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INTRODUCTION TO FUNDAMENTALS OF IRISH LAW

Learning Goals

At the end of this chapter you should:

- Start considering approaches to the study of law.
- Be thinking about your own study style and your approach to studying law.
- Become familiar with some important internet resources.
- Consider different legal terminologies.
- Understand key distinctions between criminal and civil law.
- Consider the importance of giving references for your work.

1 The Relevance of Law in Life and as a Topic of Study

We are all affected by legal regulation. We make contracts, have employment relationships, drive cars, pay rent, take out mortgages, have relationships and live in family groups. All these activities occur within a framework of legal regulation.

An interesting and challenging aspect of law is that it is a dynamic subject: the law changes. Changes to statutory law may occur following a change in government to fulfil promises made before an election. European Union initiatives and developments may prompt new laws. At the time of writing there is debate concerning whether the EU Treaty will be redrawn in the wake of the euro crisis and whether a referendum will be called in Ireland as a result.

Recent alterations to criminal law include the reduction of drink driving limits and the clarification of rights to self-defence within the home. Judgments of the Supreme Court may alter the scope and interpretation of legal principles. Judgments of the European Court of Human Rights, such as in *A, B and C v. Ireland*, may require the state to revisit or reform laws.

Law is responsive to society and to shifts in social expectations. Decades ago marriage was the only accepted way of constructing family groups with children. A smoking ban in Ireland would not have been thought feasible twenty years ago. An example of the pace

of change can be seen in the fact that in 1996 the Family Law (Divorce) Act was passed, which enabled divorce in Ireland after decades of debate and controversy. In 2010 the rights of same-sex couples to enter into a civil partnership in Ireland was recognised by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

An important aspect of legal study and practice is the need to keep up to date with changes in the law and legal obligations. Legal awareness is an accepted part of our lives as consumers, house occupiers, students, employees and partners. Ignorance of the law is not a defence. This is an old saying, but one which remains relevant today. It is no defence for a business to say ‘we were unaware that the health and safety law had been updated’ or ‘we did not realise that talking with our competitors in that way could be illegal under the Competition Act’.

EU law impacts on us all, whether as employers, employees, consumers, business owners, farmers or home occupiers. If we take a package holiday or buy goods from another member state, EU law gives us consumer rights. The recent introduction of charges on septic tanks in Ireland is a result of an EU court action to enforce the EU Waste Water Treatment Directive.

2 How to Use this Book

This text aims to introduce you to fundamental concepts of Irish and European law. The range of law is vast, however, and an introductory text must start somewhere.

It focuses on the following areas of Irish and European law:

- sources of law
- institutional framework of Irish and European law
- fundamentals of tort
- fundamentals of contract law
- fundamentals of criminal law
- consumer law
- European Union law
- human rights law
- general study skills.

Once you have acquired a fundamental understanding of these areas you will be able to research specific fields in the areas of law, business studies, accountancy, building surveying or human resources.

The book aims to enable you to discover and interpret

information. It offers some suggestions about methods of reading and studying in general and for law in particular. Use it as a work book as well as a basic reference text. It aims to help you feel equipped and confident to tackle problem and short-essay type questions and to research topic areas further.

2.1 Electronic legal resources

The book shows you how to use the internet to develop your skills in locating, evaluating and applying relevant legal information. You will be aware from studying in general that the key to progressing with any subject area, whether maths, engineering, psychology or law, is to work with the materials and get involved in the subject area. This is essential for real understanding and enjoyment, and also makes revision much easier if you are facing end of course exams and assessment. As well as researching legal topics on a recognised site you may also access updates on major developments in the law and links through the Gill & Macmillan website.

2.2 Aspects of legal study

The study of law has its own particular characteristics. You need to be aware of:

- Where the relevant law comes from (the source of the law).
- The fact that a number of different laws may be relevant to a situation.
- What the law covers (the scope of the law) and how it is interpreted.
- How the law could be applied to a situation, and any alternative interpretations.
- The court or other body that applies the law if a dispute is unresolved.
- Possible outcomes if the law is broken.

3 The Format of this Book

Each chapter contains a list of Learning Goals and Overviews. Sections include Questions and Key Points; most also include a number of Tasks and Web Tasks. Work through these tasks, because they aim to explain fundamental aspects of the Irish and European legal orders. Each chapter ends with a series of Questions and a Summary. At the end of the book is a Glossary of Legal Terms.

