Book Reviews

Australasian Computerised Legal Information Handbook

by G.W. Greenleaf, A.S. Mowbray, D.P. Lewis (Butterworths, 1988, $39.00)

Quick easy access to the vast volume of reference and legal material is now becoming readily available with the increasing number of computerised legal information services. Material that was previously locked away on the shelves of dusty law books is now at the fingertips of anyone with a computer keyboard and access to the vast electronic data retrieval systems.

The challenge is for lawyers to learn how to use these new services most effectively.

The Handbook is designed to aid the transition of lawyers from fountain pens to computer display screens. It begins with an introduction to the principles of legal information retrieval. This is designed to serve as a starting point to understanding what they are and how they work. These questions are answered through tutorial demonstrations of the systems in action, with reference to the parameters of each individual system. The bulk of the Handbook is devoted to outlining the different databases pertinent to Australian and New Zealand lawyers.

Part A covers the introduction of the user to the world of information retrieval, giving a brief overview of what the systems are, what is involved in getting connected, and how to go about searching effectively.

Part B of the Handbook is an exhaustive guide through the overall perspective of full text retrieval. The section comments on everything from logging on to complex searching of specific databases within specific systems. The most common and basic databases are introduced along with some simple search strategies.

In Part C, the reader is taken on a comparative study of many of the databases available in Australasia, using a compare and contrast approach. This is particularly valuable as the process of how to learn about a new database is revealed, rather than just the idiosyncrasies of the introduced systems.

A complete list and explanation of all Australasian databases is provided in a reference format in Part D. This is the most definitive and exhaustive list of its kind and serves as an invaluable guide to the services available to any lawyer wishing to expand his proficiency.

The Handbook's main advantages stem from the duality of its presentation: both as a quick access reference for the experienced user wishing to avail himself of an alternative database, and the easy to follow "how to" tutorial for the novice attempting to master the power of a full text retrieval system.

Additionally, each section is followed by a self test, to check the reader's understanding of the material. These exercises provide a quick, concise means of reflecting one's comprehension of the information.

The benefits to the lay person of learning about full text retrieval systems from authors who are professional educators, rather than technical writers, cannot be over-emphasised.

The Handbook is easy to read, easy to follow, logical and easily understood. As a starting point for the novice or a reference platform for the expert, it serves as a quick readily available storehouse of essential information. Its main drawback is one it shares with all technical reference books in that the speed of changes and developments in the field covered make it impossible for the Handbook to be completely current. An update is eagerly awaited when and if it becomes available.

❑ Andrew Macintosh

The New Company Law

Peter Gillies (The Federation Press $39.95)

The Commonwealth's introduction of the Corporations Act, 1989 (expected to come into effect on 1 July, 1990) provides an appropriate occasion for the publication of Dr. Gillies' new work on company law. The legislation constitutes the culmination of a trend to uniformity and centralisation in the administration and control of companies, which was commenced by the uniform Companies Act, 1961 and continued with the Interstate Corporate Affairs Commission agreement of 1974 and the co-operative companies and securities industry legislation of 1981.

With the increasing sophistication of commercial activity in recent years, the pace of change in company legislation has quickened correspondingly. The uniform Companies Act consisted of 399 sections; the Corporations Act has 1,350. Apart from its sheer volume, the current legislation is undoubtedly more complex and intricate than in the halcyon days of 1961. The drafting of the Act is further complicated in an effort to circumvent the limitations of the Commonwealth's constitutional power.

One significant development in the new legislation is the concept of the "close corporation", introduced by the Close Corporations Act, 1989. This is a new form of body corporate, designed for the perceived needs of small business enterprises, under which financial and reporting requirements are less extensive than otherwise but the liability of members and officers to third parties is increased.

8 February, 1990 the High Court held to be unconstitutional those sections of the Corporations Act under which the Commonwealth purported to regulate the incorporation of companies. Apart from the particular sections which were directly considered by the Court, the validity of other provisions (including those in the Close Corporations Act) are now in doubt. It would seem that the Commonwealth was not constitutionally entitled to introduce the "close corporation" concept in the manner in which it has done since, presumably, the Commonwealth can only legislate for the conversion of an existing company into a "close corporation" but is incapable of regulating the incorporation of such a company.

A degree of uncertainty thus surrounds the future of the "new company law" which is not likely to be resolved in the short term. In the meantime, practitioners will be called upon to advise as best they can concerning this uncertain future state of affairs.

