

SMALL BUSINESS LAW

ASSESSMENT

Assessment will be a test on:

- 4 April 1996 - worth 30%
- 20 June 1996 - worth 30%

Each assessment will be a multiple choice test of 50 questions.
About 1 hour.

Assignment: A 1000 word assignment on topics to be announced.
Due date: 20 June 1996. Worth 40%.

STATUTORY INTERPRETATION

This module consists of understanding and analysing a number of statutes relevant to small business in the ACT. Therefore, a good starting point is a brief understanding of how a statute should be interpreted.

THE LITERAL RULE

This is a general rule that the Act or regulation should be interpreted strictly from the printed words. That is, no outside source is used to help in interpretation. The words and phrases are interpreted according to their literal meaning. This rule is most appropriate for modern legislation.

THE GOLDEN RULE

This is an exception to the literal rule. If the result of a literal interpretation is absurd then, the court is prepared to modify the words so that it does not lead to an absurd interpretation. An example is the use of gender specific words to include all persons. For example, if the words are "...he is guilty of fraud", the courts will interpret this to mean that both males and females are guilty of fraud.

However, the courts are very cautious about applying their own interpretation to words and phrases in statutes and the prima facie conclusion must be that they are correct. Otherwise the courts may be usurping the role of parliament. Another solution is to sever the offending part if its absence does not unduly affect the rest of the statute.

THE MISCHIEF RULE

This rule has been reinforced by statute. For example, s15AA in the Acts Interpretation Act 1901 (Cth) and s33 of the Interpretation Act 1987 (NSW). The rule allows judges to look to external sources to aid in the interpretation of the words or phrases. Because this is a statutory direction, judges must do this when interpreting legislation. A common external source is the relevant extract from Hansard (the Parliamentary Reporter).

When looking at an Act such as the Agents Act 1968 (ACT) you should check the following:

1. Date printed. Is it the latest edition? Have there been important amendments?
2. TABLE OF PROVISIONS - the contents section of the Act. Note that it is subdivided into Parts. That is, sections concerned with the same subject matter eg THE AGENTS BOARD
3. Short title: The official way the Act should be cited
4. s3 Application of the Act. Generally, those people or corporations that the Act does not apply to.
5. s5 Interpretation. The definition section. This section is most important as a statutory definition can be quite different from the normal dictionary definition. For example, "minerals" in the various Mining Acts.
6. Similarly, the agent definitions in ss FA-5F are most important.

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