

LAW1501: Foundations of Law

Full Exam Notes

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Coco v The Queen (1994) 179 CLR 427

Parties:

Applicant: Coco, **First Respondent:** The Queen

Law in question:

Invasion of Privacy Act 1971 (Qld)

Facts:

Carter J of the SCQLD approved the use of listening devices in connection with Police investigations concerning Coco. Pursuant to this investigation, the Police entered Coco's factory premises (Cosco Holdings) without his knowledge or consent and installed listening devices. As a result, the Police obtained information from the monitoring of conversations through the listening devices. Coco was then charged with the offence of offering a bribe to Commonwealth officers contrary to s 73(3) of the *Crimes Act 1914 (Cth)*. The information obtained through the listening devices was what was used to convict Coco. Coco wished to appeal this criminal charge on the basis that evidence obtained illegally should be inadmissible in a court of law.

Issues to be decided:

- i) Did the *Invasion of Privacy Act* permit a judge to authorise entry onto premises to install listening devices where that entry otherwise would have been unlawful?
- ii) Does s 43 of the 'Queensland Act' overall allow a judge to authorise members of the police force to enter premises in a way that would amount to a trespass? (If not - what is the impact on the authorisation to use listening devices on the premises?)
- iii) Could the information obtained by police through the listening devices be used against Coco to obtain a conviction?

Outcome and reasoning:

The appeal was allowed, the applicant's conviction quashed and a new trial ordered.

- i) If the legislature wishes to make it lawful for a person to enter private premises without the knowledge or consent of the owner, it can only do so by legislation which makes this unambiguously clear, either expressly or by necessary implication. (If Parliament want to allow trespass, legislation must be unambiguously clear).
- ii) It is not a necessary implication of legislation which authorises an invasion of privacy through the use of listening devices that it also authorises a trespass onto land for the purposes of installing listening devices. (It is not a necessary implication that legislation that authorises an invasion of privacy also authorises trespass onto land).

Legal Practitioners Conduct Board v Thomson [2009] SASC 149

Parties:

Applicant: Legal Practitioners Conduct Board, **First Respondent:** Thomson

Law in question:

Legal Practitioners Act 1981 (SA)

Facts:

The Legal Practitioners Conduct Board wants to have Ms Thomson's name removed from the roll of legal practitioners. She failed to communicate with five clients over several months, causing them stress and anxiety. She was also abusive to a client and his secretary, discourteous and aggressive to the Police and failed to cooperate with the Board's initial investigations. Thomson is asking to be supervised rather than entirely banned. She was involved in a car accident in 1988 which caused her to seek psychiatric support, she had a closed head injury (PTSD and depression) that may cause aggressive behaviour.

Issue to be decided:

Should Thomson be removed from the roll of legal practitioners due to professional misconduct?

Outcome and reasoning:

The practitioner does not have the characteristics that a person needs to have in order to practise law. The Court's finding was that Thomson's name should be removed from the role of legal practitioners, and so she was not allowed to practise law as of that point.

K-Generation v Liquor Licensing Court (2009) 237 CLR 401, 521:

If there is a need to refer to extrinsic materials to help interpret legislation, we can in South Australia because of this case. For Commonwealth legislation, use s 15AB of the *AIA* 1901 (Cth).

“If the Act were a Commonwealth statute, that Second Reading Speech could be considered pursuant to s 15AB of the Acts Interpretation Act 1901 (Cth). The South Australian Acts Interpretation Act does not contain any equivalent of s 15AB or the similar provisions of other States and Territories.”

“The question whether extrinsic materials may be considered in South Australia and in what circumstances they may be considered an aid to statutory interpretation is to be answered by the common law. The answer at common law is that such materials can be considered to determine, inter alia, the mischief to which an Act is directed”.

“At common law it is not necessary before entering upon a consideration of such material to surmount a threshold of ambiguity, obscurity or possible absurdity. Statutory interpretation requires the court to have regard to the context in which the words to be interpreted arise and also their statutory purpose. Context includes ‘the existing state of the law and the mischief, which, by legitimate means ... one may discern the statute was intended to remedy’.”

McBain v Victoria [2000] FCA 1009

Parties:

Applicant: McBain, **First Respondent:** State of Victoria, **Second Respondent:** The responsible minister for the State Act, **Third Respondent:** Medical board, **Fourth Respondent:** Ms Meldrum.

Law in question:

Infertility Treatment Act 1995 (Vic) and *Sex Discrimination Act* 1984 (Cth).