

拓展

*Course of  
Legal English*

# 法律英语教程

主编 宋 雷

高等学校英语拓展系列教程



语言技能类

语言应用类

语言文化类

专业英语类



外语教学与研究出版社  
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# 前言

法律英语 (legal English or the English language of law) 是法律语言学与法学有机交融所形成的一门交叉性学科 (interdisciplinary subject), 被人称为“专门职业英语” (English for professional purpose, 简称 EPP), 目前已受到广泛关注。事实上, 由于法律与语言关系的密切, 在某种程度上, 法律英语的学习与了解即是法律 (准确地说是普通法, 即 common law) 的学习和掌握。近年来, 随着全球化进程的推进与中国日渐崛起, 国家对既懂法律又通英语 (不是一般的英语而是法律英语) 的复合型人才的需求与日俱增, 学习法律英语的重要性和必要性也益发彰显。一本好的法律英语教材, 对于渴求掌握此门知识的学生而言, 可以起到事半功倍的作用。本书正是在此目的的指导下精心编写的一本教材, 旨在让读者接受系统科学的训练和指导, 尽快逾越法律英语学习过程中的各种羁绊, 最终达到精确掌握及熟练运用法律英语的目的。

本教材分为学生用书和教师用书, 其中学生用书共 18 课, 内容涉及法律英语基本知识的诸多方面, 如普通法概述和法律分类等, 触及到刑法、合同法、侵权法、婚姻家庭法、知识产权法、竞争法、反托拉斯法、环境法、民权、隐私权、仲裁、投资保障立法、程序法、信用证等许多内容。本教材在安排上遵循由总述到具体、由浅入深的原则, 并力求满足读者对法律英语及英美国家具体法律知识的渴求。

每课内容均由六个部分构成, 即 Lead-in、Objectives、Warm-up、Text、Supplementary Reading 以及 Case Study。Lead-in 部分提纲挈领地介绍了与本文相关的法律知识, 引导读者深入学习。Objectives 为本单元的学习目标, 包括重点、难点知识和相关要求。Warm-up 部分设计了有助于理解课文的一些法律词汇及术语的练习, 尤其突出在法律语境有特殊法律意蕴的普通词汇。Text 部分是每课的重点。为方便读者阅读, 课文安排尽量追求逻辑性, 多数课文按照如下思路编排: 历史 / 概要 / 法理——特征——具体法律制度。Text 之后, 为了巩固和深化学习, 设计了多种形式的练习: 1) 对本单元重点法律术语和词汇的复习, 主要采取选词填空的形式; 2) 针对课文理解的练习, 包括思考讨论题以及正误判断或选择题; 3) 翻译, 围绕课文重点词汇及相关法律知识进行英汉互译。Supplementary Reading 旨在通过角度不同的文章帮助读者更加深入、全面地理解每课主题。Case Study 部分涉及与

每课主题相关的案例学习，目的在于引导读者欣赏案例内容、诉争点、诉由、最终判决理由、上诉、终审判决结果及理据（包括遵循先例、推翻先例或运用不同解释规则对现有立法进行解释）等。

为方便学习，Text、Supplementary Reading、Case Study 部分均附有脚注，包括一些较难理解的词汇术语的解释以及必要的背景知识等。复杂的背景知识解释一般见于教师用书。同时，Supplementary Reading 和 Case Study 部分均设计了理解性的练习。

教师用书主要包括：1) 背景知识及补充注释，相比学生用书上的脚注，这里的内容更丰富、全面，更具有拓展性；2) 练习参考答案，提供学生用书上练习部分的相应参考答案——包括案例学习的参考答案（但建议读者首先自己做练习，然后再参阅教师用书的答案）；3) 课文参考译文，该部分旨在帮助读者准确理解课文。所有课文的译文都经过编者仔细审阅核对，从而最大限度地确保译文的质量。教师用书是读者系统学习本教材必不可少的一本参考资料。

