



# interpretation NOW!

Episode 130 – 27 March 2026



What is the difference between ‘ordinary meaning’ and ‘plain meaning’? A recent American article spends 70 pages explaining the position<sup>1</sup>. Often the two terms are used without discrimination. In our system, ordinary meaning involves the natural way in which people use a word. Plain meaning refers to the evident or clear meaning of a word in the sense that only one interpretation is possible<sup>2</sup>; cf ‘plain and obvious’ – [McGregor](#) [2026] HCA 3 [201]. Plain in this context is not a synonym for ‘uncomplicated’, nor does it signify a meaning ‘plain or clear on its face’. All words must be subjected to the ordinary principles of interpretation before any ‘plain or clear meaning’ may properly emerge<sup>3</sup>. Some of the confusion here follows from the fact that, rather often, the ordinary and plain meanings of a word will be the same. Just don’t assume in advance that this will be the case.

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## Legal meaning

### [Dermatology & Cosmetic v Nichols \[2025\] VSCA 328](#)

After surgery, N sued the doctors for ‘significant injury’<sup>4</sup>. Her solicitors emailed medical assessments to their solicitor. These came to the doctors’ attention a few days later. The doctors challenged the assessments by way of referral to a medical panel. The referral was valid only if it occurred within 60 days after the assessments were served on the doctors<sup>5</sup>.

The court held that ‘serve’ took its legal meaning ‘absent contrary contextual indication’<sup>6</sup>. This meaning recognised common law principles and ‘supervening jurisprudence’<sup>7</sup>. It required bringing to attention as a matter of fact<sup>8</sup>. This validly occurred when assessments came to the doctors’ attention<sup>9</sup>.

## Meaning of ‘court’

### [Royal Embassy \[etc\] v Saleh \[2025\] FCAFC 184](#)

Foreign states now enjoy only limited immunity from domestic jurisdiction<sup>10</sup>. In an unfair dismissal action by mission staff, the embassy argued that the Fair Work Commission was not a ‘court’. Therefore, the employment exception to immunity did not apply<sup>11</sup>, & the embassy had absolute immunity at common law.

This was rejected. The definition of ‘court’ includes a ‘tribunal or other body’ that has judicial functions or powers or are ‘of a kind similar to judicial functions or powers’. An ALRC report explained the broad scope of this definition. Given Commission proceedings are adversarial and involve application of legal principle they are ‘of a kind like judicial functions or powers’<sup>12</sup>.

## Beneficial legislation

### [Hoang v Minister \[2026\] FedCFamC2G 26](#)

It was not disputed that a visa scheme responding to family violence was ‘beneficial legislation’, and to ‘be accorded a fair, large and liberal interpretation’<sup>13</sup>.

An earlier decision, informed by this principle, had permitted a psychologist to provide a ‘medical report’ under a legislative instrument. This was argued to be ‘plainly wrong’ for going too far<sup>14</sup>. Judge Gerrard (at [67]) said that ‘plainly wrong’ means not only ‘obviously wrong’. It also requires ‘conviction as to error’. Generally, a report from one in another profession will not satisfy the instrument. But this did not mean that psychologists could not address medical issues within their area of expertise.

## Contract theory

### [FCT v SNA Group \[2026\] FCAFC 10](#)

Law students early in their studies learn that the objective theory of contract is ‘in command of the field’. This case (at [15-21]) explains the principles.

Contract formation and terms depend on the words and conduct of the parties as reasonably understood by reasonable people in their position, not on any actual subjective intention of the parties<sup>15</sup>. Having it merely in your own mind ‘is nothing’. The objective theory ‘demands an outward manifestation or communication by words and (or) conduct of a mutual assent to contract on particular terms’. Absence of evidence of communication between the parties here led to the finding that no contract arose.

■ Thanks – Oliver Hood, Jeremy Francis, Suna Rizalar & Charlie Yu.

<sup>1</sup> [Marco Basile](#) (2024) 110 *Virginia Law Review* 135.

<sup>2</sup> cf [Cheedy](#) [2011] FCAFC 100 [107], [ZD](#) [2017] VSC 806 [106], [BDM](#) [15-11].

<sup>3</sup> [Palmanova](#) [2025] HCA 35 [6], cf [Harvey](#) [2024] HCA 1 [109-111].

<sup>4</sup> ss 28LE & 28LF [Wrongs Act 1958](#) (Vic).

<sup>5</sup> ss 28LT & 28LWE [Wrongs Act 1958](#) (Vic) ‘within 60 days’.

<sup>6</sup> [31], [Brewery Employees](#) (1908) 6 CLR 469 (531), cf [Pearce](#) 10<sup>th</sup> ed [4.32].

<sup>7</sup> [31], [Workpac](#) [2018] FCAFC 131 [108], [Electrolux](#) [2004] HCA 40 [162].

<sup>8</sup> [32], [Capper](#) [1998] HCA 24 [21-22], [Howship](#) [1996] NSWSC 314.

<sup>9</sup> The court criticised the conduct of all the lawyers involved [64-65].

<sup>10</sup> [Foreign States Immunities Act 1985](#) (Cth), [Firebird](#) [2015] HCA 43 [5-7].

<sup>11</sup> ss 9 & 12 [Foreign States Immunities Act 1985](#) (Cth).

<sup>12</sup> [5, 48, 56], cf [Kirby](#) (1956) 94 CLR 254 (281), [TCL](#) [2013] HCA 5 [29].

<sup>13</sup> [NSWALC](#) [2016] HCA 50 [32], [Quarry Street](#) [2025] HCA 32 [139].

<sup>14</sup> [Kaur](#) [2020] FCCA 2975 [32] Judge Driver, cf [ALRC Report](#) [21.3].

<sup>15</sup> [Equuscorp](#) [2004] HCA 55 [34], [Ermogenous](#) [2002] HCA 8 [24-25].