A Method for Interpreting Statutes: Description

This is an outline of the book: Christopher Enright (2015) *A Method for Interpreting Statutes* Sinch: Canterbury.

Background

1.1 Components of a Statute

From a functional perspective a statute has seven components:

A. Words. The raw part consists of the words of the statute. The literal rule of interpretation constrains the scope of the meaning of these words

B. Definitions. The words include a special type of provision in the form of definitions.

C. Instruments. Some provisions authorise some person to make instruments, which extend the text of the statute.

D. Interpretation Acts. Each jurisdiction has a statute that lays down provisions that apply to each statute in the jurisdiction unless that statute expresses a contrary intention to the application of a provision to it.

E. Maxims. Common law has created maxims of interpretation that apply to relevant parts of a statute unless that statute expresses a contrary intention to the application of the maxim to it.

F. Judicial Interpretation. Judges interpret statutes when a case involves a provision that is ambiguous. As readers would appreciate, this book is describing a method to use in this task of interpreting a statute.

G. Judicial Alteration. The golden rule of interpretation allows judges a limited scope to alter the words of a statute when the relevant provisions is absurd or in conflict with another provision.

1.2 Enacting Statutes by Reference to Policy

Legislators that are rational and honest will enact a statute in order to achieve some desired outcome of effect. In abstract form legislators enact Statute X in

order to achieve Effect X. Effect X is a cluster of specific effects that can be any of a number of types. They may, for example, be economic, social, cultural, education of symbolic.

1.3 Interpreting Statutes by Reference to Policy

In the Australian jurisdiction the two dominant constitutional rules for interpreting a statute seek to have courts carry on the function of the legislature in formulating a statute to achieve a desired policy goal or effect. These are the rules:

Purpose and Object Rule. This rule requires a court to seek the meaning that will best achieve the purpose and object (which are synonyms for effects) that the legislators sough to achieve be enacting the statute.

Extrinsic Material Rule. This rule permits a court to look at material outside the statute as an aid for ascertaining the purpose and object of the statute. Lawyers refer to this as extrinsic material.

Model

Lawyers and law schools in Australia are generally skills averse. The author takes issue with this on the basis that developing and teaching skills improves that quality of teaching, learning and using law. An obvious format for skills that is pertinent to many tasks in law is to develop a step-by-step approach to performing that tasks that lawyers perform. This step-by-step approach can be algorithmic or something that approximates an algorithm. The steps for interpreting law can be set out in a model[1] that contains six steps. The diagram below sets out these steps in short form:

Step 1. Rule	Organising the Rule
Step 2. Issues	Identifying the Issues
Step 3. Options	Identifying the Meanings and Effects
Step 4. Purpose and Object	Identifying the Purpose and Object
Step 5. Correct Meaning	Identifying the Correct Meaning
Step 6. Opinion	Writing the Opinion
Diagram 1 Model for Interpreting Statutes	

This model captures the fundamental logic and the bare bones of the processes involved when interpreting law. Readers need to understand and use it in this sense. It does not purport to describe the process in any other sense, for

1.   This model draws on ideas formulated int two other texts by the author – Christopher Enright (2015) *Legal Reasoning* and Christopher Enright (2015) *Legal Method.*

example, in terms of politics or sociology. To illustrate some of these steps it is necessary to create an example. A legislature has enacted Statute X. The legislature enacts Statute X in order to cause Effect X. Effect X is therefore the purpose and object of Statute X.

Step 1 Organising the Rule

Step 1 in the model is to organise or analyse the rule that contains the provision in the statute that the court needs to interpret.[2] One organises a legal rule by dividing it into its elements and consequences.[3]

Step 2 Identifying the Issues

Step 2 in the model is to identify any issue which gives rise to the need for a court to interpret a statute.[4] The way to identify an issue is to apply the elements of the relevant legal rule to the facts in a systematic way – that is, take each element in turn and check it against each of the facts.[5] There is an issue when it is not clear whether an element of the rule applies to the facts or not. This happens when part of the element is ambiguous, that is, it has two or more meanings. According to one meaning at least, the element applies and according to at least one other meaning the element does not apply. By interpreting the ambiguous provision the court resolves the issue by determining that one meaning as opposed to another is the legally correct meaning.

Step 3 Identifying the Meanings and Effects

Step 3 requires the court to identify the options before the court. These options comprise two connected parts:
1. Meanings. There are the various meanings of the ambiguous provision
2. Effects. There is the effect that each of these meanings will cause the statute to have if the court were to choose it as the legally correct meaning.

