

The Legal Environment

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The Legal Environment

- Legal systems
- Laws
- Legal processes
- Efficiency and fairness of the legal system

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Legal Environment: Overview

- **Businesses are subject to many different legal jurisdictions:**
 - International
 - Regional [e.g., European Union]
 - National
 - Local: state, county, city

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Important Legal Issues that Must Be Resolved under *any* Effective Legal System:

- **Contract law**
- **Nature of contracts**
- **Enforceability of contracts**

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- **Protection of property rights**
 - *Intellectual property*
 - *Expropriation*
- **Antitrust regulations**

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- **Employment & workplace issues**
- **Product safety & product liability**
- **Environmental controls**
- **Taxation**

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Legal Systems

- **Common law**
- **Civil law**
- **Theocratic law**
- **Bureaucratic law**

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Common Law

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Common Law

- **Based originally upon:**
 - **Customary (i.e., "common") legal practices from the period before the laws were codified**
 - **Originated in England (Henry II; 1154)**

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Other Sources of Common Law

- **Constitutions, national and municipal**

- **Legislation (or *statutes*) which tend to be relatively general**

- **Policies of government agencies (e.g., the U.S. SEC or FDA)**

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- **Finally, & uniquely, court decisions**

- ***Precedence* of prior court decisions is very important under common law!**

- **Responding to changing conditions & special circumstances**

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Common Law Is a Very Flexible Legal System

- **Adaptable (by courts) to changing conditions**

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Legal Contracts

- The flexibility of common law, which makes it attractive, also makes it *less predictable*.

- Legal contracts tend to be very detailed--because of the flexible interpretation by courts.

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Role of Official Participants Under Common Law

- Limited role of judges

- Active role of lawyers

- *Jury system*--used in criminal & some serious civil cases

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Specialized Courts

- Very limited under common law

- Evolving in some common-law jurisdictions

- But much less important than in civil-law systems.

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What Countries Use Common Law?

- **Common law is prevalent only in the United Kingdom and countries that had been British colonies, including:**

- **United States**
- **Canada**

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- **Ireland (the only European country other than the UK)**
- **India**
- **Australia & New Zealand**
- **Hong Kong (part of China)**
- **More than 25 countries in total**

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Civil Law

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Civil Law

- Based upon a comprehensive set of written laws (= codes, statutes)

- Source:
 - Constitution
 - Legislation or
 - Imperial decree

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Tradition & the precedents of past legal cases are *not* relevant in civil law.

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Civil Law Is Very Inflexible

- Strict application of existing codes

- New conditions require new laws.

- However, the system's inflexibility makes it *much more predictable* than common law.

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- Courts in civil-law jurisdictions are *not* free to interpret the law.
- Prior court decisions are *not* relevant factors in trials.
- Contracts are much less detailed than in common law.

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Role of Official Participants Under Civil Law

- Judges play a very active role.
 - Asking questions of witnesses.
 - Judges often call their own experts.
 - Judges assume some of the role of lawyers under common law

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- Civil-law courts often use *panels of judges*, or even lay specialists.
 - Not juries
- The role of lawyers is much less important than in common law.

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Special Courts Under Civil Law

■ **Special courts exist for different categories of cases:**

- **Criminal court**
- **Commercial court**
- **Labor court**
- **Family court**

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Civil law is the most prevalent legal system in the world.

- **Continental Europe**
- **Asia**
- **Latin America**
- **More than 150 countries**

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Countries which lack an acceptable legal system adopt civil law.

