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Book review: The Journalist's Guide to Media Law

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BOOK REVIEWS

PEARSON, Mark (1997)

The Journalist's Guide to Media Law,
Allen & Unwin, Sydney. ISBN 1 86448 434 9

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The semester was barely under way and already students were asking meaningful questions about a topic yet to feature in the lecture program. What sparked their interest? "Pearson," replied one. "I started reading it and I couldn't put it down." It was an endorsement of the most valuable kind for this long-awaited text.

Pearson has filled a noticeable gap in the market by producing a practical guide to Australian media law from the perspective of the working journalist, rather than the lawyer. It is a perspective that is missing in two other key texts in the field, Sally Walker's *The Law of Journalism* and Armstrong, Lindsay and Watterson's *Media Law in Australia*.

Pearson recognises, for example, that the boundaries of acceptable practice in relation to contempt of court are evolving, that authorities are becoming more "tolerant" of "technical" contempts and that editors may well make a "commercial decision" to publish. Similarly, he details the "disciplined, professional work practices" that help journalists avoid being intimidated by defamation laws. In doing so, he responds to a common criticism of the legal perspective: tell me what I can do, not what I can't.

Pearson's helpful, practical advice is distilled into a number of easy-to-read tables and diagrams. Among them is a list of sub judice "time zones" with a step-by-step guide to what may be published at each stage of a legal proceeding. Although taught in journalism law courses in this way for many years it is not something that has previously appeared in the major texts.

The defamation chapter includes a two-page flow chart illustrating the thought processes of a publisher from the time alarm bells begin to ring to the point when court action is inevitable. The approach acknowledges the reality that very few defamation actions are determined in the courts and that a

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successful defence begins long before publication. It also puts the study of defamation in a real world context.

Unfortunately, *The Journalist's Guide to Media Law* does not offer any answers to the dilemma currently emerging in the contempt arena, specifically how far the media can go without attracting a prosecution. The chapter on contempt opens with a reminder of how enthusiastic the media were in covering the Port Arthur massacre in 1996 and poses the question "At what point does it jeopardise an individual's right to a fair trial?" Authorities in Tasmania threatened prosecution over the Port Arthur coverage, but no action was subsequently taken.

Liberties have since been taken in other cases, particularly in the early stages of the sub judice period. An example is the coverage by Brisbane's *Courier-Mail* in March this year of an assault charge against British singer Liam Gallagher. Pearson notes quite correctly that the trend is toward prosecution only where there is a "real risk" of prejudice to proceedings and that the time lapse between publication and trial is a relevant consideration. But whether this means in practice that we are moving to a new era where the media need not be as cautious in reporting crime in the early stages of the sub judice period is something readers will have to grapple with for themselves.

Pearson's experience as a newspaper journalist shows in his practical Q&A summaries. Questions, for which he has ready answers, include: "What if my boss is due to appear on drink-driving charges?", "How do I prove my story was changed by editors after I had written it?", "How many calls can I make asking someone for an interview before the courts will deem it a nuisance?" and "What if something interesting is happening in two courtrooms at once?"

His expertise as a scholar (he is currently Associate Professor of Journalism at Bond University and holds a Master of Laws with a specialisation in media law) show in his selection of issues and cases. He states boldly in the preface that the "cases and examples cited are different from those which would appear in a legal text". They are perhaps not so different, but have been effectively culled to minimise the confusion that fine legal points may engender in journalists and students.

To his credit, Pearson has gone beyond the major law reports to cite cases reported in the *Gazette of Law & Journalism* and unreported out-of-court settlements. The up-to-date nature of the book is reinforced with one of the clearest interpretations yet for journalists of the High Court's Lange decision last July.

Important cases in the book are highlighted in grey for ease of reference and include not only a summary of the facts and law but a paragraph or two on the "lessons for journalists". The book

also cites examples in recent political history which are commendable but which I thought might have been backgrounded better for today's undergraduates. For example, the case of Aboriginal man, Kelvin Condren, who was found to have been wrongly jailed for murder in Queensland, was cited in the context of reporting jury deliberations. Only a sentence is devoted to the case and Condren's first name is incorrectly stated as "Kevin".

On the subject of reporting jury deliberations I should also mention that although the book is generally useful in describing differences from state to state it has missed an opportunity to comment on the draconian nature of recent changes to Queensland's laws in this regard.

Pearson has stamped this work with his own understanding of how the complex web of laws that make up "media law" interrelate. We find contempt by disobeying a court order not in the section on contempt but in a broader "*Journalists and Information*" section along with confidentiality and copyright. Meanwhile issues such as trespass, nuisance, listening devices, blasphemy, discrimination and obscenity are grouped as "ethical and moral issues which are seen as so important to society that laws have been developed to enforce them".

The final chapter *New Media Technologies and the Law* brings us up to date with the debates over how the law might apply to new forms of electronic communication such as email, the Web and CD-ROMs. Journalists in all parts of the globe may wish to heed the practical advice it contains about email interviews and storing and checking downloaded information. The chapter is perhaps a sign of the times. The next major text in this field may need to be conceived in a framework that takes electronic research, writing and publishing for granted.

The Journalist's Guide to Media Law is aptly named. Rather than the lawyers and law students in contemplation in *The Law of Journalism*, this book is aimed at journalists and journalism students. Lecturers in journalism law will find it makes the task of referring students to suitable reading material much easier. As a text it is well-referenced and contains useful chapter summaries and tables of important cases. Its strength, though, is in its ability to cut through the legal jargon and communicate the issues clearly and practically. As one student noted: "It's logical. I can get my mind wrapped around it." As such it represents a major advance in media law education in Australia. ■