Civil Law VS Common Law

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Outline:

- 1. History & Some fundamental properties of Civil Law & Common Law.
- 2. The comparison between Civil Law and Common Law.
- 3. Law in Vietnam.

Part 1:History & Fundamental Properties



Common Law

The origin:

- > Anglo-Saxon law.
- The base of American Law.



- > Originated from the reign of Henry II of England.
- ➤ Built up from the Common Customs → Precedents.
- ➤ Keep judging records & use them as *precedents* for similar cases later.

Development:

- ➤ 15thcentury: System of Equity was established as the *Development of Common Law* in solving conflict cases.
- ➤ 1937: The new Federal Rules of Civil Procedure combined Law and Equity into one form: "Civil Action".
- Nowadays: 'Question of Fact' and 'Question of Law' are considered in judgment.



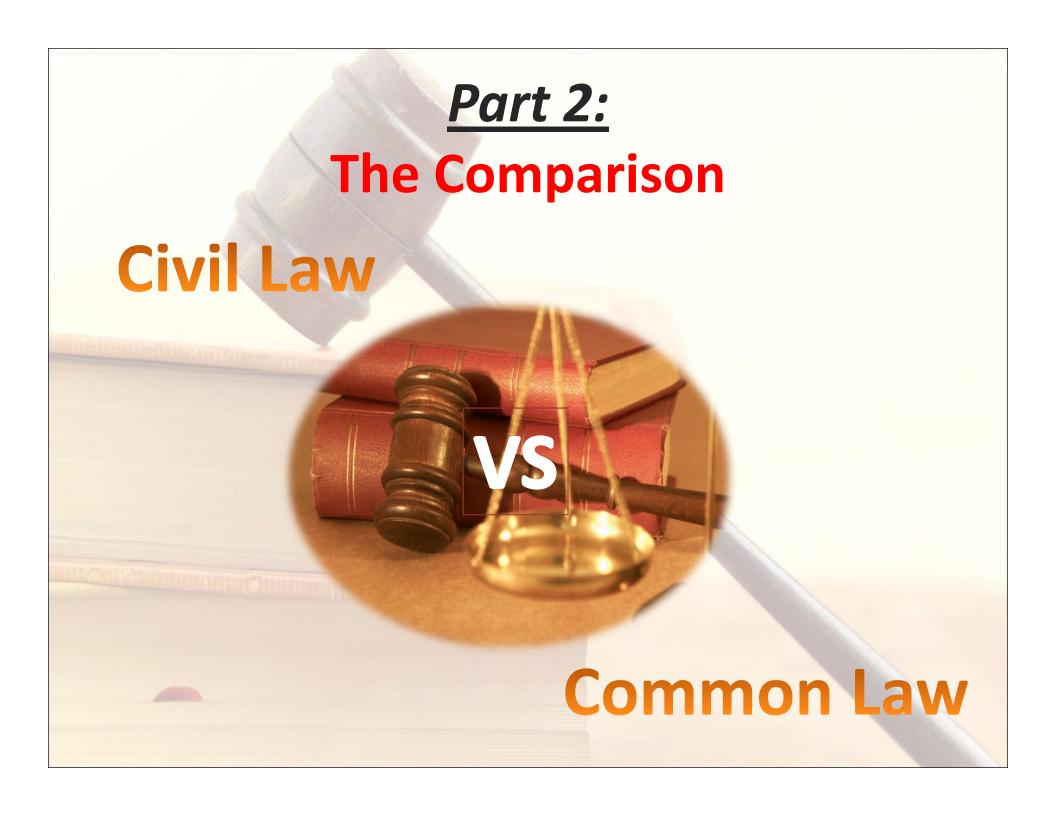
Civil Law

The origin:

- > Used often in Europe countries.
- Derived from *Roman law*, especially the Corpus Juris Civilis of Emperor Justinian.
- Proceeding from Broad legal principles and the Interpretation of doctrinal writings.



- ➤ Specialize to countries.
- > Prussia 1794: Territorial Code.
- > France 1804: Napoleonic Code or Civil Code.

