Student Name:

Student Number:

Subject Coordinator:

Subject Name: LAW112 – Memo Statutory Interpretation

Due Date: 8 February 2019

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[Your answer will begin on this new page. Reference according to the AGLC an example is below. You can find more on the Law Library Resource Guide.

EG: Fraud is defined as any act by a person that involves obtaining the property of another or any financial advantage or causing financial disadvantage by deception or dishonesty.¹ – you can remove this part once you are ready to submit via EASTS]

a. **Relevant Legal Issue(s) (200) words**

This question asks you to identify what were the legal issues for the parties. Identify the problem and what has gone wrong for whom. Name each party and describe their individual issues. What area of law may govern these issues? Identify any conflicting facts. Listing the issues means avoiding a ‘scatter gun’ approach to analysing and answering the question.

You only have 200 words so be concise. You are encouraged to examine the secondary resources around this decision or commentary on the Supreme Court and Court of Appeal decisions prior to reading the cases. This will help you distil the main issues.

By way of example of an outline, the below outline comes from *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1. The issues for both parties are outlined and the area of law is outlined. Use bullet points, or numbers etc.

In 2014, Deputy Senior Crown Prosecutor Margaret Cunneen SC and Stephen Wyllie, Ms Cunneen’s son, allegedly advised Sophia Tilley, Mr Wyllie’s partner, to present false chest pains to investigating police officers, at the scene of an accident, to avoid her blood alcohol level being obtained. Ms Cunneen, Mr Wyllie and Ms Tilley (“Respondents”) were alleged to have intended to pervert the course of justice. Under s 31(1) of the *Independent Commission Against Corruption Act 1988* (NSW) ("ICAC Act"), the Independent Commission Against Corruption (“ICAC”) (“Appellant”), commenced a public inquiry to investigate the alleged conduct.

On appeal to the High Court of Australia (“HCA”), Counsel for the Appellant argued:

1. There was no justification for concluding that “corrupt conduct”, illustrated in s 8(2) *ICAC Act*, is limited.
2. The alleged conduct reflected “corrupt conduct”, under s 8(2).

¹ *Crimes Act 1900* (NSW), s192E.
3. Section 12A designated ICAC with extensive investigative powers.

However, the Counsel for the Respondents argued:

1. Under s 8 ICAC Act, the alleged conduct does not constitute “corrupt conduct”.
2. ICAC officiated a misuse of their investigative powers.

The legal issues presented to the HCA include the following:

1. If, under the ICAC Act, the alleged conduct constituted “corrupt conduct”.
2. The intended meaning of ‘adversely affect’, pursuant to s 8(2).
3. Whether ICAC’s investigative powers were misused.

b. Interpretive Criteria used by Justice Schmidt and Justice Payne (1200 words)

In this section you are being asked to outline what interpretative criteria was used by Justice Schmidt and Justice Payne, and you are directed to the relevant paragraphs – paragraph 17 to 98.

Please refer to the day one presentation (2) from the LAW112 residential school for detailed information regarding the interpretative criteria. The interpretative criteria is to be included in your critical analysis and includes:

- Intrinsic guides of the provision and Act concerned;
- Extrinsic materials;
- The relevant Commonwealth statutory interpretation legislation – the Acts Interpretation Act 1901 (Cth);
- Pre-existing, related or similar statutes and common law doctrines;
- Interpretative principles and presumptions developed by courts;
- Precedent in comparable cases;
- Other contextual factors include the effect of any alternative construction (absurdity or injustice);

You must use the above when answering this part of the question. The above list provides the scope of what interpretative criteria is and what may be involved to interpret a statute. Have the above list in front of you when you attempt this question.
In this part you want to capture what interpretative criteria WAS used. The best answers would also address what was NOT used and what might be RELEVANT (not just a list of all that could have been used).

By way of example, you might identify that:

Justice Payne relied upon the following interpretative criteria in reaching a decision in this case:

- X (outlining what it is with references)
- Y (“”)
- Z(“”)

Notable was the absence (if any) of:

- A (“”)
- B (“”)
- C (“”)

Remember, you are being asked to critically analyse.

c. Conclusion reached by the NSW Court of Appeal and whether you agree/disagree (600 words)

Conclusion reached by the NSW Court of Appeal (recommended 200 words)

The question is asking you to put in your own words what decision the Court reached. This means identifying the ratio decidendi of the decision.

By way of example again, in the same case used above:

The majority of the HCA (French CJ, Hayne, Kiefel and Nettle JJ) concluded that “adversely affect” by way of the exertion of official functions of public officials, pursuant to s 8(2) ICAC Act, meant ‘adversely affect the probity of the exercise of an official function by a public official in one of the ways listed in s 8(1)(b)-(d)’. The HCA extended the view that, under s 8(2), if the term “adversely affect” was defined as ‘adversely affect howsoever the efficaciousness of the exercise of the official function’ the definition of “corrupt conduct” would encompass considerable diversity, resulting in a composition of “corrupt conduct” that does not constitute conduct in relation to corruption within public administration. The alleged conduct does not constitute “corrupt conduct” in terms of s 8(2), whereby the alleged conduct is not considered to be conduct adversely affecting probity of the exertion of public
official’s official functions. The HCA concluded that ICAC was incorrect in administering their investigative powers in response to the alleged “corrupt conduct”.

Critical Commentary (recommended 400 words)

Do you agree/disagree?

This is your chance to argue whether or not you agree or disagree with the NSW Court of Appeal decision and WHY. You need to set out your reasons. You might have reference to the judgements from the lower courts. You might refer to commentary.
BIBLIOGRAPHY

To format your bibliography see AGLC3 Rule: 1.16, found on page 33-34 of the AGLC. Remove any categories not used.

A Articles/Books/ Reports

B Cases

C Legislation

D Treaties

E Other