

Laws 104 Subject Notes

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2 Introduction

Speaking up is what lawyers do, and it makes you a better law student.

2.1 Categories of Law

Public law: the law governing relations between individuals and the state

Private law: the law governing relations between individuals, including organisations

Civil Law: the law dealing with disputes between individuals, or between organisations, or between both, providing for compensation from the party in breach of an obligation

Criminal Law: the system of law concerned with the punishment of offenders by the state

<u>Public Law</u>	<u>Private Law</u>
Administrative	Consumer Protection
Constitutional	Contract
Criminal	Employment
Industrial	Intellectual Property
International	Property
Regulation	Torts



“Common lawyers argue that there are many sources of law: common law, statute law, customary law and international law.”

*“Civil lawyers tend to treat civil codes as the primary source of their law.”
(Connecting with Law, Oxford University Press 2014)*

2.2 Legal Systems

Ancient peoples developed principles governing certain matters. Earliest source of law → Customary law. Religions were also fertile ground for the growth of rules to govern adherents ie Shar'ia Law is still a basis for law in many Islamic countries.

Australia is a common law country → based on English common law. Also USA, New Zealand, Canada, Ireland, Kenya, India, most of West Indies, Israel and Malaysia, although law has developed differently in each of these countries → reflects local views of rights and justice, and the prevailing social ethos.

Civil Law countries → most of continental Europe, some states in South America and some in Asia ie. Thailand and Japan → Generally this means that all their laws are contained in comprehensive documents called “codes” → heavily influenced by principles derived from Roman Law.

Civil law rules are generally developed by deduction from the principles of the codes whereas at common law the rules emerge through an inductive process in cases decided by the courts. Both are strongly influenced by precepts of Christianity and Roman Law. Common law and civil law together constitute the Western legal tradition.

Scotland, due to a long historical relationship with France, has a mixed legal system. The same is true of Louisiana in the USA and Quebec in Canada, which once belonged to France. The act of Union in 1707 made Scotland a part of the UK and subject to laws made by UK parliament at Westminster, although its legal system remained fundamentally different. UK legislation established a Scottish Parliament in 1999 since when some of the powers, including over criminal justice, have been developed to the Scottish legislature.

2.2.1 Western Legal Tradition

Various parts of Roman Law, which was influenced by Greek and Christian legal principles, were collected and organized by emperor Justinian into texts now known as the *Corpus Juris Civilis*. With the fall of the empire Roman legal practice ceased and records were lost, and those not living in complete lawlessness had only customary laws to maintain order.

Late into the C11th in Italy the Justinian texts were found, Along with the Bible and the writings of the Greek philosophers, they became the focus of intensive study by scholars until the precepts and principles came to form the basis of contemporary civil law. From that point, common law and civil law developed separately.

Both systems were also influenced by the theory of *natural law* → until the C18th was considered by many to be the superior theory. The notion of natural law remains controversial; however, it forms the basis for the present-day Western debate over international human rights. Belief in the concept of natural law was in part the basis of the American and French revolutions, which gave rise to much of our modern understanding of democratic government.

2.2.2 The Common Law

From its beginning in the last part of the C11th, it developed its specific characteristics because it was common to England and Wales and because of the relative stability of government in England over the subsequent centuries.

2.2.3 The Civil Law

Most countries in continental Europe did not develop wide-reaching or complex legal systems until the C19th. Napoleon drew up detailed civic code for French empire. *Civil Code, Code of Civil*

Procedure, Commercial Code, Code of Criminal Procedure and Penal Code, known together as the *Code Napoleon*, had all become law by 1810. Use of the Code spread throughout much of Europe, and it has had a strong influence on the current legal systems of civil law countries.

2.2.4 Legal Globalisation and Convergence

Law is subject to globalization, leading to a convergence in both the substantive and procedural law in different jurisdictions. Occurring both formally and informally.

Formal: Instruments and institutions of International Law.

Informal: Increased contact and communication between nations. Particularly strong in the countries of the European Union.

2.3 Sources of Law

Cases → the decisions and reasons for those decisions

Legislation → made by parliament and delegated authorities

2.4 Legal Scholarship

1865 → reporting of cases became systematic.

However haphazardly it was applied, the doctrine of precedent or *stare decisis* was important even at this early stage.

The few early law books that still exist are all concerned with the workings of the courts.

Earliest reports of cases came in two forms. “Rolls”—court records which contain notes on the disputing parties and the final outcomes → no indication of judge’s reasoning. “Yearbooks”—may have been written for lawyers or law students, recorded *ratio decidendi*, compiled by private individuals.

Mid 1500s—Yearbooks replaced by more complete and formal (still private) series of reports → ‘Nominate reports’. Continued until 1865.