Vagueness in Law

TIMOTHY A. O. ENDICOTT

OXFORD UNIVERSITY PRESS
## Contents

**Abbreviations**

### 1. Introduction 1

1. What is in the Book 2
2. What is not in the Book 5

### 2. Linguistic Indeterminacy 7

1. The Twilight Zone 8
2. Interpretive Orthodoxy and the Critical Predicament 11
3. Deconstruction 15
4. Context 17
5. Wittgenstein 22
6. Conclusion 29

### 3. Sources of Indeterminacy 31

1. Vagueness: Introduction 31
2. Imprecision 33
3. Open Texture 37
4. Incompleteness 38
5. Incommensurability 41
6. Immensurability 46
7. Contestability 47
8. Family Resemblances 47
9. Dummy Standards 48
10. Pragmatic Vagueness 50
11. Ambiguity 54
12. Beyond Words 55

### 4. Vagueness and Legal Theory 57

1. Legal Theories 58
2. Kelsen: The Norm as a Frame 60
3. Dworkin: The Right Answer Thesis 63
4. Juridical Bivalence 72
5. Conclusion 74

### 5. How Not to Solve the Paradox of the Heap 77

1. Semanticist Solutions 78
2. Higher-Order Vagueness 82
3. The Paradox of Trivalence 84
4. How Vague is a Vague Word? 91
5. No Clear Borderline Cases? 95
6. Conclusion: Can the Paradox be Dissolved? 97

6. The Epistemic Theory of Vagueness 99
1. The Epistemic Theory 99
2. Meaning and Use 101
3. Use as a Guide to Action 118
4. The Vagueness of Evaluation 126
5. Context Dependence and Vagueness 131
6. Conclusion: Putting a Price on Bivalence 134

7. Vagueness and Similarity 137
1. The Boundary Model 138
2. Vagueness as a Problem of Social Choice 143
3. Incommensurability and Boundaries 148
4. The Similarity Model 155
5. Conclusion 157

8. Vagueness and Interpretation 159
1. Hercules and the Quietest Rave 160
2. The Resources of the Law 163
3. Dworkin and Juridical Bivalence 167
4. Interpretation, Intention, and Understanding 167
5. Interpretation and Indeterminacy 175
6. Interpretation and Invention 179
7. Conclusion: The Charm of Legalism 182

9. The Impossibility of the Rule of Law 185
1. The Content of the Ideal 186
2. Vagueness and Arbitrary Government 188
3. Reconstructing the Ideal 190
4. Three Puzzles 192
5. Resolution 197

Bibliography 205
Index 211