



Module: Web Development Issues

Unit: Legal Aspects of Web Development

Lesson: Introduction to the Law

---

## Introduction to the Law

Page 1 of 9

---

### Introduction

The word "law" suggests a concept of rules; rules which are essential for a society or community to operate in an orderly way.

Rules within any community come into being in a variety of ways - it is the same with English law - the law has developed over a very long time, and is still evolving to meet new challenges and new situations. This is particularly the case in computer law. Existing legislation may be able to cope with technological change, if it is applied correctly. However, the pace of change is such that laws introduced even ten years ago may not be able to deal with new crimes that emerge today.

As developers within the web community, it is important to be aware of the rules which affect the way you work and what you can do. This unit does not aim to make you an expert in computer law, but to give you an understanding of the principles involved, and a knowledge of where you can find current information. You should always consult an expert when you need specific advice!

---

End of Page 1



---

## Introduction to the Law

Page 2 of 9

---

### The Development of English Law

English law (which applies in England and Wales, with a few exceptions) has evolved gradually. Up to the Norman Conquest of England (1066), "laws" were handled locally, with local customs, which varied from place to place, being applied.

In the years following the Norman Conquest, centralised legal control gradually replaced the local courts. Permanent central courts were set up at Westminster, and royal judges travelled to courts around the country to help establish this central control.

### Common law

As the judges travelled, they tended to apply the same rules wherever they went. In addition, new rules were created centrally which applied nationally. Gradually, the rules became common to the whole country, and so the principle of "common law" was established.

### Precedent

The travelling judges looked to previous decisions to ensure the common law was applied consistently. This became known as the doctrine of precedent. This is a key part of the legal system even today, with precedent building on precedent, as judges make decisions on new cases, based on actions in previous ones.

Principles of common law based on precedent, also known as 'judge-made law', allow the legal system to adapt to changes in society. The issue of marital rape is a good example. In the landmark House of Lords appeal in 1992 of R v R (<http://www.leeds.ac.uk/law/hamlyn/rv.html>), the House of Lords overturned 250 years of legal precedent which stated that a man could not be guilty of raping his wife. This was done through judge-made law, not by an act passed in parliament.

### Statute Law

The industrial revolution in the 1800s and the growth of modern business enterprises in the 1900s increased the pace of change enormously, and common law, which grew up to meet the needs of an agricultural society, could not answer the many new questions. New laws had to be created quickly, and this was done through "statutes", pieces of legislation which were formally brought into being - known as "enacted".

Early legislation included royal decrees. Nowadays legislation is usually enacted by an Act of Parliament.

So statute law differs from common law - but it still needs to be interpreted by the courts.

## top tips

Statute law is also known as "legislation". Statutes can change established common law, but common law cannot overrule or amend statutes. A statute can only be superseded or altered by another, later, statute.

## think about it .....

Why do you think statute law has become an important source of new law today?

## feedback

---

You may have considered the pace of change in today's society. In order to be able to react quickly to unprecedented events and circumstances, it may be necessary for legislation to be passed. Other challenges for the law include new technology, and environmental pressures, such as climate change.

### Law Reporting

Case law is a key part of the English legal system. It is important then that the circumstances of cases and decisions made are recorded. This is the job of the Incorporated Council of Law Reporting for England and Wales, which produces The Law Reports and The Weekly Law Reports.

Marsh, SB and Soulsby, J (1998)

## top tips .....

"Case Law" refers to the application of precedent in legal decisions.

---

## Introduction to the Law

Page 3 of 9

---

### **Criminal and Civil Law**

English law, along with many other systems of law, falls into two main categories, criminal law and civil law. The two systems are complementary, but each has distinct characteristics and procedures.

#### **Criminal Law**

The purpose of criminal law is to regulate behaviour which the state considers to be antisocial or dangerous to the public. Criminal law seeks to punish the offender, not to compensate the victim. Punishment may take the form of a fine, imprisonment or a requirement to fulfil a specific task, such as community service.

Examples of criminal law include murder, theft, tax offences, commercial offences and motoring offences such as dangerous driving.

Criminal cases are brought to court as "prosecutions". Prosecution for a breach of common or statute law is carried out in the name of the Crown (as England is a monarchy, the Crown - the King or Queen - is the head of state).

