

WEEK 5 - STAT INTERPRETATION

WHY IS STATUTORY INTERPRETATION IMPORTANT?

- 'The law of statutory interpretation has become the most *important single aspect of legal practice*. Significant areas of law are determined entirely by statute. No area of the law has escaped modification.' - Chief Justice Spigelman
- Constitutes law
- Parliament (legislative arm) holds the supreme law making power

WHY IS STATUTORY INTERPRETATION CHALLENGING?

- Words can have multiple meanings
- Written communication can be ambiguous
- Intended meaning may not have been conveyed by the legislation
- Drafting errors (may have missed or added a word)

INTERPRETING LEGISLATION

Two forms:

1. Modern Statutory Approach

- **Courts interpret legislation in accordance w/ rules made by Parliament**
- **Help discover & give effect to the legislature's intention in enacting the legislation**
- **Avoid results which weren't intended**
- *Acts Interpretation Act 1901 (Cth) / Interpretation of Legislation Act 1984 (Vic)*

2. Traditional Common Law Approach

HOW TO DETERMINE PURPOSE?

'In construing a statute it is not for a court to construct its own idea of a desirable policy, impute it to the legislature, and then characterise it as a statutory purpose.'

Intrinsic Materials:

- Words used in the statute itself
 - The preamble
 - Statement of purpose of objects clause
 - Headings and schedules

Extrinsic Materials

- Materials outside the statute
 - Seconding reading speeches
 - Law reform commission reports
 - International conventions

CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES 2006 (VIC)

Purpose

- To establish a framework for the protection & promotion of human rights in Victoria
- To ensure that human rights principles are a mandatory part of governmental decision making
- Facilitates protection & promotion of human rights in the development of new legislation
- Requires courts & tribunals to interpret Victorian statutes in a manner compatible w/ human rights as far as it is possible to do so

How do we ascertain if an entity is a public authority?

3 steps:

1. Does your entity come within s4(1)?
2. If yes, do you need to define 'function of a public nature'?
3. Consult s4(2) taking note of s4(3)

WEEK 5B - STAT INTERPRETATION CONT.

WILLIAMS ARTICLE

Why is it legally significant that there is a *Charter of human rights in Victoria*?

- To ensure government policy adheres to human rights
- First bill of rights to be enacted by the states
- To depart from the idea that parliament and government will 'just' use their good sense to protect human rights - need for it to prevent corruption

Why is there no Bill of Rights in Australia?

- When the Constitution in Australia was drafted, it didn't seem like there was any need as there was the idea that parliament and the government would just use their common sense to incorporate it when creating law
- Back when constitution was being drafted, the draft wanted parliament to discriminate on the basis of race so including Bill of Rights would be incompatible with that
- Australia inherited legal system from UK and during the time the Australian Constitution was being drafted, the UK didn't have that so Australia just followed

How was the structure for the *Charter* decided?

- Government set up a committee to look into it
- Wanted to have it based on international convention of human rights
- And preserve parliamentary sovereignty
- Extensive community consultation was made
- Put down in a draft and passed by government

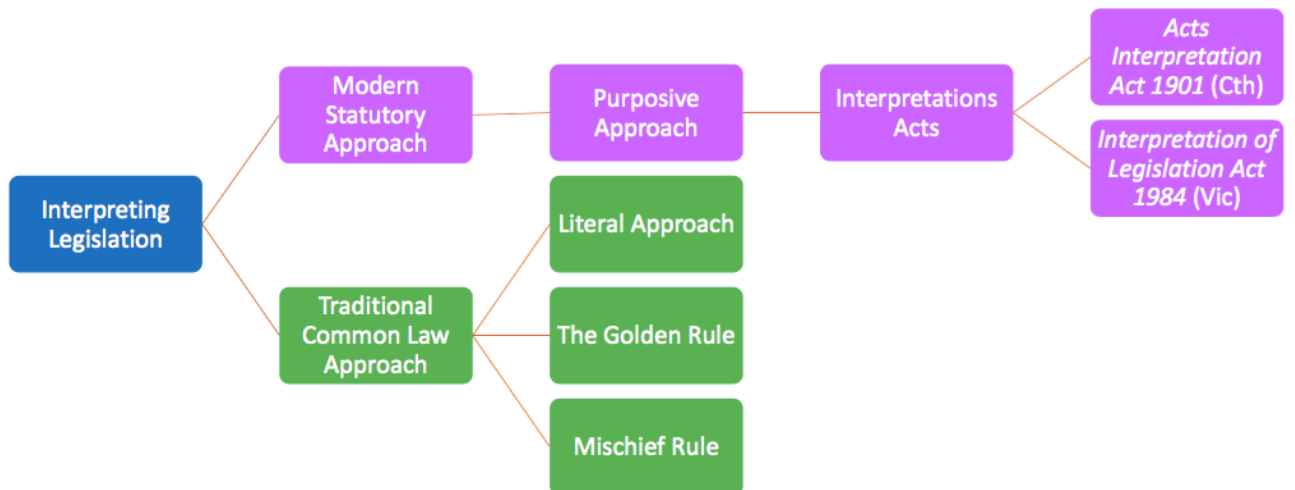
Why are the human rights set out in the *Charter* not 'absolute'?

