



BOOK REVIEWS

HOW TO UNDERSTAND AN ACT OF PARLIAMENT by Gifford and Gifford, (Law Book Company, Sydney 1991) xix, 189 pages

How to Understand an Act of Parliament is as unpretentious and accessible as its title suggests. Using ordinary language, it tells one clearly, step by step, how to make sense of a statute. It explains the making of an Act of Parliament and how an Act is organised. In some detail, it discusses the legal significance of each of its component parts, from the coat of arms to the schedule. It then goes on to consider the different approaches to statutory interpretation. It explains the literal rule, the golden rule and the mischief rule. It discusses the syntactical presumptions (though happily it avoids this term). It considers the implications for statutory interpretation of materials extrinsic to an Act as well as the effects of Acts on each other.

At first blush, the interpretation of statutes might seem to be a subject which does not lend itself to humour. But Gifford and Gifford reveal that this is not so. From the outset, they manage to inject some wit into what might be regarded by many as an inherently unexciting topic. They tell us, for example, of a sixteenth century Act suggested by Henry the VIII after the Bishop of Rochester's cook had poisoned the porridge destined for the Bishop's household. The King, who enjoyed his food, managed to secure a retrospective law which provided for poisoners to be boiled to death. The Bishop's cook was the first to go.

Gifford and Gifford continue to strike a light note throughout the book and so manage to leaven the task of interpreting legislation. Their volume is therefore pleasant and easy reading. The clarity of the writing also serves to strengthen the authors' point that greater endeavours should be made to render legislation in plain English. Some nice examples are offered of the unnecessary circumlocution of Parliamentary drafting.

Both teachers and students of law should find this a useful book. Teachers will probably want to make use of the entertaining illustrations and case law used to substantiate points. Students should benefit from the clear

presentation and general readability. So should members of the general public wishing to gain some insights into the nature of legislation.

How to Understand an Act of Parliament is not without its flaws. A conspicuous one is sexist language. The authors, for example, reflect on what 'the man in the street' might make of an Act of Parliament. There is no mention however of the lay-woman and what she thinks. This is the seventh edition of a book first published in 1963 which might explain, though not excuse, such sexism. Perhaps the authors will address the problem in the next edition? In a book about legal writing, this is a particularly insensitive mistake.

Another objection one might raise to the book is that while it has breadth, it lacks depth. Thus it does not explore, in any detail, the development of the different common law approaches to statutory interpretation. As the authors themselves recognise, however, their book does not profess to be an exhaustive compendium of knowledge on the subject.

In the final chapter of the volume we are told that the authors' aims were relatively modest. "The object of the ... book", they say, "has been to set out as simply as possible the basic rules that the courts have laid down for the reading of statutes ... it has not been the intention to provide a full scale textbook on the intricacies of ... statutory interpretation." For a more exhaustive treatment of this topic they usefully suggest various further readings.

A further problem of the volume is that it is not sufficiently comprehensive in its coverage. Though it deals with common law approaches to interpreting legislation, it is less helpful on the statutory approaches. In the next edition, the authors might consider the inclusion of an additional chapter which examines the meaning and effect of those *Acts Interpretation Acts* (Commonwealth and State) which have instructed the courts to take into account the purposes of legislation.

How to Understand an Act of Parliament is nevertheless a fine starting point for anyone wishing to discern the meaning of legislation. For the first-year student, or for the lay-person, its brevity and lightness of touch will no doubt make it attractive. These qualities will also benefit the teacher of first year law wishing to inform the young (and old) about the mysteries of legislation.

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INCOME TAX: A CRITICAL ANALYSIS by Stan Ross and Philip Burgess (with a chapter on taxation of capital gains by Rick Krever), Law Book Co Ltd, Sydney, 1991, Paperback & Hardcover, 236 pages

The purpose of this book is to present a study of income tax from a broad policy perspective. The title, "Income Tax A Critical Analysis", may cause some confusion as to its philosophical approach. The reader may think that the book presents a critical legal theory approach to Income Tax Law. It does not. The authors state their aim in the preface: "[I]n this book an attempt is made to place the basic tax law concepts into an economic, social, political and historical context" (pvii). The authors have achieved this result.

