

4-1-1950

## Legal Writings on Statutory Construction

Paul H. Sanders

John W. Wade

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>

---

### Recommended Citation

Paul H. Sanders and John W. Wade, Legal Writings on Statutory Construction, 3 *Vanderbilt Law Review* 569 (1950)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol3/iss3/14>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# LEGAL WRITINGS ON STATUTORY CONSTRUCTION

PAUL H. SANDERS \* AND JOHN W. WADE \*

This review does not purport to provide a complete critique of the various works in the field of Statutory Construction. It is not directed primarily to the specialist. Instead, it is intended to bring together for the benefit of the general practitioner the various books and other writings on the subject and thus amounts essentially to a bibliography.<sup>1</sup> But an effort has been made to suggest the approach of the longer works and to estimate in some measure their value. Thus this symposium on the subject of Statutory Construction can be rounded out by providing convenient reference to other writings in the field.

## TEXTS AND TREATISES

Unlike many legal fields, Statutory Construction has not been the subject of an extensive collection of legal treatises. But there are a number of valuable works—some contemporary and some of earlier date.

*Horack's Sutherland on Statutory Construction.*<sup>2</sup>—This is the outstanding treatise in the field and a standard American reference work. Building on a widely used and quoted authority Professor Horack, in the three volumes of the third edition, has rendered a notable service to the legal profession by covering completely the problems of legislation, including legislative organization and procedure, the classification of statutes and statutory interpretation. The coverage is thorough and the footnotes are exhaustive, affording one the opportunity of selecting the appropriate holding for particular jurisdictions. Divisions of authority are clearly recognized and considered. The emphasis of the work is that of providing working tools rather than exhausting the possibilities of critical analysis and commentary. As the author of the third edition says in the preface, "It sets forth the customary rules of construction and seeks to evaluate them in terms of their usefulness; and then, because all rules are meaningful only as they apply to specific circumstances, to consider in many chapters the application of the rules of interpretation to particular fields of the law." He disagrees with his predecessor concerning the status of legislation. "The third edition reflects the growing acceptance of statutes as a creative element in the law rather than, as Sutherland suggested in the first edition, as 'legislative interference.'"

---

\* Professor of Law, Vanderbilt University.

1. For other bibliographies see POUND, *OUTLINES OF A COURSE ON LEGISLATION* 55 (1934); LIEBER, *LEGAL AND POLITICAL HERMENEUTICS* 229 (3d ed., Hammond, 1880); Radin, *A Short Way with Statutes*, 56 *HARV. L. REV.* 388, 424 (1942).

2. SUTHERLAND, *STATUTORY CONSTRUCTION* (3d ed., Horack, 1943). 3 vols. Callaghan & Co., Chicago, Ill. (1st ed. 1891).

*Crawford, The Construction of Statutes.*<sup>3</sup>—In spite of its title this work actually covers a much greater portion of the field of legislation, including the constitutional basis of legislative power, the delegation of such power and the organization and procedure of legislative bodies. Actually only 12 of the 31 chapters deal with what might be termed the principles of statutory construction. All of the other material, however, would be most useful to lawyers concerned in any capacity with any phase of legislation. The work includes references not only to standard treatises, but to law review materials and some of the more modern writers in the field of jurisprudence. It goes beyond any routine collection of case holdings by raising such questions of current controversy as "Is there a legislative intent?" The use of legislative histories and other extrinsic aids is dealt with in detail and the author does not hesitate to give his own ideas with respect to controversial issues. The work is a very acceptable and useful single-volume contribution to the understanding of problems of statutory construction and to the needs of lawyers in dealing with such problems.

*Maxwell, Interpretation of Statutes.*<sup>4</sup>—This recent edition of a standard English authority is an extremely useful exposition in compact form of the law of statutory construction in a single common law jurisdiction which has been faced with the problem of interpreting and applying statutes for many hundreds of years. The wealth of case material cited in the 445 pages of text is indicated by a table of cases 124 pages in length. There are some discussions of the development of certain rules, of "trends" and "modern rules," in the work, but it is largely a noncritical presentation of the application of the various rules, canons, presumptions, etc., of construction as revealed by English cases. The treatment is reminiscent of certain American legal encyclopedias which read as if all cases were decided at the same time, and were capable of being stated rather dogmatically as part of a single harmonious legal pattern, in all respects unconflicting and equally applicable at a particular moment.

The similarities and differences between the English and American approaches are suggested by the following: "A statute is the will of the Legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded 'according to the intent of them that made it.'" (P. 1). "But it is unquestionably a rule that what may be called the parliamentary history of an enactment is not admissible to explain its meanings." (P. 29).

*Craies, Statute Law.*<sup>5</sup>—This English text devotes only one part to

3. CRAWFORD, *THE CONSTRUCTION OF STATUTES* (1940). Pp. xvi, 1008. Thomas Law Book Co., St. Louis, Mo.

4. MAXWELL, *THE INTERPRETATION OF STATUTES* (9th ed., Jackson, 1946). Pp. cxxxii, 445. Sweet & Maxwell, London. (1st ed. 1875).

