interpretation NOW!

Episode 11 – 27 April 2016

Australian Government
Australian Taxation Office

Finding the latest learning on an interpretation issue is not that hard. Go to the standard text[1] and/or past episodes of ***iNOW!*** and locate the leading case or core passage. Select some keywords and run a 'Boolean query' through *AustLII*. If there are too many hits, add keywords. Review your catch under 'by date', clicking the 'latest first' button. Often there will be a recent case on what you need. In Episode 10, for example, the case on meaning of 'Australia' was decided only the day before we went to reviewers. Courts often restate basic principles of interpretation – *Lowe v R* is a good example[2]. **iTip** – scan relevant passages in cases like this one for up-to-date information and to refresh memory – it's all fun!

Steven Fogarty Tax Counsel Network

Statutory definitions

***Moreton Bay RC v Mekpine* [2016] HCA 7**

The High Court again points to the limited role that statutory definitions play. The issue was whether a definition of 'common areas' in one Act applied to another – answer 'no'[3]. The court said (at [61]) that statutory definitions do 'no more than define the meaning to be assigned to [a] word … as used in the Act'[4]. They are an aid to construction and 'do not operate in any other way'.

Two further issues with definitions are (A) the possible impact of ordinary meaning on them[5], and (B) the circuity of using the term itself to determine what it means[6]. **iTip** – don't assume that definitions in one Act apply to another Act.

Beneficial legislation

***Abblitt v ADC* [2016] TASSC 12**

Are all statutes interpreted the same way, or does the old rule about reading beneficial provisions liberally still apply? The judge here (at [29]) said it did - the Act was to be given 'a fair, large and liberal' interpretation rather than one which is 'literal or technical'[7].

The High Court confirmed this in 2011[8], but it does not solve all problems. First, there is the need to find the provisions are beneficial. Second, the rule cannot support an 'unreasonable or unnatural' result. Third, it may not help where discretions are to be exercised or value judgments made[9]. **iTip** – the rule does survive but it has its limits.

Taking advantage of own wrong

***AFP v Vo* [2015] NSWSC 1523**

This ancient rule still exerts an influence in modern times. In this proceeds of crime case, it was held (at [17]) that an interpretation which allows a person to take advantage of their own wrong must be resisted.

The principle reflects public policy and illustrates an impact of practical consequences on interpretation. It applies in revenue contexts[10], and is discussed in a recent Queensland decision[11]. **iTip** – although the 'own wrong' principle may not arise very often in practice, be aware that it can have an impact.

Commanding the impossible

***SCC Plenty v Construction* [2015] VSC 631**

This case on adjudication mechanisms in building industry laws makes the point (at [98]) that 'laws must not command the impossible'. Unless flexibility was applied, said the judge, the legislation 'could not be made to work'.

The notion of impossibility driving interpretation is another aspect of taking practical implications into account[12]. It is an old principle accepted in all civilised legal systems. However, it cannot be taken as broad licence to excuse compliance with statutory obligations merely because things are difficult in some way or another. **iTip** – courts do apply this principle, but only very rarely.

- Writer – Gordon Brysland, Producer – Michelle Janczarski.
- Thanks to Mike Ingersoll and Jo Stewart.

[1] Pearce & Geddes *Statutory Interpretation in Australia*.
[2] *Lowe v R* [2015] VSCA 327 (at [9-30]).
[3] cf *Coverdale v West Coast Council* [2016] HCA 15 (at [43]).
[4] *Gibb v FCT* (1966) 118 CLR 628 (at 635), quoted.
[5] *Heffernan v Comcare* [2014] FCAFC 2 (at [46]).
[6] *ICAC v Cunneen* [2015] HCA 14 (at [33]), Episode 1.
[7] *IW v City of Perth* (1997) 191 CLR 1 (at 12), quoted.
[8] *AB v Western Australia* [2011] HCA 42 (at [24]).
[9] *Western Australia v AH* [2010] WASCA 172 (at [105]).
[10] *De Marco* [2013] NSWCA 86 (at [32-41]), illustrates.
[11] *Meridien AB v Jackson* [2013] QCA 121 (at [20-27]).
[12] *Uelese v Minister* [2015] HCA 15 (at [100]), Episode 1.

Episode 12 – same meaning; terms in another Act; objects and long-title; when 'may' means 'must'