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Czech University of Life Sciences Prague

Faculty of Economics and Management

Department of Law

Diploma Thesis

DIFFERENCES BETWEEN COMMON LAW AND CONTINENTAL LAW AND THEIR PRACTICAL CONSEQUENCES

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BACHELOR THESIS ASSIGNMENT

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The differences between the common law and continental law and their practical consequences

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Objectives of thesis

The aim of the work is to conduct a comparative study of the modern 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.

Methodology

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.

The proposed extent of the thesis

30- pages

Keywords

Civil law, Procedural law, the hierarchy of Norms, separation of powers, precedent, law property, comparative law, casuistry.

Recommended information sources

ALLISON, J.W.F. A continental distinction in the Common Law: A historical and comparative perspective on English public law. New York: Oxford University Press Inc., 1996. ISBN 0-19-829865-X.

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Declaration

I declare that I have worked on my diploma thesis titled "DIFFERENCES BETWEEN COMMON LAW AND CONTENENTAL LAW AND THEIR PRACTICAL CONSEQUANCES" by myself and I have used only the sources mentioned at the end of the thesis.

In Prague on 16.03.2015

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Elena Korshunova

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Rozdíly mezi common law a kontinentálním právem a jejich praktické důsledky

Differences between Common law and Continental law and their practical consequences

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Souhrn

V období globalizace a rostoucí vzájemné závislosti mezi zeměmi, studium právní mapy moderního světa se stává důležitější. Výzkum základních právních systémů vede k rozvoji mnohostranných vztahů mezi všemi zeměmi a národy, povědomí o škodlivých účincích izolaci jedné země od ostatních. V souvislosti s tím, podle metody srovnávacího právního výzkumu, tato práce identifikuje a popisuje hlavní rozdíly mezi dvěma právními systémy – Common law a Kontinentálním právem. První kapitola analyzuje příčiny a historii rozvoje Common law a kontinentálního práva od doby Starověkého Říma do Novověku. Druhá kapitola je věnována praktickému uplatňování těchto dvou právních systémů na základě vlastnického práva. Zvláštní pozornost je věnována hodnocení účinnosti, bezpečnosti a složitosti procesu nákupu nemovitosti v zemích následujících tyto pravní tradice.

Klíčová slova:

Common law, Kontinentální právo, Procesní právo, hierarchie právních norem, oddělení pravomocí, precedens, komparativní právo, věcná práva, vlastnictví, nemovitost, absolutní práva.

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.

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Introduction

There are over two hundred countries in the world, and each of them has at least one more or less developed functioning legal system. All of the national legal systems have their own characteristics and specialties, but they all can be united into several groups based on similarities of the legal traditions and their historical background. Legal systems embody laws, each of them reflect the socio-economic, political and cultural development of the particular state, so their study allows to understand the mechanism of the development of the societies on the basis of rights and duties and social relations between the citizens of the countries. Nowadays, in a rapidly developing world, where dramatic changes in the political, economic and social spheres and crises are likely to emerge, it is important to know the basic common and distinctive features of legal systems produced by the Western civilization and currently recognized world-wide. Therefore, one can distinguish two major legal traditions that is followed by most nations throughout the world – Common Law and Continental Law.

The Common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents. The Civil law tradition developed in continental Europe and had followed the footsteps of the Roman law. The significance of the analysis and comparison of the two principal legal systems of the world is outstanding, as it allows to explore and to reassess the legal spheres of international cooperation. It can also lead to the understanding the laws of development of modern legal systems in order to improve the national legislation. Comparative studies allow to approach the solution of many traditional questions of law from a new perspective and help to study positive and negative accumulated legal expertise in the two systems.

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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.

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Sources and Methods

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 works 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.

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A. Theoretical Part

Currently, there are two traditions dominating laws and legal systems of Western civilization states, jurisdictions and nations. They both are based on Christianity and reflect the history as well as particular sociological features and political influences; they both reflect people and societies following them. They are Common law and Continental law, i.e. legal systems belonging either in the common law family or in the continental law family. Thus, subjective rights and duties of peoples on the both sides of the Atlantic, including relationships and transactions, are most often related to valuable tangible assets, real estate, and are determined by national objective law which is either "common law" or "continental law". How and why they are different and which one is better in general, and for real estate transactions in particular? To answer these questions, the history and development of Continental law and of Common law needs to be recapitulated and critically assessed.

A.I. The History and Development of Continental law

Roman law and Roman legal system emerged in one of the most developed and cosmopolitan country of the Ancient World - Ancient Rome, and later became the basis for the development of the Continental Law tradition shared by many European countries and their jurisdictions. It developed concepts, ideas as well as details and reached such a high level of legal forms and legal techniques that it rightfully became an expression of individualism and freedom of legal self-determination of a part of the population, i.e. the free population of Roman citizens.

The main actor of private law was an individual, acting independently and individually responsible for his actions. The distinctive features of the law of that period were the accuracy of wording, structure and clarity of argument, new concepts such as the "ownership and its triad", viability, and at the same time full compliance of all legal decisions to the interests of the ruling class.

The term "Roman law" (*Jus Romanum*) refers to a legal order that existed in the ancient Rome, starting from the founding of Rome in 753 BC to the death of the Emperor Justinian of the Byzantine Empire in 565 AD. Roman law began as a legal system of a small town right on the Apennine Peninsula in the VIII century BC and initially it didn't differ a lot from the legal system of Greece. But as Rome began to expand and developed, it soon needed its own independent administrative and judicial structure.

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The history of Roman law can be divided into 3 major periods:

1) The ancient Roman Civil law - *jus civile* (from the emergence of the Roman state in 753 to the establishment of Magistrate, *Peregrine Praetor*, in 242 BC);

2) Classical or Praetor Roman law (from establishment of Peregrine Praetor in 242 BC to creation of The *Constitutio Antoniniana*, the Edict of Emperor Caracalla in 212 AD);

3) Post-classical law (from the Edict of Caracalla in 212 to the fall of the Western Roman Empire in 476 or till the death of the Byzantine Emperor Justinian I in 565 AD).

4) The reception of Roman law by national legislations of Europe (from the rediscovery in Bologna, North Italy, in XI century, following the spreading throughout Europe to the creation of national Civil Codes).

A.I.1. Ancient Roman law

The first ancient Roman law was called the Law of Quirites, named so after the ancient tribe. This name was used in different sorts of transactions, figures of speech, especially when dealing with property rights. This system of law was later named Civil law, emphasizing the nationalism of the rules, applied only to the Roman citizens. It was tied to religion and exercised conservatism and ritual practices. Civil law, in its narrow sense, was a national system of private law, bounded by regulations. In a wider sense, Civil law included all explanations and comments on civilian laws found in the Twelve Tables.

The first known Roman Codification of customary law was The Law of Twelve Tables 754–449 BC, created under the pressure from the plebs, who demanded the establishment of certainty in legislation. The main purpose of the Twelve Tables was systematization of many customs and laws that had already existed. The structure of the Tables was incorporating property rights, rules applying to legal proceedings, criminal and civil laws and some police regulations.

The Twelve Tables were constructed thematically: the first sections referred to the procedural codes, the fourth section contained the norms of family law, the eighth dealt with criminal law. The difference of the sections also manifested itself in a style of provisions: regulations of procedural forms, liability in tort as opposed to abstract rules

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governing the relationship based on the will of the individual (disposal of property and freedom of wills, freedom to modify the transaction).

The Twelve Tables became a model for following systematization of laws. They served as a base for establishing a certain order of written standards; it first recorded a concept of private property and legalization of slavery. Any encroachment on private property were punished by death penalty.

In this period, Roman lawyers made a distinction between *jus publicum* (public law) and *jus privatum* (private law). *Jus publicum* directly protected the interests of the state and its organs. It defined the powers of institutions and individuals, regulated by taxes; determined which acts were considered criminal and what punishment was in order. Public law included state, administrative, financial, land, criminal, military, and international laws.

Private law (*jus privatum*) contained the rules, governing the relationship between the natural and legal persons and protected the interests of individuals using the discretionary rules. It consisted of:

1) the right of property;
2) obligations arising out of a contract;
3) family relations; the right of inheritance.

Jus privatum included civil law and procedure, family law, commercial law, inheritance law and private international law.

Therefore, the Private law in ancient Rome consisted of the following elements:

- *Jus civile* (civil law) – the rights of all the inhabitants of the Roman community (otherwise called *jus quiritium*, meaning it applied to natives of Rome only).

- *Jus praetorium* (Praetor law) - the law created by praetors, judicial magistrates. Two praetors were appointed, the urban praetor (praetor *urbanus*), deciding cases to which citizens were parties, and the peregrine praetor (praetor *peregrinus*) deciding cases between foreigners.

