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Laws & Ethics

Northern Ireland



CHAPTER ONE: The Northern Ireland Legal System

Law is a system of rules that exist in society to protect persons and their property. Law can be examined by distinguishing between criminal and civil law and learning about the role of courts in society. The courts interpret the rules of law, hold persons accountable for their actions and punish persons who break the law. Law is created from a number of sources and this chapter examines the establishment of a legal system in Northern Ireland and the impact of European law on the legal system in Northern Ireland.

LEARNING OUTCOMES

Upon completion of this chapter you should be able to:

1. Be able to define law and distinguish between criminal and civil law
2. Describe the different court structures and discuss the jurisdiction of the criminal and civil law courts
3. Identify the main sources of law in Northern Ireland
4. Discuss the main types of European Legislation
5. Identify the main European Institutions

REVISION RESOURCES

SEMINAR: This topic will be reviewed and discussed in **Revision Seminar 1**.

EXAM QUESTIONS: **Pilot and Past papers** are available from the website of Accounting Technicians Ireland and are essential aides when studying Law and Ethics topics.

DEFINITION AND DIVISIONS OF LAW

1.1 What is law?

The law is a system of rules and regulations established to maintain order and ensure that justice prevails in society. The law provides for a court structure to determine if a rule has been broken and to prescribe sanctions for any such breach.

1.2 Divisions of Law

The most common way of classifying law is to distinguish between criminal and civil law.

Criminal law

The aim of criminal law is to uphold the morality of society by prohibiting acts contrary to public order and by punishing those who carry out such acts. Anyone accused of committing such acts will be charged with a criminal offence. Criminal offences range from minor offences, such as driving without a seatbelt to more serious offences, such as burglary, rape or murder. Sanctions for offences range from a fine to imprisonment depending on the seriousness of the offence.

The prosecution of an offence is carried out by the Public Prosecution Service (PPS) on behalf of the state in a criminal court. Generally, the PPS must prove *beyond reasonable doubt* that the accused committed the offence. This is a higher burden of proof than usually in the civil courts because of the serious nature of a criminal prosecution.

An example of a criminal offence in relation to company law is fraudulent trading. This offence carries a maximum of 10 years imprisonment and/or a fine (Companies Act 2006 s. 993(3)(a)).

Civil law

The aim of civil law is to regulate disputes between individuals. Civil actions are taken by one individual who issues proceedings against another individual and do not involve the state. The civil courts will determine if a private law right of the party is breached and will specify the appropriate remedy, for example the payment of

compensation by one party to the injured party. In order to be found liable in civil law, generally the injured party must prove its case *on a balance of probabilities*. Contract law is an example of civil law and is one of the most important areas for business students to be familiar with. Tort, consumer and employment law are all further examples of civil law which you will study.

Public law and private law

Law can be further divided into public law and private law. Public law regulates relations between individuals and public bodies, for example government departments or local councils and deals with matters that affect society as a whole. Private law regulates relations between private individuals, including businesses or companies. There is no public element in private law as it is for the private individual concerned to take an action against the other individual.

Generally, criminal law is described as a public law and civil law is considered a private law.

1.3 Summary table: Civil law v Criminal law

The following table illustrates the comparison between criminal and civil law in Northern Ireland:

Factors	Criminal Law	Civil Law
Classifications	Public law – referred to as a prosecution	Private law – referred to as a civil action
Parties Involved	Prosecution (in the name of the Queen) and the Defence <i>e.g. R v Jones</i>	Plaintiff and the Defendant <i>e.g. Smith v Clarke</i>

Objectives	Defendant is prosecuted: Punishment – as well as incapacitation, retribution, deterrence and rehabilitation	Defendant is sued: Compensation and ceasing the unwanted action
Tests applied by the Court to determine liability	Beyond all reasonable doubt	Generally, balance of probabilities. In some limited circumstances the civil law requires a party to prove its case beyond all reasonable doubt.
Heard by	A judge acts as the tribunal of law and a jury acts as the tribunal of fact	Generally by a judge sitting alone. Some civil actions are heard by a judge and jury.
Finding	Guilty/not guilty	Liable/not liable
Commencement of proceedings	PPS through summons or indictment	Initiated by way of pleadings
Penalties/Remedies	Fines, imprisonment, probation orders, community service orders	Damages, injunctions, rescission, court orders, an account for profits
Examples	Murder, theft, fraudulent trading etc	Breach of contract, negligence, trespass

1.4 Distinction between criminal and civil cases

One incident can give rise to both criminal and civil proceedings. For example, if a pedestrian is knocked down by a speeding driver, the state can prosecute the driver for the offence of speeding in the criminal courts and the pedestrian can sue the driver for compensation in the civil courts.

