

**PARCHMENTS TO PASSWORDS -
THE STORY OF THE LAND TITLES OFFICE VIDEO CASSETTE,
PRODUCED BY THE LAND TITLES OFFICE, NSW**

By Kim Baumeler and Lynden Griggs*

The video *Parchments to Passwords* is a professional production which cohesively telescopes the history of the inception of the Torrens system into New South Wales. It commences with an explanation of the defects in the old system of land registration, which began in 1825, where a chain of title was required as proof of ownership. This form of registration was however usurped in 1863, by the Torrens system developed by Robert Torrens of South Australia, which was based on the principles used to register ships. This system involves all dealings concerning a piece of land being registered on the one document. The video details the post war land grants boom and the inception of strata titles. In 1967 the conversion of the land remaining under old system land to Torrens Title land was begun. This process was enhanced in 1983 by an automated computer-based system, a world first, which has removed the need for a paper registry. Land owners are instead given a computer folio, which is available for sale. Each folio is given a password, and dealings are identified by bar codes. The future will see an increased use of computer technology in land transfers as satellites are used to network land titles offices and provide an innovative service to the community.

The video, though not detailed, is well presented and would be a useful educational tool for those interested in the development of a land registry. It is also an excellent example of the value of technology in today's society. The graphics are impressive, and the makers have succeeded in creating a video which is easy to watch while still being informative. This video is highly recommended to any person interested in a brief (15 min. approx.) history of the Land Titles Office in New South Wales.

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AN INTRODUCTION TO INTELLECTUAL PROPERTY LAW

Colin Golvan, The Federation Press, Sydney, 1992, 204 pages, \$55 (cloth), \$35 (soft)

Intellectual property has a pervasive presence in our everyday lives but defies easy definition. For the uninitiated, "intellectual property" is best explained as including patents, copyright, designs, trade marks and so on. A legal definition, stated in broad terms, focuses upon the rights which the law provides for the protection of creative output. Intellectual property law plays a central role in encouraging innovation, promotion of investment in innovation and in facilitating the commercial exploitation of ideas and information. Rapid advances in the development and application of technology have meant an ever-increasing importance for intellectual property in the commercial sphere. In Australia, a growing awareness of the relevance of intellectual property has accompanied efforts to achieve the vision of becoming the "clever country" by shifting the domestic economy away from a heavy reliance on primary resources towards increased production of technologically advanced goods and services.

The increasing significance of intellectual property for the Australian economy has heightened the need for information about this complex area of law to be available in a readily accessible form. Mr Golvan's introductory text addresses this need and is therefore to be welcomed as a timely addition to the list of Australian intellectual property publications. It complements the available specialist texts and opens up the area to those who are not specialists but nevertheless require a working familiarity with the principles of intellectual property law.

Mr Golvan, a barrister with extensive experience in the field of intellectual property, adopts a practical focus on his subject. The book has been written from the viewpoint of the way intellectual property law is applied in practice, with the aim of providing students and practitioners with a practical overview of this area of law. The objective is to give a detailed introduction to the various intellectual property regimes and to set out the rationale behind the protection offered by the different systems, so as to provide the reader with an overview of the essential facets of each of the intellectual property sub-headings. As a functional tool, it is intended to assist in identifying the issues raised by a particular problem in the area and to provide an answer for many common problems, or at least a mechanism for finding one.

Although Mr Golvan identifies the legal profession as his primary audience, this book is in fact likely to appeal to a considerably broader readership. In particular, it will be useful for business managers who are becoming increasingly aware of the necessity of protecting their valuable intellectual property and their expensive investment in research and development. It will also provide a helpful guide for those who are actually involved in creating commercially exploitable ideas and information, whether in the arts, sciences or technology.

Considering the complexity of intellectual property law, this book is surprisingly easy to read. Mr Golvan's writing style is particularly clear and the material is organised in a logical manner so that, notwithstanding the amount of detail imparted, it is easily followed. The various intellectual property regimes are, as usual, dealt with in separate chapters on Copyright, Designs, Patents, Confidential Information, Trade Marks, and Part V of the *Trade Practices Act* and Passing Off. A feature of the book is that it feels very up to date due to the fact that it includes the major legislative reforms of the last few years as well as several important recently decided cases.

The **Copyright** chapter is comprehensive, explaining in simple terms the basic principles underlying copyright and the kinds of works protected. The chapter incorporates the numerous changes to the *Copyright Act* during recent years, in particular the new educational copying schemes, the amendments relating to importation of books and the performers' protection provisions. Several pages are devoted to the issue of infringement of copyright in computer software, with all three levels of court decisions in *Autodesk v Dyason* (which was finally decided by the High Court of Australia in the first half of 1992) being considered at some length. Although the *Circuit Layouts Act 1989* provides *sui generis* protection for integrated circuits, a discussion of the Act and the recent decisions in *Avel v Wells* and *Nintendo Co Ltd v Centronics Systems Pty Ltd* concerning its operation are also included in the copyright chapter. The chapter on **Designs** looks at the 1990 amendments to the *Copyright Act* relating to the designs-copyright overlap. It succinctly summarises the effect of the amendments in what is generally regarded as one of the most difficult areas of intellectual property.