如果读者对本书内容产生任何疑惑和问题，欢迎与编者直接联系（编者 Email 地址：XNZFSL@163.com，网站地址：www.falvtrans.com）。

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# Lesson 1

## What Is Common Law<sup>1</sup>?

### Lead-in

普通法系又称英美法系或判例法系，是指英国从 11 世纪起主要以源于日耳曼习惯法的普通法为基础逐渐形成的一种独特的法律制度，是西方国家中与大陆法系并列的一种历史悠久、影响较大的法系。

1066 年诺曼底公爵威廉征服英国以前，英国各地施行的是盎格鲁 - 撒克逊的习惯法。诺曼人在英国建立以国王为中心的封建土地制度，逐步形成王权专制国家，在历史上第一次设立权威极大的御前会议，以其判例作为普通法适用于全国。狭义的普通法即指这类判例法。

英国判例法中还包括一种特有的衡平法。这是从 14 世纪开始发展的一种与普通法并行的、主要适用于民事纠纷的法律原则和诉讼程序。由于民商事关系的发展，传统普通法的严格限制有时无法适应需要。因此，英王允许臣民在无法从普通法法院获得公平处理时，由大法官依衡平原则予以处理，停止普通法法院判决的执行，命令或禁止民事被告人从事一定的行为。

普通法系也有制定法。最近两个世纪以来，议会更是通过了大批立法。在某些领域，如刑事案件的审判中，主要依据已是制定法，而不是判例。但是，此类法令绝大部分是在归纳判例的基础上制定的，概念或原则均多来自司法习惯，因而解释和适用时往往需要借助判例。

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<sup>1</sup> common law 普通法，也译为习惯法、不成文法、判例法、英美法，指以习惯、惯例和法院判决为基础发展起来的一种法律

## Objectives

In this lesson, you are required to:

- 1) understand the origin, evolution and major features of common law;
- 2) know the scope of common-law legal system and its relationship with civil-law legal system;
- 3) differentiate such legal terms as common law, equity, statutory law, and civil law, inquisitorial system and adversarial system;
- 4) cultivate practical abilities of using legal language in specific contexts.

## Warm-up

Match the following words with their definitions.

1. practice	2. case	3. precedent	4. authority
5. decision	6. damages	7. cause (n.)	8. interpretation

- A. the power to enforce laws, exact obedience, command, determine, or judge; an institution that is invested with such power
- B. the form, manner, and order of conducting legal suits and prosecutions
- C. a conclusion or judgment reached or pronounced
- D. a suit or action in law or equity
- E. money ordered to be paid as compensation for injury or loss
- F. the art or process of determining the intended meaning of a written document, such as a constitution, statute, contract, deed, or will
- G. a judicial decision that may be used as a standard in subsequent similar cases
- H. grounds for legal action

## Text

### What Is Common Law?

Common law is a system of law that prevails in England and in countries once colonized by England. The name is derived from the medieval theory that the law



administered by the king's courts<sup>1</sup> represented the common custom of the realm, as opposed to the custom of local jurisdiction<sup>2</sup> that was applied in local or manorial courts<sup>3</sup>. The term "common law" is also used to mean the traditional, precedent-based<sup>4</sup> element in the law of any common-law jurisdiction, as opposed to statutory law<sup>5</sup> or legislation and also to signify that part of the legal system that did not develop out of equity<sup>6</sup>, maritime law<sup>7</sup>, or other special branches of practice.

## History of Common Law

Common law was originally developed under the inquisitorial system<sup>8</sup> in England from judicial decisions that were based on tradition, custom, and precedent. Such forms of legal institutions and culture bear resemblance to those which existed historically in continental Europe and other societies where precedent and custom have at times played a substantial role in the legal process.

Common law, as applied in civil cases (as distinct from criminal cases), was devised as a means of compensating someone for wrongful<sup>9</sup> acts known as torts<sup>10</sup>, including both intentional torts and torts caused by negligence, and as developing the body of law recognizing and regulating contracts<sup>11</sup>. The type of procedure practiced in common-law courts is known as the adversarial system, which is a development of common law.

