

Answers to 'Using what we have learnt so far' exercise

The following is a sample answer to the exercise 'Using what we have learnt so far' exercise on page 237 of your textbook.

The *Graffiti Control Act 2009* (NSW) is a NSW Act and the actions leading to the charge took place in Sydney, which is within the NSW jurisdiction. It is a 2009 Act, and the date of assent was 3 March 2009, and so the Act entered into force on the 31 March 2009. If the young woman scrawled 'Make Poverty History' since then, the Act was in force at the time and applies to her. The relevant section is section 8, which provides that it is an offence to 'scrawl', 'graffiti', on the 'wall' of a 'public dwelling'. These four words will be considered in turn as separate issues.

In relation to the first issue, the word 'scrawl' is not defined in the Act, and so using s34 of the *Interpretation Act 1987* (NSW), extrinsic materials may be used. The dictionary definition of 'scrawl' is 'to write awkwardly, carelessly, or illegibly'. Here, the young woman wrote the Eternity symbol, which is a flowing, beautiful word and there is no evidence that it was written in an awkward or careless manner. It was certainly not illegible because otherwise they could not have known it said 'eternity'. Therefore it is unclear whether she 'scrawled'.

In relation to the second issue, the word 'graffiti' is included in the definitions section, as 'unsolicited words or pictures'. The writing by the young woman was unsolicited, as nobody hired her to do it, therefore it meets the definition of 'graffiti'. In relation to the third issue, she wrote on a door not a wall, but in practice the door served the function of a wall to the toilet, and so it can come within the meaning of wall. In relation to the fourth issue, dwelling is not defined in the Act but has been defined in the dictionary as 'a place of residence, abode, home'. It is unclear, so we can use s34 to refer to extrinsic materials, and under ss2(f), these include parliamentary reading speeches. The Minister said 'we need to prevent hoodlums from loitering in public places and defacing public property. I for one don't want to read obscenities whilst I am using the amenities', to which the recorded response was 'Here, here' from other members of parliament. We therefore conclude that 'public dwelling' was intended by parliament to cover a public toilet.

Section 33 provides that an interpretation which promotes the purpose of the act is preferred. Determining that the young woman scrawled graffiti on the wall of public dwelling in contravention of s8 of the Act is consistent with the purpose of the Act which is referred to in the long title as 'An act to control graffiti in public places and limit its use'. We therefore conclude it is likely that the young woman will be liable under the section.