

## BOOK REVIEW

### A CAREER IN LAW

By J F Corkery (ed)

The Federation Press, 1989

Interest in a legal career has reached unprecedented levels. Everyone, it seems, wants to become a lawyer, primarily for reasons of financial reward and status and, to a much lesser extent, to further social justice or for intellectual challenge. However, despite the growth of legal studies at matriculation colleges, few aspirants really know what a legal career involves. They would be greatly assisted by a wide-ranging, stimulating and realistic view of the legal profession in the round, from the diffident early days of a law degree to years of experience on the judicial bench. This is what *A Career in Law* delivers, on the whole successfully. It covers much ground in a fairly readable fashion. Few students would not benefit, in some way, from reading it.

*A Career in Law* is the second edition of a work originally published in 1988 as *The Study of Law*. The change of title reflects a change in orientation. The first edition of sixteen chapters and an appendix concentrated on studying law, while the second edition of twenty-one chapters and an appendix is a broader introduction into 'the lawyer's world'. One chapter from the first edition is missing from the second. Alex Castles' neat survey of Australian legal history has been replaced by Wilfrid Prest's chapter on 'The Rise of the Lawyers', which is justified by the quest for thematic unity. Several other chapters have been rewritten to good effect. The chapters are mercifully short and are broken up with effective sub-headings. Minor criticisms should be registered. While good, the index does contain mistakes and omissions, which seem odd in the second edition of a work. I also found a distressing number of typographical errors and lines of faded print.

It is notoriously difficult to review a work of such diversity. Here a brief overview of most chapters will be given. The introductory chapters by Corkery, on reasons for studying law, and by Prest warrant inclusion, but Ratnapala's on legal theories is regrettably inappropriate for an introductory work of this kind. The subject matter does not lend itself to the confines of a brief chapter and the task is not very well attempted here. The remaining chapters can be grouped into three themes. Chapters 4 to 10, with some overlap, provide basic legal and political information on the Australian legal system; the executive branch of government; the Australian constitution; the Federal and State court system, including the cross-vesting of jurisdictions; and on legislation,

including an admirable introduction to statutory interpretation by Ann and John Farrar. Also useful are necessary chapters by Cassidy and Kelly on 'Common Law, Statute and Equity' and Boule on 'Precedent and Legal Reasoning'.

Legal skills link the next eight chapters. Wells, McGinley and Bradbrook offer sagely advice on learning the law, study methods and how to approach exams. Phillips contributes an engagingly humorous piece on rules for writing law exams. These chapters contain many practical hints. Corkery and Corcoran, in separate chapters, make a plea for plain writing and suggest ways to put precept into practice. For writers of honours' dissertations or casenotes and articles for Law School journals, a legal style and citation guide is supplied as an appendix. The importance of legal research is recognized by a chapter on how to use law libraries and on sources of information, with an emphasis on legal technology. An interesting chapter by McGinley balances a discussion of mooting and the skills of advocacy with sections on dispute resolution, interviewing clients, negotiating for clients and mediating and arbitrating disputes. It is salutary to be reminded that lawyers can sometimes be more effective outside courts than inside. Similar sentiments on dealing with clients are expressed by Nicholson, who recalls his experience of the transition from Law School to legal practice. Russell Baker, of Baker and McKenzie, recounts how he built up an international legal firm.

For a handful of lawyers, the pinnacle of their careers is judicial office. Distinguished contributors, like Roma Mitchell and Michael Kirby, recall how they became judges and describe aspects of the work. A useful feature of this book is the compilation of biographical details of all judges of the High Court to 1 January 1989. The locus of professional power is indicated by the fact that South Australia and Tasmania have never been represented on the High Court and Western Australia only twice.

Those considering a legal career will find much to entertain and inform in this book but more importantly they would do well to ponder the sobering reflection of Michael Kirby (p. 215):

Though there are many fine and idealistic people in our profession, there are also not a few who are cynical, self-satisfied, unconcerned about the disadvantaged and unquestioning of the content of the law which they help every day to administer.

Despite its merits, it is doubtful that reading this book will redress the balance in favour of idealism but we can still hope.

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## BOOK REVIEW

### LAW AND THE SOFTWARE MARKETER

Frederick L. Cooper III

Englewood Cliffs, New Jersey:

Prentice Hall, 1988, pp. xvi and 317

This American publication offers practical suggestions to software developers and marketers and their lawyers for the development of a 'legal protection game plan'. The book is divided into three major parts: (1) protecting proprietary rights in computer/communications technology; (2) limiting liability in marketing technology; and (3) establishing a legal protection game plan.

Part I, on proprietary rights in computer/communications technology, consists of thirteen chapters covering general aspects of intellectual property, including trade secrets, copyrights, patents, trademarks and trade names, and mask works as they relate to computer software. Chapter 1 introduces the concept of intellectual property. Chapter 2 defines and briefly explains the different components of 'software'. These include source materials (flowcharts, diagrams, notations), source code program, object code program, software media and software documentation. Each of these elements is then classified according to type of property, applicable law and method of transfer. Chapter 3 treats the application of trade secrets law to computer software. Chapter 4 explains the rights of employees to trade secrets disclosed to them during their employment, the rights of an employer to restrict employees and independent contractors from using and disclosing trade secrets and how to establish an internal trade secret program to protect confidential information and trade secrets.

