

What is the difference between Common Law and Civil Law?

INTRODUCTION

Occidental legal systems are divided into two traditions:

- The Anglo-Saxon tradition of the **common law** and
- The Latin/Roman tradition of the **civil law**.

I. COMMON LAW

1. DEFINITION OF THE COMMON LAW

Common law is the **legal system used in England and Wales**.

It is mainly based on the **idea of precedent**: when a court makes a decision about a case, that decision becomes a part of the law of the country.

Judges look to **past cases and precedents** to resolve a case.

Codes of common-law countries reflect **the rules of law enunciated in judicial decisions**.

Judges in the common law system rule **in common law and in equity**.

2. EQUITY

Equity **emerged to correct the defects of the common law system**.

Equity is generally available only **when a legal remedy is insufficient or inadequate in some way** because common law is a system based on the procedure, not flexible at all.

Equity includes some maxims, general phrases, equitable principles that have adopted over the centuries. The courts have got the discretion of the use of these maxims (ex: "delay defeats equity", "Equity helps the vigilant, not the indolent").

3. COURTS

In common-law system, there are **courts of general jurisdiction**.

4. JUDGES

The judge of the common-law system is **more passive**.

Common law functions as an **adversarial system** : the judge just listens the opposing parties and acts as an **arbitrary**.

In a common law country, lawyers make presentations to the judge (and sometimes the jury) and examine witnesses themselves.

The precedents to be applied in the decision of each new case are determined by the judge.

Sometimes, there is a jury who will decide on the basis of the facts of the case.
The judge then determines the appropriate sentence based on the jury's verdict.

II. CIVIL LAW

1. DEFINITION OF THE CIVIL LAW

Civil law is **based on legislation**.

In this legal system, the decisions of judges do not affect the laws of a country.

Civil law is **based on codes** which cover different legal topics.

Judges initially look to codes provisions to resolve a case.

Civil law is **the most common legal system in the world**: it is used in almost all of Europe, Asia and South America and in much of Africa.

The civil law system **was developed from Roman Law**, the legal system used in the Roman Empire.

2. COURTS

In civil-law systems, there are **specialized courts**, following the tradition of **separate codes**.

3. JUDGES

In civil-law system, the judge **has to inquire**, to conduct the case, by questioning directly the witnesses (with a leading question to seek (*rechercher*) the truth).

The judge's role is to establish the facts of the case and to **apply the provisions of the applicable code**.

Adapted from <<https://www.apprendre-le-droit.fr/anglais-juridique/what-is-the-difference-between-common-law-and-civil-law/>>