- *Jus gentium* (law of nations) that served to regulate the relationship between the Peregrines (foreigners) and Romans.

Together, these three elements (*jus civile, jus praetorium, jus gentium*) made up three historical legal systems of ancient Rome, while the division of public and private

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laws has been widely recognized in both international jurisprudence and national legal systems of modern societies.

A.I.2. Classical Roman law

Along with the civil law, gradually developed another legal system - the Praetor law. This system of law appeared as a result of development of Roman economy, growth of slavery, concentration of trading capital and large amount of land property and slaves in the hands of the ruling class. The Civil Law applied to Roman citizens only; however, with the development of production and exchange and expansion of trade, it was necessary to recognize the fundamental individual rights of the foreigners too. It led to the development of another legal system called the Law of Nations.

At this time, contracts, not backed up by any legal recognition, based on the expression of the will of the parties only, received the protection of a praetor. If the transaction took place between Roman citizens, they turned to the Urban Praetor; in the event, when one or both parties of the agreement were foreigners, Peregrines, the case was reviewed by the Peregrine Praetor. After reviewing the case, a praetor ordered a judge to render a decision, if the facts stated by the plaintiff, were confirmed. Judicial powers were delegated to a private judge by a praetor in a special decree, a formula, so that the new type of court action was called "*per formulas*". Assuming the duty, each praetor issued an edict which declared the policy of his magistracy. Thus, the general provisions of the edict and the formula of suits, listed in it, had a certain stability over time, in contrast to the one-time decisions on individual cases - decrees and corresponding formulas. In a year, a new magistrate made changes to the edict of its predecessor, but in general, it wasn't fully rewritten. Despite having military authority and being able to force the execution of judgment, rendered on basis of his jurisdiction, the praetor's decision could not have been in conflict with the Twelve Tables and other laws. Thus, there was a strong need for some fundamental changes in the organization of civil procedure and for creation of a new legislative framework of praetor's activities. This happened in the second half of the II century BC with the adoption of law that unleashed reforms of judicial magistrate.

The main feature of the Roman public law during the period of the late republic was a combination of contradictory elements of aristocracy and democracy. By the 30s of the I century BC a new empire formed, in the shape of the Principate, since the republican

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regime no longer met the objectives of the Roman world power. The role of the senate weakened considerably, comitia disappeared and higher magistrates were elected for many years from the same circulating officials, the influence of the army on domestic policy increased and the role of the provinces and the provincial nobility grew.

Power of the Princeps (Emperor) became limited only by the Senate, since it regulated the passage of bills. The Public law clearly stated the rights, duties and functions of the administrative officials. All these changes led to the transition to the imperial regime instead of republican. Roman slave society consolidated under the authority of the emperor.

Civil law in the classical period flourishes in the field of interpretation of legal norms. An important achievement of the classical Roman law was the emergence and development of law of property and law of obligations. The Property Act advocated the absolute superiority of private property, which can be expressed in three types of relations between the owner and the item:

1) Possession (to actually have the item);

2) Use (use it as you wish);

3) Regulation (decide the fate of the item).

These relations were expressed in the 111 BC law about the transition of the land from the fund *agerpublicus* to private ownership. It was around the concept of private property that law of obligations, property and praetor laws were further developed. Bonitary ownership was stated in accordance to the praetor's edict, by the decision of the court, however it could also be expropriated by the state. The main achievement of the inheritance law was the development of the concept of succession and freedom of will of the deceased, so that any person could get or provide an inheritance. It created the conditions for growth and transfer of private property, the transition from hand to hand, which, in turn, led to the advance in commodity-money relations and even the emergence of commodity production based on slave labor.

At the same time, a modern analogy of rent emerges - the owner provided an individual, community or the state the right to use their possessions and received a fee, embodied in the contract. Further development of the system of claims, created some new types of legal actions to protect private property:

1) Vindicatory action - the right to claim their property from illegal possession;

2) Negatory action - the right to correct any interference with property possession.

Likewise, with the development of commodity production and commodity-money relations, written contracts became the main form to establish and formalize economic relations. The four main types of agreements were:

1) Real - transfer of or parting with property (borrowing, loan);

2) Verbal - verbal obligation (word of honor, a pledge before witnesses, etc.);

3) Literal - a written statement of liability, signature (receipt, imperfect obligation);

4) Consensual - implementation of the contract by equitable agreement of the parties.

Consensual contract was most widely used in sales, wills, donations, employment contracts. Contracts were very comfortable in terms of speed and simplicity of execution, they were precise in wording, which did not allow misinterpretation, and lasted for the whole duration of the action.

Many changes had also taken place in criminal law. A new concept of a crime appeared - *crimen*, an intentional misconduct to inflict damage to property or person. Moreover, there have already existed a concept of guilt and the presumption of innocence. *Crimen* was characterized as intentional, premeditated action, and was investigated by means of inquiry, interviewing witnesses and search for clues. The concept of "*corpus delicti*" included the intent of committing the act and criminal responsibility. A right for protection from violence of a criminal or slave before his formal arrest was exercised. Another important feature of judicial system of that time was the right to appeal against court decisions.

16 BC marked the creation of a new administrative structure - *praefectus urbanus*, the prefecture of the city of Rome. It was headed by a prefect, appointed by the Emperor, and he was responsible for maintaining order in the city. With his police-related duties he also had the duty of publishing the laws promulgated by the Emperor, and, as such, acquired a legal jurisdiction and judicial powers over criminal matters. In the II century AD Emperor Augustus established the post of praetorian prefect, a commander of special forces - the Praetorian cohorts, located in Rome. As the commander of all troops in Italy and the right hand of the Emperor, the Prefect became the highest court of appeal for civil

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cases, replacing the Emperor. His criminal jurisdiction under *Septimius Severus* spread around the whole Italy, with the exception of the City.

The Law of Emperor Augustus about court proceedings for individuals in 17 BC canceled the procedure *per legisactiones*. From now on, the unity of civil procedures - *per formulas* - required appropriate unification of legal institutions. In I century AD many transactions (contracts loans, securities) were recognized at the level of Civil law. Imperial injunctions brought significant changes in the strict Civil law, specifically, in the rights of individuals, family and inheritance laws and the sphere of contractual liability.

A.I.3. Post-Classical Period of Roman law

In February 313 Western Roman Emperor Constantine I issued the Edict of Milan, which put Christianity on an equal footing with other religions in Roman Empire, assured Christians of legal rights and returned their confiscated property. Constantine carried out a successful financial reform, improving taxation, divided administration and military, further enhanced the army and transferred the capital to Byzantium.

In historical and legal texts the changes in the Roman legal culture that took place in the aftermath of the III century, are described as "the rapid decline of law."[1] The main source of lawmaking in the IV-VI centuries was the legislative activity of the Emperors. The imperial constitutions bore the names of emperors only, without mentioning the names of jurists, involved in their creation. That reflected the weakening of the role of jurists in the law-making process. The statements of the outstanding representatives of the Roman jurisprudence continued to be taken into account when passing judgments. However, their usage became strictly limited. The Law of Citations (*Lex citationum*) of 426 recognized the validity of the views only of five outstanding jurists of the classical period: Ulpianus, Gaius, Paulus, Papinianus and Modestinus. Legal terminology lost its former clarity, accuracy, became uncertain and vague. According to Alan Watson, "This Law of Citations marks a low point of Roman jurisprudence, since the correct opinion is to be found by counting heads, not by choosing the best solution."[2]

The development of jurisprudence in this era was closely connected to the strengthening of bureaucracy, the flourishing of feudalism and decline of individual

[1] ДОЖДЕВ, Д.В., Римское частное право: Учебник для вузов, pg. 784
[2] WATSON, A., The Law of the Ancient Romans, pg. 91

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autonomy. Since the days of Constantine, when the main form of positive law was imperial constitution in the form of an edict, the work of Chancery had been losing its former efficiency; legal and linguistic forms of law became decidedly inferior to classical models. Jurists of that era did not have the intellectual independence as result of great credibility of the heritage of their predecessors.

The decline continued until the reign of Justinian, who aimed at revival of legal culture and legal education. He sought to restore the stability of the Roman state, including the codification of all law, both *ius* (law in general) and l*eges* (statute laws), to eliminate the contradiction between *ius vetus* (ancient Roman law, contained in the writings of the classical jurists) and *ius novus* (the new law, which consisted of the constitutions of the emperors). Due to the legal policy of Justinian and the carried out Codification of Law, European countries are in possession of preserved priceless texts of the Roman classical jurists and imperial constitutions.

Codification, which texts were later studied throughout the countries of Western Europe, started in February 528, when Justinian established a commission of 10 people, and already on April 7, 529, the compilation of various work on jurisprudence, nowadays known as *Corpus Juris (Iuris) Civilis* was promulgated. The work consists of three parts. The first one, *Novus Codex Justinianus* (Code of Justinian) included all imperial constitutions of I-VI centuries. It consisted of 12 books, 765 titles and contained 4600 imperial constitutions, starting with 117.

