

COMMON LAW

Jovelyn L.

España
Kimberly C. Nayre

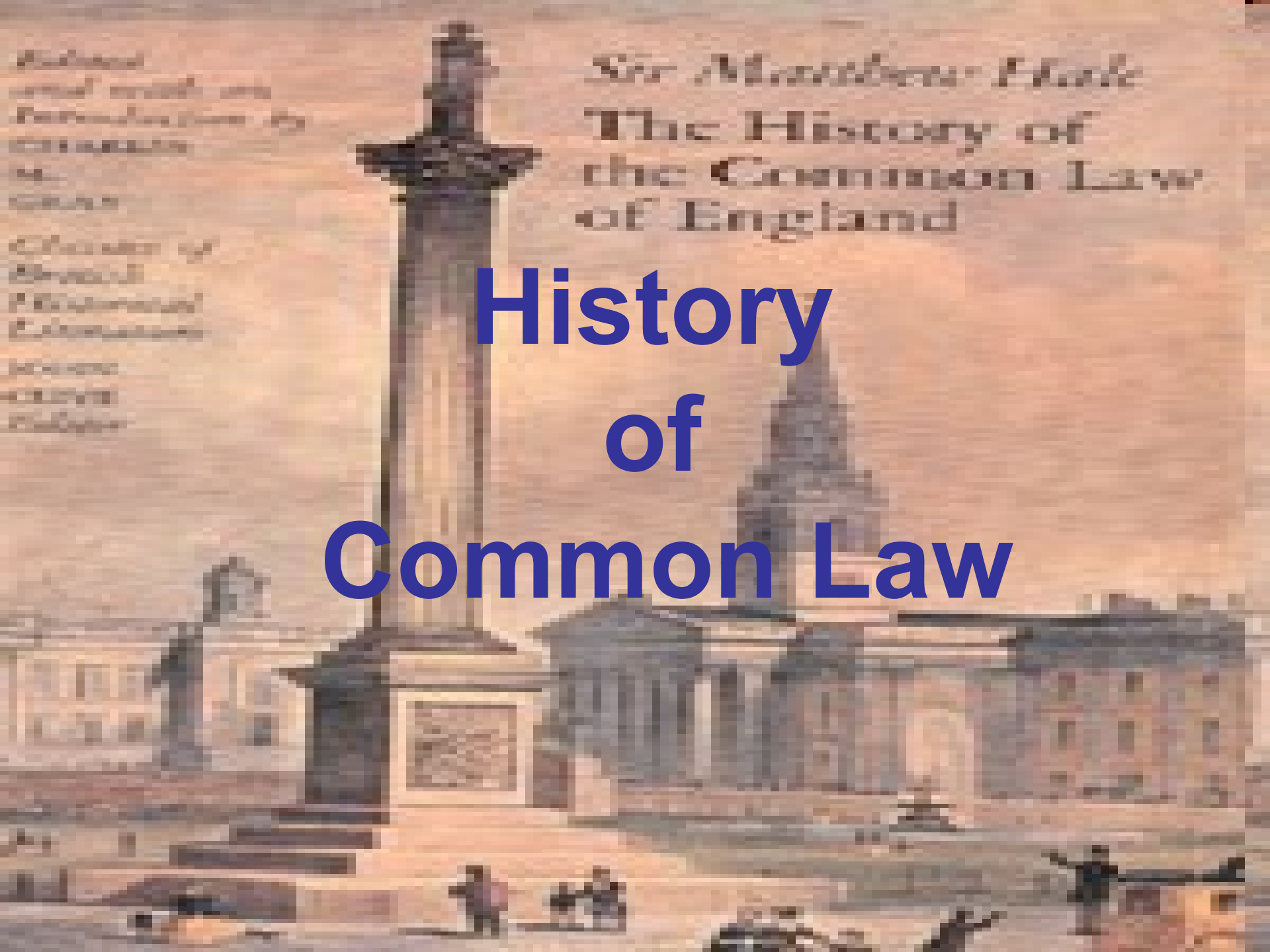
Redmond John D. Zulueta

What is Common
Law???



Common Law...

- It is a **body of rulings made by judges** on the basis of **community customs, beliefs, usages and principles that are observed as rules of conduct**. It is also based on **previous court decisions**. It covers matters such as contracts, ownership of property and the payment of claims for personal injury.
- **Characteristics of common law:**
 - it is **unwritten** and **flexible**, thereby meeting the exigencies of time.
- It is influenced by the **laws of the Saxons, Danes, Normans and Romans**. The **system has been administered by the common law courts of England** since the Middle Ages. It presently forms an essential part of the legal system of many English speaking countries, including the United States and Canada.



