# Session 5 – EXERCISE

*Here we will be drawing together and integrating all of the statutory interpretation that we applied separately in the Session 4 exercises. Today’s exercise is longer and more complex. It is based on a problem that was set as a final examination in statutory interpretation, some years ago, in the ANU LLB program.*

*This question will require us to bring together all of the key rules and principles of statutory interpretation and to structure our answer along ‘HIRAC’ lines. For this purpose, the relevant ‘rules’ are the rules of statutory interpretation that we covered in Session 4, some of which we explored and test-ran in the Session 4 exercises.*

**The Problem**

In March 2012, in response to continuing concerns about efficiency on the waterfront, the Commonwealth Parliament passed the *Waterfront Reform (Elimination of Pilfering) Act 2011* (‘the Act’). The Act received the Royal Assent on 24 April 2012.

In his second reading speechon the Bill, the Minister for Industrial Relations said:

This legislation represents an important step in our continuing efforts to clean up the waterfront, and to make sure that Australia is no longer the laughing stock of the world shipping community.

Mr Speaker, Members of the House of Representatives may be interested to know that the Productivity Commission has recently conducted a study, and found that pilfering adds about 10 per cent to the overall cost of imports to Australia - about $1.5 billion per year. The most commonly pilfered items are electronics and small consumer goods, both of which are easily sold on the black market.

Mr Speaker, this legislation will go a long way in helping to stamp out this social menace.

As the Minister was making his speech, the Opposition repeatedly jeered and interjected in a derisive way. The vote in the House of Representatives was divided along party lines, and the Bill passed the Senate only with the support of an independent Senator.

The Act is very short. The whole Act is as follows:

AN ACT to prohibit the pilfering of goods from the waterfront and to improve Australia’s reputation within the world shipping community.

1. This Act may be cited as the *Waterfront Reform (Elimination of Pilfering) Act 2012*.

2. For the purpose of section 3, ‘Pilfering’ includes the forcible entry into a container in which goods are being shipped either into or out of Australia.

3. Any person who, being employed in the stevedoring industry, should be found to have engaged in pilfering of any telecommunications equipment (including tablet devices), electronic apparatus (including televisions and audio equipment), or any other good, is guilty of an offence and liable to imprisonment for a period not exceeding ten years.

John is a stevedore employed on the Sydney waterfront by ABC Transport Pty Ltd (‘ABC’). He received very little formal education - he left school after Year 9 - but he has been loading and unloading ships for nearly thirty years.

ABC has installed hidden surveillance cameras throughout the wharf areas under its control. On Sunday, 24 May, a security official employed by ABC was watching one of the wharf areas through one of the cameras when she saw a worker passing expensive high-tech fabric ski jackets to other workers. The camera showed that jackets were being taken from an open container that had been unloaded from one of the ships. It is not known who opened the container, but it clearly was not the owner of the jackets.

The security official advised her colleagues at the wharf’s main gate to check the belongings of all workers as they left the dock. When John went to leave the dock after his shift, his backpack was found to have in it one of the jackets.

Later the Police searched John’s home, where they found an Ipad. They established, by matching its serial number, that it had come from a container that had been looted at a railway station (which was ten kilometres from the dockside), while the container’s contents were awaiting transportation to Canberra. Under questioning by the Police, John admitted that the Ipad had been stolen.

John has been dismissed from his employment and charged with having committed two offences under section 3 of the Act: pilfering the jacket and pilfering the Ipad.

**Question:** Would John be convicted? Why or why not?