

In summary, *Law, Liberty and Democracy* opens up a wide range of interesting issues for discussion, and provides a lot of not always very accessible information to assist in the process. It will be a useful book, primarily for law students studying in a contextual way a selected range of topics within the broad field of civil and political rights. It will serve as a quick first reference for practitioners. It could also be a useful source of reference for those studying political science who want to know compendiously about the main legal provisions and approaches in relation to the subjects it covers.

PETER BAILEY*

INTELLECTUAL PROPERTY LAW IN AUSTRALIA

by Jill McKeough and Andrew Stewart,
Sydney, Butterworths, 1991, xlvi + 435pp

Intellectual property law has never been widely understood in Australia despite the existence of a number of excellent works on the subject. This new book should go some way to changing that.

The book falls into six parts and contains a number of innovations as regards setting out. The first innovation is that after a brief discussion of policy issues and the rationales for providing protection for intellectual property rights in part I, the authors then describe the way in which intellectual property rights can be enforced. Enforcement and remedies are topics which are generally dealt with last. Dealing with them comprehensively in part I ensures that their importance is not overlooked. Students embarking on a study of intellectual property law for the first time should be made to understand at the outset that the intellectual property rights conferred by statute and the common law are only as valuable as the remedies and enforcement procedures provided in cases of infringement.

The second innovation as regards setting out is the sequence of the following parts. Instead of starting with patents or copyright which are the regimes traditionally dealt with first, the authors begin with confidentiality. The authors have chosen to deal with the various regimes in the order in which an inventor or creator is likely to have recourse to them from the "discovery" of the original idea or invention, through to its development and exposition, and finally its commercialisation.

Thus, Part II deals with confidentiality and the circumstances in which an idea, not in the public domain, can be protected at common law. Once an idea has been reduced to writing or recorded it may be protected by copyright which is the subject of part III together with the system for registering designs.

Chapter 9 within part III deals with the protection of computer technology. This is one area where the law has failed to keep pace with technological change. The authors deal comprehensively not only with the protection provided by the *Copyright Act 1968* (Cth) for computer programs but also with the *Circuit Layouts Act 1989* (Cth). They discuss the extent to which there is copyright in the "look and feel" of a computer program in the United States and the implications of the *Autodesk case* (*Dyason v Autodesk Inc* [1990] 19 IPR 399) in Australia.

Part IV deals with the patent system for protecting ideas that are inventive. This part covers not only the *Patents Act 1952* (Cth) but also the *Patents Act 1990* (Cth) which came into force on 1 May 1991. Chapter 15 within this part contains an excellent discussion on biotechnology and the legal issues of patenting life forms, another example of the law's inability to keep pace with technological change. The *Plant Variety Rights Act 1987* (Cth) is also considered within this chapter.

* Visiting Fellow, Faculty of Law, Australian National University.

Part V of the book assumes that our creator or inventor has successfully commercialised the original idea and established a business reputation. It deals with the various ways in which that business reputation can be protected from misappropriation. The topics dealt with include the tort of passing off, misleading or deceptive conduct under the *Trade Practices Act 1974* (Cth) and the registration of trade marks.

Part VI deals with the international aspects of intellectual property protection and also contains a useful discussion of various ways of commercialising intellectual property rights such as assignment, licensing, joint ventures and franchising. It concludes with a brief analysis of what has come to be known as the "interface" between Part IV of the *Trade Practices Act 1974* (Cth) and intellectual property rights. The former seeks to promote and preserve free competition and limits to some extent the way in which inventors can exploit their creations or innovations.

The work is concise and the reader is guided through the work in such a way that there is no doubt as to where the authors are going either in their argument or in relation to the conclusions they reach. They not only describe the existing law succinctly but display considerable critical insights. Chapter 17 contains a useful illustration. In a section dealing with foreign traders and the need for business activities within the jurisdiction in order to establish passing off, they criticise the business activity requirement in the following terms:

It is difficult to understand the justification for imposing on foreign traders seeking to protect their reputation the arbitrary requirement that they engage in some local business activities. Where a trader is so well known in a jurisdiction that consumers there would infer a connection between that trader and the defendant, is not the defendant making wrongful use of the trader's goodwill? If the concern is with the absence of damage, it is arguable that, ... loss of the capacity to *license* goodwill is as much damage as the obstruction of a plan to expand into the jurisdiction. Moreover neither damage nor the presence of local business activities can be said to be essential to the success of a statutory claim based on misleading or deceptive conduct. This point was recognised in *Taco Bell*, where the Full Court went on to dismiss the counter claim based on s52 on the basis that the few who knew of the defendant's US operations would not have been deceived into supposing any connection with the plaintiff. Common sense would suggest that all cases involving foreign traders, whether brought under s52 or in passing off, should be reduced to this factual inquiry. The only effect that the local business activity requirement can have is to obscure this basic issue.

This criticism has since been echoed by Hill J in *Con Agra Inc v McCain Foods (Aust) Pty Ltd* (1991) ATPR 52 781 at 52 794 where his Honour observed:

... I am of the view that the time has come to recognise that although the tort of passing off is based upon the existence of a business or trade, it does not matter whether that trade or business is in fact itself carried on in the jurisdiction, provided that there is in respect of that trade or business, extant, a reputation in the jurisdiction. However, neither the decisions of the High Court nor Full Federal Court presently go so far and such comments on the matter as there are point in the other direction. I think, therefore, that the issue should be addressed and resolved by an appeal Court rather than by a single Judge.

This book is carefully researched. There are nineteen pages of case references as one would expect, but also an equal emphasis on secondary material. The book is reasonably priced and is warmly welcome.

STEPHEN G CORONES*

* Senior Lecturer, Queensland University of Technology, Law School.