The second part, *Digesta* or *Pandectae* is a systematic collection of excerpts from the works of the most famous Roman jurists. This was the most significant and most extensive part of the Code. There are up to 9200 excerpts from two thousand works of 39 authors from I to V centuries AD. It consisted of 50 volumes, and represented all Roman laws up to that time.

The Commission, working on the Codex, had the right to make changes to the text, eliminating contradictions and adapting them to modern times. *Digesta*, as well as other parts of codification, received the status of the law. Justinian forbade to write any comments, allowing only translations into Greek.

Institutiones Justiniani (Institutes of Justinian) – the third part of the work, was a student's textbook of Roman law, intended to serve as an introductory six-month course for beginning students. The basis of the institutions were largely based on the

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Institutiones of Gaius, a Roman jurist of the second century A.D. Quite often there were links to the Laws of the Twelve Tables.

Institutes consisted of four books. In the first book, after the general characteristics of the system of Roman law and its sources, institutions of family law and certain categories of persons are determined. The second book examines the category of things, such as possession, ownership, wills. The third contains the law of inheritance and the law of obligations, including various kinds of contracts and quasi contracts. The fourth book studies obligations of torts, the system of claims, praetor's interdicts and state crimes.

Novellae Constitutiones (Novel or New Laws) was a private codification of constitutions issued after the completion of the Codification, carried out after the death of Justinian. Only three volumes survived. The first, written in 566, included 122 constitutions, the other two belong to the second half of the VI-VII centuries and contain, respectively, 134 and 168 acts.

The importance of Code of Justinian is paramount. It was an event of great historic significance, and, according to modern scholars of Roman law, it is the largest codification work of ancient times, and perhaps in the whole history of law, if we take into account its content and impact on the further development of the law.[3] In the Middle Ages, this Code became a foundation for the development of modern jurisprudence.

A.I.4. Reception of Roman law by national legislations

The start of the reception of Roman law is usually associated with development of industry and trade of medieval Europe that demanded better legal structure, when feudal customary law ceased to satisfy the demands of life. The reception took its first steps in the north of Italy in XI-XII centuries, due to socio-economic progress and development of commodity-money relations. Milan became a major center of handicraft production; Venice, Genoa, Pisa began to play the role of the World Trade Center, and Florence was the center of usury capital. Almost at the same time the handicraft production centers appeared in France. There was also the development of private property, and intensive trade relations demanded appropriate legal measures. Roman law had already contained an established norms of formalizing economic relations. Thus, learning Roman law in the universities, associated with the economic and cultural

[3] ЛАТЫПОВА, Д.Ф., Римское право: Учебное пособие в схемах и определениях, pg. 26

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development in some cities and became of utmost importance in the context of developing bourgeois relations.

The reception of a number of enactments of the Roman law was carried out sometimes on the direct orders of the popes, emperors and princes. But sometimes they showed open hostility towards Roman law.[4] The church was the earliest source of Roman law in the feudal world. Originating back in the times of the Roman Empire, Christianity adopted elements of the ancient culture. So, canonical law was formed under the direct influence of the Roman legal culture. Since the church school teaching was conducted in Latin, some manuscripts with the texts of the Roman laws survived and were preserved, which later made the reception possible. Christianity borrowed some Roman legal views and legal norms, which, of course, had been modified and adapted to the specific conditions of the medieval world; the interests of the church and features of Christian morality.

With the strengthening of its position, the church took control of universities. In 1220 and 1259 the Papal bullae against the teaching of Roman law were issued. At the University of Paris such teaching had been prohibited for a long time.

In the XV-XVI centuries, as a result of rapid development of commodity-money relations, growing economic and political power of the cities, the reception of Roman law received a new impetus, though it had both ideological and legal prerequisites. Thus, in the early Middle Ages, the attention to Roman law was strongly dictated by the belief that state formed on the territory of Germany and Italy, was the successor of the Roman Empire. Formal base for reception was the succession of power from the Roman emperors.

On legal grounds, reception was based on a ready form of legislation with working institutions and norms, regulating trade, and clarity of laws. The classical Roman law was largely free of national limitations, had already acquired the features of universality and was viewed as general, highest and scientific law. Secondly, the shortcomings of the local simplistic legal systems with archaic customary laws contained many gaps, ambiguities and contradictions. In general, it did not give adequate means to regulate new relationships.

The reception led to the fact that in some countries the Roman private law was in force, and in others – it significantly influenced the content of the national civil law. It was

[4] РОМАНОВСКАЯ, В.Б., КУРЗЕНИН, Э.Б., Основы римского частного права: Курс лекций, pg. 107

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extremely important, as it acted as a general rule for continental Western Europe as opposed to particularism (political disunity, fragmentation and the movement to isolation) of customary law that significantly differed from country to country. Therefore, the reception of Roman law created a single legal framework for the development of European trade.

Thus, in XVI century Roman law became the main source of law, especially civil, in all German courts. The provisions of Roman law was common to all lands. In some particular ways, Roman law had influenced the development of Common Law of England, especially on the development of legal doctrines on personal property law.

Many of the rules of Roman private law have been reproduced in the existing civil codes, such as French Napoleonic Code (1804), Austrian Allgemeines Bürgerliches Gesetzbuch (1811) and German Bürgerliches Gesetzbuch – BGB (1896.). Under the influence of Western European countries, the ideas and principles of Roman private law were adopted in XIX century Russia, firstly , by legal science, and then by the Russian legislation. As a result of the centuries-old process of reception of Roman law, the European continent formed a relatively uniform legal space, called the Continental Legal System.

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A.II. History and development of Common law

It is essential to study Common Law of England from the historical point of view, since English law tradition hadn't underwent evolution sui generis, influenced by the development of the Roman law and codification, which is characteristic of French law and other legal systems of Romano-Germanic subgroup.[5] Instead, it developed autonomously with only a minor impact from the continental Europe.

The history of English law can be divided into four main periods:

1) Anglo-Saxon period, which preceded the Norman Conquest in 1066;

2) Second period from 1066 until the establishment of the Tudor dynasty in 1485 - the period of formation of the Common law, when it became approved, overcoming the resistance of the local customs.

3) Third period from 1485 to 1832 – the flowering of the Common law;

4) The fourth period - from 1832 to the present day – the unprecedented development of legislation and adaptation to European influences.

A.II.1 Ius Commune of England – Anglo-Saxon Period

There is a date that is fundamental in the history of the English law, as well as in the history of England and Europe – 1066, a year, when England was conquered by Norman Invaders. A period preceding this date, can be called the period of Anglo-Saxon Law. Roman domination, although it lasted in England four centuries from Emperor Claudius to the beginning of V century, hadn't left a great imprint on England, no more than the Celtic period on France or Iberian period on Spain. For many historians of the English Law, the history of law began when Roman rule ceased, and the various tribes of Germanic origin - Saxons, Angles, Jutes, and Danes - prevailed in England. It was in this era, England was converted to Christianity in 597 with the arrival of St. Augustine of Canterbury, who established contact between the tribes and the Roman Church.

The results of such an act was of the great importance. The missionaries coming from the continent underlined in their teachings the value of monarchy, and the tendency towards larger national units, which resulted in the appearance of different kingdoms, ruled by kings who adopted European methods. Thus, they learned the Roman art of taxation, by dividing the land into units of equal assessment instead of equal area, calling them the

[5] DAVID, R.,BRIERLY J.E., Major legal systems in the world today: An introduction to the comparative study of law, pg. 287

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"hides". As a new class of the society was introduced, it called for the creating of a new law of status for their protection. Therefore, laws were written down "in the Roman style"[6] The Church had brought forward moral ideas that reformed English law, by introducing the concept of individual responsibility for actions as opposed to the whole group, allowing the Church to judge the act from the point of view of intention of the party who committed it.

The beginning of the English legal literature may be considered 604 A.D., when King Æthelberht of Kent issued the first written law to his people. "Dooms of Æthelberht" consisted of 90 decrees, covering issues such as interpersonal violence, rights and obligations, and the status of the king. Four centuries later, England, Norway and Denmark united under the rule of Danish King Canute, introducing a far more developed system of laws and marking a transition from the era of tribal community to feudalism. The Danes developed a sort of grand jury, a principle of free purchase and sale of land, and created various guilds.[7] Personal principle gave way, as in France, to territorial, but current law remained purely localized, even though the country was ruled by one sovereign. Therefore, prior to the Norman Conquest there was no law, common to the entire England.

