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History lesson

What have been the main legal developments affecting purchasers over the past decade? Dick Jennings discusses the most important changes and makes some predictions for the future

There are two points to history, apart from its entertainment value. Only by extrapolation from it can we predict, however uncertainly, the future. And learning from the past helps us to cope with what is to come. So the 10 years of legal development so far reported by SM is well worth a retrospective look.

Technological changes

The internet, and increased computing power, has had the most impact on the way business-to-business (b2b) commerce is conducted. Yet the resulting changes in law have seemed slight.

This is partly because the web is essentially international, and changing international treaty law takes decades. It's partly because a contract is still a contract, and many of the legal challenges of distance contracts were faced when the telephone revolution occurred. And it's partly an illusion: business practice has changed radically in key respects, and the common law follows it. But we don't notice until cases come to court, reach the Court of Appeal, get reported and enter the text books.

Intellectual property

Much of that change will be in intellectual property (IP) law, which has already seen frenetic development over the past decade.

With the explosion in biotechnology, can we patent a newly discovered (but natural) molecule? Can we even patent human DNA? Can computer software amount to an "invention" and so be patent-protected? How do we square confidentiality against the benefits of electronic data management? How do we balance the need for innovation, by awarding monopoly patent and design rights, with the need to encourage efficient markets?

Fighting crime

The explosion in computing power and telecoms has also helped criminals. That means more fraud. In terms of government response it should mean more international cooperation. The past 10 years have seen a stifling increase in so-called money laundering laws, of great inconvenience to legitimate commerce, while the most blatant of international frauds and internet scams flourish. We need fewer new laws and more effective policing.

That is even more the case with terrorism. Anyone who cares for law and the liberty of the individual, much less the freedom of trade, is deeply troubled at the kneejerk authoritarianism of the past 10 years. But I predict it will soon go out of fashion.

Protecting rights

In contrast, the past decade also saw the Human Rights Act and the Freedom of Information Act.

Fundamental changes in the role law plays in society are rare: these were such changes and they will long affect legal development. The right to a fair trial, now entrenched in UK law by the Human Rights Act, has an impact on how all organisations treat issues of what has traditionally been called "natural justice".

Regulatory developments

This has been the decade of Tony Blair and both the authoritarian and the libertarian developments are children, in the UK at least, of New Labour. UK business now faces a much greater regulatory burden.

Employment law now weighs heavily on business, and on UK competitiveness. And the post-Enron effects on corporate governance have been dramatic. Yet the torrent of new legislation, much of it ill-considered, has increased steadily under governments of every colour. One of the determinants of business success in the future will be a capacity to cope with legal regulation effectively. Justification by paper trail is often the road to salvation in terms of legal compliance, but the bureaucratisation it brings can be death to innovation and common sense.

Environmental issues

History may judge the profoundest change of the past decade to have been global warming. That, and other issues of corporate social responsibility, have so far had relatively little impact on the law. They are still issues of social responsibility, not legal compliance.

But socially responsible management is often the best way of minimising legal risk in the long term. Look at the billions business is paying now for asbestos damage, which was irresponsible but not illegal when it was caused. If there's one certainty over the next 10 years it is increased regulation, and cost, of waste generation and carbon emissions.

So much legal change - and yet in some ways, so little. Much of it reflects a governmental desire for constant action, rather than actual trends. And the speed of change can be glacial - the forthcoming reform of UK company law was planned at the time of SM's first issue. Maybe we should be thankful - business needs less government intervention, not more.

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Tel +44(0)1780 756777 **Fax** +44(0)1780 751610 **Email** ckw@cips.org **Web** www.cips.org