

Legal systems of the world

What is Law?

- a rule
- set of rules,
- recognized by state as binding (obligatory)
- regulating
- relationship
- between
- the organs of government
- the subjects of the state

Main factors that make up a legal system:

- Sources of law (Constitution, Legislative acts, Judicial Decisions, Treaties)
- law-making institutions (and their hierarchy);
- law-enforcing institutions and their powers (mostly courts)
- Legal principles and legal science;
- the organisation of the legal profession (the judiciary, the lawyers)
- Historical background;

Sources of the law

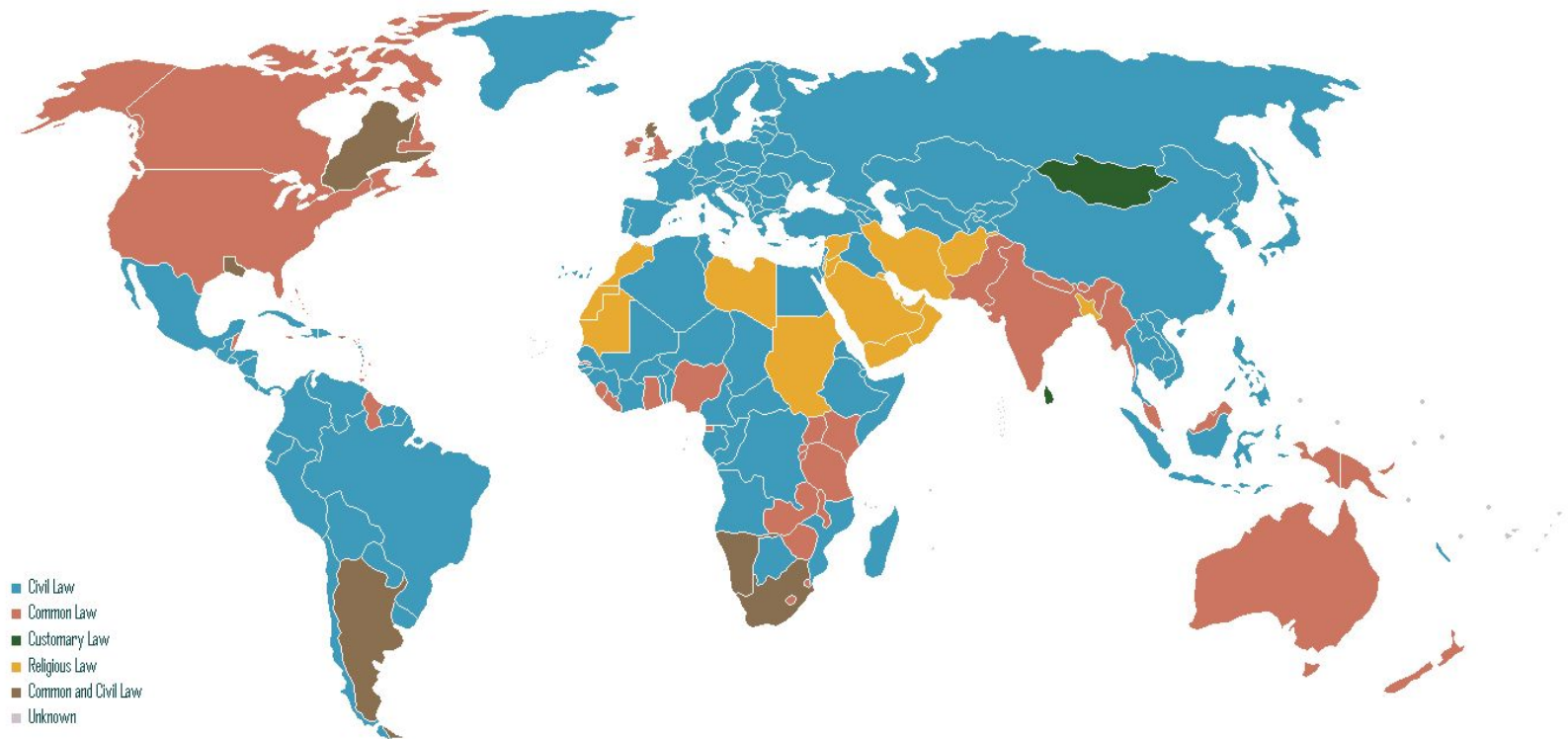
- Statutes
- Customs/traditions
- Judicial decisions (precedents)
- Legal principles

Think how are the sources of the law related to the
System of the law?

National legal systems

- Each state has its own legal system.
- The structure and characteristics of these systems are highly variable.
- Some legal systems are organized on the basis of a **written constitution** (e.g. the United States), some have constitutional systems not resulting from a single written text – **unwritten constitution** (e.g. the United Kingdom), and some do not have an explicit constitutional framework.

Legal systems of the world



After looking at the map answer the questions:

1. Look at the map, which legal systems can you find?
2. Which legal system is the most widespread ?
3. How did the European legal system spread around the world?
4. Before you are given more info, try to think up other legal systems that exist in the world?

Two major legal traditions

- Civil law (Continental law) system
(The Romano-Germanic Legal System)
- Common law system (Anglo-Saxon law system)

But some scientists outline other legal systems:

- Customary law
- Religious law
- Mixed law (mixed legal system)

Civil law

Civil law is the most widespread system of law in the world. It is also sometimes known as Continental European law. The central source of law that is recognized as authoritative are codifications in a constitution passed by legislature. While the concept of codification dates back to the Code of Hammurabi in Babylon about 1790 BC, civil law systems mainly derive from the Roman Empire, and more particularly from the Corpus Juris Civilis issued by the Emperor Justinian 529 AD. It was a big reform of the law in Byzantine Empire, bringing it together into codified documents. Civil law was also partly influenced by religious law. Civil law today, in theory, is interpreted rather than developed or made by judges. And only legislative written acts are considered legally binding (obligatory).

