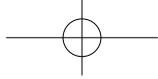
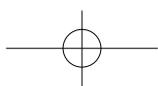


Contents

Lesson 1	What Is Common Law?	1
Lesson 2	Classification of Law	16
Lesson 3	Civil Rights Embodied in the U.S. Constitution	29
Lesson 4	Criminal Law of the United States	45
Lesson 5	Law of Contract	58
Lesson 6	What Is Property?	73
Lesson 7	U.S. Tort Law	91
Lesson 8	Investor Protection Legislation in U.S.A.	107
Lesson 9	Overview of U.S. Antidumping Law	123
Lesson 10	Intellectual Property Law	136
Lesson 11	Competition Law and Policy in the European Union	155
Lesson 12	Letter of Credit Law	168
Lesson 13	Family Law: Action for Annulment	183
Lesson 14	Privacy: From Property Right to Personal Right	194
Lesson 15	American Environmental Law	207
Lesson 16	Administration of Law	222
Lesson 17	Trial and Court Procedures in Common Law	238
Lesson 18	Arbitration	254



Copyright@FLTRP





Lesson 1

What Is Common Law¹?

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，概念或原则均来自司法习惯，因而解释和适用时往往需要借助判例。

¹ 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.

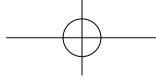
1. practice	2. case	3. precedent	4. authority
5. decision	6. damages	7. cause (<i>n.</i>)	8. interpretation

- 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 courts¹ represented the common custom of the realm, as opposed to the custom of local jurisdiction² that was applied in local or manorial courts³. The term “common law” is also used to mean the traditional, precedent-based⁴ element in the law of any common-law jurisdiction, as opposed to statutory law⁵ or legislation and also to signify that part of the legal system that did not develop out of equity⁶, maritime law⁷, or other special branches of practice.

History of Common Law

Common law was originally developed under the inquisitorial system⁸ 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 wrongful⁹ acts known as torts¹⁰, including both intentional torts and torts caused by negligence, and as developing the body of law recognizing and regulating contracts¹¹. 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 Conqueror¹² 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,

¹ king's court 国王法庭

² jurisdiction 司法管辖区

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

⁴ precedent-based 基于判例、先例的

⁵ statutory law 成文法，制定法

⁶ 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

⁷ 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

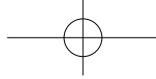
⁸ inquisitorial system 纠问制，是大陆法系国家实行的一种审判制度，奉行职权主义，与对抗制 (adversarial system) 相对

⁹ wrongful 非法的，不合法的

¹⁰ 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

¹¹ 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

¹² 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 cauldron¹ of boiling water or some other “test” of veracity² (trial by ordeal³). If the defendant’s⁴ wound healed within a prescribed period⁵, he was set free as innocent; if not, execution usually followed.

In 1154, Henry II became the first Plantagenet⁶ 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 remedies⁷ and reinstating⁸ a jury⁹ system—citizens sworn¹⁰ on oath to investigate reliable criminal accusations and civil claims. The jury reached its verdict¹¹ 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 promulgated¹² a particular law. For example, in most areas of law in most jurisdictions in the United States, there

¹ cauldron 大锅

² veracity 真实, 诚实

³ 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

⁴ defendant 被告, 被告人

⁵ prescribed period 规定的期限

⁶ 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

⁷ remedy 补救, 救济

⁸ reinstate 恢复

⁹ 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

¹⁰ swear 发誓

¹¹ verdict (陪审团的) 裁断, 裁决

¹² promulgate 公布



are “statutes” enacted¹ by a legislature, “regulations” promulgated by executive branch agencies pursuant to² a delegation of rule-making authority from a legislature, and “common-law” decisions issued by courts (or quasi-judicial tribunals³ within agencies). This first connotation can be further differentiated into a) laws that arise purely from the common law without express⁴ statutory authority⁵, for example, most of the criminal law⁶, contract law⁷, and procedural law⁸ 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 Law⁹

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” jurisdictions¹⁰ (many of which descend from the Napoleonic Code¹¹ 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 litigants¹² who felt they had been cheated by the common-law system would petition¹³ the King in person. For example, they might argue that an award¹⁴ of damages¹⁵ (at common law) was not sufficient redress¹⁶ for a trespasser¹⁷ occupying their land, and instead request that the trespasser be evicted¹⁸.

