

Happiness

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John had
Great Big
Waterproof
Boots on;

John had a
Great Big
Waterproof
Hat;

John had a
Great Big
Waterproof
Mackintosh --

And that
(Said John)
Is
That.

← Privative clause

Explanatory memorandum

This particular privative clause is instantly attractive as it is not linked to a decision or action *per se*.

It is careful to confine both the subject matter and the privative clause to clear statements of ascertainable fact. No statutory provisions impinge upon the said “John”, nor is there anything remotely administrative about the possessive nature of the garments. Indeed, it is asserted that only the boots are being worn, so mere possession/control of the other items would be enough.

Ownership issues are skirted by using the fuzzy drafting term “had”, which suggests that even adverse bailment, or theft, resulting in possession would be sufficient to satisfy the factual criteria.

Questions as to whether the garments were, in fact, “waterproof” would have already been decided in another forum – possibly a Fair Trading/Trade Practices venue, as the capitalisation of “Great”, “Big” and “Waterproof” suggest that these items are sold under that brand name, rather than being a description of the functional features specifically. Supposing “John” had more than one of each of the items, the fundamental premise protected by the privative clause is still satisfied.

Even the privative clause itself is self-contained. It defines the forum for any possible disputation (i.e. “John”), invokes all hypothetical queries that could arise from the situation of “that” (as would an equitable application for declaratory relief), then confirms the state of “That”-ness, effectively cutting off further review.