



interpretation NOW!

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We hear daily in the media that the rule-of-law is under assault everywhere. But what is the rule-of-law exactly, and what has it got to do with statutory interpretation? The rule-of-law is a network of high-level fundamental values which guide the law in a democracy (certainty, transparency, fairness, impartiality, etc). Robert Hughes in *The Fatal Shore* called it a ‘form of religion’. It is assumed by the Constitution² and finds direct reflection in our statutory interpretation principles³. As Colvin J explains, these principles ‘must be formulated by reference to the attributes of the rule-of-law’⁴. One very visible example is the principle of legality under which statutes are read to protect core rights and freedoms. Our interpretation principles are far more than some mere set of rules. Their conscientious application by everyone is essential to the expression of our democracy.

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Meaning of ‘suicide’

[Carr v Attorney-General \[2023\] FCA 1500](#)

Federal law makes it an offence to use a carriage service to assist someone to commit ‘suicide’⁵. Victoria allows doctors to prescribe a ‘voluntary assisted dying substance’ to certain persons⁶. It was argued that a doctor using a carriage service in this context commits no offence, as ‘suicide’ does not extend to taking one’s own life ‘in exercise of a legal right to do so’. This was rejected by Abraham J.

Nothing indicated ‘suicide’ in the federal law took other than its ordinary meaning – ‘the intentional taking of one’s own life’⁷. It followed, therefore, that the Victorian provisions were in ‘direct inconsistency’ with the federal law and invalid to that extent.



Meaning of ‘remains’

[Armitage v Parole Board Qld \[2023\] QCA 239](#)

In Queensland, a ‘no body – no parole’ rule applies where ‘part of the body or remains of the victim has not been located’⁸. Armitage was convicted of manslaughter, but 15% of the body was unaccounted for (hands and feet). Did the rule apply in this case?

Flanagan JA (at [27]) emphasised the importance of purpose⁹ and that context may support non-ordinary meanings¹⁰. There was evidence that the missing parts had been destroyed by fire or predation. The word ‘remains’ within the rule, it was held, must refer to what actually remains of the body and is capable of being located. The rule did not apply to missing body parts which no longer existed. Appeal allowed.



Frustration of purpose

[Mangoola v Muswellbrook SC \[2023\] NSWCA 275](#)

Mangoola sought to recover \$3m in overpaid council rates. The Act said action for amounts ‘recoverable on restitutionary grounds’ had to be commenced within 12 months¹¹ – not met. Mangoola argued that this deadline did not apply to statutory claims.

Leeming JA said context and purpose made it clear the Act was to apply to claims under statute as well as those at common law. While extrinsic materials showed the latter was ‘a purpose’ of the provision, it did not follow that it was the sole purpose. Every tax will have a statutory basis, the judge said, and ‘there cannot be an incontestable tax’¹². The 12 month deadline applied and Mangoola failed.



Extraterritoriality

[Karpik v Carnival plc \[2023\] HCA 39](#)

Passengers who caught COVID on a cruise sued the vessel owner under unfair contract provisions in the *Australian Consumer Law*¹³. One issue was whether the consumer provisions applied to contracts made offshore and to things done outside Australia.

Where the presumption of extraterritoriality arises, the ‘starting point is always the interpretation of local laws’. It is the text, context and subject matter of the local law which determine the issue¹⁴. The presumption is ‘one of construction only’, and not a fundamental common law right¹⁵. Here, the consumer provisions applied as they departed from the common expectation of territorial confinement.

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¹ generally – [BDM](#) (36-45), Mason in Barnes (ed) [Coherence](#) Ch 4.

² [Unions NSW](#) [2019] HCA 1 [61-62], cf [Palmer](#) [2021] HCA 31 [8].

³ cf [K-Generation](#) [2009] HCA 4 [46-47], [Zheng](#) [2009] HCA 52 [28].

⁴ Colvin [2022] [Robert French Oration](#) (22).

⁵ s 474.29A of the [Criminal Code 1995](#) (Cth).

⁶ s 57(a) of the [Voluntary Assisted Dying Act 2017](#) (Vic).

⁷ cf [IL](#) [2017] HCA 27 [79], [X](#) [2013] NSWCA 320 [59].

⁸ s 175C of the [Corrective Services Act 2006](#) (Qld).

⁹ s 14A of the [Acts Interpretation Act 1954](#) (Qld), similar to federal s [15AA](#).

¹⁰ [Az](#) [2019] HCA 35 [32-37], [SAS Trustee](#) [2018] HCA 55 [20, 64] cited.

¹¹ s 2(1) of the [Recovery of Imposts Act 1963](#) (NSW).

¹² [Brown](#) (1958) 100 CLR 32 (40), [MacCormick](#) (1984) 158 CLR 622 (639-641).

¹³ s 23 in Part 2-3 of Sch 2 to the [Competition and Consumer Act 2010](#) (Cth).

¹⁴ [Impiombato](#) [2022] HCA 33 [61], [Wanganui](#) (1934) 50 CLR 581 (601).

¹⁵ [Coco](#) (1994) 179 CLR 427 (437), cf [Potter](#) (1908) 7 CLR 277 (304) cited.