

1.3: Modern Legal Systems of the World

Sidebar

Even if a business is not officially “international,” it is important to understand the legal systems of the world because consumers come from all over. Consumers, business partners, and competitors are products of their environments, including their societies and legal systems. Therefore, their expectations and how they interact with each other are influenced directly by their legal systems of origin. The most successful businesses take this into account—not only for avoiding legal liability but also for enhanced consumer satisfaction. ~ Arham M., attorney

There are four main legal systems in the modern world:

1. Common law;
2. Civil law;
3. Religious law; and
4. Customary law/monarchy.

Common law and civil law systems are the most common legal systems. Watch the video in the [Media Library](#).

As the world becomes more interdependent, a fifth category of legal systems has developed — the hybrid legal system, which is a legal system that is a combination of two or more legal systems.

Table 1.3.1 Legal Systems and System Descriptions

Type of Legal System	Description
Common Law	<ul style="list-style-type: none">• Written judicial decisions of appellate courts are binding legal authority on lower courts when interpreting and applying the same or similar questions of law• The legal system is adversarial• The outcome of a case is often decided by a jury of the parties' peers
Civil Law	<ul style="list-style-type: none">• All legal rules are in comprehensive legislative enactments often called Codes• Written judicial decisions of appellate courts are not binding legal authority• The legal system is inquisitorial
Religious Law	<ul style="list-style-type: none">• Religious documents are used as legal sources• All major world religions have a religious legal system• Most nations that have religious legal systems use them to supplement a secular national system
Customary Law	<ul style="list-style-type: none">• Legal system used by a monarchy or tribe• Grants specific legal powers to kings, queens, sultans or tribal leaders as heads of state• Monarchs and leaders often seen to be “above the law”
Hybrid Law	<ul style="list-style-type: none">• Combination of 2 or more legal systems within a nation

Common Law Systems

The legal system in the United States comes from the English common law tradition and the US Constitution. English common law is a system that gives written judicial decisions the force of law. As a result, the US legal system recognizes an appellate court's ability to interpret and apply the law to future litigants through precedent. **Precedent** is a judicial opinion that is considered legal authority for future cases involving the same or similar questions of law. The benefit of this system is consistency and resolution of disputes without requiring the parties to take legal matters to court.

A famous example of how precedent works is the US Supreme Court case *Brown v. Board of Education of Topeka*. In this landmark 1954 case, the Court unanimously ruled that racial segregation of children in public schools is unconstitutional. *Brown v. Board of Education* is one of the cornerstones of the Civil Rights Movement and helped establish the precedent that "separate-but-equal" education and other services were not, in fact, equal at all. The case required all racially segregated public schools to integrate, not just in Topeka, Kansas. In addition, *Brown* has been cited as legal precedent in thousands of cases nationwide involving racial equality.

The common law legal system is adversarial, which means that the parties are opponents present evidence to a court to resolve the conflict. The judge or jury hears the parties' evidence and arguments before making a final decision. It is the parties' burden to investigate the facts, argue the law, and present their best case. Judges and juries are *not* permitted to do independent investigations, nor are they responsible for helping parties argue their cases. It is a party's responsibility to raise all legal issues.

Another characteristic of common law systems is that cases are often decided by juries of the parties' peers. In both civil and criminal matters, the parties usually have a right to have a jury randomly selected from residents of the local jurisdiction to resolve the dispute. When a jury determines the outcome of a case, the judge acts as a "gatekeeper," who decides what evidence and legal arguments the jury can properly consider. The judge ensures the parties receive a fair trial while the jury decides the outcome of the trial.

The common law tradition is unique to England, the United States, and former British colonies. Although there are differences among common law systems (e.g., whether judiciaries may declare legislative acts unconstitutional and how frequently juries may be used), all of them recognize the use of precedent, and none of them relies solely on the comprehensive, legislative codes that are prevalent in civil law systems.

