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The Law Explored: ignorance of the law

Professor Gary Slapper explains the complexities of English law in plain language

Gary Slapper

The phrase "ignorance of the law is no defence" means if, for example, you break a contract with someone, or drive without a valid driving licence, you can still be sued or prosecuted even if you didn't know what you were doing was legally wrong.

If the only laws that applied to people were the ones they knew, we'd be living in quite a different world. In the last ten years, 365 new Acts have been passed. Those were shovelled on the mountain of a millennium of lawmaking. Leaving time for you to sleep and nourish yourself, it would take you over 400 years to read all the law that applies today in the UK.

Why then, if people are presumed to know all the law, is it necessary for notices saying "It is against the law to smoke in these premises" to be put up on the entrances to all enclosed public spaces after July 1, when England will become smokefree? Can't everyone just be expected to know the law? There aren't, after all, notices anywhere which say "It is against the law to assault people in these premises."

The short answer is that the signs are required under section 6 of the Health Act 2006, and an Act can make anything the law. Failure to put up "no smoking" signs as required can result in a fine of up to £1000. These notices must be at least A5 in area (210mm x 148mm), and will need to go on all entrances to public premises, even Grade 1 listed buildings and places of worship. The reason why the Act demands the signs is that as the new law requires a big change in public behaviour, it is as well to be explicit about it. People generally know that outside a boxing ring it is wrong to punch anyone, but they might not be so sure about the new rules on where smoking is allowed.

In general, though, the reason why it is assumed that people know the law was summed up by Chief Justice Ellenborough in 1802. He noted that "every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance might not be carried. It would be urged in most every case".

So there is a sort of accepted fiction that everyone knows the law. It is sometimes dressed up in the imposing Latin phrase *ignorantia iuris neminem excusat* (ignorance of the law excuses no-one).

Even so, unlike an intolerant and fierce 19-century teacher, the law doesn't raise its stick to all ignorance. Legally, it is sometimes assumed that you might not know the law. Where there might be doubt or confusion about legal rights, the law requires that people are given good guidance. So, police must caution someone who is arrested: "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

Another concession is that not everyone who breaks a law while not even knowing it existed must be treated legally as if they did know it. There is a difference legally between ignorance and nescience (absence of knowledge in someone without the capacity to have it, like an infant or someone mentally incapacitated). Nescient people are not treated in law the same way as people who are ignorant of a law. So a clinically insane person is not bound by a formal contract he makes.

In Thomas More's 1516 story Utopia there are very few laws because "it's quite unjust for anyone to be bound by a legal code which is too long for an ordinary person to read right through". Today, our complex society couldn't be ordered with just a handbook of rules. We need a lot of law but perhaps not the glut we've got. In 1921, Lord Justice Scrutton said what some law students say after a bad afternoon in a law library "It is impossible to know all the statutory law". Add another 86 years of legislation and the situation is even worse.

But easy access to legislation and cases on the internet is a clear advance from earlier eras when the law was as remote from ordinary people as the Queen's personal diaries. Today, at least, even if there is too much law it is easier to access. And as Samuel Johnson noted, "the next best thing to knowing something is knowing where to find it".

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