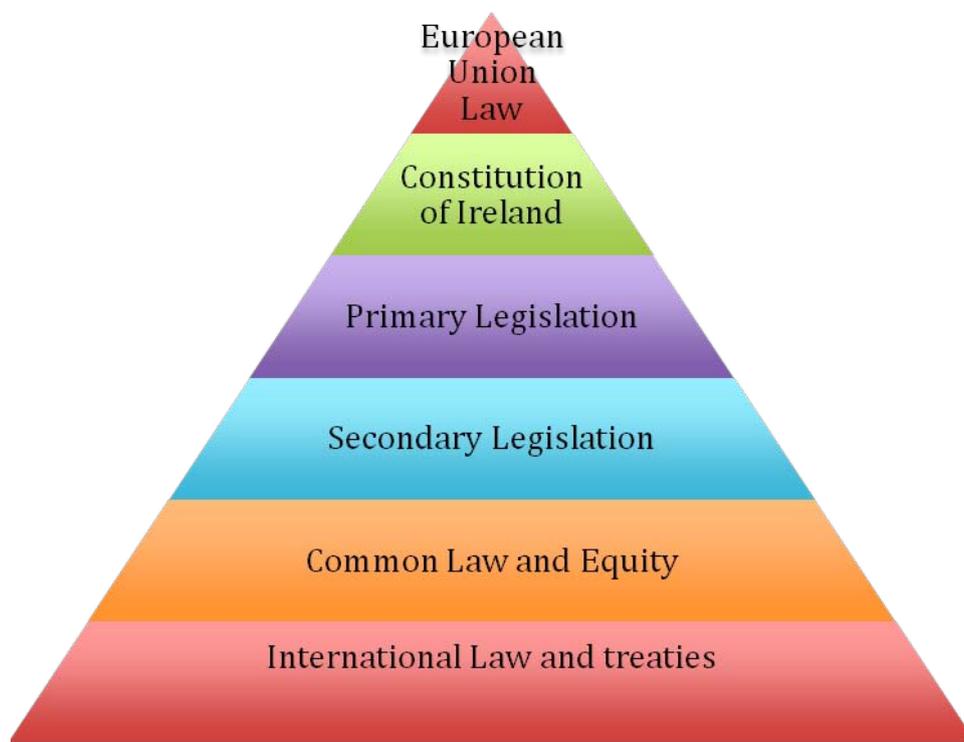


University of Tulsa, Dublin Summer Program
Researching Irish and EU Law
An Introduction to Law Lecture

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1. Primary Sources



- A. **EUROPEAN UNION LAW** – EU law is superior in rank to all other types of law. Includes provisions of EU treaties, EU regulations (binding throughout the EU) and EU directives (binding as to results that Member States are required to achieve) adopted by the Parliament and Council of the European Union. Decisions – binding on specified individuals only. EU recommendations and opinions are not binding.

- B. CONSTITUTION OF IRELAND 1937** – superior to all other sources of law except (a) EU law and legal measures passed in Ireland but necessitated by our membership of the EU and (b) legislation passed under the emergency provisions of the Constitution. Otherwise measures inconsistent with the Constitution are void and can be declared to have no legal effect to the extent that they conflict with the Constitution. The Constitution establishes the institutions of state and the separation of powers between them. It also places limitations on the conduct of the State by acknowledging certain fundamental rights.

*NB: 1. Where the term 'Ireland' is used in this paper, unless the context necessarily indicates otherwise, I mean the State as described in the Constitution of Ireland 1937 i.e. the island but **not** including Northern Ireland.*

2. While, I have included some information on Northern Ireland and the United Kingdom herein, Northern Ireland is not part of the State called 'Ireland'. Ireland as a State, in turn, is not part of the United Kingdom though because of proximity, history and relative size, English case law is often treated as very persuasive in Ireland.