Annotate the book and highlight significant points as you go along. Work through and with the material. This will help the process of assimilating the material.

4 An Introduction to Law and Legal Concepts

OVERVIEW

- The nature of law and legal regulation.
- Legal consequences.
- Distinctions between civil and criminal law.

4.1 The nature of law and legal regulation

Societies have social rules and legal rules. We can identify social traditions and morals, religious rules and customs that regulate behaviour. An example is that of queuing. There is no legal requirement to ‘form an orderly queue’. However, if a queue disintegrates and becomes a free-for-all there can be legal consequences. If people push and hit others, then the criminal law of assault may be relevant. There may be non-criminal consequences, too, in the tort of battery. There may also be health and safety implications.

4.2 Legal awareness — the scope of legal consequences

The range of legal consequences which can arise from an everyday situation is a good starting point to consider a key distinction in law, the difference between criminal and civil law.

TASK

Consider the following scenario and the issues below.

Kitty’s Trip to the Supermarket

Kitty completed her weekly shopping at the local supermarket. After paying the cashier she found her exit blocked by a large store security officer. He insisted that she accompany him to the manager’s office.

Kitty refused. He grabbed her by the arm and pushed her into the office, shouting, ‘the aul’ girls are the easiest to catch thieving!’ A number of her neighbours protested to the security officer but they were pushed aside.

The door was locked behind her.

Twenty minutes later the security officer returned and apologised. He said there had been a case of mistaken identity.

Kitty was too upset to confront the manager and hurried out via the fire exit. On her way out, she tripped over the flex of a polishing machine which was blocking the exit. Her ankle was broken.

The supermarket manager asks you whether there may be any legal consequences from this series of events.

Questions:

1. Do you think the supermarket staff may have committed any criminal offences for which they could be prosecuted by the state?
2. Do you think the supermarket could be sued by Kitty and be found liable to pay compensation?

Key Points:

1. There may criminal offences of assault under the Non-Fatal Offences Against the Person Act 1997. By pushing her the security officer may be guilty of criminal assault. By locking Kitty in a room he could be guilty of false imprisonment under the Act.

The obstruction of an exit may be a criminal offence under the Safety, Health and Welfare at Work Act 2005, which places a duty on employers to ensure that, so far as reasonably practicable, means of access and egress from buildings are safe and unobstructed.

2. There may be issues for which Kitty will want to sue for compensation. There may be civil liability for the tort of battery and also for false imprisonment. The comment about ‘the aul’ ones ...’ damages Kitty’s reputation and is defamatory.

The obstruction of the exit is likely to constitute negligence on the part of the supermarket. The liability for these actions, although committed by the store detective and the cleaning staff, will fall on the employer, the supermarket, due to the principle of vicarious liability.

Do not be concerned if you did not identify many of these possibilities. This is the starting point. By the end of your studies you will be able to explain these key points.

4.3 Distinctions between civil and criminal law

Whether an event is a civil wrong or a criminal offence (or gives rise to both types of legal consequences) is important because it determines:

1. Who or what takes proceedings against the person or organisation alleged to be in the wrong.
2. What type(s) of proceedings can be taken and which court could hear a case.
3. What outcomes or results there may be in the case.

Note that an act or an omission (a failure to do something) can have both civil and criminal consequences.

Example: Aeongus rides his motorcycle at speed in a busy urban area. He tries to overtake a car, crosses over onto the wrong side of the road and collides with an oncoming car driven by Brian. Aeongus suffers minor injuries. Brian sustains serious facial injuries. Aeongus may be prosecuted for dangerous driving (a criminal offence). He may be sued by Brian for negligence (a civil wrong).

4.3.1 The aim or purpose of criminal law

The main aim of criminal law is to regulate and to protect society. Some criminal offences are hundreds of years old.

Question: List three criminal offences that you would consider to have existed for a considerable time.

Key Points: Murder, theft, assault, fraud, rape.

The number of criminal offences is growing as society becomes more complex and more regulated. There are now criminal offences covering a range of activities: health and safety matters, driving, consumer protection, smoking in public places, unfair competition, as well as the more 'obvious' criminal offences relating to harming individuals or interfering with property rights.

4.3.2 Elements for criminal liability

The law generally requires two elements for a criminal offence to be committed. There must be a criminal act or an omission committed with a certain guilty state of mind.