Civil law groups

- Civil law can be divided into 4 distinct groups:
French civil law: in France, the Benelux countries, Italy, Spain and former colonies of these countries;
- German civil law: in Germany, Austria, Switzerland, former Yugoslav republics, Greece, Portugal, Turkey, Japan, south Korea;
- Scandinavian law: in Denmark, Norway and Sweden, also in Finland and Iceland inherited this system from their neighbors.
- Chinese law has a mixture of civil law and socialist law.

Common Law

- In contrast to the codified civil laws, Common law (law of equity) is a system law whose sources are the decisions in cases by judges (legal precedent). Though, every system will have a legislature that passes new laws and statutes. The relationships between statutes and judicial decisions can be complex. In some jurisdictions such statutes may **overrule** judicial decisions or codify the topic covered by several **contradictory** or **ambiguous** decisions. Common law developed in England. Common law was later **inherited** by the Commonwealth of Nations, and almost every former colony of the British Empire has adopted it (Malta being an exception). The doctrine of judicial precedent is the major difference to codified civil law systems.

Common law is currently in practice in most of the UK, Australia, India (not Goa), South Africa, Canada (not Quebec), the USA (not Louisiana) and others. In addition to these countries, several others have adapted the common law system into a mixed system. For example, Nigeria operates largely on a common law system, but incorporates religious law.

Customary law

- Customary law is rooted in the customs of a community. Common attributes (characteristics) of customary legal system are that customs may be unwritten but still they may govern social relations, customs are widely accepted by the community's members. Customary law system can be found in Africa, the Pacific Islands etc.

Religious law

Religious system of law is a legal system that is based on religious beliefs and texts. Meaning that the religious text or document is used as a source of law.

Islamic law (or Sharia law) is the most widespread religious law system and it governs all aspects of public and private life. Islamic law systems can be found in the Middle East, Central Asia and South Africa.

It can relate to all aspects of civil law, including property rights, contracts or public law. Though most countries use Sharia law only as a supplement to national law.

Mixed system of law

- Mixture of Civil and Common law:
Israel, Malta, Thailand, etc
- Civil and religious law:
Afghanistan, Bahrain, Indonesia
- Common law and religious law:
Nigeria, Malaysia, Pakistan

Civil law v. Common law

	CIVIL LAW	COMMON LAW
MAIN SOURCE OF LAW	legislation (codified law)	case law (precedents)
LAW-MAKING BODIES	legislative bodies	the judiciary + legislative bodies
CREATION OF LEGAL PRINCIPLES	from general and abstract; deductive reasoning: applying a general principle to a particular case	from specific and individual; inductive reasoning: legal principles derived from individual cases
ROLE OF THE JUDICIARY	interprets and applies laws	creates laws (precedents)
TYPE OF LEGAL PROCEDURE	inquisitorial	adversarial

Inquisitorial legal procedure

- the role of the judge:
 - to establish facts
 - asks questions in order to get to the truth
- the role of the legal representatives:
 - to ask additional questions to point to what they think might be relevant details in the case

Adversarial procedure

- the role of the parties:
 - to provide evidence and convince the judge and/or jury of their version of the truth
- the role of the jury:
 - to establish facts based on the presented evidence
- the role of the judge:
 - to make sure procedure is followed and to make a ruling applying the law to the facts established by the jury or him/herself

New trends

- The division of national legal systems into families or cultural groupings is weakened by the increasing contemporary influence of international agreements and legal sources. For instance, the national laws of member states of the European Union are increasingly shaped by the need to comply with the requirements set out by EU law. In other cases, international agreements with a potentially universal scope determine to a large extent the contents of national law.

Say True or False.

Correct the false statements

- Civil law is a legal system originating in the USA.
- There are no key differences between a statute and precedent
- Civil law is sometimes referred to as Romano-Germanic law or Continental law.
- Common law is not usual for English speaking countries
- Inquisitorial and adversarial systems are basically the same with the exception of the presence of written and unwritten laws
- Written rules which are passed by Parliament and implemented by courts are called precedents.
- The major feature of civil law system is that the laws are organized into a systematic mixture of written and unwritten laws.

Match two parts of the following sentences:

1. Case law is	a. ... an established written law, especially an Act of Parliament
2. Codification is	b. ... law established by precedents
3. Legislative process (enactment) is	c. ... decisions of courts in earlier similar cases
4. Precedents are	d. ... the action of making a law
5. Statute is	e. ... the act of bringing together various Acts of Parliament which deal with one subject into a single Act

Fill in the missing words:

academic authority judgment judicial
legal opinions precedents reports

Judgments in common law vs. civil law

The nature of _____ in French law could not be further from its English counterpart. Whereas some of the leading English _____ decisions contain the reasoned _____ of judges, distinguishing and applying a long list of _____ and stretching through over 100 pages in the law _____ French judgments, even emanating from the Cour de Cassation, rarely amount to two pages. They are in the form of a syllogism: they set out the facts, the _____ issue and the conclusion, usually without citing any previous case _____. Because judgments are so short, they are normally published accompanied by _____ commentary.

**Thank you for your
attention!**