A.II.2 Ius Commune of England – Norman Conquest

The greatest result of the Norman Conquest was the introduction of precise and orderly methods into the government and law of England. The Norse invaders, who had settled in Normandy, had made it the best-ruled state in Europe in a century and a half (911-1066), thus the conquered kingdom was to be introduced to the strong administration and orderly accounting and finance. William had been Duke of Normandy since 1035, and by 1047 had spread his influence and imposed discipline on his baronage. Being a devote Christian, he, nevertheless, insisted that the Church should not outstep its set boundaries, thus securing the control over its policy, namely the appointments of the higher dignities. He had also developed a financial organization, the "Chamber", and, though the duchy revenues were not high, there was clearly a set machinery to collect and control the deposition of the revenue.

The Norman Conquest is one of the most important events in the history of English law, as it has brought not only foreign occupation with strong centralized authority, but

[6] BEDE, Historia Ecclesiastica of England, pg.602
[7] VINOGRADOFF P., English society in the Eleventh Century, pg. 4-11

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also the experience of administrative management already in practice in the Duchy of Normandy. Following the Battle of Hastings in 1066, William settled upon the throne of England and began a string of reforms that forever changed the society and governance of the county. With the Norman Conquest the communal tribal era was over and England converted to feudalism.

English feudalism was very different from the feudalism that existed in the same era in France, Germany or Italy. Norman barons who followed William to England, found themselves in an unknown country, without any knowledge of its language or customs and traditions. They felt the need to regroup around their sovereign to protect their gains and their property. At the same time, the Conqueror was able to avoid danger posed to him by powerful vassals: during the distribution of land to his peers, William have not created a single major feud, and, therefore, skillfully eliminated any future rival to the throne of England.

In 1290 a law "*Quia emptores*" was passed, according to which only the king could grant land, which once again insured the direct dependence of the feudal lords on the king. An example of the medieval organization and discipline was reflected in the record of the Great Survey of England and some parts of Wales - "Domesday Book", written in 1086. The manuscript recorded 15,000 manors and 200,000 households, existing in England at the time. Its main purpose, however, was to ensure the rights of the King, ascertain the implementation of the fixed national-land tax – *geldum*.

Common Law, as opposed to local customs, a law universal all over England, didn't exist back in 1066. Instead, an assembly of free men, called the County Court, and its unit the Hundred Court, existing in every shire, executed justice based on local customs, using methods of proof that can hardly be described as rational. After the Conquest the county courts and courts of hundreds gradually crossed with feudal jurisdictions of manorial courts, such as courts baron and courts leet, that tried on the basis of common law with a strictly local character. Meanwhile, the ecclesiastical jurisdiction, established after the Conquest, applied canon law typical to all Christian countries.

After the Norman Conquest of England the royal courts didn't have universal jurisdiction. The King only exercised the role of "Supreme court". He intervened in the dispute in exceptional cases: if there was a threat to peace in the kingdom, or if the circumstances of the case were such that it could not be resolved in the County Court or

Hundred Courts. *Curia Regis* was the court where the king and his inner circle addressed especially major cases.

One of the most critical points in Common law history is the reign of Henry II, as it was a time of judicial and legislative reforms. During that time *Curia Regis* began to differentiate the responsibilities of various royal officials and their functions and procedures. There was a group of royal judges, which in King John's time permanently gathered in Westminster. The King's Bench and circuit session of Royal Court around the counties created and collected a base of precedents, some of which are used upon this time. The grounds for examining cases could be found in royal orders (*writs*), which enabled people to seek justice in the Royal Court as well as Hundred Courts and County Courts.

Another merit of Henry II was the introduction of the practice of accused providing twelve witnesses named by the jury, ready to confirm his or her claim. Since 1179 the Grand Court (*The Grand Assize*) allowed the landowner, whose property rights were challenged, to request a jury, rather than to protect their property in a duel. If the landlord chose the jury, twelve neighbors, who knew the facts, were to testify before the royal judges.

Another type of the jury, the jury of defense or prosecution was based on the Assize of Clarendon (1166) and the Assize of Northampton (1176). Twelve people, taking the oath, on behalf of every Hundred, had to "represent" their neighbors who have committed crimes.

Henry II turned the jury of Royal Court into a common practice, and by the end of the XII century it had become an integral part of the process in both civil and criminal cases. The King immeasurably expanded the role of the Royal Court, thus increasing power and revenue of the central government. He achieved a very significant improvement in the organization of justice and development of the country.

Despite Henry II's attempts to create a progressive administration, during the reign of his successor, the tyranny and iniquity led to civil war in 1258-1267 and creation of one of the fundamental constitutional acts of England – *Magna Carta Libertatum* in 1215, which is a precursor of current constitutions and constitutional acts, such as charters of fundamental rights

The development of feudal society in conjunction with the growth of trade and monetary relations, the emergence of new, cheaper and more profitable production

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methods resulted in inequality of the classes of the society. Part of the peasantry, town folk and small chivalry, was able to pay taxes and, thus, they tried to increase their income. Common interests, especially the hostility towards the conservative feudal way of life, brought those strata of society together, making them a threat to wealthy landowners and a serious political force.

The conflict found its resolution on June 15, 1215 with the signing of the Great Chart, which became a formal agreement between the king and the people. Several provisions of Magna Carta established limits of royal arbitrariness in relation to land holdings of the feudal lords. The long document of sixty chapters also defined the rights of the new committee, consisting of 25 barons who were to control the activities of the King. According to the Charter, the taxes were redistributed, judicial functions narrowed, including the abolition of court fees and elimination of juries.

Of particular importance in the Magna Carta is Chapter 29 that proclaims that: "No freeman shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." This and others Constitutional Provisions appeared to be the most resilient and formed the basis for the subsequent edited versions of the Great Charter, making it a strong constitutional document.

Starting from the rule of Edward I (1272 – 1307) up until the XVII century the common law was called *comune ley* in Norman dialect that was a spoken language of lawyers in England, while Latin remained the written language on the island as well as in the rest of Europe. Thus, French had been the official language of the court until the reign of the Tudors at the end of the XV century. Naturally, the same language was used in the crown court, gradually replacing the native dialect from the judicial sphere. Although later this trend was reversed and from the XVI century English language became common in courts, however only in 1731 (after a number of unsuccessful attempts made in 1362 and 1650), English was declared an official language, making French and Latin obsolete.

In the XIII century, as parts of the Curia, the autonomous entities, such as Commissions, exercising judicial power, developed, making permanent residence in the Westminster. The competence of these courts was limited, as they had to reckon with the lords who did not express readiness to obey the verdicts. The King's intervention in the

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affairs of barons and their subjects seemed unacceptable and contrary to the natural order, just as in our time, proprietors believe government's intervention or nationalization contradict the right of ownership. Royal Courts of Justice could not even administer justice in its appellate capacity with all disputes arising in the kingdom. The intervention of this court was sought out mainly in three categories of cases:

1) cases affecting the royal finances,

2) cases involving land and real estate,

3) felonies affecting peace of the kingdom.

At first, in these courts (Court of Exchequer, Court of Common Pleas and the Court of King's Bench) only specific cases of these three categories were examined, but soon the division of these competences disappeared and each of the three royal courts of the Westminster had the powers to address all the cases, falling within the King's jurisdiction.

All other matters were still reviewed by County Court and Hundred Court, feudal and ecclesiastical courts, and later, if need arose in various Merchant Courts, where the right to administer justice was granted in connection with various fairs and trading, and the International Trade Law - *Lex merkcatoria* or *Ley merchant* was implemented.

An increasing number of legal actions filed by private individuals who set the royal jurisdiction above any other, contributed to the expansion of the legal power of the Royal Court. After all, only the royal courts could really ensure the attendance of witnesses and enforce the rendered judgments. Only the King and the church could compel their subjects to take the oath.

Until the XIX century the Royal Court, however, had an exclusive jurisdiction. Individuals did not have the right to directly appeal to this court, instead they had to ask for the granting of such a privilege only if there were sufficient grounds. Usually the one who asked for this privilege, addressed the Chancellor - senior official of the Crown - and asked to issue a writ to the court to review the case. In addition, one could file a complaint (*quirela, billa*) directly to the court. Some writs were simply reflections of legal precedents based on complaints. Those procedures required a long time of consideration and the list of issued writs expanded very slowly. There were only 56 in 1227 in the first list compiled for judges' references and 76 - in 1832 by the time of the great judicial reform. However, the expansion of the competence of the royal courts didn't depend solely on the increase of grounds for lawsuits. It also did not directly depended on the law, called the second

Statute of Westminster (1285), which authorized the Chancellor to issue orders "in the case of similarity" (*in consimili casu*), that is, when the situation was very similar to that which served as the basis for issuing a writ. To expand the jurisdiction of the Royal Court *super casum* was used - a special preliminary document, in which a plaintiff detailed the facts of the case and asked the royal judges to take the dispute to consideration. Over time, the range of these claims increased and they got special names, depending on the factual circumstances of the judicial inquiry: a damage claim as a result of obligations default, the claim to terminate the illegal possession of property, etc.

