



LEGAL PROCESS

Common Law

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Sophie Evans 2204080

The legal system in England and Wales is widely recognised for its use of the common law principle. It has a common law legal system which is “established by the matter heard in earlier cases and so is the law created by judges” (Prof Rab, 2022). Common law is a legal system that is based on judicial decisions and precedents, rather than legislative statutes. In this essay, I will discuss common law and how it differs from civil law. As well as, the history of common law, while providing examples of how it is used in practice.

Common law is a legal system based on judicial decisions and precedents, rather than on legislative statutes. It has “established and developed many principles of law and equity not covered by legislation” (LNUK, 2022). It is a system of law based on past decisions, rather than a fixed set of rules. In common law, judges are responsible for interpreting the law and making decisions on individual cases. “Judges exercise legislative functions in the making of rules of procedure: and the rules of common law” (Online, 2014). These decisions become legal precedents, which are then used as a basis

for future decisions in similar cases. This principle means that lower courts must follow the legal precedents established by higher courts in their jurisdiction.

“The judgment itself, and all the proceedings previous thereto, are carefully registered and preserved, under the name of records, in public repositories set apart for that particular purpose; and to them frequent recourse is had, when any critical question arises, in the determination of which former precedents may give light or assistance.”
(Blackstone, 1765)

Civil law is a legal system based on codified laws. It is a system that is built on a fixed set of laws, rather than judicial precedent. It “forms an indispensable part of the machinery of justice and is an essential tool for enforcing legal rights and claims” (Online, 2020). In civil law, judges are responsible for interpreting the law and applying it to individual cases, rather than creating legal precedents. ‘Civil law judges silently ask themselves “What should we do this time” whereas their common law counterparts ask aloud “What did we do last time?”’ (Gerard Carney, 2015). Civil law systems are used in many countries around the world, including most of Europe and Latin America. It is

said that civil law “fulfills many social and legal functions.” (Online, 2020).

The main difference between common law and civil law systems is the source of law. It is stated that “Civil law and common law developed similar rules to limit the scope of the traditional method” (L. Rev, 1999). Common law is “based on a judgement of court to enable enforcement” (Atkinson, 2020). While “Civil law is highly systemised and structured and relies on declarations of broad, general principles, often ignoring the details.” (William Tetley, 1999), the judges are responsible for applying the actual law to individual cases. Additionally, common law is a system of law that is built on a body of past decisions, while civil law is a system of law that is built on a fixed set of laws or rules. Another key difference between the two systems is the role of the juries. In common law systems, juries are often used in criminal trials, and their decisions are based on the facts of the case and the interpretation of the law by the judge. In civil law systems, juries are less common, and judges are responsible for making decisions in both criminal and civil cases. However, “Both common law and the civil law are equally authoritative and

recognised sources of the law of property and civil rights” (Uniform Law Review, 1999).

The history of common law can be traced back to medieval England. In the 11th and 12th centuries, a system of royal courts began to develop, which were responsible for hearing cases and making decisions. “In medieval England there were many courts of law in addition to courts of common law” (A.W.B. Simpson, 1987). These courts were staffed by judges who were appointed by the king, and their decisions were based on the customs and traditions of the local communities. Common law “originated with the legal reforms of King Henry II in the 12th century and was called “common” because it applied equally across the whole country.” (Online, 2023).

Over time, these local customs and traditions became more formalised, and a system of common law began to develop. Common law was based on the idea that legal decisions should be based on the customs and traditions of the local communities, rather than on a fixed set of laws or rules. This allowed for more flexibility and adaptability in the legal system as it could evolve over

time to reflect changing economic, social and technological realities.

The development of common law was also influenced by the Norman Conquest of England in 1066, which brought with it a more centralised system of government and a more formalised legal system. “Like many other early legal systems, it did not originally consist of substantive rights but rather procedural remedies.” (M.A Glendon et al, 1998). Norman rulers began to issue legal codes and statutes, which were used in conjunction with the local customs and traditions to create a more unified system of law.

Are there examples of the common law in working practice?

The English legal system is based on common law principles, which are an integral part of its legal framework. There are many examples of common law in working practice that illustrate the importance and relevance of this system of law in modern legal practice.

One of the most prominent examples of common law in working practice is the law of negligence. Negligence

refers to the failure to take reasonable care, resulting in harm to another person or their property. It is a central concept in many types of personal injury cases and is based on legal precedents established through judicial decisions over time. For example, the landmark case of *Donoghue v Stevenson* (1932) established the principle of duty of care, which has since become a cornerstone of negligence law.

Contract law is another area of law where common law principles are employed in working practice. The area of law is based on the principle of mutual agreement and is used to govern various personal and commercial transactions. Common law principles are used to interpret and enforce contracts, and the courts rely on precedents to decide individual cases. For instance, the *Carlill v Carbolic Smoke Ball Company* (1893) established the principle of acceptance by conduct, which has since become a fundamental principle of contract law.

In criminal law, common law principles are used to determine guilt or innocence. The presumption of innocence and the right to a fair trial are fundamental principles of criminal law in common law jurisdictions.

These principles ensure that individuals are treated fairly and justly under the law. For example, the case of *R v Woolin* (1998) established the principle of the virtual certainty test for establishing mens rea (guilty mind), which has since become a fundamental principle of criminal law.

The law of trusts is another area where common law principles are used in working practice. A trust is a legal arrangement in which one person (the trustee) holds property or assets on behalf of another person (the beneficiary). Trust law is based on common law principles and is used in estate planning, charitable giving, and asset protection. The case of *Saunders v Vautier* (1841) established the principle of the right of the beneficiary to demand the transfer of trust property, which has since become a fundamental principle of trust law.

In conclusion, common law is a flexible and adaptable system of law that evolves over time through judicial decisions and precedents. The English legal system is based on common law principles, and there are many examples of common law in working practice, including the law of negligence, contract law, trust law, and criminal

law. These examples demonstrate the importance and relevance of common law principles in modern legal practice, and they highlight the significance of judicial decisions in shaping the law.

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