English for Lawyers and Law Students

Since legal language can neither be taught nor understood without context, English for Lawyers and Law Students essentially serves two purposes: It provides an insight into selected issues of the US legal system and in doing so acquaints the reader with (primarily American) English legal terminology and a variety of law concepts.

The book’s contents are selective rather than comprehensive because the focus lies on legal vocabulary rather than knowledge building. Thus, each chapter is followed by a list of related legal terms and concepts, whereby a wide range of legal terminology is defined and explained in English and not forced into a German corset. Among other issues, the book offers a valuable insight into the US trial and jury system, US legal education, the legal profession and various legal (civil and criminal) proceedings. It is a suitable reference book for law students as well as legal professionals and any reader interested in US law and English legal terminology.

The author’s main goal is to promote and ease the reader’s understanding of legal terms by contextualizing them, which should enable the legally trained eye to realize the small but subtle differences between the (American) English and related German terms. In addition, the book includes a great number of legal terms and their respective translation into German and vice versa.

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I. Important Differentiations

Civil Law versus Common Law (Legal Systems)

Civil or civilian law (as opposed to Common Law) is based on Roman law, especially the Corpus Juris Civilis of Emperor Justinian, as later developed through the Middle Ages by medieval legal scholars. Modern systems are descendents of the 19th century codification movement, during which the most important codes came into existence. The Austrian Civil Code was completed in 1811. Around this time civil law incorporated many ideas associated with the Enlightenment.

Today people use the term “Common Law” to denote the system of law that developed in England and was imported into countries influenced by the English. Civil law, on the other hand, is also sometimes known as “Continental European Law” although it is practiced around the world, such as in Latin America, Japan and most former colonies of continental European countries, but also in Quebec (Canada) and Louisiana (USA).

In the civil law system the primary source of law is a code, whereas Common Law rules are developed based on court rulings, (thereby also referred to as case law. The general principle of a case law system is that similar cases with similar facts should be solved by using the rules created in former similar (so called precedent) cases.

Still, the difference between civil law and Common Law lies less in the mere fact of codification than in the methodological approach to codes and statutes. Since legislation is seen as the primary source of law in civil law countries, courts base their judgments on statutes from which solutions in particular cases are derived. Therefore, courts reason extensively on the basis of general legal principles or draw analogies from statutory provisions to fill gaps. By contrast, in the Common Law system cases are the primary source of law, while statutes are interpreted narrowly. Consequently, judges have an enormous role in shaping the law.

It is often said that Common Law opinions are much longer and contain elaborate reasoning, whereas legal opinions in civil law countries are usually very short and formal in nature. But this is not the case in all civil law countries, since there are notable differences between the various legal methodologies used. In fact, in German-speaking countries court opinions are sometimes as long as American ones and often discuss prior cases and academic writing extensively. There are, however, certain sociological differences: civil law judges are usually trained and promoted separately from attorneys, whereas Common Law judges are regularly selected from accomplished and reputable attorneys. Also, the influence of academic writing by law professors on case law tends to be much greater in civil law countries. Civil and Common Law systems also differ considerably in courtroom procedure. While Common law functions as an adversarial system (contest
I. Important Differentiations

between two opposing parties before a judge who moderates), the civil law judge plays a more active role in determining the facts of the case. Also, civil law systems rely much more on written than on oral argument.

SIMPLY
Civil law is primarily contrasted against Common Law, which is the legal system in England, the US and other countries influenced by the English. The distinguishing characteristics of the civil and Common Law systems lie in the sources of law and the procedure used in courts: civil law is a law enacted by a nation or state for its own jurisdiction; it is a codified system of law setting out a comprehensive system of rules that are applied and interpreted by judges. In the Common Law system the primary sources of law are judicial decisions. These opinions contain legal principles that can be applied to solve future cases.

Discuss
Which other meaning of civil law do you know?

Explain the main differences between civil and Common Law!

How do the careers of civil law judges differ from their Common Law counterparts?

Is the role of a civil law judge different from the role of the Common Law judge?

Are there any advantages / disadvantages of the civil law judicial design?

Concepts
branches of government

most governments (such as the US government) can be divided into three separate branches: legislative, executive and judicial branch, whereby each branch has its own responsibilities (making, executing and interpreting the law).

case law

in Common Law systems, higher court decisions are binding on lower courts in cases with similar facts and similar legal issues. This concept of stare decisis (see below) means that lower courts are bound to appellate cases. The law based on judicial decision and precedent rather than on statutes (case law) is distinguished from “statutory law,” which is the statutes and codes (laws) enacted by legislative bodies.

civil law

as opposed to Common Law: body of laws and legal concepts derived from old Roman laws which differ from (Angloamerican) Common Law; also: generic term for non-criminal law.

code

systematic and comprehensive (written) compilation of laws, rules or regulations, which are classified according to subject matter. The process of collecting and restating the law is known as “codification”.

Tangl, English for Lawyers and Law Students
I. Important Differentiations

Common Law
the system of deciding cases referring to former (precedent) cases, which originated in England and was later adopted in the US. Today, many Common Law principles have been transformed into statutes with modern variations.

Court of Equity
originally, in English Common Law and in several states there were separate courts (some called "chancery courts") which handled lawsuits and petitions dealing with various non-monetary claims. The judicial remedies ("equitable remedies") developed by these courts provided flexible responses to changing social conditions allowing courts to use their discretion. Nowadays, most Courts of Equity have merged with courts of law.

judiciary
the judicial branch of government.

legal methodology
the system of methods followed in a particular (here: legal) discipline; an organized set of procedures and guidelines (method, modus operandi, approach). Sometimes, methodologies include a step-by-step "cookbook"-approach for carrying out the procedure.

legislative act
an act passed by a legislative body.

legislative enactment / legislation
lawmaking; the preparation and enactment of laws by a legislative body.

precedent
an appellate court decision which establishes a legal rule (authority) and is therefore cited as an example to resolve similar questions of law in later cases. The principle that a lower court must follow a precedent is called stare decisis (see below).

provision (of law)
a statute often has various provisions (articles, clauses).

stare decisis [ster-ē-di-sē-sēs]
Latin for "to stand by a decision"; it expresses the (Common Law) doctrine that lower courts are bound by higher court decisions (precedents) on a legal question which was raised by the lower court. A trial court judge must not ignore the precedent until the appellate court changes the rule.

statute
written law enacted by state legislature; local statutes or laws are usually called "ordinances." Regulations, rulings, opinions, executive orders and proclamations are not statutes.
I. Important Differentiations

NOTE THE DIFFERENCE

Vocabulary

Substantive Law versus Procedural Law

The question of whether a law is procedural or substantive is often a difficult one to answer. In the criminal context one could say that substantive laws define which acts are criminal and the punishment for violating them, whereas procedural laws regulate the steps by which the guilt or innocence of someone who is accused of a crime is determined.

In general, procedural law comprises the rules by which a court operates and in doing so determines what happens in legal proceedings. The rules are designed to ensure a fair and consistent application of due process/fundamental justice to all cases that come before a court. Substantive law, on the other hand, is the statutory or written law that governs the rights and obligations of those who are subject to it. Lawyers often distinguish procedural law from substantive law by referring the latter to the actual claims and de-