

There are four main
sources of irish law



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There are four main sources of Irish Law. Pick one of these sources and examine it in detail as it affects the Early Childhood Care and Education area.

Law does not come from one source and can change with time. Previously Brehan Law was Ireland's native law, up until it was replaced by Common Law when Ireland was taken over by Great Britain. Now post British rule Irish law is taken from The Irish Constitution, 1937, Legislation passed by our government (primary and secondary), Case law and European Union law, these are the main sources but some other sources are Public International law, Canon law, custom, media and Scholarly writing. In order to examine Case Law in Ireland it is important first to explore the definitions of law, its place in Irish society. It is necessary to be aware of the process of law making in Ireland, who it affects and how it is practiced and it is enforced.

The name given to the science of law is Jurisprudence. The laws of nature have always existed but Legal laws are put there by humans. Moral and ethics can drive humans to regulate behaviour, e. g. to use manners and to wait in turn, to respect each other's land and not to steal. Rules of moral value are sometimes governed by the good conscience and fear of other people's opinions, in Irish societal history this is evident in the times of Roman Catholic influence and is greatly linked to religious beliefs, but most moral laws are also tied in and related with legal rules especially if they are seen to cause a harm to society. E. g. murder, rape, pollution.

The collection of people forming the Irish society has a set of rules in which they must abide by. Laws are set for the common good of the society and by the society to ensure that a certain standard of behaviour is maintained by

that society. Legal law in Ireland does not just cover harm to the society; it also regulates private human acts such as suicide, abortion and animal cruelty. These legal rules are enforced on society through the court system. If there were to be no law system in Ireland it would be faced with anarchy.

Law can be defined as “ The written and unwritten body of rules, derived from custom, formal enactment or judicial decision, which are recognised as binding on persons who constitute a community or state, so that they will be imposed upon and enforced among those persons by appropriate sanctions”.

(Cited by Murdoch.) H, 1998)

The Irish Constitution, 1937 as the main source of law in Ireland is a written document containing the rules that are applied to the state. It contains the fundamental rights of the Irish people and also the regulations for its Government, the regulations for administration of justice. It also holds regulations on the division between the judicial branches of the state and the executive legislative branches of the state.

The constitution has enumerated rights to equality, to personal liberty, to life of the unborn and equally to the mother, to freedom of speech, freedom to associate, freedom of assembly, family rights and protection, Inviolability of the dwelling, the right to education(with parental primacy, freedom to private property, to religious freedom and to directive principles through social policy.

Some rights that are also implied by the Constitution are the rights of the child, the right to know the identity of one's birth mother, the right to earn a

living, the right to strike, the right to dissociate, the right to travel, the right to protect one's health, the right to bodily integrity, the right to marry and form a family, the right to communicate, the right to silence, the right to privacy, the right to life of the individual, the right to legal representation, the rights to fair procedures in decision making, the right to access to legal advice and the rights to fair procedure in decision making.

The Constitution lays out all the important rights that the society needs in order to live positively and in harmony and it is up to the state to protect the rights of society by enacting legislation. Any legislation that does not protect the rights according to the constitution is not legally binding.

Outside of European Law, the Oireachtas is the name of the only place in Ireland that can make laws for the state. It consists of the President and Dail Eireann and Seanad Eireann (the two houses of Oireachtas.) A new law starts as a bill which is a proposition for a new legislation which is usually initiated by the government who will have already consulted it with other bodies that it may affect. In some cases the government will set up a green paper containing its ideas and ask for views and feedback on those ideas from individuals and groups of people.

This bill must pass through both the houses of Oireachtas though it usually starts off in the Dail Eireann. The Dail will then examine and debate its contents and suggest changes or additions to the bill. The members will then vote on whether to pass the bill or not to pass it. The bill will then be travelled to the Seanad Eireann and they will go through the same process again. They can then decide to pass the bill without any changes needed,

the can decide not to pass it at all or they may decide to send it back to the Dail Eireann with more changes to be discussed.

If the Seanad don't agree with the bill or asks for the Dail to make more changes it will lapse 180 days later, but the Dail can still pass the bill within the deadline once it has passed through the both houses the Seanad only has the power of suggestion and of slowing the process down.

The Taoiseach then passes the bill to the President of Ireland to be signed. The President has the ultimate power then to pass the bill, if the president thinks that the bill may be unconstitutional he/she is entitled to further consultation with the council of state. It is sent to the Supreme Court to be discussed further. If the president does sign the bill it becomes an Act which means it is a Legal/statute law. This law must stay consistent to the constitution or else it is not valid.

Legislation can also be delegated to and implemented through use of statutory instruments; this is known as secondary legislation or subordinate legislation. This means some power is passed down to an executive authority to administer and implement the requirements that are needed to fulfil a primary legislation given by the legislature.