5. CRAIES, *A TREATISE ON STATUTE LAW* (4th ed., Scott, 1936). Pp. iv, 568. Sweet & Maxwell, London. (Comments based on 3d ed., Pease and Gorman, 1923). This work

statutory construction. There is some preliminary material on drafting and authentication of statutes which includes consideration of procedural irregularities. Also some of the material on the effect of statutes seems virtually substantive in character. Nevertheless, the greater portion of the material, no matter in which part presented, is pertinent to the subject of statutory construction. The work does not assume to cover or cite all cases where words in a statute have been the subject of interpretation but centers attention on the cases discussing the principles of statutory construction. The book proceeds under the assumption that there are rules as to statutory construction and interpretation, that such rules are knowable and deducible from court decisions and dicta, and that these rules can be arranged in a meaningful system. However, this is mixed with a healthy skepticism and objectivity which does not permit the adoption of merely mechanical approaches. Any lawyer would find the book a helpful one for the historical background it gives for many familiar legal problems not necessarily associated with statutory construction. The work refers to "the United States rule" from time to time and it is stated that the writers have relied heavily upon the work of Sedgwick throughout the treatise. There is a brief review of the contributions of the early English writers, Comyn, Vining, Bacon and the relevant parts of Coke's Institutes.

*Allen, Law in the Making.*<sup>6</sup>—For a generalized treatment of legal history and the topics normally associated with jurisprudence this work is one of the best single volumes available. Written by a former Professor of Jurisprudence at Oxford, it is, of course, concerned primarily with the English legal system; but it ranges far beyond merely the common law tradition to work into its pattern the various "schools," "philosophers," and legal systems of the European continent and elsewhere. Chapter six is entitled "Legislation" and one of the five divisions of that chapter is entitled "Interpretation of Legislation." But the 42 pages of this division and the "Excursus B" which follows it contain a most penetrating analysis and provide more general illumination on what is being done in England with statutes than is given elsewhere in volumes.

"We have a most elaborate code, slowly and painfully built up, for literal interpretation, and there is not a comma or a hyphen which has not its solemn precedent. No attempt has been made in these pages to enter into the details of this lore, for it is matter of pure technique which may be found in many books of reference. There is much reason for thinking that if the same amount of attention had been paid to the more difficult and elusive principles of *Heydon's* case—if, in short, our statutory interpretation had

---

is based on *Hardcastle on Statutory Law*, which originally appeared in 1879, Craies having prepared the second edition of that work in 1892.

6. ALLEN, *LAW IN THE MAKING* (4th ed. 1946). Pp. xxxii, 564. The Clarendon Press, Oxford. (1st ed. 1927).

not so weakly followed the line of least resistance—many existing anomalies in our law might have been avoided.” (P. 418).

*Black, Construction and Interpretation of the Laws.*<sup>7</sup>—This is one of the early hornbooks with the usual black letter headings. Black announces in his preface that his book is not founded on any pre-existing work but is built up fully from decided cases. He says, “It is no longer assumed to be the province of the judiciary either to quibble away or to evade the mandates of the legislature. On the contrary, the modern authorities recognize only one rule as absolutely unvarying, namely, to seek out and enforce the actual meaning and will of the law-making power. Thus the doctrine of ‘equitable’ interpretation has become obsolete, the sanctity of the common law is no longer so jealously insisted upon, and the difference between strict and liberal construction has been reduced to a minimum.” The resulting work may be looked upon as a major step forward in systematic treatment of the subject with rules and maxims and presumptions covered thoroughly but tested in each instance against actual application by the judiciary in recent cases.

*Lieber, Legal and Political Hermeneutics.*<sup>8</sup>—The Hammond edition of this pioneer work has not disturbed in any way the original author’s text of 1839. The editorial contributions consist of extensive supplementary notes. The approach of both the editor and the original author is that the interpretation of words reduced to an exact form is essentially the same no matter whether the form be embodied in a statute, a contract or any other instrument. Lieber’s main work is not developed upon the basis of decided cases and he makes no attempt at a complete annotation of the principles which he announces. The approach, at least in some respects, is that of the modern semanticist in making clear the symbolic nature of words and the ambiguity of human speech, which cannot be avoided by specification and amplification. One of Lieber’s principal contributions is his distinction between interpretation and construction. It may be noted that this purported distinction between the terms is one which was quoted extensively in other works during the nineteenth century. It is recognized, of course, that no such precise use of terminology is reflected in the case law of this subject. Having indicated the different types of interpretation and construction and the desirable features and dangers in each of the several types, Lieber then asserts, “We shall now examine the fundamental principles of every sort of interpretation, applied in whatever branch, to whatever text.” (P. 71). He enumerates nine “elementary principles” of interpretation which include such essentially sound

---

7. BLACK, HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS (2d ed. 1911). Pp. xii, 710. West Publishing Co., St. Paul, Minn. (Comments based on 1st ed. 1896).

8. LIEBER, LEGAL AND POLITICAL HERMENEUTICS (3d ed., Hammond, 1880). Pp. xiv, 352. F. H. Thomas & Co., St. Louis, Mo. (Enlarged ed. 1839). First edition apparently not printed in book form.

generalities as "There can be no sound interpretation without good faith and common sense" (P. 109), and "Interpretation is not the object, but a means; hence superior considerations may exist." (P. 109). In Note I, beginning on page 289, Professor Hammond's editorial note is an extremely useful criticism of Lieber's enumeration of principles. There are included sixteen "general principles of construction" which are comparable in tone to the illustration on interpretation given above. Anyone interested in a full coverage of the American law on this subject will find here the source of much that appears in subsequent cases and texts. The scholarship and analysis of each of the contributors is of a very high order, particularly in light of the time when the contributions were written.

*Sedgwick, Interpretation and Application of Statutory and Constitutional Law.*<sup>9</sup>—This work contains the collection, usual for the period, of rules given by previous writers, plus the interrelated discussion of constitutional limitations on legislative powers and the substantive law of certain matters covered by statutes. In spite of his collection of the rules of several authors, the writer of this work does not seem disposed to regard any approach to the subject as too authoritative. In fact, the following statement may be considered as rather remarkable in the extent to which it departs from contemporary views.

