



interpretation NOW!

Episode 82 – 30 March 2022



In a recent patents case, Edelman J made observations about the importance of context and purpose in interpretation¹. The general point (at [97]) is that fixing the meaning of express words, drawing inferences within a provision or implying new content into one are all best considered as a kind of ‘continuum’. The judge made 2 points. First, implications all along the continuum depend on ‘general or particular circumstances of context or purpose’². Second, the bigger the implication suggested, the more it must be mandated by those circumstances³. These comments may seem overly theoretical, but they do have an acutely practical application. That is, if you are seeking a substantial departure from the ordinary meaning of a provision, you must bring strong and very relevant evidence of context and purpose to the table. **iTip** – vibe is not enough.

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Tax exemptions

[Perpetual Corporate Trust v CST \[2022\] SASC 7](#)

Should tax exemptions be read liberally? A stamp duty provision conferred a broad exemption on property not used for ‘residential purposes’⁴. Exemptions having a purpose to benefit a class of activity are generally to be read liberally⁵. This reflects the principle that ‘all legislation is to be construed purposively’ to ascertain the meaning of the text⁶.

Bochner JA (at [110-111]) held that the provision in question exempts property transfers that pursue a purpose of benefiting business. Two points – (A) the statutory purpose of an exemption may affect its interpretation⁷, and (B) it is no longer to be assumed that every exemption from tax will be read widely.

Legislative codes

[Stefanski v Western Australia \[2022\] WASCA 5](#)

The instruction to ‘start with the statute’ has particular bite when it comes to legislative codes replacing the common law. This appeal raised criminal code ‘unsoundness of mind’ provisions regarding intentional intoxication or stupefaction⁸.

Buss P (at [119-120]) said the code had to be read ‘without any presumption that it was intended to do no more than restate the existing law’⁹. ‘[L]ook at the current text rather than at the old writing which has been erased’¹⁰. Intoxication in this case was intentional – appeal dismissed. The old common law learning on drunkenness has a fascination, but it doesn’t control the answer under a modern code.

Meaning of ‘court’

[Lanigan v Circus Oz \[2022\] VSC 35](#)

A performer took VCAT harassment proceedings against the circus. One issue was whether VCAT was a ‘court’ for limitation of action purposes¹¹. VCAT had been held to be a ‘court’ for other purposes¹².

McDonald J (at [35]) held it was not a ‘court’ here. The statutory framework was different and other factors pointed to a negative finding¹³. As the judge pointed out (at [33]), whether a tribunal is a ‘court’ depends on the context of the statute involved. In our system of interpretation, the same word may well mean different things in different statutes. **iTip** – the answer in each case will depend on an evidence-based analysis of context and purpose.

Consistent meaning

[ACCC v J Hutchinson Pty Ltd \[2022\] FCA 98](#)

The starting idea that the same word used in the same statute takes the same meaning has near mythic status¹⁴. In this competition case, Downes J (at [281]) said that, where the same concepts are used in a suite of provisions, ‘a consistent meaning should ordinarily be given’¹⁵. This is only natural.

In practice, the same word may take different meanings. Two points – (A) this is rare, and (B) cogent evidence anchored in context and purpose will be necessary to make the case – see editorial above. **iTip** – where the same word used in close proximity is the purposive focus of the provisions, the same meaning presumption may be stronger.

■ **Credits** – Gordon Brysland, Oliver Hood, Charlie Yu & Lachlan Ballard.

¹ [H Lundbeck A/S v Sandoz Pty Ltd](#) [2022] HCA 4, patent extension.

² Sternau (etc) (2015) 84 *Journal of Pragmatics* 86 (at 88) cited.

³ cf (at [113]), citing [Esso Australia](#) [2017] HCA 54 (at [52]).

⁴ s 105A of the [Stamp Duties Act 1923](#) (SA).

⁵ [Diethelm](#) (1993) 44 FCR 450 (at 457), [RSAYS](#) [2007] SASC 398 (at [29-30]).

⁶ [Bargwanna](#) [2012] HCA 11 (at [38]), [NSWALC](#) [2016] HCA 50 (at [92]).

⁷ Pearce 9th ed (at [9.57]), cf [Word](#) [2008] HCA 55 (at [107]).

⁸ ss 27 and 28 of the [Criminal Code](#) (WA).

⁹ [Brennan](#) 55 CLR 253 (at 263), Episode [73, Namoa](#) [2021] HCA 13 (at [11]).

¹⁰ [Stuart](#) 134 CLR 426 (at 437), Episode [63, Pickett](#) [2020] HCA 20 (at [23]).

¹¹ s 3(1) of the [Limitation of Actions Act 1958](#) (VIC).

¹² [Subway Systems](#) [2014] VSCA 142 (at [73-75]) Kyrou AJA dissenting.

¹³ cf [Sudi](#) [2011] VSCA 266 (at [29]), [ADT](#) [2008] FCAFC 104 (at [226-228]).

¹⁴ Episode [65, Orr](#) [2020] NSWCCA 220 (at [63-66]), Pearce 9th ed (at [4.6]).

¹⁵ [Tabcorp](#) [2016] HCA 4 (at [65]), [Pacific National](#) [2020] FCAFC 77 (at [206]).

Episode 83 – overlapping statutes; linguistic analysis; differing views; ‘means and includes’

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