Chapters 5-10 deal with copyright law. Chapter 5 provides a general discussion of copyright law as it relates to software, while Chapter 6 explains how to create the proper forms of copyright notice and how to cure a defective notice. Chapter 7 explains the registration and deposit procedures under the *Copyright Act*. Most commercially valuable software is created in a multi-party environment with a number of individuals, both employees and independent contractors, working on a large project. Accordingly, Chapter 8 provides practical suggestions covering the general principles of copyright ownership and the 'works made for hire' rules under the *Copyright Act* from the perspective of employers, employees and independent contractors. Chapter 9 clarifies, in the case of computer software, what constitutes actionable infringement

under the *Copyright Act*, defines derivative works, explains what is permitted copying and use, and discusses the available remedies for copyright infringement. Chapter 10 treats the problem of protecting software which is used as part of a local area network (LAN) which allows a number of independent data devices to communicate with each other, eg computer processors, terminal display units, disk and other mass storage devices, printers, facsimile units, video cameras, monitors, telephone switching equipment, and so on.

The application of patent, trademark and trade name law to computer software is the focus of Chapters 11 and 12. Chapter 13 considers mask works - a new form of intellectual property that consists of representations of the topography of the surface of a semiconductor chip. Mask works are protected in the United States by the *Semiconductor Chip Protection Act* of 1984 (17 USCA Sec 901-914).

Part II, limiting liability in marketing technology, consists of ten chapters. Chapter 14 explains the 'nuts and bolts' of basic contract law and the *Uniform Commercial Code* provisions regarding the sale of goods as they relate to computer software. Chapter 15 discusses software license agreements and explains how to design a marketing-oriented license agreement with a special emphasis on contract provisions relating to risk allocation. Limiting exposure to legal liability in general, is the focus of Chapter 16. The author notes that this is an area characterised by a high degree of complexity and requiring regular reviews by a lawyer who is on top of recent legal developments, not only in basic contract law, but also the law of fraud, negligence, strict products liability, professional malpractice. Chapter 17 is devoted to contracts for custom software and consulting services. These transactions hold the greatest potential for failure largely due to the fact that the subject matter bargained for is very difficult to define precisely. Practical suggestions are also given how to avoid these problems. Contracting to deliver a 'turnkey system' is the focus of Chapter 18. 'A turnkey agreement is the vehicle used by a systems integrator to configure and market a complete, integrated system featuring, at the very least, hardware, operating systems software, and application software' (p. 167). This system is designed, delivered and installed as a unit.

Chapters 19-23 provide a general treatment of another complex area - distribution and partnering agreements. Because the software marketplace is so volatile and intensely competitive and new product development requires considerable research and development capacity, 'many software companies are turning to highly creative relationships involving distribution and strategic partnering agreements in order to leverage their marketing efforts and to facilitate new product development' (p. 177). Chapter 20 highlights the negotiating interests of publisher versus distributor in partnering agreements. The publisher prefers to grant only non-exclusive licenses in order to minimize risk and preserve options. The distributor usually prefers to be granted some kind

of exclusive license in order to protect investment and effort in marketing the product. In many transaction, too, the publisher seeks some control over activities and performance assurances from the distributor. Chapter 21 treats pricing and payment provisions of distribution and partnering agreements. Finally, Chapter 22 tells how to avoid franchise and business opportunity pitfalls and Chapter 23 covers exporting of software to other countries.

Part III of *Law and Software Marketer* discusses and recommends the development of a 'legal protection game plan', ie a set of principles and procedures specifically tailored to a particular business. The basic purpose of such a plan is to protect one's intellectual and proprietary rights, while at the same time limiting the exposure to legal liability in the development, marketing and distribution of software and other related technology, either separately or bundled with hardware. In addition to the specific items discussed in earlier chapters, this section of the book considers the form of business enterprise, how to organise the business to best manage risk, planning for alternative dispute resolution techniques and developing and executing a legal game plan.

*Law and the Software Marketer* is a commendable text for several reasons. First, it is high readable, and being relatively free of both legal and computer jargon, it avoids a common pitfall of many books of this kind. Second, it provides, on the one hand, an excellent introduction and, on the other, a satisfactory synthesis of a difficult and rapidly expanding area of the law. Third, it is a very practical text, well illustrated and accompanied by many helpful suggestions emanating from the author's experience. Finally, *Law and the Software Marketer* is commendable for its focus on excellent business practice which perceives the lawyer as an invaluable consultant in planning a business venture, rather than someone to call only in a crisis. This emphasis on careful planning and risk reduction is critical in an area such as software marketing which is both a high-risk and high-return industry. For all these reasons, *Law and the Software Marketer* is both good value and a good read for business lawyers and computer/communication professionals who develop, market or distribute computer software.

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