Introduction to Civil Law
Jurisdictions

Traditions, Origins, and Terminology
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Three Main Periods in the Development of the Civil Law Tradition

Medieval continental law (11th century, Bologna, pre-Christian sources revived and on through present day); debate about medieval law in continuity with Roman law, since local custom and Germanic tribal law co-existed with Roman law and its vestiges in parts of Europe, also with canon law of the R.C. church.

Ancient Roman law (Twelve Tables, 449 B.C. had phases through Corpus Iuris Civilis of Justinian, completed in 530s CE. Laws for Germanic tribes, such as lex Romana Visigothorum, 506 CE, emerged with custom after the fall of Rome circa 476 CE.
Civil Law Terminology

• Examples:
  • Obligations= torts AND contracts
  • Succession= inheritance law (estates but not trusts unless specifically adopted from common law)
  • Servitude= easement
  • Prescription= adverse possession or can indicate running out of statute of limitations or other time period for filing a claim
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<th>Common Law: terms/sources</th>
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<td>Delictual obligations/civil code and modern insurance statutes</td>
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<td>Contracts</td>
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<td>Property</td>
<td>Property/civil code (separate aspects re marital law in Persons; acquisition in Succession); servitude (similar to easement); community property (marital)</td>
<td>Property/case law; some statutes</td>
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<td>Family law</td>
<td>Persons (natural): matrimony, adoption/ civil code or modern issues in a family code or statute (e.g., same gender marriage)</td>
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<td>Company law</td>
<td>Persons (legal, juridical)/ civil and/or commercial codes, statutes</td>
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<td>Commercial law*</td>
<td>Historically, lex mercatoria*/ separate code</td>
<td>Statute or statutory code (UCC sale of goods*)</td>
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<td>Criminal law and procedure</td>
<td>Separate codes, penal and procedural; investigative</td>
<td>Separate codes, penal and procedural ; adversarial (strongly Constitutional in U.S.)</td>
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<td>Civil procedure</td>
<td>Now in separate code; more judge-driven than adversary-driven so less discovery or rules of evidence; different role for precedent</td>
<td>Separate code; rules of discover and evidence, stare decisis in many jurisdictions</td>
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</table>


What Law Does a Civil Code Contain?

• Early Roman divisions: Of Persons, Of Things, of Actions (procedure)

• Napoleonic division for French Civil Code, Code civile (and most of its imitators): Book One, "Of Persons," (status of aliens in France, marriage, divorce, guardianship, etc.) Book Two, "Of Property, and the Different Modifications of Property," (ownership property, usufruct, servitudes, etc.) Book Three, "Of the Different Modes of Acquiring Property," (successions, gifts and wills, obligations, contracts, matrimonial property systems, liens, mortgages, etc.)

• German Federal Civil Code, Bürgerliches Gesetzbuch (BGB): Book One, General Part includes Persons and aspects of Contracts; Book Two, Law of Obligations, includes details on contracts and injuries; then books on Property Law (possession, ownership, mortgages) Family Law (marriage, legitimacy, guardianship), and Inheritance.
Justinian, Corpus Iuris Civilis 529-534 CE

Codex - imperial edicts
Digest, Pandects - excerpts of jurists’ writings
Institutes - textbook
Novellae - new laws or edicts (added after previous compilation)

See also Blume, Annotated Justinian Code online, ed. T. Kearley (and 3 vol. print edition).

Law Study Bologna
12th-13th c. with eastern canonists ref. to J. Digest
Glossa Ordinaria: 1200 Accursius

13th-15thc. Customary and Roman law; integrations. Sachse nspeigel & 1265 Siete Partidas of Castile; French coutumes
Post-Glossators
14th c Batolus & Baldus de Ubaldo
Ius Commune. Law merchant
Part II of the Digest of Justinian I, Bologna, 1250-1299

Credit, Philadelphia, Free Library of Philadelphia, Rare Book Department, Lewis E 244, www.digital-scriptorium.org
Decretals of Gregory IX. A judge seated between a man and a woman, each with an advocate; in the margins, a rabbit and a bird. Text from France 13-14th c.

