

Module 1

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1.

Module 1

Introduction to Law

Introduction to Law

What is Law?

The law is a set of rules which have a deep impact over our lives. How people live and behave from birth to death is affected by the influence of laws. In most societies, laws regulate the way we work, the way we relax and even the personal relationships we form. Employment law concerns work relationships and environments. It provides minimum standards for wages and occupational safety. Criminal law prohibits particular

anti-social behaviours such as the consumption of alcohol and offences against persons and property. Family law provides the law on property alteration and domestic matters. All laws are rules, but not all rules are law¹. A law is a rule that is enforceable through the courts. A law is a rule that has been set by a law-making authority such as a parliament and which is for the most part binding of every person within a jurisdiction. A rule in a game or a sport is unlikely to be a law. Similarly, social norms such as avoiding talking with one's mouth full, or speaking unfavourably of the death, are unlikely to be laws as they are not enforceable in the courts. Non-legally binding rules are merely reflections of what a given society sees as appropriate behaviour².



<http://www.accidentlawkc.com/>

¹Richard Chisholm, Garth Nettheim and Helen Chisholm, *Understanding Law*(LexisNexis Butterworths 2012).

²Roscoe Pound, *An Introduction To The Philosophy Of Law* (Yale University Press 2016).

What is legislation?

Legislation is also called statute, or statutory law. It is a law which is approved by a governing body, often a parliament. The body with authority to make legislation is referred to as the legislature. To become law, members of the legislature will often prepare a bill, which will usually be subject to further consideration by the legislature. There are various reasons of having legislation. Some regulations are passed to regulate, typically prohibit, certain acts. In other cases, they are developed to authorize certain governing bodies to perform their role with more authority. There are still other reasons such as to offer certain grants. In many cases the legislation is developed on the basis of or in contrast to some non-legislative act which was in use by some governing body³.

Legislative bodies such as Congress or parliament debate on the same before they are approved. Approval of a bill is usually dependent on the priorities of the governing bodies. Persons who can approve such bills are called the legislators. The judiciary, refers to the courts, who must interpret legislation while the executive refers to the administrative branch of government who act on legislation to further government projects⁴.

³Kath Hall, *Legislation* (Butterworths 2002).

⁴Chisholm R, Nettheim G and Chisholm H, *Understanding Law* (LexisNexis Butterworths 2012)

Codifications of Law

Codes are systematic arrangement of laws which are consistent. Codification of law is the process where a large body of piece meal law is converted into an organised code. It means that old sources of law such as norms, values, decisions of old court cases or partial statutes are converted into an organized body of information. According to Salmond, codification is as a reduction of whole body of law into practicable and an enacted form. Codification results in increased certainty. It also makes it easier for laypersons, that is persons without legal training, to understand laws. There are certain problems with codification however, its rigidity can lead to loopholes. A person committing a wrong doing may be able to avoid penalty by relying on technical defenses. Overreliance on codes can stifle further evolution of the law. Also, it is almost impossible for any code to account for the wide factual patterns that occur in human life.

Types of Codes:

Codes are laws which are developed through processes of the legislature⁵:

1 Consolidating Code:

In some cases, the codes amalgamate pre-existing rules. A code may customary and statutory laws such as in the case of a pre-emption act of Islamic law.

⁵Schulze R and Zoll F, *The Law Of Obligations In Europe* (2015)

2 Combined Code

It is possible that the code of law created is creative in nature and consolidating.

Along with being a new law, it consolidates old laws too. These codes are called as combined codes.

Functions of Law

Establishing Standards

Laws are developed to set standards in the society. Laws are often created to control activities society deems criminal. A criminal act is one that is so severe that the people expect the state to act on behalf of the people. An eye for an eye is one of the earliest recorded laws from the Hammurabi Code of 1750BC.

Maintaining Order

Maintaining order in the society is also a major function of law. Laws are often promulgated to deter anti-social behaviour. It ensures that civil society will remain in order. Laws are created keeping societal norms and expectations in view. This results in maintaining order when the same laws are applied.