By Sir Matthew Hale
The History of
the Common Law
of England

History of Common Law

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History...

- The term is of English origin and is used to describe the juridical principles and general rules regulating the possession, use and inheritance of property and the conduct of individuals.



Sir William Blackstone

"Commentaries upon the Laws of England"
that the common law consists of rules properly called *leges non scriptæ*, because their original institution and authority were not set down in writing as Acts of Parliament are, but they receive their binding power and the force of laws by long immemorial usage, and by their universal reception throughout the kingdom

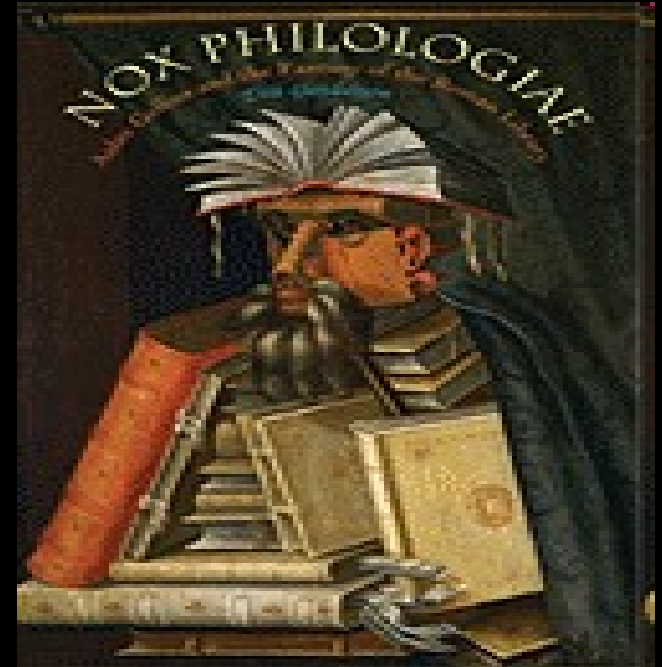
History...

Common Law as..

"tacito illiterato hominum consensu et moribus expressum"

expressed in the usage of the people, and accepted by the tacit unwritten consent of men

Common law originally developed under the **inquisitorial system in England** from **judicial decisions** that were based in **tradition, custom, and precedent**. The form of reasoning used in common law is known as case-based reasoning.



Aulus Gellius

History...

- **As applied in civil cases: a devised as a means of compensating someone for wrongful acts known as torts, including both intentional torts and torts caused by negligence, and as developing the body of law recognizing and regulating contracts.**
- **The type of procedure practiced in common law courts is known as the adversarial system; this is also a development of the common law.**



He 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 remedies and reinstating a jury system – citizens sworn on oath to investigate reliable criminal accusations and civil claims. The jury reached its verdict through evaluating common local knowledge.

Henry II of England

History...

Henry II of England

- He also developed the practice of sending judges from his own central court to hear the various disputes throughout the country.
- His judges would resolve disputes on an ad hoc basis according to what they interpreted the customs to be.
- The king's judges would then return to London and often discuss their cases and the decisions they made with the other judges. These decisions would be recorded and filed.

History...

- In time, a rule, known as *stare decisis* (also commonly known as precedent) developed, which is where a judge would be bound to follow the decision of an earlier judge; he was required to adopt the earlier judge's interpretation of the law and apply the same principles promulgated by that earlier judge if the two cases had similar facts to one another.
- By this system of precedent, decisions 'stuck' and became ossified, and so the pre-Norman system of disparate local customs was replaced by an elaborate and consistent system of law that was common throughout the whole country, hence the name, "common law."