1. Identifying the Meanings

When a provision in a statute is ambiguous it has two or more meanings (and the existence of these two or more meanings creates the issue). Step 3 involves identifying these meanings. In this analysis these meanings are labelled for reference purposes as Meaning 1, Meaning 2 and so on. Thus the range of

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2.   Chapter 9 Organising the Rule
3.   Chapter 4 Legal Method contains an account of the method for organising law.
4.   Chapter 10 Identifying the Issues
5.   Chapter 4 Legal Method contains an account of the method for applying law to facts.

meanings consists of Meanings 1-n. It is possible to set these meanings out in a table that takes the following form:

Meanings
Meaning 1
Meaning 2
Meaning n
Diagram 8.2 Meanings

2. Identifying the Effects
Introduction
When a court interprets a statute it decides that one of the meanings in the range Meanings 1-n is the legally correct meaning of the ambiguous provision. (In some cases the court may decide that two meanings or even more than two meanings are legally correct – there is no need to explore those options here since the basic reasoning that applies to one meaning applies to two or more.)

Analysing the Effect of a Meaning
A way to comprehend the effect that a meaning causes is to view the effect in stages. To some extent these stages are temporal but their main importance is that they are functionally accurate. That said, the stages may be artificial in that the process can be seamless and holistic, but the stages still help to understand what happens. These are the stages:

Stage 1. Effect of a Rule. The rule that contains the ambiguous provision will cause some effect. In all probability the act of a court in interpreting the rule will change the effect that the rule has hitherto caused.

Stage 2. Interaction of Rules. The effect that a rule causes will in all probability interact with, combine with or add to, in some fashion, the effects that the other rules in the statute are already causing. The outcome is to create the total effect of the statute. In the simple case the process may just involve adding effects. In other cases there may be an interaction. These two responses are similar to the processes in chemistry that create mixtures and compounds. In a mixture the components retain their own properties. In a compound there is no necessary relationship between the properties of the compound and the properties of its components. To return to the main point, in summary this is what happens: a rule creates an effect and that effect ends up in some way as part of the total effect of the statute.

Stage 3. Changing the Effect of a Rule. When a court interprets some provision in a legal rule it determines the legally correct meaning of the provision. Doing this is likely to change the effect that the legal rule is causing. Obviously what

this change is depends on which meaning the court declares to be legally correct because each meaning will generate a different effect for the rule and also for the statute that contains it.

Stage 4. Changing the Effect of a Statute. This change to the legal rule will have a flow on effect and change the total effect of the statute. Since each meaning of the ambiguous provision can change a legal rule in a different way, the total effect of the statute will vary depending on which meaning the court chooses as legally correct.

Structural Representation

A way to represent this in structural terms is to see a chain reaction that takes the following form:

* Meaning: Effect. A meaning causes an effect of its own.

* Interaction. That effect interacts in some way with the other effects that the statute is already creating.

* Statute: Total Effect. That interaction creates a new effect for the statute. We can call this a total effect to emphasise that it is the effect of the whole statute, and not the effect of just one meaning.

Step 4 Identifying the Purpose and Object

In the model that this chapter is propounding a legislature enacted Statute X in order to achieve Effect X. In this case Effect X is the purpose or object (the two are interchangeable in this context) of Statute X. Since the task of interpretation is to identify the meaning that will 'best achieve' the purpose and object of the statute, a question arises: how do we determine the purpose and object of a statute?

This book seeks to answer this question by a combination of means:

1. General Discussion. There is general discussion of the question.[6]

2. Makers of Policy. There is discussion of policy makers because knowing who they are can assist in identifying the purpose and object of a statute.[7]

3. Sources of Policy. There is discussion of the two sources of purpose and object, namely intrinsic sources (sources in the statute)[8] and extrinsic sources (sources outside of the statute).[9]

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6.   Chapter 16 Identifying the Purpose and Object
7.   Chapter 17 Makers of Policy
8.   Chapter 18 Intrinsic Sources of Policy
9.   Chapter 19 Extrinsic Sources of Policy

Step 5 Identifying the Legally Correct Meaning

Step 5 entails identifying the legally correct meaning of the ambiguous provision. There are two alternative ways of doing this:

1. Precedents. Analysing the precedents to determine if there is a binding precedent that applies to the case in hand.

2. Proximities. Measuring the proximities. The task of measuring proximities applies only where there is no binding precedent.

5.1 Measuring the Proximities

Introduction

Here is the scene:

1. A legislature has enacted Statute X to achieve Effect X. This means that Effect X is the purpose or object of the statute (and the terms 'purpose' and 'object' are interchangeable in this context).

2. There is an ambiguous provision in Statute X.

3. The ambiguous provision in Statute X has Meanings 1-n.

4. Section 15AA provides that a court shall prefer 'the interpretation that would best achieve the purpose or object of the Act' to 'each other interpretation'. In this example, as already stated, the purpose or object is Effect X.

Relevance of Proximities

Given the scene just described the task before the court is now as follows. It has to determine the extent to which each of the possible meanings of the ambiguous provision can 'achieve' the 'purpose or object of the Act', namely to bring about Effect X. Section 15AA and its cohorts in the other jurisdictions require a court to measure, in some fashion, the extent to which each interpretation achieves the purpose or object of the Act.

