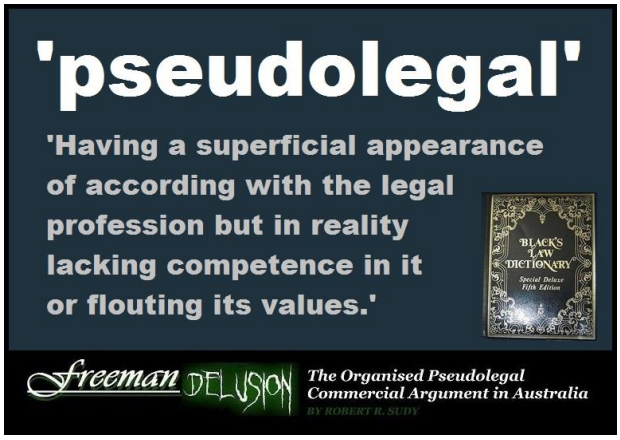
Interpreting Legalese



Unusually, non-American OPCA adherents revere the U.S.-centric Black's Law Dictionary, obsessively mining it for obscure Latin phrases scarcely used in modern courtrooms. Although very popular in OPCA circles, *"Blacks Law Dictionary"* cannot be used to interpret the meanings of Australian legal terms, and is therefore invalid in any Australian court.

Law dictionaries are not often used by a court, they are a general reference tool, and not applied to the interpretation of terms in legislation. There are clear rules and procedure for the interpretation of terms in legislation. This is divided into what is known as intrinsic evidence and extrinsic evidence.

Intrinsic evidence

"Intrinsic evidence" is information contained WITHIN the Act itself, namely the definition section or glossary of the Act. This is relied upon before ALL ELSE whenever a court finds that to apply the ordinary meaning of words in a statute would lead to an absurdity or an ambiguity.

Extrinsic evidence

"Extrinsic evidence" is information which is obtained from OUTSIDE of the Act itself, an example would be a publication called *Hansard*. This publication, which does not form part of the Act itself, is a record of debates in parliament concerning that legislation.

The Interpretation Acts allow the courts to refer to these parliamentary records whenever a court believes that it is necessary to find out the intention of parliament in enacting a statue. However, these Acts only allow the courts to use parliamentary records when all else has failed.

Another important aspect of the *Interpretation Acts* is that they create standard meanings for certain words. For example, a reference to one gender includes the other, so that whenever the work 'he' is used in a section of a statute, it includes the feminine gender (ie 'she'), unless the section quite clearly indicates that it is meant to apply only to males. Similarly, the singular of a word includes the plural, unless the contrary is clearly indicated in the language of the statute. Modern forms of drafting now generally do away with the use of the masculine gender to denote both genders, so you will usually find examples of the masculine 'he' becoming increasingly rare these days.

The ***Acts Interpretation Act (1901)*** (Cth) gives courts some assistance in interpreting federal Acts. For example, Section 15AA of the Act directs courts to prefer an interpretation that gives effect to the purpose and policy of the act. This has formalised the purpose approach mentioned above, as the preferable approach to the interpretation of statutes.

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A matter of substance, not form.

Following the constitutional technique which has been approved in the ***Engineers Case (1920) 28 CLR 129***, PLAIN ENGLISH should be used. It is also important to use connotation rather than denotation (See Engineers at 142-3 and 151; and also see ***Grain Pool of Western Australia v Commonwealth (2000) 202 CLR 479*** at 493). I believe it was Galdron J who made the very good point that the Constitution should be read as if it is being read for the very first time, and to apply a modern meaning.

Homo vocabulum est naturae; persona juris civilis. "Man is a term of nature, person of the civil law." The law is not concerned with matters of nature, therefore it only recognizes the person, and not the man. As constitutional scholar Sir Ivor Jennings once stated... *"If Parliament enacted that all men should be women, they would be women so far as the law is concerned".*

..a 'man' is not a question of law, but of fact

(i) The question whether a person is a woman or man is not a question of law but of fact. It cannot be asserted that the arbitrary selection of satisfaction as to the existence of two factual requirements, viz `core identity' and `sexual reassignment surgery' thereupon necessarily determines as a matter a law the sex of a transsexual.

View stated that it is wrong to say that the question whether a person is a woman or a man is a matter of law because it affects status. `Status' among natural persons arises from a variety of causes. It is a term without precise connotation and judicial decisions throw little light upon its meaning. Its primary characteristic is that of belonging to a particular class of persons upon whom the law confers rights or imposes duties or incapacities.

(ii) A criminal attempt is committed when a person has at all material times a guilty intent to commit a recognised crime and does acts sufficiently proximate to the commission of that crime and not merely preparatory of it. In respect of a charge of assault with intent to commit the crime of rape, whether the victim was a man or a woman or a person who had the physical appearance or the physical attributes of a man or a woman are not relevant to determining whether in the circumstances the crime has been committed: the intent is with respect to a real and not an imaginary crime and the fact that the person assaulted was not a woman with a vagina, if that were the fact, is not to the point. The same is true of the crime of detaining with intent sexually to penetrate.
Corbett v Corbett [1971] P 83; R v Tan [1983] QB 1053, not followed. Britten v Alpogut [1987] VR 929, applied.

[130 VIC 5]
R v Cogley — Court of Criminal Appeal, Vic — 21 Apr 1989 232/88

An example

Is cannabis really a narcotic plant? ***Section 70(1) of the Drugs, Poisons and Controlled Substances Act 1981*** defines "narcotic plant" to mean:

> *"any plant the name of which is specified in column 1 of Part 2 of Schedule Eleven [of the Drugs Act] and includes a cutting of such a plant, whether or not the cutting has roots;"*

This includes cannabis, as well as two types of coca plant and two types of opium poppy. The coca plant is likewise listed as a *narcotic plant* but cocaine is not a narcotic, it is a "non-narcotic central nervous system stimulant" (as found in *US v. Stieren*) but it is only *"defined as a narcotic for penalty and regulatory purposes."*

More broadly defined, you could say it is considered a *"narcotic plant"* if it is *"subject to restriction or illegal"*, which is identical to the second usage of the term in common dictionary definitions.

> Sense of ***"any illegal drug"*** was first recorded as a second usage of the term *"narcotic"* in 1926, nearly 100 years ago.
>
> "2: a drug (as marijuana or LSD) subject to restriction similar to that of addictive narcotics ***whether physiologically addictive and narcotic or not***"

The question of fact (whether or not it is technically a "narcotic") is completely irrelevant, if the classification was only for penalty and regulatory purposes. It was the intention of the parliament that the cultivation of this plant be made illegal, regardless it was at the time, (perhaps wrongly in "fact") included into a group of other plants labelled "narcotics".

Criminal Charge Book, 7.7.2.2.1 – Cultivation of Narcotic Plants (3 December 2012) Judicial College of Victoria:

> *"To summarise, before you can find NOA guilty of cultivation of narcotic plants, the prosecution must prove to you beyond reasonable doubt:*
>
> - *One – that [he/she] intentionally cultivated a plant; and*
> - *Two – that the plant that [he/she] allegedly cultivated was a narcotic plant, in this case [insert name of plant].*
>
> *If you find that either of these elements have not been proved beyond reasonable doubt, then you must find NOA not guilty of cultivation of narcotic plants.*
>
> *However, even if you decide that these elements have been proven, NOA will not be guilty if the defence has proven, on the balance of probabilities, that s/he did not know or suspect, and could not reasonably have been expected to have known or suspected, that the plant s/he was cultivating was a narcotic plant."*

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