You will see these referred to in the Latin phrases *actus reus* (meaning an action) and *mens rea* (criminal state of mind).

4.4 Civil law

Civil law covers all aspects that are not criminal. Contract, tort, property law and family law are all examples of civil law.

4.4.1 The law of tort

The word ‘tort’ means ‘wrong’ (originally a French word). It is used to describe a variety of laws which can be used to claim damages from a person who has committed a civil wrong — a tort. An action can be started in the appropriate court.

Usually a claimant will be bringing an action for damages, though other forms of remedy can be requested. For example, if someone is illegally occupying land, an injunction can be sought to compel the person to leave the land.

This area of law has largely been created by the rulings of the judges in the courts. It forms part of the common law of Ireland (see Chapter 2).

Many legal situations fall under the category of a tort.

Scenarios

Declan enters Aidan’s house without permission (the tort of trespass).

Alex rolls into the car in front as he was busy answering his mobile (the tort of negligence).

You read an article in the local paper which alleges a local councillor is corrupt. The allegations are inaccurate (the tort of defamation).

A doctor performs an operation without your consent (the torts of battery and negligence).

A neighbour regularly holds loud parties at the house, disrupting the life of the neighbourhood (the tort of nuisance).

During a football match Brendan threatens to hit Aidan if he tackles him again. Aidan knows Brendan’s reputation and feels genuinely threatened (the tort of assault).

Niamh invites friends around to her house for a barbecue. She knows that her conservatory is in a dangerous state. While there, her friend Orla leans on the conservatory frame and falls through it, sustaining cuts and bruises (liability under the Occupiers' Liability Act 1995).

4.4.2 The modern law of negligence

The modern tort of negligence was created by the judges when ruling in the famous case of *Donoghue v. Stevenson* [1932] *All ER Rep* 1.

This is one of the most influential cases of modern times and it came about because a woman in a café bought two bottles of ginger beer, one for herself and one for her friend. One bottle was contaminated with a snail.

The consumption of the ginger beer with added snail, and the sight of snail remains, caused the woman's friend to suffer shock and a gastric complaint. The woman's friend sued the manufacturer of the ginger beer for damages and won.

The court ruled that the manufacturer should have taken reasonable care to ensure that its products were not defective and did not injure a consumer.

We will be looking at this area in Chapter 4. For the moment it is important to note that this area of law is important in the regulation of our day-to-day activities (driving a car, surveying a house, running a business, etc.).

5 An Introduction to Legal Study Skills

OVERVIEW

- Types of questions or tasks that may be set.
- Using the internet as an information resource.
- Introduction to legal databases.
- Writing legal essays and problem solving.
- Referencing.

The study of law has characteristics which mark it out from other subjects. If you recognise these features it can help you plan your study style during the course. It can direct your approach when answering essay or problem-style questions and can also help in revising for an end of course assessment or exam.

Question: Consider what features you may associate with the study of law.

Key Points:

- Law is not a static subject — it changes constantly. It is important to have up-to-date information.
- Law can be detailed and precise.
- Law relies on authorities (such as an Act, statutory instrument, EU law, case).
- There can be uncertainty about whether an Act and/or case is relevant in any given situation and the facts in a particular situation are important.
- There are debates about whether a law is applicable and interpretations of the scope of the law may differ.

5.1 Types of questions or tasks that may be set

You may be asked to give specific advice or to write a report on a situation or topic. You may be asked to ‘solve’ a problem situation. You will have to summarise complex legal provisions in a readable way and cite authorities to support your answers.

1. You need to identify the relevant source(s) of law.
2. Then apply the law to the particular issue or facts with which you are presented.
3. If there is more than one interpretation you should deal with both possibilities.
4. Give the legal authority (the statute, case name, etc.) that you refer to.
5. Come to some sort of conclusion.

As you read legal documents such as judgments you will see this is the basic approach that judges adopt.

You may be faced with short ‘essay-type’ questions such as:

“The Irish Constitution is a source of developing human rights for Irish citizens.” Explain this statement.’

In essay-type questions you need to organise your material to show the reader/assessor that you have understood the question and selected relevant points to support your answer.

A short introduction sets out how the essay will address the question. In formal essays you should avoid the use of ‘I’ and use the third person instead. So instead of saying, ‘I will examine Article 40 of the Constitution ...’, write, ‘Article 40 of the Constitution will be examined ...’ This may seem formal, but it is more appropriate in an

essay or problem-solving answer than saying ‘I think ...’, ‘in my opinion ...’, etc.

