**What is Law?**

* Body of rules, imposed by a state upon its members.
* Designed to regulate human conduct within the state.
* Court interprets these rules of conduct.
* Decide whether they have been broken or not and pass sentence or make award of compensation.
* Certain standard of behavior is maintained amongst members of State in the interest of the common good.

**The Law**

* Rules and procedures to regulate behaviours of people in society.
* Legal principle – idea behind the law.
* Legal rule –  the law which puts the principle into practice.
* Legal procedure – the rules relating to court procedure and evidence.
* Jurisdiction – geographical area where a law applies.
* Jurisdiction poses particular challenges for IT Law.

**Definition of Law**

* Set of rules.
* Made by the state.
* Implemented through institutions of the state.
* Compulsory
* Guides behavior of individuals and artificial entities.
* New technology – New problems – New Law
* IT Law constantly evolving, pace is slow.

**Primary Legislation:** Law made by the Oireachtas.

**Act**: This is something that the President has signed and is an actual law

**Section**: a paragraph within an Act.

All the above would have been passed by the Dail and Seanad and signed off by the president.

**Legislative Process**

1. The initiation of a bill.
   * 1. Two ways this can be done, either by Presentation or by Leave to introduce.
2. Amendment
   1. Whether the law should be amended as broadly envisaged in the Bill.
3. The Committee stage
   1. a detailed examination and improvement of what is proposed
4. The Report, a review of changes made at Third Stage.
5. The final stage, whether the Bill, in its current form, would constitute good law.
   * 1. If the bill is passed it is then passed through the other houses, typically from the Dail to the Seanad with steps 2-5 being repeated each time.
     2. It’s at this stage that any amendments are made to the bill.
     3. The Enactment is where the bill is presented to the President, no earlier than 5 days after it was presented and no later than 7 days after presentation. Once the President signs the Bill it becomes law on that day.

**Secondary Legislation** : Law made by somebody other than the Oireachtas with the authority of the Oireachtas.

**Statutory Instruments**

* Data Protection (Registration) Regulations 2001(SI 2001/2)
* European Communities (Directives 2000/31) Regulations 2003 (SI 2003/68)
* European Communities (Copyright and Related Rights) Regulations 2004 (SI 2004/16)
* European Union (Copyright and Related Rights) Regulations 2012 (SI 59/2012)
  + The statutory instrument will make it possible for copyright holders to seek court injunctions against companies such as internet service providers or social networks whose systems are hosting copyright-infringing material

**European Union**

The European Institutions

* The Commission
* The Parliament
* The Council of Ministers
* The European Council
* The Court of Justice
* The Digital Agenda

**Important laws:** Treaties

**Secondary Law** - Regulations (less common) – These come in to effect immediately in every member state (e.g. the liquid ban on flights was passed within a week due to terrorism)

**Directives** – This is an instruction. It tells a member state to change their law and gives them a time frame in which to do it.

**Judicial Precedent** - Judges decision based on a previous case.

**Other sources of Law**

Constitution: Convention of Cybercrime (Budapest 2001) -

**Categories of Law**

Criminal Law

\*      A public wrong

\*      Prosecution of offender by the State (DPP v Ryan)

\*      Standard of proof – ‘beyond all reasonable doubt’

\*      Finding – Guilty/Not Guilty

\*      Commencement of Proceedings

\*      Criminal Courts

\*      Accused is innocent until proven guilty

\*      Objective is punishment (imprisonment, fines etc)

Civil Law

\*      A private wrong

\*      One individual sues another (Plaintiff v Defendant)

\*      Objective is to provide a remedy

\*      Standard of proof is a ‘balance of probabilities

\*      Finding – Liable/Not Liable

\*      Remedies – damages or court order e.g. injunction

\*      Civil Courts

**CIVIL COURTS**

**DISTRICT** claims up to €15k, licensing, family law, small claims

* **CIRCUIT** claims up to €75k, landlord/tenant, family law
* **HIGH** unlimited jurisdiction, Constitutional cases, company law, family law
* **COURT OF APPEAL** hears appeals based on points of law & points of fact
* **SUPREME** points of law of exceptional public importance, Constitutional cases
* **COMMERCIAL** specialises in copyright

