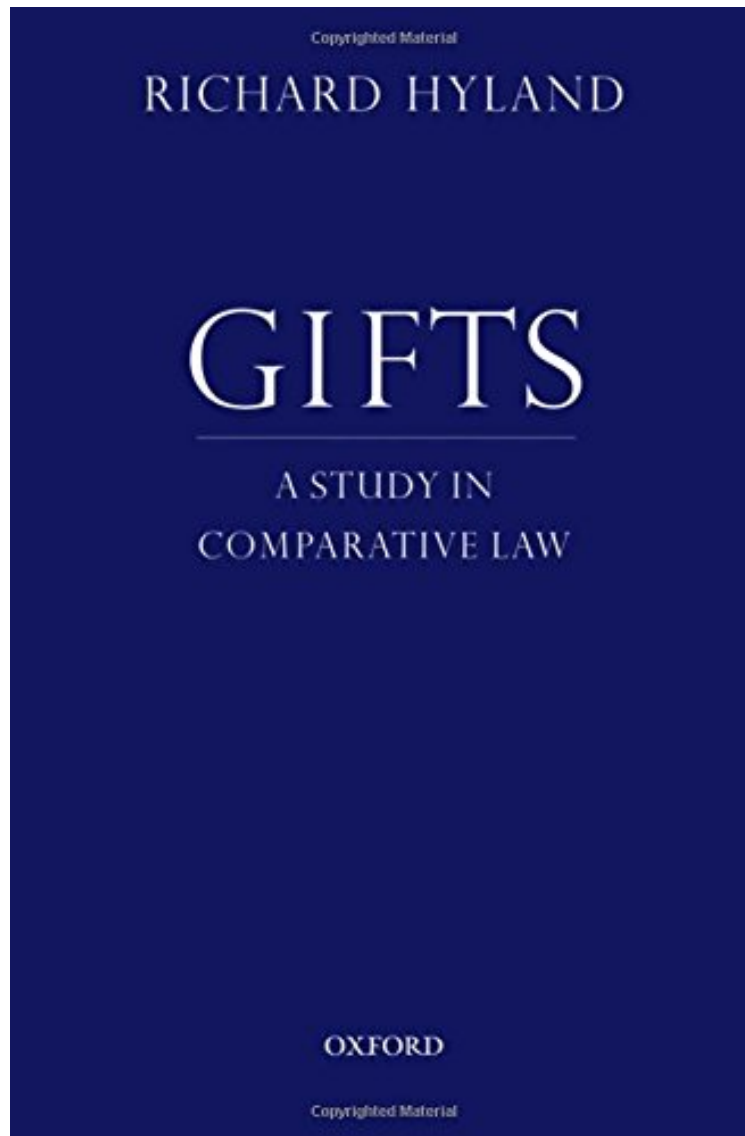


(Free and download) Gifts: A Study in Comparative Law

Gifts: A Study in Comparative Law

Richard Hyland

*DOC | *audiobook | ebooks | Download PDF | ePub*



 Download

 Read Online

#3540415 in Books 2009-06-05Original language:EnglishPDF # 1 6.20 x 2.20 x 9.50l, 2.60 #File Name:
0195343360730 pages | File size: 43.Mb

Richard Hyland : Gifts: A Study in Comparative Law before purchasing it in order to gage whether or not it would be worth my time, and all praised Gifts: A Study in Comparative Law:

2 of 2 people found the following review helpful. Gifts - should we beware of Greeks...By Phillip Taylor MBE(OR ANYBODY ELSE FOR THAT MATTER) BEARING THEM?An appreciation by Phillip Taylor MBE and Elizabeth Taylor of Richmond Green ChambersDiamonds may be a girl's best friend. But if she accepts them as a gift, the lass may need a lawyer if her relationship with the giver by any chance turns sour.Here is a great -and we mean

