Introduction to law and technology

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1. What is law?

2. UK legal system

3. Law and technology

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1. What is law?

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Law is…

System of principles, values, and rules that set preconditions for achieving common goods

Processes for writing, assessing, revising, updating, applying, and enforcing those rules

A (complex) way of organising society

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The rule of law

Everyone should be equally subject to the law
Except where justified by objective differences

Law should operate in the open and legal codes should be publicly available
Procedures for answering legal questions should be public, fair, and accessible

Legal questions should be answered according to law, not based on discretion
Law should be consistent and predictable

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Characteristics of law

Law is deliberative
Evidence-gathering, discussion, consideration, and careful thought

Law is interpretative
Assessing, evaluating, and applying the law by interpreting evidence and legislation

Law is iterative
Building on experience and feedback, with constant revision

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Law and the legal system

Legislature

Passes primary legislation

Executive

Executes and enforces the law

Legislature delegates power to make secondary legislation

Judiciary

Decides what the law means and how it should apply in practice

Makes *case law* (in England: *common law*)

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Common law and civil law

Common law (e.g. *UK, USA, Canada, Australia, New Zealand*)

Legislation is often general and policy-focused

Courts develop the law organically through cases – bound by precedent

Civil law (most of *Europe, South America*)

Legal codes are prescriptive and detailed

Courts apply legal codes to cases *without* being bound by precedent

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Public law

International law; constitutional law; administrative law; human rights law; criminal law; tax law (etc)

Private law

Contract law; tort law; business law; consumer protection law; employment law; property law; intellectual property law; data protection law; defamation (etc)

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Reading legislation

Don't start at the beginning!

Find the relevant section and work from there

Follow definitions and references to other parts of the legislation

Make sure you've covered all sections that relate to your issue

(Basically: it's a bit like reading code)

Some legislation is very long – there might be a lot to read

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Interpreting law

Literal rule: Apply the ordinary meaning of the words

Golden rule: Where the ordinary meaning would be absurd, ambiguous, or conflicts with public policy

Mischief rule: Identify what problem with the common law the legislature was trying to fix

Purposive approach: Identify what the purpose of the law is

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Law is subjective

Reading, interpreting, and applying the law is a subjective process

People often legitimately disagree on the best interpretation
Legal questions can have more than one possible answer

Lawyers use lots of tools to reason to an answer to legal problems
Legislation, case law, general legal principles, rules of interpretation, inference, analogy

