

Employees' rights

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This paper will discuss legal issues affecting employees and their rights to intellectual property. There are two issues which will be considered in the context of the creation and exploitation of innovative developments. The first and more obvious issue concerns the rights of ownership and control which employees have to the intellectual property which they create. The difficulty of establishing rules applicable to all employees can be illustrated by reference to individuals who are employed “to invent”; those who are employed to manage a firm; and employees without managerial responsibility whose duties do not relate to inventive or innovative work. The second issue concerns the rights that employees have to use the intellectual property which they have access to in the workplace. The issue here relates to confidential information, sometimes referred to as “trade secrets”, and the obligations of employees who are given access to such information. A specific concern is whether individuals can take that information with them and use it, in the form of improved skills and job knowledge, when they leave a firm. Again, the paper will illustrate the difficulties the law has in providing a general set of rules.

The major areas of the law are patents, copyright and confidential information. The legal analysis will be restricted to the law in major common law jurisdictions including the United Kingdom, the United States and Australia. It will be clear that, as the legal issues are identified and described, other issues will be identified that are more appropriately determined by economists.