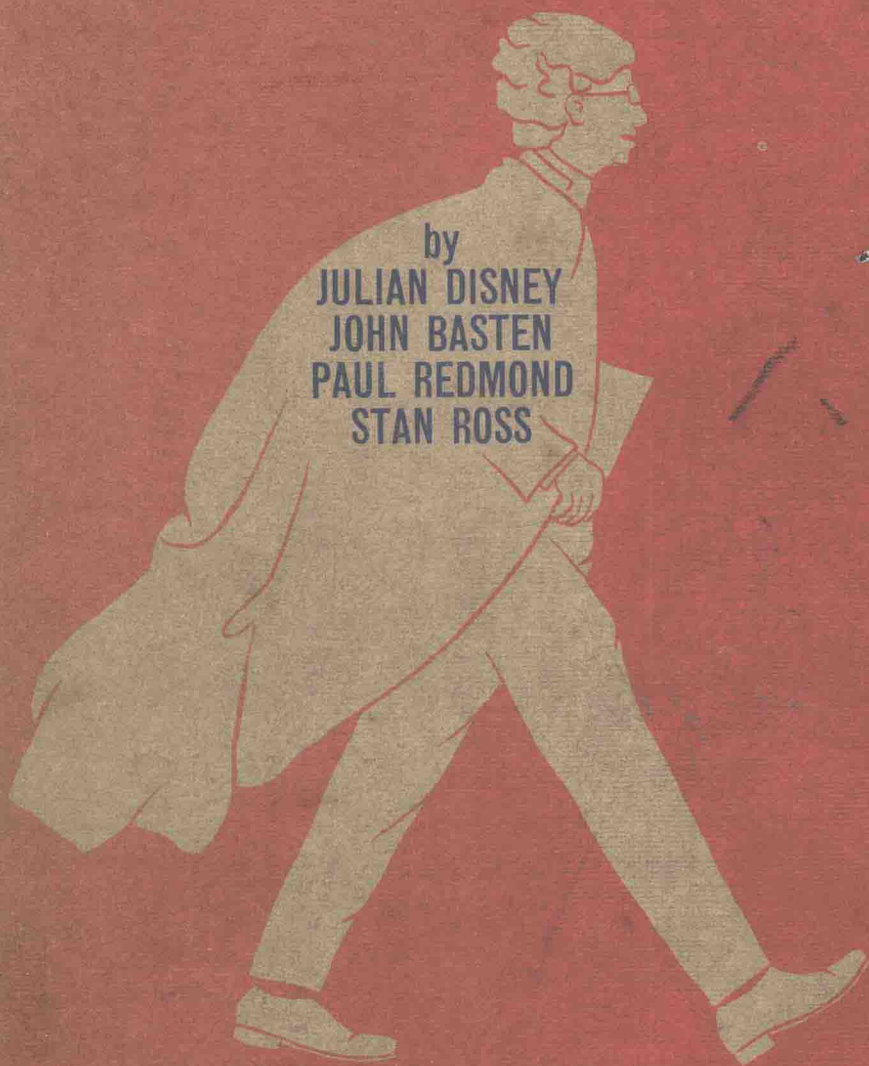


LAWYERS

by
JULIAN DISNEY
JOHN BASTEN
PAUL REDMOND
STAN ROSS



THE LAW BOOK COMPANY LIMITED

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PREFACE

The primary purpose of this book is to assist law students to understand and analyse the structure, composition and operation of the legal profession. The book has grown from materials which we prepared for a course, entitled "Law, Lawyers and Society", at the University of New South Wales Law School.

The desirability of providing students with an opportunity to analyse and discuss the structure and functions of their future profession was appreciated by the law school's founding Dean, Professor J. H. Wootten. He was responsible for placing this subject in the curriculum and, therefore, for the genesis of this book. It is fitting that he, now Mr. Justice Wootten, should be the Chairman of the New South Wales Law Reform Commission and, at the time of writing, responsible for the first general inquiry into the legal profession for an Australian government. His initiative was then taken up by Stan Ross, who originated the project that culminated in this book.