5.2 Using the internet as an information resource

The use of electronic legal databases is an essential tool in locating legal information. There are many paper-based sources such as law reports, journals, printed copies of legislation and hundreds of textbooks covering every possible area of Irish and European Union law. If you are studying law as part of a specialist course you may need to refer to a specialist textbook on, for example, employment law, nursing law or building and engineering law.

5.2.1 Internet resources for law

Electronic databases for law, provided by commercial firms, which charge subscriptions for access to the sites and the information in them, are a feature of law libraries and legal practice. Your academic institution may subscribe to one or more legal databases. For obvious reasons we focus on the sites which are free to access and use.

Question: Identify three advantages of electronic sources of legal information over paper sources.

Key Points: You may have identified ease of access (you do not need access to a specialist law library), the fact that information can be updated quickly, the information can be retrieved and copied and compiled from electronic sources quickly and conveniently. You may also have mentioned that it may be cheaper to access information electronically than purchase volumes of books and updates and that storage of electronic information is not a problem.

There can also be disadvantages in using some of the information on law that is available on the internet. The internet contains a mass of excellent, usable information. It also, as we are aware, contains a mass of unverifiable information posted by people and organisations seeking to advertise themselves or their product.

The sites we mention in this book are authoritative, useful, updated and easily navigated sites. We mainly rely on the British and Irish Legal Information Institute (BAILII), the Irish Legal Information Initiative run by UCC (IRLII), the Irish Statute Book site and the Europa portal to European Union law. There are many other useful sites referred to from time to time.

There is a list of website addresses (correct at the time of writing) at the end of the book. You will soon become familiar with certain sites and will have your own preferences about the ease of access, searches and navigation of other sites. In your own research you may find it useful to consider the following aspects and approaches. Internet searches can be highly informative and interesting; they can also be time-consuming and distracting.

5.2.2 Internet searches

You probably already have your own favourite internet search engine. Fundamental to effective searching is:

- Identification of the issue(s) you need to research.
- Selection of key words and modification or refining the search.
- Accessing the information and assessing its reliability and currency.
- Selecting relevant information and discarding other information.
- Keeping a record of websites used and dates accessed.

Many of the legal databases have their own inbuilt search engine, and it may take some time to get used to the requirements of each.

You should choose an internet information source that is reliable, verifiable (i.e. you can check on the source of the information) and updated regularly. If a site says 'last updated August 2006', it may be of very limited use for up-to-date information on the current state of the law. If it is an authoritative site it may still be highly relevant for explaining the situation in 2006, including the facts and interpretation of case law that may still be relevant.

Researching a problem and choosing search terms

Example: You are asked to research the following problem.

Marion and Hayden own a dog called Lassie. She is a breed of collie. Normally she is on a rope in a fenced garden and there are 'Beware of the Dog' signs on each gate. One day Lassie chews through the rope and attacks a person walking another dog in a nearby park. Discuss issues of liability raised by the situation.

1. Choose your search engine or electronic database. (For the purposes of this exercise we will use the BAILII site.)
2. Identify the key words and select some of them to identify relevant information. This is often a process of trial and error. You can connect them by using connecting words like 'and' or

'or'. There is no right way to do this. What you aim to do is get the most specific sources quickly without having to scan through a huge list of documents. For example, type in *dogs and liability* and limit or refine your search in the database box by selecting *Ireland*.

3. You will call up a range of documents including reports (consultation papers), the Control of Dogs Act 1986 and cases.
4. The BAILII site has a facility that enables you to sort results. The default option is to be sorted by relevance, and a percentage figure is given to indicate the degree of relevance. This relevance figure relates to the words you typed into the search and not the issue you are researching. So although the Control of Dogs Act 1986 has a 71 per cent rating it may be far more relevant to the issue than a working paper produced in 1977 with a relevance rating of 100 per cent.
5. Try some other search terms of your own, for example 'dog attack', and compare the results.

5.3 Writing legal essays and problem solving

5.3.1 Answering questions on legal topics

You may face various types of question that aim to assess your knowledge and understanding of legal issues. Questions are set to test your knowledge and understanding, not just your memory.

Questions may fall into the following categories:

- general short questions on a legal topic
- 'problem' questions that ask you to advise a person or to discuss the legal rights and obligations of a party
- case studies for you to discuss
- project-type questions.

