

STRAND-2
WEEK-4
LAW

LAWS: The philosophical view:

- **Jean Jacques Rousseau** explains in the Social Contract, or Principles of Political Right: LAW is the rules members of a society create to balance the individual rights to self-determination against needs of society.
 - Laws are enforced by a set of institutions (police, courts, law-making bodies e.g. parliament).
 - Law is an enforceable rules created for social control.
- Laws are rules that mandate or prohibit certain behaviour; they are drawn from ethics, which define socially acceptable behaviours.

Difference: Law, Order, Justice

- **Law:** Enforceable rules created for social control
- **Order:** Absence of chaos resulting when laws are obeyed.
- **Justice:** Process in legal system to achieve fairness

Purpose of a Legal System

- Maintain peace and status quo
- Achieve justice
- Provide Police power to enforce social order
- Provide answers
- Provide Protection
- Enforce Intent
- Provide rehabilitation on deviance act (imprisonment)
- Facilitate commerce and business transaction

ETHICS & LAWS: The Difference

- The key difference between laws and ethics is that laws carry the **authority of a governing body**, and ethics is based on a common **fraternity**.
- Ethics in turn are based on cultural *values*: the fixed moral attitudes or customs of a particular group. In other words, laws may be enacted from existing codified codes of conduct.

Law as an Artificial Language (Coded structure/syntax)

Terms may have different connotations when used in our legal system. It is important hiring an attorney or lawyer.

- Legal terms are often not synonymous with everyday words.
- Legal terms often have more than one meaning (semantics)
- Legal terms often have no relation to everyday language.

Types of Law

- **Civil law** comprises a wide variety of laws that govern a nation or state and deal with the **relationships and conflicts between organizational entities and people**
- **Criminal law** addresses **activities and conduct harmful to society**, and is actively **enforced by the state**.

Law can also be categorized as private or public.

- **Private law:** Laws governing the relationships among individuals & legal entities. It encompasses family law, commercial law, and labour law, and regulates the relationship between individuals and organizations.
- **Public law** Laws dealing with the relationship between government & individuals. regulates the structure and administration of government agencies and their relationships with citizens, employees, and other governments. Public law includes criminal, administrative, and constitutional law.

Comparison of Civil and Criminal Law

	Civil Law	Criminal Law
Commencement of Action	Aggrieved individual (plaintiff/complainant) sues	
Purpose	<ul style="list-style-type: none">-Compensation-Deterrence	<ul style="list-style-type: none">-Punishment-Deterrence-Rehabilitation-Preservation of peace
Burden of Proof	Preponderance of the Evidence	-Beyond a reasonable doubt
Outcome	Liable/Not liable	Guilty /Not Guilty
Principal Sanction	<ul style="list-style-type: none">-Monetary damages-Equitable remedies	<ul style="list-style-type: none">-Capital Punishment-Imprisonment-Fines

Computer Related Law

- In most countries there is a considerable body of law that can apply to computer professionals -
 1. Contract law (Any agreement, licenses, purchase, lease, Services).
 2. Computer Intellectual property law (Copying, theft not permitted by the owner).
 3. Data protection law (Crime, Fraud and Abuse issues).
 4. Computer misuse law (illegal access, changes without permission).
 5. Computer evidence (forensic evidence or binary data relied on in court).

1. Contract law.

- The ownership of intellectual property of something you developed depends very much on your role when you developed it.
- The key phrase is *“I did it in the course of my employment”* - if you develop something in the course of your employment the ownership generally belongs to your employer.
- If you do something as a contractor, invariably the ownership belongs to you - you have not been employed; you have been brought in and contracted to develop something.

Elements of a Legally Enforceable Contract

1. Agreement comprised of an offer and an acceptance
2. Supported by consideration Common types of consideration include real or personal property, a return promise, some act, or a forbearance.
3. Made by parties with capacity to contract
4. Genuinely assented to { Consent. Implied assent, approved }
5. For a legal purpose Insurable interest
6. In writing when required

Terms for Understanding Contracts

- Express, implied, and quasi contracts
- Valid, voidable, and void contracts
- Executed and executory contracts
- Unilateral and bilateral contracts

Express, Implied, and Quasi Contracts

- The terms of an **express contract** are set down in a clear-cut fashion, either orally or in writing.
- The terms of an **implied contract** are not stated; they are determined from the surrounding circumstances or an established pattern of dealings. **The restaurant owner serves the food, and customer pays**
- A *quasi contract* is best viewed as a remedy that the courts utilize to return value to someone who has enriched another person in the absence of an express or implied contract between them. **Partial contract: The restaurant owner erroneously served food ordered by customer -1 to customer-2, Customer-2 can't pay that high food bill ? Who pays?**

