# Session 5 – LEGAL PROBLEM-SOLVING 2

# SUMMARY OF THE STATUTORY INTERPRETATION PROCESS

In Session 4 we discussed various rules and principles involved in the process of interpreting statutes. Statutory interpretation is a complex area and, unsurprisingly, there are a number of other rules and nuances applied by courts in the task of statutory interpretation which we have not covered and which are beyond the scope of this course. However, set out below is a summary of the statutory interpretation process that you may find useful when approaching statutory interpretation exercises in Session 5 (and in future).

**OVERVIEW**

As the High Court of Australia said in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 384:

[T[he duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have.

[ie, looking for the objectively intended meaning, not subjective intentions]

That commitment informs the general approach to interpretation of Commonwealth legislation as mandated by s 15AA of the *Acts Interpretation Act 1901* (Cth), which provides:

In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.

Similar provisions exist in State/Territory interpretation legislation. As we’ve seen, s 15AA is best applied in a series of steps:

1. Find the ordinary and natural meaning of the provision when read in **context;**
2. Find the legislative purpose, by looking at the Act as a whole, and attempt to read the provision consistently with that **purpose;**

If these steps suggest different meanings of the words, prefer the interpretation that best promotes the purpose.

1. If *ambiguity* remains, or the steps above lead to an *absurd or unreasonable* *result*, then consider whether that can be resolved by resort to **extrinsic materials** under s 15AB(1)(b) of the *Acts Interpretation Act*.

Alternatively, if there is no ambiguity or absurd/unreasonable result, but you have some extrinsic materials available, consider consulting them in order to *confirm* the ordinary and natural meaning in light of context and purpose (s 15AB(1)(a)).

The remainder of this document explores each of those three steps in more detail.

**STEP ONE**

* **Find the ordinary and natural meaning of the provision when read in context** (leading authorities for this basic principle of interpretation in context = *Project Blue Sky* and *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384).
* Most obviously, a word or phrase must be read in the context of the section as a whole and against the backdrop of the Act as a whole. More specifically, things to consider at this stage are:
* **definitions section**
* read any definition closely > eg, is it an ‘open’ (includes) or a ‘closed’ (means) definition
* remember that a definition might itself require interpretation!
* check whether the relevant **interpretation legislation** (i.e. *Acts Interpretation Act 1901* (Cth) or state/territory equivalent legislation) defines the word or phrase or otherwise casts light on its meaning, or whether there is any **binding case** interpreting that provision in that Act;
* if neither of these sources settles the meaning of a term, a **dictionary** may illuminate the ordinary meaning: *State Chamber of Commerce and Industry v Commonwealth* (1987) 163 CLR 329)
* note that dictionaries are not considered extrinsic materials (ie are not subject to the formal rules governing use of extrinsic materials); likewise other legislation
* in certain situations it might be apparent that a **technical or legal** meaning should be given to an undefined term, rather than its ordinary meaning
* the **maxims of interpretation** we discussed also assist contextual understanding (*mention respective authorities for these*)
* *noscitur a sociis* (eg *R v Ann Harris* (1836) 7 Car & P 446)
* *ejusdem generis* (eg *Deputy Commissioner of Taxation v Clark* (2003) 57 NSWLR 113)
* words are assumed to be used consistently (eg *Wilson v Commissioner of Stamp Duties* (1986) 6 NSWLR 410)
* all words are assumed to have a meaning (eg *Project Blue Sky*)
* *expressio unius est exclusio alterius* (eg *CFMEU v Hodgkiss* (2007) 169 FCR 151 or *Dean v Wiesengrund* [1955] 2 QB 120)

*But always remember, these maxims are ‘useful servants, but dangerous masters’*

* and where do the **presumptions of interpretation** fit in?
* This varies, depending on the nature of the presumption and the interpretation problem at hand, so, you will need to be responsive to the situation eg it could be used as part of step 1, ***OR*** considered at the end after step 2 (or step 3, if you use it)
* Remember, though, that in the case of the stronger presumptions (eg that Parliament does not interfere with fundamental rights and against retrospective operation) your final conclusion about meaning must take into account the fact that the courts require express words or a very clear necessary implication for rebuttal.
* The key presumptions we have discussed are:
  + presumption that Parliament does not interfere with fundamental rights (Hall & Macken p 102);
  + presumption against retrospective operation (Hall & Macken p 104)
  + presumption that Parliament does not intend to violate rules of international law (Hall & Macken p 104)
  + presumption that penal provisions (ie provisions imposing criminal liability) will be construed strictly (ie in favour of the accused) (Hall & Macken p 105)
  + presumption that re-enactment constitutes approval of interpretation.
* Once you have decided on the ordinary meaning in context, you should apply this to the question.
* But of course you can’t stop there > you must go on to consider purpose in accordance with s 15AA.

**STEP TWO**

* Find the **legislative purpose** by looking at the Act as a whole and attempt to read the provision in line with that purpose
* How do you find legislative purpose by looking at the Act as a whole? Look at:
* express purpose or objects provision (if any)
* long title
* preamble (if any)
* general tenor of surrounding provisions / whole Act (the “vibe”!)
* When attempting to read the provision consistently with purpose, remember that a purposive (ie, purpose-friendly) construction may not necessarily be available. Section 15AA is not a licence to rewrite the legislation! Dawson J warned about this in *Mills v Meeking* (1990) 169 CLR 214, 235.
* If the provision has been well drafted, the ordinary meaning in context and the purposive construction will be the same.
* However, if they are not the same, then apply s 15AA - a construction that would best promote purpose must be preferred.

**STEP THREE**

* Is it necessary or helpful to resort to **extrinsic materials**, per s 15AB *AIA*?
* Best to answer this towards the end of the interpretation process. This is because interpretative problems can *ideally* be resolved *without* extrinsic materials.
* Thus, once you get to the end of Step Two, above, s 15AB can be invoked **if one of the three ‘trigger’ situations** described in s 15AB(1) exists:

(a) [a need/desire] to **confirm** that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

(b) [a need] to **determine the meaning** of the provision when:

(i) the provision is **ambiguous or obscure**; or

(ii) the ordinary meaning conveyed by the text of the provision taking into   
 account its context in the Act and the purpose or object underlying   
 the Act leads to a result that is manifestly **absurd or is   
 unreasonable**.

* If the provision you are interpreting is ambiguous, it might be appropriate to invoke s 15AB earlier in the interpretative process – eg, because it is impossible to establish an ordinary meaning in context and/or a purposive interpretation without recourse to extrinsic materials.