LEGAL INSTITUTIONS Case Summaries

Pepper Finance Corporation Ltd v Williams [2008] NSWSC 4

- Foreclosure of a mortgage over Mrs Williams' house by Pepper Finance. Mrs Williams sought remedies.
- Mrs Williams used various irrelevant pieces of legislation plus irrelevant / unrelated literature to attempt to support her arguments.

DERIVATION OF LAWS FROM ENGLAND

Cooper v Stuart (1889)

- Lord Watson: difference between colonies acquired by cession or conquest and unoccupied territories… NSW is the latter class
- Blackstone Commentaries "Such colonies carry with them only so much of the English law as is applicable to their new situation and the condition of an infant colony."

State Government Insurance Commission v Trigwell (1979) 142 CLR 617

- Motor car collision/accident, sheep on highway = negligence?; action for damages for personal injuries
- Refferd to Searle v Wallbank; Does Searle v Wallbank form part of SA rules?
- Rule received at settlement in 1836?
- Conditions aside, no equivalent law at the time of settlement
- Gibbs J: refer to Blackstone commentaries re laws that apply at settlement
- Therefore, Searle v Wallbank is part of SA law
- Ratio: received law becomes part of law at settlement, therefore Searle v Wallbank applies. Therefore sheep owner not negligent / liable

Searle v Wallbank

- Owner of land adjacent to highway is under no obligation to users of highway, to keep his animals from straying onto it
- "radical change in the relevant conditions"…"House of Lords should have held that the rule was no longer appropriate to modern circumstances…"
- BUT court is not legislature or law reform agency. Court must apply law to the facts as found.

Mabo v Queensland (No 2) (1992) 175 CLR 617

- Radical Title – absolute ownership by king
- Did Murray Islands first people retain ownership of land or was this ceded?
- Murray Islands never fought any one for land >> not ceded
- Terra nullius does not apply because land was inhabited
- BUT extinction of Native Title when white people took possession of land effectively

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- THEREFORE Crown owns land subject to the burden of native title claim; Crown can't use land inconsistent with native title.
- HCA did not abolish Crown land title system in Aus because it would "destroy legal framework" for land title/ownership; "too late to contemplate now"
- Led to Native Title legislation

STATUTORY INTERPRETATION CASES

Amalgamated Society of Engineers v Adelaide Steamship (1920) 28 CLR 129 >> Engineers Case

- Case law supporting Literal Approach
- Higgins J at 161-2: "The fundamental rule of interpretation … is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole."

Mills v Meeking (1990) 169 CLR 214

- Case law supporting Purposive Approach
- Case dealt with Vic legislation and refers to Vic equivalent of s15AA of Acts Interpretations Act 1901 (Cth) which is s35 of Interpretation of Legislation Act 1984 (Vic)
- Ambiguity or inconsistency not required; you only need to have more than one construction >> s 15AA of AIA 1901 (Cth)
- Dawson J at 19: "The mischief or purpose rule required an ambiguity or inconsistency before a court could have regard to purpose... The approach required by s35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction… However, if the literal meaning of a provision is to be modified by reference to the purposes of the Act, the modification must be precisely identifiable as that which is necessary to effectuate those purposes and it must be consistent with the wording otherwise adopted by the draftsman. Section 35 requires a court to construe an Act, not to rewrite it, in the light of its purposes."

State Chamber of Commerce and Industry v Commonwealth (1987) 163 CLR 329

- Case law on use of Macquarie Dictionary

Weitman v Katies Ltd (1977) 29 FLR 336

- Case law on use of Oxford Dictionary

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355

- Case law on statutory / legal construction, reconciliation of conflicting provisions, intention of legislature, legal meaning / interpretation; literal approach
- McHugh, Gummow, Kirby and Hayne JJ at 384: "… the duty of the court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond

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with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning."

- All words are assumed to carry meaning
- Ibid at 71, in reference to Commonwealth v Baume [1905]: "…a court construing a statutory provision must strive to give meaning to every word of the provision."
- Context needs to be considered in the first instance, not when the ambiguity arises later

Grey v Pearson (1857) 6HL Cas 61

- Case law on Golden Rule
- Lord Wensleydale at 106: "…in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther."

Adler v George [1964] 2 QB 7

- Example of application of Golden Rule
- "in the vicinity of any prohibited place" to mean "in or in the vicinity of any prohibited place"

Heydon's Case [1584] EWHC Exch J36, 76 ER 637, Pasch 26 Eliz, plea began 20 Eliz Rot 140

- Sets out Mischief Rule
- Determine the purpose of the Act by asking the following 4 questions:
    - "1st. What was the common law before the making of the Act.
    - 2nd. What was the mischief and defect for which the common law did not provide.
    - 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.
    - And, 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

R v Ann Harris (1836) 7C&P 446

- Case law for the concept of 'noscitur a sociis' – it is known by its associates

Quazi v Quazi [1980] AC 744

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