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Catherine Colston & Kirsty Middleton, Modern Intellectual Property Law - 2nd Edition

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Writing a textbook is not easy nor is teaching, although it has been said that intellectual property law teaching has come of age in the past decade.⁽¹⁾ If so, so have texts on IP law, as in recent years intellectual property rights have become recognized as playing a central role in commercial transactions and law schools have responded with a plethora of courses. Intellectual property law also has important roles in an increasingly broad range of areas, ranging from the Internet to health care to nearly all aspects of science and technology and literature and the arts. Intellectual property rights are critical in translating abstract forms to commercial outcomes. Understanding the role of intellectual property in these areas - many of them still emerging - is often difficult. This makes writing a definitive text book in this field even more difficult, but the authors have met the challenge head on in this, the second edition of their book.

This increasing interest in IP and the number of important cases heard by various national courts means that there are profound implications for businesses and lawyers worldwide. While very much the subject of vigorous debate, many would still agree with Lawrence Lessig's statement that "the first priority of intellectual property law is to foster innovation and progress for our society."⁽²⁾ In order to do so, we must provide students and practitioners with the tools to understand the field, for there will always be some new development just around the corner, some new understanding to be gained and exciting new prospects for innovation, and these have to be understood, or at least recognised. This book succeeds in doing this and promotes informed discussion of these important topics.

The law covered in this work is that of the United Kingdom with its European Union and Convention obligations. The book has 19 chapters as follows:

1. Introduction
2. Justification
3. The Patent
4. Patentable Subject Matter
5. Patentable Inventions
6. Infringement, Validity and Revocation
7. Breach of Confidence
8. Copyright Principles and Copyright Works and Related Rights
9. The Subsistence and Substance of Copyright and Related Rights
10. Infringement of Copyright and Defences
11. Employing Copyright: Permitted Copyright Uses, Dealings in Works and Competition
12. Moral Rights
13. Design Rights
14. Passing Off
15. Registered Trademarks
16. Trade Mark Infringement and Challenges to Trade Marks
17. Property and Dealings in Marks and Domain Name Disputes

18. Image Protection

19. Remedies

Chapters 1 and 2 provide an overview of the infrastructure of intellectual property. While all chapters are important, Chapters 3 - 6 cover patents in great detail. Chapter 7 is really about confidentiality which is an extremely important topic in IP, while the breadth and complexity of copyright is detailed in chapters 8 – 12. The common law tort of passing off and the statutory trade mark regime is well set out in chapters 15 to 17. Remedies, a significant issue in contemporary IP practice is provided with a good overview in chapter 20. The suggested readings at the end of each chapter allow the reader to pursue further in-depth study of each topic.

This book sets out the core principles for each of the main intellectual property rights in a clear and understandable way. It covers both theoretical and practical considerations.

Any weaknesses in the book come from the vast scope of the IP Law rather than any mistakes or omissions by the authors. Given the importance of the Internet, more coverage of domain name issues would be helpful, although the subject is well covered in other writing.

As an alternative dispute resolution practitioner, I am a little disappointed in the lack of attention given to ADR processes, especially mediation. There is only one paragraph on ADR in Chapter 19 on Remedies. The other brief reference is in Chapter 17 about the UDRP domain name dispute process which is very narrow in its application and on which a great deal of literature already exists. IP law actually exists outside national legal systems in a global framework as does ADR. While mediation is certainly not yet the “mainstream” in IP disputes worldwide, especially compared to arbitration, it is the dispute resolution process which has the widest potential application from both a business and legal perspective. The UK is a leader in this field since Lord Woolf’s Report in 1996.⁽³⁾ To be fair, much of the work in this area including the UK’s Intellectual Property’s Office Mediation program was only under consideration at the time this text was written.⁽⁴⁾ However, the opportunity to bring ADR to the attention of law students and others learning about IP should not be lost.

Well written, with detailed references to legislation and case law, this is a book which provides a practical reference source to an extremely important emerging area of law. There is, and will continue to be, ongoing competition and confusion between various political and commercial objectives and policies in this field and it takes a text of such magnitude to explain the basics of such an important process. This in itself speaks volumes about the complexities of the IP field. The work succeeds in meeting its stated objectives and, given its subject, is relatively easy to read and understand. It compares well with the available standard texts in the United States and Canada and is essential reading for any student of intellectual property law.

⁽³⁾ Lord Woolf’s Report in 1996.

⁽⁴⁾ Intellectual Property’s Office Mediation program was only under consideration at the time this text was written.

⁽¹⁾ See Peter K. Yu, “Teaching International Intellectual Property Law.” (2008) 52 St. Louis University Law Journal 928. Available at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1000783

⁽²⁾ Lawrence Lessig - http://lessig.org/blog/2003/11/intellectual_property.html

⁽³⁾ See <http://www.dca.gov.uk/civil/final/index.htm>

⁽⁴⁾ See <http://www.ipo.gov.uk/mediation.pdf>