

Chapter 1 : The Common Law and Civil Law Traditions

The system of law that has developed in England from approximately to the present. The body of English law includes legislation, Common Law, and a host of other legal norms established by Parliament, the Crown, and the judiciary. It is the fountain from which flowed nearly every facet of U.S.

England, Wales, Scotland and Northern Ireland. Some law applies throughout the whole of the UK; some applies in only one, two or three countries. This webpage describes law that applies either to the whole of the UK, or to England and Wales. It does not cover law that applies only to Wales, Scotland or Northern Ireland. There is no single series of documents that contains the whole of the law of the UK. Legislation is law that is created by the legislature. The most important pieces of legislation are Acts of Parliament. The principal legislature is the UK Parliament, which is based in London. This is the only body that has the power to pass laws that apply in all four countries. Each elector has one vote, and the candidate with the highest number of votes is elected as MP for that constituency. The House of Lords consists of nearly peers, of whom are formally appointed by the Queen on the recommendation of the Prime Minister. Each of these legislatures has its own website. Common law The legal system of England and Wales is a common law one, so the decisions of the senior appellate courts see below become part of the law. How UK Law is classified A distinction is made between public law, which governs the relationship between individual citizens and the state, and private law, which governs relationships between individuals and private organisations. For practical purposes, the most significant distinction is between civil law and criminal law. Civil law covers such areas as contracts, negligence, family matters, employment, probate and land law. Criminal law, which is a branch of public law, defines the boundaries of acceptable conduct. A person who breaks the criminal law is regarded as having committed an offence against society as a whole. How Civil Law is enforced in England and Wales A person who believes that another individual or organisation has committed a civil wrong can complete a claim form and send it to the appropriate court. The High Court, which is in London, hears most higher-value cases. In the County and High Courts, each case is heard by a single judge. The person who starts a civil case is called a claimant, and he or she has the burden of proving that, more probably than not, the other party the defendant committed a civil wrong. If the claimant is successful, the usual remedy is damages: Other remedies, such as a court order that prohibits a person from behaving in a certain way, are available in some circumstances. Either party to a civil case may appeal to a higher court against the decision. How Criminal Law is enforced in England and Wales A person who believes that a crime has been committed contacts the police, who conduct an investigation. If, after arresting and interviewing a person, the police believe that he or she committed the crime, that individual is charged. If the CPS believes that the case has a reasonable prospect of success, and that it would be in the public interest to do so, it will start criminal proceedings against the suspect, who becomes the defendant in the case. In court, the CPS bears the burden of proving, beyond reasonable doubt, that the defendant committed the crime. Magistrates do not need any legal qualifications, and they are advised by a Clerk, who is a qualified lawyer. Magistrates do not state reasons for their decisions. Very serious offences, such as murder and rape, are heard in the Crown Court. The Crown Court is based in about 90 centres throughout England and Wales. A jury consisting of 12 people chosen at random from the local population will decide, without giving reasons, whether the defendant is guilty of the offence. The jury is advised about the law by the judge, whose role also includes imposing a sentence if the defendant is found guilty. The sentences available for criminal offences include fines payment of a sum of money to the state , imprisonment and community punishments such as unpaid supervised work. The two most senior appellate courts are the Court of Appeal and the Supreme Court. Cases are heard by three Lords Justices of Appeal, each of whom reaches an individual decision that may consist of a lengthy speech. It hears civil appeals from all four countries, and criminal appeals from England, Wales and Northern Ireland. Permission to appeal to the Supreme Court will be given only if a case raises a point of general public importance. Cases are heard by five, seven or nine of the 12 Justices of the Supreme Court, each of whom reaches an individual decision that may consist of a lengthy speech. This ensures that similar cases are treated similarly, which many people

regard as one of the most important aspects of justice.

Chapter 2 : The English Legal System: David Kelly: calendrierdelascience.com: Books

The Foundations of the English Legal System The aim of this work is to produce a report explaining the foundations and workings of the English legal system. Throughout this essay, I will be explaining the nature and purposes of the distinctions between criminal and civil law.

Orders in Council are a sui generis category of legislation. Secondary or "delegated" legislation in England includes: Bye-laws of metropolitan boroughs , county councils , and town councils Statutes are cited in this fashion: For example, the Pleading in English Act was referred to as 36 Edw. Common law Common law is a term with historical origins in the legal system of England. It denotes, in the first place, the judge-made law that developed from the early Middle Ages as described in a work published at the end of the 19th century, *The History of English Law before the Time of Edward I*, [41] in which Pollock and Maitland expanded the work of Coke 17th century and Blackstone 18th century. The term is used, in the second place, to denote the law developed by those courts, in the same periods pre-colonial, colonial and post-colonial , as distinct from within the jurisdiction, or former jurisdiction, of other courts in England: Hudson have argued that the English trust and agency institutions, which were introduced by Crusaders , may have been adapted from the Islamic Waqf and Hawala institutions they came across in the Middle East. Since , English law has been a common law, not a civil law system; in other words, no comprehensive codification of the law has taken place and judicial precedents are binding as opposed to persuasive. This may be a legacy of the Norman conquest of England , when a number of legal concepts and institutions from Norman law were introduced to England. In the early centuries of English common law, the justices and judges were responsible for adapting the system of writs to meet everyday needs, applying a mixture of precedent and common sense to build up a body of internally consistent law. Since the courts have no authority to legislate, the " legal fiction " is that they "declare" rather than "create" the common law. The House of Lords took this "declaratory power" a stage further in *DPP v Shaw* [50] , where, in creating the new crime of "conspiracy to corrupt public morals", Viscount Simonds claimed the court had a "residual power to protect the moral welfare of the state".

