Methods and Principles of Statutory Interpretation:

Process of Interpretation

BACKGROUND:

Duty of the Court: The overall objective of statutory interpretation is to give effect to the purpose of Parliament as expressed in the text of the statutory provisions - which are not to be read in isolation (Project Blue Sky)

Remember, it “is a well-established proposition that in interpreting legal texts... the Court is concerned not with ‘the real intentions of the parties but with their outward manifestations” (French CJ, Litigation in a Statutory Universe). No individual minister represents the whole parliament, for many have reservations and distinct intentions that are echoed in the Extrinsic Material but are not indicative of legislative intention.

‘The legislative intention... is not an objective collective mental state. Such a state is a fiction which serves no useful purpose. Ascertainment of legislative intention is asserted as a statement of compliance with the rule of construction, common law and statutory which have been applied to reach the preferred results and which are known to parliamentary drafters and the courts.’ Lacey

The above underscores intention being a vessel crafted from applying the ordinary process and rules of statutory interpretation. It is not completely devoid from parliament’s objective intention, but the purpose is within the outward Statute and not to be found anywhere else.

s.15AA of the Acts Interpretations Act and s.35 Interpretation legislation Act do not require an absurdity for purpose to be considered (Mills v Meeking). Instead, they demand a purposive interpretation.

RULES:

1. Identify the issue at hand and, if possible, its cause. (see 5.1)

2. Begin with the text in its ordinary and grammatical sense (see 5.2)
   - ‘This court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself.’ (Alcan Alumina)
   - ‘Ordinary, that leaning (the legal meaning) will correspond with the grammatical meaning of the provision.’ (PBS)
   - This ‘rule is dictated by elementary considerations of fairness, for, after all, those who are subject to the laws commands are entitled to conduct themselves on the basis that those commands have meaning and effect according to ordinary grammar and usage.’ (PBS)
   - ‘It is the text of the statute which governs.’ (French CJ in Litigation in a Statutory Universe)
   - Often this will consist of resorting to dictionaries. (Kirby J in Statutory Interpretation: The meaning of meaning). Dictionary definition is never conclusive. (Field v Gent)

3. Consider the legislation as a whole (context in its widest sense) look at context and purpose.
   - Context can be considered at first instance with the text. (CIC Insurance; PBS)
   - ‘The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. (PBS)
   - We ‘ascertain the legislative intention by reference to the language of the instrument viewed as a whole.’ (Cooper Brookes)
• ‘A legislative instrument must be construed on the p.f. basis that its provisions are intended to give effect to harmonious goals.’ (PBS)

• This includes identifying the ‘mischief…the statute was intended to remedy’ but only through legitimate means- avoid EM for now. (CIC Insurance)
  i. What is the problem this legislation is intended to address? Purpose?

• ‘The meaning of the text may require consideration of the context which includes... in particular the mischief it is seeking to remedy.’ (Alcan Alumina)

• Include and make reference to any similar acts e.g. Motor Act in (Taylor v Owners)

4. Consider any reasons to depart from the literal meaning of the text (see: 5.3).

• Court can depart from the literal interpretation of a legislative provision when “the operation of the statute on a literal reading does not conform to the legislative intent as ascertained from the provisions of the statute, including the policy which may be discerned from those provisions.” (Cooper Brookes)

• “Inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent.” Court would no doubt prefer an interpretation that will conform to the legislative’s intent the best. (CIC Insurance)

• All such rules of interpretation are ‘no more than rules of common sense, designed to achieve this object. They are not rules of law.’ (Cooper Brookes)

• Drafting errors (Taylor v Owners)

5. Purposes of the Act: (See: s.15AA and s.35 ILA)

• ‘To give the words of a statutory provision the meaning that the legislature is taken to have intended them to have.’ (PBS).

• ‘The purpose of the legislation resides in the statute itself, inference from its text and structure and, where appropriate, reference to extrinsic materials. (Certain Lloyds)
  i. An express statement of purpose in the statute itself.
  ii. Inference from its text and structure
  iii. Where appropriate, reference to intrinsic materials

• The HCA has warned on more than one occasion of the danger of concentrating on a general legislative intention to override the ordinary meaning of a statutory text. (Taylor v Owners)

6. Extrinsic Materials: (see: s.15AB; s.35(b)(ii)-(iv); CIC Insurance)

• ‘It is well settled that at common law, apart from any reliance upon s.15AB... the court may have regards to reports of law reform bodies to ascertain the mischief.’ (CIC Insurance)

• ‘Statutory interpretation process involves identifying the statute’s purpose, such can be done so via express statements in the relevant statutes, by inference from its terms and appropriate reference to extrinsic materials.’ Extrinsic materials can be used to ascertain statute’s purpose. (Lacey)

• ‘historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text.’ (Alcan Alumina)

• It is not part of a court’s function to give effect to parliamentary speeches, ministerial media releases or other informal statements. (Nominal Defendant v GLG Australia)

• ‘The minister’s words cannot replace the purpose of the statute’- does not represent all of parliament. (Lacey)

• ‘The minister’s words however, cannot be substituted for the text of the law, particularly minister’s intention, not expressed in the law, affects the liberty of the subject.’ – In line of principle of legality (Lacey)
7. **Presumptions:**
- Presumption that every word has meaning (*Commonwealth v Baune; PBS*)
- Presumptions of legality (*Evans*)
- Presumptions of international law: No against international law (*Kartinyeri; Al Kateb*)
- Presumption of retrospective legislation (*Polyukhovich v The Queen*)
- Presumption of constitutional validity (*s.15A AIA; s.6(1) ILA*)
- Penal laws are read narrowly: Rule of last resort (*Beckwith v R*)
- Beneficial laws are read broadly (*Re Kearney; VCF v Brown*)
- Conflicting provisions: on the presumption that every provision is important. Court need to identify which is the leading and which is the subordinate provision. (*PBS*)

8. **Conclude if it is likely to be a broad or narrow construction.** (see: 5.6)