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Lesson Proper for Week 1

What is the law?

There are many ways of defining the law. We shall define law as 'a set of rules that can be enforced in a court'. These rules are different in different countries. The word *jurisdiction* is used to mean the area covered by a single legal system and set of laws.

Even within a single country, the law and the legal system may be different in different areas. This is most obviously the case in large countries with a federal system of government, where the country is divided into several states, each of which can make its laws in certain areas.

Criminal law and civil law

The popular image of the law sees it as the set of mechanisms that tries to punish wrongdoers, by fines or imprisonment. This aspect of the law is known as the *criminal law*. It can be considered to represent society's view of

the minimum standard of acceptable behaviour. It defines what constitutes a crime, lays down the mechanisms for deciding whether a person accused of a crime is guilty or innocent, and specifies the range of punishments applicable

to different categories of crime.

In general, the police are responsible for discovering who has carried out a specific criminal offence and for collecting evidence that will convince a court that the person in question really did commit the offence. The state, in the form of the Crown Prosecution Service in England and Wales, will then start proceedings by

prosecuting the person concerned (who is known as the *accused* or the *defendant*) in a criminal court. The court will decide whether or not the case against the person has been proved and, if it finds the case proved, will sentence the offender to a suitable punishment.

We shall be much more occupied with the *civil law*. The purpose of the civil law is to provide rules for settling disputes between people. Notice that we have referred to disputes between people. Does this mean that the civil law doesn't apply if one or both sides in a dispute are companies or organizations of some other kind? It doesn't mean this, of course, but, in order to overcome the difficulty, we need the idea of a *legal person*. A legal person is an organization that has gone through a process, called *incorporation*, that gives it the same legal status, so far as the civil law is concerned, as a *natural person*, that is a human being.

Court action under the civil law is known as litigation. It must be initiated by one of the *parties to the dispute*, that is, by the person, legal or natural, who feels they have been wronged. The person who initiates the court action is

known as the *plaintiff*.

Two important differences between British civil law and criminal law relate to the *standard* of proof and the *burden* of proof. For a person to be found guilty of a criminal offence, the prosecution must demonstrate that they are guilty beyond all reasonable doubt. In other words, the standard of proof required in criminal cases is higher than that required in civil cases.

Where does the law come from?

The two main sources of law in England and Wales are the *common law* and *statute law*. The common law is essentially traditional law that is not written down, but which depends on the judgement of judges over the centuries. When deciding the rights and wrongs of a case, a court will look at the way in which similar cases have been decided in the past; such cases are known as *precedents*.

The common law tradition is shared by many other countries. Almost all the countries of the Commonwealth share the tradition; so, most importantly, does the USA. This means that a judgement made by a judge in the USA can be used as a precedent in, for example, a court in Singapore.

The tradition of common law is not found in the countries of continental Europe, such as France and Germany. Their law is based entirely on written codes, one for the criminal law and one for the civil law. Those parts of the world that were once colonized by such countries have generally kept such a system of written codes. Confusingly, this system of written codes is often also referred to as civil law. However, in this book, we shall always use the term civil law in the sense described in the previous section, that is, the law used for settling disputes between people.

Statute law is law laid down by Acts of Parliament. It is often referred to as *legislation*. Two hundred years ago, most cases that came to trial would have been tried under the common law. There was comparatively little statute law.

Laws to regulate child labour and laws to prevent the misuse of computers are just two examples of Parliament creating new laws for such reasons. A good example of this is the Theft Act 1968, which consolidated the common law provisions regarding crimes involving stealing.

The legislative process in the uk

Like many other democratic countries, the UK has what is known as a *twochamber* or *bicameral legislature*. This means that the law-making body (the legislature) is made up of two chambers or groups of people.

The British legislature is known as *Parliament*. One of the chambers is called the House of Commons; its members are elected and everyone over the age of 18 has a vote.

The other chamber in the UK Parliament is known as the House of Lords; most of its members are appointed, but a significant number are chosen from among the hereditary peers, although this situation may not last very much longer.

The British government is made up of members from both the House of Commons and the House of Lords. Members of the House of Lords are never more than a small proportion and the Prime Minister, the Chancellor of the

Exchequer, the Foreign Secretary, and the Home Secretary are now always members of the House of Commons.

Most new legislation is initiated by the government, although individual Members of Parliament can initiate legislation in certain circumstances. It is introduced in the form of a *bill*; this is a set of proposals that parliament is invited to discuss, possibly modify and then approve. The bill is usually introduced first in the House of Commons. It will be discussed and possibly amended there, a process that includes several stages. If it is approved by the House of Commons, it is passed to the House of Lords.

If the House of Lords approves the bill, it becomes an Act of Parliament. It is then passed to the Queen for her formal approval (the *royal assent*), after which it becomes law. If the House of Lords rejects a bill or modifies it, the bill is returned to the House of Commons for further consideration. The House of Commons has the power to override any changes that may have been made by the House of Lords or even to insist that a bill rejected by the House of Lords should, nevertheless, be passed and proceed to receive the royal assent. The justification for this is that the House of Commons is democratically elected and so represents the will of the people in a way that the members of the House of Lords, not being elected, cannot do.

