

## Law 1111: Exam Key Concepts

### Purposive and literal approach;

1. Purposive approach = words in statute interpreted to promote purpose.
2. Literal approach = words interpreted in context in which they appear, according to their plain and ordinary meaning.

### Purposive approach (mischief rule);

- Mischief rule = where the words of a statute were ambiguous, a court could look at the mischief or defect that the legislation sought to remedy.
- The court could then adopt an interpretation to suppress the mischief and advance the remedy.
- The purpose underlying legislation could not be looked at to create doubt in otherwise clear words (literal approach).
- MR: for statutes to be correctly interpreted;
  1. What was the common law before the making of the Act?
  2. What was the mischief and defect for which the common law did not provide?
  3. What remedy the parliament hath resolved and appointed to cure the disease of the Commonwealth.
  4. The true reason of the remedy → suppress mischief and advance remedy → should be pro bono publico (benefit of the public)

### Purposive approach (golden rule);

- Golden rule = allowing the literal meaning of the legislation to be overlooked in cases where the meaning caused an absurd result, or one that was inconsistent with the rest of the legislation.
- Words can be read in for purposive interpretation e.g supplying omitted words/correcting incorrect usage of words.
- Construction should not fill in gaps of legislation, make an insertion which is too big or too variable in language.

### Reading words into an Act (3 conditions);

1. The court must know the mischief with which the Act was dealing.
2. The court must be satisfied that by inadvertence Parliament has overlooked an eventuality which must be dealt with if the purpose of the Act is to be achieved.
3. The court must be able to state with certainty what words Parliament would have used to overcome the omission if its attention had been drawn to the defect.

### Latin maxims;

- *Ejusdem generis* (of the same kind) → where general words follow a list of specific items they should be read as applying to other items similar to those specifically mentioned.
- ^ Only applies if a genus of words has been established.
- *Noscitur a sociis* (a word is known by its associates) → meaning of word can be derived by context.
- ^ Rule can be used to establish if words are of a similar width/narrowness.
- *Reddendo singula singulis* (by rendering each his own) → where a text exhibits the pattern of "A and B are Y and Z" = suggests that A should be matched with Y and B should be matched with Z.
- *Expressio unius est exclusio alterius* (express mention of something to the exclusion of others) → if two things are usually referred to together and only one is mentioned the other should be excluded.
- ^ Note: this latin maxim should not be used to contrast the purpose.

### Extrinsic materials;

- Courts may refer to extrinsic (external) evidence to assist in ascertaining legislative purpose where there is ambiguity.
- Note: courts are not bound by extrinsic materials.

- s35b of the Interpretation of Legislation Act outlines that consideration may be given to any matter or document that is relevant including but not limited to
  - ii) Reports of proceedings in any other house of the parliament.
  - iii) Explanatory memoranda or other documents laid before or otherwise presented to any house of parliament.
  - iv) Reports of royal commissions, parliamentary committees, law reform commissioners and commissions, boards of inquiry or other similar bodies.
- s15AB(2) of the Acts Interpretation Act (Cth) outlines a list of appropriate extrinsic materials
  - a) All matters not forming the act set out in the document containing the text of the Act as printed by the Government Printer.
  - b) Any relevant report of a royal commission, law reform commission, committee of inquiry etc that was laid before either house of parliament.
  - c) Any relevant report of a committee of the parliament or either house of parliament that was presented to parliament or house of parliament.
  - d) Any treaty or other international agreement referred to in act.
  - e) Explanatory memorandum related to the bill or relevant documents laid out before provision.
  - f) The speech made to a house of parliament by a minister containing the provision to be read a second time in that house.
  - g) Any document that is declared by the act to be relevant.
  - h) Any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in parliament.

### Interpretation of Legislation Act (Vic) and Acts Interpretation Act (Cth)

#### Interpretation of Legislation Act (Vic)

- 35A = construction promotion purpose of Act whether it is implied/express preferred to construction not promoting that purpose.
- 45 = construction of may and shall → 1) 'may' = word shall be construed as meaning that the power so conferred may be exercised or not at discretion, optional.
- ^ 2) Word shall be construed as meaning that the power so conferred must be exercised, compulsory.

#### Acts Interpretation Act (Cth)

- 15AA = interpretation best achieving Act's purpose or object should be prioritised even if it is not expressly stated.

### Law 1111: Week 7 (statutory interpretation 2)

#### Videos

#### *Latin maxims in statutory interpretation*

- Eiusdem generis
- Noscitur a sociis
- Reddendo singula singulis
- Expressio unius est exclusio alterius

#### Eiusdem generis;

- Meaning: "Of the same kind".

- Where general words follow a list of specific items, the general words are read as applying to other items akin to those specifically enumerated.

- If a legislation uses both specific and general words, gw should be limited to things of the same kind as the particular words, specific words = category.

- Courts = intention of parliament general words be read down into the category.

-Wills Act: "A Will may be revoked by burning, tearing or otherwise destroying it" Does writing "cancelled" on it or scribbling on it suffice?

