

Is Bennion enough?

By Geoffrey Darnton

I really hesitate before presuming to be able to review such an eminent book as this. How on earth can I be brief and helpful? I will try.

Let me get the obvious out of the way. This is an absolutely first rate book and it is essential reading for anyone who is involved in the construction of statutes etc. I would go further, and suggest it is also very helpful in the construction of anything else using formal expressions (for example, contracts).

The whole subject matter has been approached in an interesting way by classifying all material into a series of 'codes', somewhat confused by the use of the term 'section' as well. For example, "Section 164. Is legislative intention fictitious?" - brief statement followed by "Comment on Code S 164". Key principles are easy to ascertain, supported by substantial and extensive discussion of relevant cases. In my mind, this book is principle driven, which makes it very easy to get to the point and identify the essence of any debate. I wish many other books would adopt this style.

Bennion also has his own website, so it is easy to keep up to date with his thinking and research. However, this book is the 5th edition and he has declared his intention to 'retire' and not do another edition. There's an opportunity for some brave soul out there!

Having got out of the way the simple observations that this book can only be considered essential reading and it is impressively comprehensive, is there anything else to be said?

When I look through a book, I try to see if I can find any absolute gems in terms of either depth or humour (or both). There are many in this book, but I found one that is likely to put a smile on many readers: "A famous conjecture supposed that a million monkeys dancing for a million years on a million typewriters might at random reproduce the plays of Shakespeare. Acts of Parliament are not produced at random, or by monkeys. Neither are they yet produced (as in the future they may conceivably be) by computers. Under our present system Acts are produced, down to the last word and comma, by people. The law maker may be difficult to identify..." [p473].

He goes on with a very precise discussion to demonstrate why talking about 'the intention of Parliament' is really anthropomorphic (although I couldn't find him using that term, that's what his discussion means). Therefore, look further than anthropomorphism to find intention. This is a profound and essential point, notwithstanding that it is controversial as between different judges (as demonstrated by Bennion).

Is Bennion all you need - given that it should be considered 'essential'? There are other books about interpretation. I am not going to do a comparison in this review, but I will say that I have not found Bennion to be quite enough.

For example, I have on occasions used Odgers' Construction of Deeds and Statutes. The last edition of that excellent book was 1967. I still find it helpful. Odgers has an interesting section discussing "may and shall or must" (p370). Maybe it is there and I have missed it, but I could not find such a clear discussion in Bennion. This is surprising given that statutes abound with the terms may, shall, and must - and it is a fundamental principle of construction that if different terms are used in a statute, different meanings and effects must be intended.

There is, of course, the academic point that issues should never be explored on the basis of a single author source because doing so is insufficient to meet several higher education descriptors concerning criticality. This clearly applies to the use of Bennion also. The moral of that point is use Bennion, but also use other sources of discussion. Bennion is necessary, but may not be sufficient.

Bennion is not cheap - but it does have 1579 pages + 267 pages of front matter. However, that works out at over 16p per page for the printed book. That conveys an aroma of high monopoly profits. I suspect the book would have far more extensive use if the whole thing was made available online - and it is such a good book it would be very helpful to a far wider audience than those who will (can) pay the cost of the book. Another way to look at it is that the cost of the book is less than 2 hours of a lawyer at the 'guideline rates' used in the UK monopoly distorted rates for litigation services, as originally set by lawyers, judges, and court officials sitting down together to do that. As an occasional litigant in person and McKenzie friend, very reluctantly, that makes it worth the money.

10 May 2009