¹ enact 制定 (法律)

² pursuant to 遵循, 依照

³ 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

⁴ express 明确的, 明示的

⁵ statutory authority 制定法的法源

⁶ criminal law 刑法

⁷ contract law 合同法

⁸ procedural law 程序法

⁹ civil law 民法法系, 又称大陆法系

¹⁰ “code” jurisdiction “法典法系” 司法管辖区

¹¹ 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

¹² litigant 诉讼当事人

¹³ petition (向某人或机构) 申诉、申请

¹⁴ award 裁决, 判决

¹⁵ damages 损害赔偿金

¹⁶ redress 赔偿, 救济

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

¹⁸ evict 驱逐



From this developed the system of equity, administered by the Lord Chancellor¹, in the Court of Chancery². By their nature, equity and law were frequently in conflict and litigation³ would frequently continue for years as one court countermanded⁴ 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 injunctions⁵ (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 procedure⁶), the distinction between law and equity remains important in a) categorizing and prioritizing rights to property⁷; b) in the United States, determining whether the Seventh Amendment’s guarantee of a jury trial⁸ 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 1875⁹, 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 Procedure¹⁰ in 1938—the same judge could hear¹¹ either kind of cases, but a given case could only pursue causes in law or in equity, under two separate sets of procedural rules.

¹ 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

² Court of Chancery 大法官法院, 衡平法院

³ litigation 诉讼

⁴ countermand 取消 (命令)

⁵ injunction 强制令, 禁令

⁶ different laws of procedure 不同的程序法则

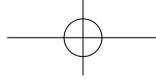
⁷ right to property 财产权利, 产权。大陆法系国家多称“物权”, 即 real right。

⁸ 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。

⁹ 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》

¹⁰ 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

¹¹ 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 jurisprudence¹ (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 Code² in the early 1960's) and procedure (the Federal Rules of Civil Procedure in the 1930's and the Federal Rules of Evidence³ 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 Code⁴ applying to civil procedure. The original colony of New Netherlands⁵ 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 law⁶ 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

¹ jurisprudence 判决书, 审判法则

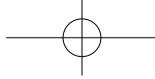
² Uniform Commercial Code (美国)《统一商法典》, 为最成功的示范性法典, 被各州所采用, 简称 UCC

³ Federal Rules of Evidence (美国)《联邦证据法则》

⁴ 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

⁵ 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

⁶ 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.

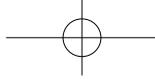
Exercises

Part I. Vocabulary

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

jurisdiction	precedent	wrongful	swear
verdict	petition	evict	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.

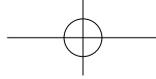
Scotland is often said to use the civil-law system but in fact it has a unique system that combines elements of an uncodified civil law dating back to the Corpus Juris Civilis (《民法大全》) with an element of common law long predating the Treaty of Union (《联合条约》) with England in 1707. Scots common law differs 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 Civilis¹ 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.

¹ 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 law¹ 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*² 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*³ 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 reasoning⁴. In common-law countries, precedent has been elevated to a position of supreme prominence.

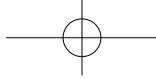
The lack of comprehensive legal codes forming general framework of private, commercial, and criminal law also affects methods of legal reasoning of the common-law system. In common-law countries, judges apply inductive reasoning, deriving general principles or rules of law from precedent or a series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

¹ 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。

² *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

³ *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。

⁴ 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。



The structures of courts in common-law countries are distinctly different from those of the courts of many other countries. Common-law systems favor integrated court systems with courts of general jurisdiction available to adjudicate criminal and most types of civil cases, including those involving constitutional law, administrative law, and commercial law.

In the common-law system, the role of the judge as the manager of the trial (and “referee” of the lawyers acting in an adversary role) is secondary to that of the lawyers, who are the prime players in the process, introducing evidence and interrogating¹ witnesses.

The special roles played by the judge in the trial process of the two systems have also resulted in unique judicial attitudes. The common-law judge is able to search creatively for an answer to a question or issue among many potentially applicable judicial precedents.

Furthermore, the training and selection of judges under the common-law system is often different from that under other law systems, notably, the civil-law system. Common-law judges are generally selected as part of the political process for a specific judicial post that they hold for life or for a specified term, with no system of advancement to higher courts as a reward for service.

Finally, the common-law system is differentiated from other law systems in terms of the training of legal professionals. In a common-law country, the study of law is almost always post-graduate. The law student is exposed to other disciplines prior to matriculation² in the law school, a situation that has perhaps led to greater social consciousness among judges and lawyers about the purposes and functions of law and its application—and greater openness and ability to confront new situations than exists among their counterparts in civil-law countries.

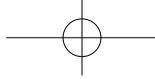
Exercise

Read the text and answer the following questions.

- 1) According to the text, what influence does the Corpus Juris Civilis have on common law?
- 2) According to the text, what were the primary purposes for equity law to be developed in England?

¹ interrogate 讯问，通过正式或官方的提问来检查

² matriculation 录取入学



- 3) According to the text, in what ways are the methods of legal reasoning in common-law system different from those under other law systems?
- 4) In what ways is the training of legal professionals unique in common-law countries? What special advantages may such training offer?

Case Study

Common-law Marriage¹

Story Case

Simon Brown was the owner of a piece of real estate² in Chicago, Illinois, at the time of his death in July, 1914. After his death a dispute arose over the possession of this property between Edna Brown, who claimed to be his second wife, and two children by a former marriage. Edna Brown claimed a dower³ interest as the widow of Simon Brown. Whether she had a right to this interest depended upon whether her marriage to Simon Brown was legal.

