

- I. Untitled introduction: **the law & the courts**
- A. *Law*: the rules and principles laid down by government to resolve conflicts
 - B. *Courts*: that branch of government responsible for interpreting the laws and adjudicating civil and criminal disputes
- II. **Anglo-Saxon case law**
- A. *Origin*: England in the late Middle Ages
 1. The **mercantile system's** need for legal innovation
 2. The **classic liberalism's** desire for limits on governmental authority
 - B. *Basic assumptions*:
 1. There exists a **natural law** that it is sometimes the task of judges to discover and apply in addition to statutes, constitutional provisions, and case-law precedents.
 2. The law evolves over time in response to changing human circumstances; but **precedents** should be respected
 3. Judges & lawyers receive highly **specialized training**
 4. The role of the judge is to be a neutral arbiter of an **adversarial system** of trial by verbal combat of opposing counsels
 5. In *criminal cases*, the **burden of proof** is on the government and it must meet a higher standard (**beyond reasonable doubt**) than in *civil cases* (**preponderance of evidence**)
 6. The U.S. judicial branch is ultimately **checked and balanced** by:
 - a. Presidential appointments of lower federal-court judges and Supreme Court justices with the advice and consent of the Senate
 - b. Constitutional amendments proposed by two-thirds of both houses of Congress and ratified by three-fourths of the states
- III. **Continental European code law**
- A. *Origins*:
 1. The Code of Hammurabi (ca. 1760 BC)
 2. Roman Empire: Code of Justinian (ca. 529)
 3. Code Napoleon (1804)
 - B. *Basic assumptions*:
 1. The law is an **instrument of government** rather than something that exists separate from it
 2. It is based more on **legislative statutes** than case-law precedents
 3. Judges & lawyers receive more **generalist training** in universities not separate law schools
 4. The role of the judge is to take an active part in the police investigation as well as the trial, e.g., questioning witnesses
 5. There is no **presumption of innocence** of the accused in criminal proceedings and fewer protections of the rights of the accused found in case law, e.g., the petition for a **writ of habeas corpus**, the protection against **self-incrimination**
 6. The **standard of proof (probably true)** in code-law criminal cases is not as high as in case-law criminal cases
- IV. **The blending of case law and code law**
- A. The differences are mostly **matters of degree rather than kind**
 1. Case law is not totally judge-made law
 2. Code law does not ignore case-law precedents
 - B. In recent years, the two systems have tended to **converge rather than diverge**
 1. Human-rights protections in code-law systems
 2. Statutory restrictions on judicial discretion in case-law systems

- V. **Religious law: the *Sharia*** (ca. 10th c. AD)
 - A. *Definition*: **Islamic law** based on the *Qur'an* (Koran) and used as part of the legal systems of Islamic states – most heavily in Iran and Saudi Arabia; less heavily in Afghanistan, Egypt, Iraq, Syria, Pakistan
 - B. *Basic assumptions*:
 - 1. **Religious and communal obligations** are more important than individual rights
 - 2. **Certainty and tradition** are more important than flexibility and change

- VI. **Courts**
 - A. Classified by **substance**
 - 1. Criminal: state v. individual
 - 2. Civil: individual v. individual
 - B. Classified by **origin** (in the U.S.)
 - 1. Constitutional: judges serve life terms (unless they are impeached and convicted)
 - 2. Legislative: judges have fixed terms
 - C. Classified by **role**
 - 1. Trial: decide questions of law & evidence
 - 2. Appellate: review questions of law (but not evidence)
 - D. Classified by **jurisdiction**
 - 1. Federal
 - 2. State & local
 - 3. Special: customs, family, juvenile, patent, traffic, tax, military

- VII. **Examples**
 - A. The law in **China**
 - 1. Confucian tradition of harmony & virtuous leaders – result: emphasis on mediation & conciliation
 - 2. Communist rule
 - a. 1949-1976: *autocracy*
 - b. Post-Mao: limited *rule of law* to protect
 - (1) Against arbitrary injustices of the Cultural Revolution
 - (2) The emerging market economy
 - B. The **European Court of Justice**
 - 1. Judicial branch of the 27-member European Union (EU)
 - 2. Power of **judicial review** evolved through case law, transforming the *Treaty of Rome* into a constitution for the EU superior to member-state laws and with strong human-rights guarantees