

INFORMATION TECHNOLOGY LAW

HANDOUT ONE



INFORMATION TECHNOLOGY LAW

INFORMATION TECHNOLOGY LAW

Definition

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Keenan – Irish Business Law

INFORMATION TECHNOLOGY LAW

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- “The law is a body of rules imposed by a state upon its members which is designed to regulate human conduct within that state. The courts interpret these rules of conduct, decide whether they have been broken and pass sentence or make an award of compensation. A certain standard of behaviour is thereby maintained amongst the members of the State in the interest of the common good”

INFORMATION TECHNOLOGY LAW

- A system of principles, rules and procedures which aim to regulate the behaviour of individuals in society
- Legal principle – the idea behind the law
- Legal rule – the law which puts the principle into practice
- Legal procedure – the rules relating to court procedure and evidence
- Jurisdiction – the geographical area where a law applies
- Jurisdiction poses particular challenges for IT Law

INFORMATION TECHNOLOGY LAW

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Definition of Law – Key Points

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- Set of Rules

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- Set of Rules
- Made by the State

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- Made by the State
- Implemented through Institutions of the State

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- Guides behaviour of individuals and artificial entities

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- New technology – New Problems – New Law

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- Set of Rules
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- Compulsory
- Guides behaviour of individuals and artificial entities
- New technology – New Problems – New Law
- IT Law is constantly evolving although the pace of change is arguably too slow

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Function of the Law

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- To uphold public morality? Lord Devlin

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- Summary of the [Hart-Devlin debate](#)

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- What is or should be the basis of Law?
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- Some proposed Laws currently before the Oireachtas – [here](#)

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- Is the Oireachtas concerned with upholding morality or prevention of harm – what does the current set of proposals indicate?

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- Some proposed Laws currently before the Oireachtas – [here](#)
- Is the Oireachtas concerned with upholding morality or prevention of harm – what does the current set of proposals indicate?
- What is the basis of [this](#) proposal? Did it become law in the UK? Would you support the introduction of such a law in Ireland?

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Primary Legislation – Law made by the Oireachtas

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- The Oireachtas

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Primary Legislation – Law made by the Oireachtas

- The Oireachtas
- The legislative process – detailed notes on Blackboard

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- Significant legislation related to IT

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- Data Protection Acts 1988 and 2003

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- Does the Oireachtas have the necessary expertise to make highly technical law effectively

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- Does the Oireachtas have the necessary expertise to make highly technical law effectively
- [Exhibit A](#)

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- Does the Oireachtas have the necessary expertise to make highly technical law effectively
- [Exhibit A](#)
- [Exhibit B](#)

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- Does the Oireachtas have the necessary expertise to make highly technical law effectively
- [Exhibit A](#)
- [Exhibit B](#)
- [Exhibit C](#)

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- Does the Oireachtas have the necessary expertise to make such highly technical law effectively
- [Exhibit A](#)
- [Exhibit B](#)
- [Exhibit C](#)

UK Approach

- Science and Technology Committee – [here](#)
- House of Lords – Digital Skills – [here](#)
- Research and Briefing Papers – [here](#)
- Oireachtas Committees - [here](#)

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Secondary Legislation

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- Definition

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- The Process of Making a Statutory Instrument

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- Examples of technology related Statutory Instruments

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- European Communities (Directive 2000/31) Regulations 2003 (SI 2003/68)

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- European Communities (Copyright and Related Rights) Regulations 2004 (SI 2004/16)

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- European Communities (Copyright and Related Rights) Regulations 2004 (SI 2004/16)
- European Union (Copyright and Related Rights) Regulations 2012 (SI 59/2012)

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Secondary Legislation

- Reasons for delegated legislation
- Volume of statutory instruments
- Statutory Instruments made in [2014](#)
- A statutory instrument which was the subject of some media coverage/public debate – [here](#)
- The Statutory Instrument in [full](#)
- Discussion of the use of statutory instruments – [here](#)
- A lot of change in the area of IT Law involves the use of Statutory Instruments – why?

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The European Union

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- Background

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- History – [outline](#)

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- Primary Law – the Treaties

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- The [Court of Justice](#)
- [The Digital Agenda](#)

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Secondary Law of the EU

- The law making process
- Regulations and Directives
- Data Protection Directive 1995/46
- Database Directive 1996/9
- E-Commerce Directive 2000/31
- Electronic Signatures Directive 1999/93
- EU Domain Regulation 874/2004

Decisions of the Court of Justice

- Sabam v Scarlet – [summary](#)
- Bestwater case - [summary](#)
- Gonzalez – right to be forgotten case - [summary](#)
- Relationship between EU law and Irish law
- Impact of EU on IT Law in Ireland

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Judicial Precedent

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- How does it work – see detailed notes on Blackboard

