

Applying the law essay sample

Law



**ASSIGN
BUSTER**

1. Why do statutes have to be interpreted? (the problem with words) 2.

General approaches to the interpretation of statutes. a. The “ literal approach”.

i. ‘ The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable.’ Higgins J. in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at 161-2. (See text page 119) ii.

Examples: *Fisher v Bell* (1961) 1QB 394 (page 118) b. The “ golden rule” approach.

iii. ‘...the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther.’ iv. per Lord Wensleydale in *Grey v Pearson* (1857) 10 ER 1216 (see page 119) v. Example: *Lee v Knapp* [1967] 2 QB 442 (page 119) c. The mischief rule and the purposive approach

vi. S15AA, Acts Interpretation Act, 1901 (Cth).

(1) In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (Whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object. vii. Example: *Armstrong v Clarke* [1957]. 2 QB 391(page 120) *Smith v Hughes* [1960] 1 All ER 859 (Page 122)

3. Rules of Interpretation.

d. The act must be read as a whole, *Metropolitan Gas Co v Federated Gas Employees' Industrial Union* (1925) 35 CLR 449. e. Regard must be had to the section of the community to which the legislation is directed, Example: *Fisher v Bell* [1961] 1 QB 394. f. The class rule- *Ejusdem generis*- where words of a particular meaning are followed by words of a general meaning, the general words are limited to the same kind as the particular words, Example: *DPP v Farrell* [1978] IR 13 (page 124) g. The context rule - *Noscitur a sociis*- the meaning of a word or a phrase is derived from its context, Example: *R v Ann Harris* (1836) 173 ER 198 (page 124) h. The inclusions and exclusions rule *Expressio unius est exclusio alterius*- the express mention of one thing is the exclusion of another, i. The general and specific rule -*Generalia specialibus non derogant*- earlier statutory provisions which deal with a particular matter may not be impliedly repealed by a later, more general, provision,

4. Presumptions.

j. words are presumed to be used consistently throughout the legislation k. words are presumed to have their current meaning l. acts which create criminal offences must be construed narrowly m. acts which create taxes, rates or charges must be read narrowly n. parliament does not intend to alter fundamental common law principles o. statutes do not operate retrospectively.

p. the re-enactment of a provision or word constitutes approval of a previous judicial interpretation of the provision or word q. legislation does not bind the Crown

r. legislation does not take away the jurisdiction of the courts
s. property rights are not taken away without compensation
t. legislation does not have extraterritorial effect

QUESTION ONE

A hierarchical court system permits:

- a. Appeals to review the decision of a lower court by a higher court.
- b. Particular courts to specialise in particular types of trial.
- c. The operation of the doctrine of precedent.
- d. All of the above.

QUESTION TWO

High Court judges are appointed by the:

- a. Prime Minister on the advice of the Governor General.
- b. Chief Justice on the advice of the Prime Minister.
- c. Governor General on the advice of the Prime Minister.
- d. Governor on the advice of the Premier.

QUESTION THREE

Before making a decision about a question of law, a judge has to follow the earlier decisions of judges in higher courts within the same court hierarchy.

This is known as the:

- a. Doctrine of precedent.
- b. Doctrine of separation of powers.
- c. Doctrine of reception.
- d. Doctrine of responsible government

QUESTION FOUR

Knowing the law can help us to:

- a. Avoid serious legal problems before they arise.
- b. Better organise our business and personal lives.
- c. Recognise when professional legal advice may be required.
- d. All of the above.

QUESTION FIVE

The ratio decidendi of a case is the:

- a. Material facts of the case.
- b. Legal principle upon which the final decision is based.
- c. Final decision of the court.
- d. Written record of the decision.

QUESTION SIX

A purposive approach to interpretation is to be applied:

- a. If when reading the legal text we are able to give words and phrases their ordinary and natural meanings.
- b. If interpreting the legal text literally would lead to a result that is absurd or inconsistent with the rest of the document.
- c. When a literal approach does not produce a clear interpretation.
- d. Never.

SHORT ANSWER QUESTIONS

QUESTION SEVEN

Do judges make law?

QUESTION EIGHT

What is the doctrine of precedent?

QUESTION NINE

What is statutory interpretation?

QUESTION TEN

What is the purposive approach to statutory interpretation?