

International Business Law

The Concept of Law and Legal Systems



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What is Law?

- system of rules
- characteristics of any legal rule
 - foreseen by law
 - enforceable by the means foreseen by law

X Not legal rules:

- traditions, moral rules, ordinary customs, rules of sport, rules of the game, religious rules or non-legal agreements between friends and family (invitation for a cup of coffee).

Law is a **system of rules that people are supposed to follow** in a country or society. Law as a system can be **broken** (e.g. *break the law*) - that means to do something against the law, or something that is **illegal**. On the other hand, we can also use a term **enforce the law** - which means to make sure that the law is not broken, and to ensure **obedience** to the law.



1. is an individual rule as part of a legal system.
2. is the system of rules that a particular country or community recognizes as regulating the actions of its members and may enforce by the imposition of penalties.
3. is an act when someone commits a crime, usually punishable by law.
4. means to compel an obedience to the laws.
5. means to comply to the law and submit to an authority.

LAW, OBEDIENCE, LAW-BREAKING, TO ENFORCE THE LAW

Functions of law

- to set and maintain order in society and achieve justice
- to define the limits of acceptable behaviour
 - the constitutional principle of *what is not prohibited, is permitted*
- to define the consequences of certain behaviour
 - (sanctions for breaching legal rules)
- to give authority to agents of the state to take actions against citizens
 - for example police has a legal right to use force
 - executors have a right to enter the property of the debtor

written law

psané právo

**unwritten law**

nepsané právo

**civil law**

občanské právo

**common law**

obyčejové právo

**action**

žaloba, úkon, jednání

**advocate**

zastánce, obhájce

**binding on**

závazný pro

**branch of law**

právní odvětví

**breach the rule**

porušit pravidlo

**legal remedies**

právní (opravný) prostředek

**classify**

roztřídit, klasifikovat

**court of justice**

soudní dvůr

**enactment**

přijetí právního předpisu

**enforcement**

prosazování, vymáhání

**evidence**

důkazy, dokazování





1. Legal system consists of different

2. The person that represents you in court is

3. Most of the criminals usually more than just one time.

4. If you commit a crime, you will be judged in

5. The new act adopted by the Senate

the parliament to act quickly.

6. In the case of injustice you can always seek all

that are available.

7. The newly elected government focuses on

of human right.

8. There was not enough to be able to sentence him.

- Branches of law
- Legal remedies
- Enforcement
- Breach the rules
- Advocate
- Binds
- Evidence
- Court of Justice

Law and legal systems

- Law is implemented through legal systems.
- five basic legal systems used around the world.
- Which legal system is used in each country depends on the tradition, history, inclination to specific legal culture
- The five legal systems are the
 - civil law systems,
 - common law systems,
 - customary law systems,
 - religious legal systems
 - mixed legal systems

Bodies of law (common law system, civil law system)

Sources of law

There are two most internationally important bodies of law – **common law** and **civil law**. In **common law** jurisdictions, such as in **England, Wales and Northern Ireland** or the **USA**, law comes primarily from **customs, usage and earlier court decisions**.

By contrast, in **civil law** jurisdictions (e.g. most of continental Europe) laws come from **written legal codes**. Much of the world can be neatly divided into these two bodies of law, i.e. common law and civil law, but there are also mixed systems (e.g. India, Iran, China and South Africa).



1. The expression signifies all unenacted law.
2. was influenced and based on Roman law, especially on Emperor Justinian's Corpus Juris Civilis. It has been codified or systematically collected to form a consistent body of legal rules, e.g. codes. It attaches great importance to the codes and commentaries written by academic jurists. Courts base their decisions on codes and statutes.
3. signifies any law that is formally enacted or made by Parliament.
4. originated in England. It was institutionalized by King Henry II, who created a unified system of law which was 'common' to the country. It has evolved over the centuries from judges' decisions. It is based primarily on customs, usage and decisions. However, some laws come from legislation, but such laws are seen as incursions into this law system.

