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## **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B. 1st Semester**

**SUBJECT: ADVANCE LEGAL WRITING SKILL-I**

**SUBJECT CODE: BAL 108**

**Lecture: 2**

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# Lecture-2



## **SUBCATEGORIES**

Civil law systems can be divided into:

those where Roman law in some form is still living law but there has been no

attempt to create a civil code: Andorra and San Marino those with uncodified

mixed systems in which civil law is an academic source of authority but common

law is also influential: Scotland and the Roman-Dutch law countries (South Africa,

Zimbabwe, Sri Lanka and Guyana)

those with codified mixed systems in which civil law is the background law but

has its public law heavily influenced by common law: Puerto Rico, Philippines,

Quebec and Louisiana

The Scandinavian legal systems, which are of a hybrid character since their background law is a mix of civil law and Scandinavian customary law and they have been partially codified. Likewise, the laws of the Channel Islands (Jersey, Guernsey, Alderney, Sark) mix Norman customary law and French civil law.

Those with comprehensive codes that exceed a single civil code, such as France, Germany, Greece, Italy, Japan, Mexico, Russia, Spain: it is this last category that is normally regarded as typical of civil law systems, and is discussed in the rest of this article.

## **PROMINENT CIVIL CODES**

A prominent example of a civil law code is the Napoleonic Code (1804), named after French emperor Napoleon. The Napoleonic code comprises three components:

the law of persons

property law, and

commercial law.

Another prominent civil code is the German Civil Code (Bürgerliches Gesetzbuch or BGB), which went into effect in the German empire in 1900. The German Civil Code is highly influential, inspiring the civil codes in countries such as Japan, South Korea and Switzerland. It is divided into five parts:

The General Part, covering definitions and concepts, such as personal rights and personality.

Obligations, including concepts of debt, sale and contract;

Things (property law), including immovable and movable property; Domestic relations (family law); and Succession (estate law).

## **History**

Civil law takes as its major inspiration classical Roman law (c. AD 1–250), and in particular Justinian law (6th century AD), and further expanded and developed in the late Middle Ages under the influence of canon law. The Justinian Code's doctrines provided a sophisticated model for contracts, rules of procedure, family

law, wills, and a strong monarchical constitutional system. Roman law was received differently in different countries. In some it went into force wholesale by legislative act, i.e., it became positive law, whereas in others it was diffused into society by increasingly influential legal experts and scholars.

Roman law continued without interruption in the Byzantine Empire until its final fall in the 15th century. However, given the multiple incursions and occupations by Western European powers in the late medieval period, its laws became widely implemented in the West. It was first received in the Holy Roman Empire partly because it was considered imperial law, and it spread in Europe mainly because its students were the only trained lawyers. It became the basis of Scots law, though partly rivaled by received feudal Norman law. In England, it was taught academically at Oxford and Cambridge, but underlay only probate and matrimonial law insofar as both were inherited from canon law, and maritime law, adapted from *lex mercatoria* through the Bordeaux trade.

### **Some salient features of the civil law:**

- Clear expression of rights and duties, so that remedies are self-evident.
- Simplicity and accessibility to the citizen, at least in those jurisdictions where it is codified.
- Advance disclosure of rules, silence in the code to be filled based on equity, general principles, and the spirit of the law.

- Richly developed and to some extent transnational academic doctrine inspiring the legislature and the judiciary.

## MCQ

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1. Which of the following is NOT included in the attributes of juridical capacity?
  - a) Juridical capacity is inherent in every natural person, and therefore it is not acquired.
  - b) Juridical capacity is lost only through death.
  - c) Juridical capacity is the fitness to be the subject of legal relations.
  - d) Juridical capacity cannot exist without capacity to act.
  
2. Which of the following is NOT a restriction on one's capacity to act?
  - a) Minority
  - b) Marriage
  - c) Deaf-mute
  - d) Civil Interdiction
  
3. This attribute or incident of a case determine whether it is a conflict-of-laws case or one covered by domestic law.
  - a) Cause of action
  - b) Foreign element
  - c) Jurisdiction

d) Forum non conveniens

4. The capacity of an heir to succeed shall be governed by the:

a) national law of the decedent's heirs

b) law of the country where the decedent was a resident at the time of his death

c) national law of the person who died

d) law of the country where the properties of the decedent are located.

5. Atty. BUKO, a Filipino, executed a will while he was in Spain. The attestation clause of the said will does not contain Buko's signature. It is valid under Spanish law. At its probate in Manila, it is being opposed on the ground that the attestation clause does not contain BUKO's signature. Is the opposition correct? Choose the best answer..

a) Yes, because it is a fatal defect.

b) Yes, the will is not valid under Philippine law.

c) No, attestation clause is not an act of the testator.

d) No, the governing law is Spanish law.