Credit: San Marino, Huntington Library, HM 19999, f.64

Canon law continues the Roman law tradition: *Decretum Gratiani*, 1140 CE & other decretalists

http://web.colby.edu/canonlaw/tag/rufinus/
Heidelberger Sachsenspiegel landrecht 1301-1400

Credit: Universitätsbibliothek Heidelberg, Cod. Pal. germ. 164 s.029r
Las Siete Partidas 1265
18th c. edition
Pandectist school of Roman law rediscovery influenced many civil codes; Savigny & Historical School brought in Germanic law but also idealized Roman law as universal.
Code Civil des Français 1804

Known as the *Code Napoléon* after 1807.

Three Books:

I. Persons
II. Property
III. Modes of Acquiring Property (succession, marriage)

Drafter: Portalis
Influences: Domat, Pothier

BGB German Civil Code
Influenced civil codes of
• Japan (also received French civil code influences)
• Qing dynasty code of China 1911
• South Korea
• Greece
• Switzerland & Turkey via the Swiss in Obligations
From Legal families and even Taxonomy to Legal Traditions
(Warning: TEXT HEAVY SLIDE)

• H. Patrick Glenn* and Rene David** began to see the notion of traditions as best capturing a networked world of transplants, influences, and post-colonial realities.

• Glenn defined tradition as something very neutral and not always European: simply information. Legal system rules, customs, and norms come to us from the past and may change. “If tradition is information, then the tradition which attracts the most adherence will be the one whose information is the most persuasive.” (37)

• But what about legal systems that contribute to domination, human rights violations, and racism?

• Glenn replies that tradition can be judged and evaluated, like any other information or system by how it is used. (45) There can be a tradition of domination or of tolerance, corruption or the rule of law.

• David and Brierley used the term “tradition” to expand comparative law through civil law terminology and models into new historical and cultural situations, such as socialist law as well as global religious and customary law.

Simple Civil Code Research Question

• Where would one look in a civil code to find or to develop an approach to artificial intelligence and its possible status in a civil code, or check to see if the code would cover it?
Title 1.19 Fiduciary administration for adults

Article 1:431 Grounds for a fiduciary administration for adults
- 1. If an adult proprietor is temporarily or permanently unable to look after his own interests in property, due to:
  a. his physical or mental condition, or;
  b. squander (reckless spending) or the presence of problematic debts;

Assets belonging to a proprietor in the sense of this Title include assets belonging to a marital community of property or to a community of property within a registered partnership that do not fall under an exclusive right of administration of the spouse or registered partner of that proprietor.
- 2. If it is to be expected that a minor, at the moment on which he will reach the age of legal majority, will be in a situation as meant in the previous paragraph, then a fiduciary administration order may be given even prior to the moment on which the minor reaches adulthood.
- 3. A fiduciary administration may be established as well if it is to be expected that the proprietor in the foreseeable future will be in a condition as meant in paragraph 1.
- 4. Where legal proceedings are pending at court to obtain a provisional or conditional authorisation, an authorisation for a medical observation, an authorisation for a continued stay under the Reception into Psychiatric Hospitals Act or an authorisation under Article 33, first paragraph of that Act, that court shall have jurisdiction as well over a request to place one or more assets of the involved adult proprietor under fiduciary administration.

