CZECH UNIVERSITY OF LIFE SCIENCES PRAGUE

FACULTY OF ECONOMICS AND MANAGEMENT

DEPARTMENT OF LAW

BACHELOR THESIS

DIFFERENCES BETWEEN COMMON LAW AND CONTINENTAL LAW AND THEIR PRACTICAL CONSEQUENCES

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BACHELOR THESIS ASSIGNMENT

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Thesis title

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

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Objectives of thesis

To define two legal systems and how these systems of laws are used in countries , the differences and comparisons between them. To show how Common and Continental Laws can be used in practice. International and business contracts both between and in Common and Continental laws . The role of judges and juries and perspectives in the present and future.

Methodology

Will include Identification, observation and description, literature overview , quantitative and qualitative research , in a function-systematic approach . Also, critical and comparative analysis, induction and deduction methodology, and analogy. Research made among books and articles sources, using a legal organizational method as well as legislation method , combination and method of authority.

The proposed extent of the thesis

30-40 pages.

Keywords

Common Law , Continental Law , contract , juries , judges.

Recommended information sources

Další literatura po dohodě s vedoucím práce / Additional literature and resources upon agreement with the tutor.

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Declaration

I declare that I have worked on my Bachelor Thesis titled " Differences between Common Law and Continental Law and their practical consequences" by myself and I have used only the sources mentioned at the end of the thesis. As the author of bachelor thesis, I declare that the thesis does not break copyright of any third person.

In Prague on _____

Olga Kukovynets

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Differences between Commonlaw and Continental law

and their practical consequences

Rozdíly mezi Common law a Kontinentálním právem a jejich praktické důsledky

Summary

This Bachelors thesis analyses the differences between the Common law and the Continental law and their practical consequences and let to understand better how this two systems work in general and how crossed between each other in cases. How they could be used in the area of countries, which are under their influence and show to the readers how he or she can use the law in their own favour in practice.

In the theoretical part is described the general definition of law the Common law and Continental law the features, history and development of both systems of law. Examined the role and functions of lawyers, judges and types of juries in each system. Represented the sources of Common law and Continental law. It is contain all necessary information for reader to make understand all questions which can appear.

The practical part consist of Case Study of the Court Proceeding (Great Britain and Czech Republic).

It examined courts and court proceeding in each system .The comparison between them and their lawyers. The results are analyzed and supplemented with comments.

In conclusion of bachelors thesis discussed the whole summary of the work, which results were gotten and added comments and recommendations of author.

Key words: Common law, Continental Law, contract, juries, judges, court proceeding

Souhrn

Tatopráceanalyzujerozdílymezi Common law a kontinentálnímprávem a jejichpraktickýdopad and umožňujepochopitdynamikuchodutěchotsystému a jejichinterakci a průniky v odpovídajícíhpřípadech.Pojednáno je o jejichpoužitívevybranýchzemích a o jejichvlivunavymezenívztahů a režimů, cožmázcelazásadnípraktickýdopad.

V teoretickéčásti je nastíněnadefinicepráva a vůbecjehopojetí a rysy v rámciperspectivy Common law a kontinentálníhopráva.V tomtoohledu je zásadnísiuvědomithistoricko-sociální context a zásadnímilníkyvývojeobousystému, tedyjak Common law takikontinentálníhopráva.Zvláštnípozornost je věnovánaroli a funkciprávníků, soudců a porot v každém z těchtosystémů.Nastíněnyjsouipramenypráva a dalšíaspektyainstitutynutné pro pochopeníinterakce a odlišnostíobousystémů a pro jejichposouzení a vyvozenípraktickýchdůsledků a dopadů.

Praktickáčástspočívá v case study ohledněsoudníhořízení v Anglii a v Českérepublice, a to jak o institucionálnístruktuře, takipostupujednotlivýchaktérů.Průběžnějsoukomparativněanalyzoványjednotlivéaspekty a předkládánydílčízávěry a komentáře.

V závěru je diskutovánacelápráce a z dílčíchzávěrů a komentářůjsoudovozoványkonečnézávěry a doporučeníosvětlujícídynamiku a významobousystémů pro globálnípostomodernímspolečnostijednotlivce.

