Five main legal system of the world

Running Head: THE FIVE MAIN LEGAL SYSTEM OF THE WORLD Five Main Legal Systems Dailyn Perez February 6, 2012 Law of Contracts J. Giannell In the world there are 5 main legal systems, common law, civil law, Muslim law, customary law, and Talmudic law. Common law is the law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action. It is a legal system that gives great precedential weight to common law, the principle that it is unfair to treat similar facts differently on different occasions.

The common law can be well use in cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as stare decisis). In practice, common law systems are considerably more complicated than the simplified system described above.

The decisions of a court are binding only in a particular jurisdiction, and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by appellate courts are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, but decisions of lower courts are only non-binding persuasive authority. Interactions between common law, constitutional law, statutory law and regulatory law also give rise to considerable complexity.

The legal systems within the United Kingdom were based largely on judge-made law (law developed through decisions by judges necessary to decide cases brought before them called " common law” until around the

seventeenth century. Each jurisdiction developed its own forms of common law, with Scotland being especially distinct from the rest. Since that time, new laws andlaw reformhave increasingly been brought about through Acts of Parliament, usually inspired by policies of the Government of the day. A statement of law made by a judge in a case can become binding on later judges and can in this way ecome the law for everyone to follow. Whether or not a particular pronouncement (technically called a precedent) by a judge sitting in court when deciding a case does become binding (according to the doctrine of " stare decisis" stand by what has previously been decided) on later judges depends on two main factors: The pronouncement must be made by a court of sufficient seniority. The pronouncement must have formed the ratio decidendi of the case (this is Latin for the reasoning behind the decision).

Our second legal system is civil law, statutes set the general principles of the law expressly by stating them; the courts then make their own interpretations of those general principles afresh in each case to arrive at conclusions about how those general principles translate into details. In common law systems, the approach is the opposite: the legislation sets the details, from which the general principles emerge, much like a computer programmer. The idea is that those who are making the statutes, rather than the courts, should be the ones who have the power to decide how the details work.

The civil law can thus be described as a top-down approach to principles, whereas the common law can be described as a bottom up approach. Both systems *value* principles equally, but arrive at them, and deal with the

interface between principle and detail, in very different ways. It is a legal system inspired by Roman law and whose primary feature is that laws are codified into collections, as compared to common law systems that gives great precedential weight to common law on the principle that it is unfair to treat similar facts differently on different occasions.

Conceptually, it is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Germanic, ecclesiastical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legislative positivism. Materially, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited authority to interpret law.

Juries separate from the judges are not used, although in some cases, volunteer lay judges participate along with legally trained career judges. The Islamic law is the moral code and religious law of Islam. Sharia is derived from two primary sources of Islamic law: the precepts set forth in the Quran, and the example set by the Islamic prophet Muhammad in the Sunnah. Islamic jurisprudence interprets and extends the application of sharia to questions not directly addressed in the primary sources by including secondary sources.

These secondary sources usually include the consensus of the religious scholars embodied in ijma, and analogy from the Quran and Sunnah through

qiyas. Shia jurists prefer to apply reasoning rather than analogy in order to address difficult questions. Muslims believe sharia is God's law, but they differ as to what exactly it entails. [2] Modernists, traditionalists and fundamentalists all hold different views of sharia, as do adherents to different schools of Islamic thought and scholarship. Different countries, societies and cultures have varying interpretations of sharia as well.

Sharia deals with many topics addressed by secular law, including crime, politics and economics, as well as personal matters such as sexual intercourse, hygiene, diet, prayer, and fasting. Where it has official status, sharia is applied by Islamic judges, or qadis. The imam has varying responsibilities depending on the interpretation of sharia; while the term is commonly used to refer to the leader of communal prayers, the imam may also be a scholar, religious leader, or political leader. Customary law is a recognized source of law within jurisdictions of the civil law tradition, inferior to both statutes and regulations.

In addressing custom as a source of law within the civil law tradition, John Henry Merryman notes that, though the attention it is given in scholarly works is great, its importance is " slight and decreasing. “ In Canada, customary aboriginal law has a constitutional foundation and for this reason has increasing influence. In the Scandinavian countries customary law continues to exist and has great influence. Customary law is also used in some Third World countries, such as those in Africa, usually used alongside common or civil law.

For example in Ethiopia, despite the adoption of legal codes based on civil law in the 1950s according to Dolores Donovan and Getachew Assefa there are more than 60 systems of customary law currently in force, " some of them operating quite independently of the formal state legal system. " They offer two reasons for the relative autonomy of these customary law systems: one is that the Ethiopian government lacks sufficient resources to enforce its legal system to every corner of Ethiopia; the other is that the Ethiopian government has made a commitment to preserve these customary systems within its boundaries.

At last is TALMUDIC LAWThe development of thousands of years is represented by the Jewish law asit is found in the Shul? an 'Aruk, ? oshen Mishpa? , of Joseph Caro (16th cent.), as well as in numerous other works which elaborate or elucidate individual passages in various ways. The history of the Hebrew code falls into three chief epochs: (1) the Pentateuch, (2) the Talmud, and (3) post-Talmudic literature. The Pentateuch forms the basis of the Talmud, while the latter serves in its turn as a foundation for post-Talmudic law, which has tenaciously maintained its validity in less cultured countries to the present day.

Although these three periods are closely related in so far as the later epochs were developed from the earlier, they must be regarded as mutually independent, since they represent different phases of evolution. As controverting the theory which formerly prevailed, especial stress must be laid upon the fact that in the course of time the changes both in material and in spiritual life profoundly modified Jewish law, the stages of whose evolution are linked together only by the legal fictions common to all history of law.

It may accordingly be said that there were three judiciary systems: the Mosaic, the Talmudic, and the rabbinic. The Talmudic code is generally termed the " Mosaic-Talmudic," since the authorities of the Talmud took the Mosaic Law as their basis. From the point of view of judicial history, however, the Talmud must be regarded as an independent structure; and it is therefore more correct to use the simple term " Talmudic law. The present article excludes all reference to rabbinic law, and discusses only those aspects of the Mosaic system which facilitate an intelligent comprehension of the Talmudic code. References Law and Judicial Systems of Nations, 4th ed. World Jurist Association, 2002. K583. W67 2002 Legal Systems of the World: A Political, Social, and Cultural Encyclopedia, 2002 M. A. Frey: Law of contracts, 2010 Cheryl Nyberg, Legal ; Judicial Systems in Countries Around the World