Valid, Voidable, and Void Contracts

- A **valid contract** is one that is legally binding and enforceable.
- A *voidable contract* is a contract whose legal effect can be cancelled by one or more of the parties to it. Voidable include coercion, undue influence, misrepresentation or fraud, Lawyer contract, Tenancy
- A *void contract* is one that has no legal effect whatsoever. illegal subject matter such as gambling, prostitution, or committing a crime, deal with a mentally ill person/minors

Executed and Executory Contracts

- An *executed contract* is one that all parties have fully performed.
- An *executory contract* is one in which some performance has yet to be delivered.

Unilateral and Bilateral Contracts

- A *bilateral contract* is one that obligates all parties to it to perform according to their promises.
- A *unilateral contract* is one in which one party may be obligated to fulfill a contractual promise and then only if another party performs.

A car buyer may agree to pay the seller a certain amount of money in exchange for the title to the car.

The difference with above is academic: Both are closely similar.
Unilateral: On a radio announcement "If you see my lost dog, then call to alert me and get a reward of GHS 1,000" Listeners are not obliged to bring the dog to the owner before the reward.

Other Contractual Terms

- An **offer** is a proposal of a bargain or exchange to another party or parties.
- The person making the offer is termed the *offeror*.
- The person to whom it is made is termed the *offeree*.
- The *promisor* is the maker of a promise.
- The *promisee* is the person to whom the promise is made.
- The *obligor* is the person who must fulfill an obligation.
- The *obligee* is the person to whom the obligor is obligated.

Duties of a Contract

Contractual duties which you cannot avoid are:

1. **Fidelity** - Healing honestly and faithfully with people.
2. **Confidence** - How you respect assurances given to you.
3. **Culpability** - That you could be taken to court negligence of duty.
4. A contract must cover reasonable liabilities (NB: You can never limit or exclude liability for ***death or personal injury*** caused by negligence, ***liability for fraud***, or ***strict liability***. If you attempt to do so in a clause, the whole clause could be ***unenforceable***.)

IT CONTRACTS

IT Contracts: Software Ownership

- If you are producing computer software with the intent of licensing the software to whoever commissioned it then you own the software.
- If you produce a piece of **bespoke software**, whoever commissioned it has paid you for, and therefore owns what you have developed; unless you explicitly state in the contract that you intend to license the software.

- **2. Intellectual property** law centres on two main moral rights.
 - **The right of paternity**, the right to be recognised as the person who created something. Patent
 - **The right of integrity**, the right not to have your work tampered with by someone else.
- **Copyright protects** original works, sound recordings, and typographical layouts.
- **Duration:** Copyright lasts for 70 years after the death of the person who created it.
- In the case of a computer generated work, copyright expires 50 years after the work's creation.

Patents protect work for 20 years.

- Patented ideas are generally novel and not obvious;
- When you patent something you are expected to use it.
- In the UK a design right for designs such as printed circuit board layouts is recognised.

3. Data Protection Law

- The most important thing to remember is that the **subject** of personal data has the right to view and correct that data.
- Personal data should be accurate, adequate - sufficient for its purpose, relevant, and kept up to date.
- Personal data should not be kept for any longer than is necessary.
- All appropriate technical and organisational measures should be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of personal data.

For computer data you should make sure that:

- You have appropriate **backups** of the data.
- You take appropriate security measures to secure the data **(CIA)**.

4. Computer Misuse Law

- Refers to unauthorised access and unauthorised modification.
- Unauthorised access of systems, programs, and data is unacceptable while unauthorised modifications through editing and deleting are forbidden.
- It has been recognised that, through the use of computers, it is possible to commit a crime in a country without actually being present in that country.
- Modern legislation can now state that it is irrelevant if you are in the country where the crime took place as long as it can be proved that you were responsible for the crime.

5. Computer Evidence in a Law Court

- This concerns what evidence is permissible in a court of law.
- Evidence may be invalid if it is viewed after the event. An example of this is if you view log files with an editor after an intrusion, this will invalidate the logs as evidence as it is deemed that they might have been altered after the intrusion.
- Under normal circumstance, specialists are brought in to follow audit trails back to the place of the attack.
- Amateurs could invalidate evidence or unwittingly tip off perpetrators.

THANK YOU