The infamous case of OJ Simpson is an example of one incident that led to two sets of proceedings. Despite the fact that OJ Simpson was found not guilty of murder in the criminal courts, the family of his murdered wife issued an action in the civil courts where he was found liable. Also, more recently in Northern Ireland, defendants in the Omagh Bomb trial, who were found 'not guilty' in the murder trial were later found liable in the civil law trial.

The criminal court proceedings require a higher standard of proof than the civil law proceedings. The prosecution must prove '*beyond all reasonable doubt*' that the driver was guilty of an offence. In the civil courts, the Pedestrian must prove on a '*balance of probabilities*' that the driver caused the injuries. As the OJ Simpson case and the Omagh Bomb trial prove, it may be possible to be found liable in civil proceedings even when you are found not guilty in criminal proceedings. This is because the criminal proceedings face the higher burden of proof.

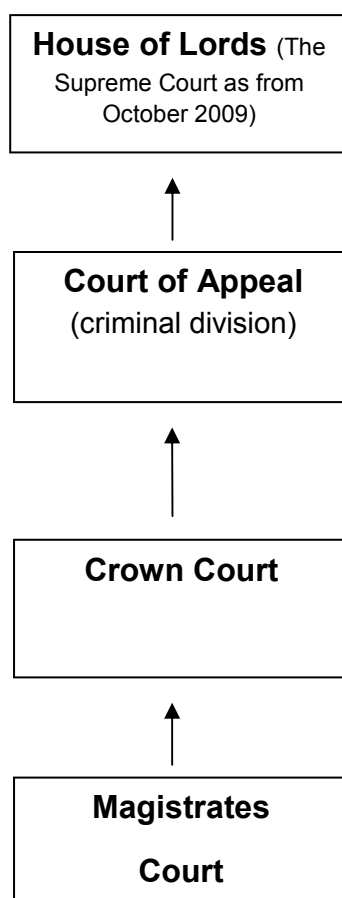
Note: Any conviction in the criminal court is admissible in the civil proceedings to prove that the offence was committed.

STRUCTURE AND JURISDICTION OF THE COURTS

1.5 Structure of the Courts

The distinction between criminal and civil law means that the courts are divided into two separate court structures. Both structures are shaped like a pyramid and are hierarchal in structure. All cases start in the lower (inferior) courts 'in the first instance' and only a few cases will reach the higher (superior) courts. As you will see the majority of cases finish in the lower courts, but a person has the right to appeal to a higher court against certain decisions made by the lower court.

1.6 The criminal court structure



Jurisdiction of the criminal courts:

1. *Magistrates Court*

The Magistrates Court deals mostly with criminal law matters and is known as the inferior criminal court. In the Magistrate's Court, one legally qualified Magistrate called a 'Resident Magistrate' sits alone. Magistrates are addressed as 'Your Worship.'

In relation to *criminal law matters* in the Magistrates Court, the court normally only hears 'summary offences' (minor offences) and 98% of proceedings started in this court also end in this court. However a defendant may opt to have a case which could be tried by a jury tried before a Resident Magistrate alone. The maximum sanction that can be imposed by the court is a 6 months imprisonment and/or a fine

not exceeding £2000. The defendant has a right to appeal to the county court (civil court) against his conviction and/or sentence imposed by the magistrate's court. If he pleads guilty he can only appeal against his sentence. There is also the option to appeal by way of 'case stated' where it appears that the lower court has wrongly interpreted the law.

2. Crown Court

The Crown Court hears all indictable (serious) offences, such as murder, rape and robbery. Proceedings will commence with the arraignment of the accused where he will plead guilty or not guilty. Cases are heard by one Judge and a Jury (consisting of 12 persons). There is a right to appeal against conviction and/or sentence or to appeal by way of 'case stated'.

3. Court of Appeal

The Court of Appeal is an appellate court. This means that the court does not hear cases for the first time, but hears appeals from the lower courts concerning the application and interpretation of the law. Normally two to three judges will sit in each case (no jury). The Court is divided into two sections, civil and criminal. In relation to criminal law, the Court has jurisdiction to hear appeals from the Crown Court and from Magistrates' Court.

After hearing the evidence, the Court of Appeal may exercise one of the following options:

- Allow appeal and acquit defendant
- Allow appeal and reduce, vary or increase sentence
- Allow appeal and order a retrial
- Dismiss appeal

An appeal from the Court of Appeal lies to the House of Lords (shortly to become The Supreme Court).

