

Academic Year 2009/2010

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**Accounting
Technicians
Ireland**

Laws & Ethics

Republic of Ireland



CHAPTER ONE: The Irish 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 Ireland and the impact of European law on the Irish legal system.

LEARNING OUTCOMES

Upon completion of this chapter you should be able to:

1. Understand the function and importance of the Irish Constitution
2. Define law and distinguish between criminal and civil law
3. Describe the different court structures and discuss the jurisdiction of the criminal and civil law courts
4. Identify the main sources of law in Ireland
5. Discuss the main types of European Legislation
6. Identify the roles of 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.

THE CONSTITUTION OF IRELAND

1.1 Introduction to the Constitution of Ireland

The Irish Constitution is the primary source of law in Ireland. It is a legal document that sets out how Ireland as a country should be governed.

It is considered the most superior law in Ireland, with the exception of European Union Law. It consists of 50 Articles and one of the most important Articles in the Constitution is the Article that states that the Oireachtas must not enact any law that is repugnant to the Constitution and that any such law (if passed) is invalid.¹ Ireland's entry into the EU has meant that European law is superior to the Constitution. The Constitution cannot invalidate any law created by Europe, even if it is incompatible to the Constitution.

The Constitution describes the Institutions of State and lists the fundamental rights and freedoms guaranteed to every Irish citizen.

1.2 The Institutions of State

The Irish Constitution established the four main institutions of State: (1) the President, (2) the Oireachtas (Parliament), (3) the Government and (4) the Courts.

- The **President** is the directly-elected Head of State. Although the President's functions are largely ceremonial, they are given some important discretionary functions (especially Article 26 of the Constitution – see para 1.14).
- The **Oireachtas** is the Irish Parliament and consists of the directly-elected Dáil Eireann and the indirectly-elected Seanad Eireann.
- The **Government** consists of the Taoiseach (Prime Minister) and Cabinet Ministers.
- The **Courts**: the most important courts are the High Court and the Supreme Court (see para 1.9-1.11).

¹ Article 15.4.

The Constitution not only established the institutions, but also provided an overview of how they should be run and the powers to be vested in each organ of state. The division of power is an underlying principle in any democracy and so that the power to run the state is not vested in a single state organ but is divided between the three organs of state:

- The legislative power is held by the Oireachtas, who draft and vote on the laws to come into effect.
- The executive power is held by the Government and it is the power to implement the laws passed by the Oireachtas.
- The Judicial power is held by the Courts and it enables the courts to interpret and apply the law correctly, in line with the constitution should a dispute arise.

1.3 The Fundamental Rights and Freedoms

Another important function of the Constitution is to guarantee every citizen a set of the fundamental rights and freedoms. For example, the right to equality before the law, the right to education, the right to life, the right to bodily integrity, the freedom to travel, the right to personal liberty, the freedom of expression, the freedom of assembly, the rights of the family and the right to fair procedures and privacy.

The courts may issue binding decisions that legislation is unconstitutional if it breaches any of these fundamental rights. If it decides that the legislation does conflict with the Constitution, it may annul or cancel the law. However, your fundamental rights and freedoms as set out in the Constitution are not absolute. This means that your rights can be limited or restricted if it is thought that it would be in the interests of the common good or public order.

1.4 Amending the Constitution

If the Constitution is to be amended it requires the consent of the people. There must be a referendum voted on by the people. If the referendum is successfully passed the President of Ireland signs it into Law. Examples of recent referendums include the law on divorce, which was introduced by a constitutional amendment in 1996.

DEFINITION AND DIVISIONS OF LAW

1.5 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.

1.6 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 Director of Public Prosecutions (DPP) on behalf of the state in a criminal court. The DPP must prove *beyond reasonable doubt* that the accused committed the offence. This is a higher burden of proof than in the civil courts because of the overriding public interest and moral nature of criminal law.

An example of a criminal offence in relation to company law is fraudulent trading, which carries a maximum of 7 years imprisonment and/or a fine of up to (Companies Act 1963 s. 297).

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, the injured party must prove *on a balance of probabilities* that the other party was in the wrong.

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.

1.7 Summary table: Civil law v Criminal law

The following table illustrates the comparison between criminal and civil law in 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 State) and the Defence <i>e.g. DPP 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	Balance of probabilities (i.e. lower than criminal – question of whether it is more or less likely)

Finding	Guilty/not guilty	Liable/not liable
Commencement of proceedings	DPP 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

1.8 Criminal and civil cases in practice

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 financially liable for causing her death.

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

proved, 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.