- C. PRIMARY LEGISLATION** – Acts of Parliament (Congress) – also called 'statutes'. These are measures passed by a Parliament. In Ireland the Parliament is called the 'Oireachtas'.
- D. SECONDARY LEGISLATION** – also called ministerial orders, Statutory Instruments (S.I.) or Statutory Orders (S.O.) or executive orders. These are measures passed (usually by the Executive) on the authority of an Act of Parliament. This delegated legislation is typically passed by Government Ministers.
- E. COMMON LAW AND EQUITY** – judge-made law developed from precedents. Equity is more flexible than common law, but both are subject to overriding legislation ('codification' of common law = transposing judge-made laws into legislative format.)

F. INTERNATIONAL LAW – While some customary rules of international law have found their way into the domestic law of the state, international agreements are generally not binding **in** the State unless the Oireachtas incorporates such agreements by means of an Act of Parliament. (See Article 29.6 of the Constitution). Ireland is thus a dualist state. International agreements to which the State is a party bind the State externally (as a matter of international law) but are not binding **in** the Irish Courts unless passed into law by the Oireachtas and even then only to the extent permitted by the Oireachtas. The sole exception relates to EU law.

Important international measures and corresponding Irish implementing measures:

International Treaty	Implemented in Ireland by...
European Convention on Human Rights (1950)	European Convention on Human Rights Act, 2003 (in part)
Geneva Convention on the Status of Refugees (1951)	Refugee Act, 1996
UN Convention on the Rights of the Child (1989)	Some parts have been implemented in Ireland – see e.g. Article 42A of the Constitution
Hague Convention on Intercountry Adoption	Adoption Act 2010

Notably, Irish judges are required to abide by decisions of the Court of Justice of the European Union. They also generally must have regard to decisions of the European Court of Human Rights, and are required, where possible, to interpret Irish law in the light of the European Convention on Human Rights.

2. *Research: Identifying and Sourcing Primary Materials*

A. **IRISH LEGISLATION (PASSED)**

Irish Legislation consists of Statutes and Statutory Instruments. Statutes are Acts of Parliament (known today as **Acts of the Oireachtas**) and form the main corpus of Irish Law. These are the equivalent of Acts passed by the US Congress or by a US state legislature. This is sometimes called ‘primary legislation’.

Statutory Instruments are executive instruments created under the authority of Statutes, usually a Government Minister or other executive functionary. This is sometimes called ‘secondary legislation’. The general rule is that while Acts of Parliament contain the principles and policies of legislation, Statutory Instruments are geared towards providing the more technical rules that are required to carry these policies into effect. (*Cityview Press v AnCO* [1980] IR 381). This is discussed below in further detail.

‘Statute’

Acts of Parliament are sometimes called ‘statutes’ (*NB*: the letter ‘t’ should appear three times in this word!). When a person speaks of ‘statutory provisions’ typically she is referring to measures contained in an Act of Parliament, though the phrase may also refer to provisions in statutory instruments.

See the Statutory Instruments Act 1947 for definitions:

- “- the word "statute" means any statute being—
- (a) a pre-union Irish statute, or
 - (b) a British statute, or
 - (c) a Saorstát Éireann statute, or
 - (d) an Act of the Oireachtas (whether passed before or after this Act);
- the expression "statutory instrument" means an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute.”

Rules for the publication of statutory instruments are set out in the Statutory Instruments Act 1947 as amended by the Statutory Instruments (Amendment) Act 1955

'Principles and Policies Test'

Secondary legislation may do no more than give effect to principles and policies already contained in the primary legislation. In other words, secondary legislation must follow the law as stated in the primary Act rather than amend the law as set out by Parliament. This is sometimes called the 'principles and policies test', which O'Higgins CJ outlined in *Cityview Press v AnCO* [1980] IR 381:

“...the test is whether that which is challenged as an unauthorised delegation of parliamentary power is more than a mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits – if the law is laid down in the statute and the details only are filled in or completed by the designated Minister or subordinate body – there is no unauthorised delegation of legislative power”

A power may be delegated by the legislature where it involves no more than merely “giving effect” to principles and policies already contained in primary legislation. In other words, the Government and other agencies are empowered only to “fill in the fine details of primary legislation” based on and following clearly prescribed pre-existing parliamentary legislative policies, not to make new policy for the State.