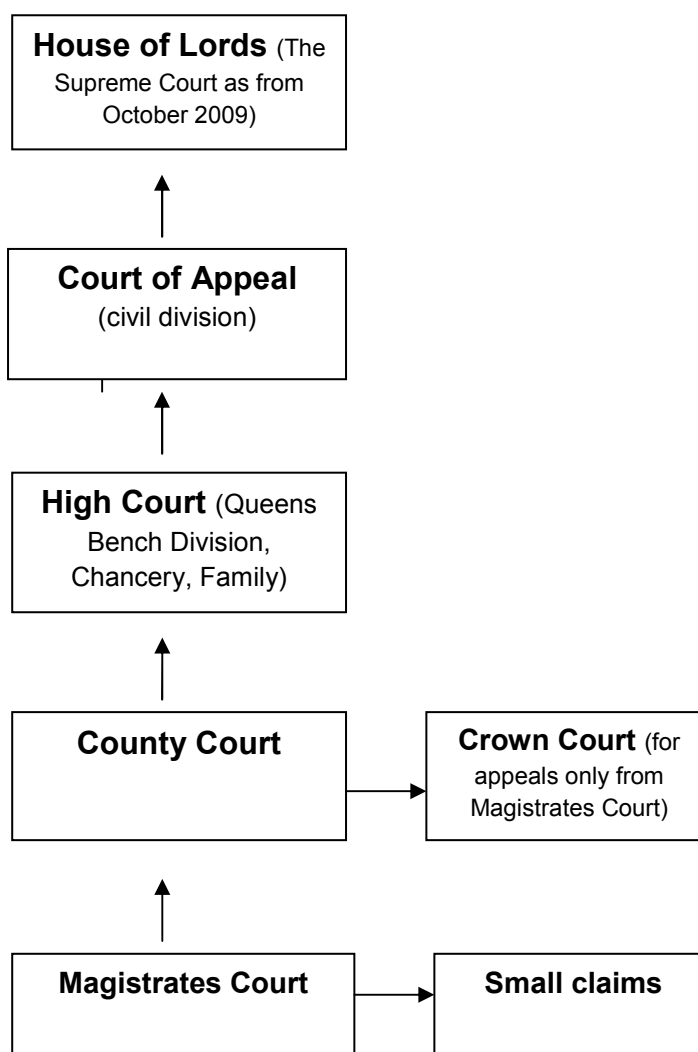
4. House of Lords

The House of Lords is the final court of appeal in the United Kingdom. It will only hear appeals regarding decisions on points of law in cases of major importance. Five law lords usually will hear the case (this has been increased to seven or nine on occasion).

Presently, the House of Lords has both a legislative and judicial function, which is unusual given the concept of separation of powers. Under the Constitutional Reform Act 2005 the functions have been separated and a Supreme Court has been established. The judicial law lords will sit in this new court and take over the appellate jurisdiction of the House of Lords. It is planned that by the end of 2009 the Supreme Court will be operational and will be the final court of appeal in the United Kingdom.

It is important to note that decisions by the House of Lords are still subject to a higher law; European law. The importance and supremacy of European law is discussed later in this chapter.

1.7 The civil court structure



Jurisdiction of the civil courts:

1. Magistrates Court:

As stated the magistrates court is mainly a criminal court, however, it does have jurisdiction to hear some civil law matters, such as applications for certain licences, such as the licence to sell alcohol, family law proceedings, ejection disputes between landlord and tenant and some debt matters. It is possible to appeal against the decision or by way of 'case stated' to a higher court.

2. County Court:

The County Court is the largest civil court. Matters are heard in one of the seven County Court Divisions by County Court Judges. Judges are addressed as 'Your Honour'. Due to the large volume of work County Court Judges are assisted by District Judges.

Most of the civil work involves disputes in contract and tort with a value of less than £15,000 or in equity matters a value of less than £45,000. A District Judge will hear cases up to a value of £5000 and any cases with a value less than £2000 will be dealt with by the informal small claims process.

The County Court will also hear disputes in relation to the recovery and title of land, equity matters, such as trusts, and other matters including the granting of liquor licences and some family law matters, such as uncontested divorces.

There is a right to appeal to the High Court on a decision made by the County Court or in some cases there may be a right to appeal directly to the Court of Appeal.

3. High Court

The High Court hears civil law matters and is divided into three divisions:

- **Queen's Bench Division:** This is the largest division and deals with actions based in tort and contract with a value over £15,000. It has a supervisory role over the inferior courts and *most* County Court appeals are heard in this division. Also, appeals from the Crown Court are dealt with here.
- **Chancery Division:** Deals mostly with equity matters, such as land and trusts. It also deals with bankruptcy, winding up proceedings and other partnership and company law matters.
- **Family Division:** Deals with complex family law matters such as divorce, custody and adoption.