Before the institutional stability imposed on England by William the Conqueror<sup>12</sup> in 1066, English residents were governed by unwritten local custom that varied from community to community and were enforced in often arbitrary fashions. For example,

<sup>1</sup> king's court 国王法庭

<sup>2</sup> jurisdiction 司法管辖区

<sup>3</sup> local or manorial court 地方或领主法院 / 采邑法庭

<sup>4</sup> precedent-based 基于判例、先例的

<sup>5</sup> statutory law 成文法, 制定法

<sup>6</sup> equity 衡平法, 指补充普通法或制定法的公平原则, 由法官基于公平意识而非严格的普通法标准作出判决, 必要时用以纠正用法之不公

<sup>7</sup> maritime law 海商法, 海事法, 也称为 admiralty, admiralty law, 指有关船舶和航运事项的法律规则总体

<sup>8</sup> inquisitorial system 纠问制, 是大陆法系国家实行的一种审判制度, 奉行职权主义, 与对抗制 (adversarial system) 相对

<sup>9</sup> wrongful 非法的, 不合法的

<sup>10</sup> tort 侵权, 指损害他人并且法律允许对此提出民事诉讼的不正当行为

<sup>11</sup> contract 合同, 契约, 指两个或两个以上当事人之间达成的一种协议, 尤指具有法律效力的书面协议

<sup>12</sup> William the Conqueror 征服者威廉, 原为法国诺曼底公爵, 1066 年在黑斯廷斯 (Hastings) 打败英王哈罗德二世, 自立为英格兰国王, 在位时引进封建主义和诺曼人习俗

courts generally consisted of informal public assemblies that weighed conflicting claims in a case and, if unable to reach a decision, might require an accused to test guilt or innocence by carrying a red-hot iron or snatching a stone from a cauldron<sup>1</sup> of boiling water or some other “test” of veracity<sup>2</sup> (trial by ordeal<sup>3</sup>). If the defendant’s<sup>4</sup> wound healed within a prescribed period<sup>5</sup>, he was set free as innocent; if not, execution usually followed.

In 1154, Henry II became the first Plantagenet<sup>6</sup> king. Among many achievements, Henry institutionalized common law by creating a unified system of law “common” to the country through incorporating and elevating local custom to the national, ending local control and peculiarities, eliminating arbitrary remedies<sup>7</sup> and reinstating<sup>8</sup> a jury<sup>9</sup> system—citizens sworn<sup>10</sup> on oath to investigate reliable criminal accusations and civil claims. The jury reached its verdict<sup>11</sup> through evaluating common local knowledge, not necessarily through the presentation of evidence, a distinguishing factor from today’s civil and criminal court systems.

Thus, in English legal history, judicially-developed “common law” became the uniform authority throughout the realm several centuries before Parliament acquired the power to make laws.

### Three Connotations to the Term “Common Law”

There are three important connotations to the term “common law”.

#### Common Law as Opposed to Statutory Law

The first connotation differentiates the authority that promulgated<sup>12</sup> a particular law. For example, in most areas of law in most jurisdictions in the United States, there

<sup>1</sup> cauldron 大锅

<sup>2</sup> veracity 真实, 诚实

<sup>3</sup> trial by ordeal 神明裁判, 古时的一种审判方法, 被告接受危险或痛苦的肉体测试, 其结果被视为是神对该人有罪或无辜的判决

<sup>4</sup> defendant 被告, 被告人

<sup>5</sup> prescribed period 规定的期限

<sup>6</sup> Plantagenet 金雀花王朝 (1154-1485 年), 从亨利二世登位到理查三世去世期间统治英国的封建王朝

<sup>7</sup> remedy 补救, 救济

<sup>8</sup> reinstate 恢复

<sup>9</sup> jury 陪审团, 宣誓就特定的事项予以判决和裁定的团体, 尤指受法律的传唤, 宣誓后, 就提交给法院的案件予以听证并给出裁定的团体

<sup>10</sup> swear 发誓

<sup>11</sup> verdict (陪审团的) 裁断, 裁决

<sup>12</sup> promulgate 公布

are “statutes” enacted<sup>1</sup> by a legislature, “regulations” promulgated by executive branch agencies pursuant to<sup>2</sup> a delegation of rule-making authority from a legislature, and “common-law” decisions issued by courts (or quasi-judicial tribunals<sup>3</sup> within agencies). This first connotation can be further differentiated into a) laws that arise purely from the common law without express<sup>4</sup> statutory authority<sup>5</sup>, for example, most of the criminal law<sup>6</sup>, contract law<sup>7</sup>, and procedural law<sup>8</sup> before the 20th century; and b) decisions that discuss and decide the fine boundaries and distinctions in statutes and regulations.

