



interpretation NOW!

Episode 115 – 18 December 2024



What has the High Court told us about interpretation in 2024? Two things stand out. First are the comments by Edelman J in *Harvey* on extrinsic materials¹. Second is the clarification in *SkyCity* of how we are to read statutory definitions². Several other cases emphasise basic themes – text>context>purpose, coherence and objectivity³; and the need to avoid what is called ‘legal fundamentalism’⁴. Elsewhere, niche areas including the impact of human rights statutes and the correct approach to legislative codes are covered⁵. But nothing the High Court said in 2024 moved the dial much on statutory interpretation. The principles which run the system are stable, reliable and known. Past is the time when statutory interpretation could be called a ‘fashion industry’⁶. High Court judges these days all wear the same robes when it comes to the principles applied in reading statutes.

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Awareness of cases

[Vicinity Funds v Commissioner \[2024\] VSC 658](#)

This case is about duties payable on transfer of Myer sites in Melbourne. Each site was subject to a 299 year lease, with rent of \$1pa. Duty was payable on the greater of consideration and unencumbered value⁷. Were the leases an ‘encumbrance’? Answer ‘no’.

Parliament is generally presumed to be aware of prior decisions bearing on new provisions⁸. The principles (at [111]) stress the need for caution on old cases decided in different settings. It was accepted, however, that the meaning of ‘encumbrance’ adopted in the past for stamp duty purposes⁹ applied equally to the new duties legislation. An ‘encumbrance’ includes mortgages and charges, but not leases.



Meaning of ‘or’

[Williams v Toyota Motor Corp \[2024\] HCA 38](#)

The little word ‘or’ often causes problems. Here, it was used between paragraphs in the definition of ‘affected person’ in manufacturer damage clauses.

Usually ‘or’ is read disjunctively to produce discrete options to be met. Jagot J (at [155]) confirmed that this is not always the case, and that ‘or’ may have an ‘ambulatory and cumulative’ operation¹⁰. Legislative history and cases under similar provisions confirmed this. Accordingly, there could be more than one ‘affected person’ in this regard. What is important to appreciate is the different roles which ‘or’ may play in legislative contexts. [Herzfeld & Prince](#) 2nd ed (at [5.260]) provides a range of practical examples.



Headings

[FCT v Patrix Prestige \[2024\] FCAFC 148](#)

Headings are taken into account in interpretation¹¹, but their practical impact varies. One issue in this case was the effect of the phrase ‘Changes of use’ in headings to luxury car tax adjustment provisions¹².

The key point made by the court (at [19]) was that headings are ‘often misleading’¹³. The heading in question was an ‘incomplete summary’ of the full operation of the provisions. It therefore exerted no controlling influence over them. Given that headings are essentially aids to comprehension and navigation, this was less than surprising. Yet, headings are not to be ignored. **iTip** – treat them with caution and don’t overplay their influence.



\$\$\$ Meaning of ‘in relation to’

[FCT v Esso Australia \[2024\] FCAFC 151](#)

The meaning of phrases like ‘in relation to’ depends on context. The issue in this case was whether fees paid to Esso under contract were ‘assessable tolling receipts’ for being ‘consideration receivable ... in relation to the processing of ... internal petroleum’¹⁴.

Context is determined by the text, purpose and history, along with the facts of the case¹⁵. It was noted that 2 things may be related even if one of them relates to other things as well, and that ‘consideration’ in this context is what ‘moves’ a transaction. It was held (at [97]) there was a ‘substantial, relevant, direct and close’ connection between the fees and processing. Appeal allowed.

■ **Thanks** – Agnes Liu, Tharindra Yapa, Cheryl D’Amico & Brittany Doherty.

¹ [Harvey](#) [2024] HCA 1 [113-116]; [E105](#) (summary), [E106](#) (whole episode).

² [SkyCity](#) [2024] HCA 37 [32-33] joint judgment of the court; [E114](#).

³ [HBSY](#) [2024] HCA 35 [53, 157] Gageler CJ & Jagot J respectively; [E114](#).

⁴ [Greylag](#) [2024] HCA 21 [107, 114-117] Edelman J; [E111](#) (editorial).

⁵ [Smith](#) [2024] HCA 32, [E113](#); [Davney](#) [2024] HCA 22, [E110](#).

⁶ Spigelman *From Text to Context* (2007) 81 ALJ 322 (322).

⁷ ss 20(1) & 22(1) of the [Duties Act 2000](#) (Vic).

⁸ [Electrolux](#) [2004] HCA 40 [161], [Fortress](#) [2015] HCA 10 [15], [E8](#).

⁹ [Commissioner of State Revenue v Bradney Pty Ltd](#) (1996) 34 ATR 233.

¹⁰ [Electricity Trust](#) 51 FCR 540 (547), cf [McIntosh](#) [2021] NSWCA 221 [13-15].

¹¹ [Rolfe](#) [2021] HCA 38 [18], [Pearce](#) 10th ed [4.91-4.93], [E 55, 84 & 109](#).

¹² s 15-30 of the [A New Tax System \(Luxury Car Tax\) Act 1999](#) (Cth).

¹³ [Lavender](#) [2005] HCA 37 [21], [Adeels](#) [2009] HCA 48 [13] cited.

¹⁴ s 24A of the [Petroleum Resource Rent Tax Assessment Act 1987](#) (Cth).

¹⁵ [Travelx](#) [2010] HCA 33 [25], [DMA18](#) [2020] HCA 43 [43] cited.