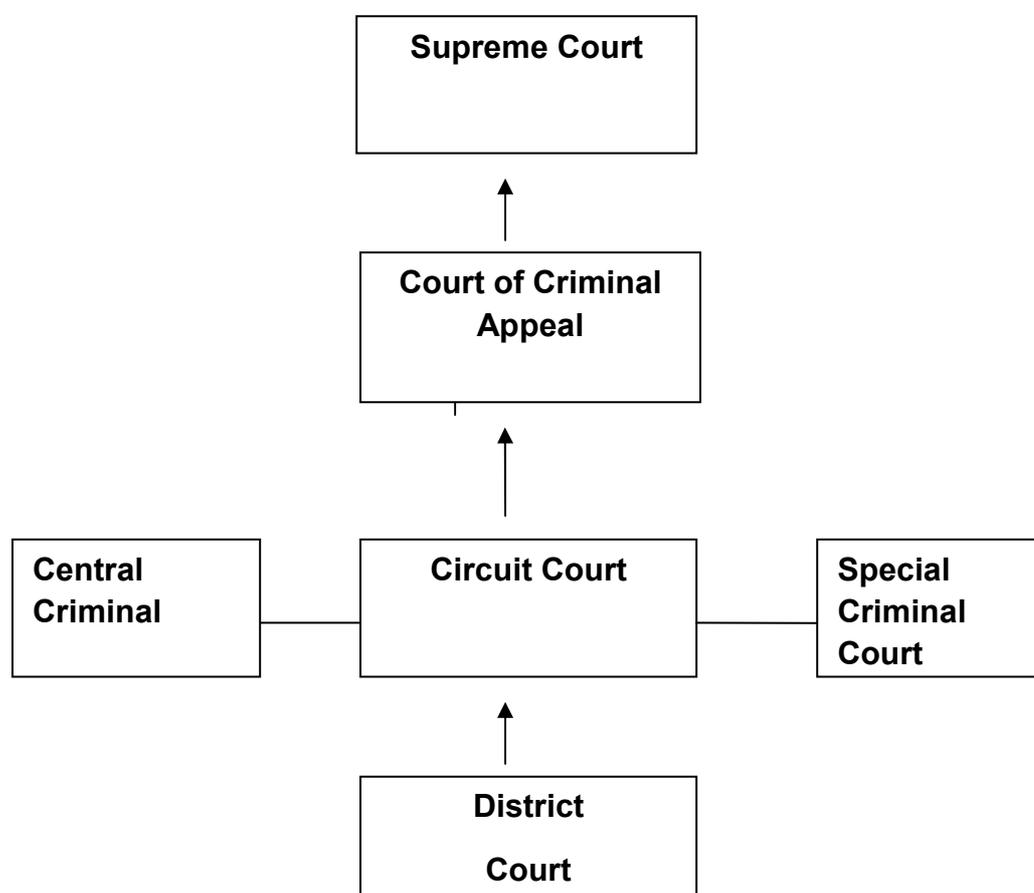
Note: Any conviction in the criminal court is admissible in the civil proceedings to prove that the offence was committed.

STRUCTURE AND JURISDICTION OF THE COURTS

1.9 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 any decision made by the lower court.

1.10 The criminal court structure



Jurisdiction of the criminal courts:

District Court

The District Criminal Court deals mostly with criminal law matters and is known as the inferior criminal court. In the District Court, one legally qualified Judge sits alone, and makes a decision without a jury. There are 24 District Courts located throughout Ireland, and a case is set down for hearing in a particular District Court depending upon: (1) where the alleged offence was committed, (2) where the defendant resides or carries on business, or (3) where the defendant was arrested.

In relation to *criminal law matters* in the District Court, the court only hears 'summary offences' (minor offences) and 98% of proceedings started in this court also end in this court. The maximum sanction that can be imposed by the court is a 12 months imprisonment and/or a fine not exceeding €1905. The defendant has a right to appeal to the Circuit Court against his conviction and/or sentence imposed by the district'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' to the High Court where it appears that the lower court has wrongly interpreted or applied the law.

Circuit Court

The Circuit Criminal Court hears all indictable (serious) offences except murder, rape, aggravated sexual assault, treason and perjury. Proceedings will commence with the arraignment of the accused where he will be brought before the Court and asked to 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 or to appeal by way of 'case stated'.

There are eight Circuit Courts Divisions in Ireland – six travelling divisions and two permanent courts, one located in Dublin and the other located in Cork.