Resolving Disputes

Laws help to resolve disputes. In human affairs, it is almost impossible to avoid disputes completely. It is important that when disputes occur whether they be commercially based or relate to injury, that people can rely on a set of guidelines for

the management of any conflict... Under the court system, there is a federal court system and a court system existing in each state⁶. There are other means of resolving disputes which include alternative dispute resolution methods or ADRs.

Protecting Liberties and Rights

Laws often provide a minimum standard of personal freedoms. There are various liberties and rights which are offered by and protected by constitution of United States and that of the constituent states. One major role of law is to ensure that rights and liberties are protected. It stops the government from creating any law which violates freedom of speech right of the citizens. If anyone thinks the right is violated by the government or by anyone else, he or she can go to court to get justice. For example, if John was a black man, human rights law would protect him from discrimination in the workplace. In summary, laws serve many purposes. Although we have discussed only four functions, there are many more⁷.

Summary

As can be seen from this chapter, Laws are a fundamental set of rules that govern the way we live and how we live. Without having a legal system in place, the world would be in a disaster. Laws have been integrated into humans since the beginning of time, and they simply have organised the way we live. Legislation and implemented laws

⁶Williams G and Smith A, *Learning The Law*

⁷Pound R, *An Introduction To The Philosophy Of Law* (Yale University Press 2016)

and regulations are not there as strict rules only, but they also protect our rights as citizen or even humans. The essentiality of having laws in place is not one that can be defined in words. Look around you and you can see how laws have shaped the way we live.

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2.

Introduction to EU Law

Introduction

This chapter will aim to provide you with:

- an understanding of the European Union (EU) law making process
- a basic understanding of the European Convention on Human Rights (ECHR)
- acquire a basic knowledge about the EU institutions
- acquire sufficient knowledge of the core areas of EU substantive law;
- to raise awareness of relevant issues in EU law;

What is the EU?

The European Union ('EU') is a partnership between 28 nations of Europe. It has its origins in a commitment between France and Germany to create stable economic and political relationships on the continent. The EU created the Euro (€) a single currency as well as a single market of over half a billion persons. Citizens of the EU

are permitted to freely move from member state to member state and may work and reside in the member state of their choice. The free movement of persons, goods, services and capital are the EU's founding principles⁸.

Origins of the EU

The EU was formally created as a result of the Maastricht Treaty, officially the Treaty on European Union ('TEU'), on 1 November 1993. Prior to the forming Treaty were a number of earlier treaties, such as the Treaty of Rome which led to the inauguration of the European Economic Community, a predecessor to the current union⁹.

While the EU has had its critics, who see the union as a compromise of sovereignty; overwhelming the transnational body is recognised as a powerful means to support the economic growth of smaller nations and provide stronger bargaining power for the members collectively on a global scale. By and large, member states have supported pragmatic action to maintain and expand the EU¹⁰.

⁸Hallerberg, M. (2002). Introduction. *European Union Politics*, 3(2), 139-150.
<http://dx.doi.org/10.1177/1465116502003002001>

⁹Chalmers, D., Davies, G., & Monti, G. (2012). *European Union law* (2nd ed., p. 267 -). Cambridge, UK: Cambridge University Press.

¹⁰Hallerberg, M. (2002). Introduction. *European Union Politics*, 3(2), 139-150.
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Expansion since 1993

In 1993, the European Council, a predecessor to the EU, which was then comprised of twelve nations including Denmark, Germany, Belgium, France, Luxembourg, Italy, Greece, Portugal, the Republic of Ireland, the Netherlands, Spain, and the UK, consummated the criteria for joining the EU.

Now known as the Copenhagen Criteria, the three requirements, each with its own criteria, are as follows:

1) Political

The country in question must have a functioning democratic government. Such means that all citizens participate on an equal basis to make political decisions on every governing level. A democracy also entails a secret ballot for free elections, freedom of press, freedom to establish political parties, and other rights.

According to the requirements, the government may only exercise power with accordance to documented laws and procedures.