Primary Legislation applying in Ireland

It is important to note that some of the legislation applicable in Ireland predates the foundation of the State. When the State was founded in 1922, laws that were in force at that time were carried over into the law of the new State to the extent that they were not inconsistent with the Constitution of the State. Many of these pre-independence statutes, however, have been repealed by the Statute Law Revision Acts, 2005, 2007, 2009 and 2012. Today, only those pre-independence Acts that are expressly saved by the Statute Law Revision Acts are still in force.

Pre-1800 statutes. From 1782 to 1800 Ireland (the whole island) had its own Parliament at College Green in Dublin (the building now houses the Bank of Ireland). One could, however, only be a member of this Parliament if one were a Protestant Episcopalian land-owning male. There were also a variety of Irish Parliaments prior to that date.

Statutes from this period are published separately. These are difficult to locate but see Osborough, *The Irish Statutes Revised, 1310-1800*, (Round Hall, 1995). Otherwise, some of these older statutes have (in selected cases only) been included in the Northern Ireland section of the www.bailii.org website.

Some statutes of English Parliaments also were applied from time to time in Ireland and these may be sourced at www.legislation.gov.uk.

1801-1922. From 1801 to 1922 Ireland was part of the United Kingdom of Great Britain and Ireland, and the Westminster Parliament in London, England made legislation for Ireland. This was as a result of the Act of Union 1800, which merged Ireland (previously a separate Kingdom ruled by the British monarch) into one United Kingdom comprising England, Wales, Scotland and Ireland. As such, legislation passed in this period in respect of the island of Ireland is contained in the Statutes of the United Kingdom. Where such statutes applied to Ireland they applied to the whole island including what is now Northern Ireland. These may be sourced at www.legislation.gov.uk or in the Northern Ireland section of the www.bailii.org website.

It is important when researching pre-independence statutes of the UK Parliament to check the range of application - this is usually stated towards the end of the Statute. Some UK Parliament statutes applied to the whole Kingdom, but many applied only to specific parts, or did not apply to other parts. Much of this legislation has been repealed, particularly by the Statute Law Revision Acts. If you want to check whether a pre-1922 Act is still in force you can check the lists of saved Acts in the Statute Law Revision Acts. Where a pre-1922 Act has not been repealed it remains part of the law of Ireland provided that it is not inconsistent with the Constitution. (Article 50 of the Constitution 'carries' such laws over into the law of this State).

1922 to date. In 1922, 26 of the 32 counties of Ireland (excluding Northern Ireland) became independent and formed the Irish Free State. In 1937 a new State was formed, again effectively comprising the 26 counties. The official title of the State is Ireland or, in Irish, Éire. From 1922 Ireland has had its own Parliament, the *Oireachtas*. Statutes enacted by the Oireachtas apply (except where extra-territorial jurisdiction is invoked) only to the 26 counties of what is known as the Republic of Ireland.

Statute Law Revision

Since the early 2000s, it has been state policy is to remove/repeal as many pre-1922 statutes as possible. A great many laws passed before 1922 were carried over into the law of the new State and then into the law of the current State. These include Statutes of the Irish Parliaments pre-1922, as well as those of the UK and English Parliaments that had the force of law in Ireland pre-1922. These laws contained important principles, but in many cases the case for their abolition was strong:

- The laws in many cases were no longer relevant to modern conditions in Ireland, or addressed issues that were no longer relevant
- The laws were inappropriate relative to modern values
- The language of the laws in question was obscure or impenetrable
- The laws themselves were often not accessible to the public
- The laws may have been of doubtful constitutionality.

As a result, several pieces of legislation have been passed repealing (abolishing) pre-1922 Acts of Parliament with the result that today, only a specified number of pre-1922 Acts have the force of law in Ireland

Sourcing Statutes.