monumental -- book on gifts; primarily the legal aspects and the ramifications of giving and receiving gifts across a representative range of western cultures, from England (assume that means the United Kingdom) and the United States to Spain, Italy, France and Belgium. India is also included as the world's largest English speaking democracy with, of course, a common law tradition. References are also made to Germany and Switzerland. The perspective is legal; the fascination universal. The book, as author Richard Hyland is happy to state, is not just for lawyers. Conceivably, folk whose idea of reading a law book extends about as far as novels by John Grisham might well find it a riveting read, despite the often challenging concepts and legal terminology therein. The book is indeed the work of a formidable, retentive and scholarly mind. The research involved is massive and meticulous. The subject matter, as the subtitle indicates, is comparative law, the author having mentioned that a professor of his, early in his career, convinced him that the only way to think about the law is comparatively. The professor in question was regarded as one of the world's leading comparativists -- a word that's admittedly new to us and the spelling checker, but we like it. Hyland, quite rightly, has intended this impressive work of scholarship and erudition for four kinds of readers: * The lawyer or academic in the United States or abroad who seeks a wider perspective on gift law, including the law of trusts and estates and of contract and restitution * The writer or teacher in the field of comparative law * Professionals in disciplines other than the law * ...and lastly, the individual who thinks about gift giving 'from the perspective of the humanities and the social sciences' - and here is where the interdisciplinary nature of the book comes into its own. Ever since those conniving Greeks fooled the Trojans with that infamous wooden horse full of warriors, it seems that certain legal minds have looked upon gift bearing with suspicion and here we're talking about matters political or dynastic, like gifts of valuable chattels or acreage. The very first sentence of 'Gifts' states that 'the French revolutionaries abhorred gift giving.... This book explores why the legal mind so often concludes that gift giving is a danger to society.' Later in the text, it's pointed out that the Romans prohibited gift giving between spouses. Another example: in the impressively extensive bibliography, there is a list of over a dozen books/ articles on the ancient custom of potlatch (ceremonially giving valuables away partly to demonstrate your status within the tribe) among the Kwakiutl people of British Columbia in Canada, which infamously was banned by law between about 1884 and 1951. What is there about the authoritarian mind-set that likes banning things, including the giving of gifts? This is only one of the puzzling phenomena Professor Hyland's 'Gifts' addresses. Our advice is to buy it, borrow it, but don't steal it! Somebody - a grateful colleague, or client perhaps -- might give it to you as a gift and will be interesting reading for Chancery practitioners. ISBN: 978-0-19-534336-6

Gifts: A Study in Comparative Law is the first broad-based study of the law governing the giving and revocation of gifts ever attempted. Gift-giving is everywhere governed by social and customary norms before it encounters the law and the giving of gifts takes place largely outside of the marketplace. As a result of these two characteristics, the law of gifts provides an optimal lens through which to examine how different legal systems engage with social practice. The law of gifts is well-developed both in the civil and the common laws. Richard Hyland's study provides an excellent view of the ways in which different civil and common law jurisdictions confront common issues. The legal systems discussed include principally, in the common law, those of Great Britain, the United States, and India, and, in the civil law, the private law systems of Belgium and France, Germany, Italy, and Spain. Professor Hyland also serves a critique of the dominant method in the field, which is a form of functionalism based on what is called the *praesumptio similitudinis*, namely the axiom that, once legal doctrine is stripped away, developed legal systems tend to reach similar practical results. His study demonstrates, to the contrary, that legal systems actually differ, not only in their approach and conceptual structure, but just as much in the results.

"Professor Hyland has written a work of massive but accessible comparative scholarship dealing with a problem that engages the attention of every legal system: how the law does and should regard gifts-with what mixture of permission, encouragement, and regulation. After setting the stage by reviewing the variety of social scientific treatments of the social meaning and significance of the gift, and explaining the utility and limitations of comparative studies, Hyland conducts a detailed, fascinating comparison of the approaches taken by the Western legal traditions. The book will be an indispensable resource for students of the gift, and of comparative law in general." --Richard A. Posner, Judge, United States Court of Appeals for the Seventh Circuit Senior Lecturer, University of Chicago Law School "Hyland's exploration of why the legal mind so often concludes that gift giving is a danger to society is a work of scholarly comparison the likes of which we have not seen since Mauss's classic text. The book changes the terms of debate about the gift and is a must for anthropologists, sociologists, philosophers and historians and other scholars interested in the burgeoning multi-disciplinary literature on the gift." --Chris Gregory, Professor of Political and Economic Anthropology, University of Manchester "This book is masterful! The doctrinal material is extremely significant, consistently interesting, and exceptionally well done. The scholarly effort and intellect that went into this book are both obvious and staggering." --Melvin A. Eisenberg, Koret Professor of Law, Boalt Hall Law School, University of California, Berkeley "Richard Hyland's Gifts is a 'gift' to comparative law. Miraculously, this learned exposition of the law surrounding the practice of gifts is a page-turner. Going far back in time and widely across the

