

interpretation NOW!

Episode 21 – Uber BV v Commissioner [2017] FCA 110



Australian Government

Australian Taxation Office



Many cases touch on statutory interpretation in some way, but few are about almost nothing else. [Uber BV](#) is one of them. The GST law defines ‘taxi travel’ to mean ‘travel that involves transporting passengers, by taxi or limousine, for fares’. Griffiths J said that ‘taxi’ takes its ordinary meaning and that uberX drivers provide ‘taxi travel’. The case is compulsory reading on a range of key interpretation issues – eight of these are dealt with below. The parties ‘generally agreed’ on these principles but differed on their application. The **itip** from [Uber BV](#), however, is that interpretation principles provide ‘*helpful guidance rather than talismanic formulae or inflexible rules of law*’¹.

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1 – legal meaning

The task is to give the words the legal meaning parliament is taken to have intended them to bear². Usually this will be the literal or grammatical meaning. Sometimes, however, purpose or context will point to some different meaning. The process of interpretation is always objective – never a search for subjective motivations or collective intention³.

2 – text first and last

Interpretation must begin with the text, and so also it must end⁴. As High Court mantra insists, it is a ‘text-based activity’. The text, however, ‘must be considered in its context’, which includes the purpose, policy and mischief, as well as legislative history and extrinsic materials.

3 – examine context

Look at context early – no need to wait for ambiguity or other problems to emerge⁵. **INOW!** describes the basic procedure as ‘text > context > text’⁶. Context may *confirm* meaning, but rarely does it operate to *change* meaning. Be careful not to substitute what contextual sources may say about the law for the words of the text itself⁷.

4 – approach to GST

Context pointed to a ‘broad and non-technical approach’ to apply to the GST law⁸. It is expressed in flexible and general language, so we ‘should avoid interpretations which are unduly technical or overly meticulous and literal’⁹. That GST is a ‘practical business tax’ is simply part of the context; it’s not some special interpretational rule just for GST¹⁰.

5 – always speaking

Modern statutes are presumed to be ‘always speaking’ in the present¹¹; their meaning may evolve with the times and the march of technology¹². The term ‘taxi’ was always speaking; it did not matter that uberX was not around when GST began. A separate issue is whether ‘always speaking’ operates to include the new technology in question¹³.

6 – composite expressions

Was the definition of ‘taxi travel’ a composite expression? ‘No’ said the judge (at [132]), because the phrase ‘taxi or limousine’ differentiated between vehicle types. By contrast, composite expressions (like ‘external affairs’¹⁴) demand an integrated approach to interpretation. They are not to be read by isolating each term against a dictionary¹⁵.

7 – ordinary & trade meanings

Trade meaning usually overrides ordinary meaning in tax laws aimed at that trade¹⁶. Here, the law was aimed at those needing to know if they supplied ‘taxi travel’. Hence, ‘taxi’ took its ordinary meaning (at [135]), which included UberX vehicles. Expert evidence could not be given about ordinary meaning¹⁷, and in any case it established no trade meaning.

8 – dictionaries

Dictionaries can be consulted to confirm the ordinary meaning of words, as in [Uber BV](#)¹⁸. We are told, however, ‘not to make a fortress out of a dictionary’¹⁹ – they are no substitute for interpretation. Look at them of course, but measure what you find against context and purpose. It is the mechanistic use of dictionaries that gets us into trouble.

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¹ [Uber BV](#) (at [135]), [Taylor](#) [2014] HCA 9 (at [37]).

² [Uber BV](#) (at [119-121]), [Project Blue Sky](#) [1998] HCA 28 (at [78]).

³ [Certain Lloyd’s](#) [2012] HCA 56 (at [25-26]), Episode 1.

⁴ [Uber BV](#) (at [48, 120]), [Thiess](#) [2014] HCA 12 (at [22]), Episode 2.

⁵ [Uber BV](#) (at [48, 122]), [Cunneen](#) [2015] HCA 14 (at [57]), Episode 14.

⁶ Episodes 2, 4 and 5.

⁷ [Power Rental](#) [2017] NSWCA 8 (at [90]), [NAAJAL](#) [2015] HCA 41 (at [86]).

⁸ [Uber BV](#) (at [125-129]), [Lansell](#) [2010] FCA 329 (at [51-52]).

⁹ [Saga](#) [2006] FCAFC 191 (at [70]).

¹⁰ [Saga](#) [2006] FCAFC 191 (at [30]), [International](#) [2011] FCA 824 (at [29]).

¹¹ [Uber BV](#) (at [52, 130]), Pearce & Geddes (at [4.9-4.12]), Episode 2.

¹² cf Sievers [note](#) – <https://chris sievers.com/>

¹³ [Hore](#) [2002] NSWSC 1130 (at [43]), Wilson (1988) 13 NSWLR 77 (at 85-86).

¹⁴ [XYZ v Commonwealth](#) [2006] HCA 25 (at [176-177]).

¹⁵ [Sea Shepherd](#) [2013] FCAFC 68 (at [34-35]), Episode 5.

¹⁶ [Uber BV](#) (at [39, 124]), [Agfa](#) (1996) 186 CLR 389 (at 398-399), Episode 16.

¹⁷ [Uber BV](#) (at [104]), [Lansell](#) [2010] FCA 329 (at [60]).

¹⁸ [Uber BV](#) (at [133-135]), Episode 2.

¹⁹ [Sea Shepherd](#) [2013] FCAFC 68 (at [36]), [Thiess](#) [2014] HCA 12 (at [23]).