

Privacy and IPR

2019-10-02

1 Lecture 2

1.1 Recap

- Lecture 1:
- An introduction to the meaning of law through history

1.2 Rationality

- Judges and lawyers need to apply the already written rules and laws but use their knowledge and experience as well
- In the past God represented the basis of rationality
- So since God is rational and he establishes the rules, the rules are rational as well
- After the French revolution, rationality of rules started being based on human rationality, the so-called "Principle of Rationality"
- The 'principle of rationality' is the assumption that people are instrumental in trying to reach their goals, and this is what drives the model
- Rational: every possible legal problem has a unique solution based on the code in power

1.3 Legal system

- The legal system is considered to be perfect
- The legal body must understand the system
- For any new rules, the legal body's job is to analyse them in such way that they fit perfectly in the system
- If they don't, that means that there is a problem in understanding the system

1.4 Definitions

- Natural law: a body of unchanging moral principles regarded as a basis for all human conduct
- Natural law is above any individual human intervention
- Positive law: statutes which have been laid down by a legislature, court, or other human institution and can take whatever form the authors want
- Kelsen: basic norm - the order or rule that forms an underlying basis for a legal system. The theory is based on a need to find a point of origin for all law, on which basic law and the constitution can gain their legitimacy

1.5 Property

- Property is the building block of the Western legal tradition (another one is the contract)
- Medieval tradition: use of land -i. to produce food, to feed animals or to plant trees to use the wood
- These uses are different, but then they weren't seen as such by the legal system
- Tenure: the conditions under which land or buildings are held or occupied
- There was no individual ownership in the medieval times
- Renaissance: new social class, individual and collective enterprises that tread internationally as well
- The new class wanted access to property too
- Property changes ownership from lineage to wealth - especially after the French revolution
- Hegel: property is something naturally embodied in the human spirit
- Ownership is the expression of the link between an individual and the external actions in his life
- Property is becoming the core of the new order
- The success and the social status of an individual is measured by the property they own
- The protection of property becomes the focus of the legal system
- Property is connected to freedom if seen as a 'space' where the individual can do whatever they want
- Basis of property is natural law
- Modern property: it is regulated sector by sector
- Liberalism: a political and moral philosophy based on liberty, consent of the governed, and equality before law - Western legal tradition
- Real property: in rem right - right associated with a property, not based on any personal relationship
- In personam right: a personal right attached to a specific person, such as contract rights, a tort award against a defendant, or a license
- In rem rights: property rights enforceable against the entire world whereas an in personam judgment binds only the litigants

- Traditionally, property was a right over physical things
- Intellectual property: contradiction to the definition of property, right to exclude from its use
- Property: best example of exclusive right, highest level of protection, right to block any interfering action or in a lower level get compensation for the damage caused by interference (liability)