

LAW AND THE LEGAL SYSTEM

Chapter-I

CS449-Professional Issues in Information Technology
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LESSON OBJECTIVE

After reading this chapter, you should:

- *understand the nature of the law and the difference between criminal law and civil law;*
- *understand the terms legislature, judiciary and executive and appreciate the variety of ways in which these concepts are implemented in different countries;*
- *understand the ways in which law comes into existence.*



WHAT IS THE LAW?

- We shall define law as *‘a set of rules that can be enforced in a court ’*
 - These rules are different in different countries
- The best known examples of such differences are:
 - Family law or sale of goods etc.
- From the point of view of the information systems, these differences are in the rules governing:
 - Data protection,
 - The rights of access to information, and
 - The misuse of computers which is much more significant.

WHAT IS THE LAW?

- As well as having different laws, as different countries have different legal systems, i.e.
 - different systems of courts,
 - different rules for court procedure,
 - different procedures for appealing against a court decision, and so on.
- The word *jurisdiction* is used to mean the area covered by a single legal system and set of laws. (An area within which a particular system of law is used)

WHAT IS THE LAW.....?

- Even within a single country, the law and the legal system may be different in different areas.
- This is most obvious in large countries with a
 - Federal system of government,
 - Where the country is divided into a number of states,
 - Each of which can make its own laws in certain areas.
- Obvious examples are India and the United States of America (USA).

WHAT IS THE LAW....?

- In the United Kingdom, for historical reasons, Scotland, Northern Ireland etc. have different legal systems & different laws, however their laws are, in almost all cases, the same as those of England and Wales.
- When we refer to British law or UK law, we shall be referring to laws that apply across the UK.
- Sometimes we shall refer to the law of England and Wales, indicating that there are differences elsewhere in the UK.
(Organization of Islamic Cooperation (OIC))

The distinctions between Civil Law and Criminal Law



There are basically two types of law:

Civil law &
Criminal law

THE CRIMINAL LAW

- Criminal law represents Society's view of what is acceptable behavior and what is not.
- The police, and some other agencies, are responsible for apprehending those who break the criminal law.
- Society, in the form of the Prosecution Services, brings them before a court.
- Punishment takes the form of imprisonment, a fine, community service, etc.



EXAMPLES OF CRIMINAL OFFENCES

- theft;
- murder;
- fraud;

IT based Criminal Offence

- obtaining unauthorised access to a computer;
- knowingly selling pirated software.

THE CIVIL LAW

- Civil Law is concerned with the rights and duties of citizens in dealings with other citizens
- Action is initiated by the aggrieved party (the *claimant*, formerly – and still in the USA – the *plaintiff*).
- There is no element of punishment and no involvement of either the police or the Prosecution Services.
- If the plaintiff is successful, the court may order the defendant to pay compensation or to carry out certain actions or to refrain from carrying out certain actions.

- Lending and borrowing money
- Entering into contracts
- Disputes with neighbours
- Getting married
- Inheritances and wills



BRANCHES OF CIVIL LAW



TORT



CONTRACTS



PROPERTY



FAMILY

EXAMPLES OF CAUSES FOR ACTION UNDER THE CIVIL LAW

- Breach of contract;
- Tort; (A wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation).

IT Based Civil Offence

- Defamation (e.g. publishing false information damaging to someone's reputation on a website or elsewhere);
- Using pirated software.

STANDARDS OF PROOF

- To convict someone of a criminal offence, the prosecution must prove *beyond reasonable doubt* that the defendant is guilty.
- To obtain a judgement in a civil court, it is only necessary to establish the facts *on the balance of probabilities*.

NATURAL PERSONS AND LEGAL PERSONS

- The civil law is concerned with relationships between people.
- Companies, universities, councils are not people.
- In order to make the civil law applicable to such organisations, they must be *incorporated* , a legal process that gives them the status of a person.
- Such organisations are known as *legal persons* as opposed to *natural persons* , i.e. real people.

You cannot sue the Computer Science Department because it is not a legal person. But you can sue the University as a whole because it is incorporated and hence is a legal person.

HOW THE LAW IS MADE

In England, Wales, the USA, and most countries in the British Commonwealth, law, both civil and criminal, is made in two ways:

- by act of parliament. This is known as *statute law* ; (legislation)
- by the judgement of judges. This is known as *common law* .