The chapter on **Patents** provides a concise and easily followed summary of the operation of the new *Patents Act 1990*. It describes the steps involved in obtaining a patent, discusses what is capable of being patented, and deals with infringement proceedings and possible remedies. While this chapter obviously provides a useful introduction to the patent system for law students and practitioners, I would also recommend it to inventors, scientists and others involved in producing patentable inventions.

The recent decision of King J of the Victorian Supreme Court in *Secton Pty Ltd v Delawood Pty Ltd* on the question of what can be protected as a trade secret is discussed in the **Confidential Information** chapter. The chapter on the **Trade Practices Act and Passing Off** includes a review of the recent landmark case, *Con Agra Inc v McCain Foods (Aust) Pty Ltd*, which considered the extent of reputation required to be established in Australia in order to make out an action in passing-off.

While the demands of brevity in a book of this kind leave little scope for discussion of current trends or issues, Mr Golvan draws attention to some areas which are inadequately protected under existing intellectual property laws and require legislative amendment. One such area is moral rights where only the "barest bones" of protection are provided under present Australian law. Another is the protection of works by Aboriginal artists. Mr Golvan discusses the recent *Bulun Bulun* and *Yumbulul (Morning Star Pole)* cases and the problems which flow from the basic incompatibility between the

principles of copyright law and the collective ownership of rights in artistic works under Aboriginal law.

Mr Golvan has achieved his purpose of writing a book which can be used by law students and practitioners to obtain a practical overview of the operation of intellectual property law. My experience as a teacher of intellectual property law and the response of my students during the latter part of 1992 indicate that this book (and, hopefully, future revised editions) will rapidly become established as a standard introductory text. Importantly, Mr Golvan succeeds beyond his stated aim by making the area accessible to the growing number of people outside the legal profession for whom intellectual property has commercial significance.

Review by Anne M. Fitzgerald, Lecturer in Law, University of Tasmania.

THE LAW OF CONTRACT

(8th Edn), G.H. Treitel, Sweet & Maxwell/Stevens, 1991.

The oft quoted saying has it that a week is a long time in politics. This saying could equally be applied to the law.

The development of the law of contract over the past four years necessitates a new edition of Treitel's treatise in contract law, the author indicating that the new edition takes account of a further 350 cases (not to mention legislative activity) in the area of contract law.

As an undergraduate student wending my way through the intricacies of offer and acceptance, consideration, and all of the paraphernalia of a contract, the textbooks then available (including an earlier edition of this work) seemed to fall into two categories. Firstly, there was the text which appeared to be directed at undergraduate students, proceeding upon the basis that it was far more important to convey a sense of the underlying processes in the development of the law of contract. Such works tended to rate highly for readability and certainly were invaluable in introducing newcomers to the subject, but nevertheless sacrificed a detailed examination of the minutiae of contract law in order to fulfil their objective. The second category of work focussed upon a detailed consideration of the case law on contracts, paying less attention to the social processes which formed that body of rules we know as contract law.

Treitel's work falls into the second category, but this is by no means a criticism of this painstakingly thorough work. To the contrary, I would have no reservation in recommending such a text to those requiring a comprehensive contract law reference.

The excellent index, footnotes and case table speed the finding of the law on a particular point, as users of prior editions of this text will no doubt be aware.

However, from an Australian perspective, the continued development of certain aspects of contract law by the Australian courts means that Treitel's work cannot be relied upon as an authoritative statement of the law in Australia. Rather, the text must be reserved for the secondary roles of providing direction where the Australian courts or legislature have not yet spoken and also assisting in drawing a comparison of contract law in Australia with that of the United Kingdom.

Having said this, my only reservation concerns not so much the book itself, but the fact that just as this book was born as a result of the pace of development in the law, so will it soon be obsolete. However, in the meantime, those seeking an authoritative text in contract law, with an emphasis on the law pertaining to the United Kingdom, would be well served by this text.

Review by Mark Burton, lecturer in law at the University of Tasmania.

