
William Cornish and David Llewelyn


£95

A book reaching its sixth edition in 27 years is in little need of endorsement from a reviewer. The work is evidently a success, with an established fan base that will probably have already acquired and started using the new edition before any review reaches print. Yet there may be some in the British IP world and beyond who have yet to hear of or read Cornish & Llewelyn, and for them it is worth saying that this is probably the best – certainly the most demanding – of the now large number of textbooks on the UK market purporting to offer general surveys of the law of intellectual property. Indeed it was almost the first of the kind when it appeared back in 1980, and it is another indicator of the success of that pioneering effort that it has had so many followers.

Looking back to the first edition, it is interesting to note how durable the initial structure of chapters has been, despite the significant changes that have overtaken most of IP in the subsequent quarter-century. Two chapters on ‘common ground’ were followed by parts on patents (five chapters), confidence (one chapter), copyright (five chapters), and trade marks and names (four chapters). There were five appendices on competition law, ‘old patents’, registered designs, plant varieties and joint interests in marks. Nearly all of this is still there, and even the chapter headings remain almost entirely the same. The adjustments have been mostly modest, reflecting legal development. So for example what was at first a chapter on trade marks and the EEC had become by the third edition of 1996 one on all IPRs and the European union. Again, in 1980 there was real doubt about the future of registered designs, and copyright seemed to be taking over as the main form of design protection; so the subject was treated mainly in a copyright chapter, with an appendix only, as already noted, on registered designs. The combined effect of British Leyland v Armstrong Patents [1986] AC 577 and sections 50-52 and Part III of the Copyright, Designs and Patents Act 1988 compelled a restructuring in the second edition published in 1989, with a separate chapter headed ‘Industrial Design’. That chapter survives, however, down to the current edition, albeit with ever more complex content, thanks to the combined efforts of the English courts and the European legislator.

The fifth edition of 2003 saw major innovation with the addition of two completely new chapters on IPRs and new technologies (digital and biotechnology); in the sixth edition these remain as updated masterly overviews of the field. The new edition also has its own innovation, in that the previously single chapter on confidence (which from the third edition had a section on confidence and privacy) is now supplemented by an invaluable chapter entitled ‘Personal Privacy’. The relationship between breach of confidence and the Human Rights Act 1998 has spawned a new civil wrong of invasion of privacy, and the authors suggest that it may be structured around the
following considerations: the claimant’s reasonable expectation of privacy, misuse without sufficient justification of the information by a defendant who knows or ought to know about the expectation of privacy, and a balancing by the court of the competing interests of the parties where justification is sought in a competing human right such as free expression. The authors lament that when their text went to press the House of Lords had yet to issue its speeches in *Douglas v Hello!* [2008] 1 AC 1, but their analysis of privacy rights as such seems little shaken by what their Lordships had to say, or indeed the even more recent views of the Court of Appeal in *Murray v BigPictures UK Ltd* [2008] EWCA Civ 446. But on publicity rights (“the underbelly of privacy” – para 9.04), the continuing significance of breach of confidence as the main form of protection for commercially valuable information has been reaffirmed by the House of Lords’ decision in *Douglas* (note the comment at para 9.20 that if the House upheld the *OK!* claim, “the action for invasion of privacy will remain closer in conception to breach of confidence”).

One mystery apparent change in the sixth edition is the disappearance of the appendices, which in the fifth edition had shrunk a little to three in number (competition, plant varieties and joint interests in marks). The mystery deepens when it is noted that the appendices are cross-referred to in the main text (see e.g. para 1.54) and are also indexed (see entries for ‘Competition law’, ‘Plant varieties’ and ‘Reputation’), although there is no mention of them in the contents pages! Something seems to have been overlooked in the production process.

It would be wrong, however, to end on such a carping note. This book remains a remarkable achievement, at once lucidly setting out the current law, while also offering incisive historical and policy analysis along with occasional wry comment – for example, the *Napster* and *Grokster* cases becoming “bleeding images much paraded in the campaigns to preserve the internet as an unfettered instrument of free exchange” (para 20.68). All this makes it a pleasure to read, and an excellent starting-point for debates on a wide range of IP issues. On to the seventh edition!

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