Central Criminal Court

This court hears all serious crimes that are not heard in the Circuit Court. 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 or to appeal by way of 'case stated'.

Special Criminal Court

This court is reserved for cases involving dangerous criminals and terrorist cases. There is no jury, but three (rather than the usual one) judges reside. This court is not a permanent court but established as necessary to deal with cases that cannot be properly heard in the other courts.

Court of Criminal Appeal

This court is an appellate court, which means that it does not hear cases for the first time, but hears appeals from the lower courts (circuit or central court) concerning the application and interpretation of the law. Normally three judges will sit in each case (no jury). On hearing the evidence, the Court of Criminal Appeal may exercise one of the following options:

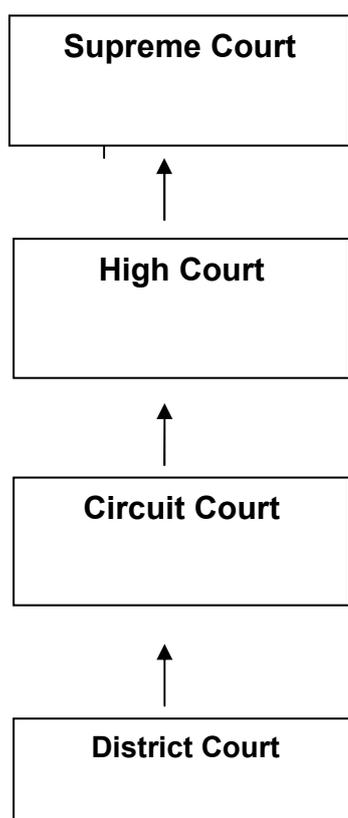
- Allow the appeal and acquit the defendant
- Allow the appeal and reduce, vary or increase the sentence
- Allow the appeal and order a retrial of the case
- Dismiss the appeal

An appeal from the Court of Criminal Appeal lies in the Supreme Court.

Supreme Court

The Supreme Court is the final court of appeal in Ireland. It will only hear appeals regarding decisions on points of law in cases of major importance. Usually three to five judges will hear the case but this has been increased to seven for important constitutional cases. The Head Judge of the Supreme Court is known as the Chief Justice.

1.11 The civil court structure



Jurisdiction of the civil courts:

District Court:

As stated the District Court is mainly a criminal court, however, it does have jurisdiction to hear some civil law matters, such as damages in contract and tort, applications for certain licences, such as the licence to sell alcohol, family law proceedings, eviction disputes between landlords and tenants and some debt

matters. It is possible to appeal against the decision on a point of fact or by way of 'case stated' on a point of law to a higher court. The maximum damages that may be awarded in the District Court are €6,348.69.

Circuit Court:

The County Court is the largest civil court. Matters are heard in one of the eight Circuit Court Divisions by Circuit Court Judges. Most of the civil work involves disputes in contract and tort and claims are limited to a damages award not exceeding €38,092.14. The Circuit 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 Circuit Court or in some cases there may be a right to appeal directly to the Supreme Court.

High Court

The High Court hears civil law matters and hears matters in relation to larger contract claims or claims in tort. The court will also hear equity matters, such as land and trusts and also deals with bankruptcy, winding up proceedings and other partnership and company law matters. The high court will also hear complex family law matters relating to divorce, custody and adoption.

High Court cases may be heard by any 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. The High Court has jurisdiction to hear appeals from inferior courts. There is a right to appeal a decision of the High Court to the Supreme Court.

Supreme Court (see also criminal law jurisdiction)

The Supreme Court 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. The Supreme Court may uphold or reverse any decision of the previous court or order a new trial.

SOURCES OF IRELAND'S LAW

1.12 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 the common law system. Such a system has existed in Ireland (North and South) since the seventeenth century.

Unfortunately the 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, common law and 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.

1.13 Three sources of law

A distinctive feature of a common law system is that the law is made by the judges. Today, judges are not the only law-making body as the Irish legislature 'The Oireachtas' has the power to create laws by enacting *legislation*. Legislation is regarded as the most important source of law and if there is any conflict between

case law and legislation, legislation prevails. Also, Ireland's joining of the European Union in 1973 has resulted in European law becoming a third source of law in Ireland.

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

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

1.14 Legislation

Legislation is regarded as the most important source of law in Ireland. As there is a written constitution in Ireland, all legislation enacted by the Oireachtas² must be compatible with the Constitution. Although all laws enacted are supposed to be in line with the Constitution, there is a right in Ireland to challenge the constitutionality of a law (Article 26 of the Constitution). If the legislation conflicts with a constitutional principle the law will be declared unconstitutional by the Irish courts and invalidated. Legislation enacted by the Oireachtas consists of primary and secondary legislation.