"Nor do I believe it easy to prescribe any system of rules of interpretation for cases of ambiguity in written language, that will really avail to guide the mind in the decision of doubt. It is with the utmost difficulty, if at all, that we can define or direct any one intellectual process. How is it to be expected that we can, with success, lay down rules which are generally to govern the operations of the mind? The attempt is ingenious, metaphysically curious, but of little practical utility in the study or the application of the science of the law. What is required in this department of our science is not formal rules, or nice terminology, or ingenious classification, but that thorough intellectual training, that complete education of the mind, which lead it to a correct result, wholly independently of rules, and, indeed, almost unconscious of the process by which the end is attained. It would seem as vain to attempt to frame positive and fixed rules of interpretation as to endeavor, in the same way, to define the mode by which the mind shall draw conclusions from testimony." (P. 228).

*Potter's Dwarries on Statutes.*<sup>10</sup>—The enthusiasm of the American editor of this work is made apparent in his preface. "An applicant for admission to the bar . . . should be debarred, who shall have advanced no further in the science of law, than to suppose the rule of interpretation of all statutes

9. SEDGWICK, A TREATISE ON THE RULES WHICH GOVERN THE INTERPRETATION AND APPLICATION OF STATUTORY AND CONSTITUTIONAL LAW (2d ed., Pomeroy, 1874). Pp. xlvii, 692. Voorhis & Co., New York. (Comments based on 1st ed. 1857).

10. DWARRIS, A GENERAL TREATISE ON STATUTES (Potter's Am. ed. 1874). Pp. xxiv, 693. W. Gould & Son, Albany, N. Y. (1st ed. 1830).

was one uniform rule; . . . or who could not answer to the distinction between prospective and retrospective, public and private, enabling and disabling, enlarging and restraining, affirmative and negative statutes, and to the various other known divisions, as well as of the particular rules of construction applicable to each division; and, as applicable also to the various parts of the same statute; to the title; the preamble; the enacting part; the clauses, provisos and exceptions; and to the effect which each part bears upon the whole, and upon its construction." In order to avoid such a "debarring," the author proceeds to give all the necessary answers and a considerable choice of previously announced rules and maxims. Those included in chapter 5 are 19 maxims from Dwaris (some of which are in Latin with no further explanation); 45 maxims from Vattel (all of which are in English); 10 from Puffendorf; 16 from Grotius; 14 from Rutherford;<sup>11</sup> 38 extracted from Domat; and 21 listed under the heading, "American Rules." The greater part of the book is actually devoted to constitutional law and the substantive law of particular matters covered by statutes.

*Smith, Statutory and Constitutional Construction.*<sup>12</sup>—In addition to the material presented on statutory construction, this work is of interest because of the history of legislation among ancient governments, in England and in the American colonies and states. The constitutional restrictions on legislative power are developed in a manner which is of particular interest to the constitutional lawyer. Perhaps half of the book's 976 pages are devoted to the matter of interpretation. There are extensive quotations and references to other text writers, including Dwaris, Lieber, Rutherford, Vattel, Puffendorf, Domat, Lord Bacon, Plowden, etc., and the several rules announced are to some extent illustrated by court decisions in particular cases. The system is not altogether satisfactory, however, and to a considerable extent the approach breaks down into the simple repetition of particular instances and particular rules without consideration for the interrelationship of such rules. In fact, a considerable discussion is given to the meaning of specific words such as "aforesaid," "and," "all," "depending," etc. Separate consideration is given to penal statutes, affirmative and negative statutes, public and private statutes. The collection of materials is interesting; the analysis of and systematic development of statutory interpretation is not greatly advanced by this work.

*Endlich, Interpretation of Statutes.*<sup>13</sup>—An obvious value in this work,

---

11. It may be noted, with reference to the last three authorities mentioned, that Puffendorf copied many maxims from Grotius and Rutherford copies from both Grotius and Puffendorf. The author states, however, that he has eliminated such duplications.

12. SMITH, COMMENTARIES ON STATUTE AND CONSTITUTIONAL LAW AND STATUTORY AND CONSTITUTIONAL CONSTRUCTION (2d ed. 1876). Pp. xv, 976. Banks & Bros., Albany, N.Y. (Comments based on 1st ed. 1848).

13. ENDLICH, A COMMENTARY ON THE INTERPRETATION OF STATUTES (1888). Pp. lxviii, 871. F. D. Linn & Co., Jersey City, N. J. (Founded on Maxwell's 1875 edition).

in addition to its broad coverage of all phases of statutory interpretation and construction is the very complete annotation to English and American cases. The approach of the author is reflected in the foreword, as follows: "The innumerable maxims and technical rules of statutory interpretation, shrouded for the most part in a dead language, are well enough known. The difficulty is in their application." The author states that he has sought, as did Maxwell, (upon whose work the book is based) not to cast the rules and maxims aside as useless, but to translate them into a living language and reduce them to a few easily grasped obvious general principles, and to indicate their force and effect by showing the methods, limits and results of their application in decided cases. Whether this objective was fully accomplished or not, certainly the purely mechanical approach was avoided and there were provided authoritative illustrations of usage, the material with which to judge the effectiveness of the "general principles." In this respect, the treatment does not seem to be any more didactic than the most recent English edition of the text upon which this treatise is based.