A.II.3 Ius Commune of England – Tudor Era and the flourishing of Common Law

After the rapid development in the XIII century, Common Law yet had to face its greatest challenges, namely the risk of formation of a new rival legal system, which after some time could have even replaced the Common law, just as in ancient Rome, the classical civil law was substituted for *jus praetorium*. In England, such a possible adversary was the Law of Equity.

The limited power of royal jurisdiction could still be tolerated, when, along with the courts of Common law there were other courts, capable of solving the case if Common law principles couldn't be applied. The deterioration and later the disappearance of those courts made it necessary to search for new adjustments, designed to fill the gaps of the Common Law system.

Therefore, starting from the XIV century, individuals, unable to reach a solution in the Royal Court, or in case of dissatisfaction with the pronounced decision, could appeal to the king and ask him to intervene. That address was usually passed through the Lord Chancellor, who was the King's Secretary, and, therefore, liable to pass the complaint to the King, who later introduced it to the Council. However, with time, such appeals had lost its exceptional nature and became a regular procedure of appealing the decisions of courts, and even allowing to partially or fully circumvent the Royal Court.

Tudor absolutism in the XVI century was based on the extensive use of the royal prerogative. The Court of Chancery became more prominent and dealt with the cases Common law was unable grasp. In the field of criminal law, the famous Court of Star Chamber was a serious threat to the freedom of subjects, though at first it was intended only to establish order after the Civil War.

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Following the aftermath of the Wars of the Roses, it became difficult for the King to make decisions in the Council, while at the same time, the Lord Chancellor was becoming a more independent judge, who alone was making decisions on the cases on behalf of the King and Council that delegated him the authority.

After 1529 the Chancellor was no longer just a Secretary of the King, but more often acted as a jurist and dealt with complaints, addressed to him, like a judge, but did so in a written manner, borrowed from Christian law, that strongly varied from the procedures of Common law courts. The principles, applied by the Lord Chancellor, also had largely been borrowed from Roman law and Christian law that aimed to satisfy the feeling of social fairness of the Renaissance. The Chancellor also benefited from individuals not having a jury trial, unlike the Common law public and transparent procedure. Thus, in the XVI century the English law had almost adopted the European legal frame. There was a serious risk that the parties would not apply to the courts of Common law and the courts would completely disappear, as well as three centuries ago disappeared Court of Hundred, since the Westminster Courts advocated new better forms of law.

The fact that this didn't happen could be accounted to the contradictions between the courts and the Royal power. Common law courts had found an ally in Parliament in the struggle against royal absolutism. The poor organization of the court of Lord Chancellor, its complexity and corruption had also been used as a drawback. The revolution, which could have turned England to the Roman legal system, has not occurred. As a result, a compromise was reached and both the Common law courts and the Court of the Lord Chancellor came to share a certain balance of power.

Since 1621 the decisions of Lord Chancellor had been monitored by the House of Lords, which allowed the interference of Lord Chancellor in the Common law cases based on precedent. For all these reasons, the British legal system retained a dual structure even to this day. Along with the norms of Common law that has developed in the run of the Westminster Royal Courts, English law includes the rules of Equity Law, which make additions or amendments to the Common law. Up to 1875 the rules of Equity Law were applied only in a special court –the Court of Chancery. But over time, the differences between those rules were erased and in the XVIII century those two laws were developing quite harmoniously, without any apparent conflicts.

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At the same time, in the second half of the XVIII century Commercial law (*Lex Mercatoria*) had become a part of Common law. Until that time, Commercial law in England was seen as a foreign body, and, like any international law, it only applied to merchants. However, the special commodity jurisdiction of the past has slowly lost its autonomous character. This evolution was fully completed in the second half of the XVIII century, when England unified law, and commercial law institutions have ceased to be the privilege of merchants only.

A.II.4 Ius Commune of England – Modern Era of Common Law

The period from 1832 up to the XX century was characterized by a significant transformation of both a state mechanism and the legal system of the UK. At the beginning of this period fairy radical legal and judicial reforms were conducted. Just as it took place in the XIII and XVI centuries, XIX and XX came to be known as the age of significant transformation of Common law. This period is characterized by the development of democracy and, under the influence of the works of Jeremy Bentham (1748-1832), also the development of legislation. Bentham advocated two basic changes in the legal system: 1) in order to achieve the greatest happiness for the greatest number, legislators—rather than courts—should make the law; and (2) the aims of law should vary with time and place.

In 1873 - 1875 the organization of courts was also significantly modified. The Judicature acts eliminated the formal distinction between the courts of Common law (curia regis) and Court of Chancery (equity court) and fused common law in a narrow sense and equity by making available legal and equitable remedies in all divisions of the High Court and by providing that the equitable rule should prevail when conflicts arose. Common law and Equity nevertheless preserved their separate identities, partly because of the different subject matter with which they often dealt and partly because lawyers persisted in maintaining the distinction.

The modernization that started in the late XIX century continued on into the next century. In the early part of XX century, it could be asserted that there was no public law in England in the sense of a set of rules, regulating the administration of public affairs, which differed from those operating in the private sphere. Beginning with the regulation of local government in the first part of the century and marked by famous if ineffective challenges to the powers exercised by the executives during two world wars, a body of public-law remedies was slowly developed to challenge the executive's freedom to act.

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Their distinctive features were given greater clarity following the United Kingdom's entry into the European Economic Community in 1973. Within the EU a range of remedies, largely modeled on those created by the French administrative courts, served to hold institutions of both the EU and national authorities, to account for acting in excess of the powers, granted to them by the constitutive treaties of the Union. By the 1980s it was being said that a new branch of English law had been created, though by the early 21st century it was rather perceived that a process of assimilation of wider European ideas into the English Common law was developed.

The Human Rights Act of 1998 marked an important change in the orientation of the Common law away from a law of duties and toward a law of rights. The act effectively made the provisions of the European Convention on Human Rights a matter of domestic law, enabling the English courts to give relief in cases that otherwise would have to be taken to the European Commission of Human Rights or its court, the European Court of Human Rights. The right to protect life has been held to permit courts to disguise the identity of both witnesses and the accused in extreme cases but, on the other hand, has not been extended to cover a right to take one's own life, so as to limit the liabilities of those who may assist in the suicide.

The central concept of the Common law is a precedent. Even though a Statute is superior to a precedent in the sense that it can cancel it, it does not mean that a precedent is secondary in nature. The peculiarity of the Common law is that the law is implemented through the precedents. Before becoming the current act, it should undergo the necessary injunctions. There were a number of cases, where the Statutes were ignored by courts or misinterpreted in favor of a precedent.

England does not have a written constitution. What is commonly called the British Constitution is the sum of laws and principles, designed to limit the arbitrary power and ensure the rights and freedoms. A law, according to the classical doctrine of the English legal system, plays a secondary role by making amendments or additions to the judicial practice. However, nowadays laws and bylaws play the same role as similar sources in the Continental law.

The problem of the relation between a law and a precedent in England is very peculiar. Externally, it is easy to solve - the law may cancel a precedent, and in case of a conflict between the two, the priority is given to law. However the greatest role is given to

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judicial interpretation of the law, the rule according to which the legal authority is bound not only to the letter of law, but also to the interpretation which can be found in previous court decisions, referred to as "the precedents of interpretation."

Legal Doctrine takes a special place among the sources of Common law. Some literary works are well recognized and used in solving specific cases in comparison to Continental law, where they cannot be an independent form of expression and consolidation of legal norms. The significance of these sources in Common law is not so much in the theoretical opinion of the author, as in provided examples of precedents cited and analyzed. For example, one of the most authoritative source is a 13 volumes of law report, known as “Institutes of the Laws of England” by Sir Edward Coke that is cited more often than any other collection of precedents. Thus, a source of Common law is not only a legal science and theoretical concepts, but also legal comments, descriptions of cases, designed to serve as a practical guide for lawyers.

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BI. The Law of Property in Continental Law and Common Law

Property law is one of the fundamental concepts of economic and social theory. Legal historians distinguish two main traditions in defining property rights - Continental and Common. The first considers it necessary to concentrate all property rights on the object in the hands of one owner, considering the cases of the distribution of powers among several persons as feudal vestiges. The epitome of a classic continental property rights document was Napoleonic Code, where private property was declared not only "sacred and inviolable", but also "unlimited and indivisible." In contrast, the Common legal tradition has kept many institutions of feudal law, allowing, in particular, the possibility of fragmentation of ownership of any object between few individuals. If the Continental tradition represents ownership as something lone and indivisible, the Common tradition views it as a set of partial powers. Undoubtedly, the second tradition is more flexible and realistic. Unitary and indivisible right is an ideal design, but in real life some powers always engage in a variety of combinations. Splitting the right to partial competences is a normal practice, and it would be wrong to regard it as evidence of the erosion of private property.