High Court cases may be heard by any of the three Lord Justices of Appeal or by one of the ten High Court Judges. Trials will be heard by a single judge, but there is

a right to trial by judge and jury in some cases, such as libel, slander, malicious prosecution and false imprisonment cases. Judges are addressed as 'My Lord or Your Lordship'.

All three divisions may hear appeals from inferior courts. There is a right to appeal a decision of the High Court to the Court of Appeal or in some situations, directly to the House of Lords.

4. Court of Appeal (see also criminal law jurisdiction).

The Civil Division of the Court of Appeal hears appeals from the High Court where the validity of a law is challenged and hears appeals by way of 'case stated' from the High Court, County Court and the Industrial Tribunals (Industrial Tribunals will be discussed further in chapters 4 & 5).

As stated the Court of Appeal may uphold or reverse any decision of the previous court or order a new trial.

5. House of Lords

(See criminal law jurisdiction).

SOURCES OF NORTHERN IRELAND'S LAW

1.8 Common law and Equity

The legal system that operates both in the United Kingdom and Ireland is known as a common law system.

Before the common law system was established in England, the legal system was made up of a collection of unwritten customary rules, which varied throughout the country depending on the region. The King decided to create a unified system where the same rules would be applied all over England regardless of the region. Under this new system the King's Judges travelled the country and established a *common* set of rules applicable to all of England. This was the establishment of a common law system. Such a system has existed in Ireland (North and South) since the seventeenth century.

Back then common law system did not always produce fair results. One of the main problems was that the cases were all heard in Latin and the only civil remedy available to the injured party was damages (which is not useful if your problem is a bad tenant who you want evicted). Individuals who believed that they suffered an injustice in the common law courts would petition the King's Chancellor for an alternative decision. As more and more individuals petitioned the Chancellor, a Chancery Court was developed and decisions of the Chancellor from this court became known as the rules of equity.

The two systems, the common law and the rules of equity merged together and today the chancery court forms part of the common law courts and a single system of equity and common law rules is administered. If there is a conflict between the common law rules and equity, the rules of equity prevail.

1.9 Three sources of law

Today most law has its point of departure as an Act of Parliament, enacted by the UK Parliament (and the Northern Ireland Assembly). The legal system in Northern Ireland is however a so-called 'common law system' and this means that legislation is not the only source of law. Case-law or, as it is also known, legal precedent also forms a source of law. Real life disputes come before the courts for decision and a judge gives written reasons in his or her decision, which is called a judgment. When a similar dispute comes before a judge in a future case that subsequent judge will look back to previous decisions, and will be guided by these older judgments or precedents in making a decision in the case he or she has at hand.

Also, the United Kingdom's joining of the European Union in 1973 has resulted in European law becoming a third source of law.

Therefore, there are three main sources of law in Northern Ireland:

- I. Legislation (made by the Parliament/Assembly)
- II. Case law (made by the Judges/Courts)
- III. EU Law (made by the European Institutions)

1.10 Legislation

Legislation is regarded as the most important source of law in the UK. Under the UK democracy, the fundamental concept of *parliamentary sovereignty* exists, which means that parliament is the supreme law-making body. In some common law countries where there is a written constitution, for example in Ireland, the legislation enacted by the parliament can be challenged and invalidated if the legislation conflicts with a constitutional principle. As the UK does not have a written constitution, parliament can make, change and alter laws without being challenged.

In Northern Ireland legislation is created by both Parliament and the NI Assembly (not all legislation passed by Parliament applies to Northern Ireland). Legislation is commonly referred to as statute law and consists of primary and secondary legislation.

Primary legislation:

Primary legislation is enacted by Parliament (and/or the NI Assembly) and is implemented in the form of Acts, for example, Companies Act 2006. A Parliament Act is implemented into law after it has passed through and been approved by the House of Commons (Parliament), the House of Lords and has received Royal Assent. Northern Ireland Acts are passed by the Assembly do not pass through the House of Commons and Lords, but go through a similar process of debate and approval in the Assembly. Acts passed by the Assembly must receive Royal Assent from Her Majesty before they become law.

Statutory Acts start life as a Bill and the process of becoming an Act of Parliament is:

First Reading: The Bill (drafted by civil servants) is laid before the House.

Second Reading: The Government Minister sets out the main policy objectives and the opposition set out their views on the Bill and the debate begins.

Committee stage: A selected committee of MP's scrutinise the Bill and make amendments.

Report stage: Committee report back to the House.

Third Reading: Bill is formally amended and goes to the House of Lords for analysis.

Final stage: House of Lords repeat the stages the Bill passed through in the commons.