*Coode, Legislative Expression.*<sup>14</sup>—This 49-page pamphlet is an extremely helpful analysis of "legislative expression" that could still prove of use to the draftsman as well as to the person concerned with statutory construction. Coode breaks down the expression of every law into a legal subject, the enunciation of the legal action, the description of the case to which the legal action is confined and, lastly, the conditions on performance of which the legal action operates. The results are reminiscent of that diagramming of sentences which used to be a method of teaching grammar. Would it be safe to assume that those who write statutes and those who seek to find their meaning are no longer in need of some such discipline?

*Odgers, The Construction of Deeds and Statutes.*<sup>15</sup>—This recent English work devotes approximately 160 pages to statutory construction. It purports to embody the principles set out in the works of Maxwell and Craies and to serve as an introduction for those who are beginning a study of the subject.

*Historical Works.*—Two works which will add much to the understanding of the development of statutory construction in England are Plucknett's *Statutes and Their Interpretation in the First Half of the Fourteenth Century*<sup>16</sup> and Thorne's edition of the Ellesmere manuscript, *A Discourse upon the Exposition & Understandinge of Statutes.*<sup>17</sup> This sixteenth century treatise by an unknown author is considered the first distinct account of

14. COODE, *LEGISLATIVE EXPRESSION: OR, THE LANGUAGE OF THE WRITTEN LAW* (1848). Pp. 49. T. & J. W. Johnson, Philadelphia, Pa.

15. ODGERS, *THE CONSTRUCTION OF DEEDS AND STATUTES* (2d ed. 1946). Pp. xxi, 328. Sweet & Maxwell Ltd., London (1st ed. 1939).

16. PLUCKNETT, *STATUTES AND THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY* (1922). Pp. xlv, 200. The University Press, Cambridge, England.

17. THORNE (ED.), *A DISCOURSE UPON THE EXPOSITION & UNDERSTANDINGE OF STATUTES* (1942). Pp. vii, 194. Huntington Library, San Marino, Calif.



statutory interpretation in England. Thorne's 100-page introduction refers to other early works and is itself a major contribution to the general topic of this symposium.<sup>18</sup>

#### CASEBOOKS

Casebooks are usually prepared for pedagogical purposes, and it would not normally seem useful to describe casebooks in an article directed primarily to the practicing attorney. But most of the casebooks in this field contain far more than mere collections of cases. The text discussions and other collected materials not being easily obtained elsewhere, these books constitute valuable supplements to the treatises. For this reason it has been thought desirable to describe them individually.

*de Sloovere, Cases on Interpretation of Statutes.*<sup>19</sup>—This is the pioneer, and still an extremely valuable, collection of cases, law review materials, notes, etc., centering on the subject indicated by the title, which may be taken as covering about one-third of the field developed in many of the more recent casebooks on Legislation. Legislative procedure and drafting are not given express attention. The case material is well distributed with respect to the several states, federal courts and England. There is adequate and interesting historical material. The four parts of the book are headed, "Preliminary Problems," "Interpreting the Statute," "Interpreting and Applying the Statute" and "Operation and Effect of Statutes." Others might wish to classify the material in the Third Part as "The Effect of the Existence of a Statute on Collateral Issues" and the Fourth Part as "Operative Effect of Statutes in Time." The Introduction by Dean Pound is noteworthy. It highlights in three pages the essential characteristics of the problem and the basic dilemma involved in the need for predictability and the need for a "margin for doing justice in particular cases." Dean Pound concludes: "Undoubtedly statutory interpretation is not a simple process of ascertaining, by the help of fixed canons, the intent of an individual lawgiver with respect to a state of facts he had in mind and for which he made a logically discoverable provision. To put it that way gives over-emphasis to the demand of the economic order for a maximum of predictability. But to give over the postulate of an intent discoverable by a reasonably predictable course of legal reasoning on the basis of the given text, over-emphasizes the demands of the individual life. It is the task of the jurist to work out a theory and method of interpretation which will give the maximum effect to each of these demands." (P. vii-viii).

---

18. Other works on the subject which were unavailable for comment are BEAL, *CARDINAL RULES OF LEGAL INTERPRETATION* [(3d ed., Randall, 1924). Pp. xliii, 302. Stevens & Sons, Ltd., London. (1st ed. 1896)]; and BISHOP, *COMMENTARIES ON THE WRITTEN LAWS AND THEIR INTERPRETATION* [(1882). Pp. viii, 354. Little, Brown & Co., Boston].

19. DE SLOOVERE, *CASES ON THE INTERPRETATION OF STATUTES* (1931). Pp. xxiii, 970. West Publishing Co., St. Paul, Minn.

*Horack, Cases and Materials on Legislation.*<sup>20</sup>—This casebook led the way in the presentation in published form of materials dealing broadly with the legislative process and the legislative product. Four of the book's six chapters are designed to be informative for those who may be concerned with formulating a policy to be enacted into legislation, with drafting the bill embodying such policy and with following such a bill through the legislature, seeking to influence favorable consideration from that body. Two chapters are devoted to statutory interpretation but one of these is designed more specifically for the draftsman and is included in the listing above. The editor very definitely rejects the idea of emphasizing the "usual approach" of statutory interpretation. He says in the preface: "This volume . . . presents a different thesis. . . . It assumes that an analysis similar to that made of judicial decisions will disclose a legislative common law founded on recognizable custom, history and precedent which parallels in all essentials the custom, history and precedent which has made prediction practical in the field of judicial determination." This "predictability" apparently extends to the development of legislation as well as statutory construction. A recent article by the editor raises the question whether he has abandoned a portion of the announced thesis of this casebook.<sup>21</sup>

*Read and MacDonald, Cases and Other Materials on Legislation.*<sup>22</sup>—This recent compilation provides a vast store of materials and references adequate for virtually any interest or approach in the field of legislation, whether it be that of legislative organization and procedure, drafting or statutory interpretation. The editors include extensive extracts from text materials as well as decided cases and statutes. The broader "jurisprudential" aspects are fully developed through materials comparing the growth of the law through judicial and legislative processes and a chapter on "Fitting Legislation into a Unified Legal System." Although only one chapter of the eight in the book is made, by its title, specifically applicable to interpretation and construction, a much greater proportion of the material is actually relevant to a consideration of these topics. A detailed analytical table of contents and a full index aid in making this material readily available. The interests of the legislator, the draftsman or the person concerned with securing the enactment of legislation are, however, given a greater emphasis in the arrangement.