Primary legislation:

Primary legislation is enacted by the Oireachtas and is implemented in the form of Acts, for example, The Companies Act 1963. An Act is implemented into law after it has been approved by the Dáil, Seanad and signed by the President.

Delegated or Secondary legislation:

The Oireachtas does 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.

² The Oireachtas is a tripartite body comprising: (1) the lower house (Dáil Eireann), (2) the upper house (Seanad Eireann) and (3) the President.

In Ireland secondary legislation usually takes the form of Orders, Rules and Regulations. In contrast to primary legislation, secondary legislation does not have to be approved by the Dáil 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 of the Oireachtas. 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 in comparison to a selected committee of the Dáil.

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 the public can remain largely unaware of changes in law.

1.15 Case law and precedent

As Ireland is a common law legal system, the Oireachtas is not the only law-making body. A distinctive feature of our common law system is that decisions made by judges on new areas of law become law, and this law is called *case law*. Case law is considered as nearly as important a source of law as legislation, so if there is a conflict (rarely) between case law and legislation, the latter will prevail.

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 includes all the important decisions made by judges that have made new law over this period and up to today. These decisions establish 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 – in reality this means that a decision of a higher court binds a lower court).

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/legal issues of the case in question are sufficiently similar to the previous case establishing the precedent. The court will not have to apply the precedent if the decision was either incorrectly made or was 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 their case.
- Efficiency: it enables judges to make new laws in reaction to particular circumstances arising from recent developments in society (it is much faster than having to wait for the legislature to enact new law).

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

- Inflexibility: it unnecessarily forces courts to follow previous decisions (other common law countries do not have the doctrine of binding precedent e.g. France).
- Unfairness: a judge may create an unfair precedent that must then be followed by other courts until a higher court overrules it.
- 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.

SOURCES OF EUROPEAN LAW

1.16 EU Law – an introduction

EU law is the final source of law in Ireland. The Irish law making process was significantly altered by Ireland joining the EU and Ireland (as well as all other EU members) had to agree to the supremacy of EU law over national law and the Constitution. This means that although national law can be invalidated by the Constitution, European law cannot be invalidated by the Irish Constitution.

1.17 Creation of the EU

The European Union (formerly known as the European Community), was established by a founding group of six 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.

Ireland joined the European Union in 1973 with the signing of the European Communities Act 1972. As a result, Ireland became a member of the Union and agreed to incorporate European law into their national laws. Thus, European law became the third source of law in the Ireland.

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

1.18 European Legislation

European legislation, like Irish legislation, consists of 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 a common market that facilitates the free movement of goods, services, people and capital. It set out to raise the standard of living for everybody living in 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, in order to achieve the objectives of the EU and it also increased the voting power given to the European Parliament.

3. The Maastricht Treaty 1993

This Treaty replaced Community with Union (EC to EU). 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, like Ireland 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 on 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 yet come into force as not all member states have ratified this Treaty.

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 of Ireland voted against it in 2008. There will be a second referendum on this Treaty (with amendments/guarantees) 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 (on the date established for its implementation), without the need for individual member states to create new laws and legislate. An example of an EU Regulation is the EU Liquids Regulations which imposes restrictions on the carrying of liquids into the departures area of all airports across the EU.

Each Regulation is 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).

The European Union passes many Regulations each year, however not all secondary laws can be implemented 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 universally apply. 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 its own law in line with the EU's 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 Ireland, Directives are implemented either by an Act of Oireachtas or by a Statutory Instrument. 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 impose a fine on member states. An example of a Directive being implemented into Irish law is The Data Protection Act 1998. This Act was enacted by Ireland in response to the EU Directive on the 'Protection of individuals with regard to the processing of personal data and the free movement of such data'.

INSTITUTIONS OF THE EUROPEAN UNION

1.19 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.

1.20 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 Ireland.

Total 10 marks

Question 2:

Detail the original jurisdiction of the main civil courts in Ireland, commenting also on the appellate jurisdiction of the High Court and the Supreme Court. A discussion of appellate jurisdiction of the other civil courts is NOT required.

Total 10 marks

Question 3:

A. In relation to the Irish legal system, outline the difference between primary and delegated legislation?

(3 marks)

B. Discuss the advantages and disadvantages of delegated legislation in Ireland.

(7 marks)

Total 10 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.

(5 marks)

Total 10 marks

Question 5:

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

Total 10 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.*