The question concerning the origin and development of the real estate appeared in the days of the Roman state. Already in that period the division of property into movable (*res mobiles*) *и* immovable (*res immobiles*) could be found. Romans included land plots (*solum*, *fundus*, vast areas - *latifundia*, *campi* and small areas – *praedicia*, *loci*) into the concept of real estate. The lad plot contained land itself and everything that cannot be separated from it without causing damage. Moreover, buildings, fields, plantations were considered only as a single unit together with land, and a fundamental principle was put forward: *superficies solo cedit* - made on the surface follows the surface. Therefore, regardless of by whom and at whose expenses the facility was built, it had always been the property of the owner of the land.

In the Middle Ages in Western Europe public forms of land-turnover began to develop. A special legal administration of real estate was determined by unity of private law and public authority over certain territories. Differentiation in the time had gone so far that it was impossible to speak of movable and real as two types of the property, rather it treated them as two completely separate categories - *Liegenschaft* and *Farniss* - subjects to the action of very different legal regimes - *Immobiliarsachenrech*t and

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Mobiliarsachenrecht. Such a strict distinction was characteristic of the legal systems that haven't yet abandoned the feudal inclinations, such as the pre-revolutionary Russian law. However, the brightest example is the Common law that still separates personal property, which is mounted on movable property and real property, with its tenures though the crown has a formal recognition of the property.

B I.1. Real estate in Russian legislation

In Russian legislation the term real (immovable) property has appeared relatively recently. The first appearance of the term "real property" in Russian legislation is associated with 1714, when Peter I signed the decree "On the order of inheritance of personal and real assets" (the Decree on Primogeniture) which secured the possession of land by nobles and equalized in rights of the owners of estates. Before the adoption of the Decree on Primogeniture the land had special names, depending on the origin of the right of the owner or its type (ancestral lands, estates, yards, plowing land). After the adoption of the Decree these names have lost their specific meanings and the difference between them was smoothed.

It is considered that in the Soviet civil law a category of real estate was not defined. Thus Article 21 of the Civil Code of 1922 stated: "With the abolition of property in land, the division of property into movable and immovable is abolished."

The Russian Soviet Federative Socialist Republic Law "On property in the RSFSR" of December 24,1990 had used the term "immovable property" for the first time in modern Russian legislation, thus, restoring the division of things into movable and real property. The description of property was given in the Fundamentals of Civil Legislation of 1991. In Section 2, Article 4 property is defined by the land and all that is connected to it, that is, buildings, constructions, enterprises, and other property complexes. Furthermore, the movables and immovables were characterized through their opposition. An essential feature of movables in that norm was the ability to move a thing without any damage.

Thus, in accordance with Article 130 and 132 of the Civil Code of Russian Federation real estate can be defined as follows:

- Objects, impossible to be moved without causing damage to their purpose and use: land plots, isolated water bodies, forests, perennials, buildings, structures and other objects firmly connected to the ground;

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- Things that are not "unmovables" in the truest sense of the word, but are referred to as real property as directed by the law, since they need to have a special state registration: air and sea vessels, space objects, enterprises as property complexes.

Movable property is recognized as all the other things not related to real estate, including money and securities (see Appendix A).

Real property, being a complex phenomenon governed by civil law, is characterized by diverse properties. As a consequence, it involves multiple classifications of real estate depending on the selected classification criterion.

By ownership immovable property is divided into:

1) Private, that is owned by citizens (natural persons) or owned by legal entities;

2) Public that is owned by public entities. In turn, public property includes:

- Objects that are in federal ownership;
- Objects owned by subjects of the Federation;
- Objects that are owned by municipalities;
- Objects of mixed ownership that are located in the joint ownership of different subjects of Civil law.

Considering the purpose of the property, buildings and structures can be divided into housing (real estate in the housing sector) and non-residential fund. The real estate is designed to meet the residential needs of people, the non-residential property is generally used in order to generate income, that is, the implementation of business activity (industrial, commercial, agricultural, etc.). This classification is relevant to the turnover of immovable property. Often entrepreneurs are interested in turning real property of housing stock to the interests of business. Because the law prohibits the use of housing premises for commercial purposes, there is a problem of transferring it to non-residential fund. Currently, this problem is solved in the Housing Code of the Russian Federation of December 29, 2004 № 188-FZ, which contains Chapter 3 “Transfer of premises to the non-residential premise and non-residential premise in premises”.

According to the origin real property can be classified as: things that are naturally created (earth, land, isolated water bodies, forests), and the things that have been created by human hands (buildings, air and sea vessels, inland navigation, and space objects).

Considering physical characteristics of real property, it can be divided into:

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- Land;
- Subsoil areas;
- Buildings;
- Structures;
- Premises;
- Other objects, which relocation is impossible without damage to their purpose;
- Facilities as property complexes used for business purposes;
- Movables, which are classified as property by operation of law (air and sea vessels, and space objects).

According to the nature and purposes of use in public circulation (on the principle of zoning) real property can be classified into:

- Real estate, withdrawn from civil turnover;
- Property, partially used for civilian purposes;
- Real estate used for housing;
- Property used for business purposes;
- Property used for agricultural purposes;
- Property used for the public purposes;
- Property with the status of historical and cultural landmarks;
- Property, referred to as nature reserves.

This classification is of great practical importance. The use of real property other than intended could result in sanctions or its confiscation. To use real property at the will of the owner, one must bring its legal regime in line with the objectives of the use.[9] For example, to use the premises for business purposes the transfer to the non-residential premises mode is needed.[10]

For effective management of the property and transactions with real estate, qualitative and quantitative information of four types must be provided:

• Physical characteristics of the land, buildings or other real estate (location, area, size, etc.);

• Property and legal description - property rights, restrictions, encumbrances, servitudes;

• Economic indicators of demand - cost, price, yield, etc. .;

[9] ДРОЗДОВ, И.А, Понятие и признаки жилого помещения, pg.15
[10] ГРИШАЕВ, С.П., Нежилые помещения как объекты гражданского права, pg.40

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• State of the environment - climate, ecology, noise, seismic activity, hydrography, transportation, etc.

This information is collected at three levels: regional, local and at the site of the real estate.

The principal differences between movables and real property are that all the rights on real property are subjected to registration and only after the registration a person will be able to acquire the rights to property. In accordance with Article 131 of the Civil Code the right of ownership and other rights connected with real property, restrictions on these rights, their origin, transfer and termination are a subject to state registration in the State Register of Rights.

With the adoption of the Federal Law "On state registration of immovable property and transactions with it" of 1998, began a new stage in the development of legal regulations of property. The law defined the meaning and legal consequences of registration, established the basic principles that determine the order of registration and the reasoning for the decision-making by the registering authority. However, the adoption of this law has not completed the process of creating a legal framework for property rights registration. The actual content of the Law on Registration proved that, on the one hand, it was focused on a transition from the application of certain of its provisions to creating a system that fully satisfies its contents, but, on the other hand, it called for the adoption of a large number of regulations, defining the mechanism of practical implementation of more general rules of this law.

The main objectives of the state registration are:

1) to protect the rights and legitimate interests of the owners and holders of other rights to real estate;

2) to ensure legality, reliability, open civil turnover;

3) to ensure transparent and reliable confirmation of rights to real property;

4) to create an effective governance mechanisms of real estate market;

5) to implement a fiscal function of the state in terms of ensuring revenue flows from operations, the subject of which includes real estate;

6) to secure the real estate market through the prevention and suppression of crimes and offenses in this area.

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Real estate transactions are subjected to state registration only in cases prescribed by law. The participants of the contract do not have the right to set or cancel the state registration of the transaction.[11] As a rule, the legislator considers sufficient to use one of the forms of state registration: rights or transactions. Only in particularly difficult cases, when it is needed to carry out state control over both a transaction and transfer of the rights to it, the law provides the registration of both. Such cases include registration of the contract and the transfer of ownership, in agreement of sale and purchase of residential premises or enterprise, in contract of exchange of these types of real estate, and in a deed of gift of real property.

With the development of market relations and changes in the economic life of Russia the real estate market began to actively develop and, therefore, the need for a unified procedure of registration of real estate arose. Consequently, the law introduced a mandatory state registration of any of the rights to real property, carried out by marking data on real property and transactions with them into the State Register of Rights, which is common to the whole territory of Russian Federation.

BI.2. Real estate in the countries of Common Law

In Common law tradition all the property has been divided into real property and personal property. This division has been connected to various forms of claims: real claims protected ancestral property and rights to the free holding of land, a fief from the king or other lord. This included the right to a feudal title. All the other things were protected by personal claims.

