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FACULTY OF JURIDICAL SCIENCES

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Lecture- 4



DIFFERENTIATION FROM OTHER MAJOR LEGAL SYSTEMS

The table below contains essential disparities (and in some cases similarities) between the world's four major legal systems.

	Common law	Civil law	Socialist law	Islamic law
Other names	Anglo-American, English, judge-made, legislation from the bench	Continental, Roman, Romano-Germanic, European Continental	Soviet	Religious law, Sharia
Source of law	Case law, statutes/legislation	Statutes/legislation	Statutes/legislation	Quran
	Judges act as impartial			

Lawyers	referees; lawyers are responsib le for presentin g the case	Judges dominate trials	Judges dominate trials	Secondary role
Judges' qualificatio ns	Career lawyers (appointe	Career judges	Career bureaucrats, Party	Religious as well as legal training

	d or elected)		members	
Degree of judicial independen ce	Low	High; separate from the executive and the legislative branches of government	Very limited	Ranges from very limited to high
Juries	Provided at trial level in some jurisdictio ns	May adjudicate in conjunction with judges in serious criminal matters	Often used at lowest level	Allowed in Maliki school, not allowed in other schools
Policy- making role	Courts share in balancing	Courts have equal but separate power	Courts are subordinate to the	Courts and other government branches are theoretically subordinate to the Shari'a. In practice, courts historically made

	power		legislature	the Shari'a, while today, the religious courts are generally subordinate to the executive.
Examples	Australia, United Kingdom (except S	All European Union states (except Ireland and Cyprus), all of continental South and Middle America	Soviet Union, PRC (except Hong Kong and	Many Muslim countries have adopted parts of Sharia Law.

	<p>Scotland), Israel, India, Cyprus, Nigeria, Republic of Ireland, Singapore, Hong Kong, United States (except Louisiana), Canada (except Quebec), New Zealand, Pakistan, Malaysia, Bangladesh</p>	<p>(except Guyana and Belize), Quebec, all of East Asia (except Hong Kong), all of North Africa, Francophone and Lusophone Africa, Azerbaijan, Kuwait, Iraq, Russia, Turkey, Egypt, Madagascar, Lebanon, Indonesia, Vietnam, Thailand, Louisiana</p>	<p>Macau), North Korea</p>	<p>Examples include Saudi Arabia, Afghanistan, Iran, United Arab Emirates, Oman, Sudan, Malaysia, Pakistan and Yemen.</p>
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Civil law is primarily contrasted with common law, which is the legal system developed first in England, and later among English-speaking peoples of the world. Despite their differences, the two systems are quite similar from a historical point of view. Both evolved in much the same way, though at different paces. The Roman law underlying civil law developed mainly from customary law that was refined with case law and legislation. Canon law further refined court procedure. Similarly, English law developed from Anglo-Saxon customary law, Dane

law and Norman law, further refined by case law and legislation. The differences are

- Roman law had crystallized many of its principles and mechanisms in the form of the Justinian Code, which drew from case law, scholarly commentary, and senatorial statutes
- Civilian case law has persuasive authority, not binding authority as under common law

Codification, however, is by no means a defining characteristic of a civil law system. For example, the statutes that govern the civil law systems of Sweden and other Nordic countries and the Roman-Dutch countries are not grouped into larger, expansive codes like those in French and German law

Subgroups

The term civil law comes from English legal scholarship and is used in English-speaking countries to lump together all legal systems of the jus commune tradition. However, legal comparatives and economists promoting the legal origins theory prefer to subdivide civil law jurisdictions into four distinct groups:

- Napoleonic: France, Italy, the Netherlands, Spain, Chile, Belgium, Luxembourg, Portugal, Brazil, Mexico, other CPLP countries, Macau, former Portuguese territories in India (Goa, Daman and Diu and Dadra and Nagar Haveli), Malta, Romania, and most of the Arab world when Islamic law is not used. Former colonies include Quebec (Canada) and Louisiana (U.S.).
 - The Chilean Code is an original work of jurist and legislator Andrés Bello. Traditionally, the Napoleonic Code has been considered the main source of

inspiration for the Chilean Code. However, this is true only with regard to the law of obligations and the law of things (except for the principle of abstraction), while it is not true at all in the matters of family and successions. This code was integrally adopted by Ecuador, El Salvador, Nicaragua, Honduras, Colombia, Panama and Venezuela (although only for one year). According to other Latin

American experts of its time, like Augusto Teixeira de Freitas (author of the "Esboço de um Código Civil para o Brasil") or Dalmacio Vélez Sársfield (main author of the Argentinian Civil Code), it is the most important legal accomplishments of Latin America.

- Cameroon, a former colony of both France and United Kingdom, is bi-juridical/mixed
- Germanistic: Germany, Austria, Switzerland, Latvia, Estonia, Roman-Dutch, Czech Republic, Russia, Lithuania, Croatia, Hungary, Serbia, Slovenia, Slovakia, Bosnia and Herzegovina, Greece, Ukraine, Turkey, Japan, South Korea, Taiwan and Thailand
 - South Africa, a former colony of the United Kingdom, was heavily influenced by colonists from the Netherlands and therefore is bi-juridical/mixed.
- Nordic: Denmark, Finland, Iceland, Norway, and Sweden
- Chinese (except Hong Kong and Macau) is a mixture of civil law and socialist law. Presently, Chinese laws absorb some features of common law system, especially those related to commercial and international transactions. Hong Kong, although part of China, uses common law. The Basic Law of Hong Kong ensures the use and status of common law in Hong Kong. Macau continues to have a Portuguese legal system of civil law.

MCQ

1. Piracy is a

(A).civil crime,

B). Criminaloffence. C). Both A & B, D) none of these)

2. The Slave trade is considered as a crime in –

(A).20TH century,

B).19th Century,

C).18thCentury,

D). none of these)

3. Who among the following is a reformist theorist-

(A). Gandhi,

B). Plato,

C). Aristotle.

D). Russell

4. The highest punishment given in India is

(A). Capital punishment, B). Life imprisonment, C). Amputation,

D). Heavy fine)

5. Where is International court located-

(A). The Hague, B) London,

C). Paris, D). Tokyo
