Books

STATUTORY INTERPRETATION by Donald Gifford, Sydney, Law Book Company, 1990, xxix + 210pp, ISBN 0 455 209391.

The interpretation of statutes is a skill which cannot be learnt or acquired quickly, and this is correctly acknowledged by the author in the Preface of his book, *Statutory Interpretation*, with the following words (pix):

> Statutory interpretation is a more difficult area to master than might at first sight appear . . . [and] a knowledge of . . . the [major rules of statutory interpretation] . . . is not in itself sufficient to guide a lawyer in the interpretation of a statute.

The author refers to his book as an academic work which "is valuable in bringing together the various strands of statutory interpretation and in providing an overview of [the] subject . . ." (p ix). In his concluding remark in the Foreword, Sir Harry Gibbs describes the book as a "discussion . . . [which] . . . should prove useful to practitioners and students alike" (p viii) and generally speaking, this statement is accurate. However, owing to the rather critical thrust of the book in parts, it is doubtful if it is suitable as an introductory student text.

The author proceeds to present in five parts the rules of interpretation which are used by lawyers and the courts when confronted by ambiguous legislative provisions. Part One deals with the four general approaches to statutory interpretation: the Literal or Plain Meaning Rule, the Golden Rule, the Mischief Rule and the Purposive Approach. Part Two deals with the contextual reading of words. Part Three deals with the use of extrinsic materials. Part Four deals with the interpretation of different types of acts. Finally, Part Five deals with the problems of extraterritoriality; how acts affect the Crown; and mandatory and directory provisions. In certain chapters, the author conducts a fairly thorough examination of cases and other works on the subject, including Edgan, S G G, *Craies on Statute Law* (1978); Langan, P St J, *Maxwell on the Interpretation of Statutes* (1981); Sarathi, V P, *Interpretation of Statutes* (1981). The examination of Pearce, D C, *Statutory Interpretation in Australia* (1981) is particularly critical.

The author's disagreement with Pearce begins in the opening chapter where it is pointed out that Pearce's discussion of the literal approach is at best patchy. For instance, Pearce fails to mention: (1) that *Phosphate Co-operative Co of Australia Ltd* v *Environment Protection Authority* (1977) 138 CLR 134; 18 ALR 210 is a decision of the High Court of Australia; and (2) *Sullivan* v *Commissioner of Probate Duties (Vic)* (1976) 51 ALJR 37, another High Court decision, were both based on weighty authority from courts within and without Australia (see pp5-6). Using other examples of inadequacies in Pearce's arguments, the author concludes that "Pearce's proposition is . . . incorrect" when he states that:

> It is probably right to say that [the literal approach] is less influential now than it used at one time to be. There is a ". . . modern tendency to depart

> from literal construction where adherence to that construction would frustrate the legislative purpose as gathered from the whole statutory context" (p5)

Other disagreements with Pearce include those which refer to the *expressio unius* rule (p27), the golden rule (p36), the mischief rule (p44), the purposive approach (p49) and the use of extrinsic materials (p120 et seq).

The author also disagrees with Maxwell. For example, when dealing with "Words of Similar Meaning — *Noscitur a Sociis*" in Chapter 8, the author points out that Maxwell treats "the class rule as one application of the general principle, *noscitur a sociis*" (p78). This view of Maxwell is shared by Pearce who is quoted as saying that "the *noscitur a sociis* rule works 'in much the same way' as the class rule" (n5, p78). However, the author states that there are

> . . . significant differences between the two rules. The class rule is useful only for restricting the meaning of a general expression that comes at the end of a group of specific words with a common characteristic: the noscitur a sociis rule can be used to find the meaning of an ambiguous word whether it comes at the beginning, middle or end of the group. Also, while the class rule can only be used to restrict the meaning of a general word, it should be possible in a suitable case to use the noscitur a sociis rule for the opposite purpose — if the ambiguous word is to take its colour from its context then a word which at first sight appears to possess a narrower meaning than its neighbours might be found, upon closer examination, to possess an alternative meaning more in line with the meaning of the group of words of which it forms a part. Normally, however, the noscitur a sociis rule is used to restrict the meaning of an ambiguous word. (pp78-79)

In support of this conclusion, the author cites Sarathi whose view is expressed in a milder form: "Many do not distinguish between this rule [*noscitur a sociis*] and the *ejusdem generis* doctrine. But there is a subtle distinction . . ." (n5, p78). And Sarathi refers to *State of Bombay* v *Hospital Mazdoor Sabha* [1960] 2 SCR 866; AIR 1960 SG 610 in support of that distinction (ibid).