*Cohen, Materials and Problems on Legislation.*<sup>23</sup>—This relatively short book (567 pages, plus pocket supplement) introduces a new arrangement

20. HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940). Pp. xxix, 829. Callaghan & Co., Chicago, Ill.

21. Horack, *The Disintegration of Statutory Construction*, 24 *IND. L.J.* 335 (1949).

22. READ AND MACDONALD, *CASES AND OTHER MATERIALS ON LEGISLATION* (1948). Pp. xlviii, 1357. The Foundation Press, Brooklyn, N. Y.

23. COHEN, *MATERIALS AND PROBLEMS ON LEGISLATION* (1949). Pp. xiv, 567 (with pocket supplement, 69 pages). The Bobbs-Merrill Co., Inc., Indianapolis, Ind.

and emphasis in casebooks. Primarily the editor is concerned with the tasks and skills of the lawyer representing his client's interests in legislative matters. He lists seven such lawyer-tasks and only two of these could be carried on independently of some concern for the legislative process. It is the assumption of the editor that the lawyer, in addition to being called upon to use legislative materials in the courts, "must often battle for his client in the legislative arena." He does not purport to offer too much abundance and "adjustability" in the materials since "this assumes, too readily, that those who are presented much and variegated material are already sufficiently oriented in the field to perform this function [of molding the materials to the user's plan] expeditiously." A noteworthy contribution is the inclusion of a number of "problems" involving performance of the "task" under consideration in the particular chapter. Interpretation and construction are covered in a chapter entitled, "Ascertaining the 'Meaning' of Ambiguous Legislative Language." Undoubtedly, this would prove an effective introduction to the subject matter indicated. The background of rules, maxims, presumptions, etc., is not presented in a complete fashion, and would have to be picked up by students in the course of research on the problem given or covered by independent lecture.

*Lenhoff, Comments, Cases and Other Materials on Legislation.*<sup>24</sup>—Unlike its 1949 contemporary (Professor Cohen's casebook) this collection is no streamlined affair. Its 1046 pages, however, still fall short of Read and MacDonald's 1357. Its two parts, which are accorded substantial equality in space, are entitled, "The Legislative Process" and "Statutory Interpretation." Even the "legislative process" part, however, is much more thoroughly "legal" in the traditional sense than is true in the Cohen and Horack books. For instance, Lenhoff has nothing comparable to detailed development of the materials on "formulation of legislative policy," "gauging the efficacy of proposed legislation" and "influencing legislative action" appearing in the casebooks of these two editors. The author indicates in his preface the materials that bear some relation to such topics and the appendix has some drafting material, but he deliberately chooses to emphasize materials useful to the lawyer as a lawyer involved in litigation rather than as a legislator, a policymaker or a draftsman. As a result, he has much more than either of the above two editors on other subjects. Some chapters (there are 24) such as "Mistake of Law" would appear to be unnecessary. In the "statutory interpretation" part, however, Professor Lenhoff provides solid fare. The "rules," maxims, etc., are presented and discussed, frequently in the editor's own text comments, which are of added value because of his civil law background.

---

24. LENHOFF, *COMMENTS, CASES AND OTHER MATERIALS ON LEGISLATION* (1949). Pp. xxxvii, 1046. Dennis & Co., Inc., Buffalo, N. Y.

*Pound, Outlines of a Course on Legislation.*<sup>25</sup>—There are few topics in the published casebooks that are not set forth or suggested in this remarkable outline—cases, law review materials, illustrative statutes, and, more than anything else, the rich contributions from the “jurisprudential” writers which the author could call into use with such facility. The outline covers virtually every phase of the subject. Only one of the thirteen chapters is entitled “Interpretation of Laws.”

*Parkinson, Cases and Materials on Legislation.*<sup>26</sup>—“The materials here-with presented for use in the first year course in Legislation in Columbia Law School are not intended for historical study of legislation or appraisal of the legislative contribution, but rather as a basis for discussion of the problems which the formulation of legislation and its enforcement present to the lawyer.” This statement of purpose in the foreword of Professor Parkinson’s materials seems to disclaim too much in one respect and promise coverage that is not fulfilled in another. In his chapter 1, “The Evolution of Legislative Law Making,” there is presented an adequate portion of English parliamentary history and it is tied in with American materials so that the beginning student may get contrasts between systems of legislative supremacy and judicial supremacy in lawmaking. There is nothing in this work, however, treating legislative procedure or drafting, such as might reasonably have been suggested from the quoted purpose. The materials would appear to be more Constitutional Law than Legislation as the term is understood today, but this is undoubtedly explained by the editor’s concern for “the fact basis of legislation,” which at the time of his collection might mean life or death under the substantive due process ideas then enforced by the Supreme Court. The arrangement still has value, however, in emphasizing the close relationship and interdependence of approaches to constitutionality and to interpretation of statutes, constitutionalism being dominant in one phase of the interpretative process. Chapter 5 of the second volume gives approximately 200 pages to “Statutory Language and Its Interpretation.” The coverage is not exhaustive but suggestive. In addition to cases, text extracts and law review material, the author frequently presents compact annotations covering historical background and additional materials. The cases used include many subsequently presented in Cheatham, Dowling and Patterson’s *Cases on Legal Method*.