The country must also have strict human rights guidelines which cannot be taken away from any citizen. The right to life, the right of lawful prosecution (in accordance with laws existing at the time), freedom from torture and slavery, and protection of minorities are all included in the section.

2) Economic

The country in question must have a functioning market economy that has the capacity to be competitive within the union. Countries must also pass the Euro convergence criteria.

3) Legislative

The country in question must enact legislation that brings the laws of their country into agreement with the law of the EU.

These are in addition to rules which have a geographical basis.

Since 1993, the EU has become three times its original size. In 1995, Austria, Sweden and Finland were added. In 2004, ten members, largely from the Soviet bloc, such as Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia, and Slovenia, and also Poland, and the Czech Republic were added. Cyprus was also amongst the ten nations added to the EU in 2004. Bulgaria, Romania and Croatia have also since become members¹¹.

Principle of Conferral:

Conferral is a principle of the EU which holds that the body can only act with authority that has been expressly provided for it through treaties. It is a principle that operates in

¹¹Chalmers, D., Davies, G., & Monti, G. (2012). *European Union law* (2nd ed., p. 267 -). Cambridge, UK: Cambridge University Press.

a similar manner to federations such as the United States, Canada and Australia, whereby individual states confer authority to a central federal government. According to the law of conferral, the EU is a body of member states meaning that the EU's legal capacity and laws are decided upon by those member states. The EU does not have full jurisdiction by right, so it only has power over things which are explicitly outlined in its policy. Anything that has not been mentioned in EU law is strictly the matter of singular member states. It is explained in Articles 4 [1] as well as 5[2] of the TEU.

The articles clarify that the EU acts only within limits of the power which the members have bestowed upon it. 4 [1] states that those competences which are not conferred upon the EU by way of the Treaties remain with the Member [Countries].'

It goes on to say that each member state is equal, and the EU must respect their own national identities which are inherent in their history and fundamental structures such as government and constitutions, as well as the geographical territory of the member state¹².

Principle of Subsidiarity:

Subsidiarity is a principle of the EU which holds that the union should only act when its objective cannot be sufficiently achieved by individual member states acting alone.

The principle of subsidiarity, much as the principle of conferral, safeguards member

¹²Tridimas, T. (2007). *The general principles of EC law* (2nd ed.). Oxford: Oxford University Press.

states' rights, and governs the scope of the EU's lawful authority¹³. The principle ensures that Member States are allowed to make their own actions and decisions, but also authorizes the EU to intervene when a member state cannot sufficiently achieve an objective on their own, 'by reason of the scale and effects of the proposed action.' This principle is important because it keeps the power close to the people, and ensures that the EU does not override state power. Relevant sections of treaties concerning the principles of subsidiarity are Article 5(3) of the TEU and Protocol (No 2).

Principle of Proportionality

Proportionality is another principle that regulates powers within the EU. The main focus is ensuring that the institutions of the EU refrain from acting ultra-virus. In other words, the notion of the principle of proportionality is that EU institutions are limited to specific bounds. The principle, set out in Article V of the TEU, also regulates EU powers. Again, the action of the European Union is limited to the means necessary to achieve treaty objectives—this means that the EU's action must be in accordance with its aim. Again, the relevant criteria are provided in Protocol (No 2).

¹³Foster, N. (2008). *EU law* (1st ed.). Oxford: Oxford University Press.

EU Law and Sources of Law:

The EU has its own laws and principles which are laid out in its founding treaties. The body can adopt legislation—which member countries must agree and comply with.

These laws are divided into two categories: primary, secondary, and supplementary¹⁴.

Primary legislation

The primary legislation is established by the treaties which are the basis for EU action and decision. The treaties set out the distribution of power and jurisdiction between the union and the member states. Primary law is based on the amendments to EU Treaties, annexed protocols to all treaties, and treaties on member states of the EU who have recently joined.