Royal Assent: The Monarch approves the Bill

Parliament and the Assembly have the power to make new law, alter existing law and codify common law (write into legislation the law by the judges).

An example of Parliament codifying principles that have emerged in case law is the Companies Act 2006. Prior to this legislation some of the duties owed by a director to a company were not written into statute. These duties were referred to as the fiduciary duties of a director and were enshrined in common law. These duties have now been given a statutory footing and are incorporated in the Companies Act 2006 ss. 170-181.

Delegated or Secondary legislation:

Parliament/NI Assembly do not have the resources or time to implement every new piece of legislation, so a power is invested in them to delegate legislation to another body, such as a government minister or a public or local authority. This delegated legislation originates from the primary legislation and is also referred to as secondary legislation.

In Northern Ireland secondary legislation usually takes the form of Orders, Regulations and most commonly Statutory Rules e.g. Insolvency Rules (NI) 1991. In contrast to primary legislation, it does not have to be approved by Parliament or the Assembly in advance of implementation into law.

The advantage of delegated legislation is that it enables the legislation to be passed (and if necessary changed at a later date) more quickly, by avoiding the sometimes slow and cumbersome process in Parliament/Assembly. Secondary legislation also allows the experts in the area of the legislation to be involved in the making of the legislation, for example government ministers who may have a more detailed and technical knowledge of the area than the selected committee of MP's.

The disadvantage of the process of delegated process is that it enables a large volume of complex legislation to exist in the one area of law and the lack of publicity surrounding the implementation of the delegated legislation means that people may be unaware of the changes in law.

The courts have a unique power in relation to delegated legislation. As delegated legislation is implemented by a range of bodies, without advance approval of Parliament, the courts have the power to judicially review any part of secondary legislation and declare it invalid. The courts can challenge the legislation on the ground that the body who implemented the legislation did not have the correct power to do so (acted '*ultra vires*' outside their powers), or such a body did not use the correct procedure for implementation. The courts do not have the same power to challenge the primary legislation because of the principle of parliament supremacy.

1.11 Case law and precedent

A distinctive feature of our common law system is that decisions made by judges in previous cases form a source of law. However, it is the Queen in Parliament and not the judiciary who form the legislature. Therefore if two barristers argue a case in front of a judge and one of the barristers has found a precedent (a judgment made by a judge in a previous similar case) that helps his case, but the other barrister points to a conflicting statute, it is the statute and not the precedent which the judge is bound to follow.

Case law is usually created when the existing law is 'silent' on the matter or where the legislation is unclear. It has developed over centuries and develops every day. Each piece of case law establishing a principle of law (commonly referred to as a *precedent*) which must be applied by lower courts in future cases. This is known as the *doctrine of binding precedent* (or in Latin '*stare decisis*' which means stand by your decision).

The decision is divided into two parts the *ratio decidendi* which means the 'reason for deciding' and the *obiter dictum* which means 'something said by the way'. It is the *ratio decidendi* that forms the precedent binding the lower courts.

The lower courts are bound to apply a precedent where the material facts of the case in question are sufficiently similar to the previous case establishing the precedent. The court will not apply the precedents which are shown to have been incorrectly made, or which have been overturned by a higher court. In relation to criminal law the precedent would not be applied if it would be against the interests of justice to do so.

The **advantages** of precedent as a source of law are:

- Consistency: the same principles are applied resulting in a set of consistent decisions, which ensures a just legal system.
- Certainty: the use of binding precedent means that lawyers and clients will know how their issues will be resolved and have some certainty as to the outcome of your case.
- Efficiency: enables judges to make new law in reaction to particular circumstances or recent developments in society. (Faster than having to wait for the legislature to enact new law.)

The **disadvantages** of case law as a source of law are:

- Unclear: binding decisions may be unclear or the wording ambiguous forcing the judges to spend time deciphering the law.
- Vast numbers: many decisions become case law and there is the possibility of two conflicting precedents being created

1.12 Statutory interpretation of primary legislation

Judges have a significant role in shaping the law through the process of statutory interpretation (interpreting the legislation created by parliament). Sometimes it is necessary for a judge to interpret particular legislation if the legislation has not been drafted clearly or coherently. Words may be vague or ambiguous, or the term used may be outdated and unsuitable for modern day application.

As the concept of Parliamentary supremacy prevents the courts from challenging or changing the wording of Acts, the courts have developed a set of rules or guidelines

to assist them when interpreting legislation and to ensure that the interpretation by the courts yields a fair and just result.

