



Devenish on Interpretation: Statutory Interpretation
by Annie Singh and G. E Devenish
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Reviewed by Gregory Solik, Cape Bar

From the publishers



Devenish on *Interpretation: Statutory Interpretation* is the first volume of a two-volume tome that can be considered a comprehensive update of the original publication *Interpretation of Statutes* that was published by Professor Devenish over 30 years ago.

The second edition retains the structure of the first. Chapters 3 to 8 cover issues well known to South African lawyers: restrictive interpretation, extensive interpretation, internal and external aids to construction, multilingualism (textual reconciliation using two or more texts) and the various presumptions of interpretation. The presumptions include: that the legislature does not intend that which is harsh, unjust or unreasonable; that the legislature intends to treat all persons affected by its law on the basis of equality; that the legislature does not intend absurd or anomalous results; that there is a presumption in favour of the principles of natural justice; that there is presumption of constitutionality; and the presumption against retrospectivity. The presumptions are set out, analysed, and discussed.

The presumption against retrospectivity is in fact two cognate presumptions: one against retrospectivity and the other protecting vested rights. A retroactive statute is one that operates backwards. That is to say, it is operative as of a time prior to its enactment. A retrospective statute changes the law only for the future, but it looks to the past and attaches new prejudicial consequences to a completed transaction. A retrospective statute operates as of a past time in the sense that it opens up a closed transaction and changes its consequences, although the change is effective only for the future.

The presumptions and their application shed light on the nature of the interpretive process as well as the connected relationship which exists between statute and the common law in an evolutionary process. Professor Devenish argues that some of the most fundamental common-law presumptions that in the pre-democratic era reflected the inherent values in our common law have been subsumed or incorporated into the provisions of the Bill of Rights. The interpretation of a provision of a statute should, Professor Devenish argues, be in contextual harmony with both the letter and spirit of the whole body of law, encapsulating statutory law, including the Constitution and its values, and the common law, to the extent that it is compatible with the Constitution, in both letter and ethos (p 273-274).

The author should be congratulated for producing an erudite piece of scholarly work that succeeds in reconciling various approaches of our legal heritage: Roman Dutch law, English law, the common law, and the Constitution – including

not only its values in section 1(d), but its *spirit*. This wide and knowledgeable lens is reflected strongly in the first two chapters, which are devoted to providing an introduction to the fundamental concepts and historical roots of the interpretation of statutes in South Africa as well as the theories of interpretation. Here Professor Devenish reminds us that the interpretation of statutes “is a craft as much as a science and the judges, as craftsmen, select and apply the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of processing”.¹

Determining the intention of the legislature is thus an intellectual process of inference that is used ultimately to determine the purpose of the words in legislation. Professor Devenish however acknowledges that the term “the intention of the legislature” is so frequently used by the courts that it has become essentially a meaningless legal cliché. Today, where does one look for the intention of the legislature in the “monster Acts with their flotillas of statutory instruments and schedules, plethora of boards, tribunals and committees, with delegated powers, which they set up, the myriad of subjects, and their often opaque and tortured language that defies translation into intelligible ideas”.² And more fundamentally, that words, phrases, sentences and even texts can never have intrinsic meanings, regardless of how precise the process of drafting has been, since the context of the language and the persons involved are always relevant.

To engage and overcome the difficult task of confronting these inherent difficulties, and explaining, analysing and reconciling the various approaches and their techniques – as they are employed by the judiciary – the book is peppered with many wonderful quotes:

Innes C J in *Venter v R* 1907 TS 901: “[N]o matter how carefully words are chosen there is a difficulty in selecting language which, while on the face of it expressing generally the idea of the framer of the measure, will not, when applied under certain circumstances go beyond it, and when applied under other circumstances fall short of it.”

Justice Holmes in *Towne v Eisner* 245 US 418, 425, 38 S Ct 158, L Ed 372 (1918): “A word is not crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in colour and context according to the circumstances and the time in which it is used.”