Precedent[edit] One of the major challenges in the early centuries was to produce a system that was certain in its operation and predictable in its outcomes. Too many judges were either partial or incompetent, acquiring their positions only by virtue of their rank in society. Thus, a standardised procedure slowly emerged, based on a system termed *stare decisis* which roughly means "let the decision stand". The doctrine of precedent which requires similar cases to be adjudicated in a like manner, falls under the principle of *stare decisis*. Thus, the *ratio decidendi* reason for decision of each case will bind future cases on the same generic set of facts both horizontally and vertically in the court structure. The highest appellate court in the UK is the Supreme Court of the United Kingdom and its decisions are binding on every other court in the hierarchy which are obliged to apply its rulings as the law of the land. The Court of Appeal binds the lower courts, and so on. Overseas influences[edit] Map of the British Empire under Queen Victoria at the end of the nineteenth century. Reciprocity[edit] England exported its common law and statute law to most parts of the British Empire , and many aspects of that system have survived after Independence from British rule, and the influences are often reciprocal. In the United States each state has its own supreme court with final appellate jurisdiction, while the US Supreme Court has the final say over federal matters. In particular, several Caribbean island nations found the Privy Council advantageous. International law and commerce[edit] Britain is a dualist in its relationship with international law, so international treaties must be formally ratified by Parliament and incorporated into statute before such supranational laws become binding in the UK. The English law of salvage , [61] collisions , [62] ship arrest, [63] and carriage of goods by sea [64] are subject to international conventions which Britain played a leading role in drafting. Many of these conventions incorporate principles derived from English common law [65] and documentary procedures.

Chapter 3 : English Legal System by Catherine Elliott

English law is the common law legal system of England and Wales, comprising mainly criminal law and civil law, each branch having its own courts and procedures.

Most nations today follow one of two major legal traditions: The common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as Spain and Portugal. Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly possessing distinctive legal traditions, such as Russia and Japan, that sought to reform their legal systems in order to gain economic and political power comparable to that of Western European nation-states. To an American familiar with the terminology and process of our legal system, which is based on English common law, civil law systems can be unfamiliar and confusing. Even though England had many profound cultural ties to the rest of Europe in the Middle Ages, its legal tradition developed differently from that of the continent for a number of historical reasons, and one of the most fundamental ways in which they diverged was in the establishment of judicial decisions as the basis of common law and legislative decisions as the basis of civil law. Common law is generally uncodified. This means that there is no comprehensive compilation of legal rules and statutes. While common law does rely on some scattered statutes, which are legislative decisions, it is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. The precedents to be applied in the decision of each new case are determined by the presiding judge. As a result, judges have an enormous role in shaping American and British law. Common law functions as an adversarial system, a contest between two opposing parties before a judge who moderates. A jury of ordinary people without legal training decides on the facts of the case. Civil Law, in contrast, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The following sections explore the historical roots of these differences. Basilica of San Vitale, Ravenna, Italy. The term civil law derives from the Latin *ius civile*, the law applicable to all Roman *cives* or citizens. Its origins and model are to be found in the monumental compilation of Roman law commissioned by the Emperor Justinian in the sixth century CE. While this compilation was lost to the West within decades of its creation, it was rediscovered and made the basis for legal instruction in eleventh-century Italy and in the sixteenth century came to be known as *Corpus iuris civilis*. Succeeding generations of legal scholars throughout Europe adapted the principles of ancient Roman law in the *Corpus iuris civilis* to contemporary needs. Medieval scholars of Catholic church law, or canon law, were also influenced by Roman law scholarship as they compiled existing religious legal sources into their own comprehensive system of law and governance for the Church, an institution central to medieval culture, politics, and higher learning. By the late Middle Ages, these two laws, civil and canon, were taught at most universities and formed the basis of a shared body of legal thought common to most of Europe. The birth and evolution of the medieval civil law tradition based on Roman law was thus integral to European legal development. It offered a store of legal principles and rules invested with the authority of ancient Rome and centuries of distinguished jurists, and it held out the possibility of a comprehensive legal code providing substantive and procedural law for all situations. As civil law came into practice throughout Europe, the role of local custom as a source of law became increasingly important—particularly as growing European states sought to unify and organize their individual legal systems. Throughout the early modern period, this desire generated scholarly attempts to systematize scattered, disparate legal provisions and local customary laws and bring them into harmony with rational principles of civil law and natural law. Historical development of English Common Law Originally

