

Introduction

Law: a necessary evil?

In the opinion of many people, the law is a necessary evil that should be used only when everyday, informal ways of settling disputes break down. When we buy a train ticket a lawyer may tell us it represents a contract with legal obligations, but to most of us it is just a ticket that gets us on the train. If our neighbor plays loud music late at night, we probably try to discuss the matter with him rather than consulting the police, lawyers or the courts. Only when we are injured in a train accident, or when a neighbor refuses to behave reasonably, do we start thinking about the legal implications of everyday activities.

Even so, some transactions in modern society are so complex that few of us would risk making them without first seeking legal advice; for example, buying or selling a house, setting up a business, or deciding whom to give our property to when we die. In some societies, such as the United States, precise written contracts, lawyers and courts of law have become a part of daily life, whereas in others, such as Japan, lawyers are few and people tend to rely on informal ways of solving disagreements. It is interesting that two highly industrialized societies should be so different in this respect.

On the whole it seems that people all over the world are becoming more and more accustomed to using legal means to regulate their relations with each other. Multinational companies employ expensive experts to ensure that their contracts are valid wherever they do business. Non-industrialized tribes in South America use lawyers in order to try to stop governments from destroying the rainforests in which they live. In the former Soviet republics where law was long regarded as merely a function of political power, ordinary citizens nowadays challenge the decisions of their governments in courts of law. And at a time when workers, refugees, commodities and environmental pollution are traveling around the world faster than ever before, there are increasing attempts to internationalize legal standards. When it helps ordinary people to reach just agreements across social, economic and international barriers, law seems to be regarded as a good thing. However, when it involves time and money and highlights people's inability to cooperate informally, law seems to be an evil—but a necessary one that everyone should have a basic knowledge of.

Scope of this book

The purpose of this book is to give students a general introduction to the law, whether or not they intend to specialize in legal studies. Despite greater internationalization, most law is still made and enforced by individual governments, and there are great differences among the world's systems of law. For much of this book, English law has been chosen as a model. But frequent comparisons have been made with the principles and institutions of other parts of the world, especially with the United States, whose legal system closely resembles that of England, and with Western Europe and Japan.

The book is divided into four parts. The first five chapters deal with some general issues: what law is, where it comes from and the legal traditions that have developed in different parts of the world; the division between civil and public law, the institutions in which laws are made and applied, and the work of lawyers themselves.

The next five chapters are concerned with some important legal principles: contracts, crimes, torts, trusts and land law. Most areas of legal work employ some of these principles, so it is useful to have some knowledge of them before looking at how the law is applied in practice.

The next five chapters consider the role of law in regulating some areas of economic and social life: running a business, consuming products and services, family life, employment, and intellectual property (inventions, designs, copyrights).

The final five chapters take a look at some wide topics where legal developments are closely related to social and political ones: freedom of speech and expression, citizens' rights, human rights, law enforcement, and the internationalization of the law.

A glossary of the key legal terms used in this book is provided for reference at the end of the book.

The words which occur in bold in the text are key concepts for that chapter, and are then defined. Some of them are also in the glossary.

Ústřední knihovna
právníké fakulty MU
Brno

Part One

General Issues

1 What is law?

I Descriptive and prescriptive

- 1 The English word “law” refers to limits upon various forms of behavior. Some laws are descriptive: they simply describe how people, or even natural phenomena, usually behave. An example is the rather consistent law of gravity; another is the less consistent laws of economics. Other laws are prescriptive—they prescribe how people ought to behave. For example, the speed limits imposed upon drivers are laws that prescribe how fast we should drive. They rarely describe how fast we actually do drive, of course. This book is concerned with certain kinds of prescriptive law.

II Social morality, rules and laws

- 2 In all societies, relations between people are regulated by prescriptive laws. Some of them are customs—that is, informal rules of social and moral behavior. Some are rules we accept if we belong to particular social institutions, such as religious, educational and cultural groups. And some are precise laws made by nations and enforced against all citizens within their power. This book is mainly concerned with the last kind of law, and it is important to consider to what extent such laws can be distinguished from customs and social rules.
- 3 Customs need not be made by governments, and they need not be written down. We learn how we are expected to behave in society through the instruction of family and teachers, the advice of friends, and our experiences in dealing with strangers. Sometimes, we can break these rules without suffering any penalty. But if we continually break the rules, or break a very important one, other members of society may ridicule us, criticize us, act violently toward us or refuse to have anything to do with us. The ways in which people talk, eat and drink, work, and relax together are usually

guided by many such informal rules which have very little to do with laws created by governments.

