

Importance of statutory interpretation

Statutory interpretation is an important aspect of the common law. In about half of all reported cases in Australia, the courts are required to rule on the meaning of legislation.

Interpretation Acts

The meaning of Commonwealth legislation is governed by the provisions in the Acts Interpretations Act (1901). It prescribes the meanings of common terms and provides courts with clear directions to resolve a range of potential inconsistencies.

The Traditional (General) Rules – sometimes referred to as Literalism

The traditional common-law approach to statutory interpretation was to "look at the words of the Act".

This approach was founded on the assumption that the statute alone was a reliable guide to the intent of the Parliament. That is, Parliament said what it means, and means what it said (within the context of the legislation). However, to assist the courts in interpreting legislation, judges relied upon three general rules (REFER SEPARATE DOCUMENT CONCERNING A 4TH RULE – THE MORE THAN RULE). These were the:

Literal Rule: The literal rule dictated that the courts gave effect to the "ordinary and natural meaning" of legislation. This Rule was defined by Higgins J, in *The Amalgamated Society of Engineers v The Adelaide Steamship Co Ltd (1920)*.

Justice Higgins said "The fundamental rule of interpretation, to which all others are subordinate, 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 whole of the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient, impolitic or improbable".

A summary of the Literal Rule is:

1. It is the intention of the legislature as a whole that is to be sought
2. The intention is to be derived principally from the words of the legislation itself
3. The words ought be interpreted according to their ordinary and natural meaning, unless it is clear that another meaning was intended.
4. Where using the Literal Rule results in an absurdity or an ambiguous interpretation, the Court may apply the Golden or Mischief Rule.

Golden Rule: According to the golden rule, the courts were to interpret legislation in a manner which avoided an obvious absurdity, ambiguity or inconsistency from using the Literal Rule. Obvious printing mistakes or simple slips were set aside and the courts read legislation as if these errors were not there.

The Golden Rule was described by Lord Wensley in *Grey v Pearson (1857)*, and approved by the High Court of Australia in, for example, *The Australian Boot Trade Federation v Whybrow & Co (1910)*.

Lord Wensley said “...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 the absurdity and inconsistency, but no farther ”

Mischief Rule: This rule required the courts to interpret legislation in a manner consistent with its purpose: the "mischief" it was intended to remedy.

This Rule dates back to 1583 and relies upon the existence of an ambiguity for it to be applied. The Rule requires one to look at the legislation that existed prior to the legislation now being interpreted was passed. The Rule requires you to decide what was the defect (or mischief) in that past law that required Parliament intended to rectify. As such a Court should interpret the new law in such a way that promotes that corrective intention.

Though not specifically mentioned, this Rule appears to have been applied by the Federal Court in *HR Henderson Pty Ltd v Collector of Customs (1990)*.

The traditional common law assumption was that the mischief and golden rules were subordinate to the literal rule.

Rules of Language

The traditional approach also relied heavily on a number of rules of language. The Rules provided that, in some cases, the meaning of a word is to be derived from the context in which they appear. Many of these are expressed in the form of a short Latin phrase. Three important rules of language were:

Ejusdem Generis: where a list of words are followed by more general words, the meaning of the general words is restricted to the same class as the words in the list.

With particular interest to Tariff Classification is the Rule of *Ejusdem Generis* (or *Eiusdem Generis*). This Rule provides that, for example, when specific things are followed by general things, the meaning of the general is to be modified by the specific.

By way of example, should a particular tariff heading make reference to horses, cows, sheep and other animals, the meaning of the phrase “other animals” is modified by the things that proceed it – cows, sheep and horses.

In such case one is required to establish the class of things provided by Cows, sheep and horses – the common class characteristics – and apply those class characteristics to anything being considered as “other animals”. Common class characteristics of cows, sheep and horses are that they are four-legged domesticated animals. As such, the phrase “and others animals” would not extend to leg-less animals (snakes) nor feral animals (tigers).

This approach was adopted in *Attorney-General v Brown (1920)* where a prohibition existed on the importation of “arms, ammunition, gunpowder or any other goods” and it was held that the phrase “any of goods” did not extend to pyrogallic acid.26.08.2013

Noscitur a Sociis: the words of an Act take their meaning from the other words in the same section or sub-section.

This Rule presumes that the reader will not try and interpret the law one word at a time, but will look at whole phrases, sentences or paragraphs in which to gain context.

In *Mersey Docks and Harbour Board v Henderson Bros (1888)* Lord Halsbury said "It certainly is not a satisfactory mode of arriving at the meaning of a compound phrase to sever it into its several parts and to construe it by the separate meaning of each of such parts when severed".

This approach was adopted by O'Connor J, in *Chandler & Co v Collector of Customs (1907)*.

Expressio Unius est Exclusio Alterius: mention of one or more things of a particular class excludes all other members of the same class.

Limits of Literalism

The main argument in favour of the Traditional Rules (literalism) was that any other approach would represent a usurpation of the legislative function of Parliament. Another argument was that certainty in the application of statute law would be diminished if judges were able, in effect, to rewrite the legislation.

However the problem with common-law literalism is that it depends on a series of apparently arbitrary, judge-made rules. These threaten the legislative function of Parliament at least as much as any departure from strict literalism.

Another problem was more abstract. In practice, the meaning of an Act was generally not discoverable from its wording alone. Meaning derives from context, and the knowledge and assumptions which the courts bring to the task of interpretation. In these terms, it was absurd that courts were unable to make full use of documents (such as Second Reading Speeches or Parliamentary debates) which most clearly expressed Parliamentary intentions. Not surprisingly, Kirby J has frequently referred to the "dark days of literalism" in his judgments.

The third problem with literalism was that it was often an obstacle to revenue raising. The traditional presumption that tax laws should be interpreted in the favour of taxpayers was a particular problem for legislators, as it provided opportunities for creative forms of tax avoidance.

Refer to paper on EXTRINSIC MATERIALS for a discussion on the PURPOSIVE APPROACH and the move away from Literalism.

Precedent

Although precedent was fundamental to the common law, it does not apply in quite the same way to statutory interpretation as it does in other areas. Courts are not bound to interpret legislation in accordance with the interpretations placed on similar provisions by other courts. Each court has an obligation to seek the meaning of a particular piece of legislation for itself.

Although the common law permitted the courts to make law through the use of precedent, this practice was not permissible in the field of statutory interpretation. The courts were forbidden to treat legislation as representing a "stab at formulating a concept". Their task was to interpret the statute, not to extract from it general concepts which could be extended to guide the courts in a wider range of circumstances.

These distinctions did not mean that precedent was unimportant. Courts were usually expected to adhere to previous rulings on the same statute. This was based on the assumption that, if Parliament had not changed the wording of legislation following a court ruling, this was good reason to believe that the Parliament was satisfied with the court's interpretation.