

Review of *Statutory Interpretation* by Francis Bennion

London: Butterworth, 1984, cii + 854 + (appendices and index) 50 pp. (hardback £85.00)

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Mr Bennion describes his book as a Code, accompanied by a critical Commentary.

Codification was fashionable in the closing decades of the 19th century, and the Codes enacted then appear to have stood the test of time. The recent amendments to the Sale of Goods Act, although relatively minor in form, serve to make it more effectively a Code by forbidding or restricting the rights of parties to contract out of its provisions.

But the 20th century has shunned Codes, even in fields where they might be considered desirable. Over a quarter of a century ago, Professor Gower, discussing the British Companies Act 1948 in the context of his proposals for a Code of company law for Ghana, commented that no one, by reading the Act of 1948, could glean any real understanding of company law; nowhere were the fundamental principles enunciated. Subsequent amendments and the recent consolidation Act take us little further.

Although the provisions of the Roads (Scotland) Act 1934 were described in the Bill's Explanatory Memorandum and in the debates in both Houses as a Code, it is silent on remedies where questions of public or private law arise, for example, out of a roads authority's failure to exercise its powers and duties. It is, rather, an Act bringing order into a disorderly collection of statutes drafted in various styles over more than a century, and embracing innovations to accommodate modern administrative and technical developments.

Just as Mr Bennion introduced novelties in drafting the Consumer Credit Bill, so here his book is constructed in a novel manner. Basically it is a Code for the interpretation of statutes, in the style of a statute. But it also accommodates the needs of different users or the different needs of any individual user.

The ideal plan of course would be to read the book from beginning to end. But the busy practitioner who has the needs of his clients in mind cannot be expected to do that, while an academic who reads every page from cover to cover might find himself pilloried by Sir Keith Joseph as an idle labourer demonstrably unworthy of his hire.

So the author begins by advising us how to use the book. This advice is easy to follow, because the Code and the Commentary are printed in different sizes of type. Accordingly, the reader can relatively speedily read the Code and ignore the Commentary. The book is divided into two divisions, the first being the Code and Commentary on the Common Law System of Statutory Interpretation, while the second deals with supplementary, but nonetheless important provisions. A bird's eye view may be obtained by reading Division One of the Code and ignoring the Commentary. However, if one ignores the Commentary much of the value of the book is lost, as is also much of the pleasure in reading it.

The Commentary gives an exhaustive discussion of virtually every section of the Code. This may include historical background and hundreds of examples drawn from case or statute law. It contains a wealth of cross-references to other sections, so that the pursuit of information may lead the reader into a host of fascinating byways of the law.

Another novelty is the complete absence of footnotes, all authority being included in the text. This in fact facilitates reading, because the eye is not perpetually being directed to the bottom of the page nor to the end of the chapter - or even of the volume, as often happens with modern publications.¹

The seven Parts and 183 sections in Division One deal with the common-law system of statutory interpretation under such heads as the interpreter, the text, the enactment and the facts, and the legal meaning of an enactment, stated in the Code and, as indicated above, liberally illustrated in the Commentary. There are also three Parts dealing with legislative intention, examining it, giving

¹ In later editions the book was rearranged and footnotes were included.

guides to it, and expounding unclear meaning. The guides in sections 115 to 152, set out in more than 120 pages, include rules of construction, principles derived from legal policy, presumptions as to legal intention and linguistic canons. The author's technique is illustrated by an early group of sections - the basic rule of interpretation in accordance with the general legal guidelines to legislative intention (section 117), 'informed' rather than literal interpretation (section 119), the plain meaning rule (section 120), common-sense construction (section 122), and the 'functional construction' rule that components of an enactment must be assessed in conformity with their legislative function (section 124).

The 'informed' interpretation rule states that 'the interpreter is to infer that the legislator, when settling the wording of an enactment, intended it to be given a fully informed, rather than a purely literal, interpretation (though the two usually produce the same result . . .'. The court must first discern and consider the context of the enactment.

Accordingly Mr Bennion rejects Professor Driedger's suggestion that the art of interpretation has evolved, so that 'First it was the spirit and not the letter, then the letter and not the spirit, and now the spirit and the letter.' One cannot but agree with Mr Bennion that when the spirit and the letter lead in different directions the interpreter has to choose,

For guidance as to how to exercise one's choice, we must turn back to Part IV on the Legal Meaning of an Enactment, where the grammatical meaning and the strained construction are discussed exhaustively. While rejecting Lord Denning's enthusiasm for the continental model of purposive construction, Mr Bennion fully justifies the use of strained construction in appropriate circumstances, with examples that demonstrate the bizarre consequences of some applications of the literal rule. The 'universal repealer' perpetrated in Arkansas would have left the state in a condition of lawlessness, while a blunder in New Zealand would have left the country without a legislature.

The first two Parts of Division Two, VIII and IX, deal with the structure of statutes - commencement, amendment and repeal, territorial extent and application.

Had this book been published a few years earlier, we might have been spared the doubtless considerable public expense involved in *The Commissioner of Police of the Metropolis v Simeon*, in which the courts discussed the effect on the so-called 'sus' offences of the provision that they 'shall cease to have effect', and associated sections. Section 179 explains that the expression is really addressed to the legislators; the repeals Schedule lists all the repeals in the Act, This item is helpful to humbler users of the statute.

Anyone who is puzzled about the geographical history of Monmouthshire will find a whole page encompassing that history from Roman times to the present day, when it passed for the most part to the new county bearing the preciously archaising name of Gwent (section 215)

The remaining 13 Parts can be classified as beginning with an expansion of 'informed' interpretation (legislative history) in Parts X and XI. And 'functional' construction' in Part XII. In the context of this last Part, what Mr Bennion terms the unamendable descriptive components of an Act are also discussed in a most instructive group of sections. Some of the older *dicta*, and the orthodox views found in *Maxwell* and other standard works have been abandoned in recent years or are here subjected to helpful criticism, We also have in section 266 a brief explanation of the origin of chapter numbers, a term which puzzles many students and laymen when they first come into contact with Acts of Parliament. Further useful information as to past and present practice appears under section 278.

The Legislative Presumptions in Parts XIV to XVIII collect and collate (and criticise) more conventional classifications of rules of interpretation. The application of ancillary legal maxims in Part XIX deals with some 16 Latin maxims, while Parts XX to XXII cover Linguistic Canons of Construction, the last dealing with the *eiusdem generis* rule under some nine separate heads.

Recent developments in statutory interpretation are throughout noted in considerable detail. Various aspects of the enacting history of legislation as an aid to interpretation are discussed in the context of *Black-Clawson*, while the novel provisions of the Civil Jurisdiction and Judgments Act 1982,

authorising courts to consider the *Jenard and Schlosser Reports*, are regarded with less than enthusiasm.

Generally, this book is comprehensive and useful for different users - the practitioner and the judge, the academic and the lawyer-legislator. Mr Bennion has drawn on three phases of his personal experience, as a legal academic, as a parliamentary draftsman and as legal author. He has produced a comprehensive book using novelty in his classification.

Although much litigation today turns on the interpretation of statutes, it is important to remember, as is explained in section 120, that it is an art or science dealing with the pathology of law. In most legal situations problems of interpretation do not arise. However, when a point of interpretation does arise, Mr Bennion's book is the latest, the longest and the fullest to consult.

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For full version of abbreviations click 'Abbreviations' on FB's website.