Bond Law Review

Volume 3 | Issue 1 Article 8

5-1-1991

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Recommended Citation
van Caenegem, William (1991) "Intellectual Property In Australia, Jill McKeough and Andrew Stewart, Butterworths, 1991," *Bond Law Review*: Vol. 3: Iss. 1, Article 8.
Available at: http://epublications.bond.edu.au/blr/vol3/iss1/8

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Intellectual Property In Australia, Jill McKeough and Andrew Stewart, Butterworths, 1991

Abstract
Stewart and McKeough have undertaken a daunting task in putting together this comprehensive yet compact textbook on Australian intellectual property law. Intellectual property is a varied and not particularly coherent area of the law, and treatment of the subject as a whole is therefore a difficult undertaking.

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Book Reviews

Intellectual Property In Australia: by Jill McKeough and Andrew Stewart.

Butterworths, 1991. 435 and xvi pages.

by
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Stewart and McKeough have undertaken a daunting task in putting together this comprehensive yet compact textbook on Australian intellectual property law. Intellectual property is a varied and not particularly coherent area of the law, and treatment of the subject as a whole is therefore a difficult undertaking.

The authors have to be commended for identifying an underlying theme, which at once gives some unity and new interest to the subject matter. The book is built on an evolutionary framework. It follows the steps taken from the conception of an idea, confidentiality, to writing it down, Copyright, or in case the idea involves an inventive step, Patent. Successful exploitation leads to the build up of goodwill which takes us to a section on Business Reputation, including Trademarks. The final part of the book is devoted to International Aspects of Intellectual Property Law, and Strategies for Commercial Exploitation of Intellectual Property.

By nature this is a text book and devoted to clear and complete, if not detailed, exposition of the present state of the law as perceived by the authors. Yet it does not lack in critical evaluation and exposes the authors views on a number of areas. That makes for interesting reading. But it does mean that the book is not as exhaustive as may be required to resolve practical issues: it is a teaching tool as well as helping to situate a problem and providing relevant leads.

Apart from the novel concept that lies at the heart of the book and dictates its structure, it is interesting to note that a separate section of the chapter on Copyright is devoted to computers. The relatively short section on Design is also to be found under Copyright. The final section of the book, on commercialising intellectual property, tends to show that the authors have a wide public in mind; not just lawyers, but also those with a more technical interest in intellectual property protection.

In contrast, s 52 of the *Trade Practices Act* 1974, (Cth) is not covered in a separate section. It is also a pity that questions relating to the relationship between intellectual property and trade practices legislation, in particular

restrictive trade practices, are not separately addressed.

The authors have, however, given more attention to the important issue of appropriate levels and means of protection. Thus they discuss the property rights issue as well as radical ideas for replacing the whole existing regime. The authors advocate resistance to the powerful forces that argue for more and more protection: the different goals that intellectual property law must reconcile do not accommodate too wide a straying from the middle road.

The question of unity in intellectual property law is a vexed one. Replacing the rather haphazard regimes with a single unifying approach along the lines of 'unfair copying' or 'misappropriation of a competitor's business assets' has been suggested as a way forward. The authors take a cautious approach to this attitude and stress the risks inherent in it. The balanced approach which characterises the book throughout is well illustrated by the following passage, relating to proposed unifying approaches:

> In particular, they focus attention on what should perhaps be the key issues: whether the defendant has acted unconscionably, given the plaintiff's prior efforts or investment; and whether the public interest in encouraging innovation and dissuading free riders would be served by permitting the claim to succeed. The real problem is in seeing how such a system could ever be implemented on a cost-efficient basis. The uncertainty that would be generated by having an adjudicator weigh every claim against some necessarily nebulous standard of impermissible conduct, not to mention the unlikelihood of consensus emerging on the ideal policy mix, weighs heavily against abandoning the current regimes. These regimes at least offer a measure of predictability in so far as ascertaining the existence of rights is concerned, particularly where registration is required. Of course this last advantage can be overstated, for in each of the registration systems it is common to fund doubtful applications being accepted by the authorities on the basis that any controversy over their validity will be resolved in court. The delays and expense occasioned by such challenges can reduce litigation of a game of bluff and encourage an environment in which rights may be obtained, asserted or denied merely in order to secure a settlement in which the right-owner or the challenger is bought off. [1] Nevertheless there does not seem to be an overwhelming case for the practicability of a broad principle of liability. No doubt the present laws could be usefully improved in many respects, but they ought, and indeed are most likely, to be retained in something close to their current form. (p. 21 - 22)

All in all this book is a step forward in the analysis of intellectual property law, an activity that Australia very much needs. The style is clear and not overly legalistic, so it will be quite palatable to a wide audience, not just to intellectual property devotees. It is also eminently topical. It starts from an issue basis in many areas and does not waste space on exhaustive comment on established detail.

The authors have succeeded well in analysing and evaluating the present laws. The book makes good reading and is an effective practical guide for anyone with an interest in this fast developing area of the law.

1 This is particularly true where patents are concerned: see [1408]-[1409].