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Legal Method

Third Edition

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Preface to the Third Edition

This book continues to be 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 must not be simplistic: '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.) One important consequence of this is that I have been unable to avoid the fact that legal method is open-ended, which means that on many occasions I have been unable to offer the comfort of neat conclusions and reliable rules. In the words of Hutchinson and Monahan:

'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 rationalization. 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 categorizing, describing, organizing 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.)

For this edition, I have written a new chapter on the *Protection of Human Rights and Fundamental Freedoms*, and omitted the old one entitled *Some Studies of Statutory Drafting and Interpretation*. I have added some Web site addresses which I have found useful, in the hope that others may also do so. In accordance with the book's general approach that the study of institutions and procedure should be kept to the minimum necessary in order to understand the intellectual processes of legal method, I have mentioned the Woolf reforms of civil procedure, which will be introduced in April 1999, only in passing.

Except when writing about the European Community, in which context it often seems most natural to think in terms of 'Britain' or the 'United

Kingdom', I have generally written 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.

I continue to agree with the late Lord Goodman (of Messrs Goodman Derrick & Co, the London solicitors) that 'a lawyer who is only a lawyer isn't much of a lawyer', and therefore I continue to urge students to read widely. In the much-quoted words 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*). Furthermore, possession of a well-furnished mind may minimize the truth of the old gibe that 'the study of law sharpens the mind by narrowing it'.

Finally, I remain indebted to the many friends, colleagues and students who have, in varying ways, had their impact on this book in general, and the improvements which have been incorporated into this edition in particular. It would be impossible to name them all and invidious to name only some. Above all, however, I am indebted to my wife, Jacqui. Quite apart from her word processing and proofreading skills, the extent of her patient good humour continues to amaze me.

I have tried to be up to date to 20 December 1998, although I have been able to incorporate a few later developments.

IAN MCLEOD
April 1999

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