The Corporations Act remains for present purposes in the penumbra of the existing co-operative scheme legislation. Dr. Gillies' book provides an expeditious means of entry into the labyrinth of the new legislation. It will be found that for most practical purposes the substantive law does not differ under the future regime although the structure and terminology of the new legislation is occasionally at variance.

Notwithstanding the considerable bulk of the legislation, to a great extent the day-to-day problems encountered in company law require consideration of common law principles. As in other works in the field, the greater part of Dr. Gillies' book consists of a consideration and explanation of the application of the legislation in the decided cases.

Whatever the future holds for the general applicability of the Corporations Act, an understanding of the established judge-made law of companies remains essential for the majority of questions arising in the area. Dr. Gillies has set out in straightforward and lucid terms the standard authorities on the subject. He has also provided a very complete coverage of the recent Australian cases by way of cross-reference where detailed explanation is unnecessary (footnotes are not employed, so that all references are incorporated into the text.)

The New Company Law does not seek to explore problem areas of uncertainties in the law, nor to theorise concerning its underlying philosophical basis or desirable future course. Rather, this book provides a simple and direct statement of the state of company law at the present time and upon the coming into effect of the Corporations Act, 1989.

❑ S.P. Epstein.

Obituary - Judge A.F. Tolhurst Q.C.

Judge Tolhurst Q.C., a recent appointee to the District Court Bench, died suddenly on 19th March, 1990.

His Honour was born on 28th March, 1938. He was educated at De la Salle College, Marrickville where he was dux in 1955 and obtained a maximum pass in the Leaving Certificate in that year.

He graduated as a Bachelor of Law, Sydney University in 1960 and later was awarded a Masters degree. His Honour worked for a time in the Public Trustees Office and served articles with Messrs. Rishworth, Dodd & Co., before commencing practice at the Bar in 1961. Initially he practised generally but later specialised in Equity and Revenue Law. He was the author of Stamp and Estate Duties New South Wales, published in 1971. This work became one of the standard texts on the subjects and he a recognised authority in revenue law. He was appointed Queen's Counsel in 1985 and his ability as Counsel was highly regarded.

He was a popular and respected member of Chalfont Chambers, whose door was always open to other members of his floor when assistance with perplexing legal problems was required. In addition to his legal knowledge, His Honour read widely over the whole of his life and gained knowledge in wide areas of learning, apart from the law.

His appointment to the District Court Bench on 15th November, 1989 was received with universal acclaim by the legal profession and it is a matter of great regret to those that have known him that he had but little time to use his considerable talents in service to the community as a Judge of the District Court. ❑ A. McInnes Q.C.

The Out-of-Court Rule

Barristers' Immunity in the Court of Appeal

Paul Donohoe reviews the latest case on liability of barristers.

How far from the courtroom door will the line be drawn?

In the Gianarelli Case 165 CLR 543 the High Court held that barristers were immune from suit for in-court work: Bar News Autumn 1989. The New South Wales Court of Appeal has held that a barrister who failed to do anything about claiming interest upon any damages before judgment was immune from suit: Keefe v. Marks (1989) 16 NSWLR 713. The case is interesting for several reasons.

Are Judges simply looking after their own?

No. Gleeson CJ at 717 D to E identified the underlying policy as extending to persons involved in court proceedings: not only barristers but also judges, jurors and witnesses.

Where does the immunity begin?

On this issue the Court was not unanimous. Gleeson CJ at 718 E to 719 E held that the immunity covered all work involved in what is commonly called a brief to appear, such as:

1. interviewing the plaintiff;
2. interviewing other witnesses;
3. giving advice and making decisions about what witnesses to call and not to call;
4. working up any necessary legal arguments;
5. giving consideration to the adequacy of the pleadings; and if appropriate
6. causing any steps to be undertaken to have the pleadings amended.

He concluded at 719E that all of this was "intimately connected with the work ultimately done in Court" and Meagher JA apparently agreed; 729 A & C.

Priestley JA dissented, and it should be remembered that an application for special leave has been filed. He made these points:

(1) some pleadings may not be so intimately connected with the work in court that they can fairly be said to be a preliminary decision affecting the in-court conduct of the case;
(2) the degree of connection must be assessed; and
(3) there may be a difference between making a decision and an omission.

His Honour did not consider whether the arguments would succeed; only whether they were arguable because the issues arose on a strike-out application a procedure for which he confessed "no particular fondness".

In the present case he thought it arguable that immunity did not extend to "a simple out-of-court omission to consider whether a claim for interest was available." at 725 C to D. ❑