Charter of Human Rights and Responsibilities Act 2006 (Australia) - judicial disengagement and rights-compatible interpretation Bill of Rights Act 1990 (NZBORA), 190-191, 198, 200, 204, 218, 220, 222, 228, 229, 230 Charter background, 186-187 early jurisprudence on s. 32(1) - Supreme Court of Victoria, 202-203 generally, 184 judicial neutralization of s. 32(1), 185-186 provisions comparative landscape, 190-192 "consistently with [statutory] purpose", 198-200 enforcement mechanisms, 188-190 if "remedial", how "remedial"?, 193-198 methodology, 200-202 "remedial" or "ordinary" statutory interpretation, 192-193 rights and limitations, 187-188 generally, 183-186, 232-234 Human Rights Act 1998 (UKHRA), 188, 190-191, 193, 196-198, 200, 202, 204, 211, 213, 227 post-Momcilovic jurisprudence cases following Court of Appeal, 223-226 generally, 222 s. 32(1) beyond principle of legality, 226-228 problems with jurisprudence principle of legality - parliamentary intention vs strained interpretation, 228-230 s. 7(2) factors Court of Appeal methodology, 231-232 principle of legality, 230-231 R. v. Momcilovic

2010 — Victoria Court of Appeal cases under UKHRA and NZBORA, 204 critique of decision, 207 Drugs, Poisons and Controlled Substances Act 1981 (Vic), 203-204 methodology, 205-207 ordinary interpretative direction, 204-205
2011 – High Court of Australia – appeal constitutional background, 208-209 decision, 209-210 generally, 207 ratio of decision not apparent, 222 support for Court of Appeal decision, 210-215

support for NZ/UK approach, 216-221

declaratory legislation

abandonment of unnecessary form of legislation, 389-393 Canada Bread Company, 354, 380-388, 389, 390 changed law rule, 372, 374, 378 generally, 353-354, 389-393 Hawkesbury City Council v. Sammut, 360, 390 legal fiction as unnecessary and archaic, 389-393 legislation promoting political outcomes, 354-356 nature of declaratory form of legislation, 356-361 Scrymgour v. Moore, 390-392 separation of powers, and Canada Bread Company, a cautionary tale analysis, 385-388 dissent, 383-384 generally, 380-382 majority decision, 382-383 direction problem Parliament can change laws of general application, 372-374 Parliament cannot direct courts in resolution of dispute, 374-377 Parliament cannot directly set aside prior judgment, 370-371 generally, 362-365 implications, 378-380 interpretation problem, 365-370 significance of declaratory legislation, 361-362

gender identity interpretive challenge in Australia

Acts Interpretation Act 1901

"creative interpretation", occasions where appropriate, 62 generally, 58-59, 61-62 purposive approach of s. 15AA, 59-60 reference to extrinsic materials in s. 15AB, 60 Anti-Discrimination Act 1977 (NSW), 69 Births Deaths and Marriages Act 1995 (NSW) s. 32A. 69 s. 32DA, 70 s. 32DC(1), 70 Crimes Act 1900 (NSW), s. 81A, 64-65 gender identity cases AB and AH v. State of Western Australia, 65-66 Bellinger (FC) (Appellant) v. Bellinger, 63-64 Corbett v. Corbett (otherwise Ashley), 63, 65 NSW Registrar of Births, Deaths and Marriages v. Norrie, 68-72 R. v. Harris, 64-65 Re Kevin, 64 Western Australia, v. AH and Another, 72-73 Gender Reassignment Act 2000 (WA) s. 14, 68 s. 15, 66-67 generally, 55-56, 56-62, 73-74 Interpretation Act 1984 (WA), s. 18, 67-68 Interpretation Act 1987 (NSW), ss. 33, 34, 70 judicial interpretation of legislation generally, 55-56 Marriage Act 1961 (Cth), 64 Matrimonial Causes Act 1973, s. 11(c), 63 modern approach to statutory interpretation, 58-59 shifting view of gender identity, 72 Human Rights Act 1998 (UK) and judicial powers of interpretation constitutional adjudication Charter of Rights and Freedoms (Can.), notwithstanding clause, 251-252 European Convention on Human Rights, 247-248, 250, 252, 253-254 generally, 254-255 "living instrument" approach, 249 new approach to interpretation of law required by Human Rights

