

THE
HAMLYN
LECTURES

ANDREW BURROWS

**Thinking About
Statutes**

INTERPRETATION, INTERACTION,
IMPROVEMENT

HAMLYN LECTURES HAMLYN
LECTURES HAMLYNLECTURES

CAMBRIDGE

THINKING ABOUT STATUTES

Interpretation, Interaction, Improvement

We are in the age of statutes; and it is indisputable that statutes are swallowing up the common law. Yet the study of statutes as a coherent whole is rare. In these three lectures, given as the 2017 Hamlyn Lecture series, Professor Andrew Burrows takes on the challenge of thinking seriously and at a practical level about statutes in English law. In his characteristically lively and punchy style, he examines three central aspects which he labels interpretation, interaction and improvement. So how are statutes interpreted? Is statutory interpretation best understood as seeking to effect the intention of Parliament or is that an unhelpful fiction? Can the common law be developed by analogy to statutes? Do the judges have too much power in developing the common law and in interpreting statutes? How can our statutes be improved? These and many other questions are explored and answered in this accessible and thought-provoking analysis.

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THE HAMLYN TRUST

The Hamlyn Trust owes its existence today to the will of the late Miss Emma Warburton Hamlyn of Torquay, who died in 1941 at the age of eighty. She came from an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor and JP for many years, and it seems likely that Miss Hamlyn founded the trust in his memory. Emma Hamlyn was a woman of strong character, intelligent and cultured; well-versed in literature, music and art; and a lover of her country. She travelled extensively in Europe and Egypt, and apparently took considerable interest in the law, ethnology and culture of the countries that she visited. An account of Miss Hamlyn may be found, under the title 'The Hamlyn Legacy', in Volume 42 of the published lectures.

Miss Hamlyn bequeathed the residue of her estate on trust in terms which, it seems, were her own. The wording was thought to be vague, and the will was taken to the Chancery Division of the High Court which, in November 1948, approved a Scheme for the administration of the trust. Paragraph 3 of the Scheme, which follows Miss Hamlyn's own wording, is as follows:

The object of the charity is the furtherance by lecturers or otherwise among the Common People of the United

THE HAMLYN TRUST

Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and Ethnology of the Chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the Intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.

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From the outset, it was decided that the objects of the Trust could be best achieved by means of an annual course of public lectures of outstanding interest and quality by eminent lecturers, and by their subsequent publication and distribution to a wider audience. The first of the Lectures was delivered by

the Rt Hon. Lord Justice Denning (as he then was) in 1949. Since then, there has been an unbroken series of annual Lectures published until 2005 by Sweet & Maxwell and from 2006 by Cambridge University Press. A complete list of the Lectures may be found on pages ix to xiii. In 2005, the Trustees decided to supplement the Lectures with an annual Hamlyn Seminar, normally held at the Institute of Advanced Legal Studies at the University of London, to mark the publication of the Lectures in printed book form. The Trustees have also, from time to time, provided financial support for a variety of projects, which, in various ways, have disseminated knowledge or have promoted to a wider public understanding of the law.

This, the sixty-ninth series of Lectures, was delivered by Andrew Burrows at the University of Oxford, the University of Manchester and the Institute of Advanced Legal Studies, London. The Board of Trustees would like to record its appreciation to Andrew Burrows and also the three venues which generously hosted these Lectures.

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PREFACE AND ACKNOWLEDGEMENTS

Statutes are swallowing up our common law. Yet, despite their practical importance, statutes have never been the focus of a Hamlyn Lecture Series. In these three lectures, I have taken on the challenge of thinking seriously and at a practical level, and in a lively way, about statutes in English law by examining three central aspects, which, for shorthand, I label interpretation, interaction and improvement.

The first lecture on ‘Statutory Interpretation’ examines four main questions. What is the present English law on how a statute is to be interpreted? Is statutory interpretation best understood as seeking to effect the intention of Parliament or is that an unhelpful fiction? What insights are to be gained by the idea that a statute is ‘always speaking’? And can we assimilate statutory interpretation with other types of legal interpretation, in particular the interpretation of contracts and common law precedents?

In a common law system, intriguing questions arise about the interaction between common law and statute. The second lecture on ‘The Interaction of Common Law and Statute’ examines three main issues concerned with that interaction. First, it looks at the development of the common law by analogy to statutes. Secondly, it explores the removal of the common law, or the freezing of its development, by