Chapter 1

Introduction: Is Statutory Interpretation in Private Law Distinctive?

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Introduction

It is now trite to say that statutes have overtaken common law in their importance. It is certainly true that if one compares *Statutes at Large* from 1066 to 1761 which has nine volumes[1] with the compilation of statutes from just one Parliament in one recent year it is evident that the volume of legislation has exploded. Legislation shapes and contributes to almost every area of the law, helping to structure and regulate even the most basic of relationships and conduct of life in Australia. Of most interest to this volume, statutes are now pervasive throughout areas of the law, such as contract, torts and equity, in which case law has traditionally seemed paramount. In that, private law is no different from any other; case law doctrine and statute now form a multilayered juridical tapestry.

This volume excavates the effect that this change has had on the processes of analysis and thought of the actors in private law – the lawyers, judges and academics. It had its genesis in a symposium at UNSW Law School in October 2017 which aimed to explore the processes and principles of statutory interpretation in private law and to ask whether these are distinctive. We wanted to explore how the interactions between common law and statute affected the development of the law, and to identify any meta-principles that might be guiding the development of law in this area.

To hold a symposium on a topic involving 'private law', of course, raises the thorny question of what private law is. In the past some people have in fact even defined private law as non-statutory law. That cannot be the case today and is probably merely an artifact of the fact that for a long time in some areas of private law such as torts and equity there was comparatively little legislation which appeared to affect what might be thought of as the fundamental operations of the law. This is no longer true, of course, if it ever was, and legislation may be found occupying a central place in most modern areas of law. For our purposes we define private law broadly. Our initial position is that private law involves any law which is usually that between parties who are private legal persons rather than government or government officials. Saying 'usually' allows for the exceptions which arise, for example, where an employer being sued by an employee

1 O Ruffhead (ed), *The Statutes at Large from Magna Charta to the End of the Last Parliament* (1761, printed by M Baskett, 1765).