

**INTRODUCTION/
FOUNDATIONS OF LAW
SUMMARY
2010**



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The Western Legal Tradition

Both the civil law and common law traditions are derived from ideas in Christianity and Roman Law. The common law and civil law systems are what are known as the Western legal tradition.¹

During the peak period of the Roman Empire, the Romans had a Roman Code that was derived from Greek legal principles and Christian legal principles. This code was collected together and was called the *Corpus Juris Civilis*.² The *Corpus Juris Civilis* was also known as the Justinian Texts because they were organised by Emperor Justinian. When the Roman Empire ended, most of the *Corpus Juris Civilis* was lost, and it was not until later in the 11th century that these texts were rediscovered by legal philosophers. Alongside Greek Philosophy and the Bible, the Justinian Texts formed the basis for the contemporary Western legal tradition.

While the common law and civil law systems come from the same origins, they soon developed in different directions.

COMMON LAW

Australia's legal system is based on the English common law system. Around the world, common law jurisdictions include:

- Australia;
- Canada;
- USA;
- New Zealand;
- Ireland;
- Kenya;
- India;
- Israel; and
- Malaysia.

¹ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

²C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

CIVIL LAW

All the laws of civil law countries are contained in documents called “codes”. This includes both substantive and procedural law.

Civil law countries include:

- Most of continental Europe (notably France);
- Some states in South America;
- Thailand; and
- Japan.

Contemporary civil law is heavily influenced by the detailed code Napoleon drew up when he came into power after the French Revolution. This *Code Napoléon* became law in 1810 and consisted of:

- The Civil Code;
- The Code of Civil Procedure;
- The Commercial Code;
- The Code of Criminal Procedure; and
- The Penal Code.³

English Legal History

The year 1066 was a signpost for a series of cumulative changes, beginning with the conquest of England by William, the Duke of Normandy. These changes have resulted in Australia and other former British colonies sharing the common law legal tradition.⁴

Before the Norman Conquest, there was a legal system already in existence in England. The problem with this pre-Conquest legal system was that it was not consistent across regions. Pre-Conquest Anglo-Saxon laws were based on different sets of customs that were in force in different parts of England, as such there were no single set of uniform

³C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

⁴ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

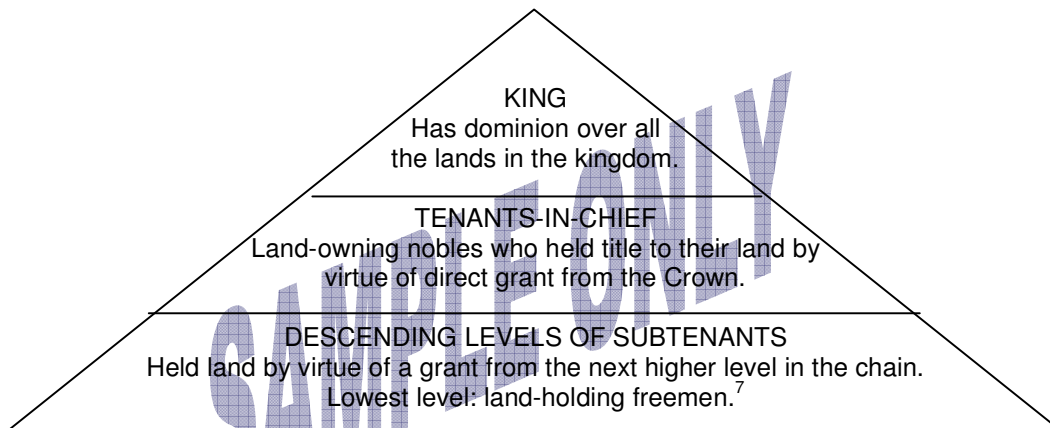
rules across the country.⁵ These laws were administered in localised Anglo-Saxon courts.

FEUDALISM

The Normans established a series of land ownership called feudalism, which helped create a stable and uniform administrative system of government throughout England.

- **Feudalism:** a system of land ownership based upon a formal social hierarchy.⁶

The formal social hierarchy in Feudalism



This formal hierarchy meant that alongside loyalty to the king, each landholder also owed feudal loyalty.

⁵ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

⁶ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

⁷ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.

- **Feudal loyalty:** Loyalty owed to one level upwards. Each landholder swore allegiance to their immediate superior in the chain. Swearing allegiance meant being obligated to provide the lord with a share of the crops and serving military service on the lord's behalf. The lords in turn promised to protection and assistance to their tenants.⁸



If you have any queries regarding the introduction/foundations of law summary please email - info@lawskool.com.au

SAMPLE ONLY

⁸ C Cook, R Creyke, R Geddes, D Hamer. *Laying Down the Law* 6th Edition. (2005) LexisNexis Butterworths. Sydney.