Klíčová slova: Common law, Kontinentální právo,poroty,soudci, soudní řízení

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List of abbreviations

CCI	Code of Criminal Investigation
CCP	Code of Criminal Procedure
CR	Czech Republic
EC	European Communities
EU	European Union
GJ	Grand Jury
PJ	Petit Jury
UK	United Kingdom of Great Britain
USA	United States of America

1. Introduction

The word ‘law’ in general has many different meanings and I would like to use one of the famous Latin phrases : ‘Dura lex, sed lex’ - ‘The Law is harsh but it is the law’.” It strongly enunciates the supremacy of the law. That law must be an ambiguously and unequivocally clear so as to call for application, however hard or harsh its effect might be. Any interpretation of the law is restricted towards its application”(Palo vs. Militante, 184 SCRA 395, 402 (1990); Feati Bank and Trust Company vs. Court of Appeals, 196 SCRA 576, 594 (1991); Republic vs. Court of Tax Appeals, 213 SCRA 266, 273 (1992) and De la Cruz vs. Court of Appeals, G.R. No. 120652, 11 February 1998 cited in page 17, Latin and French in Philippine Jurisprudence, The Lawyers Review, Vol. XII, No. 10, 31 October 1998, Mla., Phil., Atty. Baldomero S.P. Gatbonton, Jr.)
Law is like the state, it is one of not only the most important but also most complex social phenomena. Trying to understand what is law and what is its role in society, even the Roman lawyers drew attention to the fact that it is not limited by one definition.

The law is used in at least two senses:

- First, the law means that "there is always a fair and good ," that is a natural law.
- Secondly, law - that's what "useful to someone or everyone in any country as a civil law."
  The original foundations laid by the Roman lawyers, particularly in this area of law as a civil law, although in a modernized form, but survived.

The aim of the Bachelor thesis is an attempt to clarify worked out on the basis of scientific material essence of the concept of "law ",Common Law and Continental Law, its features, consider the direction of historical development, differences between them and what kind of consequences could be find out in practical part of Court Proceeding.

2. Aim of BT

1. Define two legal systems and how this systems of law use in countries all our the world , main differences and comparison between them.
2. Show how Common and Continental Laws can be used in practice . Particular focus on practical consequences and current trends .
3. International and business contracts between and in Common and Continental laws .
4. Role of judges and juries in each system , perspectives in present and future
5. Using of the different kinds of methodology and bibliography , follow for the created time - table to prove tested hypotheses in practical research for getting a final result for the conclusion.

Hypothesis

- The Common law and Continental law going to the same goal even that they are build on different systems.
- Differences between two legal systems have an impact on economy

Methodology

1. Identification, observation and description.
2. Literature overview ;
3. quantitative and qualitative research ;
4. function-systematic , critical and comparative analysis;
5. Induction and deduction, analogy;
6. Books and articles sources;
7. Legal organizational method, legislation method, combination and method of authority.

3. **Chapter I**
   This part has written definition and describes features of legal system of Anglo-Saxon law.

3.1 Definition and features of the Common law system

The term "Common law" have many different meanings such as :

1. The kind of law, in which the main role is played by the jurisprudence to resolve criminal and civil cases. In this aspect, the Common law is opposed to statutory law . The use of the term "common law" in this sense is the most widespread;
2. The kind of legal systems, formed under the influence of English law. This type of law is valid in countries which are belong to the Anglo-American legal family (England, USA, Canada, Australia, New Zealand, etc.). In this case, the Common law is opposed to primarily Romano-Germanic law;
3. The law that appeared in XII century as a Common law to all free inhabitants of Great Britain, which were under the jurisdiction of the Royal Court. This historical understanding of the Common law is opposed to the local law of some parts of England;
4. The system of rules which is established by Royal Courts. It is opposed to the norms of fair, established by the courts of conscience, led by the Lord Chancellor.

The authority and power of the Common law is largely based on old traditions which are rooted in the history of the English state. Therefore, better to understand the concept of "Common law" we have to look through to the history of English law in the XII-XIV centuries. To understand the meaning of the Common law is also impossible without declaratory theory of law, or theory of the independent existence of the law. British lawyers XVII-XVIII centuries M. Hale and C. Blackstone we considered fairly as he authors of the declaratory theory .

They summarized the old centuries practice of common law and formulated it is basic fundamentals, namely:

1) Judges do not create law, but only declare or reveal it. The law is exist objectively and independent from judges. The judges are "oracles" of the law. Their decisions - the most authoritative evidence of the existence of law.

From this perspective, the Common law is nothing other than the law declared by the judges in the history of the court. In this case, according to the declaratory theory ,the law it is not man-made rules, not an official document, but living law, practice and experience. New legal fundamentals appear just like a new language units. However, their nature is the same: no one can say exactly who invented them , who is their author;

2) The law it is a custom . It is an expression of some values of people. The development of the Common law, which takes place over many centuries, similar to the custom law.[1]

3) Rationality that's the life of law. Identification of common law with rationality is a consequence of the theory of natural law. According to the English tradition, the principle of rationality is always treated as a matter of fact that is transmitted to the jury. This is especially true in civil legal cases on negligence, which is interpreted as a failure of the standard of conduct of a rational person.

