

Exploring the Law: The Dynamics of Precedent and Statutory Interpretation

2nd Edn - Colin Manchester, David Salter and Peter Moodie

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This book, mainly designed for first-year courses in legal method, has already achieved success. It deserves that, because it treats precedent and statutory interpretation in a competent and thorough way. However it is only too successful in reproducing that disastrous lack of method and principle which is so often displayed by our courts, even though it criticises this.

One can trace the fault far back. If precedent and statutory interpretation are not properly taught to students, they will not display a grasp of its principles when later they become practitioners. If legal practitioners are thus incompetent they will do no better when elevated to the bench. It is a recurring cycle of failure. One cannot blame authors like these for reflecting, for the instruction of students, the incoherence that prevails in real life. That is what they are supposed to do.

Having been born with an urge to impose order on chaos, I regret that these able authors have not felt inclined to follow a truth I have laid down in my writings. Like so many who hold forth on statutory interpretation they still trot out "the literal rule, the golden rule, the mischief rule", even though these ancient shibboleths have long been exploded. The authors say these so-called rules are "selected" by the court as felt to be appropriate, when the truth is that the court should perform a balancing exercise bearing in mind all relevant interpretative factors.

However the authors do sound a note of caution in saying these three hoary rules are "traditional". They mention purposive construction, in recent years fastened on by our courts as some kind of talisman. They deal effectively with the changes brought about by the Human Rights Act 1998.

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