

## Book Reviews

In this inaugural Computers & Law Newsletter we include two book reviews. The first is by Graham Greenleaf, Sydney solicitor, former research officer within the N.S.W. Privacy Committee and President of the N.S.W. S.C.L. The other review is by Julian Burnside, Melbourne barrister and President of the Victorian S.C.L. The Editor hastens to advise that the holding of executive office is not a necessary precondition for publication of book reviews herein! Reviews contributed by more humble members will be most welcome in subsequent newsletters.

### Computer Law

Colin Tapper Longmans, N.Y.,  
1982 ISBN 0.582-49702-7

This is a curious, interesting, teasing mixture of a book. Tapper is a fellow of Magdalen College, Oxford. His book is the book of a scholar. Tapper is clearly interested in the philosophy of law, and is not unduly concerned with the exigencies of its practice.

The size and format of the book are eloquent of the development of its subject in England (and, for that matter, Australia). It is a small book, especially for a law book. It is considerably smaller, less detailed and less comprehensive than Bigelow's monumental twelve volume Computer Law Service and Reporter.

Tapper covers predictable ground. The chapter headings are: Computers and Intellectual Property; Computer Contracts; Computer Torts; Computer Crime; Privacy and Confidential Information; Computers and Evidence; Further Developments. Within each chapter, Tapper covers the position as it stands in the U.K. and the U.S.A., and spends time occasionally to explain the historical paths which brought us to our present position. It is interesting and instructive, in a field as new as computer law, to see the law of two major common law countries compared in this way. It is equally interesting to see the differences between the legislation each jurisdiction has passed in order to overcome perceived problems in the law. the price paid for this treatment is superficiality.

The chapter on Computer Contracts is a good example. Several substantial books have been written on the subject of computer contracts. Tapper's attempt to deal with the subject - 33 pages - is necessarily scant. It provides sign posts but not a road map. It provides a good description of negotiating procedures, without covering any but the most common contracting issues. Quite properly, it deals with the law relating to computer contracts as a subset of contract law generally, yet it does not tell a lawyer much that he doesn't know, and doesn't tell a computerist as much as he needs to know. Therein lies the paradox of this book. It is not a sufficient textbook for a practising lawyer, and yet it would be risky for a computerist to use the book as his lodestar and set sail without professional advice. In many respects, it is more a scholarly exercise than a practical book. Tapper believes that, substantially, the existing law is sufficient to accommodate the peculiar characteristics of the computer. He has justifiable reservations about the provisions of the U.K. Evidence Act (and by extension its Victorian clone) and about the laws relating to intellectual property (a subject which clearly fascinates him). He does not attempt to look very far forward and anticipate difficulties or appropriate solutions. Contrasted with this is his comparative law approach, where each chapter has a discussion of the relevant law in the U.K.

and the U.S.A. and occasionally other common law jurisdictions, such as South Africa, Canada and Australia.

This comparative approach is very useful for those seeking to shape the law of their own jurisdiction - where authority is slight, the guidance of other jurisdictions is of utmost assistance. Since brevity is apparently the price which has to be paid for this comparative approach, it is curious to see that Tapper does not generally advocate changes in the law. The only plausible explanation for the adoption of the comparative approach is that the book is an intellectual exercise for a person steeped in the philosophy of law and fascinated by the technology of computers.

Notwithstanding these oddities, the book is well written and generally sound. It is the only book on the subject to come out of England (apart from the first edition). It fills a significant gap in English legal literature. The chapter on Intellectual Property has a useful overview of the U.K. and U.S. positions, which are different both in statute and case law. The chapter on Torts suffers from a lack of source material, but does point to most of the areas of likely importance, and thus serves as a useful warning to those who use computers in an increasingly complex and litigious world. The chapter on Computer Crime exhibits a scholarly disdain for a subject which most people find fascinating. It suffers from a complacent attitude that the law is able to cope with all but the rarest computer related crimes, and ignores the absence of an equivalent in computer crime to the various preparatory offences which surround orthodox crimes. Most of the chapter in fact concentrates on infringements of intellectual property and privacy. The chapter on Privacy and Confidential Information is largely predictable, but is a useful summary of the law.

It is eloquent of the rate of change that the book (being a second edition) has not only a chapter on further developments (which updates most of the substantive chapters) but also has a loose page interleaved and headed "Recent Developments", with a short description of some late 1981 cases.

The book has a useful table of sources, and a well selected bibliography: both of these are sorely needed in what is still an embryonic area of law, and by themselves would justify a purchase of the book for anyone who is interested in the subject. Although the book will not answer everybody's questions, it will provoke the reader to ask questions in an area of which they might otherwise remain blissfully unaware.

► Julian Burnside