- Litter Act 1964: "Litter includes bottles, tins, cartons, packages, paper, glass, food or other refuse or rubbish." Is motor oil thus excluded? → did not establish category → motor oil = other refuse/rubbish.
- In *Malouf v Manly Council*, 2002, does an outdoor eating area fall within the definition of "restaurants, cafeterias, coffee lounges and other eating places"? → places where people sit down and consume food → outdoor eating areas = other eating places.

*Noscitur a sociis*;

- Meaning: "A word is known by its associates → meaning of word must be derived by context."
- "...if a person shall unlawfully and maliciously stab, cut or wound" (*R v Ann Harris*, 1936) → Harris bit off nose → wound = stab, cut = had to use an instrument.
- What about biting?
- Preconditions of EG = prima facie applied to restrict meaning of general word, n/a EG = NAS can be used to establish if words are a similar width/narrowness → restrict or expand.

*Reddendo singula singulis*;

- Meaning: "By rendering each his own."
- Where a text exhibits the pattern "A and B are Y and Z", reddendo suggests that A should be matched with Y and B should be matched with Z, achieving a sort of symmetry in the text.
- Reddendo = author intended distributed relationship between 2 juxtaposed ideas.

Example:

- "Any person who buys any marijuana or cocaine without a chemist permit or a doctor's certificate commits an offence".
- Here: Marijuana = chemist permit and cocaine = doctor's certificate.

*Expressio unius est exclusio alterius*

- Meaning: "The express mention of one thing is to the exclusion of others."
- If 2 things referred to together, only 1 mentioned the other should be excluded.
- Example:
- *Salami v McKellar* (1977): The court was asked to consider two contrasting deportation provisions in the Migration Act, 1958.
- The first provision – in respect of "prohibited immigrants" - made provision for a court hearing prior to deportation, while the corresponding provision for "aliens" was silent as to this.
- The court concluded, by use of the maxim, that "aliens" were not entitled to a hearing prior to deportation.
- HC caution with this latin maxim → should not be used to contrast the purpose.

### *Extrinsic materials in statutory interpretation*

Extrinsic materials;

- Commonwealth Acts Interpretation Act, 1901- s15AB.
- ILA 1984-s35b.
- Extrinsic materials help us to interpret the words in an act!

Acts Interpretation Act 1901- Sect 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:

- 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
- to determine the meaning of the provision when:
  - 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.**

Acts Interpretation Act 1901- Sect 15AB- #2

3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the **weight** to be given to any such material, regard shall be had, in addition to any other relevant matters, to:

(a) the desirability of persons being able to rely on 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; and

(b) **the need to avoid prolonging legal or other proceedings** without compensating advantage.

- s1b(i or ii) must be satisfied to use external materials.

- ReMark case, p64 = justice Brown refers to RePatrick and Australian Journal of Human Acts → define parent of act because definition is obscure and difficult to understand.

Interpretation of Legislation Act 1984- Sect 35 (Victoria not Commonwealth)

Principles of and aids to interpretation

35. In the interpretation of a provision of an Act or subordinate instrument (DL)-

(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 (intrinsic);

(ii) extrinsic: 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 or other similar bodies.

- No limitations of when accessing external materials, cf to Commonwealth

*Finding the meaning of words and phrases (FOL Hyams 11.43-11.45, 11.68-11.71)*

- Dictionaries may be useful in considering the range of possible meanings of a word.

- ^ Not used for the conclusive meaning of a word → used by the court to confirm meaning justified in context of legislation as a whole.

- **Courts may consider previous interpretations of similar words in other statutes → main legislation is based on earlier legislation, number of pieces of legislation deal with same/similar subject matter.**

- Earlier interpretations = persuasive and useful → most important considerations = context of words and purpose of legislation in question.

- **Field v Gent = reluctance to use ejusdem generis rule unless 'genus' established → different interpretations can be adopted by different judges to the same words.**

- ^ 10 yr old appellant J threw petrol from cup onto coal, T did not know J's intentions → no consent → explosion occurred = T sustained severe burns.

- Judge held J committed offence under s51 of Summary Offences Act 1953 (SA) → thrown a 'missile' without reasonable cause.

- On appeal SC interpreted 'missile' = 'a person who discharges a firearm or throws a stone or other missile without reasonable cause and so as to injure, annoy or frighten, or be likely to injure, annoy or frighten any person, or so as to damage, or be likely to damage any property is guilty of an offence'.

- Contention = x missile, ejusdem generis rule → genus is a solid object = x petrol → rejected by judge.

- Judge = x genus is established and rule may not be employed to limit meaning of other missile.

- Missile = object capable of being thrown, adapted to be discharged from the hand/machine/engine.

- ^ Mulligan = nothing in s51 that contradicts missile from original meaning.

- Debelle = J not guilty under s51 → missile is capable of being thrown, hurled or short + argues that genus is created → petrol is a liquid not an object → cannot be grasped.

- Statute one of many dealing with same/similar subject matter → refer to the other statutes while interpreting statute in person → contextual principle of interpretation.