Act 1998, 247-248, 254

Parliamentary sovereignty, 251

"unlawful act by a public authority", 252-253

US Supreme Court vs UK courts, powers of, 250 White Paper 247

White Paper, 247

evolution of human rights in the UK, 261-263 generally, 235 history of rights protection in the UK Bill of Rights 1689 (UK), 236, 238-240 European Convention on Human Rights, 240-242, 243, 247, 254 generally, 236 Habeas Corpus Act 1679, 237 Human Rights Act 1998, 242-244, 247 Magna Carta (1215), 236-237 judicial-political divide, 260-261 political reaction to European and UK court rulings, 255-260 traditional statutory interpretation "anxious scrutiny", 246 Heyden's Case, 245 Interpretation of Statutes (1969), report of Law Commission and Scottish Law Commission, 244-246 principle of legality, 246-247 White Paper, 247

Interpretation Act (Canada)

application and scope, 10-15 constitutional implications analysis in Canada, 6-10 analysis in UK, 5-6 Charter of Rights and Freedoms, 8 generally, 4-5 declaratory legislation, retroactive application of, 15-16 enactment in 1867. 1-3 federal statutes overriding, 14-15 generally, 24 Interpretation Act 1850 (UK), 3 Interpretation Act 1889 (UK), 3 Interpretation Act 1978 (UK), 3 key provisions administrative matters, 23-24 computation of time in federal legislation, 22-23 Crown immunity, and, 20 interpretation of federal legislation, 20-22 mechanics of federal legislation, 15-20 repeal, replacement and amendment, 17 territorial scope of federal law, 19 transition, nine rules governing, 18 Lord Brougham's Act — Interpretation Act 1850 (UK), 3

statutory workhorse, 1

jurisprudential maxims (Canada)

generally, 321-322, 350-351 interpretive axioms administrative decision-makers are entitled to err, 325-331 deference as respect incorporates remedial pluralism, 345-346 inconsistency is not a violation of rule of law, 340-344 more than one valid interpretation is plausible, 331-336 only "true" jurisdiction exists, 336-340 range of intelligible, defensible outcomes is possible, 344-345 pluralism and judicial review domestic legal systems, 322 judicial activism, 324 non-court-centric model, 323 sources of law, 322 reasonableness review vs correctness review, 347-350

legislative amendments — interpreting substance or style

amending provisions, judicial interpretation Australia, 412-419 Canada, 404-412
background and history Australia, 401-403 Canada, 398-401 generally, 397-398 *Interpretation Act* amendment provisions, 398 Uniform *Model Interpretation* Act comparison, 400-401 generally, 395-397, 419-423

Migration Act 1958 (Australia) — role of international law in statutory interpretation

Convention Relating to the Status of Refugees (1951) Article 1A(2), 267 first mention in Australian legislation, 269-270 generally, 265, 266, 269
drafting history and references to Refugees Convention definition of refugee included in 1991 amendment, 269-270 definitions of refugee, 267-268 "dualist model" of reception of international treaty obligations, 269 Migration Amendment Act (No. 2) 1980 (Cth), first mention of Refugees Convention in Australian legislation, 269 generally, 265-266, 291-292

international law as instrument of statutory interpretation

Legacy Act 2014 Australian interpretation of refugee status, 282-284 criticisms and concerns, 284-286 post-Legacy Act interpretation, 286-291 principles governing application of international law debate over recourse to international law, 275 essential rules of construction, 275-276 generally, 270-271 where text of treaty is transposed into statute, 271-275 refugee definition, jurisprudence on, 276-282 Vienna Convention, 271-272, 279-280 Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Seeker Legacy Caseload) Act, (2014), 266, 270, 282-284 Protocol Relating to the Status of Refugees (1967), 267 ouster clauses — statutory interpretation and the British Constitution Anisminic Ltd. v. Foreign Compensation Commission, 134-135, 138-140, 146 constitutional context Anisminic Ltd. v. Foreign Compensation Commission, 140, 141 Privacy International v. Investigatory Powers Tribunal, 142, 144-146 R. v. Secretary of State for the Environment, ex parte Ostler, 141-142.145 R (Cart) v. Upper Tribunal, 142-143, 145, 149 Smith v. East Elloe (Rural District), 141-142 constitutional principle and ouster clause interpretation dicta indicating repudiation of constitutional orthodoxy, 151-153 Evans v. Information Commissioner, 147, 148 generally, 146-147 interpretive role of courts, 149 ouster beyond Parliament's legislative reach, 149 R (A) v. Director of Establishments of the Security Service, 149 R (Cart) v. Upper Tribunal, 149 R (Jackson) v. Attorney General, 149-150 Unison v. Lord Chancellor, 148 forms of ouster ex post ouster, 136 generally, 134 quasi-ouster Evans v. Information Commissioner, 136 Freedom of Information Act 2000, 136 Tribunals, Courts and Enforcement Act 2007, 136-137 Unison v. Lord Chancellor, 136-138