- **Japan after World War II**
- **Russia and most other former communist countries**

■ **Why?**

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Theocratic Law

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- **Theocratic law is based upon ancient religious texts.**

- **It usually exists along with either common or civil law.**

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Primary Examples of Theocratic Law

- **Islamic law**

- **Talmudic law**

- **Hindu law**

- **Christian canon law**

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■ **Theocratic law tends to be:**

- **Very detailed**
- **Very inflexible**
- **Very slow to change**

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■ **Procedures under theocratic law for *due process* & appeal of court decisions generally do not meet the standards of either common or code law.**

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Islamic Law

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Islamic Law

- By far the most prevalent theocratically-based legal system
- Based upon the *Shari'a*, a legal compilation from the Quran (Koran) and other early Islamic writings

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General Characteristics of Islamic Law

- Similar to civil law
 - Very inflexible
 - Specialized courts
 - Judges or panels of judges

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Islamic Law Forbids:

- Consumption of:
 - Alcohol
 - Tobacco
 - Pork
- Gambling
- charging (or paying) of interest

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■ **Islamic law also forbids engaging with or investing in companies involved in these activities**

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Where Islamic law predominates, there is no true separation of church and state.

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Islamic Law is the prevalent law in a few countries.

- **Saudi Arabia**
- **Iran**
- **Afghanistan**
- **Sudan**

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Islamic Law is Usually Mixed with Common or Civil Law

- **Algeria (Islamic & civil law)**
- **Pakistan (Islamic & common law)**
- **Egypt mixes all 3 systems!**

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Talmudic Law

- **Based upon the Talmud (rabbinical writings of the 4th -5th centuries A.D.)**
- **Advocated by fundamentalist groups in Israel**

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Hindu Law

- - **Governs treatment of different castes**
- - **Primarily concerned with family & property matters**
- - **Common law is the basis for most criminal and business law.**

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Administrative Law

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Administrative Law

- **Based upon arbitrary government policies – not legislation.**

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General Characteristics of Administrative Law

Individuals and private-sector companies cannot be assured of due process and fairness under the law.

- **Even existing constitutional protections can be ignored.**

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■ **Laws can quickly & arbitrarily change (e.g., with a change of the head of the government)**

- **Commercial law is not well developed.**

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Administrative Law Is Common in Totalitarian Countries

- **Communist countries**
- **Fascist countries**
- **Military dictatorships**
- **Other dictatorships**

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Regional Legal Systems

■ **Sometimes states or provinces use a different legal system than the national government**

- **Louisiana**
- **Quebec**
- **Scotland**

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■ **In some countries, Islamic law is prevalent only in certain provinces.**

- **Nigeria**
- **Indonesia**
- **Malaysia**

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Different Laws

■ **Different legal systems must address the same or similar issues (e.g., commercial law).**

■ **However, *between* legal systems or even *within* a particular type of legal system (e.g., common law), laws differ greatly.**

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Different Legal Processes

■ **Countries with the same type of legal system and similar laws might have legal processes that differ greatly.**

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Consider the U.S. & U.K.:

- **In U.K., the loser in a lawsuit pays his own costs as well as those of the winner.**
 - Discourages frivolous lawsuits
- **Also, lawyers in the U.K. cannot accept *contingency* compensation.**

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- **In U.S., the opposing parties in a lawsuit pay their own legal fees.**
 - Encourages lawsuits, no matter how tenuous, since the plaintiff's cost is limited to his own.

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- **Also it sometimes encourages the poorer party to settle even, if they have a clear case, simply because the wealthier party can afford an expensive, drawn-out litigation.**

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■ **Contingency fees for lawyers are legal here -- which has led to many *class-action* lawsuits.**

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Efficiency and Fairness of Legal Systems

■ **Efficiency is possible under any type of legal system.**

■ **Fairness is also possible under any type of legal system.**

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■ **However, inefficiency and partiality are also possible under any of the types of legal system.**

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Miscellaneous Legal Issues

- *Extra-territoriality*
- *Sovereign Immunity*
 - *Waiver of sovereign immunity*

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Foreign Corrupt-Practices Act

- Prohibits American managers from paying bribes to foreign officials
- "Facilitating payments" are permitted
 - Mordida; baksheesh

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- *Convention on Combating Bribery of Foreign Public Officials in International - Business Transactions (OECD; 1999)*

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Alternative dispute resolution

- ***Mediation***
- ***Arbitration***

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