

# Legal and Professional Issues

## Theme 1 Notes

### Sources of Law

➤ *What is law? Why do we have law? Where does it come from?*

#### Sources of Law:

- Law refers to a set of rules and regulations that govern the behaviour of individuals and society as a whole.
- It is established to maintain order and enforce rules to prevent chaos and promote justice.
- Law comes from various sources such as legislation, constitution, common law, case law, and international law.

The Code of Hammurabi was one of the earliest and most complete written legal codes and was proclaimed by the Babylonian king Hammurabi, who reigned from 1792 to 1750 B.C. Hammurabi expanded the city-state of Babylon along the Euphrates River to unite all of southern Mesopotamia.

#### Examples of some laws:

- The ten commandments.
- If one break a man's bone, they shall break his bone. If one destroy the eye of a freeman or break the bone of a freeman he shall pay one gold mina. If one destroy the eye of a man's slave or break a bone of a man's slave he shall pay one-half his price.

➤ **What law do ITC Professionals need to be aware of?**

IT professionals need to be aware of various laws related to contracts, torts, data privacy, intellectual property, and criminal law.

- **Contracts:** This includes laws related to e-commerce, employment, IT projects, SLAs, trade, and T&Cs. Components of a contract include offer, acceptance, consideration, and legal intent.
- **Torts:** This involves intentional torts such as assault, battery, false imprisonment, fraud/deceit, trespass, and defamation, as well as negligence like slip and fall accidents, motorcycle accidents and pedestrian accidents and strict liability cases such as defective products (product liability), animal attacks and abnormally dangerous activities. Torts also involve elements of duty, breach of duty, causation, and injury.
- **Data Privacy:** IT professionals need to be familiar with laws related to data access and portability, accountability obligation, lawful processing, transparency requirements, data protection by design and default, risk-based approach, data security, breach notifications, data protection impact assessments, data protection officers, and controller and processor relationships.
- **Intellectual Property:** Laws related to copyright, trademarks, patents, design rights, and database right.
- **Criminal:** This includes cybercrime and hacking.

➤ **Modern Irish Law**

**Roots in English Feudal Law:**

Introduced to England by William the Conqueror

- **'Curia Regis' - King's Court (Tenants in Chief):** structure of administration based on existing local laws imposed his feudal system of ownership and control on top standardized and shaped a 'Common Law'.

- **Common Law:** the body of law developed by the king's courts was common to the whole realm. Found, not in the customs of ancient England, but in the recorded decisions of the courts.
- **Later in Ireland:** Irish ways and customs were disregarded Common Law of England superseded this.

➤ **Reception of Legislation and Common Law**

The reception of legislation and common law in Ireland is governed by Article 50 of Bunreacht na heireann, and the sources of Irish law include common law, legislation, the constitution, and European law.

➤ **Classification of Law**

- **Civilian systems** of law are based on principle and when addressing a problem, assess what to do in light of the legal principle that applies to that problem.
- **Common law systems** are based on precedent and assess a problem by examining the decisions that previous courts reached in addressing analogous problems. There are many mixed systems, including the legal system in Scotland.
- **Public law** refers to the body of law, including local government law and constitutional law, criminal law which regulates the activities of the state vis a vis the private citizen.
- **Private law** refers to the body of law, which regulates the activities of individuals, often called black letter law. Includes: family law, law of succession, contract law, tort and law of property.

➤ **Europe**

**European Union:**

## **Origin**

1952: European Coal and Steel Comm.

1993: European Union was established by the Maastricht Treaty.

European Union in fact consists of three Communities:

European Community (EC) forms the bulk of the European Union, the ECSC and Euratom.

## **EU Institutions**

Council of Ministers, Commission, European Parliament, Court of Justice and the Court of Auditors.

**Council of Ministers:** the highest decision-making and law-making body.

Presidency of the Council rotates among members every six months, which lack of continuity can affect its effectiveness.

Issues Regulations, Decisions and Directives which are legally binding.

Resolutions, Conclusions, Recommendations, and Opinions which are not legally binding.

The European Parliament is consulted by the Council on proposals, and where co-decision procedure (introduced in Maastricht in 1992) is used for law-making.

The Parliament has a right to veto (but usually secures amendments instead). Decision-making in the Council usually takes place on the basis of qualified majority voting.

**European Commission** has extensive powers, and in particular the sole right to initiate legislation Commission is the 'government of the EU.

It is divided into Directorates, e.g. Directorate of the Internal Market and the Directorate of Justice and Social Affairs with regularity.

**European Parliament** provides democratic legitimacy to the law-making process within the EU.

Has no right to introduce legislation itself and limited powers to veto law-making by the EU in general.

Recently, its 2005 referral to the European Court of Justice of the Commission-sponsored agreement with the US administration for the transfer of airline passenger data to the US could be seen as increasing value of the EP in the legal process.

**European Court of Justice (ECJ)** — [www.curia.eu.int](http://www.curia.eu.int) - which decides matters which are referred to it by domestic courts within the European Union. The ECJ ensures the observance of law in the interpretation and application of the EU Treaty and the provisions laid down by the competent Institutions. There is also a Court of First Instance (CFI), since 1989, which deals with direct actions brought by natural and legal persons but which cannot give Preliminary Rulings (see below), and a Court of Auditors which oversees the implementation of the budget of the EU.

