It Law

Exam 2015 Notes

## Answer 3 out of 5 sections

Past papers :

2014

http://exampapers.cit.ie/PastExams/Computing/KWEBD\_8\_Y4/2014%20Semester1/KWEBD\_8\_Y4%20LEGS8001%20IT%20Law.pdf

BLUE IS IMPORTANT

Green needs to be confirmed

Remember Each question should have the following tips

Accuray

Clarity

Details

Examples and the example cases

Question 1

NOT COMING UP ON IT : DIFFERENT TYPES OF LAWS

Limited to the law regarding to the it , code of ethics

Different types of law

limits to what laws can cover

Code of Ethics

Is it a profession, will it become one

**Irish Business Law**

“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”

**Jurisdiction**

the geographical area where a law applies

Jurisdiction poses particular challenges for IT Law

http://www.techrepublic.com/blog/it-security/what-makes-cybercrime-laws-so-difficult-to-enforce/

**Code of Ethics**

A code of ethics document may outline the mission and values of the business or organization, how professionals are supposed to approach problems, the ethical principles based on the organization's core values and the standards to which the professional will be held.

**Primary legislation**

Primary legislation is law made by the legislative branch of government. That contrasts with secondary legislation, which is usually made by the executive branch. Secondary (or delegated) legislation must be authorised by primary legislation and must conform to boundaries laid down.

**Secondary Legislation (Oireachtas)**

In the United Kingdom, delegated legislation (also referred to as secondary legislation or subordinate legislation or subsidiary legislation) is [law](https://en.wikipedia.org/wiki/Law) made by an executive authority under powers delegated from a legislature by enactment of [primary legislation](https://en.wikipedia.org/wiki/Primary_legislation), which grants the executive agency power to implement and administer the requirements of that primary legislation.

**Professionalism and IT**

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

**Who Makes the laws**

## Cases or links

How laws are made in ireland

<http://www.citizensinformation.ie/en/government_in_ireland/>

Tell me like i'm five

<http://www.citizensinformation.ie/en/government_in_ireland/national_government/houses_of_the_oireachtas/legislation.html>

Code of ditches

www.bcs.org/category/6030

https://www.dataprotection.ie/ViewDoc.asp?fn=%2Fdocuments%2Flegal%2F4c.htm&CatID=22&m=e

## Past Questions

2014 Discuss the possible statutory defences open to a Defendant in a Defamation action, illustrate your answer by reference to case law

2015 Describe the process by which law is made by the European Union and evaluate the impact of EU Law on Irish Law with particular reference to Information Technology

# Question 2

## Key Points

* Civil Law
* breach of confidence
* what could happen
* cases up in blackboard
* NO DEFAMATION OR NO PRIVACY

**Breach of confidence:**

|  |
| --- |
| ***The information in question must be confidential***     * It must have been **communicated** in circumstances which **impose an obligation of confidence on the recipient** * **The information must be inaccessible to the public** * Must be able to show the person whom he complains breached the obligation      * The **information has been used in a manner not intended by the owner** and not authorised by him * Commercial **information** can be of **significant value** * Disclosure of information can **reduce its value (** loss of revenue) |

its essential commercial secrets can be protected against disclosure and that courts impose this obligation to hold information confidential.

In general the court will not allow the use of information which has been disclosed in confidence in a way that is inconsistent with the purpose for which the information was imparted.

on the other hand no one will be prevented from using information which is already in the public domain. if you can prove you carried out your own independent research in developing a product the court will not grant an injunction. No one can be stopped from reverse engineering a product except in the case where a patent exists.

