

The English Legal System is based upon common law principles. Explain what this means.

In this essay I will be discussing what is common law whilst referring to credible and reliable sources to back my reasoning up but to also apply case law related to certain topics throughout. Whilst on the topic about common law I will also mention what is civil law and compare the two systems discussing their advantages and disadvantages and the differences between both. The main body of my essay will quite clearly outline the history of common law ensuring I am referring to sources that can back my information up whilst referencing and giving credit to the author. Towards the end of my essay, I will then give examples of common law working in practice and naming case laws that can compare to these. In my conclusion I will then bring all my findings together and come out with an outcome from every vital piece of information that I have found.

To begin my essay, what is common law? Common law influences decision-making where the possible outcome from the judge cannot be by written rules of the law. (Segal, 2019) Common law was first brought into practice during the 17th and 18th centuries, and the reasoning behind it being called common is because it applied to the whole country and was equal and fair. Common law is part of the English legal system which includes England, Wales, Scotland, and Ireland. Common law in more depth refers to the “body of law” because it acts as a reason to be based on the decisions made in court. (Reuters, 2022). After research according to some information “laws may be defined as the rules that govern the behaviour of human beings” (ICLR, 2018) this goes to show that any kind of law is a law that is in place that people have to abide by and go on with their day-to-day jobs by following codes that are provided to them. On the other hand, we have civil law, civil law is a completely different type of law where it defines your responsibilities and rights however, if you were to breach a law or a right you were given where you went against it then you would not get a criminal process or punishment against you. (Department, 2018). Many people may not like this, but it is not up to the opinion of your own. In comparison to both pieces of law, this website states that they differ slightly depending on what type of punishment or penalty you will receive. (Duignan, 2019). From this information, it shows to me that you can understand by demonstrating that criminal law deals with behaviour done against the public for example and civil law deals with behaviour that constitutes an injury to another person. After discussing what each of these laws is there are advantages and disadvantages of common and civil law together, firstly I will discuss common law and its advantages, common law is more reliable and faster than other laws this is because it comes down to the judges and courts to decide on something between them to discuss and come to an agreement whilst reviewing a case. (Petschke, 2018). After researching common law and its advantages from a website it shows that it is more flexible around things for example it is easier and faster to develop in situations. (View all posts by carmineproofreading, 2020). One of the main advantages of the common law system is to provide justice to people and because it has been updated this law can come across as consistent and independent to help the individuals within these cases. On the other hand, we have the disadvantages of common law, now that I have discussed the advantages based on these, pieces of information that I have pulled together from different sources it states that the legislation is elected representatives only, but common law comes from judges and the judges are not elected by the public, therefore, they are not held

accountable. (carmineproofreading, 2020). A disadvantage of common law is that if you bring a case to court which is quite unusual, then nothing will stop that judge from creating a new law there and then applying it to your case going to stop that judge create a new law there and then applying it to your case which can be seen as quite a high disadvantage.(Lawsuit, 2010). After finding the advantages and disadvantages of common law there are also pros and cons for civil law for example in civil law it is all legal for example there are judges in court who are trained in comparison to common law where there are representatives elected to do so, furthermore civil law provides a positive approach and transparent judiciary. On the opposite side the disadvantages of civil law for example in civil law if a case goes to court, then there would be a settlement granted between the dispute as protecting the victim would be the focus however the disadvantage is that it is very time-consuming, and it isn't the easiest to amend or enact new law "which may be detrimental to the community and in the public's eye." (cth Sara, 2012). There is a major difference between Common and civil law, the Common law systems are less structured whereas civil law is structured and formed as the courts must play a major part in developing the law. (Trust, 2021). After researching the differences between civil and common law I have come across a website which compares the two, however, common, and civil law can be combined in certain countries where the use of combination will be between for example the legal system and the judges. fen, 2019). In common law, they typically rely on the precedent which is an established rule in legal cases where the court will decide on the case with similar issues or facts and as mentioned if you bring a different case to court then there is nothing stopping that judge to create a new piece of law/legislation and apply it to your case.

In case law is the precedent that makes the judicial decision for future cases, for example, the court must follow and apply the law throughout given instructions by higher courts. (Ryan, 2020). Common law is applied to offences if the judges "have always treated It as a crime" these examples could vary from manslaughter, murder, and common assault. (NEWS, 2016). In reis the case which can respond to this is Donoghue and Stevenson 1932, for example, Mrs Donoghue was given a bottle of ginger beer however it allegedly contained remains of a snail therefore she had a shock and gastroenteritis as a result but because she had not the drink herself there was nobody to blame so she could not sue. (Clapham, 2018). An example of common law in practice is a common-law marriage which will recognise the rights which are like those that have a marriage licence in comparison to those that are not officially married. In further depth, common law marriage is recognised by the court which gives specific rights that meet certain circumstances which are required to satisfy the definition of a common law marriage in England and Wales.

Overall, throughout this essay, there is a clear demonstration that the English legal system has different common law systems where the answers have been backed by pieces and sources of information giving credit to the authors whilst applying case law to an example. The main body of the essay displays the advantages and disadvantages of the pros and cons of using the common and civil law systems and the type of impact they have on the community and society. In conclusion, common law relies a lot on case law whereas civil law relies on its system where the law is written from a document. There is a clearer view of common law preferably in the public's eye because it is much more flexible and the judges in courts ensure consistency and are much clearer in instruction compared to civil law. In this essay, I have clearly outlined the history of common and civil law for example where it originated from

and why was it brought out and its use in the courts however, common law seems the most appealing as it is very transparent for the courts and structured neatly for clear understanding. as the history of common and civil law the differences the two show outside and how different cases are handled when it comes to court.

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