Introduction to Common Law

Families of legal systems

- Civil Law
- Common Law
- Mixed (Civil and Common Law elements.)
- Religious or customary law
  - (e.g., Islamic law, Hindu law.)
The things you will learn about common law this term will fall into three main categories:

- Sources of law/concept of law
- Adversarial procedure
- The jury system

What do the terms “civil law” and “common law” mean?

**Civil law**
- Can mean —
  - Legal system based on Roman law (like in Turkey)
  - A particular branch of law (Medeni Hukuku) within that system
  - The law of civil or private rights, as opposed to criminal law or administrative law (in the common law system)

**Common law**
- Can mean —
  - Legal system based on English law
  - Judge-made law (within that system.)
  - Traditional, informal (as in: common law marriage.)
In this course, when I say “common law” and “civil law” I will usually be talking about the different kinds of legal systems.

### Civil law vs. Common law

<table>
<thead>
<tr>
<th>Civil law</th>
<th>Common law</th>
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<tr>
<td>• Based on Roman law</td>
<td>• Developed from English traditional law</td>
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<td>• Law considered a “science”</td>
<td>• Law is practical, not scientific</td>
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<td>• Comprehensive codes</td>
<td>• Statutes don’t cover everything (but they cover more than they used to.)</td>
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<td>• (Traditionally) no equivalent of “common law” or precedent. (In modern civil law, decisions of certain courts are binding precedents.)</td>
<td>• “Common law” from prior court decisions (precedent)</td>
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<tr>
<td>• No jury, judge decides facts and law.</td>
<td>• Jury system</td>
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Civil law - Sources of Law

• In Turkish law, codes are the primary sources of law.

• In cases where there is a “gap” in the code, the courts may apply customary law.

Common law – sources of law

• The most important source of law has been law made by judges. (known as case law, or precedent.)

• Statutes (laws written by the legislature) are also an important source of law.
**Differences in Procedure**

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<th>Civil law</th>
<th>Inquisitorial System (especially in criminal law)</th>
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<td>Common law</td>
<td>Adversarial System</td>
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**Inquisitorial system**
- Especially in criminal cases, an impartial officer of the state conducts a search for the truth.
- It is important that the judicial officer, judge or prosecutor, does not care whether a conviction results or not.

**Adversarial system**
- The truth comes out when two parties vigorously defend their version of the facts from legally equal positions before a neutral and unprejudiced judge.
- Parties control the investigation and judges do not participate actively in the search for the truth.
### Inquisitorial system
- Evidence for a criminal trial in an inquisitorial system will be in a dossier in documentary form, which forms the principle basis for the decision of the trial court.

### Adversarial system
- Oral delivery of evidence by first hand witnesses at the trial
- Cross-examination of witnesses to test this evidence
- Importance of letting the fact finder (jury or judge) see the demeanor of the witnesses.

### The jury
- Traditionally, cases in common law are decided by a jury.

- Juries are drawn from a random selection of ordinary people who live in the jurisdiction.

- In criminal cases they decide on guilt (but not sentence.)

- In civil (private law) cases they decide on liability and on damages (though the judge may change the damage award.)
• In most modern common law systems, juries are used for criminal law cases only. (The United States is an exception – the right to a jury in civil cases is written into the constitution.)

• For an explanation of the constitutional basis of the jury right in U.S. civil trials, see “The Seventh Amendment,” National Constitution Center. https://constitutioncenter.org/interactive-constitution/amendments/amendment-vii

• Even in criminal cases, juries are now used only for more serious crimes in many countries.

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**Evidence**

• Since cases have traditionally been decided by people without any legal training, it is important to make sure that they only hear reliable, relevant evidence.

• This is why the rules of evidence are so important, and so much more complicated, in common law countries.
## Judges

### Civil law
- Judges are civil servants
- Judges enter their profession after law school
- As a judge becomes more experienced, he/she may be promoted within the judiciary to higher courts

### Common law
- Judges politically appointed or elected.
- No direct entry. Judges appointed from among experienced lawyers
- Once appointed to a court, a judge stays there, unless appointed or elected to a higher court