

by ANA-MARIA MIHAILA

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INTRODUCTION

The English Common law had mainly originated from Middle Ages where a single royal court was seen to set up for most of the country at Westminster that was nearby London. The origin of English common law was from Magna Carta which had impacted other nations and had even inspired the rebellious nature against English dominance. The common law system comprises of creation of law or legislation with passing of law through knowledge derived from precedents or previous case laws. The structure of English legal system comprises of criminal courts where criminal cases are decided by Magistrate's court and cases of serious nature are thereby sent to the Crown court (Armgarth, 2021). The High Court will hear the appeal from Crown Court and if appeals are of severe nature then it will go to Court of Appeal and even Supreme Court. This report will cover the description of common law and civil law with differentiation among them. It will also cover the history of common law with some examples of common law working in practice.

TASK

1. What is common law?

The law which is authorised, regulated and declared by the judges through the help of various sources such as custom, precedents is referred as Common law. It was named 'common' due to its imposition on all the king's courts all over England. The origin of common law has been from a very early time which was at the time of king's dominance. The working of common law is operated through functioning of legislation which are often taken from previously decided cases or precedents in order to derive the true and actual meaning and knowledge of that particular law or legislation. The main feature of common law is that it enables the representation of law of courts which is expressed or authorised in judicial decisions. The establishment of such law is derived by the Parliament which mainly comprises of Monarch who are House of Lords and House of Commons. It is simply a body of law which is based on decisions of courts rather than some rulings, statutes or codes (Boaz, and Davies, 2019). The main principle of common law is to adhere under the decisions of the courts which are usually higher courts like High court and Supreme court. Courts are required to follow the decisions of the higher level courts which are in their own jurisdiction. Therefore, England and Wales is seen

to have a common law system from establishment of decisions and cases which were taken earlier by the judges. ¹⁰ The three most common types of law are civil law, criminal law and administrative law.

2. What is civil law?

A law which is part of set of laws which are established by the country of England and Wales in order to stabilise the conduct of people in the society with an appropriate civil behaviour. The term civil has been derived from Latin term 'ius civile' which is known to be law that is applied on all Roman citizens. The main aim of civil law is to deal with the disputes among individuals and other forms of social construct such as organisations. It generally comprises of compensation of an agreement or decision which is related to finance in order to regularise the financial dealings between individuals or organisations. Civil laws have to imposed to penalise or punish the person or parties in case of any irrelevant civil conduct that disrupts the peace within public (Lee, 2019). Its main objective is to regulate or correct the decisions which have been authorised in order to enable the offender to compensate for the losses to the victim. The most common types of civil law are Employment law that involves protection provided to employees and employers in terms of their employment, Cases of personal injury that involves road accidents or accidents caused due to negligence with breach of contract in terms of violation of terms and conditions of contract.

3. Contrast the two systems

The main difference between common law and civil law is as follows:

- Common law is based on the principles of previous decisions or precedents with judicial proceedings or rulings that are decided by the authorised judges whereas; Civil law is based on the rulings or decisions which are taken in accordance with the codified statutes with ordinances of land.
- The case laws which are ruled or provided in public are of national importance in common law in order to provide benefit to the public whereas; Civil law is a part of common law system and is regularised for maintenance of civil culture in the society.

- Common law undertakes the cases which are of national importance in consideration of welfare of whole community or society whereas; Civil law undertakes cases which are civil nature where a contract or term of contract has been breached of an individual and to provide fair justice to the aggrieved party.
- In a country of Common law dominance, the legal presentations are made to the judges in order to enable them to examine the witness by themselves whereas; in Civil cases, the investigators who are often referred as police handles the civil cases at first hand in order to impose compensation or fine on breach of any law or civil activity.
- Common law includes advising of clients on appropriate terms and points of law in consideration of institution of a case in the court whereas; Civil law includes drafting of contracts and agreements in order to regularise the conduct of business within individual and organisations.

4. Outline the history of the common law

The origination of English common law has been since the early time of Middle Ages in the court of king or 'curia regis' which is referred as king's court. The court was a single royal court which had been set by most of the country at Westminster, near London. Henry II is known as the father of common law, who had originated the common law in England. During early time, law was composed of procedural remedies instead of substantive rights as its legal system was based on the conduct and authorisation of king. The tradition of common law had emerged since a very early time of Middle Ages and had therefore been applied on Britishers. A common set of rules that enables in solving the problems is taken from principles of common law (Shebaita, 2020). It is mainly based on the historical decisions which are taken by the judges instead of being dependent on the codes and statutes.

On an international point of view, common law is understood in accordance with international law which is unitary state that constitutes of three legal systems which are followed in three regions of England and Wales, Scotland and Northern Ireland where the other areas are also influenced by common system of law which is prevalent in England (Walton, 2020). So, the common law system had developed from the time of Norman Conquest in 1066 in England. Since 5th century AD, the law of Anglo-Saxons had been followed by the island where it comprised of developing body of rules which were of same nature that had been used by the

German people of Northern Europe. With the existence and ruling of Anglo-Saxon law, there were various matters that were governed through local customs where church was seen to play a major part in rulings of the government. Therefore, this law was basically not laid back or majorly influenced from Roman law that was found in continental laws. The laws of England had been developed through the rulings of church and Norman Conquest that had helped in development of common law system.

5. ¹ Are there examples of the common law working in practice?

The concept of common law marriage is a set example of common law that helps in encountering rights which are provided to couples through marriage licences in order to have an official marriage (Woods, 2020). Crimes such as murder, common assault and manslaughter are considered as offence in common law. As common law is based on legal rulings of judges, there are some examples of common law rulings where there is major requirement to read the contract through copyrights, confidentiality in doctor -patient relationship and practice of common law marriage.

CONCLUSION

From the above report it is concluded that, the law which is declared and authorised by judges is referred as ¹⁴common law and the civil law is a part of common law system. The main difference between common and civil is that previous decisions or cases are used in governance of common law whereas codified statutes and ordinances are used in civil law system. ¹¹The origin of common law had been since early Middle Ages in king's court where legal system was authorised through governance of single royal court.

REFERENCES

Books and Journals

- 6 Armgardt, M., 2021. A formal model for analogies in civil law reasoning. In *New Developments in Legal Reasoning and Logic: From Ancient Law to Modern Legal Systems* (pp. 171-183). Cham: Springer International Publishing.
- 2 Boaz, A. and Davies, H. eds., 2019. *What works now?: evidence-informed policy and practice*. Policy Press.
- Lee, J., 2019. 4. Against All Odds: Numbers Sitting in the UK Supreme Court and Really, Really Important Cases. In *Apex Courts and the Common Law* (pp. 94-139). University of Toronto Press.
- 5 Shebaita, M., 2020. The Notion of Administrative Contracts in Civil Law System vs Common Law System. Available at SSRN 3706353.
- 4 Walton, T., 2020. Material risk: a review of informed consent in the UK. *Orthopaedics and Trauma*, 34(3), pp.131-134.
- Woods, L., 2020. Automated facial recognition in the uk: The bridges case and beyond. *Eur. Data Prot. L. Rev.*, 6, p.455.