Secondary legislation

Secondary legislation is constituted from the treaties principles and comprises of directives and regulations. Secondary sources also include unilateral secondary law, conventions, and agreements with other nations. Unilateral acts are those listed in Article 288 of the TFEU and those not listed, but which are respected communications and recommendations. Conventions and agreements may be exemplified by international agreements, agreements between EU institutions and the agreements between the states.

¹⁴Foster, N. (2008). *EU law* (1st ed.). Oxford: Oxford University Press.

Supplementary law

Supplementary law is not provided for in the treaties, but includes justice case-law, the general principles of law and international law. Supplementary Law allows judges to fill in gaps left by primary and secondary laws. The court is also very inspired by international law when developing new EU laws.

Treaties

A treaty is a contract between nations. Treaties are recognised as an important part of international law. Treaties are also referred to as exchanges of letters, protocols, international agreements, conventions, or pacts. As mentioned before, treaties are an integral part of the EU. They provide the authority for any action taken by the EU, as they have been approved by all EU member countries. A treaty, at its core, is an agreement between EU Member States. Treaties set out objectives, rules for institutions within the EU, and determine relationships between EU member countries. They may also be amended to continue being equal and modern—this helps the EU to become more efficient and ready to welcome more members into the fold.

The most prominent EU treaties include:

1. The Merger (or Brussels) Treaty
2. The Single European Act
3. The Treaties of Rome: ECC and EURATOM

4. The Treaty establishing the European Coal and Steel Community
5. The Treaty of Amsterdam
6. The Treaty of Lisbon
7. The Treaty of Nice
8. The Treaty on the European Union (or the Maastricht Treaty)



https://europa.eu/european-union/about-eu/symbols/flag_en

Regulations:

A regulation is a law or rule, established by an authority, in order to regulate conduct and is binding. Regulations are applied across the entirety of the EU. A number of regulations are used in the EU to control and maintain trade arrangements and standards.

Directives:

A directive is a goal, decided by the EU, which all member countries must achieve.

The way in which they go about achieving the goal, however, is up to each individual state. An example of a directive in the EU is the directive for consumer protection.

The central body determines the contents and criteria of the directive and the member states can determine how to achieve the directive. The directive may relate to hidden charges of goods. Member countries then need to act with internal legislation and enforcement to remove hidden charges.

EU Fundamental Laws and Freedoms

One of the remarkable EU features is the way that it has acted to improve personal freedoms and human rights.

The Charter of Fundamental Rights of the European Union ('the Charter') is a document of the EU which is frequently updated in light of changing social situations. The Charter contains sections titled "Dignity", "Solidarity", "Freedoms", "Equality", "Citizen's Rights" and "Justice", and "General Provisions".

Some of the noted laws provided by the Charter are the prohibition of slavery, human cloning and the death penalty. The Charter also supports personal freedoms such as privacy and freedom of thought on matters of religion, language, assembly, and asylum.

The Charter clarifies the various rights and freedoms provided for in by precedent of the Court of Justice of the EU ('CJEU'), namely the CJEU's case law; the European Convention on Human Rights ('ECHR') and associated rights; as well as other rights

that are provided through international instruments and constitutional commonalities between the EU member states.

The Charter is a highly modern document. It has provisions for what are known as 'third generation' fundamental rights, which include guarantees on bioethics; data protection; and transparent administration. Furthermore, it operates within the bounds of the principles of solidarity and proportionality. The implication is that its provisions such as the prohibition of discrimination are relevant to EU institutions. Member states still retain freedom to develop their own specific internal regulatory regimes¹⁵.

Summary

It is paramount for anyone willing to understand the laws of Cyprus and its Legal System to have a brief understanding of European Law. The European Union is large and respected union of countries and states in which they have their own European Laws that all member states adhere to. The structure of EU law is rather comprehensive but to summarise it, the European Union laws are binding on all member states which means that domestic laws cannot contradict with them. Being part of the European Union also gives citizens' rights and access to justice which allows them to take their own countries to the European Court of Justice.

¹⁵Horspool, M., & Humphreys, M. (2011). *European Union law* (5th ed., p. 167). Oxford: Oxford University Press.

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