Interpreting and Predicting Common Law

The Common Law Doctrinal Framework

stare decisis

precedents

The Common Law Doctrinal Framework

❖ stare decisis

a court will generally follow its prior decisions and that a court is expected to follow decisions of the courts to which it is subordinate

❖ precedents

if a court within a similar legal system has previously considered and resolved a particular problem, its decision is worthy of consideration in resolution of future similar

mandatory

persuasive

Types of Authority for Judicial Precedents

❖ Mandatory

that which a court should generally consider itself bound to follow

❖ Persuasive

that which a court should consider and may be inclined to follow

Directly in Point

- ✓ **The question resolved in the precedent case is the same as the question to be resolved in the pending case**
- ✓ **Resolution of the question was necessary to disposition of the precedent case**
- ✓ **The significant facts of the precedent case are also present in the pending case**
- ✓ **No additional facts appear in the pending case that might be treated as significant**

Common Law Doctrinal Framework

- a court may overrule its prior decisions or the decisions of courts subordinated to it
- it may be done either expressly or impliedly
 - ❑ **express** - when the court discusses the precedent and gives reasons for the decision to overrule it
 - ❑ **implied** - when the court reaches a result in a pending case that is inconsistent with a directly in point mandatory precedent, without mentioning the precedent

Factors which Make Opinion Analysis Difficult

Language

❖ Semantic Ambiguity

when the particular meaning intended is not clear in a particular context

❖ Syntactic Ambiguity

due to the uncertainties of modification or reference that are unresolved by the context

❖ Internal Contextual Ambiguity

such as inconsistent statements within an opinion

❖ External Contextual Ambiguity

such as inconsistent statements with statements in an opinion of the same court

Operation of Appellate Court Systems

- ✓ the judges are always pressed for time and are always pressured to reach a majority agreement
- ✓ the opinion may always have several contributors
 - ❑ ***Dissenting Opinion*** - an opinion explaining the reasons for disagreeing, and elaborating on what decision the dissenter would have reached
 - ❑ ***Concurring Opinion*** - an opinion that agrees with the decision of the majority, but explains a different reasoning
- ✓ there is no opinion of the court
- ✓ there may not be a decision by the court

Opinion Analysis

Opinion Analysis

❖ Facts

are only identified after finding out the issue of the case, the result reached by the court and the court's reasoning

- **Abstract** – done by reducing particular facts to general categories

❖ Procedure

- ✓ which party obtained a favorable decision from the lower court
- ✓ what procedural point is being appealed
- ✓ nature of the action and the remedy sought

Opinion Analysis

❖ Decision

- a statement of the procedural action taken or directed with reference to the case before it
- describes the substantive result in a case

❖ Issue

- ✓ must be stated in the affirmative form if the answer in the substantive decision is “yes”, otherwise, it must be stated in negative form
- ✓ the issues before the court may also form a hierarchy - *analyzed by asking “why” until the specific question that the court appears to answer is arrived at*

Opinion Analysis

❖ Reasoning

- ❑ **Precedent justification** - justifying application of an existing rule

- ❑ **Policy justification** - justifying a result or a new variant rule as it refused to follow a precedent or conclude that there is no precedent

Opinion Analysis

Precedent Justification

- ✓ The significant facts are identical, and the precedent is applied
- ✓ The significant facts are sufficiently similar, and the precedent is applied, but is extended by analogy, and may be further explained by policy justification
- ✓ The significant facts are not identical or sufficiently similar and the precedent is distinguished or limited and not followed, thereby reasoning out with policy justifications

Policy Justification

- ✓ relies on social utility, ethical considerations, general standards of justice, or custom or business practice or expediency
- ✓ may also use *negative parade of horribles reasoning*, which relays the undesirable consequences of the other available choices
- ✓ precedents are the logical

Opinion Analysis

❖ Rule

- **precise statement of what one believes an opinion stands for with reference to future cases**
- **summary of controlling significant facts, issues, and substantive decision**
- **sometimes established by prior decisions, or stated in a secondary authority**

❑ **Principle** - a general statement from which a substantial number of rules may develop under it

- **merely declares the result or manner in which it has resolved the dispute, without stating that it has applied any rule**

Opinion Evaluation

Opinion Evaluation

- **Mandatory Precedents** - The point of evaluation is identification of weaknesses or strengths relating to the possibility of an overruling or limiting decision.
- **Other precedents** - identification of weaknesses or strengths relating to their persuasiveness as authority.

Opinion Evaluation

- In evaluating the substance of an opinion, one may use a two-pronged approach based on the two basic types of reasoning that may be used by courts.
 - Are the court's precedent justifications adequate? Is the opinion technically valid?
 - Has the court advanced valid policy justifications? Has it considered all possible conflicting policy considerations?

- In determining what law will probably control the resolution of a particular problem, one has to evaluate more than the opinion's substance
- Consequently, Philippine courts may “properly resort to common law principles in construing doubtful provisions of a statute, particularly where such statute is modeled upon Anglo-American precedents.