#### LAW REVIEW ARTICLES

Leading articles and student contributions to the law reviews constitute some of the most helpful materials on the subject of Statutory Construction.

25. POUND, *OUTLINES OF A COURSE ON LEGISLATION* (1934). Pp. viii, 59. Harvard Univ. Press, Cambridge, Mass. (Paper backed).

26. PARKINSON, *CASES AND MATERIALS ON LEGISLATION* (1934) 2 vols. (Vol. 1 in 2 parts). (Paper backed).

Unfortunately, it is not possible to discuss them individually, and about the best that can be done is to list them under some form of classification.

Preliminary to this, however, specific reference should be made to some writers who have made extensive and valuable contributions. Thus the many scholarly articles of the late Professor de Sloovere of New York University may frequently constitute the starting point for a law review search.<sup>27</sup> Reference should also be made to the writings of Max Radin,<sup>28</sup> Frank E. Horack, Jr.,<sup>29</sup> Roscoe Pound,<sup>30</sup> James M. Landis,<sup>31</sup> Harry W. Jones,<sup>32</sup> Charles B. Nutting<sup>33</sup> and Ernst Freund.<sup>34</sup> Two recent expressions by contemporary members of the United States Supreme Court should also be noted.<sup>35</sup>

The classification under which the articles have been arranged is merely for the sake of convenience and is not intended to be mutually exclusive. Many of the articles might well have been placed under several headings.

### 1. *In General*

Amos, *Interpretation of Statutes*, 5 *Camb. L.J.* 163 (1934).

Benson, *Rules and Aids to Statutory Construction*, 1 *Va. L. Reg. (N.S.)* 512 (1915).

Farley, *Interpretation Reinterpreted*, 11 *Tulane L. Rev.* 266 (1937).

---

27. *Preliminary Questions in Statutory Interpretation*, 9 *N.Y.U.L.Q. Rev.* 407 (1932); *Steps in the Process of Interpreting Statutes*, 10 *N.Y.U.L.Q. Rev.* 1 (1932); *The Functions of Judge and Jury in the Interpretation of Statutes*, 46 *HARV. L. REV.* 1086 (1933); *Textual Interpretation of Statutes*, 11 *N.Y.U.L.Q. Rev.* 538 (1934); *Contextual Interpretation of Statutes*, 5 *FORD. L. REV.* 219 (1936); *The Equity and Reason of a Statute*, 21 *CORNELL L.Q.* 591 (1936); *Extrinsic Aids in the Interpretation of Statutes*, 88 *U. OF PA. L. REV.* 527 (1940).

28. *Statutory Interpretation*, 43 *HARV. L. REV.* 863 (1930); *Realism in Statutory Interpretation and Elsewhere*, 23 *CALIF. L. REV.* 156 (1935); *A Short Way With Statutes*, 56 *HARV. L. REV.* 388 (1942); *Early Statutory Interpretation in England*, 38 *ILL. L. REV.* 16 (1943); *A Case Study in Statutory Interpretation*, 33 *CALIF. L. REV.* 219 (1945).

29. *Statutory Interpretation—Light from Plowden's Reports*, 19 *KY. L.J.* 211 (1931); *In the Name of Legislative Intention*, 38 *W. VA. L.Q.* 119 (1932); *The Common Law of Legislation*, 23 *IOWA L. REV.* 41 (1937); *Constitutional Liberties and Statutory Construction*, 29 *IOWA L. REV.* 448 (1944); *Congressional Silence: A Tool of Judicial Supremacy*, 25 *TEX. L. REV.* 247 (1947); *The Disintegration of Statutory Construction*, 24 *IND. L.J.* 335 (1949).

30. *Spurious Interpretation*, 7 *COL. L. REV.* 379 (1907); *Common Law and Legislation*, 21 *HARV. L. REV.* 383 (1908); *Courts and Legislation*, 77 *CENT. L.J.* 219 (1913), 7 *AM. POL. SCI. REV.* 361 (1913).

31. *A Note on "Statutory Interpretation,"* 43 *HARV. L. REV.* 886 (1930); *Statutes and the Sources of Law*, in *HARVARD LEGAL ESSAYS* 213 (1934).

32. *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 *WASH. U.L.Q.* 2 (1939); *Extrinsic Aids in the Federal Courts*, 25 *IOWA L. REV.* 737 (1940); *Statutory Doubts and Legislative Intention*, 40 *COL. L. REV.* 957 (1940).

33. *The Relevance of Legislative Intention Established by Extrinsic Evidence*, 20 *B.U.L. REV.* 601 (1940); *The Ambiguity of Unambiguous Statutes*, 24 *MINN. L. REV.* 509 (1940).

34. *Interpretation of Statutes*, 65 *U. OF PA. L. REV.* 207 (1917); *Use of Indefinite Terms in Statutes*, 30 *YALE L.J.* 437 (1921).

35. Frankfurter, *Some Reflections on the Reading of Statutes*, 2 *RECORD* 213 (*Ass'n of Bar of City of New York* 1947), 47 *COL. L. REV.* 527 (1947); Jackson, *The Meaning of Statutes: What Congress Says or What the Court Says*, 34 *A.B.A.J.* 535 (1948), 16 *I.C.C. PRAC. J.* 41 (1948), 8 *F.R.D.* 121 (1949). Cf. Frank, *Words and Music: Some Remarks on Statutory Interpretation*, 47 *COL. L. REV.* 1259 (1947).