### Common Law as Opposed to Civil Law<sup>9</sup>

The second connotation differentiates “common-law” jurisdictions (most of which descend from the English legal system) that place great weight on such common-law decisions, from “civil-law” or “code” jurisdictions<sup>10</sup> (many of which descend from the Napoleonic Code<sup>11</sup> in which the weight accorded to judicial precedent is much less).

### Common Law as Opposed to Equity

The third connotation differentiates “common law” (or just “law”) from “equity”.

As early as the 15th century, it became the practice that litigants<sup>12</sup> who felt they had been cheated by the common-law system would petition<sup>13</sup> the King in person. For example, they might argue that an award<sup>14</sup> of damages<sup>15</sup> (at common law) was not sufficient redress<sup>16</sup> for a trespasser<sup>17</sup> occupying their land, and instead request that the trespasser be evicted<sup>18</sup>.

<sup>1</sup> enact 制定 (法律)

<sup>2</sup> pursuant to 遵循, 依照

<sup>3</sup> quasi-judicial tribunal 准司法裁判所, 如仲裁委员会、行政裁判所等行使准法庭功能的裁判机构

<sup>4</sup> express 明确的, 明示的

<sup>5</sup> statutory authority 制定法的法源

<sup>6</sup> criminal law 刑法

<sup>7</sup> contract law 合同法

<sup>8</sup> procedural law 程序法

<sup>9</sup> civil law 民法法系, 又称大陆法系

<sup>10</sup> “code” jurisdiction “法典法系” 司法管辖区

<sup>11</sup> Napoleonic Code 《拿破仑法典》, 又称《法国民法典》或《民法典》, 是资产阶级国家最早的一部法典, 也称为 Code Napoleon

<sup>12</sup> litigant 诉讼当事人

<sup>13</sup> petition (向某人或机构) 申诉、申请

<sup>14</sup> award 裁决, 判决

<sup>15</sup> damages 损害赔偿金

<sup>16</sup> redress 赔偿, 救济

<sup>17</sup> trespasser 非法入侵者, trespass 指非法侵入他人领地, 属侵权行为

<sup>18</sup> evict 驱逐

From this developed the system of equity, administered by the Lord Chancellor<sup>1</sup>, in the Court of Chancery<sup>2</sup>. By their nature, equity and law were frequently in conflict and litigation<sup>3</sup> would frequently continue for years as one court countermanded<sup>4</sup> the other, even though it was established by the 17th century that equity should prevail.

Before 1873, England had two parallel court systems, courts of “law” that could only award money damages and recognized only the legal owner of property, and courts of “equity” that recognized trusts of property and could issue injunctions<sup>5</sup> (orders to do or stop doing something). Although the separate courts were merged long ago in most jurisdictions, or at least all courts were permitted to apply both law and equity (though under potentially different laws of procedure<sup>6</sup>), the distinction between law and equity remains important in a) categorizing and prioritizing rights to property<sup>7</sup>; b) in the United States, determining whether the Seventh Amendment’s guarantee of a jury trial<sup>8</sup> applies or whether the issue can only be decided by a judge (issues of equity); and c) the principles that apply to the grant of equitable remedies by the courts.

In England, courts of law and equity were combined by the Judicature Acts of 1873 and 1875<sup>9</sup>, with equity being supreme in case of conflict.

In the United States, parallel systems of law (providing money damages) and equity (fashioning a remedy to fit the situation, including injunctive relief) survived well into the 20th century in many jurisdictions. The United States federal courts procedurally separated law and equity until they were combined by the Federal Rules of Civil Procedure<sup>10</sup> in 1938—the same judge could hear<sup>11</sup> either kind of cases, but a given case could only pursue causes in law or in equity, under two separate sets of procedural rules.