In 1888, two years subsequent to the death of his first wife, Simon Brown visited in Ann Arbor, Michigan. While in that town he met Edna Perry and before he left town, the two agreed to be husband and wife and from that time continued to live together as such. The wedding was not solemnized⁴ by any ceremony. The children of Brown by his first wife now claimed that there never was a legal second marriage and therefore Edna Brown could not claim any dower interest. Which is correct?

Ruling Court Case: *Meister v. Moore*, Volume 96, *United States Reports*⁵, Page 76

This was an action in ejectment⁶ brought by Bernard L. Meister for the possession of certain lots of ground in Pittsburg, Pennsylvania. Both parties claimed title⁷ under William

¹ common-law marriage 普通法婚姻，指没有结婚的男女未进行结婚登记或遵循其他结婚程序而以夫妻名义，并以结婚为目的公开同居生活一定时间，从而法律认定该婚姻关系合法的婚姻形式

² real estate 不动产，指土地、建筑物及其他附着于土地上的定着物，包括物质实体及其相关权益

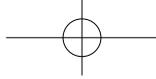
³ dower 亡夫遗产

⁴ solemnize 隆重庆祝，正式举行

⁵ United States Reports 《美国联邦最高法院判例汇编》，美国联邦最高法院判例的官方汇编

⁶ ejectment 收回不动产之诉

⁷ title 所有权，构成控制或处置财产或所有权的合法权力的所有要素同时符合的条件



Mowry. Meister, the plaintiff, claimed as the purchaser of the alleged wife and daughter of the said Mowry; the defendant claimed as the purchaser from Mowry's mother, in whom the title vested¹, if he died unmarried and without children entitled to take.

Meister, the plaintiff, showed that in 1844 Mowry went to Saginaw Valley, in the state of Michigan and there became acquainted with Mary, the daughter of an Indian named Pedrow. Mowry and Mary became married without any formal ceremony, lived together as man and wife, and had one child born to them named Elizabeth. Mowry died in 1852 without having made a will², leaving but the one child Elizabeth. Elizabeth conveyed³ the property in question to the plaintiff. If she was the legal heir⁴ of Mowry, she would inherit his property and have the right to convey. Whether a legal marriage existed between Mowry and Mary determined these points.

The defendant claimed that a valid marriage did not exist because the Michigan laws expressly state the manner in which a marriage should be solemnized. Mr. Justice Strong delivered the opinion⁵ of the Court: "At common law an informal marriage by a simple agreement between the parties to be man and wife at the time of the agreement and from then on, entered in good faith⁶, is a valid marriage. This is a common-law right. A statute may take away this right, but there is the presumption that the legislature had no such intention unless it is plainly expressed. A statute which requires that a marriage should be entered into in the presence of a magistrate or clergyman or that it be preceded by a license, is merely directory of the manner in which a marriage may be perfected; a statute must expressly state that no marriage shall be valid unless solemnized in the prescribed manner in order to make a common-law marriage invalid. The Michigan statute does not expressly state that a common-law marriage is invalid. Therefore Mowry and Mary were legally husband and wife. Elizabeth was the legal heir and had the right to convey the property to Meister, the plaintiff."

Story Case Answer

It has long been a mooted⁷ question in the courts of various jurisdictions as to whether an informal marriage is valid; but whatever may be the historical facts, the public

¹ vest 授权

² will 遗嘱

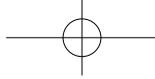
³ convey 将财产权或所有权转让给他人

⁴ heir 继承人

⁵ opinion 宣判, 由法院或其他司法机构根据法律条款或原则对法院判决的正式陈述

⁶ in good faith 诚信, 善意 (指真诚实施的行为, 即使有疏忽也属于善意)

⁷ moot 讨论, 争论



generally recognize the necessity of some formal observance of marriage, in order that the parties conserve their respectability in the community. Either celebration before a clergyman or in the presence of such civil officer as the statute may designate is therefore necessary today. This is the law in England and in many of the states. When the state law is not clear in making void a common-law marriage without ceremony, public opinion has the effect of forcing the parties to observe the formalities. The case of *Meister v. Moore* is of importance in stating the view of the United States Court in the question of common-law marriages.

The validity of a marriage is always determined by the law of the place where the marriage was entered into at the time it was executed¹. Therefore, in the Story Case under the law as laid down in the United States Court, a valid marriage existed between Simon and Edna Brown, and she could take her dower interest in the property in Illinois.

Exercises

1. Discuss the following questions concerning the case.

- 1) What is the role of precedent in this case?
- 2) What is the flexibility and initiative of the judge under the common-law system?

2. Write a summary of the case, covering the following aspects:

- A) Parties involved;
- B) Main points of contention;
- C) Similar precedent quoted by the ruling court and the reasoning;
- D) Ruling of the court.

¹ execute 通过签字等手段使生效