**CRIMINAL COURTS**

* **DISTRICT** summary offences, some indictable offences, preliminary hearings
* **CIRCUIT** indictable offences EXCEPT murder, rape
* **HIGH (CENTRAL CRIMINAL COURT)** offences which can’t be heard by the Circuit e.g. Murder
* **SPECIAL CRIMINAL** a non-jury court used for terrorism/organised crime
* **COURT OF APPEAL** hears appeals from Circuit/Central/Special Criminal Courts
* **SUPREME** important points of Law only

**ALTERNATIVE DISPUTE RESOLUTION**

Q**uasi-Judicial Tribunals**

* breach of discipline
* [conduct rules](https://en.wikipedia.org/wiki/Code_of_conduct)
* trust in the matters of money or otherwise
* **Conciliation** An expert conciliator facilitates discussion between the parties and suggests solutions, can participate. INDUSTRIAL/EMPLOYMENT DISPUTES
* **Mediation** A mediator acts as a go-between/referee and encourages the parties to find common ground and reach a compromise, can’t participate. FAMILY DISPUTE

**COMPUTER ETHICS**

**DEFINITION:** James Moor (1985) The analysis of the nature and the social impact of computer technology and the corresponding formulation and justification of policies for the ethical use of such technology.

Change in technology – change in laws, social institutions, business policies etc

LAW = you must                  ETHICS = you should

**DEFINING ETHICS**

**DEFINITION:** ETHICS is the study of situation, activities and decisions where issues or right and wrong are addressed in a moral sense

·      The rules and principles are called ETHICAL THEORY

·      **Morality** – the norms, values and beliefs embedded in social processes which define right or wrong for an individual or a community

·      CYBERETHICS

**ETHICS OF IT and BUSINESS**

New developments > New ethical problems. Issues often ignored because focus is on developing technology.

**ROBERT DEGEORGE 4 KEY THEMES**

MYTH OF AMORAL COMPUTING AND IT

* False belief computing has no moral advances

LURE OF THE TECHNOLOGICAL IMPERATIVE

* Rush to make advances

DANGER OF THE HIDDEN SUBSTRUCTURE

* User ignorance, don’t understand how tech works

ACCEPTANCE OF TECHNOLOGICAL INERTIA

* Can’t change or undo technology

**ETHICS IN PRACTICE**

**PERSONAL** ethical code

**CORPORATE** code of ethics

**PROFESSIONAL** code of ethics >

**CHARACTERISTICS OF A PROFESSION**

Substantial education and training in order to practice

Members control entry to profession

Existence of one or more professional bodies

Code of conduct set out and enforced by professional body

Monopoly in relation to title or tasks

**Common Forms of Computer Based Crime - Spam**

—  district court Up to 5000 Euro Fine

—  Indictable - circuit court-Up to 250,000 euro fine

—  Further information - [here](https://www.siliconrepublic.com/enterprise/2008/12/22/spammers-will-face-fines-up-to-250000) - Spammers will face fines up to €250,000

**Common Forms of Computer Based Crime - Malware**

  Maliciously developed software

  Designed to alter operation of computer usually to the users disadvantage

  Transmitted and installed without the users informed consent

—  In some cases there is no particular objective – a form of cyber vandalism

—  Increasingly used for commercial purposes and criminal activity

—  Malware, Adware, Spyware, Viruses, Worms

—  Legal Responses

—  Criminal offence – Criminal Damage

—  Trojan Horse Defence – R v [Caffrey](http://news.bbc.co.uk/2/hi/technology/3202116.stm) - Aaron Caffrey, 19, was accused of crashing systems at the port of Houston in Texas by hacking into its computer systems.But a jury cleared him after believing his defence that hackers had broken into his computer and used it to launch the attack. This paves the way for hackers to use this defence to get away with hacking