Cases must be proven by the prosecutor to be "beyond reasonable doubt". This is a very high standard of proof - a case must be virtually certain to reach a guilty verdict.

In criminal law, case reports are written as "R v White" - meaning the Crown (Rex or Regina) is prosecuting someone named White.

#### **Civil Law**

Civil law gives the right to individuals to govern their dealings with each other. Civil cases are brought by "plaintiffs", usually private individuals or companies. Bringing a civil action against another party is known as "suing". When someone says they are going to sue, this is what they mean.

Suing is not about punishment, it is about compensation. The wrongdoer ("defendant") must compensate the wronged person ("plaintiff"), usually by payment of damages (money). Sometimes the outcome is an "injunction" - this is a court order to stop the defendant from doing something or repeating the offending behaviour.

Civil cases are only decided on balance of probabilities - that the court is more sure than not sure - which is a much lower level of proof than in criminal cases. This has the effect that people may sometimes bring a civil case against someone who has been cleared in the criminal courts - exactly what happened in the OJ Simpson murder case in the USA in the 1990s.

In civil law, reports are written as Smith v Jones ("Smith and Jones" - the plaintiff, Smith, is suing the defendant, Jones).

Civil law includes contract law, the law of torts (civil wrongs such as trespass), family law and property law. Aspects of civil law which are especially relevant to the web developer are considered in detail later in this unit.

In practice, most civil cases are settled before they reach court.

## think about it .....

Why do you think many civil cases are settled before they reach court?

## feedback

---

You may have given cost and bad publicity as reasons why parties prefer to settle without going to the expense and trouble of suing. Also, as the purpose of suing is to gain compensation, rather than punishing the offender, it is perfectly possible to achieve this without entering a court room!

## top tips .....

Criminal law is concerned with punishment, civil law with compensation.

---

End of Page 3

## knowledge check .....

To complete this knowledge check activity, see the Knowledge Check section at the end of this lesson.

.....

---

End of Page 4

---

## Introduction to the Law

Page 5 of 9

---

### **International Aspects**

The lesson so far has considered only the law applicable in England and Wales. (There are some differences between England and Wales, due to the devolved powers of the National Assembly for Wales, but these differences are not significant in the context of this unit.)

### **Basis of Law**

The English common law system has become the basis of law in many parts of the world, including the USA, Australia and New Zealand, although of course the legal system in these countries has developed separately.

In many countries, the legal system has been more heavily influenced by Roman law - this is the case in Scotland and many other European countries.

### **Adversarial or inquisitorial?**

The system in England is "adversarial" - one party against another - which contrasts with the "inquisitorial" system in Germany and many other countries, in which the party making the decision gathers evidence from both sides, and then makes the decision.

### **Constitutional?**

In English law, the judge must interpret and apply the legislation that is in place. They cannot declare that it is "unconstitutional". Only a further Act of Parliament can override statutes. In many other jurisdictions, the judges do have this power to override statutes by declaring them to be inconsistent with the written constitution. For instance, this can happen in the United States.

## research activity

---

Research the basic principles of law in your own country - or if you are in England or Wales, consider a country with whom your organisation does business, or with whom you think you may do business in the future.



## European Union Law

The European Union (EU) is an important source of law. By the European Communities Act (1972), EU law became part of UK law. This means that provisions made under European Union treaties automatically become part of UK law, without Parliament having to act separately to implement them. EU law includes

- Directives, which may be adapted by member states
- Regulations, which are effective immediately and may not be varied
- Decisions of the European Court of Justice

Note that EU treaties and regulations directly apply to member states but directives have to be enacted by the legislature of each individual state. For example, the 1995 EU Data Protection Directive was incorporated into English law by the passing of the 1998 Data Protection Act (which was an update to the original 1984 Act).

