Although legislation lies at the heart of the study of the law, the drafting of the law has been for years a “cryptic” topic, often considered to be of secondary importance, whose “secrets” were shared by few professional drafters and a small group of aficionados in jurisdictions around the world. It took several decades and innumerable failed laws for the legal community to realise the impact that legislative drafting has (among other things, of course) on the quality of law as well as the fact that this vast and complex area of study constitutes a new sub-discipline of law (legislative studies, legisprudence) which lies at the intersection of law, policy and social science and combines academic elements with a strong practical orientation. Behind this evolution lies the effort of several people who worked hard to theorise the idiosyncracies of legislative drafting and Professor Helen Xanthaki is one of them.

Helen Xanthaki is a well-known figure in the world of legislative drafting and one of the few academics who specialise in this field: since 2013, she is the only Professor of Law and Legislative Drafting in the UK. Xanthaki’s academic career has been devoted to the advancement of drafting in a number of ways: she is the author of the latest edition of Thornton’s Legislative Drafting (5th edn, Bloomsbury Professional, 2013), which is no less than a drafters’ bible; she has taught generations of professional (or aspiring) drafters from around the world and created an active, multinational, community of drafters at the Institute of Advanced Legal Studies and the Sir William Dale Centre for Legislative Studies; she has published extensively on different aspects of legislative drafting and has been involved in innovative research to deepen understanding of how legislation can be effective for its users. These biographical references are not mentioned for praise only: instead, they are stated because they reflect the multifaceted understanding of legislation that sets the background of her book Drafting Legislation. Art and Technology of Rules and Regulation.

As suggested by its title, this book is an exploration of fundamental issues related to legislative drafting from a new perspective: one that acknowledges the interdisciplinary “phronetic” effort of any drafting endeavour as one that brings together knowledge, intuition and experience. This new approach places drafting at the intersection of policy, law and social science and aspires to liberate the drafter to work creatively, bearing the end goal in mind (effective legislation) and making the best possible use of the available tools and methods, rather than binding him/her to strict and inflexible rules.

The major innovation of the book therefore is that it places the work of the drafter in context. Drafting is not a laboratory experiment but a real-life exercise in lawmaking...
without strict rules but with a clear expected end result (effective legislation). In this sense, structure, grammar, form, and plain language are functional tools at the service of the drafter rather than inflexible rules applied rigidly. Within this broader picture, all issues fall into perspective. For example, the concern on how to use grammar is valid and legitimate in the effort to make a specific set of rules clear, unambiguous and understandable to the end user but not as an abstract concern detached from a specific context. According to Xanthaki’s approach, sacrifices (eg in language, syntax etc) are legitimate as long as they serve the end result. This book contributes to academic knowledge in a double way: firstly by clearly delineating the broader context within which a drafter operates and secondly by analysing, systematically and comprehensively, the drafters’ toolkit. And although the analysis of the toolkit absorbs most of the book and goes into great depth, the end is never lost from sight.

The book includes 20 chapters and its layout follows Thornton’s five phases of drafting. Chapter 1 introduces the reader to fundamental questions of values of good law, the nature of drafting, and the relevance of rules in legislative drafting and the overall approach of the author. Chapters 2 and 3 focus on drafting instructions and the legislative plan. Chapter 4 looks at the structure of a Bill, Chapter 5 looks at the legislative sentence and Chapter 6 at plain language. Chapters 7–9 and 12–13 focus on the content of a law and explore preliminary, principal, final, amending and penal provisions. Last but not least, the book addresses issues related to time, the challenges involved in extra-territorial legislation, delegated legislation, statutory interpretation as well as theoretical issues such as comparative drafting, consolidation and codification, quality of legislation in the EU and legislative education and training.

An important quality of the book lies in its admirable mastery of a dispersed, diverse and extensive volume of academic literature on legislative drafting. Xanthaki has been collecting her material for years, no wonder that it is so exhaustive. A second advantage is its systematic approach: all issues are covered in theory and practice. All chapters address the theoretical concerns and bring examples from legislation around the world. An entire case study on tax legislation in Chapter 16 applies the arguments of the author in a concrete (and extremely complex) area of law and dispels any doubts of a critical reader about the validity of her approach. However, what is, in my view, the most outstanding achievement of the book is that it manages to go into great depth in analysing an important number of topics without ever losing the end result from sight. Therefore effectiveness guides the discussion and the analysis of different perspectives and options and is the connecting tissue throughout the entire book. Numerous examples are used to illustrate the points, but the message remains clear throughout the book: structure, language and form are tools to produce effective legislation, and they need to be used with this purpose in mind.

Drafting Legislation, Art and Technology of Rules and Regulation is a comprehensive, systematic and insightful guide to the complex and cryptic world of legislative drafting. It is a knowledgeable, structured and excellently documented contribution to the theoretical and practical dilemmas and choices involved in designing effective rules. Unlike other literature on legislative drafting, which is either too theoretical or too practical, thus addressing either academic or professional audiences, this book masterfully combines the two and in fact makes a strong case about how one
needs to learn from the other. It offers at same the time a structured approach to the
considerations that a drafter needs to address when working on a piece of legislation,
while placing legislative drafting in its dual context as a sub-discipline of law and as a
practical craft that needs to deliver high quality results in practice.

Xanthaki’s contribution is fresh air to the academic literature in the field of legislative
studies. It acknowledges the important role of the drafter as a translator of policy and
offers a context within which legislators around the world, whether from common or
civil law countries, can be inspired and guided on how to legislate in a systematic and
evidence-based way. This excellent book is equally useful for practitioners, theorists,
academics but also for any “lover of the law” interested in delving into the mystical work
and challenges of legislative drafting. It is already recognised as the leading reference in
the field of legislative drafting and has an international impact outside academia, as
drafters apply its teachings in the actual drafting of legislation.

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