Irish Statutes and statutory instruments from 1922 are widely available and may be found in any library in the legal reference section. They may also be found on the web:

www.bailii.org

www.irlii.org (particularly useful for recent legislation)

<http://www.irishstatutebook.ie/>

www.achtanna.ie

Recent legislation may also be located at www.oireachtas.ie

NB. These Acts are typically set out online in their original format, and are usually not consolidated, though individual Government Departments and the Law Reform Commission often issue unofficial consolidated versions of Statutes, with updates included.

See also Clark (ed.), *Irish Current Law Statutes Annotated* (Round Hall, various years). These annotations are also available online at westlaw.ie. These annotations contain section-by-section explanations of the relevant Acts.

Consolidations

Most of the sources noted above set out the legislation in its original format i.e. as passed. It is important to bear in mind that the legislation may have been amended or repealed by subsequent statutes.

Restatements of legislation (administrative consolidations) are permitted under the Statute Law (Restatement) Act, 2002. This allows Acts as amended to be republished containing all of the relevant amendments to those Acts. These restatements are prepared by the Law Reform Commission and certified by the Attorney General as being accurate.

Restatements contain the legislation as amended by subsequent measures. These are increasingly available from the following sources:

<http://www.lawreform.ie/restatement.84.html>

See also: <http://www.attorneygeneral.ie/slr/slr.html#Restatement>

For instance, the Succession Act 1965 (addressing wills and probate) has been amended to reflect the introduction of civil partnership. The restated, updated version is available on the Law Reform Commission's website:

http://www.lawreform.ie/fileupload/Restatement/First%20Programme%20of%20Restatement/EN_ACT_1965_0027.PDF

Consolidated versions are also available on www.westlaw.ie, which can be accessed through the library database site.

www.irishstatutebook.ie is also useful – this contains the Acts as enacted, but click on the ‘legislative directory’ for each Act to check whether any changes have been made and to link to those changes.

Tip: You may often quickly source a restatement on google by typing in the name of the Principal Act and the word ‘restatement’.

Principal Act’ and ‘Amending Acts’

The phrase ‘Principal Act’ is used to describe the main Act governing a particular area. It may be distinguished from Amendment Acts that amend or alter aspects of the Principal Act. So, for instance, the Defence Act 1954 is the Principal, main Act governing defence law but it has been subject to several amending Acts, e.g. the Defence (Amendment) Act 2011.

The Principal Act may generally be regarded as a ‘stand alone’ Act in that (*subject to and read alongside subsequent amendments*) it can be read as providing an entire code governing the relevant area. An Amendment Act, on the other hand, may only be understood when applied to the Principal Act that it amends.

Citation of Statutes

An Irish Statute is usually cited by reference to its short title (this is usually outlined in the Act itself. Here are some examples:

Offences Against the State Act 1939 (No. 13 of 1939)

Employment Equality Act 1998 (No. 21 of 1998)

Where an Act has been amended by subsequent legislation, the Act and amending legislation are often cited together, as follows:

Employment Equality Acts 1998-2011

Databases.

Statutes are also available in consolidated form on Westlaw – www.westlaw.ie - which you should be able to access through the UCD library. Westlaw is also an excellent

search engine for Irish cases and journal articles.

B. IRISH LEGISLATION (PROPOSED)

In Ireland, the term ‘bill’ describes a proposed piece of legislation that has not yet been signed into law by the President. Until signed by the President, the Bill has no legal force or effect. Bills once published may be sourced online at www.oireachtas.ie. If proposed by the Government they will usually also be found on the website of the particular government department. If a ‘Private Member’s Bill’ (proposed otherwise than by the Government) it should be found also on the particular party’s or deputy’s/senator’s website.

C. EU LEGISLATION

Legislation passed by the European Union is generally directly applicable to and in Ireland. The most common form of such legislation are Regulations, Directives and Decisions. These are published in the Official Journal of the European Communities but can also be found on the web at:

http://europa.eu/eu-law/index_en.htm

For additional information on EU law check out the **European Public Information Centre (EPIC)** at the **European Parliament and Commission Offices, Dawson St., Dublin 2.**

D. RESEARCHING CASES

Most High Court and Supreme Court decisions are written and reported. Lower Court judgments (District and Circuit Court) are not usually reported and are thus harder to locate. In family law cases, the proceedings are in *camera* (*i.e.* behind closed doors) and as such unless there is a written report of the decision issued by the judge him/herself, there may be no account of the matter other than the bare result and the orders granted.

