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## STATUTORY INTERPRETATION STUDENT RESOURCE

Statutory interpretation is the process by which the courts interpret and apply legislation (i.e. Acts of Parliament). Although legislation is contained in a written form the process of interpreting legislation is complex and can often be the subject of an appeal. Interpreting legislation has been described by the Hon M Kirby AC, CMG as ‘an art not a science’.<sup>1</sup>

Over the years courts have used a number of different methods to aid with the discovery of the meaning of legislation. These methods include:

1. Literal rule – A fundamental rule of statutory construction requiring the interpretation of a statute according to the intention of Parliament, which is to be found by an examination of the language used in the statute as a whole and nothing else. This rule finds its basis in considerations of the role of the political impartiality of the judiciary, as it is for the Parliament and not the judiciary to formulate policy and to draft and enact legislation giving effect to that policy.<sup>2</sup>
2. Golden rule – A rule of statutory construction requiring the construction of statutes according to their natural and ordinary meaning unless this causes ambiguity. Where there is no ambiguity the natural and ordinary meaning must be adhered to, however irrational or unjust the result, unless such a result is contrary to the intention of the legislature.<sup>3</sup>
3. Mischief rule – A rule requiring the construction of an ambiguous word or phrase in a statute in the light of the ‘mischief’ or ‘defect’ in the existing law which the statute was intended to remedy.<sup>4</sup>
4. Purpose rule – An approach to statutory construction where a particular provision is interpreted in accordance with the purpose of the statute. Traditionally, it was applied only where a literal approach produced an ambiguity or inconsistency. The purpose is discerned by looking at the statute as a whole as well as extrinsic aids such as parliamentary debates, commissions and international agreements where appropriate.<sup>5</sup>

The amount of new legislation enacted each year from both the Commonwealth and the State Parliament has increased considerably in recent times and this together with the complex nature of new legislation has led to changes in the rules of how statutory interpretation is undertaken by the courts. There has been a move away from the view that legislation had one accurate meaning and Judges were left to search long and hard to determine that meaning.

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<sup>1</sup> Kirby M, ‘Statutory Interpretation: The Meaning of Meaning’ [2011] Melbourne University Law Review 3; (2011) 35(1) Melbourne University Law Review 113; <http://www.austlii.edu.au/au/journals/MelbULawRw/2011/3.html>

<sup>2</sup> Nygh P and Butt P, *Butterworths Concise Australian Legal Dictionary* (Butterworths, 2<sup>nd</sup> ed, 1998).

<sup>3</sup> Nygh P and Butt P, above n2.

<sup>4</sup> Nygh P and Butt P, above n2.

<sup>5</sup> Nygh P and Butt P, above n2.

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Some of the rules have been enacted by Parliament as well as the High Court of Australia. The purpose rule, or purposive approach, has been given pre-eminence by both Commonwealth and State legislation such as *The Acts Interpretation Act 1901* (Cwlth) which contains a provision at Section 15AA(1):

*In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.*

The Western Australian legislation contains a similar provision in the *Interpretation Act 1984* (WA) at sections 18 and 19.

In 2011, the Hon Michael Kirby AC CMG, a retired Judge from the High Court of Australia, prepared a paper on [Statutory Interpretation: The Meaning of Meaning](#). The Hon M Kirby AC CMG stated that the High Court of Australia has unanimously endorsed other principles that are used for statutory interpretation including:

1. where the relevant law is stated in legislation then the starting point is the text of the legislation;
2. the overall object of statutory construction is to give effect to the purpose of Parliament as expressed in the text of the statutory provisions;
3. in deriving the meaning of the text words should not be considered in isolation but rather to examine the sentence or paragraph and identify the meaning in the context that they are used.

Whilst the starting point to statutory interpretation is to use the purpose approach, the Hon M Kirby states that the modern approach requires a combination of analysing the text, context and purpose of the statute.

To illustrate the modern approach used by courts the Hon Michael Kirby, referred to a Western Australian case that was heard on appeal by the High Court of Australia - *Carr v The State of Western Australia [2007] HCA 47*. Read the chapter entitled 'Part IV A Bank Robbery and Carr's Case – The Facts'.

The Judges in *Carr's case* reached a different outcome to the Hon M Kirby. Read 'Part V Text, Context and Purpose in Carr' which sets out the reasoning used by the Hon M Kirby and then answer the following:

1. Using the purpose rule what were the three main areas the Hon M Kirby considered?

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2. What were the different meanings of 'interview' identified in the article by the Hon M Kirby?

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3. Did the meaning of 'interview' change when looking at it in context of its use in the *Criminal Code (WA)*?

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4. How would the outcome have differed if the courts had adopted the traditional 'literal approach' to the meaning of the word 'interview'?

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