total ouster Anisminic Ltd. v. Foreign Compensation Commission, 134-135 Foreign Compensation Act 1950, 134 generally, 131, 133-134, 153-155 Liversidge v. Anderson, 131-133, 134 purposive approach in New Zealand generally, 293-294, 319 historical analysis of interpretation legislation Acts Interpretation Act 1908, 298 Acts Interpretation Act 1924, 298, 301, 302, 303-305, 311 Interpretation Act 1867 (Can.), 297 Interpretation Act 1888, 296-297 Interpretation Act 1999 approach of courts, 315-319 Law Commission recommendations, 311-314 progress of Bill through Parliament, 314-315 Interpretation Ordinance 1851, 295-296, 297 purposive provisions and the courts before 1999 canons of construction, 299 case law, 300-302 change in approach, 306-310 commentaries, 302-303 reasons purposive provisions were not used, 303-305 rule of law — statutory interpretation and the Canadian Constitution generally, 111-112, 130 relationship between statutes and the Constitution generally, 112-113, 120 notwithstanding clause and statutory override, 113-115 quasi-constitutional statutes, 115-117 statutory limits to Charter jurisdiction, 117-120 statutory bars to constitutional remedies Energy Resources Conservation Act, s. 43 immunity clause, 126-127 Ernst v. Alberta Energy Regulator, 126-128, 130 Henry v. British Columbia (Attorney General), 128-129 Ward v. Vancouver (City), 127 statutory tribunal jurisdiction over the Constitution Doré c. Québec (Tribunal des professions), 124 generally, 120-121 J. (G.), Re, 124 Law Society of British Columbia v. Trinity Western University, 124-125

Lovola High School v. Quebec (Attorney General), 124 R. v. Conway, 121-124, 125 Trinity Western University v. Law Society of Upper Canada, 124-125 Scotland Act 1998, s. 101 – statutory interpretation and legislative competence absence of constitutional review of primary legislation in UK constitution, 157-158 Act of the Scottish Parliament (ASP) compared to Act of UK Parliament, 166 generally, 157 s. 101, reading down legislation, 159, 167 bias in favour of devolution Northern Ireland's more positive approach to interpretation, 169-170 purpose and method of inquiry, s. 101, 167-169 purpose of interpretative obligation defined in s. 3 of Human Rights Act 1998, 167-168 constitutional review consequences of legislating beyond Parliament's competence, 161 pre-enactment checks and cross-checks, 162 "third way" of constitutionalism, 159-160 generally, 157-159, 181-182 Human Rights Act 1998 purpose of interpretative obligation defined in s. 3, 167-168 Jackson v. Attorney General, 158 judicial constitutional review and s. 101 Anderson v. Scottish Ministers, defines approach courts take to application of s. 101(2), 174-175 challenged ASPs, 176-178 DS v. HM Advocate, 175-176 generally, 174 R. v. Lambert, and proper scope of interpretative obligation, 175 Labour Party general election victory, 158 Parliamentary constitutional review and s. 101, 178-181 presumption of competence departure from common law principles of constitutional interpretation, 171 fluidity of constitutional intensity of devolution statutes, 174 generally, 170 Imperial Tobacco, Petitioner, 173-174 Northern Ireland Act 1998, 173 "presumption of constitutionality", 172 "principle of efficacy", 172