world's legal systems, Prof. Hyland has produced a masterpiece, showing how the seemingly simple and everyday act of gift giving has generated a wealth of legal issues and a panoply of solutions." --George A. Bermann, Gellhorn Professor of Law Jean Monnet Professor of European Union Law, Columbia University School of Law "Certain to become a landmark in the extraordinary interdisciplinary conversation about gift giving. Gifts will serve the practicing lawyer well, especially one with a cosmopolitan client base." As erudite as this work is, however, the material remains thoroughly accessible. Written in prose that is a model of concise lucidity, the material is readily digested, consumed in chunks either large or small. The material will be useful to someone who picks up the book and reads a section or two, seeking an answer to a particular legal question. But the book is ultimately a page-turner and anyone who absorbs one section is likely to succumb to its richness and turn to the beginning, reading the book as it ultimately demands to be read-from cover to cover." Iris J. Goodwin, Associate Professor, University of Tennessee College of Law ABA Real Property, Trust, and Estate Law Journal "Professor Hyland's important book about the long shadow of the donatio deserves the attention of both judges and scholars. It represents a turning point in the study of the law of gifts." -- Encarnacion Roca Trias, Justice of the Spanish Supreme Court Professor of Civil Law, University of Barcelona "Richard Hyland has undertaken a particularly demanding task. He has written the first wide-ranging modern monograph on gift law. It is principally a work of comparative law, but one that is also wonderfully well informed about the anthropological, economic, and social background of gift giving. Even legal history is examined. The book fills a gap that many have long felt. It is a truly foundational work, one that hardly anyone would be able to study in a single reading, but in which one can always read with great benefit." --Reinhard Zimmermann, Director of the Max Planck Institute of Comparative Law, Hamburg "The sheer expertise of the author can be easily identified in this book which gives a critical approach to the subject of comparative laws which raises many an intriguing debate in the mind of the reader." --Barnik Ghosh, India Law Journal "A fascinating story, superbly told here by a true master of our craft." -- Hans W. Baade, Hugh Lamar Stone Chair Emeritus in Civil Law, University of Texas at Austin American Journal of Comparative Law "This is a magnificent book. Richard Hyland has presented us with a great gift." -- Ewoud Hondius, European of Private Law "It is, undoubtedly, a scholarly comparative work of significance to anyone interested in the act of giving...The account is probing and thought provoking." --Robert Cunningham, Faculty of Law, The University of Western Australia Anthropological Forum "Hyland provides a fascinating comparative study of the law with much to stimulate the interest of the reader. He rightly identifies the uneasy relationship between legal principle and social phenomena and the difficulties which arise from a failure by lawyers to understand social institutions in their broader perspective, which may require reference to their historical origins, political and economic influences and sociological and anthropological material. In short, lawyers, by focusing on legal niceties, run the risk of overlooking the role played by gift giving in society." --Paula Giliker, Professor of Comparative Law, University of Bristol Common Law World "Hyland is aware of the dialectical unity of gifts and contracts, so that, depending on which side you come from, the one may appear to be free and the other obligatory. The three fundamentals of contract are obligation, mutual assent and autonomy of the parties; and the gift lacks all three...Thanks to Richard Hyland's scholarship, no-one any longer has an excuse to rest on one side of the Great Divide. For me, Gifts opens up the tantalizing prospect of studying the dialectical movement of transactional modes in history, drawing on western comparative law to fill the gaps left by ethnographers and historians." --Keith Hart, Professor of Anthropology Emeritus Goldsmiths, University of London "The book is a must-have for every comparativist, in that it is a critical analysis of the different theories of comparative law which makes it an indispensable tool when working in that field of the law...I thoroughly enjoyed working through Hyland's work and hope that it will receive the acknowledgement and recognition that it deserves for being an authoritative contribution to the subject field." --Christian Schulze, Comparative and International Law Journal of Southern Africa, University of South Africa "Professor Hyland has written a work of massive but accessible comparative scholarship dealing with a problem that engages the attention of every legal system: how the law does and should regard gifts-with what mixture of permission, encouragement, and regulation. After setting the stage by reviewing the variety of social scientific treatments of the social meaning and significance of the gift, and explaining the utility and limitations of comparative studies, Hyland conducts a detailed, fascinating comparison of the approaches taken by the Western legal traditions. The book will be an indispensable resource for students of the gift, and of comparative law in general." --Richard A. Posner, Judge, United States Court of Appeals for the Seventh Circuit Senior Lecturer, University of Chicago Law School "Hyland's exploration of why the legal mind so often concludes that gift giving is a danger to society is a work of scholarly comparison the likes of which we have not seen since Mauss's classic text. The book changes the terms of debate about the gift and is a must for anthropologists, sociologists, philosophers and historians and other scholars interested in the burgeoning multi-disciplinary literature on the gift." --Chris Gregory, Professor of Political and Economic Anthropology, University of Manchester "This book is masterful! The doctrinal material is extremely significant, consistently interesting, and exceptionally well done. The scholarly effort and intellect that went into this book are both obvious and staggering." --Melvin A. Eisenberg, Koret Professor of Law, Boalt Hall Law School, University of California, Berkeley "Richard Hyland's Gifts is a 'gift' to comparative law. Miraculously, this learned exposition of the law surrounding the practice of gifts is a page-turner. Going far back in time and widely across the world's legal systems, Prof. Hyland has

