

This essay will show how the legal system in England and Wales is based on common law principals. The essay will describe what common law is and what civil law is. This essay will also show the differences between common law and that of civil law, with a brief history on the origin of common law and why is important in the UK and other countries.

Thomason Reuters (2022) states Common Law is a 'body of law' in decisions made in the courts. However, common law is more than just 'body of law', in the middle of common law there is principle called 'stare decisis' it just states that the courts and judges need to follow early decisions and rulings known as caselaw. Giving an example when a decision is made of a set of facts the court is made to follow the decision by the higher courts. With this common law is not the only legal system we use today; we have civil law. Common Law treats people equally, regardless of their social status. In 1932, a woman found a dead snail in her ginger beer, this caused her some stress. She decided to take the manufacturer of the ginger beer to court to claim personal injury. She won the court case, and this set a new rule for the courts to follow. The Judge. Lord Atkin stated that the manufacturer must take extra care in avoiding causing any injury to their customers. From that point on, all cases of personal injury, that go to court would refer to this judgement. Common law relies on judges looking back to old cases. It is important to note that common law is not based on legislation, this case may have set the president of all other small claims (House of Commons, 2006). One of the disadvantages of Common law is that, if a decision or ruling has been made, and it's a bad ruling, then this sets up a bad precedent for all the other decisions that are being made in court. Common law is not reviewed by anyone. Another disadvantage is that the judge is not appointed by citizens, unlike lawmakers who have been chosen by the public. The judge alone makes the decisions, and that decision becomes the law. An advantage of common law is that the ruling is already there for the judge to research. Another advantage of common law is that it is consistent, and each case must be treated equally, if anyone is due to appear in court, they could look back at previous cases to predict their outcome (Arden, 2021).

Civil law is the rights and the protection of personal belongings or the rights of organisations that may not be protected by the criminal laws (Slater, 2018). Usually, a person or organization is trying to get compensation from person or organization. No one is sent to prison, but someone will be lost from money. Civil law is a legal structure that is a private matter between two people or organisations, for example, a shop owner can sue someone for trespassing on

their property. This would not be a criminal matter. Family disputes, personal injuries or types of contracts people have breached or even employment laws all these can be related to civil law. It is important to note that civil law relies on legislation. The judge in these matters cannot go against the law (Aeden, 2021).

According to Carlson (2021) both law systems affect how businesses are carried out in each jurisdiction. Lawyers have a big role in courts, in common law lawyers take the more confrontational role, they are there to question the witness and get answers. However, in civil law the lawyer takes more of a meddling approach they use evidence the court has by just using the essential assistance the court has with building the case. The key difference between the two legal systems is the way in which they handle evidence, common law relies heavily on precedent and the interpretation of evidence, while civil law relies on more formalised approach to evidence gathering and presentation. Both common law and civil law have their advantages and disadvantages, the difference is between the lies in which they create and apply law. Common law again relies on precedent and judicial interpretation while civil law is based on legal codes.

Berkeley (2017) States that, the legal systems of most nations today can be broadly categorized into two traditions: common law and civil law. The common law tradition originated in England during the Middle Ages and was adopted by many British colonies around the world. Common law was created during the reign of King Henry II. It was referred as 'common' because it was used equally by all citizens regardless of status (Courts of Tribunals Judiciary, 2023) In contrast, the tradition of civil law emerged in Europe during the same time period and was taken on board by the other colonies of European imperial powers. Later, countries such as Russia and Japan also took on board civil law to modernize their legal systems and increase their economic and political power. For Americans who are familiar with the terms and procedures of the common law system, civil law systems may seem unfamiliar and confusing. This is because the legal tradition of England developed differently from that of Europe due to many historical reasons. One of the most significant differences between the two systems is that common law is based on judicial decisions, while civil law is based on legislative decisions (Barkeley, 2017).

Common law is not typically codified, which implies there is no comprehensive collection of legal regulations and statutes. Common law, however, does rely on

some scattered statutes, which are legislative decisions, but its basis is primarily on precedent, meaning judicial decisions made in comparable cases. These precedents are kept over time in court records and collections cases law such as yearbooks and reports (Prabirjit, 2011). The judge who presides over each new case is responsible for determining which precedents to apply.