- Civil law
- Common law
- Unwritten law
- Written law

CIVIL LAW

COMMON LAW

MUSLIM LAW

CUSTOMARY LAW

MIXED SYSTEM



Civil law

- all Europe (except UK), South America and vast majority of Asian countries
- follow the Roman Law tradition
- Common characteristics
 - based on codified statutes which are the dominant source of law (Civil Code, Commercial Code, Criminal Code...)
 - written Constitution
 - More rigid
 - passed by Parliament
 - Courts, on the other hand, are the bodies which only interpret and apply rather than create law.
 - Case law is thus not the official source of law, however, case law of the higher courts has a strong persuasive power

Common Law systems

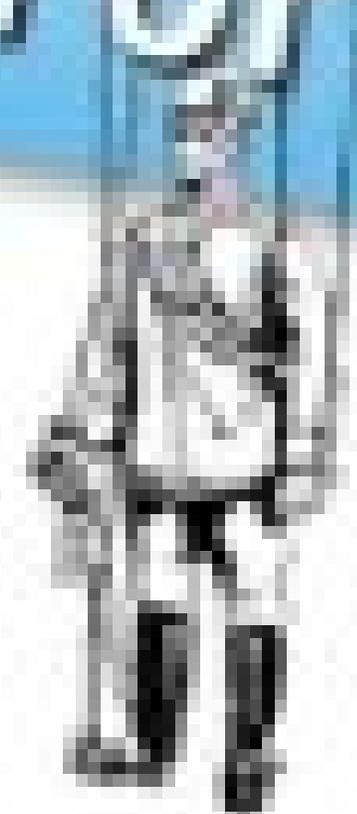
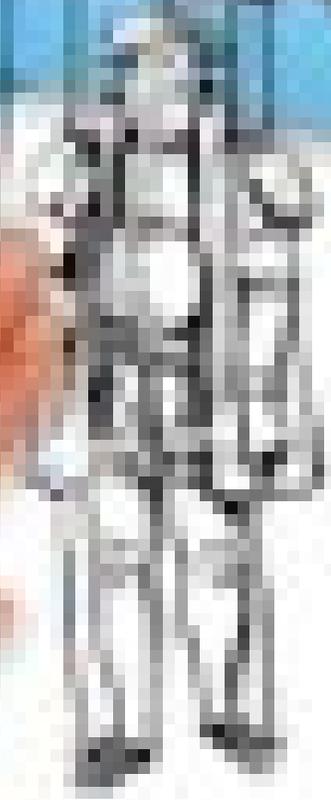
- UK, North America and Australia
- dominant source of law are **precedents** (judge-made law)
 - principle of *stare decisis* (principle of following the rules established by previous judicial decision if the facts of the case are comparable)
- Common Law countries have also written statutes but they are not a dominant source of law.
- These countries can but do not have to have a written constitution (UK does not have a written constitution X US do)

Other law systems

- Customary law systems
 - built on customs accepted and maintained by the whole society.
 - do not exist in their clear form anymore but rather they can be found as a mixture of civil or common law with these customs
- Religious legal systems
 - based on religious tradition.
 - a typical example is Islamic law which is based on Quran.
- Mixed legal systems combine two or more legal systems

Separation of Powers

explainity
verbally explained



True or false?

Thomas Hobbes believed that if a state is the only one to use violence then it will ensure peace.

Thomas Hobbes's Leviathan has never abused its power.

In that scenario the state controlled police and administration.

Solution is to distribute the state's power into four branches.

In Germany, the branches of power are dependent on each other.

Authority is distributed merely at the highest level.

It can be easy to monopolize power.

Due to the separation of powers, everyone is protected from violence.

International and supranational legal systems

- **international legal system**

- regulating relations between states or international organizations (UN, NATO etc.)

- **supranational legal systems**

- such as EU law which is superior to national laws of the member states.

How the legal system looks like in the CZ?