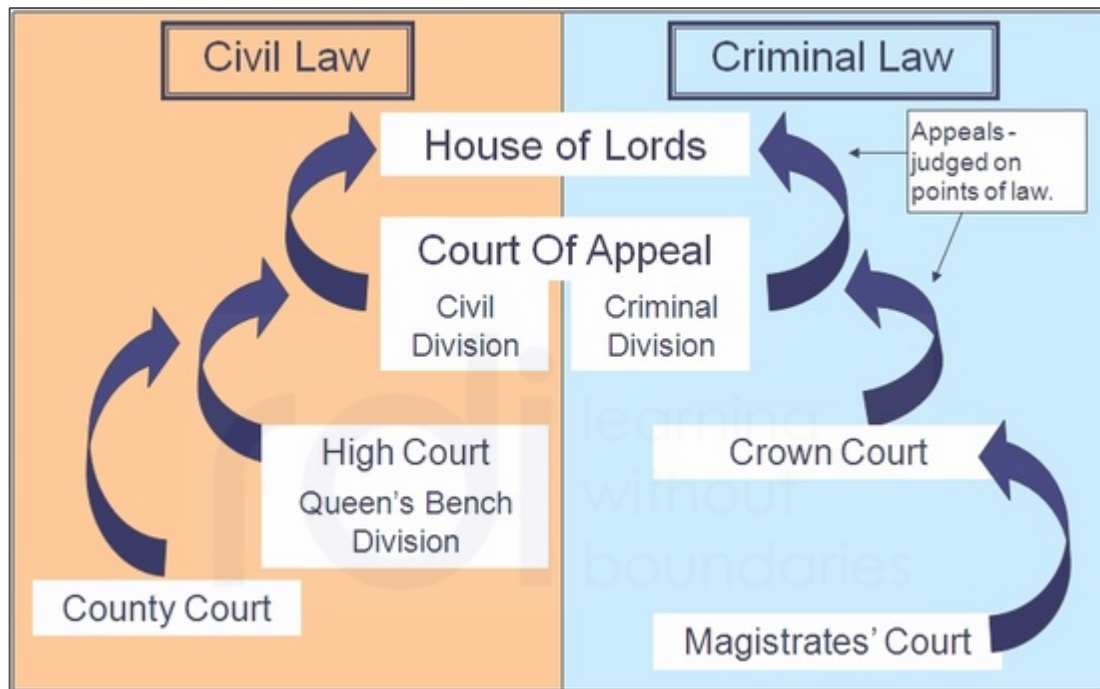
---

End of Page 5



## English Court System

The diagram below shows a simplified overview of the basic structure of the court system in England.



**Figure 05.01.02 - English Court System**

The court structure is quite complex, and has four basic levels:

- House of Lords
- Court of Appeal
- High Court (including Crown Court)
- Lesser courts e.g. County Courts, Magistrates' Courts and industrial tribunals.

There is no absolute division into civil and criminal courts, but in practice, most civil cases are dealt with by the County Courts, by a judge (no jury). The High Court is divided into three divisions, the Queen's Bench division being the most relevant to this unit. Cases may be begun at one level of the system and passed to a higher level, according to certain rules.

Through the doctrine of "binding precedent", decisions made by higher courts are binding on the courts below - that is, the lower courts cannot overturn decisions made by higher ones.

Appeals against the decision of a lower court may be made to a higher one. The lines of appeal are shown on the diagram. The European Court of Justice makes a fifth level, above the House of Lords.

## top tips

The European Court of Justice does *not* have binding precedent over the UK courts. However, the court's rulings do have a strongly persuasive influence.

---

End of Page 6

---

## Introduction to the Law

Page 7 of 9

---

### Computer Law

Computer law exists to deal with computer crime - simple. But what is computer crime?

At this point in the lesson, you have the opportunity to reflect on and debate this issue in more depth.

### think about it

Think for a few minutes about what you consider "computer crime" to mean. Try and think of some examples.

### group learning activity

Discuss the following points with your fellow learners on the discussion forum.

- What you think is meant by "crime"?
- What you think is meant by the term "computer crime"? See if your discussion group can come up with a definition.
- What do we mean when we use the term "computer misuse"? Is this different from computer crime?
- See if you can come up with a list of computer related activities/crimes and see if you can categorise them.

### feedback

---

For computer crime, you may have come up with some of these ideas:

- Crimes against computers - hacking, perhaps
- Crimes using computers to commit other crimes - e.g. distributing child pornography
- Doing "old" crimes in new ways with technology - harassment, libel, infringing copyright
- Completely new crimes which didn't exist before computers - like "phishing" for bank details and passwords

## group learning activity

### Professionalism and Computer Ethics

Discuss the following points with your fellow learners on the discussion forum.