We believe that, hitherto, legal education in Australia has not given sufficient attention to the nature and role of the legal profession. When courses have been provided, most of them (particularly in relation to legal ethics) have tended to involve the bare recital of alleged facts and rulings with little or no attempt at integration or critical analysis. We hope that this book will help to remedy these failings, whether by stimulating the development of new courses similar to "Law, Lawyers and Society", or by encouraging a new approach to existing courses such as "Legal System" or "Legal Ethics". Different parts of the book may serve different needs in law schools and legal workshop courses. The book, or parts of it, may also be of use in the rapidly increasing number of courses on the law for non-lawyers, especially at colleges of advanced education.

Our main aim then has been to produce a book of materials for use in legal education. A secondary purpose has been to facilitate and stimulate greater public and professional discussion of the role of the legal profession in modern society. Our belief in the importance of such discussion has been confirmed by the establishment, while we were preparing this book, of a Royal Commission on Legal Services in England, the commencement of a major inquiry into the legal profession by the Law Reform Commission of New South Wales, and an investigation of six professions (including lawyers) by the Ontario Law Reform Commission. In the United States, the prominence of lawyers among the Watergate criminals has caused a dramatic upsurge in the quality and quantity of debate on legal ethics and professional responsibility. In all common law countries, the ethical standards of lawyers have recently been to the fore in professional and public debate. It is essential that non-lawyers

should take a prominent role in discussion about the legal profession, and we hope that they will obtain some assistance from this book.

In two respects the final form of the book has diverged from our original conception of it.

We originally intended to adopt a more sociological emphasis and to include more comparative material from other disciplines and about other professions. However, our experience teaching students with little or no personal knowledge of the work of lawyers leads us to the conclusion that it was necessary to provide as much basic information as possible. The result will, we hope, assist legal and non-legal readers to develop their own general theories, whether ideological, sociological or otherwise, on the roles of lawyers in society.

We also intended to adopt a national approach, rather than to concentrate upon one or two States. We did so in the belief, frequently confirmed in the course of our research, that Australian lawyers know very little about the way in which their own profession operates in other States and Territories and that such ignorance is contrary to the interests of both the public and the profession. Accordingly, we tried to use extracts and examples from a wide range of jurisdictions, and to indicate differences between jurisdictions. Although we have regarded it as inevitable, and not undesirable, that parts will need to be supplemented with "local colour" we are also aware that on some topics we may have omitted important interstate variations. Our goal of providing a comprehensive and balanced picture was hampered by the acute dearth of available material in considerable areas and also by differences between the efficiency of administration, and the spirit of co-operation, which we encountered from the organizations we visited in various parts of the country.

Most of the book consists of cases and materials, but it differs in several respects from conventional Australian "cases and materials" law books. First, a substantial proportion of the book is our own text, including a significant amount of previously unpublished material. We have had extensive access to law society files in several States, and have carried out research in each State capital and in Canberra.

Secondly, we have included not merely case reports and articles from legal periodicals, but also newspaper articles, committee reports, statistical surveys, opinion polls, sociological analyses and other writings.

Thirdly, we have used some material from the U.S.A. and Canada. Not only do the legal professions in those two countries provide instructive comparisons with Australia, but North America leads the common law world in terms of articulation, analysis, and constructive criticism of the principles upon which legal professions and individual lawyers operate. Of course, we have also drawn extensively upon material from England, which remains for Aus-

tralian lawyers the traditional overseas source of information and opinion.

On the title page, we have placed Julian Disney's name at the top of the list of authors to reflect the fact that his contribution was significantly greater than that of each of the others to the book in its final form. The names of other authors are listed alphabetically. We have also included the name of our research assistant, Rick Raftos, to give him due credit for his substantial contribution.

