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**Bachelor Thesis Abstract**

**Differences between Common law and Continental law  
and their practical consequences**

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## Summary

In the era of globalization and the growing interdependence of the nations the study of the legal map of the modern world is becoming increasingly important. The study of principal legal systems leads to the development of multilateral relations with all countries and peoples, the awareness of the harmful effects of isolation of one country from others. In this regard, using the methodology of comparative legal research, the work identifies and considers the main distinctions between the two major legal systems – Common law and Continental law.

The first chapter analyses the causes and history of development of Common law and Continental law since ancient Rome to the period of the New Age. The second chapter focuses on the practical application of the two legal systems on bases of property law. Special attention is given to evaluation of the effectiveness, security and complexity of the process of property acquisition in the countries following these two legal traditions.

## Keywords:

Common law, Continental law, Procedural law, the hierarchy of norms, separation of powers, precedent, , comparative law , property law, ownership, real estate, absolute rights.

## Objectives and hypothesis

The aim of the work is to conduct a comparative study of the modern substantive and procedural law of two legal systems of the world, to find significant factors that determine the existing differences between the Common and Continental Law and to describe the practical application of those differences in the context of real estate acquisition.

Based on the purpose of the work, the author has set the following objectives:

- to determine the relevance of the topic, the theoretical level of a theme;
- to reveal the essence of the concepts of Common law and Continental law and their features;
- to consider the impact of legal custom in the two legal systems;
- to define the major principles of real estate acquisition;
- to determine the legal characteristics of a contract of sale of real estate;
- to identify the source of the legal regulation of the relations arising from the purchase and sale of real property in both Common law and Continental law.

The underlying hypothesis for this study is that the process of property acquisition is faster, smoother and more secure in the countries with Common law tradition. The purpose of this thesis is

to investigate if this is the case in the area of real estate, with the object of study being the legal regulations of social relations, arising between subjects of law in connection with the purchase and sale of real estate. Hence the substantive as well as procedural aspects of a real estate deal are assessed with the aim to confirm or reject the hypothesis about the better suitability of the Common law scenery.

## **Sources and Methodology**

The empirical research was based on the works of various authors such as O.W. Holmes, T.F.T. Plucknett, J. Martinez-Torron and J.H. Merryman and numerous Russian researchers. The comparative study of Common law and Continental law has been found in the works of W.W. Buckland & A.D.McNair, J.W.F Allison, R. David.

The legal framework of research includes the Civil Code of the Russian Federation, the Housing Code of the Russian Federation, the Family Code of the Russian Federation, other federal laws governing civil relations in the field of buying and selling real estate, legal framework of England and the USA.

The main methods used in the paper are descriptive methods which include compilation, interpretation and classification of information; comparative and qualitative methods; structural and functional analyses.

However, it needs to be underlined that this work is not based only on secondary data and their processing via qualitative analysis. The author has prepared a questionnaire with a well-balanced set of questions and collected answers from experts, thus gathering high quality primary data able to be processed both via qualitative as well as quantitative methods. Namely, the highest originality of this work is generated by the dynamic interaction of comparison performed on general theoretical level and on particular practical level. Moreover, the case study along with its detailed description and analysis allowed to reach a highly practical semi-final conclusion about the differences between the Common law and Continental law, with a special focus on the most valuable tangible property and transactions with it, i.e. the sale of a piece of real estate.

## **Conclusion**

Analyzing and researching the two major legal families – Common law and Continental law, the author identified the features that characterize each legal system and distinguish it from the other.

Continental legal system is described by a single hierarchically constructed system of written law, a dominant place in which is occupied by the Codes, regulations and norms. A major role in law making belongs to the legislator, who creates a general legal rules of conduct, while the task of law

enforcers (Judge, administrative bodies, etc.) is to accurately implement these general rules in specific enabling legislations. In this system written constitutions have supreme legal authority, and a high level of normative generalization is achieved by the codification of regulations. Subordinate legislation (regulations, directives, orders) also are of importance, while legal customs and precedent act as a supporting additional sources.

In comparison, the Common law tradition heavily relies on judicial precedent as a basic source of law. The leading role in the formation of rights is given to court, which in this regard takes a special position among the governmental authorities. Procedural law is of predominating importance, along with statute law.

Since the ownership and property law are one of the fundamental concepts in the economic and social theories, the two legal systems represent two different views on property that has developed from the Ancient times and are still widely applicable nowadays. However, while the Continental tradition represents ownership as something stable and indivisible, considering necessary to concentrate the ownership of the object in the hands of one owner; in Common law it is a set of partial powers, with the possibility of fragmentation of ownership of any object between few individuals.

By studying the real estate law, the intention was to investigate whether or not the property purchase in Common law tradition is a more secure and effective in comparison to Continental law. The focus was on legal procedure and time aspect of the apartment acquisition, as well as the level of involvement of legal representatives in the deal. It was found that the Continental law gives a more detailed fixed instructions on the procedure and tends to use written contracts as means to ensure the security of the deal. Since the Continental system operates on a fixed contractual term, the time of the deal closing is relatively shorter than in the Common law system.

The level of the real estate agents' involvement differs between the studied countries. While in the Common law the agent is responsible for the deal from the beginning to its closing, in the Continental law it is the buyer who has to supervise the deal to ensure the lack of infractions. Clearly, Common law is much more practical and business oriented and stays away from the "do-it-yourself" approach relying on either a well educated subject and/or paternalistic state searching for the mystic good faith and protecting it.

However, it is impossible to speak about one ideal legal system, since both of them have the features that can be considered effective and oriented on the protection of rights and interests of the citizens. They are reflections of their societies and their subjects.

The implications of the findings have a direct impact on the development of future economic and social aspects of human life. Nowadays, the legal systems of the world get closer together, due to the rapidly growing role of international law, in particular international economic and trade rules. Therefore, in the countries belonging to the Continental legal system judicial precedent is gaining increasing importance, while the countries with Common law tradition start to emphasize the role of codification and the law. Similarly, mutual inspiration is used to improve property law on both sides of the Atlantic. Considering the status of the current global society and the importance of competitiveness and professional dealing, it might be suggested that regarding real estate, more inspiration should be taken from the Continental law, regarding the substantive aspects, and from the Common law regarding the procedural aspects. In other words, the concept of the unified ownership with in rem absolute rights erga omnes is more appropriate than the set of various fees and interests, and the concept of professional processing is more appropriate than leaving the materialization of a real estate deal in hands of subjects hardly able to follow the constant changes of the continental law.

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