The following three rules have been applied over the past few centuries:

The Literal Rule

This rule is regarded as the primary rule of interpretation, although it has not been extensively used in this century. When applying this rule, the courts interpret the literal meaning of the words in the legislation. The judges do not have to consider what it thinks it means or the intention behind the creation of the legislation. An advantage of this rule is that judges cannot apply their own subjective ideas of interpretation and so the principle of parliament supremacy is upheld by restricting the judge's ability to interfere with the wording of the legislation.

However, applying the words of the statute literally has been strongly criticised as it can produce quite illogical and unreasonable verdicts. In *Whiteley v Chappell* (1869) the law stated that it was an offence to impersonate any person 'entitled to vote.' In this case the defendant was caught impersonating a dead man, who was not strictly speaking 'entitled to vote' and so the defendant was found 'not guilty' of the offence.

The Golden Rule

This rule was developed in response to the perceived inadequacies in the application of the literal rule. The golden rule allows the judges to adapt the language of the statute to produce a sensible outcome. It is argued that this rule should only be applied if the application of the literal rule would produce a 'manifest absurdity'. The problem with this is there is no definition of what is considered a 'manifest absurdity'.

In *R v Sigsworth* (1935) the courts applied the golden rule. Under the terms of the Administration of Justice Act 1925 the deceased's estate is to go to the next of kin. In this case the next of kin was convicted of killing the deceased. The courts ruled that it would be manifestly unjust if the murderer would benefit from his murder (see also *Adler v George* (1964)).

The Mischief Rule

This rule is the oldest rule. It allows the courts to look beyond the wording of the Act and take into account the reasons why the legislation was passed and what 'mischief' the legislation was designed to cure.

When applying the mischief rule the courts must consider the following four things:

1. What was the common law before the making of the Act
2. What was the mischief and defect in the common law
3. What the legislation says in resolving the 'mischief'
4. The reason for the remedy

This rule has developed into a *purposive* approach enabling the courts to interpret the statute in the context of its aim. The purposive approach is the encouraged approach to take and the one used by the European court of Justice.

In Corkery v Carpenter (1951) Corkery was charged under the Licensing Act 1872 with being drunk in charge of a carriage. The court stated that the purpose of the act was to prevent people from using any form of transport on a public highway whilst intoxicated and so Corkey's *bicycle* could fall into category of 'carriage.'

Also, in Smith v Hughes (1960) the defendants were charged with solicited men from a balcony or from behind a window. Under the Street Offences Act 1959 it was illegal for any prostitute to solicit in a street or public place. The court stated that the purpose of the legislation was to prevent nuisance from prostitutes in public places and so the balcony could be considered a public place (see also R v Pigg (1983), R v Smith (2001) and R v Z (2004))

1.13 EU Law

EU law a further source of law in the UK. The UK law making process was significantly altered by the UK joining the EU. The UK (as all other EU members) had to agree to the supremacy of EU law over national law, which means that parliament no longer has the exclusive and supreme power to create law in the UK.

EUROPEAN LAW

1.14 Introduction

The European Union (formerly known as the European Community), was established by a founding group of European countries (France, Germany, Italy, Belgium, Luxembourg and the Netherlands) in 1957 with the signing of The Treaty of Rome 1957. These countries had united together in an effort to create economic integration and establish a free market for provision of goods and services throughout the EU.

The United Kingdom joined the European Union in 1973 with the signing of the European Communities Act 1972. As a result, the UK became a member of the Union and agreed to incorporate European law into UK law. Thus, European law became the third source of law in the UK.

The Union has since grown considerably over the decades and presently consists of 27 member states.

1.15 European Legislation

European legislation, like UK legislation, contains both primary and secondary legislation. Primary legislation is referred to as Treaties, for example, The Treaty of Rome. Secondary legislation derives from the treaties and comprises of directives, regulations (we will be concentrating on these two) and decisions from the European Courts.

Primary legislation: Treaties

Treaties of the European Union are considered to be the constitutional law of the European Union. They contain terms on the European Union's basic principles, its objectives, procedures and organisation. When treaties come into force, they automatically become law in each member state. To date, there are five European Treaties in force and a sixth one is on its way.

1. The Treaty of Rome

This Treaty founded the European Community. It set out to harmonise the individual member state's economic policies and encourage development of economic activities, by creating the free movement of goods, services, people and capital. It set out to raise the standards of living of persons in all the countries, which had been badly affected by the years of external and internal wars. This Treaty also established the Institutions of Europe, which will be discussed in the next section.

2. The Single European Act 1987

The aim of this Treaty was to advance European economic and political integration. The Treaty created policies, such as the removal of trade barriers between member states to reduce competition and increased voting power given to the European Parliament.

