9 Endnotes

1. Ian Campbell, "The new skillseekers", *Computing* 13 Sep 2007.
2. Earlier editions were entitled *Introduction to Computer Law*.
3. Computer pornography will be examined in chapter 5, as an illustration of the difficulty law has in keeping pace with technical change.
4. If readers wonder why Continental-style systems should be called "Civil Law", the answer is that the Romans called their law, or a central part of it, *jus civile*. This Latin phrase really meant "law of the city [of Rome]", as opposed to the laws of the neighbouring regions which Rome conquered and annexed; but the phrase looks as though its translation ought to be "Civil Law".
5. From October 2009 a new Supreme Court is due to replace the House of Lords in this role.
6. There are complex rules, which we shall not examine, to determine when a particular precedent is actually binding on a given court and when it is only "persuasive" – that is, the court will follow it by default but is allowed to depart from it if it has good grounds. A reader who wants the full story could consult e.g. C. Manchester and D. Salter, *Exploring the Law: the dynamics of precedent and statutory interpretation*, 3rd edn, Sweet & Maxwell, 2006.
7. On the mediaeval Law Merchant and the idea that it is returning in a new form, see e.g. Jarrod Wiener, *Globalization and the Harmonization of Law*, Pinter, 1999, p. 161 ff.
8. "IT contracts", in Holt and Newton, p. 1.
9. *Op. cit*., p. 12.
10. In 1999 the ancient term *plaintiff*, for the party who initiates a civil action, was officially replaced in England and Wales by "claimant". The older word continues to be used in other English-speaking nations such as the USA, and seems both more familiar and less ambiguous than "claimant" in this sense, so this book will continue to use the word "plaintiff".
11. <www.itil-officialsite.com/home/home.asp>
12. <www.isoiec20000certification.com/about/whatis.asp>
13. For more about SLAs, see Holt, *op. cit*., pp. 10–11; and for detailed discussion of the art of drafting successful IT contracts, see particularly Jeremy Newton, "Systems procurement contracts", in the same book.
14. A recent discussion of the question when bugs amount to breach of a software contract is Elizabeth Macdonald, "Bugs and breaches", *International Journal of Law and IT* 13.118–38, 2005.
15. There is other, newer legislation relating to the special area of retail trade.
16. "System supply contracts", in Reed and Angel, pp. 21–2.
17. "Three problems with the new product liability", in P. Cane and Jane Stapleton, eds, *Essays for Patrick Atiyah*, Oxford University Press, 1991. The *Consumer Protection from Unfair Trading Regulations 2008*, which implemented the European *Unfair Commercial Practices Directive*, explicitly use "product" to cover services as well as goods.
18. All lawsuits arising from the Therac-25 episode were settled out of court, so they yielded no precedents even for the North American jurisdictions where they occurrred.
19. *Product Liability Directive*, article 7(e).
20. Reported in the *Daily Telegraph*, 7 Dec 2006.

21. "Patent protection for computer-related inventions", in Reed and Angel, p. 328.
22. Quoted by Brian Runciman, "Berners-Lee visits key web issues", *Computing* 6 Apr 2006.
23. House of Commons, Fourth Standing Committee on Delegated Legislation, 3 Dec 1997.
24. Ian Lloyd (p. 413) is cynical about this, claiming that the Database Directive intentionally weakened the protection of databases in Britain in order to help other European countries to capture larger shares of this market.
25. Readers unfamiliar with the SaaS concept may consult e.g. Sampson, *Electronic Business*, pp. 106–7.
26. Claims at the EPO are conventionally identified as *Applicant's name/nature of invention to be covered*.
27. "Patent protection for computer-related inventions", in Reed and Angel, p. 296.
28. Criminal prosecutions are brought in the name of the Queen, and hence they are conventionally cited as *R.* v. *so-and-so*, where *R.* stands for *Regina*, Latin for "Queen".
29. The name for this particular principle of legal interpretation is *eiusdem generis*, Latin for "of the same kind".
30. Strictly, if the Obscene Publications Act did not apply, there might still have been the possibility of prosecuting under the Common Law – but not if the displays counted as cinema showings (as the Crown Court judge thought they might), because then the Obscene Publications Act exemption (point (2) above) would override the Common Law.
31. Newer flat-screen technologies do not, so this argument might not work today.
32. Colin Manchester, "Computer pornography", *Criminal Law Review* July 1995, pp. 546–55.
33. "More about computer pornography", *Criminal Law Review* September 1996, pp. 645–9.
34. David Brin, *The Transparent Society: will technology force us to choose between privacy and freedom?* Perseus Books (Reading, Mass.), 1998.
35. Alongside the general Freedom of Information Act there are also the much more specialized *Environmental Information Regulations 2004*, which are EU-mandated law. For these Regulations, see e.g. pp. 542–5 of Timothy Pitt-Payne, "Access to electronic information", in Reed and Angel.
36. Gateway Reviews are a mechanism by which the civil service monitors the progress of IT projects, with the aim of catching things that begin to go wrong before the situation becomes irretrievable.
37. "Digital dilemmas: a survey of the internet society", supplement to *The Economist* 25 Jan 2003.
38. F.G.B. Aldhouse, "UK data protection – where are we in 1991?", in K.V. Russel, ed., *Yearbook of Law Computers and Technology*, 1991. Aldhouse was referring to the 1984 Act, but this was already heavily moulded by Continental patterns of legal thought.
39. An organization, or an individual; the law does not apply only to organizations, but I shall not repeat the phrase "or individual" below (since the main impact of the law is in fact on organizations).
40. A.C. Raul et al., "EU privacy: European Court of Justice hands down landmark decision on EU Data Protection Directive", *CyberLaw@Sidley* Nov 2003.
41. When a court decision is appealed upwards through the hierarchy of courts, the court which first heard the case is called the *court of first instance*.
42. David Scheer, "Europe's new high-tech role: playing privacy cop to world", *Wall Street Journal* 10 Oct 2003.
43. Stewart Room, "What's wrong with enforcement?", *DPA Law* 2005.
44. SMSR Ltd, *Report on Information Commissioner's Office Annual Track 2006: Individuals*, p. 15.
45. Cf. Sampson, *Electronic Business*, chapter 4.
46. Though see Bainbridge, pp. 269–71.