- Frank, Words and Music: Some Remarks on Statutory Interpretation, 47 Col. L. Rev. 1259 (1947).
- Frankfurter, Some Reflections on the Reading of Statutes, 2 Record 213 (Ass'n of Bar of City of New York 1947), 47 Col. L. Rev. 527 (1947).
- Freund, Interpretation of Statutes, 65 U. of Pa. L. Rev. 207 (1917).
- Friedmann, Statute Law and Its Interpretation in the Modern State, 26 Can. B. Rev. 1277 (1948).
- Haywood, Statutes and Interpretation Thereof, 28 Am. L.N. 9 (1917).
- Holmes, The Theory of Legal Interpretation, 12 Harv. L. Rev. 417 (1899).
- Horack, The Disintegration of Statutory Construction, 24 Ind. L.J. 335 (1949).
- Jackson, The Meaning of Statutes: What Congress Says or What the Court Says, 34 A.B.A.J. 535, 16 I.C.C. Prac. J. 41, 8 F.R.D. 121 (1948).
- Pound, Courts and Legislation, 77 Cent. L.J. 219, 7 Am. Pol. Sci. Rev. 361 (1913).
- Pound, Common Law and Legislation, 21 Harv. L. Rev. 383 (1908).
- Radin, Realism in Statutory Construction and Elsewhere, 23 Calif. L. Rev. 156 (1935).
- Stone, The Common Law in the United States, 50 Harv. L. Rev. 4 (1936).
- Williams, Language and the Law, 61 L.Q. Rev. 293, 384 (1945).
- Willis, Statute Interpretation in a Nutshell, 16 Can. B. Rev. 1 (1938) (excellent general summary).

2. *Approaches to Statutes—The Plain Meaning Rule, The Golden Rule and the Mischief Rule*

- Bruncken, Interpretation of the Written Law, 25 Yale L.J. 129 (1915).
- de Sloovere, The Equity and Reason of a Statute, 21 Cornell L.Q. 591 (1936).
- de Sloovere, Contextual Interpretation of Statutes, 5 Ford. L. Rev. 219 (1936).
- de Sloovere, Textual Interpretation of Statutes, 11 N.Y.U.L.Q. Rev. 538 (1934).
- Hall, Strict or Liberal Construction of Penal Statutes, 48 Harv. L. Rev. 748 (1935).
- Hopkins, The Literal Canon and the Golden Rule, 15 Can. B. Rev. 689 (1937).
- Horack, In the Name of Legislative Intention, 38 W. Va. L.Q. 119 (1932).
- Jones, Statutory Doubts and Legislative Intention, 40 Col. L. Rev. 957 (1940).
- Loyd, Equity of a Statute, 58 U. of Pa. L. Rev. 76 (1909).
- Nutting, The Ambiguity of Unambiguous Statutes, 24 Minn. L. Rev. 509 (1940).

- Pound, Spurious Interpretation, 7 Col. L. Rev. 379 (1907).
- Scott, The Judicial Power to Apply Statutes to Subjects to Which They Were Not Intended to Be Applied, 14 Temp. L.Q. 318 (1940).
- Spencer, Genuine and Spurious Interpretation, 25 Green Bag 504 (1913).
- Thorne, The Equity of a Statute and Heydon's Case, 31 Ill. L. Rev. 202 (1936).
- Statutory Interpretation and the Plain-Meaning Rule, 37 Ky. L.J. 66 (1948).

### 3. Use of Legislative History and Other Extrinsic Aids

- Chamberlain, Courts and Committee Reports, 1 U. of Chi. L. Rev. 81 (1933).
- de Sloovere, Extrinsic Aids in the Interpretation of Statutes, 88 U. of Pa. L. Rev. 527 (1940).
- Emerson and Fuller, How to Find and Use Federal Legislative Materials, 51 W. Va. L.Q. 169 (1949).
- Frankham, Some Comments Concerning the Use of Legislative Debates and Committee Reports in Statutory Interpretation, 2 Brooklyn L. Rev. 173 (1933).
- Johnstone, The Use of Extrinsic Aids to Statutory Construction in Oregon, 29 Ore. L. Rev. 1 (1945).
- Jones, Extrinsic Aids in the Federal Courts, 25 Iowa L. Rev. 737 (1940).
- Jones, The Plain Meaning Rule and Extrinsic Aids in Interpretation of Federal Statutes, 25 Wash. U.L.Q. 2 (1939).
- Landis, A Note on "Statutory Interpretation," 43 Harv. L. Rev. 886 (1930).
- Meyer, Legislative History and Maryland Statutory Construction, 6 Md. L. Rev. 311 (1942).
- Miller, The Value of Legislative History of Federal Statutes, 73 U. of Pa. L. Rev. 158 (1925).
- Nutting, The Relevance of Legislative Intention Established by Extrinsic Evidence, 20 B.U.L. Rev. 601 (1940).
- Radin, Statutory Interpretation, 43 Harv. L. Rev. 803 (1930).
- Weisbard, Role of Court Decisions in Legislative History, 27 Taxes 295 (1949).
- Admissibility of Congressional Debates in Statutory Construction by U.S. Supreme Court, 25 Calif. L. Rev. 326 (1937).
- Effect of Legislative History on Judicial Decision, 5 Geo. Wash. L. Rev. 235 (1937).
- The Inadequacy of Legislative Recording in Iowa, 35 Iowa L. Rev. 88 (1949).
- Legislative Materials to Aid Statutory Construction, 50 Harv. L. Rev. 822 (1937).
- Nonlegislative Intent as an Aid to Statutory Interpretation, 49 Col. L. Rev. 676 (1949).