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- Hierarchy of Courts

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- Kennedy and Arnold v Ireland (1985)

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- Recent UK [case](#) involving Twitter

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- Recent UK [case](#) involving Copyright

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Other Sources of Law

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- [The Constitution](#)

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- [The Constitution](#)
- Convention on Cybercrime (Budapest 2001)- [Article](#)

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- [The Constitution](#)
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- UNCITRAL Model Law on Electronic Signatures 2001

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- UNCITRAL Model Law on Electronic Signatures 2001
- Universal Copyright Convention 1952
- European Convention on Human Rights

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Categories of Law

Criminal Law

- A public wrong
- Prosecution of offender by the State (DPP v Ryan)
- Standard of proof – ‘beyond all reasonable doubt’
- Finding – Guilty/Not Guilty
- Commencement of Proceedings
- Criminal Courts
- Accused is innocent until proven guilty
- Objective is punishment (imprisonment, fines etc)

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Categories of Law

Civil Law

- A private wrong
- One individual sues another (Plaintiff v Defendant)
- Objective is to provide a remedy
- Standard of proof is a 'balance of probabilities
- Finding – Liable/Not Liable
- Remedies – damages or court order e.g. injunction
- Civil Courts

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Civil Courts

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Civil Courts

- District Court – claims up to €15,000, licensing, family law, small claims

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- District Court – claims up to €15,000, licensing, family law, small claims
- Circuit Court – claims up to €75,000, landlord and tenant, family law

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- District Court – claims up to €15,000, licensing, family law, small claims
- Circuit Court – claims up to €75,000, landlord and tenant, family law
- High Court – unlimited jurisdiction, Constitutional cases, company law, family law

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- District Court – claims up to €15,000, licensing, family law, small claims
- Circuit Court – claims up to €75,000, landlord and tenant, family law
- High Court – unlimited jurisdiction, Constitutional cases, company law, family law
- Court of Appeal – hears appeals based on points of law and points of fact

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- Supreme Court – points of law of exceptional public importance, Constitutional cases

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Civil Courts

- District Court – claims up to €15,000, licensing, family law, small claims
- Circuit Court – claims up to €75,000, landlord and tenant, family law
- High Court – unlimited jurisdiction, Constitutional cases, company law, family law
- Court of Appeal – hears appeals based on points of law and points of fact
- Supreme Court – points of law of exceptional public importance, Constitutional cases
- The role of the Commercial Court

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- District Court – summary offences, some indictable offences, preliminary hearings

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- District Court – summary offences, some indictable offences, preliminary hearings
- Circuit Court – indictable offences except murder, rape

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- High Court – Central Criminal Court – offences which cannot be heard by the Circuit Court e.g. murder

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- Special Criminal Court – a non jury court used for terrorism/organised crime

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- Special Criminal Court – a non jury court used for terrorism/organised crime
- Court of Appeal – hears appeals from Circuit/Central/Special Criminal Courts
- Supreme Court – important points of Law only

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Alternative Dispute Resolution

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Alternative Dispute Resolution

- Quasi-Judicial Tribunals - examples

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- Tribunals of Inquiry - examples

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- Arbitration -

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- Tribunals of Inquiry - examples
- Arbitration -
- Conciliation
- Mediation
- Why use ADR?

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Alternative Dispute Resolution

- Quasi-Judicial Tribunals - examples
- Tribunals of Inquiry - examples
- Arbitration -
- Conciliation
- Mediation
- Why use ADR?
- Relevant example - [WIPO](#)

INFORMATION TECHNOLOGY LAW

Professionalism and IT

- Characteristics of a profession
 1. Substantial education and training in order to practice
 2. Members control entry to profession
 3. Existence of one or more professional bodies
 4. Code of conduct set out and enforced by professional body
 5. Monopoly in relation to title or tasks
- Is IT a profession?

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Ethics and Professional Practice

- Meaning of Ethics
- Ethical Issues in IT
- [Exhibit A](#)
- [Exhibit B](#)
- [Exhibit C](#)
- Regulation through Professional Codes of Ethics
- Is Computing/IT a profession?
- Example of a [Code of Ethics](#)
- How does IT compare with other professions?
- [Accounting](#), [Law](#), [Medicine](#)

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Additional Reading

- Blackboard – additional notes and articles
- <http://www.thejournal.ie/ireland%E2%80%99s-%E2%80%98sopa%E2%80%99-legislation-the-big-arguments-for-and-against-336952-Jan2012/>
- <http://www.tjmcintyre.com/2012/01/irelands-sopa-faq.html>
- <http://www.siliconrepublic.com/comms/item/20561-irish-govt-pushing-through>
- <http://www.williamfry.ie/publication-article/upc-victorious-in-high-court-illegal-downloading-case.aspx?paid=0&keyword=&month=1&year=2011>