COMMON LAW

- It works by precedent, i.e. it bases judgements on what has been decided by courts in the past.
- But a judge may decide that times have changed and a previous judgement is no longer appropriate.
- The decisions of courts in all the countries that use the common law are taken into account, so that a court in the USA may base its decision on what was decided by a court in Singapore.
(UNSC-United Nation of Security Council)

Computer Misuse Act 1990

UK Public General Acts ▶ 1990 c. 18 ▶ Table of contents

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More Resources ?

Plain View

Print Options

What Version ?

● Latest available (Revised)

● Original (As enacted)

Opening Options ▼ ?

More Resources ▼

Changes to legislation: Computer Misuse Act 1990 is up to date with all changes known to be in force on or before 04 September 2020. There are changes that may be brought into force at a future date. ?

Introductory Text

Computer misuse offences

1. Unauthorised access to computer material.
 2. Unauthorised access with intent to commit or facilitate commission of further offences.
 3. Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.
- 3ZA. Unauthorised acts causing, or creating risk of, serious damage
- 3A. Making, supplying or obtaining articles for use in offence under section 1, 3 or 3ZA

Jurisdiction

4. Territorial scope of offences under this Act.
5. Significant links with domestic jurisdiction.
6. Territorial scope of inchoate offences related to offences under this Act.
7. Territorial scope of inchoate offences related to offences under external law corresponding to offences under

CREATING NEW STATUTE LAW: THE LEGISLATIVE PROCESS

- publication of a *green paper* ;
- publication of a *white paper* ;
- introduction of a *bill* (first reading) in the House of Commons;
- the bill is discussed on a number of occasions and changes are made;
- the bill goes to the House of Lords, where the same thing happens;

CREATING NEW STATUTE LAW

- If the Lords have amended it, it goes back to the Commons;
- Otherwise it receives the *royal assent* (which does not involve the Queen) and becomes an *act* of parliament, and part of the law.
- Acts of parliament are usually referred to by their title and the year in which they received the royal assent, e.g., the Computer Misuse Act 1990.

CASE LAW

- Despite the legislative process, an act of parliament may not be clear.
- In order to clarify the law, a judge has to decide what Parliament meant.
- This means waiting until a case comes to court.
- The term *case law* refers to decisions made by judges in interpreting the meaning of acts of parliament.

SECONDARY LEGISLATION

- An act of parliament often gives the government power to introduce regulations (or *statutory instruments*) that are laid before Parliament but are debated only if a member specifically calls for a debate. Such regulations are known as *secondary legislation* .
- Examples include:
 - Copyright and Rights in Databases Regulations 1997;
 - Companies (Single Person Private Ltd. Companies) Regulations 1992;
 - Transfer of Undertakings (Protection of Employment) Regulations 1981.

EUROPEAN UNION LAW

- The EU issues directives, approved by the European Parliament and the Council of Ministers.
- Member states are then required to enact legislation to give effect to these directives.
- The European Court of Justice handles cases where the interpretation or implementation of directives is in question.

LEGAL SYSTEMS IN OTHER COUNTRIES

- The distinction between civil and criminal law is universal.
- Common law is largely restricted to countries that have been ruled by Britain.
- European countries other than the UK have legal systems based on *Roman law* , which involve written civil and criminal codes.

THE LEGISLATIVE PROCESS IN OTHER COUNTRIES

- Most large countries have *bicameral legislatures* (having two branches, chambers, or houses as a legislative body). Small ones (e.g. Singapore) usually have unicameral ones.
- In some countries the second chamber has a revising function only while in others (e.g. the USA) it can also initiate legislation.
- Federal states (e.g. Australia, the USA, India) duplicate the legislative structure at the level of the individual state. There is often tension between state law and federal law.

CONSTITUTIONS

- Most countries (but not the UK) have constitutions.
- A constitution describes:
 - how the country is governed;
 - the rights of the citizens;
 - how the law is made and how it is enforced.

CONSTITUTIONS....

In countries with a written constitution, such as the USA, there is a Supreme Court, which can strike out legislation that is contrary to the constitution.

In the UK, the doctrine of the *sovereignty of Parliament* , means that if Parliament passes legislation, the courts cannot block it.

SUMMARY

- criminal law and civil law;
- common law, statute law and case law;
- how laws are made;
- primary and secondary legislation;
- different legal systems in different countries;
- constitutions.