Formal and material sources of law

- Formal sources of law
 - are the outer forms of legal norms (legal norms are included in statutes, international treaties, case-law, normative agreements etc. which are the formal sources of law).
 - These forms give the norms their legal force and validity
 - Example: we know that there is a speed limit in the towns of 50 km per hour (legal norm) and it is binding because it is written in the law no. 361/2000 Coll., on road traffic, as amended (formal source of law).
- Material sources of law
 - are the source of substance for law – the state of society, technological development, economic and cultural level, traditions.
 - It is an answer to the question, why do we need a specific legal regulation? E.g. the speed limit in the towns and villages was introduced because it is dangerous to drive fast in places with high occurrence of people

Sources of law within the Continental tradition v. the Common law tradition

- Continental tradition
 - dominant source of law legislative texts (written Constitution, codes, statutes)
 - passed by a formal procedure in the Parliament
 - The main branches of law are moreover embodied in the written codes (Civil Code, Criminal Code, Business Corporations Act, Labor Code etc.)
- Common law tradition
 - is based on plurality of sources with the precedents dominating over statutes
 - The role of the courts is dominant because they create law

Formal sources of Czech law

- **The Czech Constitution and the Bill of the fundamental rights and freedoms (both written)**
 - on the top of the hierarchy of the sources of law
 - All other legal acts must be in compliance with them
- **international treaties**
 - have superiority over the statutes
- **statutes**
 - passed by the Czech Parliament
- **derived legislation**
 - regulations and decrees adopted by the government, ministries and other authorities of state administration, and legislative acts of territorial self-governing units

Classification of Law

1. classification

- National law
 - relates to a particular nation and governs relations within national territory, national citizens, residents etc.
- International law
 - governs relations between states or parties from different states.
- Supranational law
 - is a legal systems sui-generis standing above the national laws (EU law).

Classification of Law

2. classification

- Substantive law
 - says what the law is, i.e. it defines, describes, regulates and creates legal rights and duties (civil law, commercial law, criminal law etc.).
- Procedural law
 - says how to enforce the substantive law, i.e. it defines the rules for the enforcement of substantive law and establishes the methods of enforcing the rights generated by the substantive law (civil procedural law, criminal procedural law etc).



1. is the body of rules that defines conduct that is prohibited by the state because it is held to threaten, harm or otherwise endanger the safety and welfare of the public, and that sets out the punishment to be imposed on those who breach these laws. It deals with criminal offenses that are contrary to public order or society and their punishments in various forms such as fine, imprisonment etc.

2. is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits.

3. is the body of rules of a state (or nation) governing the rights and duties of persons and corporation and determines private rights and liabilities.

4. is the body of law that sets out the rules and standards that courts follow when

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- Criminal proceedings
 - Civil law
 - Civil proceedings
 - Criminal law

Classification of Law

3. classification

- Public law
 - regulates relationships between one public party which is in superior position over the other
 - The position of the two parties is unequal and the private party must comply with the will of the public party.
 - There is always a public interest on one side and a private interest on the other (Constitutional law, Administrative law, Criminal law).
- Private law
 - regulates relationships between the parties with equal position
 - with the rights and duties of individuals, families, business corporations etc. and there is no public interest in the field of private law (civil law, family law, commercial law, most part of labor law).



1. is concerned with the relationship between individuals (citizens, companies) and the state, with the organization of the state, the responsibilities of the public officers to the state and to each other, and to private persons, and with the relations of states to one another.

2. is concerned with the relationships between individuals or groups without the intervention of the state or government. For example the liability of employers towards their employees for injuries sustained at work.

- Public law
- Private law

Self-assessment questions

- What are the characteristics of legal rules?
- Why do not rules of the games belong to legal rules?
- What legal systems do you know?
- Describe the main differences between the common law systems and the civil law systems.
- What is the difference between the material and formal sources of law?
- Describe the main difference between the public and private law.
- What is procedural law for?