

Step 1 - Preliminaries

Jurisdiction

- 'The Acts Interpretation Act 1901 (Cth) (AIA) applies because X Act is Cth Legislation'

Commencement

- 'S 2 of the **Act** states that it comes into operation (commencement) on the day it receives royal assent. Date of Royal Assent is 13th May 1971 - s 6 AIA. Therefore, the Act is legally operative from the start of 13th May 1971. – s 3 AIA.'

Amendments or repeals CHANGE THIS BASED NEVE GOD-LIKE NOTES

- If the Act has any amendments or repeals, have the commenced – look at s 3 AIA
- If the amendment has NOT commenced? → presumption against retrospectivity
 - It is presumed that legislation DOES NOT operate retrospectively UNLESS CLEAR words to the contrary are used – **Stephens**
 - This presumption applies to laws affecting past rights / liberties, AND procedure – **Stephens**
- As this [is / is not] a [penal provision], it [is / is not] affecting past rights and liberties.
- The presumption [likely / unlikely] applies because clear words to the contrary [have / have not] been used
- WARNING → presumptions can be displaced by statutory language

Territoriality

- Presumption that the Act has no extra-territorial effect outside of it's - **Jumbunna**
 - → but this presumption is likely not engaged / needed

Drafting Errors

- 'There is a drafting error in the explanatory note following / within s 15(1A). While s 15(1A) imposes 'Strict Liability', the explanatory note incorrectly refers the reader to s 6.2 of the Criminal Code 1995 (Cth), which contains the definition / provision for 'Absolute Liability'. This is an obvious and simple mistake, as all other explanatory references regarding 'Strict Liability' within the Act correctly refer the reader to s 6.1 of the Criminal Code. Thus, this can simply be read as if s 15(1A) correctly refers to s 6.1 of the Criminal Code – **Taylor v Owners-Strata Plan**'

Step 2 – Word/s in Doubt

Alternative Constructions

- '[X] is the word in doubt as it appears to have two alternative constructions. The narrow construction suggests [....]. The broad construction suggests [....].'
- "The fundamental object of legislative interpretation in determining the correct construction is to ascertain the 'legislative intention' of the statute." – **Llyods Underwriters**. The starting point is the text of the statute whilst having regard to its context and purpose – **SZTAL**. From this, we will arrive at the construction that the legislature intended [X] to mean – **Project Blue Sky**."
- 'The preferable construction is the construction that, on balance, the interpretative factors favour or that command the greater weight overall' - **Sovar**

Step 3 – Text

- ‘The task of ascertaining the meaning of [X] must begin with consideration of the text itself’ – **Federal Commissioner of Taxation**.
- If the word is not defined or has not taken on a technical meaning → proceed to presumption about ordinary meaning
- [X] is not defined within the Act itself nor the AIA nor has it taken on a technical meaning. Thus, first we can look to the meaning that [X] would normally convey – **Wicks**. We start with the ordinary (literal) and grammatical meaning of the word – **AEU**. The comm law approves the use of a reputable dictionary – **Polo/Lauren Co**. The ordinary mean of [X] is [...] **[look at dictionary definition of X]**
- ‘However, a dictionary must be used with caution, as it is no substitutive for the interpretive task. This is because the dictionary definition is isolated with no consideration of the context surrounding the word. It is not telling how the word is to be used within the context of the particular statute and its given purpose’ – **House of Peace** – Ordinary meaning of the word IS DEPENDANT on the context....[*lead into Context*]

Key words

- ‘may’ = discretionary
- ‘shall’ = obligatory
- ‘must’ = obligatory
- ‘or’ = disjunctive, i.e. not implying similarity unless ‘similar’ is used
- ‘and’ = conjunctive

Key Principles

- Court strives to give each word meaning - **Project Blue Sky; Saeed**
- Words are assumed to be used consistently across an Act – **Franzon; Kline**
- Words are ‘always speaking’ - **Arbury**
 - Connotation (fixed essential attributes) determines the scope of denotation (things falling within these attributes that may change over time) - **Lake Macquarie**

Step 4 – Intrinsic Context

- ‘Context should be considered in its ‘widest sense’ from the start of the interpretation process – **CIC; SZTAL**. Whilst Intrinsic context and text are notionally separate, in the interpretative task they merge – **SAS Trustee v Miles**. The meaning of the provision must be determined “by reference to the language of the instrument viewed as a whole – **CIC**.’ To do this, we must first look to provision, then surrounding provisions, and then consider the rest of the Act – **A2; Bluesky**
- Look toward (1) components (2) syntactical presumptions, (3) key common law presumptions (including principle of legality), (4) genres

(1) Components of an Act that can be considered as context – AIA

s 13(1) – all material from the first section of the Act to the end of the Schedules is part of the Act

- s 13(2)(a) – long title
- s 13(2)(b) – preambles
- s 13(2)(c) – enacting words
- s 13(2)(d) – headings to chapters, parts, divisions, subdivisions → CAN USE HEADINGS TO INFER PURPOSE
- s 15AD – examples – “... the example may extend the operation of the provision”
- Location of the provision within the Act may be significant - **Walton v ACN**

(2) Syntactical presumptions

➤ Inclusive vs exclusive nature of definitions

- 'Means' = exclusive
- 'Includes' = inclusive
- If **X** is in an exhaustive definition then not open to look at 'ordinary meaning' eg dictionary - **Agfa**

➤ 'Nositur a sociis'

- Meaning of a word or phrase is derived from the immediately surrounding words – **WZAPN**

➤ 'Ejusdem generis'

- The meaning of general matters are constrained by reference to specific matters – **Regos**
- E.g. 'a railway, road, pipeline or other facility' → common genus = 'other facility' must be form of transport

➤ 'Expressio unius est exclusion alterius'

- An express reference to one matter indicates that other matters are excluded

➤ 'Generalia specialibus non derogant'

- If there is an inconsistency or conflict between provisions within an Act / Part, the general provision should be subordinated to the specific provision – **AEU**;
- As Parliament does not intend to make provisions inconsistent, the court strives to interpret provisions to 'maintain unity of the Act' - **Project Blue Sky**

(3) Common law presumptions

➤ Legislation does not operate retrospectively unless clear words that it indicates otherwise – **Stephens**

➤ Legislation is within Constitutional powers – **AG (Vic) v Commonwealth; s 15A AIA**

- Courts will interpret statutory language so as not to exceed such power unless a contrary intention is clear.

➤ Legislation does not bind the Crown (although this has lessened in time) – **Tomaras**

➤ Legislation does not take jurisdiction away from the courts - **Magrath**

➤ Beneficial legislation is to be construed beneficially - **Tjungarrayi v WA**

- Rest of the Act may indicate otherwise – **Victims Comp v Brown**

ALWAYS SPEAKING PRINCIPLE

- Presumption that a statute's language to be applied to new circumstances and developments that were not known when it was enacted
- If things not known or understood at the time an Act came into force fall, on a fair construction, within its words, those things should be held to be included – **Aubrey v The Queen**
- The higher the level of generality of meaning, the greater the possibility of applying the 'always speaking' approach – **Luppino**
- 'Always speaking' approach may have an updating effect, but it does not update meaning
 - The connotation or essential meaning of a word does not change – **Aubrey**
- Be more cautious when applying 'always speaking' provisions in criminal statutes - **R v A2**

Step 1 – Determine the connotation (core essential meaning) – **Chubb v Morre**

- What are the essential attributes of the word / **X**?
- Fixed at enactment