 193, Dixon J

## Thin Conception

- Typically focus on the procedures by which law is made and carried out and enforced rather than its substantive character
- Process and procedural
  - manner and form
  - clear and precise

# **GUIDE TO STATUTORY INTERPRETATION**

## **READ**

1. Navigate the statute.
2. Was the statute enacted by state or federal parliament?
3. What are the key/operative provisions?
4. Piece together the relevant provisions – how do they interact with each other?
5. Identify issues, i.e. the provisions / terms requiring interpretation.

## **INTERPRET**

To interpret a statute, consideration is given to ‘... the [legal] meaning that the legislature is taken to have intended them to have. ... the grammatical meaning of the provision ... The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute ... the canons of construction’ (*Project Blue Sky*). This must be done with reference to s 35 of the *Interpretation of Legislation Act 1984* (Vic) and s 32(1) of the *Charter of Human Rights and Responsibility Act 2006* (Vic).

### **ISSUE X**

#### **SECTION X**

##### **STEP 1 – Ordinary Natural Meaning of the Text**

The starting point of the process of statutory interpretation is the words on the page and statutes must be interpreted in a way that is consistent with the language used in that statute (per McHugh, Gummow, Kirby and Hayne JJ in *Project Blue Sky*).

“The duty of the court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have” (*Project Blue Sky*). First, the court will ask what the ordinary, natural meaning of the words and phrases is.

Same wording used throughout the statute carries the same meaning (*Project Blue Sky*).

Are any key words or phrases defined in the Act? (*Evans*)

Where “means” is used to define a term, the definition is exhaustive but where “includes” is used to define a term, the definition is inclusive (i.e. the words used in the Act apply as well as any ordinary meaning/s) (*Cohns Industries Pty Ltd v Deputy FCT*).

Are there any key words or phrases where the ordinary or natural meaning is ambiguous?

Are there any words or phrases where the technical meaning may differ from their ordinary meaning?

X would argue ...; Y would counter-argue ...; X might rebut ... conclude with which interpretation Court would consider best, and apply...

##### **STEP 2 – Context and Purpose of the Text**

The Act must be viewed as a whole (*Cooper Brooks*).

Courts must look at the text in light of many other factors and principles and it is not infrequent that the legal meaning of a statute is not the same as its ordinary, natural meaning (*Project Blue Sky*).

For this reason, words must be read in the light of the mischief which the statute was designed to overcome (*CIC Insurance Ltd*)...