
STATUTORY INTERPRETATION TEACHER RESOURCE

This resource addresses the following Politics and Law syllabus item:

**Unit 1 Year 11 ATAR Course:
Methods of Statutory Interpretation**

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’.¹

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.²
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.³
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.⁴
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.⁵

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

¹ 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>

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

³ Nygh P and Butt P, above n2.

⁴ Nygh P and Butt P, above n2.

⁵ Nygh P and Butt P, above n2.

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.

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 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.⁶

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?
 - **Text**

⁶ Kirby M, above n1, 116.

- Context
 - Apparent purpose or policy of the legislation
2. What were the different meanings of ‘interview’ identified in the article by the Hon M Kirby?
- Macquarie Dictionary – “a meeting of persons face to face, especially for formal conference in business, etc, or for radio and television entertainment, etc.”
 - Oxford English Dictionary – “[a] meeting ... sought or arranged for the purpose of formal conference on some point”
 - ‘interview’ when used in the Code involves an element of formality and structure with mutuality between the participants in the communication in question.
 - Tasmanian legislation refers to “official questioning”.
 - South Australian legislation - “(a) a conversation; or (b) part of a conversation; or (c) a series of conversations”.
3. Did the meaning of ‘interview’ change when looking at it in context of its use in the *Criminal Code (WA)*?

The Hon M Kirby found that when considering the word ‘interview’ in context additional support was found in favour of *Carr* and that the use of the word ‘interview’ in the *Criminal Code (WA)* was deliberate, for example:

- Where provision had been made in other legislation for the recording of admissions the word ‘interview’ had been avoided. The phrase ‘official questioning’ was used in the Tasmanian legislation. South Australian legislation defined ‘interview’ to include a conversation, part of a conversation or a series of conversations. However the *Criminal Code (WA)* did not follow the South Australian definition even though the South Australian legislation was in place before the *Criminal Code (WA)* was drawn up. This leads to an inference that the drafter of the *Criminal Code (WA)* would have included the extended definition if it had intended for it to be included.
- Chapter 570D of the *Criminal Code (WA)* was titled ‘Videotaped interviews’ suggesting the existence of a videotape (or secure recording) was of itself not sufficient and that more was required, such as the videotape to be in ‘interview’ form.
- Other legislation in Australia suggested that if particular persons were in a vulnerable situation the word ‘interview’ was used. From this it was inferred that the word ‘interview’ was used to indicate when a formal interchange was to take place.

In addition, the High Court has on previous occasions recognised the psychological disadvantages that accused people suffer when undergoing official interrogation and they have stated that “Such persons stand often in grave need of that protection which only an extremely vigilant court can give them”.

4. How would the outcome have differed if the courts had adopted the traditional ‘literal approach’ to the meaning of the word ‘interview’?
- Using the literal approach, the meaning of the word ‘interview’ would be found by examining the language used in the statute as a whole and nothing else. It is likely that the decision would have been found in favour of *Carr* and that the

videotaped confession that took place outside the interview room would not have been admissible.

5. Do you agree that the purpose rule provides a fair and just outcome?
- **Students' answers may vary according to their personal views.**