

**FOUNDATIONS OF LAW
LAW
SUMMARY**



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CONTENTS

INTRODUCTION TO LAW	5
THE WESTERN LEGAL TRADITION	5
Common Law	5
Civil Law	6
<i>English Legal History</i>	6
<i>The formal social hierarchy in Feudalism</i>	7
The creation of the common law	7
<i>The creation of legal structures</i>	8
<i>The writ system</i>	9
<i>The earliest trial procedures</i>	9
<i>Equity</i>	10
<i>The creation of constitutionalism</i>	12
<i>Statutes</i>	17
<i>Reforms in the common law and the courts</i>	18
LAW AND MORALITY	20
TYPES OF MODERN LAW	22
Categories of law	22
<i>Private Law</i>	22
<i>Public Law</i>	22
<i>Criminal Law</i>	23
<i>Civil Law</i>	23
SOURCES OF LAW	24
Case law	24
<i>Law reports</i>	24
Legislation	25
<i>How case law and legislation interact</i>	25
EUROPEAN COMMUNITY LAW	25
<i>Introduction to EC Law</i>	26
<i>Primary and Secondary Sources of Legislation</i>	26

<i>Parliamentary Sovereignty</i>	27
<i>References from National Courts</i>	27
THE CIVIL JUSTICE SYSTEM	28
THE COURTS	28
THE CLAIMS	28
APPEALS	29
THE CRIMINAL JUSTICE SYSTEM	30
THE COURTS	30
THE OFFENCES	30
APPEALS	30
PRECEDENT	32
INTRODUCTION TO PRECEDENT	32
TYPES OF PRECEDENT	33
<i>Original Precedent</i>	33
<i>Binding Precedent</i>	33
<i>Persuasive Precedent</i>	33
THE COURT HEIRARCHY	34
<i>The Exception to the Rule</i>	35
STATUTORY INTERPRETATION	36
INTRODUCTION TO STATUTORY INTERPRETATION	36
<i>Rules of Language</i>	36
<i>Presumptions</i>	37
THE EXTRINSIC RULES	37
THE INTRINSIC AIDS	38
THE EXTRINSIC AIDS	38
THE JUDICIARY	39
APPOINTMENT	39
<i>Superior Judges</i>	39
<i>Interior Judges</i>	40
<i>Training</i>	40

THE LEGAL PROFESSION	41
Solicitors	41
Barristers	41
Para-Legals	42
ENFORCEMENT OF LAW	43
INTRODUCTION TO ENFORCEMENT OF LAW	43
THE POLICE AND CRIMINAL EVIDENCE ACT 1984	43
<i>Stop and Search</i>	43
<i>Powers of Arrest</i>	44
<i>Detention</i>	45
SENTENCING	46
<i>Deterrence</i>	46
<i>Rehabilitation</i>	46
<i>Public Protection</i>	46
<i>Retribution</i>	47

INTRODUCTION TO LAW

THE WESTERN LEGAL TRADITION

Both the civil law and common law traditions are derived from ideas in Christianity and Roman Law. The common law and civil law systems are known as the Western legal tradition.¹

During the peak period of the Roman Empire, the Romans had a code that was derived from Greek legal principles and Christian legal principles. This code was collected together and was called the *Corpus Juris Civilis*.² The *Corpus Juris Civilis* was also known as the Justinian Texts because they were organised by Emperor Justinian. When the Roman Empire ended, most of the *Corpus Juris Civilis* was lost, and it was not until later in the 11th century that these texts were rediscovered by legal philosophers. Alongside Greek Philosophy and the Bible, the Justinian Texts formed the basis for the contemporary Western legal tradition.

While the common law and civil law systems come from the same origins, they soon developed in different directions.

Common law

The legal system of England and Wales is a common law system. Around the world, other common law jurisdictions include: Australia, New Zealand, Canada, Ireland and India.

¹ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

² C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

Civil law

All the laws of civil law countries are contained in documents called “codes”. This includes both substantive and procedural law. Civil law countries include most of continental Europe (notably France), some states in South America, Thailand and Japan.

English Legal History

The year 1066 signalled a series of cumulative changes, beginning with the conquest of England by William, the Duke of Normandy. Before the Norman Conquest, there was a legal system already in existence in England. The problem with this pre-Conquest legal system was that it was not consistent across regions. Pre-Conquest Anglo-Saxon laws were based on different sets of customs that were in force in different parts of England, as such there were no single set of uniform rules across the country.³ These laws were administered in localised Anglo-Saxon courts.

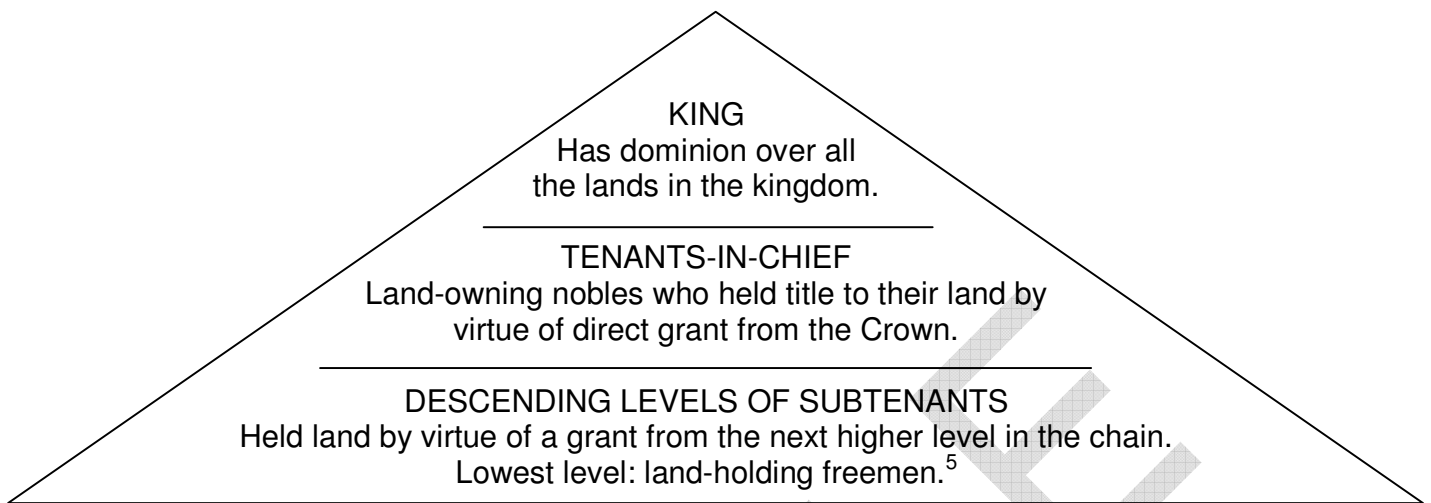
The Normans established a series of land ownership called feudalism, which helped create a stable and uniform administrative system of government throughout England.

- **Feudalism:** a system of land ownership based upon a formal social hierarchy.⁴

³ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

⁴ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

The formal social hierarchy in Feudalism



This formal hierarchy meant that alongside loyalty to the king, each landholder also owed feudal loyalty.

- **Feudal loyalty:** Loyalty owed to one level upwards. Each landholder swore allegiance to their immediate superior in the chain. Swearing allegiance meant being obligated to provide the lord with a share of the crops and serving military service on the lord's behalf. The lords in turn promised protection and assistance to their tenants.⁶



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⁵ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

⁶ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.