- S7(2) of Charter
- To maintain parliamentary sovereignty

What obligations does the *Charter* impose on public authorities?

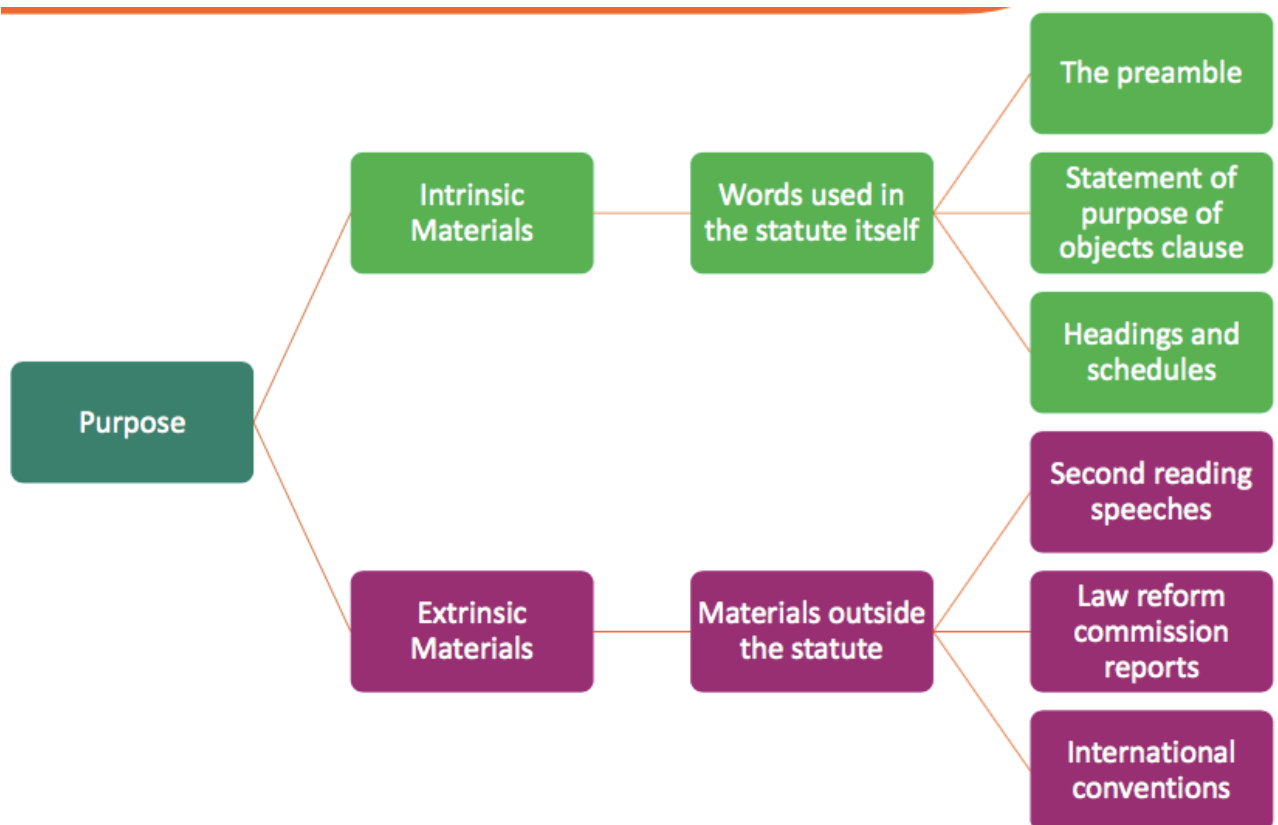
- S38(1) states it's unlawful for a public authority to act incompatibly w/ human right or fail to give proper consideration to relevant human right when making a decision