Procedure in the ED differs fundamentally from procedure in the domestic courts. First, it is important to note that there is no doctrine of stare decisis, or binding precedent. Any judgment is only binding on the parties to the dispute in question, and does not bind the ECJ when examining any future case. The decisions of the ECJ are important reference points for interpreting issues of European Union law.

**European law** found principally in the EC Treaties (e.g. The Treaty of Rome and the Treaty on European Union (1992) i.e. The Maastricht Treaty), in secondary EC legislation in the shape of Regulations, Directives and Decisions in the rulings and decisions made by the European Court of Justice.

**Regulations** apply in all Member States as law without need for further action.

**Decisions** are similar but binding only on 'those to whom they are addressed'.

**Directives** are binding in terms of implementation, but the form of implementation into domestic law is left to each Member State. In the Francovich v. Italy case the European Court of Justice gave a citizen the right to damages where a Member State had failed to transpose a Directive into domestic law.

**Opinions, Recommendations, Resolutions and Declarations** are not enforceable, but can guide the courts on the underlying purpose of Community law.

## **Directives & Regulations**

### **Some examples of EU Directives:**

- The Directive on Privacy and Electronic Communications (ePrivacy Directive)
- The Directive on the protection of personal data (General Data Protection Regulation (GDPR))
- The Directive on Energy Efficiency

### Some examples of EU Regulations:

- The Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
- The Regulation on the protection of the European Union's financial interests
- The Regulation on mutual recognition of protection measures in civil matters

**Legislative process** normally initiated by the Commission intimated to Parliament and adopted by the Council of Ministers (or by the Council and Parliament).

Depending on the reaction of Parliament and/or the Council, the Commission has the option to alter its proposal.

The Council and Parliament may each also request the Commission to submit proposals.

The role or participation of the Parliament in the legislative process depends on the legislative procedure being used by the Commission.

### ➤ *Role of Courts as a Source of Law*

#### **Case law is precedent.**

Which is to say that any instances where the same or similar facts have been applied to a rule (whether constitutional, statutory or an SI) in the past are used by subsequent courts to clarify the rule to be followed in another case. Result case law tends to be more reliable, or at least not changed without good reason Based to the rule of **stare decisis** a Latin expression meaning binding precedent,

Requires a court to apply a previous case decision in deciding the law in a present situation.

Based on the premise that like cases should be decided in the same way,

Part of the doctrine of legal certainty

Doctrine of binding precedent means that the **ratio decidendi** (reason for deciding or rule of law) from a higher court is binding on a lower court.

Ratio decidendi is only binding to the extent that it is relevant for the claims being determined, or in point .

**Obiter dictum** are comments made by a judge in determining a case but which are not relevant for the claims being determined in that case, and which are for that reason not binding on another court. e.g., Central London Property Trust Ltd v High Trees

## **Persuasive precedent**

Where a court though not bound may still follow a decision from another court.

Courts will also look further afield for persuasive authority — and therefore decisions in the United States, Australia, France, Netherlands, Germany, New Zealand, South Africa and Canada, to name a few, will be relevant

## **Benefits of Precedent**

Consistency or Fairness:

- Similar cases are treated in a similar manner,
- Essential in a democracy.

Certainty

- Easier to predict the result of a case which is of benefit to litigants and their legal advisors.
- Saves Time
- Because most cases will be covered by an existing precedent.
- If there is no similar case, a judge will create a new precedent.

Realistic

- 'forged on the anvil of reality. (Contrast to legislation)

Legislation is intended to be clear and unambiguous. However, it is possible that the form of expression used in legislation is not clear — and in these circumstances, the statute in question is capable of being interpreted in different ways. There are a number of techniques used by the courts to interpret statutes.

## **Rules for interpretation**

Ejusdem generis — "of the same kind, class, or nature" — where a statute contains general wording after a list of specific items, then the generality of those words should be read as being limited by the items listed to being items like those specifically listed.

Expressio unius est exclusio alterius — "expression of one thing is the exclusion of another" — which means that including one specific item in a list or specifying one thing indicates that the legislature intended to exclude all others. This can only operate where words are not illustrative only.

Noscitur a socia — "it is known from its associates" which means that ambiguous words and phrases can be given a meaning from surrounding words and context.

Rule of Lenity -an approach which finds that criminal statutes should be construed narrowly.

Over time the courts have adopted different approaches to interpreting statutes

**Literal approach:** where words are given their plain and ordinary meaning whether or not this leads to an absurd or harsh result,

**Golden rule:** the current fashion is to interpret any ambiguous words in a statute in such a way as to give those words their plain and ordinary meaning, unless to do so would lead to an absurd result.

**Mischief rule:** allows the court to look behind the ordinary meaning of a word or phrase to identify the intent behind the expression given to it by Parliament (i.e. what 'mischief did the wording seek to address).

**Purposive approach:** which aims to interpret legislation in keeping with the purposes of the legislation and this approach is commonly used to interpret EU law.

### ➤ Courts Structure

Supreme Court

Court of Appeal

High Court

Central Criminal Court

Circuit Court

Special Criminal Court

District Court

### ➤ Irish Experience

#### **Pre-Norman**

In pre-Norman Ireland, the main source of law was Brehon Law, an oral Gaelic legal tradition. It was based on fairness, compensation, and the common good and applied by local Brehon Courts. It covered various topics. Early Irish law was also influenced by Christian, Norse, and English law.



## 1450's

In the mid-15th century Ireland, the sources of law were a mix of Brehon Law, early Christian law, Norse law, and English law. Brehon Law was dominant in western and northern regions, while English law was mainly applicable to Anglo-Norman lords. The decline of Brehon Law occurred as the English Crown tried to enforce English law throughout Ireland.

