

E-Commerce No Longer Relegated to Footnotes

E-commerce Law, Nicoll and Jones, CCH New Zealand

The publication of the subscription service *CCH E-commerce Law* is a significant step for New Zealand specific e-commerce legal resources. The aim of *E-commerce Law* is “to keep you up to date with the fast-evolving law relating to business conducted electronically”.¹

E-commerce Law is divided into general subject areas that reflect the diversity of law affecting e-commerce: Contracts, Security, Intellectual Property, Electronic Payments, Consumer Protection (including privacy), Tax, Dispute Resolution, Tort, Crimes, Evidence, and Y2K. It also includes the New Zealand E-commerce Law Cases and selected legislation. In addition to covering purely commercial matters, the coverage extends to areas that, while not strictly commercial, are nonetheless of interest to those in the field of e-commerce. Such areas include computer fraud and hacking, ISP and network operator liability in negligence and defamation, privacy issues, and electronic evidentiary issues.

The idea seems to be to provide a “one-stop shop” for legal information relating to e-commerce. Notably, perhaps reflecting the wide reach of e-commerce, the publication is not aimed solely at legal practitioners but at a wider audience including accountants, bank staff, IT workers, and “all businesses who intend to use e-commerce”.² Accompanying each subject area are brief sections outlining the fundamentals of that area of law. Additionally, each subject area has a useful “big picture” section containing a quick reference and checklist of practical issues.

While this publication covers such a wide area of law, it is still slim at present. This is for several reasons. First, being released in November 1999, it is the newest of CCH’s services. Secondly, the information is presented in a concise manner. Discussion of the law is generally confined to the context of e-commerce, and technical descriptions are usually summarised efficiently. Thirdly, the coverage, while broad, is not yet as in-depth as that of publications of a similar type on traditional areas of law – such as land law or company law. However, this is at least partly because there is relatively little case law or legislation to draw on, and the law – at least in New Zealand – is often uncertain. It is frequently necessary to offer suggestions and analogies in this intensely practical and fast moving field. A welcome feature in this regard is the inclusion of magazine-style articles and updates by the editorial team and guest writers. It is not every legal publication that includes quotes such as this:³

1 <<http://www.e-commercelaw.co.nz/>> (last accessed 6 September 2000).

2 <<http://www.e-commercelaw.co.nz/>> (last accessed 6 September 2000).

3 Moira Scollay, Australia’s former Federal Privacy Commissioner, *E-commerce Law*, Bulletin – May 2000.

Electronic commerce is a lot like sex: it involves two (or more) consensual partners engaging in (and usually completing) a 'transaction'. Surrounding this seemingly simple act, however, are a myriad of legal, cultural and social issues – consent, trust, privacy, loyalty, competitiveness, safety, potential abuse of power, and exploitation. In both contexts there are even nasty 'viruses' to be avoided. Among the most crucial of the issues to be addressed in order to have fulfilling – and safe – e-commerce is the protection of privacy.

There is no doubt that this publication will expand as e-commerce activity increases and when the Government introduces specific legislation, such as the proposed Electronic Transactions Act.⁴ One particular improvement that could be made is the addition of comparative material. Given the relatively undeveloped state of New Zealand law, together with the global reach of e-commerce, it is useful to look to foreign and international arrangements. Some such areas are noted, such as the Utah Digital Signature Act 1995 and the Illinois Electronic Commerce Security Act 1998. However, these are not comparatively analysed or related to the New Zealand environment and are selective. For example, the UNCITRAL Uniform Rules on electronic signatures are mentioned but the US Electronic Signatures in Global and National Commerce Act, passed in June 2000, is not. The Australian Commonwealth's Electronic Transactions Act 1999 is mentioned only in passing. Similarly, while some jurisdictional issues are covered, more material on the conflicts of laws would be useful. Doing business on the Internet almost certainly means that commercial activity crosses legal boundaries.

E-commerce Law is also available on the Internet.⁵ The web-site provides all the material of the printed publication and is updated as new material becomes available. The online version is organised in the same way as its printed counterpart and is easy to navigate and use. A search facility is provided. However, better use could be made of the online medium. Notably, there seems to be very few links to other sites. For example, where the UNCITRAL Model Law is discussed, there is no link to the UNCITRAL web-site.⁶ References to New Zealand Law Commission reports could include a link to the online report.⁷ Even in the Tax section there are no links to relevant parts of CCH's own tax web-site.⁸ An online publication such as this needs to be more than merely an electronic "copy" of the printed version.

4 See "Electronic Commerce Part Two: A Basic Legal Framework", NZLC R58, November 1999, available at <<http://www.lawcom.govt.nz>> (last accessed 6 September 2000).

5 <<http://www.e-commercelaw.co.nz/>> (last accessed 6 September 2000).

6 <<http://www.uncitral.org/>> (last accessed 6 September 2000).

7 Available at the Law Commission's web-site <<http://www.lawcom.govt.nz/>> (last accessed 6 September 2000).

8 <<http://www.cch.co.nz/tax/>> (last accessed 6 September 2000).

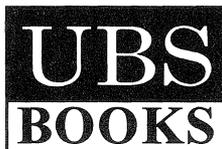
E-commerce Law demonstrates by its content the need for the publication. Nowhere else is so much e-commerce related legal material collected together. This publication is a unique and useful resource for “big picture” information of interest to lawyers, students and business people conducting business online, and will become more so as it matures and increases its depth of coverage.

Guy Burgess

BOOKS RECEIVED

GRANTHAM R & RICKETT C E S, *Enrichment and Restitution in New Zealand*, Oxford, Hart Publishing, 2000, xlviii and 516pp.

WEBB D, *Ethics, Professional Responsibility and the Lawyer*, Wellington, Butterworths, 2000, xxxii and 526pp.



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