Statutory Construction—Use of Extrinsic Aids in Wisconsin, 1940 Wis. L. Rev. 453.

The Use of Extrinsic Aids in Statutory Interpretation in Kentucky, 36 Ky. L.J. 190 (1948).

#### 4. *Maxims of Construction*

Lattin, Legal Maxims and Their Use in Statutory Interpretation, 26 Geo. L.J. 1 (1937).

McCaffrey, The Rule In Pari Materia As an Aid in Statutory Construction, 3 Law. & L. Notes [No. 3] 11 (Winter 1950).

Mackay, Ejusdem Generis Principle of Interpretation, 90 Cent. L.J. 285 (1920).

Smith, Ejusdem Generis and Civil Rights Statutes, 5 Nat. B.J. 184 (1947).

Williams, Expressio Unius Est Exclusio Alterius, 15 Marq. L. Rev. 191 (1931).

Williams, The Origin and Logical Implications of the Ejusdem Generis Rule, 7 Conveyancer N.S. 119 (1943).

Interpretation of Codes by Civil and Common-Law Courts, The Doctrine of Ejusdem Generis, 5 Tulane L. Rev. 266 (1931).

#### 5. *Historical Articles*

Horack, Statutory Interpretation—Light from Plowden's Reports, 19 Ky. L.J. 211 (1931).

Plucknett, Ellesmere on Statutes, 60 L.Q. Rev. 242 (1944).

Radin, A Short Way With Statutes, 56 Harv. L. Rev. 388 (1942).

Radin, Early Statutory Interpretation in England, 38 Ill. L. Rev. 16 (1943).

#### 6. *Comparative Law of Statutory Construction*

Gutteridge, A Comparative View of the Interpretation of Statute Law, 8 Tulane L. Rev. 1 (1933).

Lenhoff, On Interpretative Theories: A Comparative Study in Legislation, 27 Texas L. Rev. 312 (1949).

Interpretation of Codes by Civil and Common-Law Courts, Doctrine of Ejusdem Generis, 5 Tulane L. Rev. 266 (1931).

#### 7. *Statutes as Bases for Analogical Reasoning*

Horack, The Common Law of Legislation, 23 Iowa L. Rev. 41 (1937).

Landis, Statutes and the Sources of Law, in Harvard Legal Essays 213 (1934).

Page, Statutes as Common Law Principles, 1944 Wis. L. Rev. 175.

Reasoning by Analogy From Statute in Pennsylvania, 43 Dick. L. Rev. 234 (1939).

#### 8. *Procedure in Statutory Construction*

de Sloovere, The Functions of Judge and Jury in the Interpretation of Statutes, 46 Harv. L. Rev. 1086 (1933).



de Sloovere, Preliminary Questions in Statutory Interpretation, 9 N.Y.U.L.Q. Rev. 407 (1932).

de Sloovere, Steps in the Process of Interpreting Statutes, 10 N.Y.U.L.Q. Rev. 1 (1932).

#### 9. *Statutory Construction in Particular Fields*

Baker, Judicial Interpretation of Tax Exemption Statutes, 7 Texas L. Rev. 385 (1929).

Billig and Smith, Bulk Sales Laws: A Study in Statutory Interpretation, 38 W. Va. L.Q. 309 (1932).

Corry, Administrative Law and the Interpretation of Statutes, 10 U. of Toronto L.J. 286 (1936).

Horack, Constitutional Liberties and Statutory Construction, 29 Iowa L. Rev. 448 (1944).

Lyon, Old Statutes and New Constitution, 44 Col. L. Rev. 599 (1944).

Mendelson, John Marshall's Short Way With Statutes, 36 Ky. L.J. 284 (1948).

Newman, How Courts Interpret Regulations, 35 Calif. L. Rev. 509 (1947).

Sanagan, The Construction of Taxing Statutes, 18 Can. B. Rev. 43 (1940).

Smith, The Changing Construction of Revenue Laws, 20 A.B.A.J. 12 (1934).

ten Broek, Interpretive Administrative Action and the Lawmaker's Will, 20 Ore. L. Rev. 206 (1941).

Criminal Law and Procedure—Statutory Construction, 32 Mich. L. Rev. 976 (1934).

The Supreme Court on Administrative Construction as a Guide in Interpretation of Statutes, 40 Harv. L. Rev. 469 (1927).

#### 10. *Miscellaneous*

Cox, Judge Learned Hand and the Interpretation of Statutes, 60 Harv. L. Rev. 370 (1947).

Freund, The Use of Indefinite Terms in Statutes, 30 Yale L.J. 437 (1921).

Horack, Congressional Silence: A Tool of Judicial Supremacy, 25 Tex. L. Rev. 247 (1947).

Jacobson, Federal Interpretation of State Law, 86 U. of Pa. L. Rev. 335 (1938).

Mann, The Interpretation of Uniform Statutes, 62 L.Q. Rev. 278 (1946).

Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76 (1937).

Sutton, Use of "Shall" in Statutes, 4 John Marshall L.Q. 204 (1938).

Due Process Requirements of Definiteness in Statutes, 62 Harv. L. Rev. 77 (1948).

Indefinite Criteria of Definiteness in Statutes, 45 Harv. L. Rev. 160 (1931).

Statutes-Construction-Effect Given to Practical Construction, 20 Minn. L. Rev. 56 (1935).