## Celtic European Origins

Ireland originally part of a Celtic world which included northern Europe.

A common culture, but no centralised state power.

A "warrior culture, which valued bravery and fostered conflict.

Territories not fixed - 'wanderlust of the celt'.

Enclosed timber dwelling-houses in protective stone or earthen enclosures.

**Hierarchical structure:** king/learned men/druids at the top, slaves at the bottom.

Shared some legal concepts, if not entire legal systems; similar to concepts found in customary (tribal) laws in Africa, America and Asia.

No prisons; wrong was redressed by monetary compensation.

A debtor could be bonded to his creditor and sold to another, until the debt was repaid.

Were relatively wealthy, with high protein diet, using salting and smoking as methods of preserving meat, cheese and butter-making as means of preserving dairy produce.

Engaged in farming, (grain, cattle, sheep and dairy products), fishing, hunting, bee-keeping, metal and salt-mining, metal work (iron, bronze, gold and silver), clothes-making, (woolen, leather, furs) salting of meat and fish, cheese-making.

Did not have reading or writing; - learning were memorised and passed orally from generation to generation.

Declined with Vercingetorix (Arverni tribe) (52 BC) defeat by Caesar.

## Celtic Ireland BC

Legal system, known as the Brehon Laws.

Laws in cryptic language.

Triads: groups of three things or characteristics.

Responsibility of the fili (poets or learned people).

Verse formed discourse format (Question and Answer).

Passed on word perfect from one generation to another.

"There are three foundations of law and custom: order, justice, and peace."

"Three foundations of success: a silent mouth, a careful ear, and a fitting action."

Lawyer spent up to 20 years learning these laws verbatim.

Tara, in County Meath, was a ritual centre from Neolithic times (4,000 BC).

Whoever ruled Tara was considered High King of Ireland.

Feis: a triennial gathering was held in Tara, attended by people from all over Ireland, with games, music and a conference of the brehons.

Brehons = judges; had to know and apply the law.

King was subject to the Law.

Status: Kings = druids = fili

Next in structure: Brehons, medical specialists and harpists. Princes (landowners with a certain number of tenants) landowners and then free tenants' client-tenants (who were advanced cattle as well as land). At the bottom unfree tenants and bonded servants. All free men attended a king's council also defended the realm. Approx. 150 kingdoms in Ireland. In return for protection Local kings paid tribute to regional and/or provincial kings, provincial kings paid tribute to a High King.

Christianity merged with Brehon Law.

Druids gradually replaced by Clergy.

Kings' selection by Magic Rites replaced by election within the dead king's kin.

Clergy demanded punishment for crimes.

A Life for a Life.

Death penalty for Rape.

Mutilation for stealing.

Monogamy to replace Polygamy.

Where Christian sexuality required chastity outside of monogamous marriage.

Brehon law allowed polygamy, divorce and trial marriages.

Sexual union (except by a prostitute) resulting in birth gave rise to rights and duties in law.

Levels of marriage:

Highest: formal agreement for marriage between two propertied persons

Lowest: being a rape, placing obligations on the man

Bible v. Folklore: clergy tended to disregard the large body of learning and wisdom in folklore.

Relied on the interpretation of history, philosophy and politics found in the written Bible texts.

After Colmeille: the clergy sponsored the recording in written form of much of the folklore and Brehon Laws

### **End of Tara (554 AD)**

Implementation of “Life for Life” for protection of the lower orders as previously rich people often abused their positions, as the murder or rape persons of low honour-price only required payment a handful of silver to redeem themselves in law.

Manifest Function of this demand was to protect common people from abuse by wealthy people.

Latent Function: As with any other law, it is the powerful who are best at turning the law to their own advantage.

High King: Diarmuid took advantage of the tentative change of law to put a disagreeable subject to death.

Saint Ruadhan (or Rodan) went to Tara with his followers in protest fasted against the king was believed he cursed Tara

Diarmuid's successor left Tara for good.

### **Fall of Tara: consequences**

Political instability/stalemate

High Kingship now based on balance of power.

End of triennial Tara Feis

No conferences of Brehons

Little subsequent updates in Brehon Laws

### **Drom Ceat, 575 AD**

Convention called to resolve conflict.

Colmcille: defended Brehon Laws

Canon Law: a guide to Christian conscience

Brehon Law: practical solutions in Real World

### **Result:**

retention of the Brehon Laws.

No further clergy's opposition to Brehon Laws

### **Conquest of Ireland: 12th Century**

After claims by Henry II

Normans arrive - Introduced English feudal law.

Up to 15th Century: English rule limited to the Pale.

Normans "as Irish as the Irish themselves"

16th - 17th Century: Conquest Completed

1607: English Law extended to all Ireland

### **Parliament in Ireland**

The Parliament of Ireland set up around 1310, had limited powers being allowed to consider only bills presented by the king's representative, In addition the parliament of England held itself entitled to legislate for Ireland.

### **Poynings' Law**

An Irish Statute which declared that all English statutes would carry in Ireland.

Effect Limited the power of Parliament.

Irish privy council decides Irish bills.

Later ratified by Crown

Irish Parliament impotent in effect

e.g., Statute of Frauds 1677>>1695 in Ireland

### **English Supremacy**

Dependency of Ireland Act 1719

London has right to directly legislate in Ireland

Panic of American Ind. & Irish Volunteers

Grattan's extracts Irish Leg. Ind. thru

Dependency of Ireland Act 1782

Repeals both earlier act & Poynings's law

1728: Rebellion

1800: Act of Union passes in Dublin & London

"United Kingdom of Great Britain and Ireland"

### **Modern Irish History**

Jan 1919: SF members meet in Dublin.

