

CS 211 – Professional Issues in Computing



Lecture 1 – Law versus ethics

Introduction

This introductory week is devoted to the background to the United Kingdom legal system, the issue of legal jurisdiction, and the important distinctions that exist between law and ethics.

UK Legal System

The United Kingdom is split up into four sovereign areas, England, Wales, Scotland and Northern Ireland. As well as the parliament in Westminster that legislates both for UK-wide and English law, parliaments exist in Northern Ireland, Scotland and Wales that pass legislation for those territories. Despite this devolved situation, the parliament at Westminster remains ultimately sovereign, as many key areas that are legislated for are reserved for the UK parliament to preside over, such as foreign affairs, defence, terrorism, and immigration.

Types of legislation

Legislative forms in the UK consist of primary and secondary legislation. Primary legislation relates to Acts of Parliament, which are the result of Bills that have passed through parliament and subsequently received Royal assent to become law. Primary law in European Union countries is also passed down from the European Parliament, thus in the UK we are also subject to primary law passed in this fashion (while we remain a member of the EU of course!).

Secondary law relates to law that normally consists of amendments to Acts of Parliament or smaller pieces of legislation that impact on local issues rather than national. A major contributor to secondary law is what is known as *Statutory Instruments*, which are small pieces of legislation that amend larger Acts. They often provide the detail that it is impossible to place in Acts as they are passed, or they clarify points that the original Act has subsequently found to be unclear or out of date on.

The primary and secondary legislation in the UK is passed by the parliaments at:

- Westminster for UK issues, and English primary and secondary law and Welsh primary law
- Holyrood for Scottish primary and secondary Law (but many areas of law are reserved to Westminster parliament)
- Cardiff for Welsh secondary law
- Stormont for Northern Ireland primary and secondary law (but many areas of law are reserved to Westminster parliament)

Thus we can see that the UK legal system has been complicated considerably by devolution, and thus it is necessary to be aware of which parliament(s) impacts on legislation related to your professional practice.

Criminal and Civil law

Despite the fact that legislative bodies in the home countries can pass legislation for their jurisdictions, the overarching court systems are similar in concept; they consist of two types, namely criminal and civil. The differences between civil law and criminal law are important to understand, as the breaching of each carry very different outcomes in a court.

Criminal law relates to crimes that are normally prosecuted by the State, such as theft, assault, fraud or other offences against people and property. In criminal law the key point is that the charges must be proven beyond a reasonable doubt. The decision on whether someone is to face criminal proceedings is normally made by the Crown Prosecution Service (CPS) in England, and the Procurator Fiscal in Scotland. Conviction under a criminal trial leads to the convicted person having a criminal record.

Civil law relates to the individual or organisation's right in law to obtain some form of redress from another person or organisation. Cases can involve one person suing an organisation for an accident that injured them or an individual suing a person or an organisation for libel or defamation. In civil law the burden of proof relates to balance of probability, which is a lower threshold of proof than beyond a reasonable doubt. Civil law cases can be expensive to instigate if there is a chance they may reach a trial, especially as in normal circumstances the loser has to pay all of the legal bills. Thus there is a major disincentive for many people to seek redress this way, even if they have been injured in law. Losers in civil law cases do not have criminal records at the end of the process.

Legal jurisdiction

The term jurisdiction refers to legal power, over someone or something (Dictionary of Law, 2007). The something can be a geographical territory or country, and this is the definition of the term that is most commonly used. In short, legal jurisdiction relates to the territory in which a piece of

legislation can be enforced and which someone can be prosecuted for committing an offence illegal in that territory.

Of course such a concept was straightforward in the days before the Internet, but it is obvious that today it is straightforward for someone with the skills to use a computer to commit an offence in a territory that is not their own. Consider the swathe of emails you likely receive on a daily basis offering you the chance to help the widow/son/daughter/friend of an oil executive/deposed politician/military general to move money around the world for a large fee. These scams are named 419 scams; after the section of the Nigerian penal code they break. With the advent of the Internet such scams provide jurisdictional problems to prosecute, since an offence potentially occurs in the country where the original mailer is based, and also in the country of receipt, if the receiver is taken in by the scam.