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2. UK legal system

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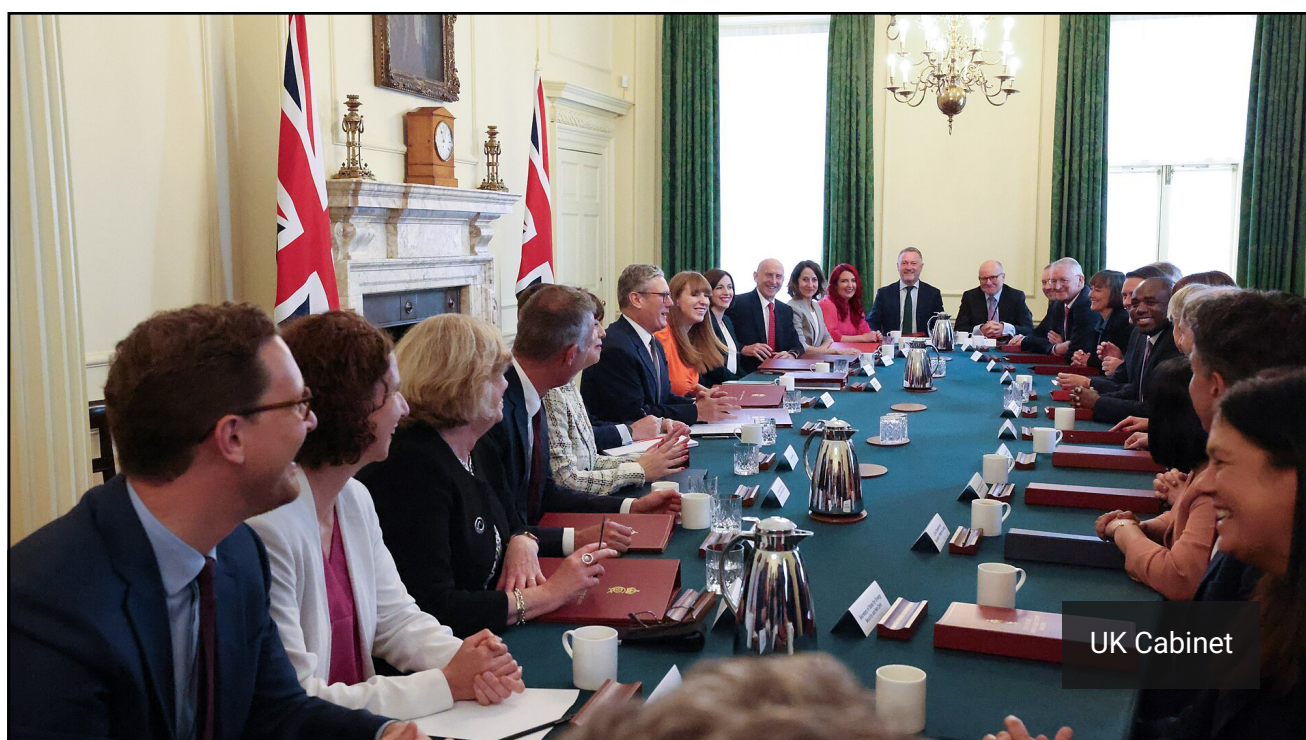Palace of Westminster (Parliament)

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House of Commons

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House of Lords

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10 Downing Street

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UK Cabinet

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UK Supreme Court

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UK law: three fundamental principles

The rule of law

Parliamentary sovereignty
Parliament has legal authority to make any law it wants, without restrictions

Doctrine of precedent (*common law*)
Lower courts are bound to follow decisions of higher courts when deciding cases about similar things

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3. Law and technology

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Some misconceptions

Law inevitably falls behind technological change

Regulation stifles innovation (and this should be avoided)

Digital technologies are too complex or too fast to be governed by law

Technological change is inevitable and unstoppable

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Some counterpoints

Law is important in shaping technological development in modern societies
Law and technology and *mutually constitutive* – not one falling behind the other

We have lots of law that applies to digital technologies already
Digital technologies do not stand outside legal and regulatory frameworks or the rule of law

There are good reasons for regulating, though digital tech can bring challenges
This does not make tech exceptional or ungovernable, nor are these challenges insurmountable

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Law, innovation, and technological development

"*The law does not simply respond to technological change; it also facilitates and mediates it*"
Simon Deakin and Christopher Markou, 'The Law-Technology Cycle and the Future of Work'

Law structures entitlements (rights, benefits, liabilities, and accountabilities) around and markets for technological development, production, distribution, deployment, and use

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Law is context

Law is part of the social context in which technologies are developed and used

Law is a fundamental force in technological development in modern societies

The general law applies to new technologies as to anything else

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Equality Act 2010

PROHIBITED CONDUCT

Discrimination

13   Direct discrimination

(1)   A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

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So why might we need to regulate?

New technologies can have a major effect on society and confer significant power on some at the expense of others

Regulation might be needed when the general law isn't sufficient
Especially when problems are structural or systemic

Sometimes – to try to deal with problems cause (in part) by law

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The Collingridge dilemma

Efforts to regulate the further development of technology face a double bind

Information problem
Impacts are hard to predict before technology is more extensively developed

Power problem
Intervening to regulate tech is more difficult when the technology has become entrenched

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Conclusion

Law is an important part of how we organise society

Law is a deliberative, subjective process of interpretation and reasoning

Law doesn't 'fall behind' technology – it shapes and structures its development and use

But: Regulation of new technologies is often a hard problem!

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