**Statutory interpretation**

- **Difficult** because the written word is an imprecise means of communication
- **Important** because legislation prevails over case law (except where parliament has no power to make law, or has not complied with proper process for making law)
- Legislation a central role: 50% of cases involve courts interpreting legislation, and a further 25% applying legislation whose meaning is not in dispute
- Courts identify and resolve ambiguity in statutes

**Literal approach**

- Courts should work out what the words mean in their natural and ordinary sense and apply that
- Can consider context but not overall purpose or the practical outcome of applying the ordinary meaning of words
- Ordinary meaning is the dictionary meaning: *State Chamber of Commerce and Industry v Commonwealth* (1987)
- Use the current meaning: *De Garis v Neville Jeffress Pidler* (1990); *Chappell v Associated Radio of Aust* (1925); *Lake Macquarie Shire Council v Aberdare County Council* (1970)
- Sometimes courts have applied the legal meaning: *Fisher v Bell* (1961); or technical meaning: *Herbert Adams P/L v FCT* (1932)

**Golden rule**

- Use the literal approach unless it leads to some absurdity or is inconsistent with the statute as a whole
- If so, can slightly amend the wording to remove the absurdity but no further
- Can be seen as a more common sense version of the literal rule

**Mischief rule**

- Also known as purposive approach – looks at what Parliament intended
- Heydon’s case:
  - what was the law before the act?
  - what mischief or defect did the law not cover?
  - what remedy did Parliament establish in the act to remedy the defect?
  - how can the courts interpret the legislation to remedy the defect?

**Modern approach**

- Interpretation legislation – parliament tells courts how to interpret their legislation
- s15AA Acts Interpretation Act 1901 (Cth) (‘AIA’) and s33 Interpretation Act 1987 (NSW) (‘IA’): prefer an interpretation that promotes the purpose of the Act
- Common law approaches (literal, golden and mischief rules) of secondary importance
• Modern statutory approach not the same as the mischief rule as can refer to purpose any time, not just when ambiguity or absurdity
• Courts interpret but don’t rewrite statutes (still have to apply words that are there): Mills v Meeking (1990)
• Find the purpose from the act itself (objects clause) or if not, extrinsic materials
• If conflict between ordinary meaning and purpose, purpose must prevail. Also, can’t ignore words used: Kingston v Keprose Pty Ltd (1987)
• Can ‘strain’ ordinary meaning though: Newcastle City Council v GIO General Limited (1997)

Use of extrinsic materials

• s15AB AIA (Cth) and s34 of IA (NSW)
• Use of extrinsic materials limited to:
  1. Confirm ordinary meaning of the word; or
  2. Find out what parliament intended, if an expression is ambiguous or obscure or the ordinary meaning is manifestly absurd or unreasonable
• Re Australian Federation of Construction Contractors; Ex Parte Billing (1986)
• Can’t use extrinsic materials to reword the statute though: Re Bolton; Ex Parte Beane (1987)
• Don’t have to have recourse to extrinsic materials at all
• s15AB(2) – extrinsic materials include treaties, reports, second reading speeches, explanatory memoranda

Statutory interpretation problem solving method

• Jurisdiction
• Commencement – s5 of Acts Interpretation Act (Cth) and s23 of Interpretation Act (NSW)
• Examine relevant sections and apply rules to interpret them
• If you need to refer to extrinsic materials see s15AB (Cth) and s34 (NSW)
• Does that interpretation promote the purpose [s33 NSW Act, s15AA Cth Act]
• Conclusion