Privacy Bill 2006 + 2012 failed proposals

Civil action for invasion of privacy

## Cases or links

Celebrities Cases

* Ryan Giggs – here **(Basicly the newspapers said that it was a member of the man u squad and played for wales, there's only one player but even said it was him by name. The other papers then jumped to the idea it was him, meaning the original source didn't say who.)**
* National Bank Vs RTE**(A bank was refused an injunction to prevent a broadcaster revealing certain information which it had obtained about certain bank accounts apparently being used to evade tax.).... The Court acknowledged the public interest in the maintenance of confidentiality between banker and customer**

**on the one hand, yet recognised the public interest in defeating wrongdoing**

* Saltman Engineering VS Campbell Engineering**, Campbell engineering made tools for leather punching for saltman engineering based on drawings which were provided by saltman. The relationship broke down and after saltman and campbell parted company , the defendants continued to manufacture and market leather punches. The plaintiff argued that this was an abuse of the confidential information contained in the drawings and the court agreed**
* CAMPBELL vs MGN Ltd **….. in this case photographs were published of ms campbell leaving a narcotics anonymous meeting. The court found that a duty of confidentiality should be imposed as the information could reasonably regarded as private and this duty must be balanced against the public interest and freedom of expression.**
* [Michael] Douglas Vs Hello [Magazine]
  + **Douglas agreed to OK Magazine! to photograph their private wedding.**
  + **Hello had hidden camera and took photos which they published.**
  + **The House of Lords agreed that the photographs of the wedding were confidential.**
  + **The case resulted in OK Magazine! being awarded £1,033,156.**

# Question 3

CRIMINAL JUSTICE ACT 2011

* GIVE NEW POWERS TO THE GARDA
* FAILURE TO REPORT OFFENCES IS PUNISHABLE

The Criminal Justice Act 2011 (“the 2011 Act”) came into effect on 9 August 2011. It introduces new procedures to **facilitate Garda access to information and documentation that will assist in the investigation of white collar crime**. The 2011 Act makes it an **offence for a person not to report to Gardaí information** which he knows or believes might be of material assistance in preventing the commission of certain offences or amongst other things securing the conviction of any persons for those relevant offences. The 2011 Act also makes significant amendments in relation to the detention and questioning of suspects.

As such, it was broadly welcomed as a necessary aid to the Garda in detecting, investigating and prosecuting serious financial offences including offences of fraud by financiers and bankers and those in charge of significant sums of investor and depositor funds. The Act significantly modernises and improves the powers of the Garda to confront complex cases of serious financial crime.**The first of these gives the Gardaí new powers relating to the detention of persons before charge and the ways in which those periods of detention may be suspended. Compelling the production of documents, getting answers from the people who compiled them about what they meant and, most notably, having sanctions for people whom the Gardaí reasonably believed were withholding information.**

The offence attracts penalties of a fine and/or imprisonment on summary conviction and on indictment.The offence carries a five-year maximum prison term as punishment

There is a saver in the 2011 Act which absolves a person from the obligation to report where they have a “reasonable excuse”. **The 2011 Act does not enlighten us any further as to what will constitute a reasonable excuse.**

The 2011 Act also provides protection for whistleblowers and prohibits the penalisation of employees by employers for disclosing information in respect of relevant offences to Gardaí. Employees who are wrongly dismissed following reporting information to the Gardaí are entitled to bring a claim to a rights commissioner or alternatively to seek redress under the Unfair Dismissals Acts 1997 to 2007 or at common law for wrongful dismissal.

The 2011 Act does not provide a time period within which the information must be disclosed but states that it must be provided to Gardaí “as soon as practicable”. As soon as practicable is not defined and therefore it is difficult to anticipate what attitude a court will take to “persons” who do not report information as soon as they hear it.

During the course of an investigation of a relevant offence a member of the Gardaí can apply to the District Court for an order requiring the provision of particular documents or information by any person. Failing to comply with an order to produce documents or information attracts penalties. A person will not be required to produce information or documents that is privileged legal material.

<http://www.arthurcox.com/wp-content/uploads/2014/01/Arthur-Cox-The-Criminal-Justice-Act-2011-September-2011.pdf>

<http://www.tjmcintyre.com/2013/02/impact-of-criminal-justice-act-2011-on.html>

## Key Points

* Cybercrime
* Recent , criminal justice act 2011, failure to report
* New powers to the gardaí
* Describe cybercrime give examples
* Are the laws fit for the area

**Definition**

Cyberlaw or Internet law is a term that encapsulates the legal issues related to use of the Internet. It is less a distinct field of law than intellectual property or contract law, as it is a domain covering many areas of law and regulation. Some leading topics include internet access and usage, privacy, freedom of expression, and jurisdiction.

