

ELECTRONIC FINANCE LAW



Chris Reed

CHRIS REED

ELECTRONIC
FINANCE LAW



WOODHEAD-FAULKNER

NEW YORK LONDON TORONTO SYDNEY TOKYO SINGAPORE

Published by Woodhead-Faulkner (Publishers) Limited,
Simon & Schuster International Group,
Fitzwilliam House, 32 Trumpington Street,
Cambridge CB2 1QY, England



First published 1991

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British Library Cataloguing-in-Publication Data

Reed, Chris
Electronic finance law.

I. Title

343.42

ISBN 0-85941-694-1

Designed by Geoff Green
Typeset by Goodfellow & Egan, Cambridge
Printed in Great Britain by BPCC Wheatons Ltd, Exeter

FOREWORD

Very soon after my Committee began its review of banking services law and practice it became apparent to us that the nature of banking had changed out of all recognition in the century or more since the enactment of the Bills of Exchange Act in 1882. This Act, while it has been amended in the intervening years, still remains the basis of our law governing the operation of 'paper-based' payment systems in the United Kingdom.

The most significant of these changes was the growth of electronic banking. This has manifested itself for the retail customer in the increased availability of automatic teller machines (ATMs) and for the business customer in the establishment of a wide range of systems of electronic fund transfer (EFT) both within the United Kingdom and across national frontiers.

The growth of EFT has disclosed what, at least at first sight, would seem to be something of a legal vacuum in that there is a real lack of legal rules and decisions directed specifically at EFT and the still rather novel crop of legal problems which it produces. In the absence of any specific legal regime for EFT it is necessary to consider whether and to what extent rules and decisions derived from paper-based payment systems can be applied by analogy, translated, as it were, into an EFT context.

Christopher Reed's initiative in attempting to fill this perceived vacuum by elucidating the legal basis and rules governing electronic financial transactions is therefore to be commended. From the perspective of an information technology lawyer, he seeks to translate the law from paper-based to

electronic methods of effecting financial transactions. Mr Reed would not claim to have achieved a definitive translation but expresses the hope that he may have been able 'to cast some fresh light on the state of banking and finance law'. Such light is much needed in the uncertain legal world of electronic finance.

Professor R. B. Jack
Chairman of the Banking Services
Law Review Committee

PREFACE

Banking and finance comprise one of the most important of the commercial sectors, both nationally and internationally. This is also an area where developments in information technology have been adopted more swiftly and comprehensively than in most other sectors. The aim of this book is to examine the effects of the adoption of that technology on the law that regulates banking and finance.

Any author who offers a book for critical inspection, particularly where it is likely to be read by those who are practising its subject matter, does so with some trepidation. This is particularly true in the case of this book, as the development of information technology and its application to the financial sector is proceeding at such a rate, as is the work of the legislative and regulatory bodies in this field, that the book can only offer a 'snapshot' picture of the state of the law. An attempt has been made to predict the course of future developments, but as the 'future' in relation to information technology is almost certainly no further ahead than five years, these predictions may well be overtaken by events. Except where otherwise stated, the text describes the state of the law as at 1 January 1991.

It should also be stressed that this book is written from the perspective of an information technology lawyer, not a banking lawyer. My hope is that this may cast some fresh light on the state of banking and finance law, and that the book does not oversimplify the law in that field in so far as it relates to paper-based methods of effecting financial transactions.

Many of the ideas put forward in the text have been

discussed with my colleagues at the Centre for Commercial Law Studies and with fellow information technology lawyers, in particular the members of the London Computer Law Group, and I am grateful for their helpful and perceptive comments. Any errors and omissions are of course my own responsibility.

I would also like to thank the many people who assisted in various ways with the production of this book, and in particular my secretary Lorraine Mulpeter, who transcribed quantities of illegible writing and creaky dictation tapes; my editor David Crosby who waited patiently as numerous deadlines passed; and the staff at the main high street banks in Ipswich who regularly took the time to find me information about their computerised banking systems and explained the finer points to me. Finally and most importantly, I wish to thank my wife Jilly, who patiently endured countless explanations of this area of the law and undertook a large part of the burden of proof-reading.

Chris Reed
Centre for Commercial Law Studies
March 1991

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ABBREVIATIONS

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Arora	Arora, <i>Electronic Banking and the Law</i> (IBC Financial Books, London 1988)
Encyclopedia of Information Technology Law	Saxby, <i>Encyclopedia of Information Technology Law</i> (Sweet and Maxwell, London 1990)
Penn, Shea and Arora	Penn, Shea and Arora, <i>Banking Law Vol. 1</i> (Sweet and Maxwell, London 1987)

Other terms

ANSI	American National Standards Institute
APACS	Association of Payment and Clearing Services
ASCII	American Standard Code for Information Interchange
ATM	Automated Teller Machine
BACS	Bankers Automated Clearing Services
CHAPS	Clearing House Automated Payments System (UK)
CHIPS	Clearing House Interbank Payments System (US)
CIF	Cost, Insurance and Freight
CMI	Committee Maritime International
DES	Data Encryption Standard encryption algorithm
E-mail	Electronic mail
EDI	Electronic Data Interchange

EFT	Electronic Funds Transfer
EFTPOS	Electronic Funds Transfer at Point of Sale
ICC	International Chamber of Commerce
ISO	International Standards Organisation
PIN	Personal Identification Number
PTT	Post, Telegraph and Telephone authority
RSA	Rivest, Shamir, Adelman encryption algorithm
SEPON	Stock Exchange POol Nominees, a holding account for the settlement of securities under the Stock Exchange Talisman system
SWIFT	Society for Worldwide Interbank Financial Telecommunications
UCP	Uniform Customs and Practice for Documentary Credits
UCTA	Unfair Contract Terms Act 1977
UNCID	UNiform rules of Conduct for Interchange of trade Data by teletransmission
UNCITRAL	United Nations Commission on International TRAdelaw
VANS	Value Added Network Services

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