produced a masterpiece, showing how the seemingly simple and everyday act of gift giving has generated a wealth of legal issues and a panoply of solutions." --George A. Bermann, Gellhorn Professor of Law Jean Monnet Professor of European Union Law, Columbia University School of Law "Certain to become a landmark in the extraordinary interdisciplinary conversation about gift giving. Gifts will serve the practicing lawyer well, especially one with a cosmopolitan client base." As erudite as this work is, however, the material remains thoroughly accessible. Written in prose that is a model of concise lucidity, the material is readily digested, consumed in chunks either large or small. The material will be useful to someone who picks up the book and reads a section or two, seeking an answer to a particular legal question. But the book is ultimately a page-turner and anyone who absorbs one section is likely to succumb to its richness and turn to the beginning, reading the book as it ultimately demands to be read-from cover to cover." Iris J. Goodwin, Associate Professor, University of Tennessee College of Law ABA Real Property, Trust, and Estate Law Journal "Professor Hyland's important book about the long shadow of the donatio deserves the attention of both judges and scholars. It represents a turning point in the study of the law of gifts." --Encarnacion Roca Trias, Justice of the Spanish Supreme Court Professor of Civil Law, University of Barcelona "Richard Hyland has undertaken a particularly demanding task. He has written the first wide-ranging modern monograph on gift law. It is principally a work of comparative law, but one that is also wonderfully well informed about the anthropological, economic, and social background of gift giving. Even legal history is examined. The book fills a gap that many have long felt. It is a truly foundational work, one that hardly anyone would be able to study in a single reading, but in which one can always read with great benefit." --Reinhard Zimmermann, Director of the Max Planck Institute of Comparative Law, Hamburg "The sheer expertise of the author can be easily identified in this book which gives a critical approach to the subject of comparative laws which raises many an intriguing debate in the mind of the reader." --Barnik Ghosh, India Law Journal "A fascinating story, superbly told here by a true master of our craft." --Hans W. Baade, Hugh Lamar Stone Chair Emeritus in Civil Law, University of Texas at Austin American Journal of Comparative Law "This is a magnificent book. Richard Hyland has presented us with a great gift." -- Ewoud Hondius, European of Private Law "It is, undoubtedly, a scholarly comparative work of significance to anyone interested in the act of giving...The account is probing and thought provoking." --Robert Cunningham, Faculty of Law, The University of Western Australia Anthropological Forum "Hyland provides a fascinating comparative study of the law with much to stimulate the interest of the reader. He rightly identifies the uneasy relationship between legal principle and social phenomena and the difficulties which arise from a failure by lawyers to understand social institutions in their broader perspective, which may require reference to their historical origins, political and economic influences and sociological and anthropological material. In short, lawyers, by focusing on legal niceties, run the risk of overlooking the role played by gift giving in society." --Paula Giliker, Professor of Comparative Law, University of Bristol Common Law World "Hyland is aware of the dialectical unity of gifts and contracts, so that, depending on which side you come from, the one may appear to be free and the other obligatory. The three fundamentals of contract are obligation, mutual assent and autonomy of the parties; and the gift lacks all three...Thanks to Richard Hyland's scholarship, no-one any longer has an excuse to rest on one side of the Great Divide. For me, Gifts opens up the tantalizing prospect of studying the dialectical movement of transactional modes in history, drawing on western comparative law to fill the gaps left by ethnographers and historians." --Keith Hart, Professor of Anthropology Emeritus Goldsmiths, University of London "The book is a must-have for every comparativist, in that it is a critical analysis of the different theories of comparative law which makes it an indispensable tool when working in that field of the law...I thoroughly enjoyed working through Hyland's work and hope that it will receive the acknowledgement and recognition that it deserves for being an authoritative contribution to the subject field." --Christian Schulze, Comparative and International Law Journal of Southern Africa, University of South Africa About the AuthorRichard Hyland is Distinguished Professor of Law at Rutgers University School of Law and an internationally recognized scholar of comparative law. He's received his M.F.A. in fiction from Columbia University, a Diplôme d'études Approfondies (LL.M.) from the University of Paris 2, was a Fulbright Scholar at the Universities of Rome and Messina in Italy. He received his J.D. at the Boalt Hall Law School in the University of California, Berkeley and his A.B. at Harvard College. Prof. Hyland's honors and services include the Council on Foreign Relations, the International Academy of Comparative Law, and the American Law Institute.