issued in the year 1215, the Magna Carta was first confirmed into law in 1297. This exemplar, some clauses of which are still statutes in England today, was issued by Edward I. National Archives, Washington, DC. English common law emerged from the changing and centralizing powers of the king during the Middle Ages. After the Norman Conquest in 1066, medieval kings began to consolidate power and establish new institutions of royal authority and justice. New forms of legal action established by the crown functioned through a system of writs, or royal orders, each of which provided a specific remedy for a specific wrong. The system of writs became so highly formalized that the laws the courts could apply based on this system often were too rigid to adequately achieve justice. In these cases, a further appeal to justice would have to be made directly to the king. Courts of equity were authorized to apply principles of equity based on many sources such as Roman law and natural law rather than to apply only the common law, to achieve a just outcome. Courts of law and courts of equity thus functioned separately until the writs system was abolished in the mid-nineteenth century. Even today, however, some U.S. Likewise, certain kinds of writs, such as warrants and subpoenas, still exist in the modern practice of common law. An example is the writ of habeas corpus, which protects the individual from unlawful detention. Originally an order from the king obtained by a prisoner or on his behalf, a writ of habeas corpus summoned the prisoner to court to determine whether he was being detained under lawful authority. Habeas corpus developed during the same period that produced the Magna Carta, or Great Charter, which declared certain individual liberties, one of the most famous being that a freeman could not be imprisoned or punished without the judgment of his peers under the law of the land—thus establishing the right to a jury trial. In the Middle Ages, common law in England coexisted, as civil law did in other countries, with other systems of law. Church courts applied canon law, urban and rural courts applied local customary law, Chancery and maritime courts applied Roman law. Only in the seventeenth century did common law triumph over the other laws, when Parliament established a permanent check on the power of the English king and claimed the right to define the common law and declare other laws subsidiary to it. This evolution of a national legal culture in England was contemporaneous with the development of national legal systems in civil law countries during the early modern period. But where legal humanists and Enlightenment scholars on the continent looked to shared civil law tradition as well as national legislation and custom, English jurists of this era took great pride in the uniqueness of English legal customs and institutions. That pride, perhaps mixed with envy inspired by the contemporary European movement toward codification, resulted in the first systematic, analytic treatise on English common law: *The American legal system remains firmly within the common law tradition brought to the North American colonies from England. Yet traces of the civil law tradition and its importance in the hemisphere maybe found within state legal traditions across the United States. Many of the southwestern states reflect traces of civil law influence in their state constitutions and codes from their early legal heritage as territories of colonial Spain and Mexico. And while Blackstone prevails as the principal source for pre-American precedent in the law, it is interesting to note that there is still room for the influence of Roman civil law in American legal tradition. The founding fathers and their contemporaries educated in the law knew not only the work of English jurists such as Blackstone, but also the work of the great civil law jurists and theorists. Indeed, a famous example of its use is the case of Pierson v. Post, in which a New York judge, deciding on a case that involved a property dispute between two hunters over a fox, cited a Roman law principle on the nature and possession of wild animals from the Institutes as the precedent for his decision. Post is often one of the first property law cases taught to American law students. Cases such as these illuminate the rich history that unites and divides the civil and common law traditions and are a fascinating reminder of the ancient origins of modern law. Download a printable PDF with more information, including images, glossary and bibliography.*

Chapter 4 : The English Legal System: 18th Edition (Paperback) - Routledge

Slapper and Kelly's The English Legal System explains and critically assesses how our law is made and applied. Trusted by generations of academics and students, this authoritative textbook clearly describes the legal rules of England and Wales and their collective influence as a sociocultural.

Chapter 5 : The English Legal System - Alisdair Gillespie, Siobhan Weare - Google Books

English legal system Question 1. In the hierarchical structure of the English courts, the decision of a higher court is binding on a court below it. This is the basis.

Chapter 6 : The English Legal System - Alisdair Gillespie; Siobhan Weare - Oxford University Press

THE ENGLISH LEGAL SYSTEM 3 heard), and is referred to in court as the calendrierdelascience.com this particular example, Danvers is the defendant, who has been brought to trial to face a criminal prosecution.

Chapter 7 : English law - Wikipedia

The English Legal System in 60 Minutes! Whether you are a new student or someone who is just about to sit for your English Legal System or Common Law examinations, "The Law Simplified" course on the English Legal System will give you a fast-track summery of the subject.

Chapter 8 : The English Legal System - Alisdair Gillespie - Google Books

The Thai legal system became an amalgam of German, Swiss, French, English, Japanese, Italian, and Indian laws and practices. Even today, Islamic laws and practices exist in four southern provinces. Over the years, Thai law has naturally taken on its own Thai identity.

Chapter 9 : The English Legal System - ePub - Gary Slapper, David Kelly - Achat ebook | fnac

- The English Legal System The English legal system is based on Common Law as opposed to Civil Law. Common Law is a system whereby Judges apply judgment derived from experience as well as knowledge of legal precedent; a system based on customs.