Consequently, judges play a crucial role in shaping the legal system of countries such as America and Britain (Kirby, 2010). Common law operates as a system where two opposing parties present their case to a court and a judge will supervise the proceedings. The facts of the case are decided by a jury of ordinary citizens without legal training, after which the judge determines the appropriate sentence based on their verdict. Unlike common law, civil law is codified (Hendry, 2020). The countries with a civil law system, they are comprehensive and regularly updated legal codes that cover all matters that can be presented in court of law, outlining the applicable procedures, and the suitable punishments for each offense. Such as codes changes between various categories of law, with serious law determining the acts that are subject to criminal or civil prosecution, procedural law determining how to establish whether a certain action is a criminal act, and penal law establishing the correct or suitable penalty (Syed, 2023). In a civil law system, the judge's responsibility is to ascertain the facts of the case and apply the provisions of the relevant code. Although the judges are often responsible for filing charges, investigating the matter, and making decisions, they will work within a structure established by extensive set of laws that are codified. Therefore, the judge's decisions are less significant in shaping civil law than decisions of law makers who write and interpret the codes (Pfander, 2020).

To conclude, common law has been in place since the reign of Henry 11. Common law treats everyone equally regardless of their social standing. The decision or rulings are made by the presiding judge, once a ruling has been made that that ruling becomes the law. Common law does not rely on legislation, the judges alone make the decisions on each case. One of the biggest differences between common law and civil law, are that civil law is rules by legislation and common law is not. If anyone was to appear in court, they could look back at similar cases to predict their outcome. There are advantages and disadvantages to common law, however, it seems to work.

Reference list.

Arden, M (2021) *Foreword Common law* (Online) 80 (1) p. 4-7. Available from: <https://www.proquest.com/central/docview/2578726544/A4FED04DAD314B29PQ/229?accountid=130472> (Accessed on 21/02/2023).

Berkeley (2020) *Common law traditions* (Online) Available from: <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions> (Accessed on 20/02/2023).

Carlson (2021) *The common law and civil law traditions* (Online) Available from: <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTradition> (Accessed on 21/02/2023).

Courts of Tribunals Judiciary (2023) *Overview of the judiciary* (Online) Available from: <https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary-in-england-and-wales/history-of-the-judiciary/> (Accessed 20/02/2023).

Hendry, J (2020) *The hostile environment and migration: blurring the lines between civil and criminal law* (Online) 76 (1) p. 26-36. Available from: <https://www.proquest.com/central/docview/2470410964/32DE5384DB8E431FPQ/3?accountid=130472> (Accessed on 21/02/2023).

House of commons (2006) *Written Evidence* (Online) Available from: <https://publications.parliament.uk/pa/cm200506/cmselect/cmconst/754/754we07.htm> Accessed on 20/02/2023).

Kirby, M (2010) *Common law and international law* (Online) 30 (1) p. 30-60. Available from: <https://www.proquest.com/central/docview/2210363211/EB08FB6795024BA2PQ/4?accountid=130472> (Accessed on 20/02/2023).

Pfander, J (2020) *The common law* (Online) 72 (5) p. 1269-1360. Available from: <https://www.proquest.com/central/docview/2410834943/A4FED04DAD314B29PQ/5?accountid=130472> (Accessed on 20/02/2023).

Prabirjit, S (2011) *Common law vs Civil law* (Online) 2 (4) p.143-161. Available from:

<https://www.proquest.com/central/docview/1024829771/C7005B9E9DF54A27PQ/21?accountid=130472> (Accessed on 21/02/2023).

Slater G (2022) *The difference between criminal and civil law UK* (Online) Available from: <https://www.slatergordon.co.uk/newsroom/criminal-vs-civil-law-understanding-the-differences/> (Accessed on 21/02/2023).

Syed G (2023) *Limitations on Parliamentary Sovereignty in the UK: A critical analysis* (Online) 39 (1) p. 47-48. Available from: <https://www.proquest.com/central/docview/2470410964/32DE5384DB8E431FPQ/3?accountid=130472> (Accessed on 20/02/2023).

Thomas Reuters (2022) *Common law* (Online) Available from: <https://legal.thomsonreuters.com/en/insights/articles/what-is-common-law> (Accessed on 20/02/2023).