Robinson v. Secretary of State for Northern Ireland, 173 safeguarding devolution settlement absence of safeguards in Act, 163 ASP compared to Act of UK Parliament, 166 bias in favour of devolution, 167 Miller v. Secretary of State for Exiting the European Union, 166 s. 28(7) preserves power of UK Parliament to legislate in devolved areas, 163 Sewel convention, 164-165 Smith Commission, recommendations for further devolution of powers, 165-166 traditional approach to legality of Acts of Parliament, 157 Whaley v. Lord Watson of Invergowrie, 158 shared parenting in family law disputes — Australian experience agitation for reform, 1995 amendment to Family Law Act "80-20 rule", 31-32 conflict between parental responsibility and court's duty to protect children from abuse, 30 failure to clarify how courts delegate parental responsibility, 29 Hull Report, 31, 32, 34 men's groups, power of, 30 parental responsibility, concept introduced, 28 Australian Institute of Family Studies (AIFS), 48-49 equal shared parental responsibility (ESPR) exception to, 37 generally, 32, 48, 51 presumption despite risk of family violence, 45 false allegations of domestic violence, 46 Family Law Act 1975 (Cth) amendment, 32 generally, 26, 52 Family Law Amendment (Shared Parental Responsibility) Act 2006 ESPR, exception to, 37 generally, 27, 34-35 men's groups, 36 "primary considerations", 37 reduction of judicial discretion, 36 response to 2006 reform, 38 Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011, 27, 50 generally, 25-28, 50-53 men's groups, 30, 36, 46, 52

parental responsibility, 28, 33
2006 reform

consequences, 40-45
costs awarded for false allegations of domestic violence, 46-47
dissatisfaction with, 48-50
"friendly parent", 45-46
generally, 38-40, 51
presumption of equal shared parental responsibility despite risk of family violence, 45
problems for lawyers, 48
"twin pillars" – equalising shared care with child safety, 47-48

tax avoidance in Canadian income tax law

departures from traditional Anglo-Canadian approach in 1970s and 1980s Bronfman Trust v. R., 84-86 generally, 81 Golden v. R., 81, 86 Johns-Manville Canada Inc. v. R., 83, 84 "modern rule", 81 R. v. Imperial General Properties Ltd., 83-84 Stubart Investments Ltd. v. R., 81-82, 86, 89 general anti-avoidance rules (GAARs) application, three requirements misuse or abuse requirement, 90-91 non-tax purpose test, 89-90 tax benefit resulting from transaction or series of transactions, 87-89 characterization of avoidance transaction as abusive, 90 generally, 75, 76, 86-87 Income Tax Act s. 245(1), 87-88, 91 s. 245(2), 91 s. 245(3), 87, 89 s. 245(4), 90 s. 245(5), 91 s. 248(10), 88 scope, 88, 90 tax consequences, 91-92 generally, 75-76, 109-110 specific anti-avoidance rules (SAARs), 80 tax avoidance and statutory interpretation after GAAR generally, 92-93

Lipson v. R., Copthorne Holdings Ltd. v. R. and broader policy arguments 1245989 Alberta Ltd. v. R., 108 generally, 105-107 Gervais c. Canada, 107-108 Triad Gestco Ltd. v. R., 109 lower court GAAR cases, 1997-2005 Duncan v. R., 99 generally, 98 McNichol v. R., 99 OSFC Holdings Ltd. v. R., 99-101 lower court cases, 2005-2013 Collins & Aikman Products Co. v. R., 104 Evans v. R., 104 Gwartz v. R., 105 Landrus v. R., 105 SCC decisions in Mathew v. R. and Canada Trustco Mortgage Co. v. R, effect of, 101-104 tax avoidance at Supreme Court of Canada, 1988-2005 Antosko v. Minister of National Revenue, 94 Duha Printers (Western) Ltd. v. R., 94-95, 98 Entreprises Ludco Itée c. Canada, 96-98 Friesen v. R., 94 McClurg v. Minister of National Revenue, 93 Neuman v. Minister of National Revenue, 95-96, 98 Shell Canada Ltd. v. R., 96, 98 traditional Anglo-Canadian and American approaches to tax statutes Gregory v. Helvering, 78-79, 80 Inland Revenue Commissioners v. Duke of Westminster, 77-78, 79, 80, 81 Partington v. Attorney General, 77 specific anti-avoidance rules (SAARs), 80 Tennant v. Smith, 77