"Computer law" is a third term which tends to relate to issues including both Internet law and the patent and copyright aspects of computer technology and software.

## Cases or links

No cases yet as it’s such a new act

# Question 4

Domain names - how they develop/ rules and procedures

domain names are human friendly form of IP addresses. it corresponds to specific places on the net. the advantages are its easier to remember over a string of numbers.

the number can be changed but the domain name remains the same. DNS is an international system that coordinates the allocation of domain names. DNS records are updated to reflect change.

ICANN runs DNS . It has 13 root servers throughout the world.

If you wish to register a domain within for example ireland .IE you must go to the registrar in ireland and follow its rules. it may be that their rules require a connection to the country as opposed to .com which is first come first serve.

**Disputes**

Squatting is the term given to the practice of pre-emptively registering the trademark of a third party as a domain name . they exploit the first come first serve nature the domain name system to register names of trademarks. this can be name of companies or famous people . Squatters then go on to try and sell the the domain back to the company involved that are far in excess of the cost of registration.

They may divert traffic to competitors or defame them. one case of this happening is to wal-mart

**WIPO(world intellectual property organisation)**

It was decided with the increase in disputes and the increasing value of domain names that something had to be done to ensure uniformity of dispute resolution.

**UDRP(uniform domain name dispute resolution policy)**

proposed by WIPO and came into effect in 1999. In 2001 60% of all cases filed under UDRP were filed with WIPO. A number of countries have designated WIPO as their dispute resolution power. New top level domains are subject to the UDRP

**How it works**

if a trademark holder considers that its trademark has been breached by another domain name being registered it may initiate proceeding under the UDRP. The respondent must submit to the proceeding. Complainant must Specify the domain name in question and the grounds for complaint. Grounds = identical or similar to the trademark, why the respondent should be seen as having no legitimate rights in respect of the domain name and why the domain name should be considered as having been registered in bad faith.

Respondent is given the opportunity to provide a defence and WIPO appoints a panellist that determines if the domain should be transferred. panellists are neutral and qualified. a domain name case is generally resolved within two months. traditional trademark litigation can take many years and be expensive. UDRP costs don’t exceed 5000 dollars usually and may be as low as 1500 dollars.

**Is it binding?**

The domain name is either transferred or the complaint is denied. no monetary damages applied . an appeal is possible within 10 days but rare.

**.IE**

Run under the commissioner for communications regulation (ComReg)

ComReg has controlling policy while IEDR continues to run the .ie ccTLD.

* generic names are allowed
* domains of two characters are allowed(cannot be only two letters)
* Must have real and substation connection with ireland.

**.com**

administered by VeriSign and is sold through brokers on a first come first serve basis

**Emerging case Law**

1. **the domain name is identical or confusingly similar to a trademark**
2. **the domain name holder has no rights or legitimate interest in the domain name**
3. **the domain name was registered and used in bad faith**

no guidelines on how to prove or disprove the question of similarity .

How a respondent demonstrates a right to a domain

1. the respondent can demonstrate that before it received any notice the complainants rights it had used the domain in a legitimate manner
2. the name corresponds with a name by which the respondent is commonly known
3. the respondent is making a fair and non commercial use of the domain

Example of bad faith

1. registered the domain primarily for selling renting or transferring the domain name for valuable consideration in excess of the respondent's documented out of pocket costs
2. Registered in order to prevent the owner of the trademark using it
3. Registered for purpose of disrupting the business
4. Attempted to attract internet users for commercial gain

