

Opinion Article

Common law and its basic principles

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ABOUT THE STUDY

In common law legal systems, judicial rulings are officially recognised as “law,” on par with statutes enacted through the legislative process and executive branch regulations. The “doctrine of precedent,” also known as stare decisions, states that rulings by higher courts bind subordinate courts and future decisions by the same court, ensuring that comparable issues be resolved in the same way. In “civil law” systems, on the other hand, legislative statutes are often more complex, while judicial rulings are typically shorter and less detailed, because the judge or barrister is only writing to resolve a particular case, not to lay down reasoning that would guide future courts (Attaran, et al. 2012). If, on the other hand, the court determines that the current dispute is fundamentally different from all previous decisions, and legislative acts are either silent or vague on the topic, judges have the authority and responsibility to settle it (Backman, et al. 2008). The court issues an opinion in which it explains why it made the decision, and those reasons are combined with previous decisions to create precedent that will bind future judges and litigants (Coovadia, et al. 2009). In contrast to and on an equal footing with legislation established through the legislative process and regulations promulgated by the executive branch, common law stands as a body of law created by judges (Dwyer, 2005).

Common law adjudication

To identify “what the law is” in a specific circumstance in a common law jurisdiction, various steps of investigation and analysis are needed. The facts must first be established. Then, any applicable statutes and cases must be located (Palmer, et al. 2009). Then one must extract the concepts, parallels, and declarations of what the various courts believe relevant in order to predict how the next court will rule on the facts of the case (Renton, et al. 2012). Later decisions, as well as decisions by higher courts or legislatures, have more

weight than earlier cases and lower court decisions. Finally, “what the law is” is determined by combining all of the lines drawn and justifications stated (Starfield, 2007). Then the facts are applied to that law. Common law systems are much more difficult in practise than the basic one outlined above. A court’s judgements are only valid in that jurisdiction, and even within that jurisdiction, some courts have more power than others. In most jurisdictions, appellate court rulings are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, whereas lower court decisions are simply persuasive authority and are not binding (Wilkinson, et al. 2006). Complexity arises from interactions between common law, constitutional law, statutory law, and regulatory law.

Statutory law is less pliable than common law. First, common law courts are not bound by precedent and can reinterpret and change the law without legislative interference to conform to changing trends in political, legal, and social thought. Second, common law evolves in a series of incremental steps that progressively iron out all the intricacies, so that the law can change significantly over a decade or more without a dramatic rupture, lessening disruptive impacts. In contrast to common law incremental progress, the legislative process is extremely difficult to initiate, as legislators often wait until a situation has become intolerable before acting. Legislative changes are sometimes big, abrupt, and disruptive as a result of these factors.

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