The book is compiled from material available to us in Sydney late in 1976. In only one or two instances have we been able to incorporate later developments. During 1977 a number of submissions were made to the Commissions in England and New South Wales; study of these, and no doubt the Commissions' own papers and reports, when available, would usefully supplement the material in this book.

Julian Disney
John Basten
Paul Redmond
Stan Ross

Sydney,
May 1st, 1977.

PERSONAL ACKNOWLEDGEMENTS

This book would not have been possible without financial assistance from the University of New South Wales, and especially from the Faculty of Law. These funds enabled us to travel interstate for research and to employ a research assistant for most of 1976. In this and other ways, we owe much to the sympathy and support of Garth Nettheim, Dean of the Faculty. His predecessor as Dean, Harry Whitmore, also supported us in the initial stages of the project. The Faculty Librarian, Rob Brian, and his assistant, Jack Moulos, gave us invaluable help in our research. The Faculty also provided secretarial assistance to enable the numerous manuscript drafts to be typed. We are particularly grateful to Lystra Criticos, who bore the major burden of the typing, and to Lorna Ledger and Helen Arkins, who typed most of the remainder. As always, Aileen Argue worked long hours in the faculty office to help us. Two further staff members, Arthur Garcia and Robin Sorensen, were responsible for the arduous task of preparing the index. Russell Hogg and Robyn Lansdowne assisted with proof-reading.

A large number of law society officials, practising lawyers and judges have helped us in gaining access to files and records. In particular we would like to thank the Hon. Sir Laurence Street, Chief Justice of N.S.W.; Mr. Justice Powell, formerly Vice-President of the N.S.W. Bar Association; Mr. Gordon Lewis, Executive Director, Law Institute of Victoria; Mr. J. N. D. Harrison, Secretary of the Law Society of Tasmania; Ms. Joan Sedsman, Executive Officer of the Law Society of South Australia; Master Boehm, Supreme Court of South Australia; Mr. Brian Magarey, former President, Law Society of South Australia; Mr. W. J. Robinson, then Acting Executive Officer of the Law Society of Western Australia; the Hon. F. G. Brennan, formerly President of the Bar Association of Queensland; and Miss B. K. Donkin, Secretary of the Queensland Law Society.

Many other officials, judges and practising lawyers generously gave their time and thoughts in discussions covering a wide variety of matters. It would be invidious to name only some, and space prevents us listing them all. Some, indeed, might prefer to remain anonymous. However, the contributions of two academic lawyers cannot go unmentioned. Many of our initial ideas and plans were inspired by Professor Harry Arthurs, who teaches a course on the legal profession at Osgoode Hall Law School in Ontario. Another Canadian and a former colleague of ours at the University of N.S.W., Mary Jane Mossman, also provided us with material and ideas throughout the formative period of the project.

On a more personal note, Julian Disney and Paul Redmond wish to thank Tania Disney and Anne Redmond, respectively, for their support and patience during the lengthy period of preparation of this book.

TECHNICAL NOTES

Text

In order to distinguish clearly between our own text and the material extracted from other sources, we have placed a black square, ■, at the beginning and end of textual passages.

Footnotes

As mentioned in the preface, our primary aim was to prepare a teaching book, rather than an authoritative and exhaustive reference book. Accordingly, we have kept footnotes to a minimum and have tried to amalgamate footnote material as much as possible (for example, by using one footnote to give references for the whole of the paragraph).

Almost all footnotes have been omitted from the extracts. Where they have been retained, they have been renumbered to fit in with our own footnote sequence.

Questions

At the end of most sections of chapters we have included a list of questions which can be used to guide the reading of the materials (for example, by suggesting to students that they look at the questions before starting to read the section) or as a basis for individual contemplation or group discussion.

Monograph References

In the body of the text, some references to books, reports and similar publications are given in abbreviated form. More detailed references are to be found in the index to articles and monographs.

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