Constituted themselves as Dail ieann.

Drew up "Constitution of Dail Eireann"

Promulgated

Declaration of Independence

Democratic prog. > reaffirm Proclamation 1916

British Parliament reacted.

Government of Ireland Act 1920

Partition North/South

Dec. 1921: Anglo-Irish treaty signed.

Irish Free State, Dominion status

## **Constitution of Irish Free State**

Passed in Oct 1922

Innovative organs of state/Fund. Freedoms

Yardstick for legitimacy of all other laws

Declared authority: God > People > Government.

Did not create a new set of laws - Declare old law existed until repealed

Some contentious issues

Oath of allegiance

Office of Governor General

References to Crown

Abdication of King Edward 1936 provides opportunity.

1937: Constitution of Ireland

1948: Republic of Ireland Act ~ removes External Affairs from Crown

## ➤ **Parliament**

### **Constitutional Developments Parliament**

Norman kings continually at war in Europe.

King had to constantly look to their barons for funds.

King called meetings of the great vassals (barons, lords, and bishops) to parley ("parler")

In order to vote money transfers to the king.

Later parliament began to present petitions.

"Bills" in return for voting for money

"Bills" became Acts (or Statutes) of Parliament legally binding due to the king's signature.

### **Magna Carta, 1215**

In 1215 a group of Barons waylaid King John at Runnymede,

forced him to sign a document, the Magna Carta

curtailed the arbitrary powers of the king.

Some Irish barons were involved.

William Marshall, Earl of Pembroke

Norman-Irish were aware of how an Irish king's powers were curtailed under Brehon Law

King had to recognize the rights and liberties of the lords and barons, of the Church, and of free men (that is, land owners)

Introduced "Juries":

No freeman was to be convicted henceforth for any crime, except by the verdict of a jury of his peers.

### **Houses of Parliament:**

1265: City and Borough Reps were now called to parliament (Commons).

Lords and the Commons met separately origin of the House of Commons and the House of Lords.

### **Bill of Rights, 1689 Power shifts to Parliament:**

After the restoration of the Stuart kings, James II began to act in an arbitrary manner, ignoring parliament.

The parliamentarians removed him from the throne and offered the kingship to his son in law, William of Orange.

conditional on William's signing the Bill of Rights, which obliged him to call the parliament at least once every year to approve the king's proposed expenditure and the taxation of the realm.

Since then parliament has been the real power, the monarch's signature being a rubber stamp on the law.

### **➤ Common Law**

### **Hastings 1066**

Common law refers to a system of law that is based on judicial precedents, rather than on written laws. It originated in England after the Norman Conquest in 1066 and has been influential in the development of the legal systems of many countries, including the United States. The Battle of Hastings in 1066 marked the Norman Conquest of England and the beginning of the common law tradition.

### **First Millennium: England:**

Roman conquest by Caesar around 55 BC

Brought peace and prosperity.

Introduced concept of equality for Roman citizen

500 AD Roman army leave, and chaos ensued.

England invaded by the Angles and Saxons.

Roman Law and learning left no trace.

Invaders' laws varied across the country

Crude concepts such as trial by combat, ordeal or immersion,

Compurgation (repeating an oath word-perfect without stumbling).

Tithing: used to force communities to police themselves

Later Christian missionaries from Ireland/the Continent gradually restored Christianity and literacy.

Viking invasions: produce further period of chaos.

### **English Feudal Law:**

William ruled through land ownership.

He owned all England as king.

He granted large segments to his great vassals (Barons and Lords)

Subject to Service, Fealty and Homage

Otherwise forfeited - Coroner

They sub-granted to mesne Lords, etc.

Land Occupiers: serfs: no title: tenants at will

Land granted to Bishops: different duties.

### **Curia Regis**

Assisted king with the legislative, administrative, judicial process.

Later evolved into courts - Specialisation through Divisions

Landlords held Manorial Courts



Existing local courts were continued

Later Great vassals called to parley re taxes (Origin of Parliament)

### **Feudal Courts**

Sheriffs supervised Manorial Courts

Justices of the Peace supervised Local Courts

Soldiers assisted Sheriffs and Justices Enforcement By tithing:

dividing the population into groups of 10.

a serious offence was committed by any.

member of the tithe, the entire tithe was punished.

the population policed themselves.

William made few new laws/decrees.

Courts' function: to enforce existing law.

Feudal Supervision of Local Courts

Uniformity achieved.

through central control of the court system by sheriffs and justices

the centralized sitting of the principal courts.

### **Evolution in Common Law:**

Stare Decisis (=Precedent):

A matter was decided by the king's court,

Meant all similar future cases would be decided in the same way

Therefore, Common Law:

is found in decisions of the judges/not in local customs.

Ancient custom is not usually a source of law today.

rare exceptions include "the Foyle Fisheries" case.

## Theme 2 Notes

### Intro to Ethics

#### ➤ History

- Socrates
- 470-399 BC
- No writings
- Influenced many others, such as Plato, Aquinas
  
- Epicurus
- 341-270 BC
- Materialist
- Hedonism based on pleasure & pain
- Death should not be feared

#### ➤ The Trolley Car - Thought Experiment:

#### **The Trolley Car Problem:**

##### **Scenario 1**

A trolley is running out of control down a track. In its path are five people who have been tied to the track by a mad philosopher. Fortunately, you could flip a switch, which will lead the trolley down a different track to safety. Unfortunately, there is a single person tied to that track. Should you flip the switch or do nothing?