—  Civil law – action for negligence

—

—  **Investigation and Prosecution**

—  Garda Bureau of Fraud Investigation

—  Computer forensics

—  Computer evidence – S5(1) Criminal Evidence Act 1992

## Cybercrime

Investigation and Prosecution

* Garda Bureau of Fraud Investigation
* Computer forensics
* Computer evidence – S5(1) Criminal Evidence Act 1992
* E-Discovery – [here](https://www.siliconrepublic.com/enterprise/2011/10/07/electronic-evidence-plays-a-growing-part-in-legal-process)
* Digital evidence – [here](http://www.irishtimes.com/news/crime-and-law/digital-evidence-requires-an-understanding-of-cyberlaw-1.2085606) and [here](http://www.tjmcintyre.com/2015/01/mobile-phone-records-as-evidence-in.html)
* Recent [case](http://www.rte.ie/news/2015/0327/690272-garda-case-against-graham-dwyer/)
* Importance of user education - [here](http://www.siliconrepublic.com/strategy/item/6564-security-group-calls-for-us)
* Role of the Data Protection Commissioner
* Alternative use of civil remedies

## Criminal Law

S2(1) Criminal Damage Act 1991

A person who without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence.

A person who without lawful excuse operates a computer—

(a) within the State with intent to access any data kept either within or outside the State, or (b) outside the State with intent to access any data kept within the State, shall, whether or not he accesses any data, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or imprisonment for a term not exceeding 3 months or both

## Creating a False Instrument

* S25(1) Criminal Justice (Theft and Fraud ) Act 2001
* Forgery
* Falsely entering a username/password
* R v Gold (1988)
* Could be used instead of Unauthorised Access

## Electronic Commerce Act 2000

* Criminalises the misuse of signature creation devises
* S25 (a) deals with accessing, copying or otherwise obtaining the signature creation device of someone else
* S25(b) deals with altering, disclosing or using the signature creation device of someone else
* S25 (c) deals with creating, altering or using an electronic signature for a fraudulent purpose

## Cyberbullying

* Not a distinct offence in Irish Law
* S10 Non-Fatal Offences against the Person Act 1997
* S5 Non-Fatal Offences against the Person Act 1997
* S13 Post Office Amendment Act 1951
* Prohibition of Incitement to Hatred Act 1989
* Harmful and Malicious Communications Bill 2015
* Law Reform [Commission](http://www.mhc.ie/latest/blog/tackling-cyber-bullying-the-law-reform-commission-calls-for-discussion)

## Recent Developments – Criminal Justice Act 2011

* Provides more extensive powers for Gardai in relation to ‘serious and complex’ offences
* S3(1) identifies relevant offences
* S15 – Application to District Court of order to make documents available
* Failure to provide passwords can be punished by a fine or prison term up to 12 months/2 years
* S18 – Reasonable presumption in relation to authorship or exchange of documents
* S19 – Offence to withhold information – max sentence – fine or 12 months/5 Years in prison (old offence of ‘Misprision’)
* No increase in resources for Gardai envisaged under the 2011 Act

## European Law

* Council Framework Decision 2005/222
* Illegal Access to Information Systems
* Illegal System Interference
* Illegal Data Interference
* Liability of Legal Persons
* Penalties
* Jurisdiction
* European Arrest Warrant
* Framework Decision 2002/584
* Purpose of EAW

## The Cybercrime Convention

* Signed by Ireland 2002
* Not yet implemented – recent [article](http://www.thejournal.ie/ireland-ratify-cybercrime-convention-734969-Dec2012/)
* Requirements of the Convention
* Access to computer system without right
* Illegal Interception
* Other Offences
* Procedural Law
* International Co-operation
* Extradition