High Court and Supreme Court decisions may be derived from a variety of sources. Most of these are available in college libraries (at per 340).

Name	Abbreviated as
Irish Reports	IR
Irish Law Reports Monthly	ILRM
Irish Law Times Reports (now published as part of the Irish Law Times)	ILTR Formerly known as the Irish Law Times and Solicitor's Journal (I.L.T. & S.J.)
Northern Irish Law Reports	NI
Employment Law Reports	Empl. L.R.
Irish Family Law Reports	I.F.L.R.
Decisions of the Irish Court of Criminal Appeal	Frewen

Decisions of the Superior Courts in England and Wales (High Court, Court of Appeal and the House of Lords) and Scotland (Court of Session, Court Ordinary) may also be found in most Irish Law Libraries.

Name	Abbreviated as
Appeal Cases	A.C.
All England Reports	All E.R. or A.E.R.
Weekly Law Reports	W.L.R.
Chancery	Ch.
King's Bench Division, Queen's Bench Division	K.B.D./Q.B.D.
Probate, Divorce and Admiralty Reports	P. or P. & D.

Decisions of the Court of Justice of the European Union and of the General Court (formerly the European Court of First Instance) are reported in the following places:

Name	Abbreviated as
European Court Reports	E.C.R.
Common Market Law Reports	C.M.L.R.

Decisions of the European Court of Human Rights are reported in the European Human Rights Reports (E.H.R.R.). *N.B.* It is important to distinguish between the European Court of Human Rights and the Court of the European Union (European Court of Justice and European Court of First Instance). These are separate and distinct courts, the judgments of which have extraordinarily different effects on Irish law.

For developments in the Irish law tracked on a year-by-year basis see Byrne and Binchy (eds.), *Annual Review of Irish Law*, (Thomson Round Hall) separate editions for each of the years from 1989 to date. Cases are considered thematically.

Sourcing cases online

On the web, recent major Irish cases can be found free of charge on www.courts.ie, www.bailii.org and www.irlii.org. courts.ie contains most superior court decisions from 2001 onwards. In some cases materials may be found simply by using google www.google.ie - search the name of the case and in many cases the report will be available online, particularly if it is a recent decision.

For decisions of the UK courts see: <http://www.judiciary.gov.uk/>

For synopses of recent Irish decisions see: <http://www.staredecisishibernia.com/>

For **Court of Justice of the European Union** decisions see:

<http://curia.eu.int>

For **European Court of Human Rights** decisions check out:

<http://www.echr.coe.int/ECHR/EN/hudoc>

Useful Databases (subscription services)

Westlaw, FirstLaw, Justis and LexisNexis all provide a very useful source of online materials, including legislation, caselaw, journal articles, consolidated legislation and EU and ECHR materials. These databases generally require a subscription – ask the Library for further details.

3. Secondary Materials

A. LAW REFORM COMMISSION REPORTS

In 1975, Parliament established the Law Reform Commission. Its purpose is to research specific areas of the law thought to be in need of change and to suggest strategies for reform. Law Reform Commission Reports and Working papers are thus a useful source of information about Irish law. These are available on the web at www.bailii.org and www.lawreform.ie.

For Northern Ireland, see the Civil Law Reform Division of Department of Finance and Personnel:

<http://www.dfpni.gov.uk/index/laws-and-regulations/law-reform.htm>

Other agencies have also produced valuable reports that may be of some use and interest. Of particular note is the work of the Irish Human Rights Commission and that of the Equality Authority (see links below).

B. FINDING SECONDARY MATERIAL

Law books are generally shelved between 340 and 350 in Irish libraries. Some important texts are shelved in reference and all official State publications are shelved separately.