5.3.2 Writing an answer

Producing an accurate and readable summary of the topic is another skill that you will be encouraged to practise. This is a transferable skill, i.e. one that you can use for other subjects and in the workplace.

When answering questions on areas of the law you need to support your answer with reference to legal authorities. This means making references to appropriate case law and/or provisions of an Act, the Constitution, etc. After you have worked through some of the tasks this will become second nature.

An approach to problem questions:

- identify the law
- apply the law to the facts
- come to some sort of conclusion.

Note that often there may be two or more possible ‘correct’ answers. The legal system thrives on different interpretations and arguments. If the point is debatable, you can say that it is debatable, and explain why.

Question: Outline three of the main differences between criminal and civil law in Ireland.

Key Points:

- The purposes and aims of criminal law and civil law.
- A prosecution is by the state in a criminal action. In a civil action a plaintiff sues the defendant.
- The different processes involved, e.g. the role of the jury trial in criminal law for more serious cases.
- The mental element generally required for criminal guilt (*mens rea* element).
- Differing burdens of proof. The prosecution must prove guilt beyond reasonable doubt in criminal law. In civil law the plaintiff must prove their case on the balance of probabilities, i.e. that it was more likely than not that the events occurred as the plaintiff alleged.

Question: Why do you consider there are different standards of proof for criminal and civil trials?

Key Points:

- In criminal trials the stakes are higher. Before the abolition of the death penalty a convicted person could lose their life. The sanctions of imprisonment and other restrictive punishments require that the case should be proved beyond reasonable doubt.
- In civil cases the normal outcome is either a finding of liability and an award of damages or a dismissal of the case. Legal costs may then be awarded by the court. In criminal cases the outcomes may be an acquittal or a finding of guilt and then sentencing.

5.4 Referencing

You need to know how to reference your resources and sources of information. If you write an essay for a course or a report for an

employer you should show where you obtained the information. This gives your research extra strength and credibility as it can be verified. Academic institutions have their own policies about referencing and may use different systems. Whether you use paper-based resources, such as textbooks, or electronic sources, such as the internet, it is important that you become familiar with the appropriate method of referencing the works to which you refer for essays and dissertations, etc.

5.4.1 Referencing in general

Question: Why is it necessary to refer to sources (such as authors or reports) in the body of your essay and references afterwards?

Key Points:

- To comply with academic rules.
- To ensure that you acknowledge others' words and thoughts and do not plagiarise (pass off another person's work as your own).
- In order that your work can be verified and the reader can follow up on sources you have used.

5.4.2 Types of referencing

The Harvard system of referencing is a recommended system of referencing. This deals with the citation of authors/reports within the body of the text, for example:

‘Law plays an important part in the definition and regulation of all kinds of social relationships, between individuals and between groups.’ (Harris, 2007)

At the end of your essay you should have a section headed ‘Bibliography’ or ‘References’ where you list books, journal articles, newspaper articles and/or websites. You should include sources that you have read or consulted (not just those from which you have directly quoted). This enables the writing and facts upon which you rely to be verified and gives proper attribution to the original author.

There are different conventions about how to detail books. The Harvard system includes the following pieces of information: author(s), year of publication in brackets, title of book in italics, the edition number if relevant, the name of the publisher.

You should reference websites or database resources, giving the website address and the date the site was accessed. There are examples at the end of this chapter.

Citing case law

If you are referring to a case in an answer or essay (not in an exam situation) you should if possible provide the full name of the case and the reference of the law report. Even if you are looking at cases on the internet the report will often give the traditional paper-based source of the case, e.g. *Kelly v. Hennessy* [1995] 3 IR 253. It is conventional to either underline or italicise case names. This citation means the case was reported in 1995 in the Irish Reports series (IR) at page 253. If you refer to the case more than once you do not need to repeat the reference in full but can simply refer to *Kelly v. Hennessy*.

Reminders about referencing

Just as copying from a colleague or copying paragraphs from a book without acknowledging the source or author constitute plagiarism, copying directly from a website can also contravene a number of rules (including the law on copyright).

Do not copy and paste chunks of material from a relevant and reputable website. If you use a selected quote from an internet source you should place it in quotation marks and acknowledge the source at the end of your answer, together with the date; e.g. <http://www.bailii.org/> (accessed 5/3/12). It is useful to include the date because the content of websites and internet resources can change frequently, and this is a record of the information as it was presented on the day.

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