English law does not provide a legal definition of property rights. To date, all the land in England is recognized as the property of the Queen, and the individuals are regarded as holders of land.

In practice, however, this right does not differ much from property rights in the countries that adopted the Roman law tradition: it is of indefinite duration and establishes the possibility to use the property and alienate it without any authorization from the Crown. The transfer of rights to the land requires complicated formalities.

In English law, property is divided into two main classes - freehold and leasehold. Freehold is a type of property, the ownership of which is not limited (either in time or as

[11] КИНДЕЕВА, Е.А., ПИСКУНОВА, М.Г., Недвижимость: права и сделки, pg. 165

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anything else), while leasehold is rental properties. Freehold, in turn, is divided into 4 types:

• Fee simple - means unlimited (absolute) ownership that is inherited. In this case, the owner has the maximum of the rights and privileges in respect of their property. The owner can devise it, sell or donate it. The heirs in possession of such property are free to use it as they see fit.

• Fee tail is a limited ownership. The owner of this property can neither sell nor in any other way put it into operation. The owner possesses the property during his life, and after his death it is passed to the heirs.

• Life estate. This property is in the life tenure, which is limited to a term of a life of the owner (called the life tenant) and it does not go to his heirs. Such property can be sold, but the new owner will only possess it as long as the original owner is alive.

• Pur autre vie is ownership of the property, limited by life of a third party. This is a special case of life estate, when the owner of the property is limited in the time of his possession for a period of life of another person. That is, if A bought a property from B, who owned it under the terms of life estate, then the ownership of the property A is pur autre vie.

In addition to these concepts in real estate there are still two important terms - remainder and reversion. A remainder is interest in land that comes into effect in possession only when prior interest ends, that is, the right to property, comes into effect only upon termination of a previous right, the subsequent (expectant) property rights. A person endowed with such right is called remainderman. Thus, if A transfers property to the life tenure of B, specifying that after the death of B, it will be passed onto C, then C will be a remainderman. Reversion is the transition of property rights to the original owner. It takes place in the event that the owner of property (reversioner) has transferred certain (but not all) of their rights to it to another person for the lifetime of the latter (e.g., leased). After the death of the tenant the rights to the property comes back to the original owner.

The USA law, throughout history has been composed of certain important legal institutions - corporations law, contract law, property rights, and so on. The regulation of civil law relations is mainly within the competence of the individual states, whereas, some states (California, Montana) adopted civil codes. The legal techniques with some modifications are borrowed by the legal system of the United States from the English Common law.

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California Civil Code of 1872 states that all property is divided into real and private. Real estate doesn't only include land and buildings on it, it also encompasses benefits, interests, rights (such as right to drill the ground on the property, right to acquire property in the future), and everything that is connected to the land or is considered of its origin like vegetation and *fructus naturals* (trees, undergrowth, perennial grasses).

The real property law in the USA deals with various legal issues, such as sale and purchase of property, transfer of legal title to the property, rental and landlord issues, property development, mortgages, rights of tenants, owners and renters. It also can be characterized by a system of registration of transactions. Virtually all states have passed a law to establish a special procedure for registration of transactions, involving the transfer of ownership of real estate. The provisions of these laws are not uniform, but as a general rule they establish that the unregistered conveyance of real estate is void.

Some states have enacted laws that require preparation of acts of transfer of rights to immovable property. There are two kinds of documents serving this purpose: documents on the formal renunciation of the right (quitclaim deed) and documents of guarantee (warranty deed).

Most of real estate transactions are performed through real estate brokers, who are professionals with a license and a commission, percentage of the price of property sold. Brokers usually have written contracts with their customers and the content of those contracts, as well as commission they get, can be changed through negotiations. A broker must pass special tests to be licensed. The main operating principles for brokers are ethics and honesty.

The contract between the broker and seller is called a listing agreement. The agreement may be either open, where brokers earn a commission only if they find a buyer, or exclusive, in case they are the only agents getting a commission for finding a buyer. Brokers lead their entire transactions, find the suitable property that they show a potential buyer or present a client with a list of the property on sale. They often have access to computer lists of all sold properties and can, thus, quickly identify what property is most appropriate to the customer.

Thus, having the same historical roots, the system of real property rights in England and the United States have noticeable differences. If in England there is a system of registration of real property rights, the United States uses a special system of records

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(recordation), supported by the so-called contractual guarantees of property (deed warranties), as well as the insurance of its titles (title insurance).

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BII. Case study – The Procedure of buying a flat in Russia and the USA

This chapter is devoted to the practical application of property law in a continental jurisdiction according to a national law following the continental law tradition and in a common law jurisdiction according to a national law following the common law tradition. The purpose of the case study presented in the work is to understand all the specifics of dealing with real estate transactions in two legal traditions and determine which one of the legal systems makes the process faster, easier and more secure. To meet the objectives of the study a questionnaire was conducted. The questionnaire consisted of 12 questions that touched on all the aspects of the real estate acquisition and are the first and foremost questions a person would ask upon deciding to buy an apartment (see Appendix B).

The respondents of the questionnaire were the two professionals in the area of real estate with years of experience and numerous closed deals, representing the legal systems of the USA and Russia. They were asked to share their practical knowledge and give a professional advice on how one can securely procure a 3-bedroon apartment.

According to the results of a questionnaire, the first step after finding a proper apartment and getting an acceptance from the seller, is to check that all the documents are intact and the flat is in suitable condition. In Russia, the list of documents and forms that are necessary for the transaction is very precise. Since not all the transactions are made with the help of the realtor, it is important to know what information must be provided in different instances. Those documents are:

- Documents of title (agreement of sale and purchase/ gift/ exchange, privatization, Certificate of Right to Inheritance by Operation of Law etc.);

- Registration documents – A Certificate of State Registration of Property Rights. In case of shared or joint ownership one would need a consent of all owners of an apartment for sale. If the owners of the apartment are minor children one would need a permit of Child Protective Services for sale of an apartment (Order of the district administration). If the owner is disabled or mentally incapacitated the need for consent of guardian (if any) arises, however, in cases that the incapacitated is in a mental institution, the representative of the facility can give a consent to sell per procuration. In the event the seller has bought an apartment in marriage with agreement of sale or agreement of

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participation in shared construction, it is necessary to clarify the presence of spouse's consent to sell the apartment or the existence of the marriage contract;

- Technical documents (cadastral certificate), technical certificate or its verified copy. These documents are necessary to know if the apartment was redeveloped, and if it was, the legal documentation should be provided.

At the time of the transaction the seller is required to present an extract from the house register, which would ensure that no one is registered in the apartment. The seller also should present an account statement from the electricity company, confirming that at the time of the transaction, there is no debt for electricity and an electric meter satisfy all the requirements.

If the apartment is in mortgage one should clarify in legal form the amount of the debt, the order and timing of removal of encumbrances. In case when there is a need to issue a deposit (advance) in preliminary contract, it is necessary to clarify the terms of the preparation of documents to the apartment; whether or not there are any restrictions (encumbrances) by means of ordering a statement from the State Register of Rights in the Office of the Federal Service for State Registration, Cadastre and Cartography.

In the USA a close attention is paid to the state of the apartment before the purchase. There are several things to be aware of before buying the apartment, such as the real estate market, the competition, the neighborhood. In the Common law system a lot of attention is given to making a buyer or seller as comfortable and satisfied with the deal as possible, thus, the brokers try to give as much information to the buyers and what to expect from the transaction as possible.

The overall and technical state of apartment is also of great importance. The first things that should be done before finalizing the deal is to perform and accept the results of a contractor’s inspection of the property. If there are any problems, one reserves the right to withdraw from the offer and still get the deposit back, or, if a person still wants the property, he or she asks for a credit on the purchase. This contingency is usually to be performed and removed within ten days of final acceptance of the offer.

Another contingency is a radon test that is either removed or opened up for negotiations, by signing boilerplate forms. Also the buyer’s attorney should approve the contract language within 10 days, while the seller is also granted attorney approval of the

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contract language. Pest inspection contingency is very important and lack of one can result in drastic consequences.

The attorney approval of the title work is to be removed within three days of receiving a copy of the updated title work that usually takes three or four weeks to receive, which will reveal any and all liens on the property, or issues with property lines, etc. At closing, the owner will have to fill out a form guaranteeing that there are no liens placed on the property within the last six months, and, if some turn up later, the seller must pay them.

The financing contingency is rather important, if obtaining a mortgage. One must present the seller a copy of a 'pre-approval' letter from a bank. The financing contingency can take two to three weeks, or a month to approve, the bank has to get an appraiser to see if it is making a safe loan. If the property does not appraise for the agreed price the deal can fall apart.