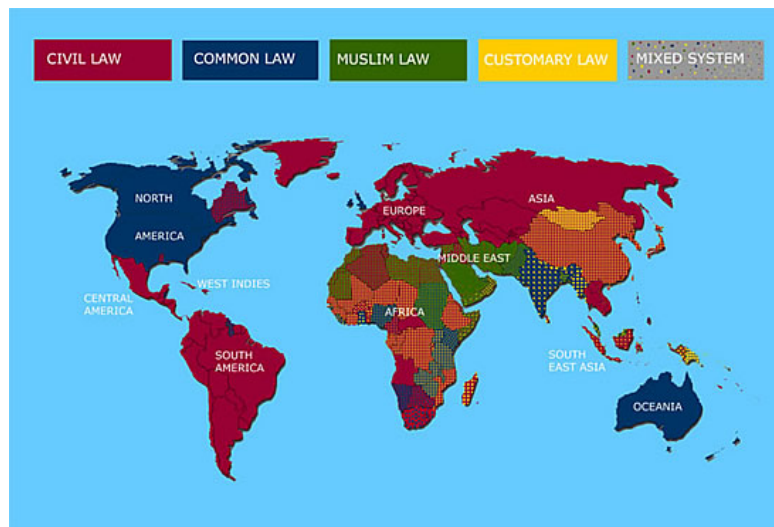


Figure 1.3.1 *Legal systems of the world.* (CC BY 4.0; [Source](#))

Civil Law Systems

Civil law systems were developed in Europe and are based on Roman and Napoleonic law. Civil law systems are also called code systems because all the legal rules are in one or more comprehensive legislative enactments. During Napoleon's reign, a comprehensive book of laws—a code—was developed for all of France. The code covered criminal law and procedure, non-criminal law and procedure, and commercial law. The code is used to resolve only cases brought to the courts, which are usually decided by judges without a jury.

Civil law systems are inquisitorial systems in which judges actively investigate cases. Judges have the authority to request documents and testimony, as well as to shape the parties' legal claims. In addition, judges are not required to follow the decisions of other courts in similar cases. The law is in the code, not in the cases. The legislature, not the courts, is the primary place to enact and modify laws.

Civil law systems are used throughout Europe, Central and South America, Asia and Africa. France, Germany, Holland, Spain, and Portugal had colonies outside of Europe, and many of these colonies adopted the legal practices that were imposed on them by colonial rule.

There are also communist and socialist legal systems that differ significantly from traditional civil law systems. Legal scholars debate whether this is a separate type of legal system or a subset of modern civil law systems. In a communist or socialist legal system, the nation has a code but most property is owned by the government or agricultural cooperatives. In addition, the judiciary is subservient to the Communist party and is not an independent branch of government.

Religious Law Systems

Religious law systems arise from the sacred texts of religious traditions and usually apply to all aspects of life, including social and business relations. In religious legal systems, a religious document is used as a primary legal source. All major world religions—Judaism, Christianity, Islam, Buddhism and Hinduism—have a religious legal system. The Islamic legal system (Sharia) with Islamic jurisprudence (Fiqh) is the most widely used religious legal system in the world. Most nations that have religious legal systems use them to supplement their secular national system. Only Saudi Arabia (Islamic) and the Vatican (Christian) are pure theocracies that have only a religious legal system in their nations.

Customary Law Systems

Customary legal systems are becoming increasingly less common. A customary system is used by a monarchy and grants specific legal powers to the kings, queens, sultans or tribal leaders as heads of state. A challenge of a customary system is that the ruler is seen to be “above the law” because the laws do not apply equally to the ruler and subjects. There are only a handful of monarchies remaining in the world, and most of them have evolved into hybrid legal systems or have adopted a different type of legal system.

Hybrid/Mixed Law Systems

Hybrid legal systems are a combination of two or more legal systems within a nation. India is a classic example of a nation with a hybrid legal system. As a former British colony, India has a common law legal system, which recognizes the power of the Supreme Court and High Courts to make binding judicial decisions as a form of precedent. However, most of its laws are integrated codes found in a Napoleonic code system. In addition, India has separate personal codes that apply to Muslims, Christians, and Hindus. As a result, India has a hybrid system made up of common law, civil law, and religious law systems.

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