

## Legal Traditions Summaries

A brief summary for each legal tradition is included below.

### CIVIL LAW

The majority of countries follow the civil law tradition. A main characteristic of the civil law system is that written codes serve as the primary source of legal authority. These codes are comprehensive in an attempt to cover all legal issues that might arise.

Some civil law systems follow an inquisitorial trial process, whereby the main activities take place during the investigative stage and the judge plays an active role in questioning witnesses and defendants during the trial. However, a number of civil law countries are moving toward an adversarial trial process.



#### Key characteristics of an inquisitorial process are:

- The prosecutor and judge both hold most of the power; the defense attorney's role is very limited
- Investigation is conducted by an examining magistrate who acts as an inquisitor directing fact-gathering, questioning witnesses, interrogating the suspect, and collecting evidence
- A trial is merely the public finale of the ongoing investigations where the accused is presumptively guilty until proven innocent
- Trials rely on written materials/files rather than oral arguments
- Legal opinions in civil law countries are usually very short and formal in nature

#### The court system is less integrated than under the common law tradition and includes:

- Specialized courts that handle constitutional, administrative, commercial, and criminal law issues
- First instance courts, courts of appeals, and a high (supreme) court

### COMMON LAW

In a common law system, the main hallmark of the system is the doctrine of *stare decisis*, which means the legal principles enunciated and embodied in judicial decisions is binding precedent and must be followed.

Given the fundamental importance of case decisions in common law systems, court opinions are typically longer than in the civil law tradition and should set forth the reasoning behind the decision.

In common law systems, the trial process tends to be adversarial in nature whereby the defense attorneys and prosecutors play an active role in the trial and the judge serves as a neutral arbiter.

#### Key characteristics of an adversarial process are:

- Judge is neutral and does not participate in investigations. A judge's role includes setting binding precedent, interpreting statutes, and refereeing between the prosecutor and defense attorney
- Power between the prosecutor and defense attorney is balanced
- Plea bargains are possible

- Defense attorneys can interview witnesses and victims during the investigative process
- Public defender services need to be sufficiently resourced to defend the accused
- Oral presentation of evidence and legal arguments lies with opposing parties, not with the judge
- The accused is presumed innocent and has a right to a jury trial in criminal cases

#### The court structure is a unified system and includes:

- Trial courts, courts of appeals, and a supreme court
- General jurisdiction courts that may handle cases involving criminal, constitutional, civil, administrative, and commercial law
- Specialized courts such as family courts or drug courts are also part of the common law tradition

Examples: U.S., Canada, Liberia, Australia, New Zealand, United Kingdom

**Legal Traditions Summaries** (continued)

**CUSTOMARY LAW**

To solve a dispute or regulate an individual's conduct, customary law tradition utilizes written and unwritten rules deeply rooted in the societal, cultural, and spiritual contexts and values of the community. The primary emphasis in customary law tradition is reconciliation and restoring social harmony.

*"Customary law itself is not simply a set of rules and sanctions, but a contextually defined process, involving flexibility, negotiation, and reinterpretation of a dynamic body of knowledge to reflect what is considered reasonable under the circumstances. Due to historical influences, it is often conducted with reference to rules, but the application of such rules is inherently contestable."*

-- *Local Justice in Southern Sudan (2005)*

Procedures include consultation, mediation and reconciliation to resolve disputes involving land and property, access to public services, use of natural resources, family issues, and sometimes severe criminal matters.

**In many countries, systems based on customary law coexist with the formal, state justice system and their trial processes may include:**

- Informal gatherings of village elders
- Semi-formal community councils
- Quasi-judicial proceedings and tribunals

**Actors are community-based and include:**

- Local arbitrator(s), such as community leaders or elders
- Victim or victim's family
- Community members

Examples: Afghanistan, Liberia, Mexico, South Sudan



**RELIGIOUS LAW**

Religious law tradition relies on ethical and moral codes taught by religious traditions and stemming from sacred texts. This tradition focuses on the relationship between individual(s) and God.

There are many legal systems based on religious law, such as:

- Sharia – Islamic Law
- Halakha – Jewish Law
- Canon Law – Roman Catholic (Christian) Law
- Dharma – Hindu Law

**Islamic Law**

Islamic, or Sharia, law is the most common religious law tradition today. Sharia law is derived from two sacred texts:

- Quran: a religious text but does outline principles of justice and equality
- Sunna: provides additional explanation of binding legal norms

The sacred texts are complemented by other writings, opinions, and decisions.

**The main justice actors in Sharia law are:**

- Qadi: A judge responsible for determining guilt or innocence
- Mufti: A legal expert who is empowered to give rulings on religious matters

**The Sharia court structure varies.** For example, some countries have mixed jurisdictional courts based on common or civil law legal traditions and supplemented with Sharia law.

Trial procedures vary greatly from the other legal traditions.

- The qadi determines guilt or innocence
- Parties represent themselves without lawyers
- Verdicts are not binding precedents
- Rules of evidence prioritize oral testimony over forensic evidence



Examples of Islamic Law: Afghanistan, Nigeria, Sudan, Indonesia, Lebanon, Iran, Pakistan, UAE, Maldives, Syria, Libya, Saudi Arabia, Yemen, Egypt, Jordan