interpretation NOW!

Episode 26 – 27 July 2017

Australian Government
Australian Taxation Office

For diverse policy, economic and historical reasons, our tax law is complex[1]. At his recent Press Club address[2], Chris Jordan said part of his job is to help taxpayers by 'hiding the complexity' of our tax system. One way the ATO tries to make it easier for taxpayers is by engaging with the community on simpler terms and in more contemporary ways in the provision of public advice and guidance. A similar objective of ***iNOW!*** is to present interpretation in a way that 'hides the complexity'. Our word limits and format drive engagement and clarity[3]. These principles are not there to be admired, however. They are practical tools to be applied flexibly in the solving of real world problems[4]. Often they can reveal a viable solution unseen on a first reading.

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Ordinary words

***DPP v Acme Storage Pty Ltd* [2017] VSCA 90**

An issue in this case was the meaning of 'detriment' in an anti-discrimination provision – ordinary or technical legal meaning? The court (at [65-83]) reviewed cases on how ordinary words are to be approached. Absent contrary indicators, ordinary words in a statute take their ordinary meaning according to 'logic and common sense'[5].

It was held that, 'when understood in context'[6] 'detriment' did not have a 'special, and different, legal meaning, at odds with its ordinary and natural meaning'. Had parliament wanted something different, it could have legislated for it. **iTip** – ordinary words usually take their ordinary meaning.

Mischief rule

***ABCC v Powell* [2017] FCAFC 89**

The mischief rule is an ancient precursor to the purposive approach we apply today in selecting between constructional choices[7]. What parliament was seeking to remedy is part of the context.

What happens, however, when the words chosen go beyond mere remediation of the mischief? This case (at [46-47]) tells us that general words are 'not necessarily' to be read down in these situations[8]. But, where general words would create some 'disproportionate counter-mischief', the position may well be different – see Episode 22[9]. **iTip** – context and purpose are key factors to deciding how general words in a statute are properly to be read[10].

Statute 'as a whole'

***Tilley v Children's Guardian* [2017] NSWCA 174**

Often it's the simple things that help us when trying to figure out what a provision means. This case (at [54]) takes us back to the core proposition that 'statutes are to be read as a whole'[11]. To do otherwise only invites the kind of narrowness which the modern purposive approach seeks to avoid.

On this basis, an argument which confined the expression 'proceedings have been commenced' in child protection legislation to when a trial began had to be rejected. Reading the provisions together in their context made this clear. **iTip** – parliament does not enact provisions as little islands of self-contained meaning, nor are they to be read that way.

'under or in relation to'

***Raptis v City of Melbourne* [2017] VSC 247**

Episode 19 makes the point that the degree of connection required by phrases like this one depends on purpose and context. This case (at [43-52]) gives an example. Raptis ran the *Blu-Nite Café* from leased premises. He argued that illegal work by the lessor voided the lease, and he demanded all his rent back.

The lessor said that, because the dispute was one 'arising under or in relation to' a retail lease, only the tribunal could hear it[12]. The court agreed – 'under' pulled one way (narrow), while 'in relation to' pushed in the other (wide). Here, there was a direct relationship between the existing retail lease and its legality. Accordingly, Raptis' claim was dismissed.

- Writers – Gordon Brysland & Suna Rizalar.
- Thanks to Chris Jordan, Jeremy Geale & Michelle Janczarski.

[1] Krever (2003) 25 *Sydney Law Review* 467, for example.
[2] National Press Club, Canberra, 5 July 2017.
[3] Go to the footnotes for deeper learning.
[4] *Taylor* [2014] HCA 9 (at [37]), Episodes 5, 13 and 21.
[5] *R v AL (a pseudonym)* [2016] VSCA 156 (at [11]).
[6] As an element of an indictable offence.
[7] *Heydon's Case* (1584) 76 ER 637 (at 638), Bennion (Part XIX).
[8] *Commonwealth Custodial Services* [2007] NSWCA 365 (at [16]).
[9] *UNSW Global* [2016] NSWSC 1852 (at [47-50]).
[10] cf *Watts v APC* [2014] FCA 370 (at [61-64]).
[11] *Unit Trend* [2013] HCA 16 (at [47]), cited.
[12] ss 81 and 89 of the *Retail Leases Act 2003*.