Some Factors that Affect Persuasiveness

- *What is the level of the deciding court within jurisdiction?*
- *When was the case decided?*
- *Was the decision or reasoning divided?*
- *Was the case considered by the whole court?*
- *Does the opinion carry a full report of the case?*
- *What was the quality of the arguments presented by counsel?*
- *How was the decision been subsequently treated by the deciding court and other courts?*

Opinion Synthesis

Opinion Synthesis

- Synthesis is essentially a process of comparing and relating precedents which have common or analogous facts.
 - Select first the germane mandatory precedents
 - If there is more than one germane precedent, then one must compare the precedent cases and relate the opinions
 - From this process, one will obtain a view of how the courts of the particular jurisdiction have dealt with the problem area
 - If the synthesis of mandatory precedents does not reveal a clear prediction or if the evaluations suggest weaknesses in the mandatory precedents, one may have to repeat the process with respect to germane relevant persuasive precedents.

Opinion Synthesis

- Another variety of synthesis :one to trace growth of a particular approach to a given problem area.
- One has to start with the assumption that the opinions are actually consistent. Comparison of these opinions is crucial.
- The following questions may be asked in the process of comparing opinions:
 - **Are these decisions truly consistent?**
 - **If the facts are similar, does the court appear to apply the same principle or rule?**
 - **Is the reasoning inconsistent or merely payment variant from opinion to opinion.**
- In actual problem solving, ideally, synthesis will be a progressive process which accompanies analysis of individual opinions. As one finds and analyzes relevant who is vote similarities, distinctions in fact patterns, questions presented, decisions, reasoning, and underlying rules and principles

Common Law in the Philippines

Common Law in the Philippines

- Common law - generally not in force in the Philippines
- Common law was imported to the country due to the establishment of institutions and enactment of laws that are similar to those of the United States
- Some principles of common law are therefore adopted by the legal system of the Philippines insofar as they are founded on sound principles applicable to local conditions, and not in conflict with existing laws .

Civil Law vs Common Law

Civil Law vs Common Law: Fundamental Distinction

Civil Law

Based on codes
and/or statutes and
rules of decision

Common Law

Based on “precedent”
established in
previously-
adjudicated cases

Civil Law vs Common Law: Legislative Drafting & Interpretation

Civil Law

A “civil code” is considered “all encompassing.” **Laws are drafted in general and abstract terms and are interpreted broadly to reach the spectrum of principles needed to govern everyday affairs.** Judges look to the “spirit of the law” and not just the “letter of the law.” Judges thus interpret the law beyond the actual purpose a legislature may have had in enacting the law. There is, however, a reluctance to extend the law too far so as not to affect the entire organization and economy of the code. Thus, a judge in a civil law jurisdiction seeks a systematic and consistent approach to the law in the code, and so will interpret the code broadly to achieve this.

Common Law

While legislation is considered a “higher” authority than case law, judges tend to interpret statutes and codes narrowly, frequently stating that if the legislature had intended a certain coverage or consequence, this should have been explicitly stated in the statute. Thus, legislators tend to enact legal rules in very specific terms so the legislation is clear as to what situations should be addressed by the law. **Unclear legislation becomes the province of the courts to interpret** (pursuant to a set of “rules of statutory interpretation”).

Civil Law vs Common Law: Case Law vs Jurisprudence

Civil Law

Statutes and codes are the major source of law. Lawyers & judges rely on the general principles and apply them to the facts in a particular dispute, but the facts from prior, similar cases do not provide the required authority necessary to decide a dispute.

Common Law

Case Law is the major source of law. Cases within a particular jurisdiction and which apply the legal rule(s) to similar sets of facts are considered “precedent.” The results from the application of the rule to the facts cannot be varied in a current dispute without strong grounds to distinguish the current dispute from the decisions published for prior disputes (i.e., case opinions).

Civil Law vs Common Law: The Study of Law

Civil Law

Students read and study legal doctrine (more than or to the exclusion of case opinions). “Doctrine” is the accumulated writings of professors and others learned in the law that states / describes “what the law is.” (In the common law, much of this type of analysis of the law is considered a “secondary source” of law, which helps to explain or understand the law, but which is not itself the law.

Common Law

Legal education relies on the “case method” or “Socratic method” of study. Students learn to discern the law from one or more cases within a jurisdiction, and then to predict the outcome of or advocate a position in a dispute based on the similarities and differences between the facts of these “precedent” cases and the facts in the current dispute.