The author's critical approach is also extended to the bench. For example, Anderson J's decision in *Van Der Meyden* v *Melbourne & Metropolitan Board of Works* [1980] VR 255 on the use of delegated legislation is summed up as "cannot be right" (see pp145-46).

On the other hand, if in the author's opinion a view on a rule of interpretation is correct, he would acknowledge it quite readily: for example, see the reference to Turner J in *Commissioner of Inland Revenue* v *Auckland Savings Bank* [1971] NZLR 569 on the literal or plain meaning rule (p21); the decision of the High Court of Australia in *Re Australian Broadcasting Tribunal; Ex parte 2HD Pty Ltd* (1979) 27 ALR 321 (p27); Maxwell's view on subordinate legislation (p144) and Pearce's view on consolidating acts (p160).

For a person who has kept a keen eye on accuracy and detail (for example, see n46, p8), it is almost uncharacteristic that the author's reference to *Halsbury* is so brief, with no reference to bibliographic details (see n60, p11). Further, the reference to *Odgers on the Construction of Deeds and Statutes* in note 10a, page 178 appears to be the result of hurried afterthought. If it is a first reference, it lacks bibliographic detail; if it is a repeat reference, it should have been "op cit" in nature.

The five parts of the book are divided into 39 chapters. That they are indeed chapters is confirmed by the reference to "Part 1 (Chapter 3)" at page

151. However, the entire text totals 210 pages only, with ten of these pages being the Index. This means that on average, each chapter is five pages long. Put mildly, the layout of the book is unusual, with some of the chapters unusually short, the shortest being Chapter 29 which contains four lines of text and one footnote (p168). In fact, there are nine chapters with texts of less than a page (ie: Chapters 20-22, 25-26, 28-29 and 30-31). The Table of Contents is found at pages xiii-xiv and the multitude of cases referred to (there are approximately 1150 of them) is listed in the Table of Cases in alphabetical order (see ppxv-xxiv). The Table of Statutes is found at pxxxi and the only interpretation act referred to is the *Acts Interpretation Act* 1901 (Cth). It would have been useful if the author had provided a list of comparable legislation in relation to the other jurisdictions in Australia like the *Interpretation Act* 1987 (NSW), *Acts Interpretation Act* 1954 (Qld), *Acts Interpretation Act* 1915 (SA) and *Interpretation of Legislation Act* 1984 (Vic). However, this comment is by no means meant as a criticism because the author does not pretend that the book is exhaustive in any sense.

In conclusion, it may be said that the critical approach adopted by the author in parts makes the book interesting reading. His comprehensive discussion of certain rules is certainly elucidating. And, in the words of Sir Harry Gibbs, his "firm views on aspects of the matters that are controversial" (pviii) make it, in a way, riveting.

ALEXIS L GOH*

ESSAYS ON RESTITUTION edited by P D Finn, Sydney, Law Book Company, 1990, 356pp, $79, ISBN 0 455 209871.

In 1989, a small group of legal academics, practitioners, and judges gathered at the Australian National University to discuss the developing field of restitution in Australia. The principal papers presented at the conference were thereafter revised by their authors, edited by Professor Finn, and published in this volume.

The book is not a treatise on the subject of restitution nor does it present a comprehensive treatment of any subpart of restitution. Instead, it is simply a collection of essays on a variety of subjects held together by a common concern for cases having to do with issues such as unjust enrichment, mistaken improvement, and quasicontract. Each essay ably analyses the pertinent cafe law, reviews the relevant commentaries, and presents reasonable arguments. As such, each chapter provides the reader with useful information about a particular issue, whether it be mistaken payments (Butler, P A, "Mistaken Payments, Change of Position and Restitution", Chapter 4, p87), ineffective transactions (Carter, J W, "Ineffective Transactions" Chapter 7 p206), or mistaken improvers (Sutton, R J, "What Should be Done for Mistaken Improvers?", Chapter 8, p241.). Taken as a whole, however, the

* Senior Lecturer, Faculty of Law and Legal Practice, University of Technology, Sydney.