

Aviation Advocacy

Introduction to Law and Legal Systems

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Sources of Law

- There are **four** key sources of law:
 - common law (or “case law”): law made by judges in the courts
 - legislation (or “statutory law”): laws made by national parliaments, passed as “Acts” or “Statutes”
 - supra-national laws and regulations (eg EU Directives)
 - international conventions and treaties (eg Montreal Convention)

Common Law *versus* Civil Law (1)

- There are **two** key systems of law:
 - common law
 - civil law
- common law has been developed over hundreds of years in courts, and is embodied in decisions made and developed by successive generations of judges
- civil law derives from laws that are embodied in codes

Common Law *versus* Civil Law (2)

- So what's the difference?
 - common law is judge-made decisional law, is found in thousands of reported **cases**, and gives precedential authority to prior decisions on the principle that it is unfair to treat similar facts differently on different occasions. This is the doctrine of **judicial precedent** (“*stare decisis*”)
 - civil law is ultimately derived from the Code of Justinian (534 AD), developed by successive law makers (eg Napoleon), and is contained **codes**. The legal principles in the codes are generalised and avoid factually specific scenarios. Judges are bound by the primary force of the codes. Case law in civil law jurisdictions is therefore of secondary importance to the provisions of the codes.

Common Law *versus* Civil Law (3)

- Different countries have different legal systems:
 - one third of the world's population (2.3 billion people) live in common law jurisdictions: UK, North America (US and most of Canada), Australia, Commonwealth and ex-British Empire
 - civil law jurisdictions include continental European countries
- Turkey is a **civil law** jurisdiction: laws derived from the Swiss Civil Code and the German Commercial Code, with French and Italian influences

Aviation: the Legal Framework (1)

- The laws that are relevant to the aviation industry are made up of:
 - the four key sources of law (common law, legislation, supra-national directives & conventions/treaties)
 - common laws and civil laws
- So the industry's legal framework is truly international (or, as lawyers say, "multi-jurisdictional")
- The legal system of every jurisdiction and its interface with other jurisdictions have **enormous** significance for this global industry

Aviation: the Legal Framework (2)

- The legal framework of the aviation industry has to take account of:
 - operations and events on the ground
 - operations and events in the airthat occur in multiple countries and jurisdictions.
- The four key sources of law have developed laws and regulations particular to what happens on the ground and in the air.

Aviation: the Legal Framework (3)

- *Cujus est solum ejus est usque ad coelum*

“He who owns the soil owns everything above and below, from heaven to hell”
- Foreshadows trespass litigation with every flight
- Aviation’s Golden Rule:

everything is illegal
UNLESS you have special permission

The Concept of “Aviation Law”

- Is there such a thing as ‘Aviation Law’?
 - Law about aviation?
 - Law that has aviation as its subject?
 - What special laws are there?

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