ELECTRONIC CONTRACTING LAW: EDI and Business Transactions

**L. J. Kутten, Bernard D. Reams and Allen E. Strehler,
Clark Boardman Co., 1991, Softcover, 538 Pages plus Index**

Electronic Data Interchange (EDI) has, as the authors of this book state, been around for over twenty years. Yet its use has not been widespread. Each year, its supporters claimed, was to have been the year of the EDI explosion; yet each year ran into the next with but a slow and steady advance in EDI usage - the explosion was still awaited. Now, assert the authors, the explosion is upon us: the US Government is preparing standards to implement EDI for its ordering of goods and the European market will increase over 400% in size between 1991 and 1995, from \$US86M to \$US400M per year.¹ While the authors provide no details of the US market, an earlier US report estimated that 27% of small US retailers and 77% of larger retailers would be using EDI by 1991.²

Whatever the size of the market, it cannot be denied that EDI usage is on the increase. Within Australia, there have been rapid advances in the adoption of EDI by the banking and financial sectors and a slow but steady increase in usage by larger retailers. Interbank communication, stock exchange transactions and electronic retail banking are dominated by EDI and Electronic Funds Transfer at Point of Sale (EFTPOS) systems are increasingly being seen, particularly in the food, petrol retailing, and transport sectors.

It is reasonable to expect a continued growth in EDI usage in line with the present worldwide quest for business efficiency, for the efficiency gains available through EDI are very significant. EDI can provide instant communication between parties, or direct communication can be arranged through computer, or even from computer to computer. Indeed, computers can today be programmed to negotiate contracts with each other and to place, confirm, fill, and dispatch orders and make and receive payments without human intervention. All that is required is that a human create a single initial document: once this is done, the rest of the transaction can be left to the world of EDI.

As should be fairly obvious, EDI is involved with contracting, and as such, it will affect those involved in the legal profession. For the legal practitioner, EDI has a threefold effect. First, it affects the traditional rules of communication: are they to be those of instantaneous communication or those of communication by post? An ability to take a specific transaction, examine the circumstances surrounding it, categorise it and support a categorisation is important. Second, EDI system integrity affects matters of fact and proof and basic system analysis skills will be important in showing

1 p. xv.

2 Electronic Messaging Service Task Force, 'The Commercial Use of Electronic Data Interchange - A Report', *The Business Lawyer*, V. 45, No. 3, June 1990, pp. 1656-1657.

what occurs in an EDI system and what the effects are of a suspect EDI transaction.

Finally, and most importantly, a basic understanding of the principles and vocabulary of EDI system construction and objectives and the emerging law of EDI is vital if the profession is to discharge its primary obligation of providing legal advice to clients contemplating the introduction of EDI systems. Hence, the reason for this book: as the authors point out, there is a lack of legal material and information involving EDI and anyone involved with its legalities will be a pioneer, a person who will run all the risks involved in assuming such a role.

The book is meant, say the authors, to provide '...a series of guideposts as [the pioneer reader makes his] own safe way down the EDI path.'³ It is meant to educate the reader about basic EDI technology, to outline the key legal issues facing EDI and to provide guidelines and forms for drafting EDI agreements.⁴ If weight and size were an indication of content, then surely the book would qualify as an essential purchase, for it is large in size and heavy of weight. Only when it is opened, however, is it realised that the type is large, the spacing is double, the margins are significant and the Section divisions run to four spaces. Further, no less than 229 of the book's 538 pages are taken up with 10 Appendices. Thus, a cursory examination suggests, as a starting point, a fair bit of scepticism in regard to quality of content.

The Table of Contents suggests that the authors seek to achieve their objectives in two ways. First, they seek in the 10 Chapters of the book to provide the most basic introduction to the relevance and use of EDI, to the shape of EDI systems and to the legal consequences of EDI transactions. Second, they seek in the Appendices to locate in a single place the available legal documentation most relevant to EDI usage. Covered in the educational chapters are matters such as an overview of EDI, the elements of an EDI system, the mechanics of a typical EDI transaction and EDI bookkeeping requirements. Key legal issues are covered in chapters on EDI business relationships, EDI and computer evidence, EDI contract formation, an introduction to EDI trading partner agreements and security and privacy implications. The Appendices are very wide ranging covering everything from how to choose and use a computer expert to US Internal Revenue Documents to providing a copy of the American Bar Association EDI Model Trading Partner Agreement and Commentary.

In that the content of the book covers a significant part of the EDI field, it can be seen to meet the author's objectives. However, the volume of the subject matter clashes with the general layout of the book and the result is a large introductory book on EDI rather than either a large in depth analysis of EDI and its implications or a small introductory text. Perhaps an introductory text is what the authors had in mind with their statement that, '...if you asked 100 lawyers tomorrow what the acronym EDI stood for, 99

3 p. xvi.

4 pp 1-4 and 1-5.

will not have the foggiest idea of what you are asking about.⁵ If this is so, then it can be said that the book is indeed useful; but for an in depth analysis, the reader will need to go elsewhere. In summary, this book provides a very basic and useful introduction to EDI. It will be handy for anyone wishing to gain a rapid grasp of the subject, particularly if he happens to be a legal practitioner who needs a quick introduction to EDI and benefits from reading large print and wishes to fill empty space in his legal library.

Reviewed by Bob Hamilton, Faculty of Law, University of Tasmania.