C. INFORMATION ON THE WEB.

Very useful: www.citizensinformation.ie: information on various matters pertaining to Irish life. See also www.irish-law.org

Here is a selection of websites you may find useful:

Government	
www.irlgov.ie	The official Irish State website with links to all branches of Government, Departments of State and so on.
www.courts.ie	Information on the Irish Courts
www.nio.gov.uk	The Northern Irish Office website
http://www.niassembly.gov.uk/	Northern Irish Assembly
http://www.northernireland.gov.uk/	Northern Irish Executive
http://www.legislation.gov.uk/	For UK Legislation
www.parliament.uk	UK Parliament
www.cso.ie	Statistics on Ireland (Republic)
http://europa.eu/	European Union official website
http://curia.eu	EU Courts' website
www.attorneygeneral.ie/index_en.html	Attorney General's Office
www.direct.gov.uk/en/index.htm	Information about the United Kingdom
www.courts.ie	Court Service, includes recent cases
Professional Legal Organisations	
www.lawlibrary.ie , www.barcouncil.ie	Bar Council (Barristers' governing body)
www.lawsociety.ie	Law Society of Ireland (Solicitors' governing body)
www.ucc.ie/ucc/depts/law/irishlaw/	Irish law page
www.biall.org.uk/	British and Irish Law Librarians
www.ialt.ie	Irish Association of Law Teachers
Selected Specific State Agencies (examples)	
www.hsa.ie	Health and Safety Authority
www.nca.ie	National Consumer Agency
www.equality.ie	Equality Authority
www.equalitytribunal.ie	Equality Tribunal
www.nda.ie	National Disability Agency

www.cpa.ie	Combat Poverty Agency (now part of the Department of Social Protection.)
www.equalityni.org	Equality Agency for Northern Ireland
www.revenue.ie	Irish Revenue Commissioners
www.ihrc.ie	Irish Human Rights Commission
www.employmentrights.ie/en/	National Employment Rights Agency
www.ombudsman.gov.ie/en/	Office of the Ombudsman
Selected NGOs (examples)	
www.childrensrights.ie	Children's Rights Alliance
www.nwci.ie	National Women's Council of Ireland
www.ictu.ie	Irish Congress of Trade Unions
www.iccl.ie	Irish Council for Civil Liberties
www.ibec.ie	Irish Business and Employers' Confederation
www.glen.ie	Gay and Lesbian Equality Network
www.treoir.ie	Information for non-marital parents

Media Sources and Blogs

www.rte.ie	Raidio Teilifís Éireann – the State broadcasting service
www.irishtimes.com	The Irish Times
www.independent.ie	The Irish Independent
www.journal.ie	Online newspaper
www.bbc.co.uk/news	British Broadcasting Corporation
www.cearta.ie	Dr. Eoin O'Dell's blog on Irish law
www.humanrights.ie	Irish human rights law website

D. GOVERNMENT DEPARTMENTS AND THEIR WEBSITES:

Department of the Taoiseach (Prime Minister)	http://www.taoiseach.gov.ie/
Department of Foreign Affairs	http://foreignaffairs.gov.ie/
Department of Finance	http://www.finance.gov.ie/
Department of Justice, and Equality	http://www.justice.ie
Department of Agriculture, Food and the Marine	http://www.agriculture.gov.ie/
Department of Arts, Heritage and the Gaeltacht	http://www.arts-sport-tourism.gov.ie/
Department of Defence	http://www.defence.ie/
Department of Education and Skills	http://www.education.ie/
Department of Jobs, Enterprise, and Innovation	http://www.deti.ie
Department of Environment, Community and Local Government	http://www.environ.ie/
Department of Children and Youth Affairs	http://www.dcy.gov.ie/
Department of Health	http://www.dohc.ie/
Department of Communications, Energy and Natural Resources	http://www.dcmnr.gov.ie/
Department of Social Protection	http://www.welfare.ie/
Department of Transport, Tourism and Sport	http://www.transport.ie/