<sup>1</sup> Lord Chancellor (英国) 兼任上议院议长的大法官, 英国司法机关的首长, 是内阁成员之一, 由首相提名并由皇室委任

<sup>2</sup> Court of Chancery 大法官法院, 衡平法院

<sup>3</sup> litigation 诉讼

<sup>4</sup> countermand 取消 (命令)

<sup>5</sup> injunction 强制令, 禁令

<sup>6</sup> different laws of procedure 不同的程序法则

<sup>7</sup> right to property 财产权利, 产权。大陆法系国家多称“物权”, 即 real right.

<sup>8</sup> jury trial 陪审团审判, 指案件的事实问题由陪审团而非法官来裁决的审判, 也称为 trial by jury, 与其对应的法官审理为 bench trial.

<sup>9</sup> Judicature Acts of 1873 and 1875 指 Supreme Court of Judicature Act 1873 和 Supreme Court of Judicature Act 1875, 1873 年和 1875 年通过的旨在重组高等法院的《司法组织法》

<sup>10</sup> Federal Rules of Civil Procedure (美国)《联邦民事诉讼规则》, 为美国联邦法院处理民事案件所依据的诉讼程序规则

<sup>11</sup> hear 审理

## Common-law Legal Systems

Common law constitutes the basis of the federal law in the United States and the states' laws (except Louisiana), the federal law in Canada and the provinces' laws (except Quebec), the legal systems of England, Wales and Northern Ireland of Britain, the Republic of Ireland, Australia, New Zealand, South Africa, India, Sri Lanka, Malaysia, Brunei, Pakistan, Singapore, Malta, Hong Kong Special Administrative Region of China, and many other generally English-speaking countries or Commonwealth countries. The main alternative to the common-law system is the civil-law system, which is used in continental Europe, and most of the rest of the world.

The opposition between civil-law and common-law legal systems has become increasingly blurred, with the growing importance of jurisprudence<sup>1</sup> (almost like case law but in name) in civil-law countries, and the growing importance of statute law and codes in common-law countries. An example of this is the United States, where matters of criminal law, commercial law (the Uniform Commercial Code<sup>2</sup> in the early 1960's) and procedure (the Federal Rules of Civil Procedure in the 1930's and the Federal Rules of Evidence<sup>3</sup> in the 1970's) have been codified.

The U.S. state of New York, which also has a civil-law history from its Dutch colonial days, also began a codification of its laws in the 19th century. The only part of this codification process that was considered complete is known as the Field Code<sup>4</sup> applying to civil procedure. The original colony of New Netherlands<sup>5</sup> was settled by the Dutch and the law was also Dutch. When the British captured the pre-existing colony, they continued to allow the local settlers to keep their civil law. The influence of Roman Dutch law<sup>6</sup> continued in the colony well into the late 19th century. The codification of a law of general obligations shows how remnants of the civil law tradition in New York continued on from the Dutch days.

The United States federal government (as opposed to the states) has a variant on a common-law system. The United States federal courts only act as interpreters of statutes

<sup>1</sup> jurisprudence 判决录, 审判法则

<sup>2</sup> Uniform Commercial Code (美国)《统一商法典》, 为最成功的示范性法典, 被各州所采用, 简称 UCC

<sup>3</sup> Federal Rules of Evidence (美国)《联邦证据法则》

<sup>4</sup> Field Code 《菲尔德法典》, 即最早的《纽约民事诉讼法典》, 于 1848 年由 David Dudley Field 起草, 后来成为各州民事诉讼法规的示范性法典

<sup>5</sup> New Netherlands 新尼德兰, 1614 年至 1674 年荷兰在北美洲东部建立的殖民地, 其地域大致包括今日美国的纽约州、康涅狄格州、新泽西州和特拉华州部分地区

<sup>6</sup> Roman Dutch Law 罗马-荷兰法系, 从 15 世纪中叶到 19 世纪初荷兰的法律体系, 以德国习惯法和罗马法为主, 为当代南非法律的基础

and the constitution to elaborate and precisely define the broad language, connotation, but unlike state courts, do not act as an independent source of common law. However, there are still some situations where United States federal courts may be permitted to create federal common-law rules. Statutes which reflect English common law are understood always to be interpreted in light of the common-law tradition, and so may leave a number of things unsaid because they are already understood from the point of view of pre-existing case law and custom. This can readily be seen in the area of criminal law, which while remaining largely governed by common law in England, has been entirely codified in many U.S. states.

