

interpretation NOW!

Episode 117 – 28 February 2025



Australian Government

Australian Taxation Office



An academic wrote that a ‘statute is probably the most repellent form of written expression known to man’¹. That was in 1958 when statutes were just starting their takeover of the common law world. Now, there’s hardly a corner of human life unregulated by big complex statutes. It is the rare person who does not prefer reading cases to these legislated beasts. The style of statutes leads some to read the statute last, if at all². That’s one reason we are to start with the text and not to substitute what others say for that text. Statutes are forensic puzzles aimed at an unknowable future. Solving them has become the ‘most important single aspect of legal practice’³. A law lord once said it was the uncertainty of statutes which made their interpretation ‘so exciting’⁴. **iTip** – don’t let any ‘ick factor’ about their style spoil your excitement in solving the puzzles they provoke.

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Dictionary definitions

[Breen v Clough \[2024\] NSWCA 316](#)

Courts often caution against reliance on dictionaries to resolve meaning. B and C were neighbours on steep land above a river accessed by an inclinator⁵. An ‘easement for services’ over C’s land permitted services ‘to or from each lot benefited’⁶. B installed a ‘closed system’ CCTV camera on C’s land to manage the inclinator and for security. C wanted it gone.

Relying on dictionary definitions, the trial judge held that ‘services’ required something coming from a public place through C’s land to benefit B’s land⁷. Ward P disagreed. Nothing in the easement itself required the source of the service to be external. Provision of images was clearly a service ‘to’ B’s land.



Criminal offences

[Salameh v R \[2024\] NSWCCA 239](#)

S supplied what he said he believed was cocaine to a sex worker who was later hospitalised. The drug was fentanyl, a commercial quantity of which was found at his home. S was convicted of supplying ‘an amount of a prohibited drug which is not less than the commercial quantity applicable ...’⁸ An appeal on the basis of mistaken belief was dismissed.

The ordinary principles of interpretation apply generally to criminal statutes⁹. Here the offence provision would be ‘incoherent’ if the phrase ‘the prohibited drug’ meant the drug S believed he had supplied. S only needed to know he was supplying ‘a’ prohibited drug, rather than any ‘particular’ one¹⁰.



Legislative history

[Australian Rail Track v ARTBIU \[2024\] FCAFC 170](#)

Legislative history is often significant in working out the ‘purpose or object’ in order to apply s 15AA¹¹.

After approval of an enterprise agreement, unions sought determination of various matters still in dispute. This depended on representatives having ‘not settled all of the matters that were in dispute during bargaining for the agreement’¹². Relying mainly on the legislative history, Katzmann J held there was no power to make the determination. Previous legislation had taken a similar approach, and there was no reason to think any change was intended. **PS** – in some places, recourse to legislative history is criticised as ‘a kind of ventriloquism’¹³.



Is ‘or’ binary?

[Ibrahim v Greater Bendigo CC \[2025\] VSC 6](#)

[E115](#) reported a case where ‘or’ took an ‘ambulatory and cumulative’ operation¹⁴. This case involved an application to extend time for starting work under a planning permit. The statute allowed review of (a) a decision to refuse an extension of time ‘or’ (b) a failure to extend time within a month of a request¹⁵.

It was argued that, a decision to refuse having been made, there could be no review of a failure to extend because ‘or’ confers a ‘binary choice’. Quigley J held that ‘or’ did ‘not operate as a ... mutually exclusive choice’. It merely delineated the opportunities for review. Much may ride on what ‘or’ means. Context and purpose are always crucial to resolving the point.

■ **Thanks** – Ross Carter, Agnes Liu, Patrick Boyd & Jacinta Dharmananda.

¹ Allen [Aspects of Justice](#) (284), quoted Kingston (1987) 11 NSWLR 404 (423).

² cf [Greenwood](#) (1956) 350 US 366 (374), Scalia & Garner [Reading Law](#) (384).

³ Spigelman [Statutory Interpretation & Human Rights](#) (2005) for example.

⁴ Lord Wilberforce in [Maher](#) 14 MULR 468 (509), cf Hart [Way to Justice](#) (35).

⁵ Ward P said there was a ‘degree of hostility or animosity between them’.

⁶ Schedule 8 to Part 11 of the [Conveyancing Act 1919](#) (NSW).

⁷ The camera was otherwise an impermissible fixture amounting to trespass.

⁸ s 25(2) of the [Drug Misuse and Trafficking Act 1985](#) (NSW) emphasis added.

⁹ [4-5] [Rohan](#) [2024] HCA 3 [25] cited, cf [Herzfeld & Prince](#) [10.90].

¹⁰ [20] [Tabe](#) [2005] HCA 59 [11], [Hamzeh](#) [2022] NSWCCA 232 [53] cited.

¹¹ [Ruddick](#) [2022] HCA 9 [133], [Unions NSW](#) [2019] HCA 1 [171], Episode [83](#).

¹² Scope of agreement, leave entitlements, dispute procedures, pay etc.

¹³ [Koons Buick](#) (2004) 543 US 50 (73-74) Scalia J.

¹⁴ [Williams](#) [2024] HCA 38 [155], cf [McIntosh](#) [2021] NSWCA 221 [13-15].

¹⁵ s 81(1) of the [Planning and Environment Act 1987](#) (Vic).

Episode 118 – meaning of ‘services’; impact of purpose; labyrinthine process; ‘contrary intention’

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