3. The Maastricht Treaty 1993

This Treaty replaced Community with Union. The Treaty like previous treaties created policies to enhance economic and political integration, for example:

- i) The creation of '*European citizenship*.' Each national of a member state is now considered to be a citizen of the European Union with European rights, including for example, the right to reside in any European state.
- ii) The implementation of a '*single European currency*.' Many European countries have adopted the '€ Euro.' The UK opted out of this policy at the time of signing this treaty and has not yet adopted the 'Euro' as its currency.

4. The Amsterdam Treaty 1997

This Treaty involved policies of social integration, including immigration, public health, equality and employment. The Treaty implemented a national employment policy to tackle the problem of unemployment in member states. This policy set out goals to be reached within certain timeframes with the aim of creating new jobs for individuals in all member states.

5. The Nice Treaty 2001

This Treaty does not introduce new policies, but amends existing policies in previous treaties, to cater for the enlargement of the EU from 15 to 27 member states. The Treaty includes, for example, changes on how power will be divided between the EU institutions after enlargement.

6. The Lisbon Treaty

This Treaty seeks to make the European Union more democratic by raising its standards on accountability, transparency and participation. It makes the EU Charter for Fundamental Rights, which lists the human rights recognised by the Union, a legally binding document.

Importantly, it has not come into force yet as not all member states have ratified this treaty. The UK ratified this treaty in 2007.

Ratification process of a European Treaty:

A Treaty comes into force (becomes European law) only when all member states sign up to (ratify) the treaty. Each member state will ratify a treaty either through their usual democratic parliamentary processes or if they choose, through the passing of a referendum (a public vote).

Ireland is the only member state, who put this treaty to referendum and the people voted against it in 2008. There will be a second referendum in 2009. There are still some remaining member states, who must gain parliamentary approval, but it is hoped that this treaty will be ratified by all member states by the end of 2009.

Secondary legislation: Regulations and Directives

1. Regulations

Regulations are considered to be the most powerful secondary forms of European legislation as they are immediately binding and directly applicable on all member states. This means that as soon as the regulation is enacted by the European Union it becomes part of the national law in each member state and applicable to everyone, without the need for individual member states to create new laws and legislate.

Each Regulation will be published in the Official Journal of the European Union and states the date the Regulation will enter into force. If there is a conflict between national law and a Regulation, the Regulation prevails (see next section: Supremacy of EU Law).

An example of an EU Regulation is the EU Liquids Regulations which imposes restrictions on the carrying of liquids into the departures areas of all airports across the EU.

The European Union passes many regulations each year, however not all secondary laws can be done by way of Regulation. This is because each member state has a different social, economic and legal infrastructure and it is difficult to draft a law that can apply universally. For example, the EU cannot implement a law stating a universal minimum wage that must apply in all member states as each state has different economic conditions and standards of living vastly differ between countries. Therefore, the law on minimum wage was passed by way of an EU Directive and each member state has implemented their own law in line with the EU instructions.

2. Directives

Directives are in effect instructions by the EU to all member states to legislate on a particular area of law within a specified timeframe. The Directive will lay down the objective or goal that each member state must achieve within this prescribed time. Each member state is under an obligation to adapt their national laws or adopt new national legislation in line with the European obligations. This means that although the directive is binding (as with a Regulation) it is not directly applicable to everyone as each member state must implement their own national legislation.

Directives enable each member state to choose their own form and method of implementation for the law. In the UK, directives are implemented either by an Act of Parliament or by Statutory Instrument. In Northern Ireland the Assembly may implement the Directive in the form of an Order (primary legislation) or in the form of Regulations (secondary legislation).

If a member state fails to transpose all or part of the directive into their own law within the time period given by the EU, the European Court of Justice has the power

to fine member states. Examples of Directives implemented into UK and Northern Ireland law are:

- I. The Data Protection Act 1998 was enacted by the UK in response to the EU Directive on the Protection of Individuals with regard to the processing of personal and the free movement of such Data.
- II. Employment Equality (Age) Regulations (Northern Ireland) 2006 were enacted in order to implement the age strand of the EU Employment Framework Directive. In Northern Ireland these regulations were introduced and changes were made to national legislation in order to conform with the EU Directive. For example, the upper age limit of (65 years) for unfair dismissal and redundancy had to be removed as to provide the same rights to all workers regardless of age. This limit was considered age discrimination.

1.16 The supremacy of EU law in the UK

If there is inconsistency between European law and the national law of one of the member states, European law takes priority and will override any inconsistent national law. This ensures that EU law is consistently applied in every member state. Some argue that this is an erosion of our democratic principle of parliamentary supremacy, others say that because our legislation states that EU law prevails, there is no erosion as we are carrying out the instructions of our supreme law making body.