4 The rules of social institutions tend to be more formal than customs, carrying precise penalties for those who break them. They are not, however, enforceable by any political authority. Sports clubs, for example, often have detailed rules for their members. But if a member breaks a rule and refuses to accept any punishment, the club may have no power other than to ask him or her to leave the club.

(11) 5 However, when governments make laws for their citizens, they use a system of courts backed by the power of the police to enforce these laws. Of course, there may be instances where the law is not enforced against someone—such as when young children commit crimes, when the police have to concentrate on certain crimes and therefore ignore others, or in countries where there is so much political corruption that certain people are able to escape justice by using their money or influence. But the general nature of the law considered in this book is that it is enforced equally against all members of the nation.

6 Government-made laws are nevertheless often patterned upon informal rules of conduct already existing in society, and relations between people are regulated by a combination of all these rules. This relationship can be demonstrated using the example of a sports club.

7 Suppose a member of a rugby club is so angry with the referee during a club game that he hits him and breaks his nose. At the most informal level of social custom, it is probable that people seeing or hearing about the incident would criticize the player and try to persuade him to apologize and perhaps compensate the referee in some way. At a more formal level, the player would find he had broken the rules of his club, and perhaps of a wider institution governing the conduct of all people playing rugby, and would face punishment, such as a fine or a suspension before he would be allowed to play another game. Finally, the player might also face prosecution for attacking the referee under laws created by the government of his country. In many countries there might be two kinds of prosecution. First, the referee could conduct a civil action against the player, demanding compensation for his injury and getting his claim enforced by a court of law if the player failed to agree privately. Second, the police might also start an action against the player for a crime of violence. If found guilty, the player might be sent to prison, or he might be made to pay a fine to the court—that is, punishment for an offence against the state, since governments often consider anti-social behavior not simply as a matter between two individuals but as a danger to the well-being and order of

society as a whole.

8 What motives do governments have in making and enforcing laws? Social control is undoubtedly one purpose. Public laws establish the authority of the government itself, and civil laws provide a framework for interaction among citizens. Without laws, it is argued, there would be anarchy in society (although anarchists themselves argue that human beings would be able to interact peacefully without laws if there were no governments to interfere in our lives).

9 Another purpose is the implementation of justice. Justice is a concept that most people feel is very important but few are able to define. Sometimes a just decision is simply a decision that most people feel is fair. But will we create a just society by simply observing public opinion? If we are always fair to majorities, we will often be unfair to minorities. If we do what seems to be fair at the moment, we may create unfairness in the future. What should the court decide, for example, when a man kills his wife because she has a painful illness and begs him to help her die? It seems unjust to find him guilty of a crime, yet if we do not, isn't there a danger that such mercy-killing will become so widespread that abuses will occur? Many philosophers have proposed concepts of justice that are much more theoretical than everyday notions of fairness. And sometimes governments are influenced by philosophers, such as the French revolutionaries who tried to implement Montesquieu's doctrine of the Separation of Powers (Chapter 17); or the Russian revolutionaries who accepted Marx's assertion that systems of law exist to protect the property of those who have political power. But in general, governments are guided by more practical considerations such as rising crime rates or the lobbying of pressure groups.

10 Sometimes laws are simply an attempt to implement common sense. It is obvious to most people that dangerous driving should be punished; that fathers should provide financial support for their children if they desert their families; that a person should be compensated for losses when someone else breaks an agreement with him or her. But in order to be enforced, common sense needs to be defined in law, and when definitions are being written, it becomes clear that common sense is not such a simple matter. Instead, it is a complex skill based upon long observation of many different people in different situations. Laws based upon common sense don't necessarily look much like common sense when they have been put into words!

11 In practice, governments are neither institutions solely interested in retaining power, nor clear-thinking bodies implementing justice and

common sense. They combine many purposes and inherit many traditions. The laws that they make and enforce reflect this confusion.

12 The laws made by the government of one country are often very different from the laws of another country. This makes it difficult to write a general introductory book about the law today. A book about economics, for example, while mentioning different practices and aims in different parts of the world, can focus upon those aspects of economics common to most parts of the modern world. But although there is a growing body of international law—and this will be dealt with as the final chapter of the book—the law today is, to a large extent, a complex of different and relatively independent national systems.

13 Most of the examples in this book come from English law. Despite major revisions over the centuries, the legal system of England and Wales is one of the oldest still operating in the modern world. (Scotland and Northern Ireland have their own internal legal systems, although many laws made by the British government operate throughout Britain.) English law has directly influenced the law of former British colonies such as Australia, India, Canada and the nation where law plays a bigger part in everyday life than anywhere else, the United States. In the following chapters these countries will be referred to frequently. In addition, although the legal systems of Western Europe and Japan come from rather different traditions, there are enough similarities of principle and institution to make comparison useful here, too.