

Statutory Interpretation cases

General Interpretive Methods

CITATION	Victims Compensation Fund Corporation v Brown (2002) 54 NSWLR 668; [2003] HCA 54.	
Parties		Appellant(s)
		Respondent (s)
Court	High Court of Australia	
Decision Date	30 September 2003	
Judges	McHugh ACJ, Gummow, Kirby, Hayne, Heydon JJ	

People and events

Who are the people involved?	The first and second respondents, the first being the primary victim of the attack, and the second being a secondary victim.
What are the facts?	<p>The first respondent answered a knock at his front door and was violently attacked. He was punched, kicked and stabbed in the stomach area with a broken bottle. The second respondent witnessed the attack.</p> <p>The first and second respondents claimed compensation under the Victims Support and Rehabilitation act 1996 (NSW). The first respondent claimed as a primary victim under s 7(1) of the Act, for physical injuries as well as for 'shock'.</p> <p>The secondary victim claimed under s 8(1) of the Act, for 'shock'. Under cl 5 (a) of the Act, injury for shock was only compensable if 'the symptoms and disability persist for more than 6 weeks.'</p> <p>The court had to decide whether the word 'and' was conjunctive 'and' or disjunctive 'or'.</p>
What went wrong?	
Why is there a dispute?	

Procedural history

At first instance	Name of court	Victims Compensation Tribunal
	Who won?	Victims Compensation Fund Corporation
	Why?	District Court judge found that 'and' was disjunctive 'or'; therefore, the claimants were entitled to compensation under the Victims Support and Rehabilitation Act 1996.
First appeal	Who appealed?	Victims Compensation Fund Corporation
	Was the appeal upheld?	No
	Why/why not?	The NSWCA (Mason P, McClellan J) found that ch 5 was satisfied if either systems or disability related to shock persisted for the minimum period; or if both did so; or one did so for part of the period and the other did so for the remainder. Therefore, 'and' took the disjunctive meaning to mean 'or'.

Decision/holding for each judgment

[HCA: Heydon J \(McHugh ACJ, Gummow, Kirby, Hayne J agreeing\)](#)

Decision	Appeal allowed; The conjunctive meaning of the word 'and' is preferable in the expression 'symptoms and disability' (agreeing with Spigelman CJ's dissent in the NSWCA).
Reasons for decision	<ul style="list-style-type: none"> - <i>Ordinary meaning</i> <ul style="list-style-type: none"> o The ordinary meaning of 'and' is conjunctive, and there is no occasion to depart from the ordinary meaning here. - <i>Textual aspects of the Act</i> <ul style="list-style-type: none"> o There is no convincing textual reason emerging from the rest of the Act for departing from the ordinary meaning. o [Referring to the Table relating to the relevant injury]: In the last line, the use of the word 'and' is capable of founding an argument that in the previous lines, symptoms without disability would suffice. But to interpret 'and' as having a conjunctive meaning is not inconsistent with the same reading in cl5. If and were to have a disjunctive meaning, it would be necessary to depart from the normal meaning of 'and' by reading 'and' as 'or' at that point as well as in cl5(a). o There are strong indications that the legislation employs 'or' when it is desired to convey a disjunctive meaning, such as in cl 18. Therefore, it may be inferred that when the legislative uses 'and', it wishes to convey a conjunctive meaning. o [Quoting Spigelman CJ]: Every reference to an injury in the Table is... either a physical symptom alone or a physical symptom together with a disability. There is no reference in the schedule to recovery for either symptoms or disability.. but both a symptom and a disability.' - <i>Background to the legislation</i> <ul style="list-style-type: none"> o There is no reason to be found in the background to the Act or in the Second Reading Speech for departing from the ordinary meaning of the word 'and' in cl5(a). - <i>The 1996 legislation</i> <ul style="list-style-type: none"> o [Referring to the Second Reading Speech]: The purpose of the compensation scheme is to ensure that the genuine needs of victims are met at reasonable cost to the community, to speed the payment of compensation to victims. Common law principles for assessing compensation should not be applied. Victims of crime and the community have a right to expect that victims compensation awards be consistent and equitable. The Minister proposing the Bill said that 'compensation is directed toward those victims suffering the most serious injuries.' o However, these remarks shed no real light on cl5. o It can be said that the Act as a whole, and its background, point more to a conjunctive construction than a disjunctive construction. The conjunctive construction does not have the effect of limiting eligibility to recover compensation for claims which are relevantly less significant than other claims. Thus, unless particular symptoms are disabilities in themselves, there is no eligibility. o It is not a decisive argument against the conjunctive construction that it is possible to point to various outcomes of it which might be though irrational, anomalous or harsh. <ul style="list-style-type: none"> ▪ The introduction of caps and limitations upon recovery... has been a relatively common feature of Australian compensation legislation in recent times. o Also looked at the dictionary definition of 'injury' as meaning 'actual physical bodily harm, nervous shock, mental illness or disorder.' - <i>Reasoning of the majority of the COA</i> <ul style="list-style-type: none"> o The principal argument in favour of the disjunctive construction was that the legislation had remedial and beneficial objectives, one of which was 'to give effect to a statutory scheme of compensation for victims of crimes of violence.' The majority considered that the legislation should be construed by taking 'a liberal approach'. o Since it would only be a rare case in which symptoms and disabilities did not coexist, there was no reason to construe cl5(a) as creating a mandatory cumulative requirement' because this would not promise the broad and beneficial legislative purpose'. It was also said that "symptoms and disability" was a "composite or portmanteau phrase in its context" - <i>'Remedial and beneficial objectives' argument</i> <ul style="list-style-type: none"> o To being consideration of issues of construction by positing that a 'liberal' or 'broad' or

	<p>'narrow' construction will be given tends to obscure the essential question, that of determining the meaning the relevant words used require.</p> <ul style="list-style-type: none"> ○ Although the purpose of the act is beneficial, it does not follow that recovery is contemplated for every act of violence of every consequence that could be described as an injury. ○ The clauses of the Act are drafted with some attempt at precision. ○ The legislation confers benefits, and no doubt it should be construed restrictively, but in dealing with specific limited words like in cl5, it is not open to apply much liberality of construction. <p>- <i>The 'composite or portmanteau phrase' argument</i></p> <ul style="list-style-type: none"> ○ This method turns on construing the phrase 'symptoms and disability' as a hendiadys - an expression in which a single idea is conveyed by two words connected by a conjunction. However subclauses (c) and (e) of cl5 proceed on the assumption that symptoms" and "disability" are distinct entities, not linked elements in a single idea more complex than each taken singly. <p>- The requirement in cl5(a) that "symptoms and disability" must persist for six weeks is, on the true construction of these words, that both must persist, and that it is not enough that symptoms do but not disability, or that disability does but not symptoms, or that symptoms do for part of the six week period and disability for the rest.</p>
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Text, Purpose and Context

Conflicting statutory provisions

CITATION	Project Blue Sky in v Australian Broadcasting Authority (1998) 194 CLR 335	
Parties	Project Blue Sky Inc (PBS)	Appellant(s)
	Australian Broadcasting Authority (ABA)	Respondent (s)
Court	High Court of Australia	
Decision Date	28 April 1998	
Judges	Brennan CJ, McHugh, Gummow, Kirby and Hayne JJ	