
BOOK REVIEWS

Mark Pearson, *The Journalist's Guide to Media Law*, Sydney, Allen & Unwin 1997 (\$24.95)

"This is not a lawyer's book. ... [It] has been designed with both working journalists and students in mind," writes Mark Pearson in the preface to *The Journalist's Guide to Media Law*.¹ While the approach may not lend itself ideally to teaching media law to law students, the dearth of appropriate books for students of either law or communications makes a review of this volume appropriate.

There are twelve chapters in all, divided into six parts: "Journalists and the Legal System" (an introduction to the legal system and media law); "Journalists and Justice" (sub judice contempt and reporting the courts); "Journalists and Reputations" (defamation); "Journalists and Information" (confidentiality and copyright); "Ethics and the Law" (privacy, morality and media regulation); and "Future Issues" (new technologies). Over half the content is devoted to defamation and contempt. While there is an excellent index which enables one to make good use of the book (particularly as a reference tool), the only key source of further references is the quite short bibliography.

The introduction to the legal system provides a useful and concise (perhaps too concise) overview of the Australian Legal System which would be of considerable benefit to non-law students. More interestingly, the six page outline of the relevance of media law to journalists offers a brief comparison from which law students might gain some understanding of the position of journalists with respect to this area of the law.

The format of the five remaining parts is essentially the same; each chapter gives the reader an overview of the area, and then develops and illustrates it using cases. Set apart from the text, these are referred to as either a "case in focus" or a "classic case". Each case is described and analysed in three sections: facts, law and lessons for journalists. Although the cases are selected for their illustrative value to enable an understanding of how

the law is applied, rather than for legal significance, most of the selected cases would also appear in a legal text. Each chapter has four or five such cases, with one to three pages devoted to each. The chapters then conclude with a “tips”, “nutshell” and “question and answer” overview, followed by a list of key cases. In all, Pearson tries to make the law simple and accessible to non-lawyers, at least insofar as they require a working knowledge of the law such that “the alarm bells [will sound] when they are faced with a legal dilemma.”² He does this with some success and the book would be useful to any student wanting to obtain an overview of the operation of a complex area of law, or to a reader who wants to identify the law on a particular issue.

The inclusion of *Lange v ABC* (1997) 145 ALR 96 which gave rise to a unanimous joint judgment by the High Court on the implied right to free speech makes the book a particularly timely and suitably up-to-date text. A defamation flow-chart is a useful inclusion, though the nature of the law means it is still quite complex.³ The range of topics is appropriate. The short chapters on copyright and regulation are sufficient, if not in depth. One shortcoming of particular note is that Pearson does not offer a substantial theoretical or critical dimension in addressing the law. The approach of the book as a guide to the law makes this, to some extent, unavoidable. Such concerns might be appropriately covered in other aspects of a journalism or communications course so that students already possess the critical background to assess the wider implications of the law. In short, it is not the author’s project to provide such a critique.

Part six (“Future Issues”) consists of one chapter titled “New media technologies and the law.” A total of just ten pages, the chapter deals mainly with defamation and copyright as they apply to the Internet discussing well-known cases such as *Rindos v Hardwick* (Unreported, 31 March 1994, WA SC, Ipp J) and *Cubby v Compuserve Inc* 776 F Supp 135 (1991). The author’s rationale for a brief and compartmentalised treatment of the area is that the book “can only explain some of these issues as a backgrounder for journalists. To attempt to do more would be foolhardy. The technologies themselves are evolving so rapidly that a prescriptive account would become dated far too quickly.”⁴ While this may be the case, there are problems

¹ Sydney, Allen & Unwin, 1997 at vi-vii.

² n1 at vi.

³ n1 at 114-5.

⁴ n1 at 249.

with structuring the material in this way. First, I would suggest that it is no longer appropriate to classify this area of media law as a “future issue”; it is without a doubt a very current issue. Secondly, while there is clearly a need to explain the nature of the Internet and the uncertainties that arise with respect to new media, the legal issues of defamation, copyright and so forth could be quite appropriately dealt with under their subject headings as they are for other media. Pearson states on the next page that the law “will stay substantially the same in its application to new technologies”⁵, and this could be better reflected in the structuring of the material. If the application of the law is not likely to undergo substantial change, and the Internet has become a major location for commercial publication, then perhaps the legal issues might be appropriately drawn into the mainstream.

Is the book suited to teaching media law to law students? While the target audience is quite well-served with respect to the law and case studies, in line with Pearson’s stated aims the book would not be such a useful resource for law students. More appropriate (though by no means ideal) texts would be Armstrong, Lindsay and Watterson’s *Media Law in Australia* (3rd Ed) (OUP, 1995), which offers an overview of most of the same areas in a more fluid format and with more comprehensive footnotes, though now lacks the recent High Court statements on the implied right to free political speech. Sally Walker’s *The Law of Journalism in Australia* (LBC, 1989) was published prior to any of the Constitutional free speech cases, but is still useful. For all this, Pearson’s book would, however, be appropriate for law students to look at in some ways precisely because it is *not* aimed at lawyers. The focus on the operation of the law at a journalistic level should not be omitted from any consideration of media law; to focus purely on the legal principles is to remove the law from its context.

Mark Pearson has contributed a reasonably priced and useful “handbook” style overview of media law in Australia which students of media law - and particularly communications and journalism students - will find to be of considerable value.

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⁵ n1 at 250.

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