

Act. In conclusion, the monograph is not a suitable text for students in the areas of equity and trusts, apart from aforementioned uses.

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Information Technology Law in Australia

Olujoke Akindemowo

LBC Information Services, 1999, pp 317, \$69

This is the information age. The popularity of computers, the Internet, and CD-ROMs has given birth to a new era of information technology (IT) law. According to computer expert Dr Olujoke Akindemowo, author of an exciting new book *Information Technology Law in Australia*, the law lags behind the latest developments in information technology.

Akindemowo wrote the book on computer law 'out of frustration' in order to 'fill a gap in the market.'¹ Her book is new for Australia and offers a unique approach to such topics as telecommunications and Internet abuse, the Year 2000 bug and computer crime.

As a lecturer in information technology at the University of Western Sydney, Akindemowo is well qualified to write this introductory text. She gained her PhD in IT law from London University and is a graduate of the Nigerian Law School.

Her interest in IT law dates back to 1987 when 'a far sighted Professor of Computer Science who happened to be my father, had previously remarked in my hearing that expertise in an area combining computers and law would be highly sought after in the near future'². Akindemowo subsequently completed a doctoral thesis on consumer-related legal issues arising from use of electronic fund transfer services (EFT) in England and the United States.

Information Technology Law in Australia examines many novel legal issues raised by the use of computers, telecommunications and 'the Net' in the context of the Australian legal and regulatory framework. It explores topics including the history of computers, electronic financial transactions, commercial obligations and liability and the

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1 Akindemowo, *Information Technology Law*, p vii.

2 Ibid.

protection of data and privacy. Means of impairing computers through data diddling, logic bombs, the salami technique, viruses and worms are briefly outlined.

Much of the law in this still emerging field is not black and white but grey. In *R v Stewart*³ a charge of theft in relation to confidential customer data which was copied but not physically removed from the premises of the owner was dismissed on appeal because it was found that only information had been replicated⁴. Despite its strong points, Akindemowo's IT book contains omissions and fails to contain in-depth legal research and case extracts, including relevant quotes from judges. Meanwhile Akindemowo takes a swipe at judges in relation to IT law:

The jurisprudential leanings of judges assigned computer related cases and, in particular their grasp of technological aspects also significantly affect the interpretation and practical implementation of laws in this field.

Controversial decisions have raised the question whether it has been a lack of required technical understanding, rather than the law concerned, which has been at fault in cases where the law has been found to be inapplicable or inadequate.⁵

She cites the High Court software copyright infringement case of *Apple Computer Inc v Computer Edge Pty Ltd*⁶ as an example of this perceived judicial failure to come to grips with issues relating to new technology.

The law in such circumstances may be perceived as impotent, unable to effectively maintain social order.⁷

However, this is a sweeping claim and her book certainly treats the law and the Courts with contempt.

In order to judge whether the book is useful for lawyers, prominent Tasmanian lawyer, Bruce Crawford, senior partner of the Launceston firm, Crawford and Crawford, offers his views on three areas:

³ *R v Stewart* (1983) 5 CCC (3d) 481; 149 DLR (3d) 583.

⁴ Akindemowo, note 1 above, p 205.

⁵ *Ibid*, p 13.

⁶ (1983) 52 ALJR 581; (1984) 53 ALR 255 (Full Fed Ct); (1986) 161 CLR 171; 65 ALJR 33 (High Ct).

⁷ Akindemowo, note 1 above, p 13.

Telecommunications Abuse

I found this section of the book a useful summary of the methods by which telecommunications and in particular the Internet can be abused. The sub-chapter on the legislative provisions to control these abuses is useful to the practising profession but lacks the detail that a true practitioner's book would contain.

There are references to the various parts of Commonwealth and State Acts which attempt to regulate misuse of telecommunication but no detailed consideration of their provisions is given. Nevertheless the book does not purport to be a practitioner's handbook. It provides a useful balance between descriptions of electronic systems and their abuse on the one hand and regulatory attempts on the other.

Year 2000 Bug

One of the curiosities of this very prevalent predicted Year 2000 bug is that in the media there has been very little consideration of legal liability for hardware and software providers in selling systems which will not work beyond the Year 2000 either at all or without some modification.

The magnitude of the problem appears to have paralysed consideration of this question. Perhaps because law-suits have not yet (at least commonly) surfaced in relation to the bug, the book gives fairly cursory consideration to the issues. It makes brief reference to Parts V, Div 2A and Part VA of the *Trade Practices Act 1974 (Cth)* and for the need to closely review contracts relating to the provisions of systems.

One interesting question which will undoubtedly arise is as to systems which were sold years ago before the concerns about the bug had become well-known and as to which the manufacturer may say that it was never expected that the systems would last until the Year 2000.

Electronic Commerce

This is one of the strong points of the book as it gives a detailed and valuable consideration both historic and analytical concerning the development of exchange of money and valuables. The book gives consideration to the use of barter, cash and negotiable instruments and then moves on to an interesting description of recently introduced electronic payment systems. The book makes it clear that these are largely self-regulating by the use of voluntary codes amongst users and by contractual regulation.

It is interesting to note that one of the first major computer crime investigations in Australia occurred at the Launceston Bank for Savings

in Tasmania. The audit manager of the bank amassed a large sum by 'skimming' about \$170,000 into his own accounts through a hidden line of computer programming.⁸ Akindemowo explains the 'salami technique' often goes unnoticed because of fractional sums involved.

In another Tasmanian computer crime case, *The Queen v Benbow*,⁹ an employee with the Savings and Loan Credit Union pleaded guilty to thirty counts of computer related fraud contrary to s257 of the *Criminal Code*.

The defendant created five unauthorised accounts in the names of relatives and transferred a total of \$39,077 into her own account.¹⁰ She also created an unauthorised loan account in her own name with a \$50,000 credit limit.¹¹

His Honour, Mr Justice Slicer said the scheme was complex and could only have been effected by a person holding a position of trust.¹² He sentenced her to fifteen months in jail with nine months suspended. The 22 year-old Kingston woman was the first person convicted under Tasmania's computer crime law.¹³ However, Akindemowo omits this case in her book.

Information Technology Law in Australia provides a valuable glossary of terms of recently coined words or phrases covering new concepts and practices in the information technology industry. However at \$69 the book is over-priced for the market.

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Understanding Company Law

P Lipton and A Herzberg

8th Edition, LBC Information Services, 1999, pp 729, \$75

Understanding Company Law by Lipton and Herzberg is a text designed for tertiary students to meet their needs in undertaking com-

⁸ Rod McGirk, 'More Muscle is Needed to Beat Electronic Theft,' *The Mercury*, (11 February 1991), p 8.

⁹ *The Queen v Benbow*, Tasmanian Unreported Supreme Court Judgment, List 'B', 270/1991, 23 December 1991.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ 'Six Months Jail for Computer Crime,' *The Mercury*, (24 December 1991), p 3.

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