

The Importance of Bennion's Concept of Common Law Legislation

by Nigel J. Jamieson

Not for nothing did Francis Bennion write his latest work on *Understanding Common Law Legislation*. As he says [at p. 1], “[c]onstruing common law statutes has often been found difficult as an analytical concept”. This has never been truer than of today in our need to distinguish what Bennion calls the common law statute. It requires us to distinguish our own common law mode of legislating, not just from the civil but also from the global, the developmental or evolutionary, and the compatible-construction modes of legislating, by which lawyers from vastly different legal systems differentially thread their way through the increasingly intimate as well as increasingly intricate maze of multi-sourced legislation’ (footnote 32 omitted). Later (p. 61) Jamieson refers to ‘what Bennion and others have correctly identified as common law legislation’, adding: ‘That the concept of legislation for our Anglo-American legal system is essentially one for us of common law is all too easily overlooked – especially in these days of prevailingly European influence. The fundamental issue is that of which takes priority – the statute (when considered even to be a code) in a common law context; the contract as a concept (whether or not one of common law) and even when codified into a statute; and the common law as the context of adjudication in which various legal formulae expressing concepts of contract, codes and commerce not only convey but also originate in and promote an expectation of being correctly decided in the historic context of common law.’¹

Website: www.francisebennion.com

Doc. No..2010.002.NFB

31(1) *Statute Law Review* (2010) pp. 47-62 at 58.

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

¹ Nigel J. Jamieson, ‘Codes, Contracts, and Commerce: Taking the Heat Out of the Contractual Mistakes Act’ 31(1) *Statute Law Review* (2010) pp. 47-62 at 58.