Issues with domain names

* **Cybersquatting**
  + R[egistering, trafficking in, or using an](http://www.telegraph.co.uk/technology/internet/10619203/British-businesses-fall-victim-to-cybersquatters-amid-domain-name-rollout.html) Internet domain name [with](http://www.telegraph.co.uk/technology/internet/10619203/British-businesses-fall-victim-to-cybersquatters-amid-domain-name-rollout.html) bad faith [intent to profit from the goodwill of a](http://www.telegraph.co.uk/technology/internet/10619203/British-businesses-fall-victim-to-cybersquatters-amid-domain-name-rollout.html) trademark [belonging to someone else.](http://www.telegraph.co.uk/technology/internet/10619203/British-businesses-fall-victim-to-cybersquatters-amid-domain-name-rollout.html)
  + CASE: Microsoft vs MikeRoweSoft
    - Microsoft being heavy handed
    - Rowe granting ownership of the domain to Microsoft in exchange for Microsoft products.
  + Often try and profit by selling the domain back to company that would want/need it.
* **Typosquatting**
  + Form of Cybersquatting
  + Typo Squatted variant of Google called 'Goggle.com' existed. Visiting the website would cause the domain to automatically download various computer viruses.
    - Today 'Goggle.com' links to a scam where you can win popular gadgets.
* **Gripe Sites**
  + Type of website devoted to the critique and or mockery of a person, place, politician, corporation, or institution.

# **royaldutchshellplc.com**

* + - Site has been oft quoted in news sources and is known for its activities as an Internet leak and forum for Shell whistleblowers.
    - Effective adversarial Web site

## Cases or links

This is an example of a case not using UDRP but rather traditional trademark litigation

<https://en.wikipedia.org/wiki/Microsoft_vs._MikeRoweSoft>

**David Vs goliath case**

* Claimed **trademark infringement** (phonetic similarity)
* First asked to give up domain but rowe wanted compensation.

Microsoft offered to pay Rowe's out-of-pocket expenses of $10, the original cost of registering the domain name. Rowe countered asking instead for $10,000, later claiming that he did this because he was "mad at" Microsoft for their initial $10 offer. Microsoft declined the offer and sent a cease and desist order spanning 25 pages. Microsoft accused Rowe of setting up the site in order to try to force them into a large financial settlement, a practice known as cybersquatting.

Rowe went to the press, creating publicity for the case and garnering support for his cause. The public showing of support that Rowe received was credited with "softening Microsoft's stance," leading to an eventual settlement.

**Settlement** = expenses paid trip for him and his family to the Microsoft Research Tech Fest at their headquarters in Redmond, Washington, training for Microsoft certification and an Xbox with a selection of games.

# Question 5

## Key Points

* Data protection
* 8 Key principles of it
* Schema (Data traders case)
* data between eu and us and how's it validated
* what happens next.

### Data Protection 8 Key Rules

1. [Obtain and process the information fairly](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3c.htm)
2. [Keep it only for one or more specified and lawful purposes](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3d.htm)
3. [Process it only in ways compatible with the purposes for which it was given to you initially](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3e.htm)
4. [Keep it safe and secure](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3f.htm)
5. [Keep it accurate and up-to-date](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3g.htm)
6. [Ensure that it is adequate, relevant and not excessive](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3h.htm)
7. [Retain it no longer than is necessary for the specified purpose or purposes](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3i.htm)
8. [Give a copy of his/her personal data to any individual, on request.](https://www.dataprotection.ie/viewdoc.asp?m=&fn=/documents/responsibilities/3j.htm)

### Data Protection

legal control over access to and use of data stored in computers.

### Data Protection Issues

* The use of inaccurate information
* The use of personal information by unauthorised persons
* The use of personal information for purposes other than that for which it was collected
* Data matching
* Data being interpreted in a misleading way
* The use of information about the individual's internet use for marketing and other purposes
* Surveillance and unauthorised access of private communications

### Who is not protected?

* Dead persons
* Legal persons such as a company
* Anonymous persons

### Exemptions

* Territorial exemption
* Security of the state
* Data which is required by law to be made available to the public
* Data kept for personal, family or household affairs or for recreational purposes
* Journalistic, artistic or literary material where publication is in the public interest

### When does Data Protection Law apply?

* Electronic data held on computerised system
* Manual files
* The personal information must be recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system
* Not information held on random bits of paper!