Thus, in terms of time, finalizing the deal in the US is a long process, requiring the involvement of many competent authorities, especially the procedure of title search, since it usually takes three or four weeks for the title company to come up with the paper work. In Russia the whole documentation can be prepared faster, depending on the willingness of the person to pay more for quicker resolution. Therefore, the property registration lasts up to 10 working days, the mortgage transaction takes 5 working days. Cadastral registration, correction of technical errors in the cadastral certificate can take 10 working days. The preparation of the technical documents of the Bureau of Technical Inventory (the plan of the apartment, technical certificate, delimitation plan) takes from 1 to 30 working days, though the time can be reduced at extra charge.

To settle a transaction of buying an apartment in Russia, a purchaser must have a valid passport (not expired) and Insurance Number of Individual Ledger Account. If the buyer is married, and the apartment is purchased as sole ownership, he or she must have a consent of the spouse. If the apartment is purchased for children, one should have a child's birth certificate and Insurance Number of Individual Ledger Account (for children to 14 years) and, for children from 14 to 18, a passport, Insurance Number of Individual Ledger Account and their presence for signing documents on the deal with parent acting on their behalf.

In cases, when a foreigner wants to buy property in Russia he or she would require to present a translation of the passport certified by a notary with valid Russian visa and a

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certificate of registration on the territory of Russia. Only a legal stay permit entitles a person to acquiring real property. Legal permit for residing in the territory of Russia can be a residence permit or a temporary residence permit, a visa or immigration card. All documents should naturally be valid.

In the USA one must be a US citizen, a US legal entity incorporated or a foreigner satisfying special regulation such as Foreign Investment in Real Property Tax Act, to buy property. Among the documents a buyer should provide for the transaction are tax records to the bank, proof of current employment to the bank and title company. The procedure is also less complicated and tiring to the buyer, since the brokers do most of the work, with some help from the seller's agent. The buyers have to deal with the bank, though, and be on the property during the contractor's inspection.

In Russia a purchase of real estate is carried out by individuals in the Office of the Federal Service for State Registration, Cadastre and Cartography (in urban branches or district areas), or a deal can be issued in Multifunctional Center (MFC). One must provide the following documents to the office worker: a valid passport (birth certificate for children to 14 years), Number of Individual Ledger Accounts of all the parties to the transaction, documents of title to property sold, if necessary consent of the spouse, if necessary the permit of Child Protective Services, refusals for common property with neighbors (during the selling of studios, rooms in apartments etc.) The receipts for a state duty payment are given at the document acceptance office. The cost if one purchases the registration of ownership of one property (flat) is 2000 rubles (30.46 EUR), if a person buys a house with land – 2000 + 2000 rubles respectively. If there are two or more buyers than the sum is divided between all customers equally, regardless of age. The officials prepare statements on the alienation of property rights for sellers and on the registration of property rights for buyers. After all receipts are paid, the agreement of sale and purchase is signed by both the buyer and the seller. Upon completion of the transaction the official gives the participants transaction receipts with specified date of the completion of registration, which takes 7 working days.

The similarity between two legal systems in the process of purchase is that in both countries, the owner doesn't have to provide information about the history of the apartment or any criminal activity, connected with it. However, in the USA a sellers should disclose what appliances stay with the property, such as dishwasher, dryer, fridge, etc. and in what

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working condition they are in. The mandatory point of the contract is a lead base paint form, where the sellers have to tell what they know about any lead-based paint in their home.

Another interesting point is whether the seller can pull out if he or she gets a better offer. In the US it is possible only with the opened up contract for removing a contingency, but even then, it is more of a failsafe policy. In Russia, there is a preliminary contract (contract of intent), which specifies all conditions including the procedure for termination of the contract, thus, all the obligations and rights of the parties are reinforced by law.

Tax deduction from the purchase of the property is significant in Russia, since if the sum from which you can get a tax deduction is 2 million rubles (30164.83 EUR), or rather when buying real estate for the price of 2 million rubles, the amount returned is 260000 rubles (3921.43 EUR), in the event that citizen has paid taxes (13%) in the same amount in the year of purchase of real estate. In case, the amount of tax was lower, a person should file a declaration in the following years, until the whole amount (260,000) will not be covered. If a citizen does not pay taxes (retired, informally employed) there would be no tax deduction. To obtain a tax deduction in the tax office at the place of registration one needs to provide his or her tax returns with an attached receipt for the sale of the property, the agreement of sale and purchase of the property, testimonial of employment, PIT for the year when the property was acquired and a bank account statement. The declaration is filed at the beginning of the year until April 1. In the US this practice is absent. One might only be able to deduct some of the interest on the mortgage on the income tax, or get a credit for the property taxes one pays.

The last point in the questionnaire dealt with title and the importance to have a clean title to the flat. While it is of outmost importance in the USA, since it would ensure the ownership of the property and prevent different, even minor troubles, in Russia there isn’t any difference in the form of property, ownership can only affect the order of registration of the parting with property. Third parties are not participating in shared or joint ownership, except for the creditors, who impose encumbrances on the parting with property (a laid down apartment cannot be sold or gifted until the debt to the bank is repaid).

Therefore, it can be concluded, that the same procedure is conducted differently in the representatives of two different legal systems. Despite some similarities, the

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Continental system is more contract oriented, where each right, obligation, liability finds its reflection in a written agreement that cannot be broken. The Common law system is more client oriented, where mutual respect and desire to satisfy prevails.

The role of the real estate agents also differs drastically. While in Common Law they are the ones who carry out the transactions and deal with all its aspects and carry the legal liability for it (and related insurance), in Continental law they are more of the advisors, while the buyers and sellers are the active participants of all legal procedures. Thus, it can be suggested that a Common law purchaser in good faith and using a real estate agent and demanding appropriate disclosure is in a much safer and predictable position than a Continental law purchaser.

Addressing the time frame, it's suffice to say that the Continental system is oriented on clear fast resolution, the bureaucratic machine is very well developed and only requires the presence of all the documents intact, while in Common law system, which is more people oriented, the time frame is not so clearly established. However, in practical life delays are not common and the mutual interest to complete the deal as soon as possible works very well in this respect.

Last, but not least, the Common law is much more evolutionary than revolutionary and thus subjects of Common law can rely on a stable and consistent regulation, of real estate deals and even in general more, than subjects of Continental law. Considering the lack of abrupt changes and the use of agents, a Common law purchaser does not need to be as vigilant about law evolutions and amendments as a Continental law purchaser. Hence, the legitimate expectation concept intensively proclaimed by the EU seems to be much closer to Common law and real estate deals in the USA and in the UK, than laws and situations in other EU member states.

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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.

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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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Appendix A

The Civil Code of the Russian Federation

Chapter 6. The General Provisions

Article 130. The Movables and the Immovables

1. To the immovables (the immovable property, realty) shall be referred the land plots, the land plots with mineral deposits, the set-apart water objects and everything else, which is closely connected with the land, i.e., such objects as cannot be shifted without causing an enormous damage to their purpose, including the forests, the perennial green plantations, the buildings and all kind of structures. To the immovables shall also be referred the air-borne and sea-going vessels, the inland navigation ships and the space objects. The law may also refer to the immovables certain other property.
2. The things, which have not been referred to the immovables, including money and securities, shall be regarded as the movables. The registration of the rights to the movables shall not be required, with the exception of the cases, pointed out in the law.

Article 132. The Enterprise

1. The enterprise as an object of rights shall be recognized as a property complex, used for the performance of business activities. The enterprise in its entirety as a property complex shall be recognized as the realty.
2. The enterprise as a whole or a part thereof may be an object of the purchase and sale, of the mortgage, the lease and of the other deals, connected with the establishment, the change and the cessation of the rights of estate. Within the enterprise as a property complex shall be included all kinds of the property, intended for the performance of its activities, including the land plots, the buildings, the structures, the equipment, the implements, the raw materials, the products, the rights, the claims and the debts, and also the rights to the symbols, individualizing the given enterprise, its products, works and services (such as the trade name, the trade and the service marks), as well as the other exclusive rights, unless otherwise stipulated by the law or by the agreement.

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Appendix B

Buying an Apartment Questionnaire

1) I've found my dream 3 room apartment and the seller accepted my offer. What do I do next?
2) How long will the legal process take?
3) Does the seller have to give me the information about the flat/previous owners/ any criminal records?
4) Are there any restrictions on foreign ownership of real property
5) Can the seller pull out if he/she gets a better offer?
6) What should I be aware of before buying a flat?
7) What documents do I have to provide?
8) What are the institutions I have to visit/get legal documents from before becoming an owner of the flat?
9) What legal documents can I ask for to ensure a fair deal?
10) What is a tax deduction and when/if can I get it?
11) Is it important to have a clean title to the flat? What problems does clean title prevent?
12) How can I ensure a clean ownership of the flat? What is the process of registration of title?