

*Perspective***Roles of case law in civil and common law systems**

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Received: 16-May-2022, Manuscript No. IJLLS-22-65725; Editor assigned: 19-May-2022, PreQC No: IJLLS-22-65725 (PQ); Reviewed: 02-Jun-2022, QC No: IJLLS-22-65725; Revised: 08-Jun-2022, Manuscript No: IJLLS-22-65725 (R). Published: 16-Jun-2022

ABOUT THE STUDY

Case law, which is also known as common law, is law that is based on precedents, or previous judicial decisions, rather than law based on constitutions, statutes, or regulations. Case law is based on the specific facts of a case that have been decided by courts or other judicial bodies. Case law, often known as precedent, refers to former court decisions. Statutory law, which are codes passed by legislative bodies, and regulatory law, which are developed by executive agencies based on statutes, are two types of judicial interpretations. Case law can be applied to on-going adjudication in some jurisdictions, such as criminal procedures or family law.

Case law plays a different role in civil and common law systems, resulting in variances in how courts make decisions. The logical rationale for common law courts' rulings is usually explained in depth, including citations to both laws and past relevant judgements, and they frequently interpret broader legal concepts. The necessary analysis then becomes a precedent that other courts must follow; extra analyses that aren't necessarily necessary to the resolution of the current case are known as obiter dicta, which provide persuasive authority but aren't formally binding. Civil law rulings, on the other hand, are usually shorter and pertain only to statutes. The reason for this distinction is that these civil law jurisdictions follow the tradition of requiring the reader to deduce the logic from the decision and statutes.

Some pluralist legal systems, such as Scots law in Scotland and several types of civil law jurisdictions in Quebec and Louisiana, do not fit precisely into the dual common-civil law system classifications. Although the Anglo-American common law tradition has had a strong influence on these systems, their substantive law is firmly based in the civil law tradition. These types of legal systems are commonly referred to as mixed systems of law because of their location between the two primary

systems of law. Professors of common law have typically played a lower role in developing case law than professors of civil law. Because civil law decisions are historically brief and not formally amenable to establishing precedent, much of the exposition of the law in civil law traditions is done by academics rather than judges. In the past, common law courts did not place a high value on legal research; as a result, it was unusual to find an academic writer mentioned in a legal judgement around the start of the twentieth century. Today, academic writers are frequently cited as persuasive authority in legal arguments and decisions; they are frequently cited when judges are attempting to implement reasoning that other courts have not yet adopted, or when the judge believes the academic's restatement of the law is more compelling than case law. As a result, common law systems are adopting one of the long-held civil law methods.

There may be conflicts between lower appellate courts in federal or multi-jurisdictional legal systems. These disparities may not always be resolved, and it may be necessary to differentiate how the law is applied in one district, province, division, or appellate department from how it is applied in another. Such conflicts are usually resolved only by an appeal to the court of final resort, which is rarely granted for a variety of reasons. To reach a different decision, any court may strive to separate the current case from a binding precedent. On appeal to a higher court, the legitimacy of such a distinction may or may not be acknowledged. An appellate court may also make a decision based on a completely fresh and different analysis than that of lower courts, and may or may not be bound by its own past decisions, or may, in any case, distinguish them on the facts. When a case is decided by numerous members of a court, one or more judgments may be issued (or reported). Only the majority's rationale can be used as a binding precedent, but all of them can be quoted as persuasive, or their reasoning can be used in an argument. Aside from procedural requirements, the weight attributed to any recorded judgement may be influenced by the reputation of both the reporter and the judges.

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