#### **Updated Trolley Car Problem:**

##### **Scenario 2**

As before, a trolley is hurtling down a track towards five people. You are on a bridge under which it will pass, and you can stop it by dropping a heavy weight in front of it. As it happens, there is a very fat man next to you - your only way to stop the trolley is to push him over the bridge and onto the track, killing him to save five. Should you proceed?

## ➤ *Overview*

- ✓ Introduction
- ✓ Subjective relativism
- ✓ Cultural relativism
- ✓ Divine command theory
- ✓ Kantianism
- ✓ Act utilitarianism
- ✓ Rule utilitarianism
- ✓ Social contract theory
- ✓ Comparing workable ethical theories
- ✓ Morality of breaking the law

## **The Ethical Point of View**

Virtually everybody shares "core values."

- Life
- Happiness
- Ability to accomplish goals.

Two ways to view world.

- Selfish point of view: consider only own self and its core values.
- Ethical point of view: respect other people and their core values

## **Defining Terms**

**Society:** Association of people organized under a system of rules

- **Rules:** advance the good of members over time

**Morality:** A society's rules of conduct (e.g., Competition)

- What people ought / ought not to do in various situations (what about conscription?)

**Ethics:** Rational examination of morality

- Evaluation of people's behaviour

## **Why Ethics?**

Not everyone can do what they want.

**Ethics:** A way to decide the best thing to do

New problems accompany new technologies.

- Email v. SPAM
- Libraries V. WWW ads

Common wisdom is not always adequate.

➤ **More on Ethics**

Ethics: rational, systematic analysis

Doing ethics": answers need explanations.

Explanations: facts, shared values, logic

Ethics: voluntary, moral choices

Workable ethical theory produces explanations that might be persuasive to a sceptical, yet open-minded audience

➤ **Subjective Relativism**

**Relativism**

No universal norms of right and wrong

One person can say "X is right," another can say "X is wrong," and both can be right

**Subjective relativism (SR)**

Each person decides right and wrong for himself or herself.

"What's right for you may not be right for me."

**Case for Subjective Relativism**

Well-meaning and intelligent people disagree on moral issues.

Ethical debates are disagreeable and pointless.

Subjective Relativism

### **Case Against Subjective Relativism**

Blurs distinction between doing what you think is right and doing what you want to do

Makes no moral distinction between the actions of different people Hitler v. M.Teresa)

Might add that I can do what I want so long as I don't harm others.

But then we must agree a meaning for harm. Now Inconsistent!

Tolerance is a vital ingredient for a modern, peaceful and pluralistic society

SR and tolerance often equated, however are two different things

People ought to be tolerant (Universal Rule)

However, SR says that there should be no universal rules.

Decisions may not be based on reason.

e.g., Torah cards or dice rolling

Not a workable ethical theory as it would not persuade others in justification

### ➤ **Cultural Relativism**

What is "right" and "wrong" depends upon a society's actual moral guidelines

Anthropologists have identified 'folkways'.

Morality of a group is the sum of taboos & prescriptions.

These guidelines vary from place to place and from time to time.

A particular action may be right in one society at one time and wrong in other society or at another time

Hampden-Turner/Trompenaars study on right & wrong of driving dilemma in 46 countries.

### **Case for Cultural Relativism**

Different social contexts demand different moral guidelines

As humans move from survival to mass production (pollution, common fisheries)

It is arrogant for one society to judge another.

Modern person cannot fairly judge someone in C15th.

Morality is reflected in actual behaviour.

"Do as I say, not as I do".

You are riding in a car driven by a close friend. He hits a pedestrian. You know he was going at least 35 miles per hour in an area of the city where the maximum allowed speed is 20 miles per hour. There are no witnesses. His lawyer says that if you testify under oath that he was driving only 20 miles per hour, it may save him from profound consequences. What right has your friend to expect you to protect him?

A. My friend has a definite right as a friend to expect me to testify to the lower figure.

B. He has some right as a friend to expect me to testify to the lower figure.

C. He has no right as a friend to expect me to testify to the lower figure.

What do you think you would do in view of the obligations of a sworn witness and the obligation to your friend?

Y. Testify that he was going 20 miles an hour.

N. Not testify that he was going 20 miles an hour.

### **Case Against Cultural Relativism**

Because two societies do have different moral views does not mean they ought to have different views

(Drought: construct aqueduct v. human sacrifice)

Doesn't explain how moral guidelines are determined

e.g. with the arrival of new technologies - are downloads always right?

Does not explain how guidelines evolve.

Consider the integration of US universities in the 1960s - Rosa Parks, then legally wrong, but morally right

Provides no way out for cultures in conflict.

Consider the Gaza conflict.

Because many practices are acceptable does not mean any cultural practice is acceptable (many/any fallacy)

Societies do, in fact, share certain core values (possible basis for universal value system) in order to survive

Caring for new borns

Telling the truth

Prohibition against murder

Only indirectly based on reason - Not a workable ethical theory

➤ **Driverless Cars**

Should we trust them and share our roads with them, just because they are programmed to obey the law and avoid crashes?

**How should we test them?**

Against a teenager's standard?

Are there differences between humans and machines that could warrant a stricter test?