Article 1:432 Persons entitled to file a request for a fiduciary administration
- 1. The establishment of a fiduciary administration may be requested for by the proprietor himself, his spouse, registered partner or other life companion, one of his blood relatives in the direct line or in the collateral line up to and including the fourth degree, the person who pursuant to Article 1:253a or 1:253t exercises authority over the proprietor, his legal guardian exercising guardianship over him as a minor, his legal guardian exercising adult guardianship as meant in Title 1.16 and his legal mentor as meant in Title 1.20. In the event referred to in Article 1:432, paragraph 3, a fiduciary administration can be requested for only by the proprietor.
- 2. Furthermore, the establishment of a fiduciary administration may be requested for by the Public Prosecution and by the institution where the proprietor is looked after or that offers guidance to the proprietor. The establishment of a fiduciary administration due to squander (reckless spending) or the presence of problematic debts may be requested for also by the College of Mayor and Alderman of the municipality where the proprietor has his place of residency. In both last events the petition shall mention as well why the persons mentioned in paragraph 1 – blood relatives in the collateral line in the third and fourth degree not included – have not filed a request for the establishment of a fiduciary administration.
- 3. The court before which a request for adult guardianship or for the abolishment of an adult guardianship is pending, may of its own motion, before rejecting or awarding this request, respectively, proceed to ordering a fiduciary administration as meant in the present Title.
- 4. A request to place one or more assets of an adult proprietor under fiduciary administration, made at a moment on which this proprietor is placed under adult guardianship, must be filed at the court that has jurisdiction to decide on the ending of that adult guardianship. This court may of its own motion, when ending that adult guardianship, proceed to ordering a fiduciary administration as meant in the present Title.
- 5. Paragraph 2 and 3 apply accordingly in case of an assignment of a spouse's right of administration of property to the other spouse as referred to in Article 1:91 or in case of a request for such a court order.
Title 2.1 General provisions

Article 2:1 Public legal persons
- 1. The State, the Provinces, the Municipalities, the Water Boards and all other bodies to which legislative power has been granted under the Dutch Constitution have legal personality.
- 2. Other bodies charged with governmental duties only have legal personality if this results from what has been specified by or pursuant to law.
- 3. The below listed Articles of the present Title (Title 2.1), except Article 2:5, do not apply to public legal persons as meant in the previous paragraphs.

Article 2:2 Churches and other religious communities
- 1. Religious communities and their independent subdivisions and bodies in which they are united, have legal personality.
- 2. They are governed by their own charter insofar the rules thereof are not in conflict with law. With the exception of Article 2:5, the below listed Articles of the present Title (Title 2.1) do not apply to them. Nevertheless, these Articles may be applied accordingly as far as this is in agreement with the charter of the religious community and the nature of the mutual relationships within that community.

Article 2:3 Private legal persons
Associations ('verenigingen'), Cooperatives ('coöperaties'), Mutual Insurance Societies ('onderlinge waarborgmaatschappijen'), Open Corporations** ('naamloze vennootschappen'), Closed Corporations** (‘besloten vennootschappen’) and Foundations (‘stichtingen’) have legal personality.

*) Open Corporations are the equivalent of public limited companies under English law, i.e. companies with free tradable shares
**) Closed Corporations are the equivalent of private limited companies under English law, i.e. companies with restricted tradable shares.

Article 2:4 Defective formation and (property of) non-existing legal persons
- 1. A legal person cannot come to existence in the absence of a deed signed by a notary insofar the law requires such a deed for the formation of this type of legal person. A deed signed by a notary,
Online Sources of Civil Code Texts

• Free internet
  • Translations: (google in fact turns up many, but watch the date!)
    • France: Legifrance: [https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations](https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations)
    • Germany: [https://www.gesetze-im-internet.de/englisch_bgb/](https://www.gesetze-im-internet.de/englisch_bgb/)
    • Netherlands: [www.dutchcivillaw.com](http://www.dutchcivillaw.com)
  • Foreign Law Guide (print but also online sources) and GlobaLex
  • Roman Law Resources, [www.iuscivile.com](http://www.iuscivile.com) (Aberdeen)

• Subscription databases: publishers for each jurisdiction: Beck, Dalloz, etc.
Selective Preview of Bibliography

- David, R. [and others]. *International encyclopedia of comparative law*. [Issued under the auspices of the International Association of Legal Science.] Tübingen, J. C. B. Mohr (Paul Siebeck); New York, Oceana, 1971-.

**LINK TO BIBLIOGRAPHIES FOR THIS PRESENTATION:** https://georgetown.box.com/s/hddywrw5zjcb8pat8vu9z4qe0xsc71l4