The book has been jointly written by three respected tax academics. Stan Ross was responsible for writing Chapters 8 through 11, part of Chapter 1 and the tax reform part of Chapter 7. Philip Burgess wrote most of Chapters 1 and 7, as well as Chapters 2, 3, 5 and 6. Rick Krever wrote Chapter 4.

The book is divided into three parts. The first part represents an overview of income tax law, including some historical background to the law. The second part deals with the basic concepts: income, capital, deductions and tax accounting. The third part discusses social, political and economic perspectives of tax. In actuality these divisions are not evident. Instead, any issues dealt with are invariably associated with the general policy discussion which is described as being confined to the third part of the book. The authors keep returning to the broader, socio-economic political issues that were crucial in the formulation of the policy. This is one of the strengths of the book. This book will provide the student of income tax law with the understanding that political considerations play an important role in the formulation of legal policy generally, and, in particular, the formulation of taxation policy.

Chapter 1, entitled "Historical Outline", provides a highly readable history of income tax generally and a very interesting precis of the history of income taxation in Australia. The authors go beyond a description of legislative developments to point out how taxation law developed under the administration of different political parties.

Chapter 2 is entitled "Income Tax Perspectives". It starts with a brief outline of the different types of taxes which may potentially make up the "tax mix", and is followed by a discussion of the aims and characteristics of each tax. Chapter 2 closes with interesting comparative data on the incidence of taxation among the OECD nations.

In Chapter 3, "The Concept of Income", the legal and economic approaches to the meaning of income are introduced through a fairy tale of a kingdom

where the king wishes to impose (for the first time) an income tax. To this end he seeks the advice of the nation's great legal and economic minds. Through this allegory, the author is able to describe the differing approaches to the meaning of "income" taken by different professions as well as explain how the meaning of "income" differs depending on the legislative context in which the term is used.

Rick Krever wrote Chapter 4, "Taxation of Capital Gains". The chapter provides a good policy background as to why capital gains have been treated uniquely under the Australian income tax system. It is followed by a discussion of the judicial, economic and legal concepts of capital. Mr Krever explains the reform process leading up to the introduction of capital gains in the income tax base in 1985 and describes the various arguments favouring the preferential treatment of capital gains, such as preventing "lock-in", encouraging venture capital formation and avoiding "bunching". After explaining these popular arguments, he then outlines persuasive reasons why they should be rejected. There is even a brief mention of the novel proposal of an accruals-based capital gains tax system, so eloquently described in his book, Brooks and Krever, *A Capital Gains Tax for New Zealand*.

In addition to the general policy issues associated with the taxation of capital gains, Mr Krever discusses a number of specific capital gains issues. He provides an excellent analysis of the meaning of ss160M(6) and (7) in the context of restrictive covenants. The meaning of these provisions is a subject about which the courts have had a considerable divergence of opinion. The issue will soon be resolved (one hopes) by the High Court of Australia in *FCT v Hepples*. He also looks at the transitional problems associated with the introduction of the tax in 1985 and economic distortions associated with certain exemptions.

"Deductions" is the subject of Chapter 5. The chapter begins with an explanation of why deductions are necessary in the income tax system. There is a detailed discussion of the "legal obligations" approach and a good explanation of the very difficult *Europa Oil* cases, the judicial high water mark of the doctrine. It would have been of assistance, however, if this discussion were followed with a more detailed explanation of the purposive analysis, which has now supplanted the legal obligations approach as the judicial doctrine of choice in income tax cases. The chapter closes with an introduction to tax expenditure analysis. Included is a discussion of the policy advantages and disadvantages of approaching problems through tax deductions and incentives (tax expenditures), as compared to granting direct government subsidies.