When might we need to brake the speed limit?

When might autocars refuse to move?

Legal principle: nullum crimen sine lege, "no crime without law":

would simplify the adoption of autocars.

slavishly following the law might be foolish and dangerous.

we have the opportunity to build a legal framework informed by ethics.

Is there a moral distinction between 'killing' and 'letting die'?

**Trolley car scenarios** may be a starting point.

ultimately: programmers will have to program decisions into the cars.

- relating to future events
- intentional actions
- whose life to protect?
- instruct autocars on how to act for the entire range of foreseeable scenarios.
- also lay down guiding principles for unforeseen scenarios
- does it matter whether the ac is premediated v reflexive?

**e.g., if an animal darts out.**

- dog v cow
- environmental conditions
- who is on board.
- human: may receive latitude for bad decisions.
- s/w designers: may be more accountable.

## **Other Issues**

### **Auto vehicle ownership**

- Public
- Private

### **Insurance factors?**

- Safer record less crashes
- mega crashes?

### **what about hacking?**

- all other evidence is subject to hacking.
- If under attack how should the autocar react?
- Are there any privacy issues?

## **Abuses**

- Drive too conservatively, then may become a road hazard or trigger road-rage in human drivers.
- Drink driving?
- If crash-avoidance system is well understood, then others may game the system.

The impact of automating transportation will change society in radical ways, and ethics can help guide it

### **➤ Social Contract Theory**



Philosopher Thomas Hobbes (1603-1679) wrote in 'Leviathan'

Without rules, nobody would create anything of value!

Life would be in a state of nature i.e. "solitary, poore, nasty, brutish and short"

Rational people understand that rules are necessary for meaningful cooperation to take place

Therefore, we implicitly accept a social contract.

Establishment of moral rules to govern relations among citizens.

Government capable of enforcing these rules.

Jean-Jacques Rousseau (1712-1778) evolved the theory in his book 'Social Contract

Identified the critical problem facing society is:

How to find an association that guarantees safety...

Yet enable each person to remain free?

### **Answer**

Everybody gives themselves & their rights to the whole community.

Allows the community to determine the rules for members

Each then obliged to obey these rules.

### **Caveat**

In ideal society, no one above rules

Thus, preventing society from enacting bad rules

James Rachels's Definition

"Morality consists in the set of

rules,

governing how people are to

treat one another, that rational

people will agree to accept, for

their mutual benefit, on the condition

that others follow those rules as well."

### **James Rachels's Definition**

\*Morality consists in the set of rules, governing how people are to treat one another, that rational people will agree to accept, for their mutual benefit, on the condition. that others follow those rules as well."

### **Social Contract Theory v. Kantianism**

Both based on universal moral norms derived thru a rational process.

Differs in how we decide whether a moral rule is ethical

Social Contract Theory holds that it is right for me to act according to a moral rule if rational people would collectively accept it as binding because of its benefits to the community

Hobbes, Locke and other philosophers held that all moral beings had certain rights e.g. life, liberty & prosperity

Also these rights should be balanced against duties for others e.g. right of life v. duty for others not to kill you

Social Contract provides for systems of laws and systems of enforcements

Being selfish in Not paying your taxes results in punishment

### **Based on Rights**

Negative right: A right that another can guarantee by leaving you alone

Positive right: A right obligating others to do something on your behalf

Absolute right: A right guaranteed without exception.

Limited right: A right that may be restricted based on the circumstances

### **Correlation between Types of Rights**

Positive rights tend to be more limited

Negative rights tend to be more absolute.

The utilitarian standpoint allows an unequal distribution of a certain amount of utility is better than an equal distribution of a lesser amount of utility. While Social contract theory recognizes the harm that a concentration of wealth and power can cause.

According to Rousseau, the social state is advantageous to men only when all possess something and none has too much" Each person may claim a 'fully adequate' number of basic rights and liberties, so long as these claims are consistent with everyone else having a claim to the same rights and liberties

### **John Rawls's Principles of Justice**

Any social and economic inequalities must be:

associated with positions that everyone has a fair and equal opportunity to achieve to the greatest benefit of the least-advantaged members of society (the difference principle)

### **DVD Rental Scenario**

Bill owns chain of equipment rental stores

Collects information about rentals from customers.

Constructs profiles of customers

Sells profiles to direct marketing firms.

Some customers happy to receive more mail order catalogues: others unhappy at increase in 'junk mail'

### **Evaluation under Social Contract Theory**

Consider rights of Bill, customers, and mail order companies.

Does customer have right to expect name. address to be kept confidential? If customer rents equipment from Bill. who owns information about transaction?

If Bill and customer have equal rights to information. Bill did nothing wrong to sell information.

If customers have right to expect name and address or transaction to be confidential without giving permission, then Bill was wrong to sell information without asking for permission.

### **Case for Social Contract Theory**

Framed in language of rights.

Explains why people act in self-interest without common agreement

Provides clear analysis of certain citizen/government problems.

Explains why breaking bad laws is the right course of action.

Workable ethical theory

### **Case Against Social Contract Theory**

No one signed contract.

Some actions have multiple characterizations.

Conflicting rights problem E.g., abortion

May unjustly treat people who cannot uphold contract.

Rights in return for bearing certain burdens.

Some choose to break rules others cannot help breaking rules.