HOW DO COURTS INTERPRET LEGISLATION?



- Both Acts of the Modern Statutory Approach (Cth) and (Vic) state that to interpret legislation, courts must determine purpose of the Act

HOW TO DETERMINE PURPOSE?



INTRINSIC MATERIALS

- Must determine the jurisdiction
 - Commonwealth; or
 - State?
- This is because different rules apply

Acts Interpretation Act 1901 (Cth)

Part 5 - General interpretation rules

12 Every section a substantive enactment

- Every section of an Act shall have effect as a substantive enactment without introductory words

13 Material that is part of an Act

(1) All material from and including the first section of an Act to the end of:

- (a) if there are no Schedules to the Act - the last section of the Act; or
 - (b) if there are one or more Schedules to the Act - the last Schedule to the Act;
- Is part of the Act

(2) The following are also part of an Act:

- (a) the long title of the Act;
- (b) any Preamble to the Act;
- © the enacting words for the Act;
- (d) any heading to a Chapter, Part, Division or Subdivision appearing before the first section of the Act

Interpretation of Legislation Act 1984 (Vic)

These are the things included in the Act:

- Long title
- Objects clause (Purpose of legislation)
- Definition sections
- Headings of individual sections if Act was passed AFTER 2001 (Parts, Divisions, Sub-divisions)
- Schedules
- Preamble
- **But does NOT include notes in margins in the endnotes or footnotes**

EXTRINSIC MATERIAL

- There are a number of things that must be satisfied before you can use extrinsic materials to interpret law

Acts Interpretation Act 1901 (Cth)

15AB Use of extrinsic material in the interpretation of an Act

(1) Subject to subsection (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material:

- a. to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; **or**
- b. to determine the meaning of the provision when:
 - i. the provision is ambiguous or obscure; or

- ii. *the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable*

E.g. second reading speech, commission law reports, treaty or international agreement, any document declared by the Act to be relevant documents for the purposes of this section, etc.

Interpretation of Legislation Act 1984 (Vic)

Part IV - Provisions applicable to acts and subordinate instruments

35 Principles of and aids to interpretation

(b) consideration may be given to *any matter or document that is relevant* including but not limited to -

- i. *All indications provided by the Act or subordinate instrument as printed by authority, including punctuation;*
- ii. *Reports of proceedings in any House of the Parliament;*
- iii. *Explanatory memoranda or other documents laid before or otherwise presented to any House of the Parliament; and*
- iv. *Reports of Royal Commissions, Parliamentary Committees, Law Reform Commissioners and Commissions, Boards of Inquiry, Formal Reviews or other similar bodies*

E.g. Second reading speeches, Law Reform Commission reports, International Conventions (because the Charter is based on this), cases,

When interpreting:

- Intrinsic materials should be examined first

TRADITIONAL COMMON LAW APPROACHES

1. Literal Approach

- Words in a statute must be interpreted in the context in which they appear, according to their plain and ordinary meaning
- Use legal dictionary
- Problem in relation to this approach is that it assumes that a word (or phrase) has just one meaning
- A word may have no single, unambiguous, ordinary meaning

2. Golden Rule

- Allows to depart from ordinary meaning of words to avoid an absurd result or an inconsistency
- Often used when there's an obvious error or omission
- Exception to literal approach

3. Mischief Rule

- Developed to resolve ambiguities or inconsistencies arising from the application of the literal rule
- Only used if applying the literal approach resulted in some ambiguity or inconsistency
- Narrower application of the golden rule