Acts of Parliament constitute what is known as *primary legislation*. The complexity of modern society makes it impossible for all laws to be examined in detail by parliament. To overcome this difficulty, an Act of Parliament will often make provision for *secondary* legislation to be introduced. This means that detailed regulations can be introduced without full discussion in parliament. Instead, the proposed regulations are placed in the library of the House of Commons so that members of either house can look at them. If no objections are raised within

a fixed time period, the regulations become law. An example of secondary legislation in the computer field is the regulations that were produced to apply the Copyright, Designs and Patents Act 1988 to protect the design of semiconductor chips.

The UK is a member of the European Union (EU). This is a grouping of 25 European countries (15 until May 2004) that are working towards a high level of economic and social integration involving the harmonization of many of their laws. The EU has its own Parliament, elected by individual voters in all the member countries. The EU is run by a commission that has the power to issue directives that require member countries to modify their legislation, if necessary, to meet a common standard. These directives must be discussed by the European Parliament and approved by the member states before they come into effect. Several of these directives relate to topics, such as data protection and the protection of software, that are particularly important for information systems engineers and we shall be referring to many of them later in the book.

The legislative process in other countries

The BCS examination is concerned with the situation in Britain but the Society expects that candidates in other countries will want, as part of their professional development, to understand something about the law in their own countries and the way it is made. This section tries to describe very briefly the position in a few representative countries.

The USA

In the USA, the legislature is known as Congress. It consists of two houses, the Senate and the House of Representatives. Both houses are elected but on very different terms. Members of the House of Representatives (*congressmen*) are elected for a period of two years. Each congressman represents a district and each district contains (roughly) the same number of people. The Senate contains two members (*senators*) for each state; senators are elected for seven years.

Legislation must be approved by both the Senate and the House of Representatives before it can become law; neither chamber can override the other. As in other countries with a written constitution, there is also a Supreme Court, which can strike out legislation approved by Congress and the President, on the grounds that it is unconstitutional.

The members of the government of the USA are not members of Congress. The President is, in practice though not in theory, directly elected by the people. The members of the government are individuals chosen by the President and their appointment must be approved by Congress. The founders of the USA believed that it was very important to separate the three following functions:

- | the legislature, that is, Congress, which makes laws;
- | the judiciary, that is, the judges and other legal officials, which applies and enforces these laws in particular cases;
- | the executive, that is, the President and the other members of the government, which carries on the actual business of government.

The legislative situation in the USA is made more complicated by the fact that the country is a federation of 50 states. Each state has its own legislature, most of them modelled on the federal legislature, and its own government.

Singapore

In contrast to the UK and the USA, Singapore has a *unicameral* legislature, that is, its parliament consists of only one chamber. In many other respects, however, it follows the British model. Most members of the government are MPs. The head of the government is the Prime Minister. The Head of State is a separate non-executive President; since 1993 Heads of State have been directly elected by the citizens. Their role is largely ceremonial, but they have more powers than the Queen. Their signature is required before a bill becomes law; they can veto government budgets and public appointments but they can only withhold their signature if they consider that a bill is unconstitutional.

Singapore is a multiracial society and the electoral system includes special features to ensure that minority races will always be represented in Parliament. As well as traditional constituencies that elect as MP the candidate who gets the most votes, there are 14 *group representation constituencies*.

The Singapore electorate has consistently voted for the People's Action Party, to such an extent that the government has felt it necessary to modify the constitution in order to ensure that there is adequate representation of opposition representatives in Parliament. It provides for the appointment of up to three Non-Constituency MPs (NCMPs) from the opposition political parties.

Singapore not only shares the common law with England and Wales but it also shares much of British statute law. The courts in Singapore had always been ready to apply British statutes in situations where there were no applicable Singaporean statutes. In 1993, the position was formalized when parliament passed the Application of English Law Act.

In summary

The law is generally divided into criminal law, which tries to ensure that individuals do not act in ways that are unacceptable to society as a whole, and civil law, which provides rules for settling disputes between people.

Different countries have different laws and different procedures for applying their laws. In England and Wales, the USA, and many other countries that were formerly ruled by Britain, a form of law known as common law exists; this is based on precedent, that is, on decisions made by judges in the past. Increasingly, common law is being replaced by statute law, that is, law made by legislative bodies.

Some countries have bicameral legislatures and some have unicameral ones. There are a variety of ways in which the members of the legislature may be elected. In countries with a bicameral legislature, one chamber may be appointed rather than elected. In some countries, the government is made up of members of the

legislature; in others it may be separate from the legislature. In countries with a federal constitution, there are legislatures at the level of the individual state.

In countries with a written constitution, there is usually a court with the power to strike out legislation that breaches the constitution.

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