

is not a great deal more fruitful, in the end, than the interventionism of Mr Shepherd.

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FOOTNOTES

1. E.g. L.S. Sealy, "Fiduciary Obligations" [1962] *Cambridge L.J.* 69; P.D. Finn, *Fiduciary Obligations* (1977) 1.
2. *Commercial Bank of Australia Ltd v. Amadio* (1983) 46 A.L.R. 402; *Union Fidelity Trustee Co. v. Gibson* [1971] V.R. 573; *United States Surgical Corporation v. Hospital Products International Pty Ltd* [1983] 2 N.S.W.L.R. 157; see also, incidentally, the observations of Davey J.A. in *Morrison v. Coast Finance Ltd* (1965) 55 D.L.R. (2d) 710, 713.
3. See the discussion in R.P. Meagher, W.M.C. Gummow & J.R.F. Lehane, *Equity — Doctrines and Remedies* (2nd ed. 1984) ch. 4.
4. See Maurice Cullity, "Judicial Control of Trustees' Discretions" (1975) 25 *U. Toronto L.J.* 99, 115-117.
5. [1914] A.C. 932, 958.

The Law of Intellectual Property, by STANIFORTH RICKETSON, B.A., LL.B. (Melb.), LL.M. (Lond.), Senior Lecturer in Law, University of Melbourne (Law Book Company Limited, Sydney, 1984), pp. i-clxxv, 1-1149, with Table of Cases and Indices. Cloth recommended retail price \$95.00 (ISBN 0 455 204179), limp recommended retail price \$69.50 (ISBN 0 455 20553 1).

The author's stated purpose is to bring together, within the space of one volume, all the Australian law relating to the protection of intellectual property. It is high time this was attempted. The statute law in this country now differs in many respects quite markedly from that in the United Kingdom on such subjects as patents, designs and trade marks; and judicial interpretation continues to reveal divergencies where one might not have expected them, as indicated, for example, by the treatment of "trafficking" in trade marks by Aickin J. in *Pioneer Kabushki Kaisha v. Registrar of Trade Marks*¹ and by the House

of Lords in *Holly Hobbie Trade Mark*.² Further, the Australian decisions have for long been a treasure trove for those seeking clear and authoritative expositions of basic principle. In part this has been a by-product of the exercise for over seventy years by the High Court of original jurisdiction in patent and trade mark matters. This meant that the Full High Court had a fund of direct experience in the field never possessed by the House of Lords or the Court of Appeal. The effect of the 1976 amendments, which directed instance jurisdiction to the State Supreme Courts and thence to the Full Federal Court, has been to diminish the expertise of the High Court in industrial property matters.

Mr Ricketson's work devotes some 400 pages to copyright, 280 pages to passing-off and trade marks, and a mere 177 pages to patents. One may surmise that it began as a book on copyright and grew from that. There is, as a result, a serious imbalance in the treatment of subject matter.

Many of the basic principles in patent law are easy enough to state, but are quite difficult to apply to a given problem and are best understood only by illustration from the decided cases. The problem is that the factual and technical settings in which the principles have been applied tend to be complex, thus presenting a challenge to the text writer. It is a challenge not met in this book. For example, the treatment (at pages 965-971) of the statutory requirements that the patentee fully describe his invention, that the claims be unambiguous and succinct and be fairly based, is of little use to student or practitioner because the bald propositions in the text are not enlivened by illustration. And no reader of this text will be much the wiser as to just what is a petty patent.

Again, what does it mean to say (at page 984) that "as a matter of policy" the reasoning of Lord Diplock in *Catnic Components v. Hill & Smith*,³ should be adopted here at the expense of our own decisions? Surely there is a competing "policy" that patent monopolies should be read strictly against the monopolist. And is it really a fair summary of the equivocal Full Federal Court decision in *Populin v. H.B. Nominees Pty Ltd*⁴ that it approved *Catnic*?⁵

There is also apparent a certain reluctance to grapple critically with issues raised by the decided cases, even in a field such as copyright where the coverage of the subject is most extensive. Thus, the treatment of "authorisation" in copyright infringement (pages 228-234) does not attempt an analysis of how the cases developed this concept alongside notions of joint tortfeasance and vicarious liability, how the three differ, and why an expression which on its face indicates simply the purported grant of a licence

has come to indicate an omission to take reasonable steps to limit use of a potential means of infringement (e.g. by photocopying) when the defendant has reason to suspect that means is likely to be so used (*University of Sydney v. Moorhouse*).⁶ And what, if any, is the inter-relation between the concept of authorisation in copyright law and the reasoning by which directors and other guiding spirits are enjoined in trade mark, patent and passing-off cases, where there is no such statutory concept available to the plaintiff? Yet such cases abound: *Polaroid Corporation v. Sole N. Pty Ltd*,⁷ *Rotocrop International v. Intercen*,⁸ *White Horse Distillers Ltd v. Gregson Associates*.⁹ And whilst it may be true that (page 547) "absence of exclusivity [of reputation] need not be fatal" to a passing-off action, the question should be addressed of whether this is true simply of injunctive and declaratory relief and of whether, if it is true of damages and accounts of profits, how the pecuniary relief is to be assessed and divided between the concurrent reputation holders, present in and absent from the litigation in question. And is it really adequate, on the difficult subject of injunctions restraining revocations of licences to refer the reader to the writings of Dr Spry (page 368) as if they contained the only scholarly writing on the subject?

The Preface states that the law is stated as available to the author on 1 May 1983. That is a year before actual publication. Further, there is a number of important decisions available before May 1983 which are inadequately dealt with or omitted. Among them are the House of Lords treatment of Part B trade marks in *Re "York" Trade Mark*,¹⁰ the treatment by the High Court of devolution of copyright by operation of law in *O'Brien v. Komesaroff*,¹¹ and the important decisions of the New Zealand Chief Justice and Court of Appeal in *Wellcome Foundation Ltd v. Commissioner of Patents*,¹² as to the patentability of processes for treating the human body.

The appearance of this book is to be welcomed, for it attempts to cover a range of subject-matter that has hitherto received too little attention from Australian legal writers. That it is diligent rather than authoritative effort will not deter those who have an interest in the subject from dipping into it as a matter of course.

One final protest, however, is at the indices. There is not one index but no less than six indices, self contained, so that there is one for copyright, one for designs, and so forth; this will not endear the publishers to busy practitioners.

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FOOTNOTES

1. (1977) 137 C.L.R. 670.
2. [1984] F.S.R. 199.
3. [1982] R.P.C. 183.
4. (1982) 41 A.L.R. 471.
5. Note 3 *supra*.
6. (1975) 133 C.L.R. 1, 13 *per* Gibbs J.
7. [1981] 1 N.S.W.L.R. 491, 498.
8. [1982] F.S.R. 241.
9. [1984] R.P.C. 61.
10. [1982] F.S.R. 111.
11. (1982) 56 A.L.J.R. 681.
12. [1983] N.Z.L.R. 385.