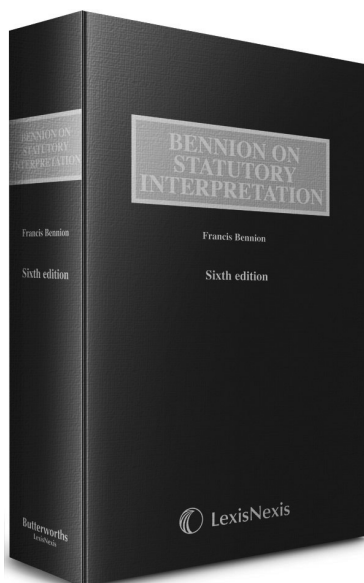


Bennion on Statutory Interpretation (6th ed)

By Oliver Jones | LexisNexis Butterworths | 2013



First published in 1984, the sixth edition of *Bennion on Statutory Interpretation* has recently been released. It is the first edition prepared by someone other than Mr Bennion himself, the editorship having passed to Oliver Jones, a barrister at Seven Wentworth.

For the uninitiated few, *Bennion on Statutory Interpretation* takes the form of a code consisting of 404 sections which together set out the principles governing statutory construction. Each section of the code is accompanied by commentary and numbered examples, with the examples being drawn (predominantly) from British caselaw.

The code, now spanning over 1100 pages, is organised into seven broad divisions.

Division One identifies the interpreters of legislation, the nature of what is being interpreted (Acts of parliament and delegated legislation), the temporal, territorial and personal operation of legislation, and lastly, the ‘anatomy’ of an

enactment and how doubt concerning the meaning of a legislative provision is resolved.

Division 2 examines the legal meaning of an enactment, described in section 150 (the first section within this division) as ‘the meaning that correctly conveys the legislative intention’. It is Part X within this division which sets out what is referred to as the ‘interpretative criteria’ or ‘guides to legislative intention’, namely, the rules, principles, presumptions and canons of construction which may be used to discern that intention.

Division 3 identifies and elucidates the rules of construction laid down at common law and by statute.

Division 4 describes the interpretative principles derived from legal policy.

Division 5 sets out the interpretative presumptions which arise from the nature of legislation, for example, the presumption that the text of the enactment is the primary indication of the legislator’s intention (section 284) and the presumption that parliament does not intend ‘absurd’ consequences to flow from the application of its Act (dealt with in Part XXI).

Division 6 concerns the linguistic canons of construction – those principles which are ‘based on the rules of logic, grammar, syntax and punctuation’, which are said

to apply to all forms of language, rather than being confined to statutes or the field of law generally.

Division 7 (significantly pared back in this edition) addresses the construction of European Union legislation and its interaction with and effect on British legislation, and the impact of the UK *Human Rights Act 1998*.

Even the brief précis given above demonstrates the comprehensive nature of this book. Its stated intention is to articulate a holistic methodology for statutory interpretation, or what Mr Bennion has referred to as ‘the Global Method of Statutory Interpretation’. To that end, the book can and should be read as a whole but it is also designed to be used by practitioners as a reference tool when confronted with an issue of statutory construction.

Such is the level of respect and admiration which this work has garnered in the 20 years since its original publication that many will have a copy of a previous edition and will be asking whether Mr Jones has added anything to the sixth edition to warrant its purchase. The answer to this question is a resounding ‘yes’, both in terms of the additions that have been made and with respect to the material that Mr Jones has seen fit to excise.

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Principal among the worthwhile additions is the extensive citation of authorities in which particular sections of the code (and sometimes the accompanying commentary) have been judicially approved. This innovation will be particularly attractive for Australian practitioners who might (unwisely and unjustly) query purchasing an English text on statutory interpretation over, or in addition to, an Australian equivalent. This is because Mr Jones has clearly gone to great effort to include references to Australian authorities as part of this exercise and there is evidently no shortage of Australian authorities from which to choose. Mr Jones has also increased the work's relevance to and purchase on Australian practitioners by including more Australian authorities in the examples and commentary to sections. For example, a discussion has been incorporated of the High Court's application of the *Barras* principle (which describes the presumption that where a term is used in an enactment upon whose meaning the courts have previously pronounced, the legislature intended that term to have the same meaning in the enactment under consideration). By way of further illustration, the High Court's decision in *Palgo Holdings Pty Ltd v Gowans* (2005) 221 CLR 249, is cited as an example to section 320, which distinguishes lawful means of getting around an Act (avoidance) from unlawful means (evasion).

The challenge in preparing new editions of reference works of this nature is to

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update the work to ensure its continuing relevance and utility whilst not inflating the work to a size which is either unmanageable or unaffordable. In this respect, Mr Jones is to be commended, as he has succeeded in updating the work whilst slightly reducing its formidable length. As part of this process, Mr Jones has gone some way towards modernising the feel of the work, yet without detracting from the charm of Mr Bennion's prose. By way of example, the commentary on punctuation which accompanies section 258 has been dramatically slimmed down. However, Mr Jones managed to slip in a reference to the Federal Court's remarks regarding the weight to be given to the semi-colon as a constructional aid in *Minister for Immigration and Multicultural Affairs v Savvin* (2000) 98 FCR 168; these remarks, particularly those of Katz J, deserve to see the light of day yet might have gone unobserved by everyone but migration practitioners were it not for their inclusion in this text.

The only criticism of this edition worth mentioning is that the introduction from Mr Bennion included in former editions provided a guide to the structure of the work, as well as an explanation of its underlying philosophy. Given the length and ambition of the work, such a guide is

both useful and edifying. Mr Jones might consider incorporating a similar guide in the next edition.

In the early pages of the work, in the commentary accompanying section 6 (which refers to the jurist or text writer as a type of interpreter of legislation) it is stated that 'some textbooks, going into edition after edition, have acquired the status of legal monuments.' This observation appeared in Mr Bennion's first edition and it is hard to resist regarding the sentence as aspirational. Surely an attempt to codify the principles governing statutory interpretation bespeaks an objective on the part of the author to create a textbook which, over time, would also acquire this status. After only 20 years in print, it may be too soon for this reviewer to declare that *Bennion on Statutory Interpretation* has become a legal monument in its own right. However, it at least may be safely predicted that in passing the editorial baton to Mr Jones, Mr Bennion has ensured that this work is very much still in the race.

Reviewed by Juliet Curtin