## Exercises

### Part I. Vocabulary

Complete the following sentences with the appropriate form of the words given below.

jurisdiction  
verdict

precedent  
petition

wrongful  
evict

swear  
litigation

- 1) A possible case of \_\_\_\_\_ detention might involve store personnel who generally have the right to detain a person they suspect of shoplifting.
- 2) After \_\_\_\_\_ in the seven-man, five-woman jury at Lewes Crown Court, the presiding judge sent them home until 10:30 am on Wednesday when the trial would be opened.
- 3) The attorney \_\_\_\_\_ the court on March 23 to dismiss the case against Polanski, arguing recent changes to California's constitution gave her more rights as a victim to influence the case.
- 4) The court's \_\_\_\_\_ is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters.
- 5) Most states of the U.S. require landlords to give their tenants at least 30 days' notice before they may \_\_\_\_\_ their tenants from business premises.
- 6) English common law is mostly derived through a long series of court \_\_\_\_\_ from different cultures spanning many centuries.
- 7) The prolonged \_\_\_\_\_ process left all parties concerned emotionally drained and financially exhausted.

- 8) The jury in the Diana, Princess of Wales inquest today returned a \_\_\_\_\_ of unlawful killing through negligent driving.

## Part II. Understanding of the Text

### 1. Read the text and answer the following questions.

- 1) How did “common law” get its present name?
- 2) According to the text, what was common law as applied in civil cases primarily devised for?
- 3) According to the text, what is the essence of the difference between common law and statutory law?
- 4) According to the text, how did the system known as “equity” as opposed to “common law” come into being?
- 5) Which shall prevail in case of conflict in England, law or equity?

### 2. Read the text again and decide whether the following statements are true or false.

- \_\_\_\_\_ 1) It was King Henry II of England that institutionalized common law.
- \_\_\_\_\_ 2) The power to promulgate regulations by executive branch agencies is delegated to them by a legislature.
- \_\_\_\_\_ 3) The main alternative to the common-law system is the civil-law system.
- \_\_\_\_\_ 4) The federal courts of the United States are an independent source of common law.
- \_\_\_\_\_ 5) Criminal law is largely governed by common law in England today.

## Part III. Translation

### 1. Translate the following sentences into Chinese.

- 1) The term “common law” is also used to mean the traditional, precedent-based element in the law of any common-law jurisdiction, as opposed to statutory law or legislation.
- 2) For example, in most areas of law in most jurisdictions in the United States, there are “statutes” enacted by a legislature, “regulations” promulgated by executive branch agencies pursuant to a delegation of rule-making authority from a legislature, and “common-law” decisions issued by courts (or quasi-judicial tribunals within agencies).
- 3) In England and Wales and in most states of the United States, the basic law of contracts and torts does not exist in statute, but only in common law that is modifiable by statute.

- 4) Such forms of legal institutions and culture bear resemblance to those which existed historically in continental Europe and other societies where precedent and custom have at times played a substantial role in the legal process.
- 5) In almost all areas of law, statutes may give only terse statements of general principle; the fine boundaries and definitions exist only in common law.

## 2. Translate the following sentences into English.

- 1) 普通法是由法官通过法院或类似审判机构的判决发展得来的一种法律。
- 2) 衡平法是英国自 14 世纪末开始与普通法平行发展的、适用于民事案件的一种法律，是普通法系的渊源之一。
- 3) 在美国，联邦法院的一项职能是解释联邦成文法律和宪法。
- 4) 民法法系主要通行于欧洲大陆以及深受欧洲大陆国家影响的其他国家和地区。
- 5) 在美国 1938 年《联邦民事诉讼规则》颁布之前，美国联邦法院中普通法和衡平法的诉讼程序是不同的。

## 3. Translate the following paragraph into Chinese.

Scotland is often said to use the civil-law system but in fact it has a unique system that combines elements of an uncodified civil law dating back to the Corpus Juris Civilis (《民法大全》) with an element of common law long predating the Treaty of Union (《联合条约》) with England in 1707. Scots common law differs in that the use of precedents is subject to the courts seeking to discover the principle which justifies a law rather than to search for an example as a precedent and that the principles of natural justice and fairness have always formed a source of Scots law.