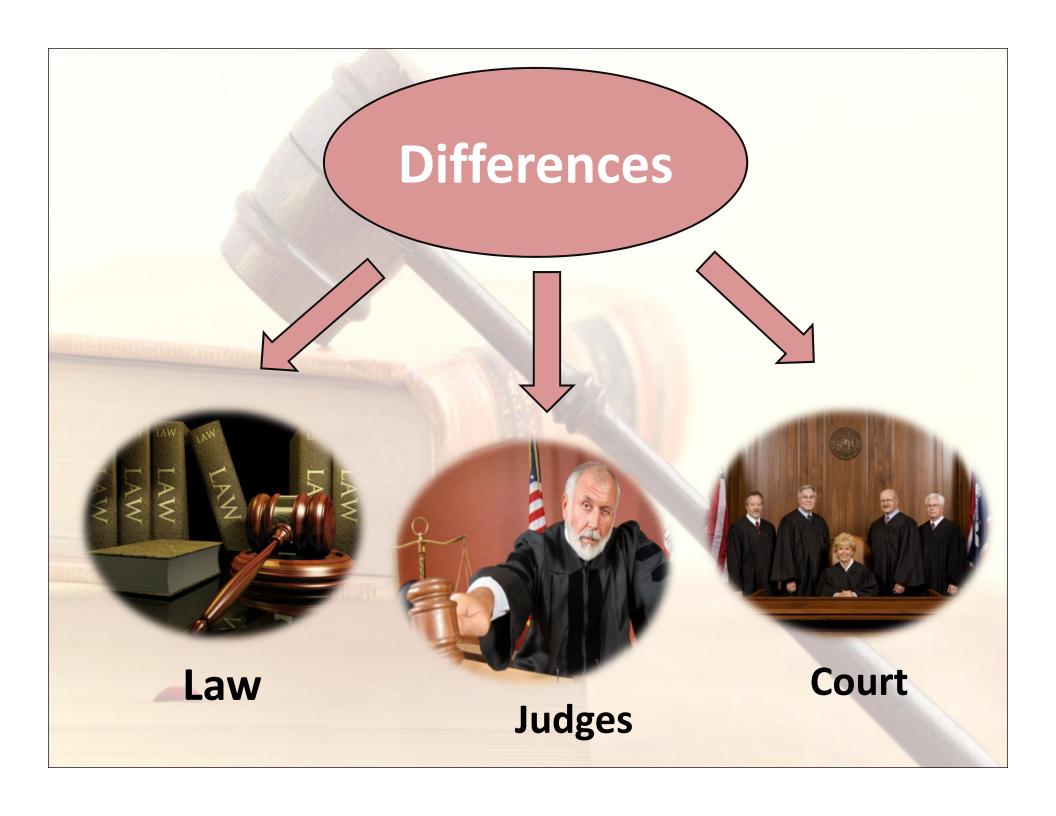




Civil Law and Common Law have been applied around in the world.



- Share similarities in Social Objectives.
- > Both comprises Constitution.



A. Law

Common Law

- Created by Law case (rely or precedents).
- The courts are given the main task in creating the law
- Dominated by judicial decisions
- A bottom-up approach to principles.

Civil Law

- A codified system and it is developed by Legislator.
- The courts should apply the law.
- Statutes and code are the paramount source of jurisdiction.
- A top-down approach to principles.

B. Judges

Common Law

- Judge & (Grand & Petit)
 Jury.
- Judges play referee role.

Civil Law

- Members of Judicial Panel.
- Judges play director/examiner role.







C. Court

Common Law

- Inductive legal reasoning
- Unified Court Structure
- Accusatorial/confrontationa
 I format
- Lawyers debate and oppose

Civil Law

- Deductive legal reasoning
- Diffused Court Structures
 (multiple specialized courts)
- Inquisitorial/collaborative format
- Lawyers advise and inform



Part 3: Vietnamese Law



- ➤ 1858-1945: Viet Nam was colonized by French → French Laws leave a great Impact on Vietnam's law then.
- Ex: General guidelines for criminal activities, Punishments etc.
- ➤ Vietnam gained Independence → Socialist Country → Follows Socialist Laws.

> Today:

Viet Nam's Law = Communist Theory law + French Civil law.

	Common Law	Civil Law	Socialist Law
Source of law	"Case law" Precedent, statutes	Statutory, rules	Civil law system (Marxist -Leninist) Socialist Theory
Example	Australia, UK, Singapore	European Union	Soviet Union , Viet Nam ,
Degree of Judicial Independence	High	High	Very limited
Judges (in court)	Mostly silent	Has more of role	Has more of role + work with lawyers
Lawyers (in court)	Control	Lawyers + Judges depend on written law	Judges dominate trials

Evaluation:

> Common law: Quite flexible.

Why? NOT bounded by the Rules.



<u>Civil law</u> is contrasted with common law (As seen in the table above).

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