To facilitate discussion this book refers to this measure as a proximity – how close a meaning is to achieving the purpose or object of the statute when it interacts with other provisions in the statute. The required analysis for interpreting a statute on this basis is set forth in the following table:

1	2	3	4	5
Meanings	$\rightarrow$	**Effects**	**Proximity**	**Purpose or Object**
Meaning 1		Effect 1	P_1	Effect X
Meaning 2		Effect 2	P_2	Effect X
Meaning n		Effect n	P_n	Effect X
Diagram 8.3 Options for Interpreting a Statute				

* Column 1 sets out the Meanings of the ambiguous provision. These are Meanings 1-n.

* Column 3 sets out the possible Effects of Statute X based on a 'what if' analysis. These are Effects 1-n that correspond with Meanings 1-n. The interpreter takes each meaning in turn then asks and answers this question. If the court were to choose this meaning as the legally correct meaning of the ambiguous provision, what Effect would Statute X then cause? (This effect of course is a predicted effect.)

* Column 2 contains an arrow. This indicates causation or to be more precise, predicted causation. Meanings 1-n in Column 1 are predicted to cause Effects 1-n in Column 3 respectively. That is, Meaning 1 is predicted to cause Statute X to have Effect 1, Meaning 2 is predicted to cause Statute X to have Effect 2, and so on.

* Column 5 states the purpose or object of Statute X. This is Effect X. Achieving Effect X is the goal when interpreting Statute X.

* Column 4 states the extent to which each meaning in the range Meanings 1-n achieves the required goal, namely Effect X. It does this by focusing on the predicted effects of Statute X for each possible meaning. These are Effects 1-n. The question then becomes this: which Effect in the range Effects 1-n comes closest to the desired effect namely Effect X. Column 4 labels this closeness asproximity, meaning proximity to Effect X. These measures for Meanings 1-n are P1-n, where P stands for proximity.

Measurement of Proximities

There is, as it turns out, no simple and easy way to measure proximities. It may be, though, that in many cases there is a simple answer in that one meaning is so obviously good and the rest are so obviously bad that proper measurement is not necessary. There is further discussion of measurement of proximities in a later chapter.[10]

5.2 Analysing the Precedents

The task of measuring proximities applies only where there is no binding precedent. A precedent binds an Australian court that is interpreting a statute when the circumstances satisfy three conditions:

1. Issue. To be a precedent a case must squarely and directly address and resolve the issue that is now before the court.

2. Court. The prior decision is binding when court that made the precedent is higher in the hierarchy of courts than is the court now interpreting the statute.

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10. Chapter 20 Identifying the Correct Meaning

An earlier decision of the court itself is presumptively binding in that the court can depart from it if there is good reason to do so.

3. Date of Precedent. A precedent is binding only if it is made after either of the following dates depending on circumstances:

  3.1 Where the Purpose and Object Rule Has Not Been Amended. Here the relevant date is the date when the purpose and object rule commenced.

  3.2 Where the Purpose and Object Rule Has Been Amended. Here the relevant date is the date when the purpose and object rule was last amended.[11]

Step 6 Writing the Opinion

Court

In Step 5 the court determines which of the meanings in the range Meanings 1-n is the legally correct meaning of the ambiguous provision. When a court has done this it will write this decision in a judgment. In this judgment it pronounces this meaning to be the legally correct meaning of the ambiguous provision. It also gives its reason for the decision.

Lawyer

A lawyer interpreting a statute obviously does not make an authoritative decision as to the meaning of a statute since they lack the authority to do so. Instead their role has two aspects:

1. Advice. Before a case comes on they try to predict the decision that the relevant court will make in order to advise their client. The lawyer may give this advice in a written opinion to a client of just leave it on the file for the case for reference when needed. This opinion attempts to predict how a court would decide the case.

2. Submissions. If the case comes to court the lawyer puts submissions to the court in an attempt to persuade the court to decide the issue of interpretation in a manner that favours their client.

Structuring the Opinion

In order to write an opinion on the answer to a question of interpretation the obvious way to proceed is to draw on the model for interpreting a statute. This model provided a logical and comprehensive step-by-step guide to the interpretation of an ambiguous provision in a statute. Consequently it will be possible to write a clear opinion by using the preceding five steps as the basis for structuring the opinion. To a large extent the opinion is an account of how the law or court performed these five steps and the results of that performance.

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11.   Chapter 20 Identifying the Correct Meaning

This book explains the writing of judgment in Part 3 Writing the Judgment. It does not provide a separate account of how a lawyer should write an opinion. The main reason for this is redundancy since it would traverse much the same grounds as writing a judgment with adjustments for the differences in perspective and standing.

Application of the Model

There are several uses of the model for interpreting a statute. Obviously from the reader's perspective the most important use is that it is a guide to interpreting law. Yet some other legal tasks incorporate interpreting law so the model assists in these tasks as well to the extent that they are based on interpreting law. All of this means that tasks for which a lawyer can use the model include interpreting law, advising a client, arguing a case, writing on a question of interpretation and reading about a question of interpretation. It may therefore be utilised by students and teachers of law, practitioners and judges alike.