Academic Guide

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|  | | Statutory Interpretation  Second Edition  Michelle Sanson  Material prepared by Michelle Sanson, based on content from Statutory Interpretation, second edition | |
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CHAPTER 1: INTRODUCTION TO STATUTORY INTERPRETATION

The book is designed with the typical semester in mind, and Chapter 1 sets the scene with a brief mention of history and the role of the judiciary. It is envisaged that Chapter 1 would apply for the first class, during which time you will be explaining the subject structure, learning and assessment activities, and undertaking an icebreaker.

When introducing the text and the required weekly readings, please make clear to students that the text is a work about statutory interpretation, so where cases are dissected and reassembled, *the focus is on the statutory interpretation aspect* – the case may have had a number of legal issues, or the legislation considered in that case may have since changed! The point is to apply the legislation as it was, to the facts as they were, to resolve the issue of statutory interpretation faced by the actual court, and in doing so, to learn about statutory interpretation.

# Suggested in-class activity: rule-reading based icebreaker

You could break students into groups and ensure they have a copy of the University rules on student conduct to consult with, which you can say is akin in some ways to a piece of legislation. Provide each group with a specific scenario, and they have to apply the rules to decide whether the student conduct rules have been breached. You can give enough time for group work for the students to introduce themselves to each other, discuss their question and decide who will speak on behalf of the group, and then when they report back to the larger group they can also introduce each other.

Some scenarios you could use, depending on your University’s rules and how many students you have in the class, are:

1. Mary, a vegan student, is campaigning to stop the Uni cafeteria serving meat, and as part of the campaign she stands outside the cafeteria and yells at anyone who comes out with a burger. What rule(s) apply, is there a breach, and what are the consequences?
2. Ken, a student who had been kicked out of his accommodation, was found to have been sleeping under a desk in the library. What rule(s) apply, is there a breach, and what are the consequences?
3. Jodie was found to have notes up her sleeve in a closed book exam. What rule(s) apply, is there a breach, and what are the consequences?
4. Paul found a USB stick left in a Uni computer by another student, and used it to prepare his assignment. What rule(s) apply, is there a breach, and what are the consequences?
5. During a class discussion, John stated his views on the issue of same sex marriage, and another student, Vira, said it is ungodly. John told Vira that religion is stupid and so is she, and Vira threw her notebook at John. What rule(s) apply to John’s conduct, is there a breach, and what are the consequences?
6. Jalal started law studies but realised in the first two weeks it was not going to be right for him, and he has withdrawn. What do the rules say about refund of fees?
7. Lee was offered a place in the Bachelor of Laws degree, but the Uni withdrew the offer without telling her why. Do the rules allow for this, or should he have been told the reason and had a chance to appeal the decision?
8. A teacher has been harassing some of the students, and Ben wants to complain about it but is afraid he will get a bad mark out of retribution. Can he make an anonymous complaint or otherwise have his identity hidden during the complaint process?
9. Joe’s father has died in the middle of semester and he has to take care of the estate matters plus help his mother, so he wants to take a leave of absence. What are the rules he has to follow?

# Extra activity:

This is an exercise to get students to read a statute, and if you would like to add a formative assessment for writing you can get them to write a sentence with their yes or no answer, and an explanation.

**Knowing journalist source warranted?**

A journalist has approached you for advice. He says he has heard that the Australian government can get a warrant to tap his phone and email without him knowing it, which would expose the identity of confidential sources. His reputation is at stake as a journalist who protects his sources, so he wants to make sure that if it happens, he gets notice of it. Your task is to check the *Telecommunications (Interception and Access) Act 1979* (Cth).

*Note: students will most likely focus in on the provisions relating to the issuance of a journalist information warrant under Division 4C of Part 4‑1, but the answer is in s 184 in Part 4-2, so unless they use the table wisely they will most likely read a fair tract of legislation before reaching the answer, which gives them a good taste of how legislation is drafted.*

# Chapter Quiz

The following quiz could be used at the start of class to test completion and comprehension of pre-reading.

1. **What was the earliest form of legislation in England?**

A. Bill passed by the House of Commons

**B. Decree of the monarch**

C. United Nations treaties

D. The writ system

1. **According to what doctrine can the courts only apply legislation, and not rewrite it if it doesn’t make sense?**

**A. Separation of powers**

B. Rule of law

C. Judicial review

D. Implied powers

1. **Which of the following was not used in statutory interpretation in Australia in the 19th Century?**
2. English statutes
3. English cases
4. Supreme Court of New South Wales decisions
5. **Supreme Court of New South Wales Official Court Guidelines**
6. **What was the date on which the repugnancy doctrine (under which Australian legislation which was inconsistent with English law was struck down) ceased to apply in Australian States?**

A. 1865

B. 1901

C. 1942

**D. 1986**

1. **What was Harvard legal scholar Roscoe Pound’s broadest option for treatment of legislation by the courts?**

**A. The first category (treating statutes as a superior source of law, applying them fully in rule and in principle, and reasoning from them by analogy)**

B. The second category (treating statutes as being on par with judge made law, applying them fully and reasoning from them as one would with other judicial decisions)

C. The third category (giving only direct effect to them, favouring a liberal interpretation)

D. The fourth category (giving only direct effect to them, favouring a strict interpretation)

1. **How do Australian courts treat legislation today?**

A. On par with cases from superior courts

B. Given a narrow interpretation in favour of the freedom of the citizen

**C. As a superior source of law, except where constitutionally invalid**

D. As inferior to common law

1. **What is the correct term used in relation to the statistical study of judicial decisions?**

A. Jurisdiction

**B. Jurimetrics**

C. Judicial analysis

D. Behavioural mathematics

1. **Which of the following can be said to apply to legal formalism in statutory interpretation?**

A. It can result in a nonsensical outcome and/or injustice for a litigant

B. It respects the separation of powers doctrine

C. It puts the onus on Parliament to correct errors in legislation

**D. All of the above**

1. **What does the description of statutory interpretation as a ‘hermeneutical circle’ mean?**

**A. Interpretation is a reiterative process in considering a provision and its intrinsic and extrinsic context**

B. All reasoning must revolve around the statutory provision itself

C. A circle is cast around the legitimate sources of documents used for interpretation, and those which must be sealed off from use

D. Statutory interpretation exists within a framework of religion and philosophy

1. **Which of the following is not a threshold matter in statutory interpretation?**

A. Is the content of the legislation relevant to the issues of the present case?

**B. What relevant precedent is available?**

C. Was the legislation in force at the time the events took place?

D. Does the Parliament that passed the legislation have jurisdiction in the place where the events took place?