The Childcare Act that was passed in 1991 is an example of a Primary Legislation.

Examples of secondary legislation can be seen within The Childcare Act. In one part The 1991 Childcare Act stated that; " The Health Service Executive has a duty to promote the welfare of children who are not receiving

adequate care and protection”. (Cited in Citizens Advice, 2008) This led to The Childcare (Placement of Children in Foster Care) Regulations, 1995. The Childcare (Placement of Children in Residential Care) regulations, 1995, and The Childcare (Placement of Children with Relatives) regulations, 1995.

Also under The Childcare Act; the HSE is given the responsibility of “ensuring the health, safety and welfare of children attending pre-schools” (Cited in Citizens Advice, 2010) from this the Pre-school Service Regulations 2006 and Garda clearance for employees in childcare were created.

When a law is seen to be broken or infringed in Ireland it must be taken to court. The courts will look at the behaviour in question and the definition of the law in question and see if the facts add up to an offence.

There are two different classifications of law in Irish society. They can be described as Private Law / Public Law or Civil/Criminal Law. Private law deals with the relationships of individual people within Ireland, whereas Public Law deals with the relationships between Ireland as a state and the individual.

The purpose of private law/ or civil law is to protect the interests of the individual persons in Ireland and give them rights to defend their interests with. If an individual person is rightfully wronged by another they can defend their interests civilly and orderly, and resolve the dispute in court. Some examples of private law cases are ones that deal with Landlord and tenant issues, Custody issues, personal injury and breach of contract issues. In usual circumstances there is a money pay out, compensation or an injunction...

Public Law/ or criminal law is concerned with the relationships of the individual and Ireland as a state and is of collective interest to the Irish society. It deals with actions by a person that are forbidden by the Irish as a state and these actions are punishable through imprisonment, community service or fines. Acts such as murder, sale of drugs and sexual assaults are dealt with before the public courts. This is done in a public court scene in most cases as it is a crime against the public, whereas it may endanger or distress the victim exceptions are made and their identities are kept hidden.

Procedural/or substantive law is the set of legal rules that are exercised by the court. This outlines the procedure by which the law is to be enforced through the courts and the rules of evidence and forms the courts structure. Some examples of the substantial law used in a civil court would be Property law, Contract law or Tort law. Constitutional law, Administrative law, criminal Law and Public International Law are seen in Public law cases.

In interpreting the legislations in the court, the court must be certain of the intentions of the legislature at the time that it was passed. The court has three rules to put into place if they are unsure of the legislation, if it is unclear to them or if it is appearing to show more than one meaning. The literal rule which means that the judge keeps to the ordinary meanings of the words according to the legislation, The golden rule which means that if by following the literal rule this leads to an absurd result then the literal rule must be changed and finally the mischief rule which means that the judge may investigate as to why the legislation was proposed to be certain of what particular mischief it was set up to fix or prevent or what or who it was

meant to protect. In the unlikely case the Dail reports may be necessary to interpret the unclear legislation.

Ireland like, England, America, Australia and New Zealand is part of a common law jurisdiction. This means in common with the other countries the Irish state uses previous court decisions to help them to make decisions in other cases. The previous cases are kept within law reports.

Law that is more so shaped from judicial decision and precedents rather than statute is known as Case law and they govern the impact that court decisions will have on future cases. It comes more from jurisprudence than it does legislation, though it serves to determine the legality of existing laws and can check or put more of a balance to the law that is put in place by the legislators.

Case law is the overall decisions that are reported by courts which are known as the courts of first impression. They make new interpretations of the law. They can be then be cited as precedents. The process in action is known as stare decisis. New Interpretations are then distinguished from statutory law.

When the Irish Parliament passes a legislation, although a great deal of research goes into the anticipation of how well it will work, nobody knows if it works until it is tested in court. When it is applied or interpreted in a particular way, especially when a new direction or differentiation appears, the case will often be reported so that other courts will follow this new interpretation in the interests of keeping consistency. The higher the court, the more significant this will be. If a case is appealed and reaches the High Court or the Supreme Court, then the lower courts will have to apply the law

in the same way as in that upper court unless the case before them has some significant difference. That is why case law is important. It acts as a guide for judges, magistrates and lawyers.

One simple example of case law in action might be when actors in the television series “ Law and Order” cite court decisions to the prosecutor to convince her that they have a case against a certain person. Something like “ States vs. Jackson” supports the idea that the defendant was guilty of felony murder.

Case Law is an area which was previously contained within the confines of one’s own country has assumed international proportions and that therefore one is not concerned simply with domestic case law.

References;