# Supplementary Reading

## Aspects of the Common-law System

The influence of the Corpus Juris Civilis<sup>1</sup> on the common law has been modest. The Corpus Juris Civilis furnished many of the substantive rules of law contained in the forerunners of the major legal codes of European countries. Undoubtedly the Corpus also influenced the development of at least some of the common-law rules and principles.

<sup>1</sup> Corpus Juris Civilis 《查士丁尼法典》，又称《民法大全》，东罗马帝国皇帝查士丁尼一世下令编纂的一部汇编式法典，由四部分组成，分别为《法典》、《学说汇纂》、《法学阶梯》以及《新律》，最后成书于公元 530 年左右。书中收录了东罗马帝国时期的皇帝敕令、权威的法学家对于法律的解释、给法律学生的法学入门教材以及查士丁尼在位期间颁布的宪令，奠定了后世法学尤其是大陆法系民法典的基础。



While Roman law<sup>1</sup> was taught at Oxford before the common-law system emerged in England after the 13th century, the influence of Roman law was not as pervasive as in the civil-law countries.

While common-law countries have statutes in various areas, sometimes collected into codes, they have been derived more from an *ad hoc*<sup>2</sup> process over many years. Moreover, codes of common-law countries very often reflect the rules of law enunciated in judicial decisions (i.e., they are the statutory embodiment of rules developed through the judicial decision-making process).

The lack of integrated, comprehensive codes in common-law countries has also resulted in another unique feature: the existence and growth of equity law. This is ironic in light of the fact that the concept of equity law originated in Rome, at a time when the *jus civile*<sup>3</sup> could not be used to cover situations involving non-Roman peoples coming under the umbrella of the Empire, and for whom some manner of law had to be developed. Equity law developed in England as a legal method to soften the often harsh effects of judicial precedent or legislation, to establish different procedures that might be required for a particular issue in the interests of fairness when common-law remedies were not available or could not ensure a just result in a particular case, and to deal with new problems that called for different remedies than the common law provided.

Common-law system is also different from other legal systems in terms of the role of judicial decisions in the making of law, and the manner of legal reasoning<sup>4</sup>. In common-law countries, precedent has been elevated to a position of supreme prominence.

The lack of comprehensive legal codes forming general framework of private, commercial, and criminal law also affects methods of legal reasoning of the common-law system. In common-law countries, judges apply inductive reasoning, deriving general principles or rules of law from precedent or a series of specific decisions and extracting an applicable rule, which is then applied to a particular case.

<sup>1</sup> Roman law 罗马共和国与罗马帝国法律的统称,涵盖了继承权益、义务关系(包括契约)、财产(包括奴隶)和个人权益等多个方面,其中大多数法律都是在主要由贵族氏族主导的会议上通过的。行政长官的裁决在法律中具有重要作用,法律学者的解释在法律上也颇有影响。罗马法对大多数西方文明的法律发展都有重要影响。

<sup>2</sup> *ad hoc* (拉丁语) 专门的,为某一特定目的形成的,与某一特定目的有关的

<sup>3</sup> *jus civile* (拉丁语)《市民法》,也称《公民法》,是古代罗马国家固有的法律,包括民众大会和元老院通过的规范性决议、法律以及习惯法规范等,仅适用于罗马公民。其内容主要是有关罗马共和国的行政管理、国家机关的创设以及一部分诉讼程序的立法,其特点是体系不完整,带有保守性,形式主义色彩比较浓厚等。

<sup>4</sup> legal reasoning 法律推理,是指对法律规定、规则或原则进行的推论。法律推理是获得判决理由或判决依据的推论过程,旨在获得可资适用的法律规定、规则或原则作为上位规范,作为裁判大前提,为司法判决准备法律上的依据和理由。