

# 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).

# 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

# The concept of Law

- In order for the rules to be qualified as legal, they must satisfy three criteria:
  - a) a general application to society;
  - b) developed by a legitimate authority of the society;
  - c) accompanied with sanctions supporting their implementation and enforcement.

# 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

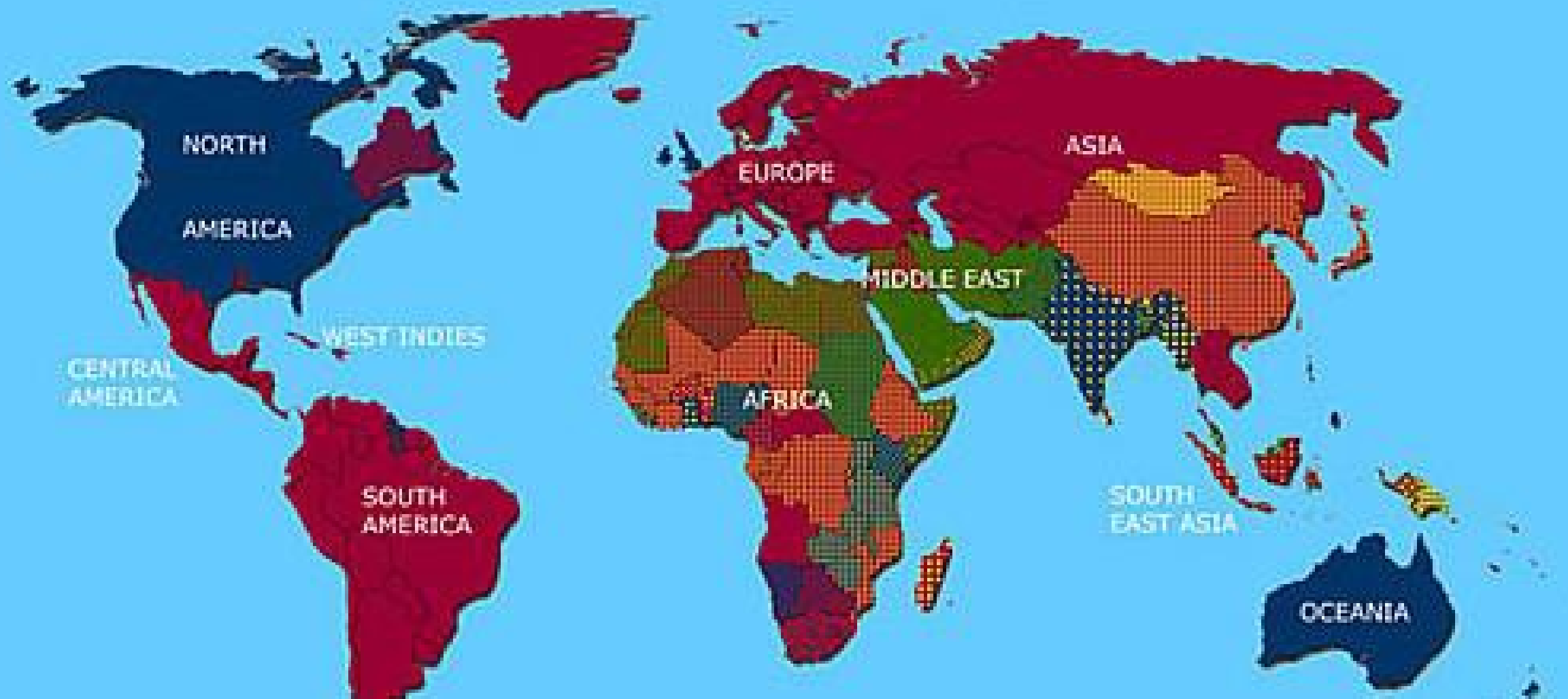
CIVIL LAW

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

# 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).



# 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).

# 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?