- What do you think it means to be a computer professional?
- Do you think computing is a profession?
- If computing is a profession, do you think it should have a set of rules or guidelines regulating the behaviour of people engaged in that profession?

## my learning space activity

Read the following extract:

"In the 1990s, Donald Gotterbarn became a strong advocate for a different approach to defining the field of computer ethics. In Gotterbarn's view, computer ethics should be viewed as a branch of professional ethics, which is concerned primarily with standards of practice and codes of conduct of computing professionals:

"There is little attention paid to the domain of professional ethics -- the values that guide the day-to-day activities of computing professionals in their role as professionals. By computing professional I mean anyone involved in the design and development of computer artifacts... The ethical decisions made during the development of these artifacts have a direct relationship to many of the issues discussed under the broader concept of computer ethics [Gotterbarn, 1991]."

(Taken from Computer Ethics, <http://www.seop.leeds.ac.uk/entries/ethics-computer/>)

- Do you agree with the statements about professionalism and computer ethics?

## my learning space activity

Look at the following webpage: 10 Commandments of Computer Ethics,  
[http://www.ccsr.cse.dmu.ac.uk/resources/professionalism/codes/cei\\_command.html](http://www.ccsr.cse.dmu.ac.uk/resources/professionalism/codes/cei_command.html)

- Do you agree with the "10 Commandments of Computer Ethics"? Could you add to or detract from them?

### Some Recent History

The 1980's saw a huge growth in the use of computers, both at home and in the workplace. In the early 80's these included the Sinclair ZX80, 81 and Spectrum, the BBC A and B, Commodore, Apricot, and early Apples.

These were soon followed by more powerful machines such as the Apple II and IBM PCs. Applications were produced for these machines which became known as "killer apps" - applications which were so exciting and useful that people would buy a particular machine just for the software. Killer apps such as VisiCalc on the Apple II, Lotus 1-2-3 on the IBM, and then the growth of Microsoft Windows led to a huge growth in business computing.

Naturally, with the growth of a more technologically aware population, rapid advances were made in software and hardware development, not all of it legal!

The wider population however, remained very wary of computers. Computer users were stereotyped as "hollow-eyed young men with no social life and poor personal hygiene, ready to bring down western civilisation as we know it at the press of a computer key". This fear was embodied in the 1983 film, "WarGames", in which a young man, believing he is playing a computer game, finds himself playing a game with a military computer, and very nearly starts World War III.

The general population, including the legislature, didn't really understand computers. Attempts were made to apply existing laws to the new circumstances, but the outcomes were not satisfactory in many cases.

## think about it .....

Why do you think it would be difficult to apply "old" laws to "new" crimes?

For instance, how would you charge someone who was accused of obtaining and misusing a computer password for their own gain, using traditional laws?

## feedback

Perhaps you answered "theft" - but is a password "property"? And if not, can it be stolen?

Forgery? But can a series of numbers count as something which may be forged?

Criminal damage? Has anything tangible been damaged?

Trespassing? But where?

The definitions provided in the old laws just do not cover these new situations adequately, and of course, there is often no case law precedent to help!

---

## Introduction to the Law

Page 8 of 9

---

Various pieces of legislation have been created to try and meet the challenges created by the new technology. We will look at an overview of the relevant law here, then consider each in detail in the rest of the unit.

## knowledge check

### Computer Misuse Act 1990

This Act was introduced in response to a Law Commission report following the case of *R v Gold* (explained in lesson 2). The Act covers:

- Basic hacking (attempting or achieving unauthorised access to a computer, or the data it stores)
- Using a computer with intent to commit another offence (fraud, blackmail or theft, for instance)
- Unauthorised modification to the contents of a computer (this would include writing or circulating computer viruses and Trojans)

There have been further modifications to the Act, which are explained in lesson 2.

### Data Protection Act 1998

This act concerns the handling of information relating to living people. It is the main piece of legislation governing the protection of personal data. The Act does not specifically mention privacy, but there are clear links with how an individual can control the use of their personal data.