The idea of rationality is a criteria for the validity of norms of positive law. Judges may refuse to apply state laws on the basis of their irrationality;

4) The judicial decision, which contains fundamentals which are previously were not decelerated by judges, does not change the legal system. This is because the court use the law as it was before the date of adjudication. It is allow to justify granting of a court order retroactively: Judge does not make norm, but only explains the norm that must be known to law breaker from everyday experience.

The second half of this chapter is about **Features of a Common law. They are mostly include**:

- No written constitution and no codified laws;
- Highest court decisions could be overturned or through legislation;
- Freedom of contract is extensive;
- Everything what is not prohibited by law is allowed.

To see some differences I include the table with the features of a Common Anglo-American law

Features of a Common Law system (Anglo-American)	
1.The succession of the law	**From 1066 it develops without any radical and revolutionary changes.**
2.Absence of reception of the Roman Law	**Through the history the effect was so law and was not used in Common law system.**
3.Judicial by their nature	**The fundamentals of the Common law was founded by the actions of judges.**

[1] Redmond P., Shears P. General Principles of English law. London: Pitman Publishing, 1964.

4.The developments of the Common law by lawyers	**The Common law is not a product of rigorous theoretical and logical teaching of scientists.**
5.Less abstract character of norms	**Most of norms are created for consideration of real cases.**
6.Separation of Case law and Statutory Law	**Case law consist of norms and principles that used by judges in process of their decision making.** **Statutory law has its norms which source is will of state in its legislature.**
7.The existence of common law and good fair in Anglo-American law	**Common law was formed by action of royal judges.** **Good fair was formed by decision making of Lord Chancellor and to intend the Common law**
8.Asbence of division on private and public law	**Principe of higher courts , to the law all are equal .**
9. Importance of separation on substantive and procedural law	**Property law define rights and duties, freedom and authority of the people .** **Procedural law applies to secure this rights and obligations.**
10. Codification is not spread	**Common law countries do not have codification.**
11.The competition of judicial procedure	**Competition between judicial.**
12.Importance of the institutions of juries	**The institution left it mark in Anglo-American Law.**

Table 1. Features of the Anglo-American law system

The definition and features show that the Law is a rules which need to be followed and the Common law has uncodified system .

3.2 History of the Common law

This part of the Bachelor thesis describes the historical circumstances , important dates , figures and periods for the Anglo-Saxon system of law .

The establishment and development of modern law of England can distinguish four main stages :

- **The first stage.** English law before the Norman Conquest (up to 1066r.) or Anglo-Saxon period. For several centuries, England was united by Anglo-Saxon kings into the amorphous state formation, which could not be called central. The law in this period consisted of local customs patriarchal Anglo-Saxon tribes that had local character and were different from each other. The decisions of the local courts could be based only on the norms of the local customs and traditions.

- **The second stage.** The formation of "Common law" through the work of the royal judges (1066 - second half of the XIV century.). Finalized during this first crisis of "Common law" that led to the emergence of a purely British phenomenon - "fair law" .

- **The third stage**. The reforming archaic "Common law" and the transition to modern law (second half of XIV century. - Mid XIX cent.). At this stage, the rules of "Common law" try to conform to the requirements of modern times. In the struggle between "Fair law" and "common law" wins "fair " .The third stage is characterized as the growing role of the statutes (laws of Parliament) as a source of law. During this period, finally recognized the principle of legal sovereignty (supremacy) in fact that Parliament has the power to issue and revoke any laws of any matter

- **Fourth stage.** Further development of "Common law" entry into modern characteristics (Middle of XIX century. - Beginning of XXI century.).

This period is characterized by the following processes:

- Fusion of common law and fair law into one system of law, and fusion of the "courts of conscience and 'common law courts' in a one single unified system (result of judicial reform in 1873 - 1875 years);

- Loss of "common law" status as a single leading source of law;
- Transfer emphasis from procedural to material law;
- Strengthening the role of law as the main source of law;
- Active work on clearing the law from the archaic acts
- Attempts to codify some areas of English law, which, after all, were unsuccessful

In the present system of English law there are two types of rules: laws and precedents.

Analyzing the historical stages of English "common law" could be said that English law [2]has characteristic succession. That is, if in the certain period were changes in a particular field of law, they never were completely overturned previous norms of law, but mostly just adapting it to modern conditions of society. English law - the trial law , the result of centuries of jurisprudence.

The process of law of England has been slow because of conservative social mentality and peculiarities of the case-law legal system, but even with the gradual development and filling the old forms with new content that meets the requirements of practice. Therefore, the first legal fiction, then "fair law" and later laws were the driving forces that helped the English "Common law to adapt to the needs of society.

3.3 Sources of the Common law

The third part describes the sources of the Common law and some little comparison with Romano-Germanic system

- **The main source** of the Common law system is the **legal jurisprudence**.

