

**BOOK LAUNCH: "INTERPRETATION AND USE OF LEGAL
SOURCES"**

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Susan Crennan

Let me commence by thanking the authors — Perry Herzfeld, Tom Prince and Stephen Tully — and their publisher, Thomson Reuters, for the invitation to launch the revision of Title 25, *Interpretation and Use of Legal Sources*, in *The Laws of Australia* encyclopaedia.

The organisation of this work into four subtitles — Australian Domestic Laws, International Law, Private Law and Judicial Statements — foreshadows the comprehensive reach of this revision. The breadth of analysis is also confirmed by a quick glance at the index, which starts promisingly with "Absurdity" and ends on an ambitious note with "World Trade Organisation".

In the first case in which I ever appeared, which involved interpretation, the list of authorities included Lewis Carroll's *Through the Looking Glass*. This was because of Lord Atkin's famous remarks in *Liversidge v Anderson*¹, responding to counsel's

¹ [1942] AC 206.

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submission on how to interpret an expression in some subordinate legislation. Lord Atkin said²:

"I know of only one authority which might justify the suggested method of construction: 'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'"

On any view, Lewis Carroll showed amazing prescience about contemporary sensitivity to linguistics, semiotics and the struggle accurately to decode human language as an expression of human thought. Isolating the real meaning of language relevant to any legal situation is obviously a crucial legal skill. This textbook assists the reader in mastering the many pitfalls arising because, as Alice said, "words [can] mean so many different things". Inasmuch as the rule of law involves the exercise of power over lives, contests over meaning have assumed great significance, and led to the development of approaches and rules which enhance certainty and predictability while leaving room for common sense and flexibility when needed.

This new work is a testament to the scale of more recent developments, which now accord primacy to a legal text and its purpose, while not ignoring the wider context.

² [1942] AC 206 at 245.

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One great virtue of this work, apart from its comprehensive sweep, is that there is no pretence that a single grand narrative or simple approach applies to the manifold tasks of interpretation which face lawyers in diverse areas of practice. What it does, however, is explain cogently how certain approaches have developed, how they have changed, and how much commonality there is in the field of interpretation, notwithstanding the public and private, and domestic and international, contexts in which legal documents fall to be construed. A good example occurs with the discussion of *Cole v Whitfield*³. In that case, which concerned s 92 of the Constitution, the High Court departed from its previous approach to considering historical material (including the Convention Debates). The departure was identified as being for the purpose of identifying the contemporary meaning of language used in the Constitution, the subject to which the language was directed, and the nature and objectives of the movement towards federation from which the Constitution emerged⁴. All this is explained succinctly and is illustrated by judicious quotation from that seminal authority.

The section on Statutes, falling within the first section on Australian Domestic Laws, is the largest portion of the textbook. While general principles are set out in a relatively orthodox manner, it is refreshing to note the attentiveness to the current appreciation

³ (1988) 165 CLR 360; [1988] HCA 18.

⁴ (1988) 165 CLR 360 at 385.

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of those principles. For example, the metaphorical nature of speaking of Parliament's intention or will is registered, as is the somewhat awkward naming of that broad and unifying concept, often called "the principle of legality", which is based on both the common law and the relationship between individuals and Parliament in a liberal democracy.

In *Zheng v Cai*⁵, a unanimous High Court said that "to attribute an intention to the legislature is to apply something of a fiction", and that it would be a misleading use of metaphor to attribute a collective mental state to legislators. In discovering the intention or will of Parliament, it is accepted by all arms of government that the correct question is not what Parliament meant, but what a statute or provision means. This emphasises the need for approaches to interpretation which are well understood and applied consistently. There is much detail in this text which assists in that regard.

Canons of construction are set out helpfully with a note of caution about correct use. Presumptions are explained clearly, as are the various approaches to the use of extrinsic materials.

The section on International Law is somewhat shorter but it is extremely informative. Of particular assistance to any practitioner are the descriptions of international judicial bodies and explanations

⁵ (2009) 239 CLR 446 at 455 [28]; [2009] HCA 52.

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of critical treaties which no modern lawyer (in what is sometimes called a globalised world) can afford to ignore.

The section on Private Law, which deals with contracts, deeds, wills and trusts, follows a similar structure to the section on Statutes. The topics covered include the meaning of words, relevant linguistic maxims of construction and the principles governing access to extrinsic materials.

Finally, the fourth section helpfully collects the principles applicable to the interpretation of reasons for judgment, orders and practice directions.

The formatting deserves compliment. Each subtitle is defined, the scope is explained and the reader is given immediate cross-references to related titles and subtitles in the encyclopaedia. Each section moves from general principles to specific sub-topics. The layout is clear, the prose simple and uncluttered, and the footnoting exemplifies both thorough scholarship and practical wisdom. This is a text for students, practitioners and dispensers of the law.

Like all imperative tasks and rules in the legal system, those applying to interpretation are constantly reshaped by the intellectual efforts of many to reflect the shared needs and values of certainty,

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consistency and fairness. It is a pleasure to launch a book of such accomplishment on that crucial topic.

Once again, thank you.