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Legal Method

Second Edition

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To Jacqui

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Preface to the Second Edition

This book is intended to provide an introduction to the techniques of handling legal sources. Some comment on the nature of introductions may therefore be useful. Introductions may appear to be simple but they need not be simplistic: indeed good ones must not be: 'With all its surface simplicity, an introduction must cut as deep as its author has wit and strength to see the way. It must cut for that deepest simplicity which is true meaning' (Karl Llewellyn, *The Bramble Bush*, revised edn, 1950, p. 7).

Accordingly, I have tried to avoid the twin traps of oversimplification on the one hand, and unnecessary complexity on the other. However, I have been unable to avoid the fact that legal method is open-ended, even though on many occasions this has meant that I have been unable to offer the comfort of neat conclusions and reliable rules. As Hutchinson and Monahan said:

'Legal doctrine not only does not, but also cannot, generate determinant results in concrete cases. Law is not so much a rational enterprise as a vast exercise in rationalisation. Legal doctrine can be manipulated to justify an almost infinite spectrum of possible outcomes. Moreover, a plausible argument can be made that any such outcome has been derived from the dominant legal conceptions. Legal doctrine is nothing more than a sophisticated vocabulary and repertoire of manipulative techniques for categorising, describing, organising and comparing: it is *not* a methodology for reaching substantive outcomes'. (*Law, Politics and Critical Legal Scholars: The Unfolding Drama of American Legal Thought* (1984) 36 Stanford Law Rev, 199, at p. 206, original emphasis.)

Except when writing about the European Community and Union, in which context it often seems most natural to think in terms of 'Britain' or the 'United Kingdom', I have tended to write in terms of 'England' and 'English' law and practice. In doing so, I have intended to include 'Wales' and 'Welsh'. Some of what I have written may also apply in Scotland and Northern Ireland, but how much and to what extent is beyond my knowledge. It follows that readers in those jurisdictions should proceed with caution.

Authors commonly profess their indebtedness to others, and I am no exception. Many friends, colleagues and students have, in varying ways, had their impact on this book generally, and the improvements which have

been incorporated into the second edition in particular. It would be futile to seek to name them all and invidious to name only some. Above all, however, I am indebted to my wife, Jacqui, not only for her word-processing and proofreading skills, but also for her patient good humour, the extent of which continues to amaze me.

As I finished writing the first edition of this book two quotations occurred to me. They are worth repeating here. The first was the much-quoted comment of Sir Walter Scott: 'A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect' (*Guy Mannering*). The second was the old gibe that 'studying the law sharpens the mind by narrowing it'.

Reading these propositions together, it is reasonable to conclude that the better furnished the student's mind may be before embarking on a study of the law, the greater the chance that the narrowing process will leave something else besides the law. The desirability of this result was very succinctly expressed many years ago by Lord Goodman of Messrs Goodman Derrick & Co, the London solicitors, when he coined the dictum 'a lawyer who is only a lawyer isn't much of a lawyer'.

I have tried to make the body of the text up to date to 1 January 1996, although I have been able to accommodate a few later developments and, in the context of the suggestions for further reading, I have mentioned new editions which are scheduled for publication during 1996 where their publishers have made me aware of them. Additionally, it is worth noticing that in April 1996 the government abandoned the introduction of the transfer for trial procedure, which is mentioned at pp. 47–8. As a matter of human interest, the child who was at the centre of the *Cambridge Health Authority* case, which is discussed at p. 72, died in May 1996. Finally, in *Three Rivers District Council v. Bank of England* (No 2) [1996] 2 All ER 363, the High Court, having accepted the general proposition that statutes should be construed purposively, went on to say that it is particularly important that they should be so construed when the court is seeking to find a construction which is consistent with a Community obligation. The court said it followed that in these circumstances it is permissible to refer to ministerial statements in *Hansard* in order to identify the *purpose* of the domestic legislation, even though the criteria specified in *Pepper v. Hart* (see p. 296) may not be satisfied.

IAN MCLEOD.

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