Chapter 6 deals with "Tax Accounting". Mr Burgess provides an explanation, which will be of particular assistance to accounting students, as

to the differences between financial accounts and accounts for income tax purposes. This is followed by a discussion of the difference between cash and accruals accounting and the rules governing when each system is appropriate. The chapter closes with a discussion of special accounting situations, such as those which are encountered in long-term projects and those related to the acquisition and sale of trading stock.

Chapter 7, entitled "Politicians, Bureaucrats, Courts and Tax Reform", looks at the principal players in tax policy development and their individual roles within the system. There is a brief discussion of the administrative issues associated with lodging objections and mounting appeals.

In Chapter 8, "Tax and Poverty", Mr Ross notes that the income tax system has a profound impact on all members of society, even on the poor, who pay little or no tax. The chapter looks at the manner in which the income tax and social welfare systems operate (or fail to do so) in a coordinated manner. There is a very interesting discussion about how the social welfare eligibility rules operate as a severe disincentive to persons who wish to work. Although it has always been an argument of the politically conservative that dole recipients do not work purely due to sloth, it is shown that the law has a substantial impact on their behaviour. The effective rate of taxation of any income earned by such a recipient may be as high as 100%, since any income earned may result in a reduction of their pension by the same amount (thus equivalent to a 100% marginal rate of tax). Who would not find a 100% marginal rate of tax a disincentive to work? The chapter is very helpful because it stimulates readers to think about the tax law and social welfare law effects on the poor and shows that the policy issues affecting the poor are far more complex than is ever portrayed in the media (very likely the only exposure many students reading the book will have previously had to such issues).

At the outset of Chapter 9, entitled "Tax Ethics", Mr Ross explains why ethics generally, and tax ethics in particular, receive little discussion in most university law programmes. This is followed by an eloquent plea to change this attitude and to ensure that ethics becomes more important in law teaching in the future.

The ethical issues affecting the tax practitioner in relation to their client and in relation to the Australian Taxation Office as well as the income tax system generally are canvassed. To whom do they owe their supreme allegiance? To whom are they responsible? These questions are articulately raised so the reader may be made aware of the existence of the issues and think about them.

Closely related to the issues of ethics is "Tax Avoidance and Evasion", the topic of Chapter 10. This topic is introduced with a brief discussion of the

chequered history of the Australian tax evasion industry, why it arose and how it was eventually curtailed by legislation and administrative practice.

The author explains that it is often very difficult to draw a distinction between tax planning, tax avoidance and tax evasion. He follows this with a detailed discussion of the meaning of each of these terms. In defining these terms, the author brings into the discussion statutory interpretation rules as they apply to determine whether or not an action is proscribed by the *Income Tax Assessment Act*. Also dealt with is the statutory proscription of tax evasion, s260, and why it failed to fulfil its aims. This is followed by a description of its replacement, Part IVA. The chapter closes with a discussion of some early cases under Part IVA which give the reader a taste of the complexity of the legislation and the difficulties associated with its application.

Chapter 11 is called "The Future". Mr Ross posits a possible scenario of what the tax scene will be like as Australia enters the third millennium. There is a discussion of whether income tax has a future at all. Will income taxes be replaced by a comprehensive goods and services tax? In the alternative, will income tax law be reformed and, rather than being the predominant revenue source, become one tax in a more sophisticated tax mix which may include, in addition to income tax, expenditure and consumption taxes.

One of the great values of this book is that it challenges the student of income tax law to think about the bigger issues of why the tax is structured in a particular manner and why a particular transaction or receipt is treated under preferential rules. It raises the important question of what effect a tax has on the entire income tax regime. It is also valuable because it points out throughout the book that the income tax system is a product of the political process and that it is impossible to study income tax without considering the political, social and economic environments and realities associated with the establishment of laws. The book is well referenced throughout and provides the reader with a wide range of readings should they wish to investigate further any issue.

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