

Review of the 1st edition of *Statutory Interpretation*

by Alec Samuels

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Statutory Interpretation by Francis Bennion

Apart from the elementary interpretation Act 1978, there is little statutory direction or guidance on statutory interpretation: it is largely a judge-made technique. Is the law of statutory interpretation a confused jumble, a mass of conflicting rules, the decision in a particular case a haphazard matter of the reaction of the particular judge, or is there a coherence, a consistency, a structure, there?

Francis Bennion is a notable lawyer, scholar, author, lecturer, former parliamentary counsel, sometime lecturer and tutor in jurisprudence at St Edmund Hall, Oxford. He believes that there is order there. "The search is for order. Parliament attempts to achieve this in its enactments, but not always with success." He has produced a code, contained in 396 propositions: statutory interpretation, codified, with a critical commentary, massive, full of history, learning, wide reading, displaying a profound knowledge of our case law and statute law. This is institutional writing of a high order, and one of those indispensable, indispensable books.

The purposive approach is the fashionable contemporary judicial approach, not new, but much favoured by the judges, though still essentially literalist. So the good advocate should make it his business to be well armed with suitable precedents and quotations. The judges employ the deductive or syllogistic reasoning.

Bennion is perhaps a bit too much of an idealist, a bit too optimistic. He seems to think that the intention of the legislature is not a myth but a reality reflecting the will of the people, and so drafted by the draftsman. He seems to think that submissions to the judge on legal policy, eg national security, order, justice, health, morality, equality, will carry a lot of weight. And that submissions based on coherence, non-retroactivity, predictability and consistency will similarly carry a lot of weight. The proposition that a breach of statutory duty carries a presumption that there is a remedy seems to be overstating things as they fall out in practice.

The potentially significant developments involved in accession to the European Economic Community and to the European Convention on Human Rights are naturally considered, though in a somewhat scattered way, and one might have wished for all the

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case law so far to be examined in the round to see what domestic or municipal principles are emerging.

The systematic and comprehensive institutional approach of this work, supported by massive citation, particularly from the leading judges in the House of Lords and Court of Appeal, means that it will be extensively studied, extensively cited in court (if the judge takes the view that, though fortunately still very much alive, Bennion is fortunately very authoritative), or extensively adopted by advocates in their submissions, and extensively peeped at by judges during the adjournment and whilst preparing their judgments.

The advice on court technique, the checklist of interpretative criteria, and the list of terms (in the appendices) should enable the intelligent and well-prepared advocate to ensure that he is the master of his craft in making persuasive submissions on statutory interpretation to the judge.

Website: www.francisbennion.com

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