47. Quoted in "Argos in the clear over 49p TV e-commerce error", *ZDNet* 2 Sep 2005. Jane Winn and Benjamin Wright reported that the United Airlines website terms and conditions still did not provide protection against the type of error that occurred in its case, several months *after* the mistake was discovered (*The Law of Electronic Commerce*, 4th edn, Aspen Publishers (New York), 2005).
48. Legal developments in this area worldwide are chronicled by the German lawyer Stephan Ott at <www.linksandlaw.com> – the following discussion draws heavily on references Ott provides.
49. Quoted in C.S. Kaplan, "Cyber law journal: hacker gadfly at center of new suit", *New York Times* 18 May 2001.
50. One American academic lawyer has argued that law is increasingly treating the metaphor of "cyberspace" as if it were more than a metaphor, so that laws governing the use of land (e.g. trespass in the familiar sense) are being extended to the internet. See Dan Hunter, "Cyberspace as place and the tragedy of the digital anticommons", *California Law Review* 91.439–519, 2003.
51. Quoted in Nicole Manktelow, "Net lawyers ponder the right to link", *The Age* (Melbourne) 10 Sep 2002.
52. Katia Bodard et al., "Deep linking, framing, inlining and extension of copyrights: recent cases in Common Law jurisdictions", *Murdoch University Electronic Journal of Law* March 2004.
53. Anthony Misquitta, "You've been framed", Farrer & Co. website, Spring 2001.
54. "IP: Trademark & DNS", <www.cybertelecom.org/dns/trademark.htm> (June 2006).
55. On the "DNS Wars", see e.g. Jessica Litman, "The DNS Wars: trademarks and the internet domain name system", *Journal of Small and Emerging Business Law* 4.149–66, 2000.
56. Large sums do continue to be paid for attractive domain names. In 2008 the cruise community site cruise.co.uk paid half a million pounds to acquire the sister domain name cruises.co.uk.

57. Statement of 6 Apr 2000 by Alison Sparshatt, MD of NetBenefit (rosecottage.me.uk/OutRage-archives/2000d24outcast.htm).
58. Quoted by Hugh Muir, "Childcare expert threatens to have website shut down", *The Guardian* 8 Aug 2006.
59. This and the Schrader quotation in the next paragraph are taken from Jason Compton, "Compliance: businesses will have to pull their SOX up", *Computing* 31 Mar 2005.
60. Quoted by James Watson, "Banks urged to stay ahead of the MiFID game", *Computing* 2 Feb 2006.
61. Quoted by Dave Bailey, "How data rules will burden business", *IT Week* 9 Oct 2006.
62. Quoted by Sarah Arnott and James Watson, "UK swamped by data rules", *Computing* 18 Sep 2003.
63. "Weighing up security and compliance", supplement to *IT Week* 24 Apr 2006.
64. The Department of Work and Pensions offers an informal account of the current legal provisions at <www.dwp.gov.uk/employers/dda/consolidated_dda_equality_act_oct07.pdf>.
65. For a brief summary, see p. 182 of Vivian Picton, "Accessibility and information security", in Fell, ed.
66. <www.blether.com/archives/2006/05/dti_achieves_ne.php>
67. "The big data dump", *The Economist* 30 Aug 2008.
68. Quoted in "Of bytes and briefs", *The Economist* 19 May 2007.
69. D.C. Blair and M.E. Maron, "An evaluation of retrieval effectiveness for a full-text document-retrieval system", *Communications of the ACM* 28.289–99, 1985.
70. For a survey of artificial intelligence techniques in e-discovery, see "The Sedona Conference best practices commentary on the use of search and information retrieval methods in e-discovery", *The Sedona Conference Journal* 8.189–223, 2007.
71. This and subsequent quotation from C. Dale, "The place for EnCase® eDiscovery in electronic disclosure for major corporations in UK courts", presented at the IQPC Information Retention and e-Disclosure Management Conference, 23 May 2008, <www.chrisdalelawyersupport.co.uk/documents/Guidance Software_EnCase_WhitePaper.pdf>.