Other Acts, including the Human Rights Act (1998) and the Freedom of Information Act (2000), have some bearing on this aspect of law and these will also be considered in lesson 3.

### Intellectual Property Law

Intellectual property law is a large and very complex area. It includes areas such as:

- Copyright Law,
- Patent Law, which is concerned with new inventions (such as hardware)
- Law of Confidence, which protects trade secrets, business know-how and information such as lists of clients and contacts
- Trade marks & passing off
- Semiconductor Regulations

In this section, we will focus mainly on the law concerning copyright. This includes the Copyright, Designs and Patents Act 1988 (CDPA) and the Copyright and Rights in Databases Regulations 1997 (CRDR).

## Contract and Liability

In law, a contract refers to a legally binding agreement, between two parties, which the law will enforce. 'Breach of Contract' refers to the fact that the contract is legally binding - if one party fails to honour their side of the agreement, the other side can sue.

Countless contracts are made daily - buying a loaf of bread involves you entering into a contract - an oral contract, but still a legal contract. Sometimes written contracts are required, and this is usually the case in business transactions.

Legal liability refers to the situation where a person is responsible for damage or loss. The concept of liability is found in many branches of law, including criminal law, the law of tort (civil wrongs, such as defamation & negligence) and contract law.

A key point here is that a person can be liable through their *acts*, but also through their *omissions* - such as occurs in the case of negligence.

Contract law is extremely complex, and you should always obtain appropriate expert advice. This is probably more so in this area than in the other areas we have looked at.

---

End of Page 8





**Knowledge Check**

Now check what you have learned!

**knowledge check** .....

To complete this knowledge check activity, see the Knowledge Check section at the end of this lesson.

.....

---

End of Page 9

rdi learning  
without  
boundaries



## Knowledge Checks

Module: Web Development Issues

Unit: Legal Aspects of Web Development

Lesson: Introduction to the Law

## Introduction to the Law - Page 4

# knowledge check

Drag the descriptions below into the correct part of the diagram to give a "side-by-side" comparison of the key points of criminal and civil law.

Criminal Law	Civil Law
	Plaintiff sues defendant
Breach of common law or statute law	
	Balance of probabilities
	Compensation
Imprisonment or fines	
Reported as R v White	

**Crown  
Prosecutes**

**Punishment**

**Damages or  
Injunctions**

**Beyond Reasonable  
Doubt**

**Reported as  
Smith v Jones**

**Governs Relations  
between two Parties**

Drag the correct label on to each box.

## Introduction to the Law - Page 9

### knowledge check

**Each one of the following statements about English law is either true or false – you decide:**

Common law is law which has been enacted by Parliament.

- True
- False

Precedent means looking at previous decisions made in legal cases.

- True
- False

R v Green refers to a criminal case.

- True
- False

Criminal law seeks to compensate the victim.

- True
- False

Civil cases must be proved beyond reasonable doubt.

- True
- False

European directives may be adapted by member states.

- True
- False

The European Court of Justice has binding precedent.

- True
- False

A person must do something wrong to be legally liable

- True
- False

**Please answer true or false to each of the statements above.**



## Knowledge Checks - Solutions

Module: Web Development Issues

Unit: Legal Aspects of Web Development

Lesson: Introduction to the Law

## Introduction to the Law - Page 4

### knowledge check

Drag the descriptions below into the correct part of the diagram to give a "side-by-side" comparison of the key points of criminal and civil law.

Criminal Law	Civil Law
Crown Prosecutes	Plaintiff sues defendant
Breach of common law or statute law	Governs Relations between two Parties
Beyond Reasonable Doubt	Balance of probabilities
Punishment	Compensation
Imprisonment or fines	Damages or Injunctions
Reported as R v White	Reported as Smith v Jones

Drag the correct label on to each box.



## Introduction to the Law - Page 9

### knowledge check

**Each one of the following statements about English law is either true or false – you decide:**



Common law is law which has been enacted by Parliament.



Precedent means looking at previous decisions made in legal cases.



R v Green refers to a criminal case.



Criminal law seeks to compensate the victim.



Civil cases must be proved beyond reasonable doubt.



European directives may be adapted by member states.



The European Court of Justice has binding precedent.



A person must do something wrong to be legally liable



True



False