### The data Protection Commissioner define

In Ireland, the Data Protection Commissioner (Irish: An Coimisinéir Cosanta Sonraí) is the person responsible for the enforcement and monitoring of compliance with data protection legislation, including the Data Protection Act of Ireland, 1988-2003.

### The Data Protection Commissioner

* Investigation
* Enforcement
* Transfer of data outside the state
* Prior checking
* Codes of Practice
* Annual Report

## Penalties

* Summary Offence
* Indictable Offence
* Forfeiture
* Civil liability
* Recent [Cases](https://www.dataprotection.ie/viewdoc.asp?DocID=1441&ad=1)

## Transfer or Data

Transfer of Data outside of EEA (European Economic Area)

* No transfer should take place unless the other country ensures an adequate level of protection for the privacy of the data subject
* European Commission can make findings in relation to particular countries
* Data Protection Commissioner can issue orders and prohibition notices
* The Safe Harbour Principle – a voluntary scheme for US companies
* The decision of the Court of Justice in Schrems Case – [here](http://business-review.eu/featured/eu-court-of-justice-makes-safe-harbor-decision-history-90565) and [here](http://www.thejournal.ie/readme/snowden-schrems-safe-harbour-2372781-Oct2015/)

## Cases or links

https://www.dataprotection.ie/viewdoc.asp?DocID=1441&ad=1

‘Criminals have Supervalu breach data’ – Data Protection Commissioner

* Costeja case [2014](http://www.bbc.com/news/world-europe-27388289)
* Irish Case [2015](http://www.tjmcintyre.com/2015/04/irelands-first-right-to-be-forgotten-case.html)
* Other examples - [here](http://www.telegraph.co.uk/technology/google/11036257/Telegraph-stories-affected-by-EU-right-to-be-forgotten.html)
* Procedure for [google](http://searchengineland.com/google-right-to-be-forgotten-form-192837)
* Effect of removal
* Use of the right to be forgotten – [statistics](http://www.theguardian.com/technology/2015/jul/14/google-accidentally-reveals-right-to-be-forgotten-requests) - [Ireland](http://www.independent.ie/business/technology/bankers-and-convicts-among-2300-irish-right-to-be-forgotten-requests-31182796.html)

# Facebook data transfers threatened by Safe Harbour ruling

#### What's the Safe Harbour agreement?

The Safe Harbor agreement allowed U.S. companies to transfer European citizens' data to America, provided where it was being sent to had privacy protections that met EU standards.

It allowed big companies like Facebook and Google, for example, to carry out a self-certification process, promising to protect EU data stored on U.S. soil.

The agreement is key for thousands of companies operating in the EU.

What Happened ?

In the wake of the U.S. surveillance revelations by former National Security Agency (NSA) contractor Edward Snowden, Austrian student Max Schrems filed a complaint against Facebook to the Irish data protection authority.

He claimed that Snowden's leaks showed Facebook wasn't sufficiently protecting user data as the NSA was carrying out mass surveillance on technology companies.

His complaint was thrown out by the Irish data protection authority, and when Schrems appealed to an Irish court, it was sent to the ECJ. The EU's top court said the Safe Harbor agreement was invalid as U.S. public authorities could access the data and individuals had no means of redress for misused data, among several other reasons.

Facebook has repeatedly denied that it allows backdoor access of its user data to spy agencies.

**A pact that helped the tech giants and others send personal data from the EU to the US has been ruled invalid.**

The [European Court of Justice said](http://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=113326) that the Safe Harbour agreement did not eliminate the need for local privacy watchdogs to check US firms were taking adequate data protection measures.

It added that the ruling meant Ireland's regulator now needed to decide whether Facebook's EU-to-US transfers should be suspended.

The pact has existed for 15 years.

Facebook has denied any wrongdoing