

#### 4. Consequences of interpretation

- Courts will consider the legal and practical consequences that will arise if they conclude that the legal meaning is the same as its ordinary, natural meaning

#### 5. Potential drafting errors

- No clear rules for determining when a court can fix a drafting error
- Whether justified to read provision as if it contained additional words or omitted words was a matter of degree - easy in the case of grammatical errors, but difficult where there is a significant gap in the statute (*Wentworth Securities*)

### Presumptions

#### Syntactical presumptions - structure of phrases and sentences

- **Ejusdem generis**: In lists that comprise several specific categories, followed by a general category, the general category should be interpreted as limited of the same kind as the specific categories
- **Noscitur a sociis**: meaning of an ambiguous word or phrase can be determined from its context
- **Expressio unius est exclusio alterius** - the express mention of one matter suggests that other matters are excluded
- **Generalia specialibus non derogant** - general words do not derogate from specific words (if two provisions are in conflict with each other, the more specific one will prevail)
- **Exclusion alterius** - two things are normally referred to together, but only one is mentioned - other one is excluded.

#### Legal presumptions - scope and effect

- Courts assume parliaments do not intend to pass laws that apply to people in other countries
  - Principle of comity: legislature of one sovereign state is presumed not to be intending to deal with persons or matters subject to the jurisdiction of another; other presumptions include...
- Legislation is constitutionally valid
- Legislation doesn't operate retrospectively - only has prospective effect
- Mens rea (intention to commit criminal act) is an ingredient of every criminal effect
  - *Mens rea* is read into offences which do not mention it in accordance with the principle that penal provisions should be read in the accused's favour where there is ambiguity (*He Kaw The*)
- Legislation doesn't violate international law nor common law rights
  - **Principle of legality**: courts presume parliament did not intend to abrogate fundamental common law rights - this can evolve with time
    - The presumption of legality states that parliament does not intend to restrict fundamental common law rights unless it manifests its intention to do so with 'unmistakable and unambiguous words' (*Coco v The Queen*), or with irresistible clearness (*X7*)
    - be read narrowly to the extent interpretively possible, to protect the right as much as possible (*Lacey v AG*; *Evans v NSW*)
    - The court cannot rewrite the statute, but should strive to read the section in a way that protects the rights to the greatest extent possible (*Momsilovic*)
  - Restriction of freedom of speech is a fundamental human right (*Evans v NSW*)
  - Freedom of speech - which is a fundamental common law right (reference could easily be made to the *Meagher* article and *Evans v NSW*, both emphasized in class). Parliament

can only abrogate or suspend fundamental freedoms through express language or necessary implication (*Ex parte Simms*); by unmistakable and unambiguous words (*Coco v The Queen*); with irresistible clearness (X7).

- Even if parliament has expressed its intention to curtail a fundamental freedom or right, courts still should adopt an interpretation that protects the fundamental freedom or right to the greatest extent interpretively possible. This point is made in *Evans v NSW*, citing *Potter v Minahan*, in which the court talks about 'constructional choices' and selecting the construction that does not encroach upon common law rights and freedoms.
- the broad interpretations given to words in *Evans v NSW* to protect as much speech as possible
  - Rebutting: difficult as unlike most presumptions (that only apply in areas of ambiguity), the presumption not to abrogate fundamental rights is said to apply in the absence of 'irresistible clearness' or 'unmistakable and unambiguous language'
- Legislation doesn't restrict or deny access to the courts or procedural fairness
- Legislation doesn't alienate property without compensation or abrogate legal professional privilege
- separation of powers requires judges to give effect to legislation as written; not to second-guess the legislature (citing the High Court in *Taylor v Owners*)

Rule	Explanation	Authority
Ordinary meaning rules	Where a word or phrase is undefined, courts should primarily use the 'ordinary and natural' or 'grammatical' meaning	<i>Alcan; Lacey</i>
Golden rule	When literal rule causes absurdity or inconsistency with rest of legislation	<i>Gary v Pearson</i>
Mischief rule	Where ambiguous, court looks to mischief in legislation to find mischief to promote purpose	<i>Heydon's case</i>
Purposive approach	Interpret legislation to best achieve purpose – used when literal reading is insufficient (Cooper Brookes) <ul style="list-style-type: none"> <li>• Cannot substitute anything said in extrinsics for actual words of the statute (Basten J, dissent in <i>Taylor</i>; supported by VCB)</li> </ul>	<i>AIA s15AA; Maritime Services; Project Blue Sky; CIC Insurance</i>
Birmingham rule	Reading in missing words – use of purposive (must be certain/satisfied)	<i>Birmingham; Wilson</i>
Ordinary words	Given ordinary meaning; trade meaning may be taken into account if concerning	<i>Reid; Herbert</i>