

Common Law vs Civil Law: What's the Difference?

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Common Law and Civil Law. The United Kingdom primarily follows the Common Law system, while France adheres to the Civil Law system. Here's a more detailed exploration of the differences:

Common Law (UK)

1. **Principle:**

In Common Law jurisdictions like the UK, the principle often emphasized is that "everything which is not forbidden is allowed." This means individuals are free to act as they wish unless there is a specific law prohibiting the action.

2. **Source of Law:**

Common Law is largely based on precedents set by judicial decisions. Courts interpret and create law through their rulings, and these precedents guide future cases.

3. **Flexibility:**

The system is inherently flexible because it evolves with each new case. Judges have considerable discretion in interpreting the law, which allows the legal system to adapt over time.

4. **Statutes and Legislation:**

While judicial decisions are crucial, statutes (laws passed by Parliament) also play a significant role. These laws are written and provide clear rules that must be followed.

Civil Law (France)

1. **Principle:**

In Civil Law countries like France, the guiding principle can be interpreted as "everything which is not allowed is forbidden." This suggests that actions are generally prohibited unless there is a specific

law permitting them.

2. Source of Law:

Civil Law is primarily based on written codes and statutes. The most important source is comprehensive legal codes, such as the French Civil Code (Code Civil), which outlines the laws in a clear and systematic manner.

3. Role of Judges:

Judges in Civil Law systems apply the law as it is written and have less flexibility to interpret or create law. Their role is to apply the statutes to the cases before them.

4. Legal Certainty:

The system aims for clarity and predictability, as laws are codified and accessible. This structure is intended to provide citizens with a clear understanding of what is permitted and what is not.

Key Differences

1. Judicial Precedent vs. Statutory Law:

Common Law systems heavily rely on judicial precedents, while Civil Law systems prioritize codified statutes.

2. Flexibility vs. Certainty:

Common Law's reliance on case law allows for more flexibility and adaptation over time. In contrast, Civil Law's reliance on written codes aims for greater legal certainty and stability.

3. Role of the Judge:

Judges in Common Law systems have a more significant role in shaping the law, whereas judges in Civil Law systems focus on applying the written law.

4. Legal Approach:

The interpretative approach in Common Law can sometimes lead to more nuanced and context-specific rulings, while Civil Law emphasizes a more straightforward application of codified rules.

Practical Implications

- **Innovation and Regulation:**

In Common Law countries, new types of activities (especially in technology and business) might be less regulated until specific laws are developed. In Civil Law countries, such activities might be constrained until clear regulations are established.

- **Legal Advice and Predictability:**

In Civil Law systems, legal professionals often refer directly to the codes, which can provide more predictable legal outcomes. In Common Law systems, the outcome of legal disputes can be more uncertain as it depends on judicial interpretation.

Conclusion

While the aphorisms “everything which is not forbidden is allowed” (UK) and “everything which is not allowed is forbidden” (France) oversimplify the nuances of these legal systems, they do highlight the broader tendencies of Common Law and Civil Law traditions. Each system has its own strengths and challenges, influenced by historical developments and cultural contexts.