The Case of Gary McKinnon

In 2001 and 2002 a London-based computer hacker called Gary McKinnon hacked into several US government databases, including those belonging to the US Army and Navy, Department of Defense, and NASA, costing the US government hundreds of thousands of dollars (Adams and McCrindle, 2008, p.394-395). McKinnon was originally arrested for the offence in the UK in 2002 and informed that he would be charged under the *Computer Misuse Act* (a UK law we will discuss later in the course) and that he would likely face community service as a punishment.

However, in 2005 he was indicted under US law and extradition proceedings were formulated to facilitate him standing trial in the US to face the charges there. Rather than the meagre punishment of community service, the US law he broke was linked to terrorism and as such if convicted in a US court he faced potentially being sentenced to 60 years in prison. The Home Secretary initially supported the US case for extradition and McKinnon had been involved in several appeals against this decision. McKinnon's lawyers latterly argued that he was medically unfit to stand trial in the US and should not be extradited, and in 2012 the Home Secretary blocked extradition on human rights grounds due to fear that McKinnon may attempt suicide if extradited. He faced no further charges in the UK, as the Director for Public Prosecutions decided in December 2012 that since the evidence was in the USA and not the UK, prosecution would prove difficult.

The case raised major legal and ethical issues. The initial crime committed by McKinnon was in the UK, but he also broke US law, and ultimately the US was the victim. However, in such a scenario, whose jurisdiction should take precedence? The UK has an Act in place that covers the offence committed; however, the US wished to try McKinnon under an Act related to terrorism, which is arguably their prerogative as the victim of the crime. The McKinnon case highlights

some important areas of concern related to crimes committed in cyberspace. We will discuss some of these issues in more detail later in the semester.

Interpol

The main law enforcement agency promoting cooperation between agencies across jurisdictions is Interpol (<http://www.interpol.int/>). One of its initiatives is *I-24/7* which is a communications tool that allows law enforcement officers in different jurisdictions to share data that may be pertinent in investigations.

Although Interpol can aid in the investigation and arrest of criminals, the issue of whether a suspect can be tried is still a matter for the courts, and extradition of criminals across jurisdictions can be an extremely complex affair, even between allies, as the Gary McKinnon case illustrates.

Law versus ethics

It is a gross error for any citizen to see the law as the sole arbiter of moral and ethical behaviour in a state. An ever-present issue for professionals in many disciplines is the potential clash that exists between upholding laws, and the ethical dilemmas that may occur as a result of doing so. To begin, however, let us first introduce the concept of ethics, before we discuss it in detail next week.

Ethics is a branch of philosophical enquiry; primarily it relates to the choices made and actions undertaken by the individual and how they impact on wider society. The word itself and the philosophical concept can be traced back to the teachings of Socrates. Etymologically the word is derived from the Greek *ethikos*, which refers to moral duty. It is crucial at this juncture to note that ethical issues and legal issues, while occasionally intersecting each other, are distinct concepts. For instance, it may be immoral and therefore unethical to uphold a specific law. Conversely, something that is deemed illegal may actually be ethical and moral. Another way of viewing the dichotomy between ethics and law is to consider that, at root, ethics are enforced by the conscience of the individual while laws are ultimately enforced by the physical power of governmental organisations. One would hope that ethics and laws would coincide, since their common wellspring is the conscience of individuals; however as noted above, in extreme circumstances it may be seen as unethical to uphold a specific law when providing a service. These types of situations, although relatively uncommon historically, are increasing as legislation is passed that attempts to limit freedoms historically provided.

Conclusion

In professional life you will have to be cognisant of the laws that impact on your practice, how they are introduced and amended, and how technology has impacted on how those laws can be

broken. You must also consider the ethicality of such laws and how your own and your profession's ethical viewpoints might be in some conflict with the laws you have to uphold.

Jurisdiction becomes a major issue of concern, as the globalised information world means offences impacting on one or more countries can be committed in countries on the other side of the world. We will discuss these themes in much more detail as we progress through the course.

References

ADAMS, Andrew A. and McCRINDLE, Rachel J. (2008) *Pandora's Box: social and professional issues of the information age*. Chichester: John Wiley and Sons.

Dictionary of Law (2007) 'jurisdiction' A&C Black, London, United Kingdom. Available from: <http://www.credoreference.com/entry/7691577> [Last accessed: 07th January 2009]

Further Reading

ADAMS, Andrew A. and McCRINDLE, Rachel J. (2008) *Pandora's Box: social and professional issues of the information age*. Chichester: John Wiley and Sons. **Ch. 1.**