Generally society tries to distinguish between these types Not all people can bear these burdens  
e.g. drug addicts

### ➤ **Comparing Workable Ethical Theories**

#### **Objectivism vs. Relativism**

Objectivism: Morality has an existence outside the human mind

Relativism: Morality is a human invention

Kantianism, utilitarianism, and social contract theory examples of objectivism

Theory Motivation Criteria Focus

Kantianism Dutifulness Rules Individual

Act Utilitarianism Consequence Actions Group

Rule Utilitarianism Consequence / Duty Rules Group

Social Contract Rights Rules Individual

## **Morality of Breaking the Law**

E.g.: Violating the copyright in a CD collection

Social contract theory perspective

People should not choose selfish interest over common good.

Kantian perspective & Rule utilitarian perspective

Benefit of obeying the law would outweigh the other Act utilitarian perspective Potential to justify copying

Conclusion

## ➤ **Utilitarianism**

### **Jeremy Bentham and John Stuart Mill**

An action is good if it benefits someone.

An action is bad if it harms someone.

**Utility:** tendency of an object to produce happiness or prevent unhappiness for an individual or a community

**Happiness** = advantage = benefit = good = pleasure

**Unhappiness** = disadvantage = cost = evil = pain

### **Principle of Utility** (Greatest Happiness Principle)

An action is right (or wrong) to the extent that it increases (or decreases) the total happiness of the affected parties.

### **Utilitarianism**

Morality of an action has nothing to do with intent Focuses on the consequences A consequentialist theory Allows is expanded to cover affected beings.

### **Bentham: Weighing Pleasure/Pain**

Intensity magnitude of the experience

Duration: How long does it last

Certainty: probability of the experience occurring

Propinquity: how close the experience is in space and time

Fecundity the ability to produce more of the same experiences.

Purity: the extent that pleasure is not diluted by pain Extent number of beings affected

### **Road Re-routing Scenario**

Local planner may replace a curvy stretch of road with a straight segment

New segment 1 mile shorter 150 houses would have to be removed

Some wildlife habitats would be destroyed.

### **Act Utilitarianism**

Add up change in happiness of all affected beings

If  $\text{Sum} > 0$ . action is good.

If  $\text{Sum} < 0$ . action is bad.

### **Evaluation**

Costs Euro 20 million to compensate homeowners.

Euro 10 million to construct new road Lost wildlife habitat worth.

Euro 1 million Benefits 30.000 cars @ 20c per day over 25 years

Euro 39 million savings

Conclusion

Benefits exceed costs.

Building highway, a good action

### **Case for Act Utilitarianism**

Focuses on happiness.

Down-to-earth (practical)

Utilitarian calculus provides a straightforward way to determine the right course

Start by identifying the set of possible alternatives.

For each alternative, total up the anticipated positive and negative consequences.

Identify the alternative with the maximum total.

Can help a diverse group of people to come to a collective decision  
Comprehensive hair question?

### **Case Against Act Utilitarianism**

Unclear whom to include in calculations.

Highway case: what about congestion elsewhere, broken communities..?

Too much work

To come to each decision

Ignores our innate sense of duty.

Keep a promise v. NOT.

1000 units of good for A v. 1001 units for B

Susceptible to the problem of moral luck

Where actions do not have intended consequence

### **Rule Utilitarianism**

We ought to adopt moral rules which, if followed by everyone, will lead to the greatest increase in total happiness.

Act utilitarianism applies Principle of Utility to individual actions.

Rule utilitarianism applies Principle of Utility to moral rules.

### **Anti-Worm Scenario**

August 2003: Blaster worm infected thousands of Windows computers

Soon after. Nachi worm appeared.

Nachi took control of vulnerable computers.

Located and destroyed copies of Blaster.

Downloaded software patch to fix security problem Used computer as launching pad to try to infect other vulnerable PCs

How would this scenario be viewed under Act Utilitarianism.

### **Evaluation using Rule Utilitarianism**

Proposed rule: If I can write a helpful worm that removes a harmful worm from infected computers and shields them from future attacks.

I should do so:

Who would benefit?

People who do not keep their systems updated.

Who would be harmed?

People who use networks

People whose computers are invaded by buggy anti-worms

System administrators

Conclusion: Harm outweighs benefits. Releasing anti-worm is wrong.

### **Case for Rule Utilitarianism**

Compared to act utilitarianism, it is easier to perform the utilitarian calculus.

Not every moral decision requires performing utilitarian calculus.

Moral rules survive exceptional situations W.D. Ross example.

Long term benefit of keeping a promise Avoids the problem of moral luck Workable ethical theory

### **Case Against Utilitarianism in General**

All consequences must be measured on a single scale.

All units must be the same in order to do the sum

In certain circumstances utilitarians must quantify the value of a human life e.g. 10 divorces result from new road

Utilitarianism ignores the problem of an unjust distribution of good consequences.

Utilitarianism does not mean the greatest good of the greatest number



That requires a Principle of Justice

What happens when a conflict arises between the Principle of Utility and Principle of Justice?

➤ **Kantianism**

Allows only universal rules that can be rationalized e.g., explains why an action is right or wrong

Identifies Good will as: the desire to do the right thing

Immanuel Kant begins with the question.

What is always good without qualification?

What about intelligence? strength? courage?

Only thing in the world good without qualification is a "good will."

Even if the end result is not achieved.

Reason should cultivate desire to do right thing. (not what we would like to do) Dutifulness — (deontological ethics) Our will should be grounded in a conception of moral rules

The moral value of an action depends upon the underlying moral rule. As critical, therefore, that we be able to determine if our actions are grounded in an appropriate moral rule.

