Review by Roderick Munday,

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***Statutory Interpretation: A Code*: By F.A.R. BENNION. Third edition.**

[London, Dublin and Edinburgh: Butterworths. 1997.
clxxv, 1017, (Appendices) 40 and (Index) 34 pp.
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EVOKING the sense one sometimes has when puzzling over particularly intractable legislation, Oliver Wendell Holmes Jr. once remarked that 'lawyers spend a great deal of their time shovelling smoke'. The ability to interpret statutes, sometimes of conspicuous opacity, and to manipulate the often competing canons of construction is of paramount importance to any lawyer. It is after all difficult to overlook the fact that the majority of reported cases are concerned with points of statutory interpretation. Of the several books designed to clarify the principles of this vital art, *Bennion,* in my opinion, is the best by a long stretch. First published in 1984, it presents its subject in the form of a Code comprising seven Divisions, which then split into 29 parts, the whole subdivided into 418 individual articles, now stretching to just over 1,000 pages. Each article of the Code is coupled with commentary, which in turn is larded with examples and additional footnoted references. The seven Divisions explore 'Interpreter, Instrument and Enactment', 'The Legal Meaning of an Enactment', and then the four-tier hierarchy of 'Rules of Construction', 'Interpretation Principles', 'Interpretative Presumptions' and 'Linguistic Canons' with which readers of *Bennion* will be familiar. The work concludes with 'The European Union'.

This third edition introduces some modest innovation. Thus, as well as taking in obvious changes like the House of Lords' decision in *Pepper* v. *Hart* [1993] A.C. 593, one section, extending to just over five pages, is now devoted to the vexed subject of tax avoidance. It chronicles the tightening grip of the revenue on those whose inexplicable desire it is to escape tax. Thus the *Westminster* principle, which asserts the subject's right to order his affairs in such away as to gain a tax advantage ([1936] A.C. 1) and the less benign *Ramsay* principle, which requires the court, in assessing a tax scheme, to look to its substance and not simply to its form ([1982] A.C. 300), are deftly illustrated and explained. More significantly perhaps, Division 7 of the *Code* is devoted to the increasingly important matter of statutory interpretation and the European Union. The Division outlines the status of European law, the role of the ECJ and the fundamental principles enshrined in EC legislation, before turning to discuss the specific approach to construction that is to be adopted when interpreting EC legislation along with the complex issue of this legislation's impact on and relationship with the law of the UK. This is a welcome addition to the book, even if one knows that it will need to be beefed up further in the next edition. The author does pose one intriguing related question in his Introduction. He asks, why has no one thought to suggest that common-law principles of statutory interpretation, as described in his book of course, should be applied to Community legislation also? Such a move, Bennion argues, would result in a more democratic EC legal system, clipping the European Court's wings to some degree. Something along these lines may not be such a bad idea, if one is still permitted to call into question the imperial pretensions of that organ.

Bennion is more than just a book outlining the methodology and principles of statutory construction. Drawing both on his understanding of Parliamentary practice and the mechanics of the legislative process as well as on a profound learning, it sometimes contains the type of information that . . . . . .

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. . . . . other books on statutory matter omit altogether. For instance, when I was once looking for clues to resolve the apparent constitutional conundrum posed by an Act of Parliament, in this instance the New Zealand Protection of Personal and Property Rights Act 1988, of which the Stationery Office version had been amended after the Queen's representative, the Governor General, had signed the bill on behalf of the monarch, ***Bennion*** pointed the way. No other text touched on the somewhat abstruse points of English practice, which then allowed one to tease out a workable solution, even in an antipodean constitutional setting. (See ***A Reform that Almost Wasn't: or When to Correct a Parliamentary Gaffe*** [1989] N.Z.L.J. 345.) Alternatively, when commenting on the dubious Court of Appeal decision in ***Fulling*** [1987] 1 Q.B. 426, in which Lord Lane, C.J. sought to define 'oppression' in section 76 of the Police and Criminal Evidence Act 1984 by means of the ***Oxford English Dictionary*** without any reference whatsoever to the statutory definition of the term set out in section 76(8) of the Act, incidentally quoting also a peculiarly truncated passage from the speech of Lord Herschell in ***Vagliano Bros. v. Bank of England*** [1891] A.C. 107, 144-145, where but in ***Bennion*** would one initially trawl for other instances of courts mindlessly leafing through dictionaries in search of an intellectual crutch? (See ***The Interpretation of 'Oppression' in Section 76 of PACE*** (1990) 154 J.P.N. 520.)

Bennion's ***Statutory Interpretation*** still opens with the words, 'The search is for order' (p. 1). The art of the ***incipit*** is one ignored by all too many writers, although in literature its impact has often been recognised (see, ***e.g.***, Jacques le Gall'~ recent study, ***Les 'incipit' dans les romans de Jean Giono*** (1996: Presses Universitaires du Septentrion)). One recalls that Bennion's book, ***Statute Law***, also opened with an arresting sentence: 'Statute law interests few people?'. Not only does Bennion's ***Code*** search for order, it actually imposes it on a subject whose natural inclinations are unruly and diffuse. This book cannot of course supply formulaic answers to every problem of statutory interpretation, but in establishing a hierarchy of interpretative norms, in stating in intelligible language the various canons and rules, and in assailing the reader with a veritable blizzard of apposite examples of their application, he makes an unquestionable contribution to what he terms 'the soundness of our legal administration', thereby ensuring that all relevant guides are potentially available to lawyers when they encounter points of legislative construction. This is a first-rate work, and one that the lawyer can happily dip into for the simple pleasure of seeing how malleable much of our legal language and many of our interpretative principles actually are in practice. Did it not almost cost a king's ransom, I would be tempted to say that I cannot imagine how any self-respecting lawyer could be without it.

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