INSTITUTIONS OF THE EUROPEAN UNION

1.17 Introduction

The European Union is managed by a series of institutions whose powers and responsibilities are set out in the Treaties. There are three political institutions which hold the legislative and executive power of the EU and the judicial section which consists of one main court and an assistant court.

1.18 The main institutions of the European Union are:

The Political Institutions are as follows:

- A. **The Council of Ministers:** The Council is the supreme legislative authority within the EU and has final decision making authority on important EU issues.
- B. **The European Commission:** The Commission is considered to be the civil service of the EU as it is responsible for the day-to-day management of the Union, and the implementation of the EU budget.
- C. **The European Parliament:** The Parliament is an advisory and supervisory EU body, which has three main roles: (1) it advises on the enactment of EU laws, (2) it has a supervisory role over the other political institutions, and (3) the Parliament has joint responsibility for the budget and how it is utilised.

The European Court of Justice (ECJ)

The ECJ is the highest court of the EU and is in charge of the judicial work of the EU. It consists of one Judge from each member state, presently 27 in total, who are assisted by 8 advocate generals. The ECJ is presided over by a President, who is elected by the Judges for a term of three years. The Judges are appointed for renewable terms of 6 years.

The primary function of the ECJ is to enforce EU law and ensure the consistent interpretation and application of EU law across all member states. The ECJ will hear cases brought by the Member States (their national courts or by individuals) and the Institutions of the EU; the Commission, Parliament and Council. The ECJ mostly hears cases in chambers of three to five Judges but occasionally they will sit as a plenary session, which means that there are thirteen Judges sitting. This is reserved for cases considered to be of exceptional importance.

The ECJ may find that member states have failed to fulfil their obligations under the Treaties. For example, in 2005 the ECJ passed 136 judgments against member states for failure to comply with their obligations under EU law. The Court has the

power to fine or impose penalties on member states who do not comply with their judgments.

It is not possible to appeal any decision of the national court to the ECJ but member states can refer questions of law to the court. The national court may do this before they make their decision, to ensure that their decision is compliant with EU law. If the court refers the question after they have made their decision and the ECJ finds that the national court's decision is inconsistent with EU law, the ECJ has the power to overrule the national court decision.

Also, it is not possible to appeal any decision of the ECJ. It is final and binding on all nations and citizens of the EU.

The Court of First Instance (CFI)

The ECJ is assisted by a lower court, the CFI. This Court must also enforce EU law and ensure the consistent application and interpretation of EU law. It hears actions brought by private individuals and businesses and actions brought by member states against the Commission.

Like the ECJ, the CFI consists of one Judge from each member state (27 Judges presently) who is elected for a renewable term of six years. There is a presiding President also elected for a renewable term of three years. Most of the cases are heard in a chamber of three Judges. Decisions of the CFI may be appealed to the ECJ on a point of law only.

SAMPLE QUESTIONS & SOLUTIONS PROGRAMME

The following questions examine the key areas you are expected to know for this particular subject, and will assist you significantly in your preparation for your examination in May/August 2010. In addition to the questions below, please also refer to the Summer 2009 examination paper which is contained in this manual for your reference. Pilot papers for this subject can be downloaded from www.AccountingTechniciansIreland.ie

Question 1:

Describe the main differences between civil and criminal law in Northern Ireland?

(Total 12.5 marks)

Question 2:

Detail the original jurisdiction of the main civil courts in Northern Ireland, commenting also on the appellate jurisdiction of the Court of Appeal and the House of Lords. A discussion of appellate jurisdiction of the three other civil courts is NOT required.

(Total 12.5 marks)

Question 3:

- a) In relation to the Northern Ireland legal system, what is the difference between primary and delegated legislation?

(4 marks)

- b) Explain the three rules Judges have used to interpret primary legislation and refer to any relevant case law

(8.5 marks)

(Total 12.5 marks)

Question 4:

a) List the FIVE primary sources of European Law

(5 marks)

b) Outline the composition and function of the European Court of Justice

(7.5 marks)

(Total 12.5 marks)

Question 5:

In the context of European law discuss the main differences between European Regulation and European Directives.

(Total 12.5 marks)

Solutions to the chapter questions above will be available online for students from January 2010 (in order to have provided you with sufficient time to have covered certain parts of the course.)

For those of you of wish to attempt any of the above chapter questions (and without looking at the solutions online!), you can email your answers to solutions@accountingtechniciansireland.ie from January 11th, 2010. Detailed feedback* will be provided to you within 3 working weeks of receipt. (These questions will not in any way count towards your summer examination marks.) This is a free service to our students and you are strongly advised to avail of it as past students have noted the benefits.

*** Proof of purchase of this manual may be required.**