What makes a moral rule appropriate??

**Categorical Imperative (1st Formulation)**

Act only from moral rules that you can at the same time will to be universal moral laws.

**Illustration of 1st Formulation**

Question: Can a person in dire straits make a promise with the intention of breaking it later?

Proposed rule: 'I may make promises with the intention of later breaking them: The person in trouble wants his promise to be believed so he can get what he needs.

**Proposed universalise rule:** Everyone may make false promises (when in difficult situations) Everyone breaking promises would make promises unbelievable, contradicting desire to have promise believed This rule is flawed, a contradiction. absurd, hence the answer is 'No:

**Categorical Imperative (2nd Formulation)**

Act so that you treat both yourself and other people as ends in themselves and never only as a means to an end.

This is usually an easier formulation to work with than the first formulation of the Categorical Imperative. Consider hiring for a plant that will close down in a year

### **Plagiarism Scenario**

Mary, Single mother Works full time Takes two evening courses/semester History class - Requires more work than normal Mary earning an A on all work so far Mary doesn't have time to write final report Mary purchases report and submits it as her own work

### **Kantian Evaluation (1st Formulation)**

Mary wants credit for plagiarized report Proposed Rule: "You may claim credit for work performed by someone else" If rule universalized reports would no longer be credible indicators of student's knowledge, and lecturers would not give credit for reports Proposal moral rule is self-defeating It is wrong for Mary to turn in a purchased report

### **Kantian Evaluation (2nd Formulation)**

Mary submitted another person's work as her own She attempted to deceive the lecturer She treated lecturer as a means to an end Ends: passing the course Means: lecturer issues grade What Mary did was wrong.

Note: The focus is on the 'will' behind the act

### **Case for Kantianism**

Rational and intuitively agreeable & fair Can produce a 'why- for a given rule Produces universal moral guidelines E.g. human sacrifice is wrong and was always wrong Treats all persons as moral equals Provides a framework to combat discrimination Workable ethical theory

### **Case Against Kantianism**

Sometimes no rule adequately characterizes an action. E.g., stealing to provide for starving family Depends on characterizing the proposed rule properly If we allow for multiple rules to characterize an action. Then there may be no way to resolve a conflict between rules. Kant expanded his framework to include:

Perfect duties e.g., don't steal: don't lie.

Imperfect duties: e.g., help others; develop your talents

In conflicts, Perfect duties must prevail. But what if conflict between perfect duties? Kantianism does not allow any bending of perfect duties. e.g., Hair problem? Still workable for our purposes

### ➤ **Ethical Egoism**

Contrasting 'Love your neighbour as yourself,' ethical egoism is the philosophy that each person should focus exclusively on his or her self-interest. The morally right action for a person to take in a particular situation is the action that will provide that person with the maximum long-term benefit. Ethical egoism does not prohibit acting to help someone else, but assisting another is the right thing to do if and only if it is in the helper's own long-term best interest.

#### **Case for Ethical Egoism**

Ethical egoism is a practical moral philosophy.

We're inclined to do what's best for ourselves.

Let other people take care of themselves, can't know for sure what is good for them. Often a 'good deed' brings more harm than good. Dependence upon the charity of others leads to a loss of self-esteem.

The community can benefit when individuals put their well-being first e.g. successful entrepreneurs may get rich, but also create jobs & wealth for others.

Other moral principles are rooted in the principle of self-interest. Can deduct from long term consequences of behaviours.

e.g. it doesn't make sense to go around breaking promises. Also, a bad idea to lie to other people or cheat other people

#### **Case against Ethical Egoism (EE)**

An easy moral philosophy may not be the best moral philosophy. People often find it difficult to pass up short-term pleasures, against their long term benefit. We do know a lot about what is good for someone else. Practically everyone shares the 'core values', not that hard to know how to help another. Charity usually doesn't lead to dependence: e.g. scholarship for a bright student. Self-interested focus can lead to blatantly immoral behaviour. Other moral principles are superior to the principle of self-interest e.g. opportunity to save a drowning person at the cost of getting one of your shirtsleeves wet. EE: save a life if it's in your self-interest e.g. publicity etc. Doesn't it make a lot more sense to consider the action in light of the value of a human life?

People who take the good of others into account live happier lives. Studies show that happiness spreads through close relationships family, friends, and neighbours

EE does not recognize that in order to reap the benefits of living in community, individuals must consider the good of other community members. We reject ethical egoism as a workable ethical theory.

### ➤ **Divine Command Theory**

Three great monotheist religions emerged from middle east (Torah)

Good actions: those aligned with God's will.

Bad actions: those contrary to God's will

Holy books reveal God's will.

We should use holy books as moral decision-making guides: Leviticus Chapter 19 – Various Rules of Conduct

### **Case for Divine Command Theory**

We owe obedience to our Creator. God is all-good and all-knowing. God is the ultimate authority.

### **Case Against Divine Command Theory**

Different holy books disagree.

Even with Christianity, the number of old testament books differ.

Society is multicultural, multi-faith, atheist & secular.

Some moral problems not addressed in scripture, may rely on analogy, but who's analogy?

God is good 'The good' not equals 'God' (equivalence fallacy)

Plato " the gods love piety because it is pious, and it is not pious because they love it 'good' is an objective standard otherwise it becomes arbitrary

Thou shall not commit/(or commit) adultery?

Can good be discussed without God's command to be good? Yes, if it's an objective 'good.

Based on obedience, not reason. Consider the story of Abraham and his son Isaac.