It is based on legal precedents, that the previously made judgments. In contrast to the Continental system, the system of Common law is mainly procedural and pragmatic than the legal and systematic character.
If we'll use different methods it could be seen that this system of law is more inductive than deductive, more experiential than logical.
This system contains a large number of concepts completely different or even unknown for Romano-Germanic legal system.

Among the legal sources of English law such as :

- judicial precedent;
- statute ;
- law ;
- constitutional custom ;
- constitutional agreement ;
- policy;
- the international treaty
- **the most significant is judicial precedent**.

[2]**VAN CAENEGEM, R.C., The Birth of the English Common law, Cambridge, Cambridge University Press, 1988**

Law of England has been and will continue to be precedent. Thus, judicial precedent justified irresponsibility of monarch " The king cannot be wrong" and " The king cannot act alone". The recognition of judicial precedent as the source of law means that the judicial authorities not only make the jurisdictional but also the law-making one.

Required precedents could be created only by higher judicial authorities :
the House of Lords, the Judicial Committee of the Privy Council , the Appeal Court and the High Court.

Lower courts do not create a precedents. English rule of precedent imperative character as : to solve as has been decided before (Rule «stare decisis»). Under this rule, each court instance is obliged to follow the precedents that made by higher court, and created her own (if the highest court). According to British sources, the number reached 500 thousand precedents. In the U.S., they are estimated in the millions.

- One of the ancient sources of English law is the **legal tradition**. In the area of constitutional law as created the tradition which plays a larger role than legal precedent. This so-called constitutional agreements which control important questions of state. They are the some kind of source of constitutional law. For example, according to the custom , the monarch have to sign an act which is agreed by both Houses of Parliament.. Constitutional deals represent rules which are not stated written of constitutional practice. They should be differentiated from customs, which are part of the common law.
- In that case that in England does not exist a written constitution operates traditional-legal order of parliamentary procedure, the relationship of senior government officials, ritual guardians of the Royal House, the tradition of the monarch participation in the official ceremonies and ethics of the monarch behavior and his family etc. British lawyers believe that the common law is a custom law.
- The sources of English law include legal doctrine - conceptually executed thoughts of well-known scholars from the questions of law. Some doctrine, as reflected in the works of British authoritative lawyers, especially judges were recognized as their contemporaries and later in certain cases. Leading among them is occupied by ancient manuals on common law through analysis of binding precedents that have not lost their relevance and nowadays. Recently, the use of the doctrine as a source of law substantially increased. Often the justification of a position in the adjudication takes place on the basis of scientific textbook, and sometimes scientific articles. Resort to them is not to be used as the primary source, and for the credibility of the decision.

- The source of law in England is judicial comments, summarizing the case-law. They are a practical tool for judges. Legal science in general or theoretical-legal ideas and concepts of the various legal schools have additional value.[3]

There are exist many sources of Common law but the highest of them is **legal jurisprudence as the most significant judicial precedent .**

3.4 Role and functions of precedent and judges

In this part I describe which role and which functions do precedent that was mentioned in previous 3.3 part and which role play judges in cases.

The concept of **precedent** is very complex and multifaceted, largely dependent and at the same time reflecting the historical, social, political and other traditions, and specific conditions for the existence of the legal environment within precedent does it functions.

Precedent is one of the main sources of law in the states of 'The Common law' countries with Anglo-Saxon system of law :Te United Kingdom of Great Britain (especially England), The United States of America, South Africa, Australia, Canada, New Zealand, India, etc). The role of judicial precedent is also have place in Continental Europe (France, Germany, Italy, Switzerland, Liechtenstein, Luxembourg, Monaco, Finland, Sweden, Spain), as well as Latin America it was also mentioned in a part 3.3 about sources of the Common law .

In the Britain, legal precedent can be set only by the court, so-called "Unlimited jurisdiction" (High Court of Justice, Supreme Court, House of Lords).

- Thus, the judgments in the House of Lords are obvious for itself and all other courts;
- The decisions which are made by the Court of Appeal, mandatory for all courts, except for the House of Lords;
- The decision which are made by the High Court of Justice, are obvious for the lower courts. The legal precedent is contain a specific element - the essence of the decision, and which is later used by the courts in dealing with cases of the similar nature. Ratio decedents are defined by English authors as "Law fundamentals which are applicable to the legal issues that appear in connection with the facts established by the court , on which decision is based."

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[3] **SERVIDIO-DELABRE, E., Common law, Introduction to the English and American Legal Systems, Paris, Dalloz, 2004**

Some more examples from countries which have Common law system and which role plays there judicial precedent.

- **INDIA**

In India, the rule of judicial precedent has the official form, which was not even in England. From 1845 were published Reports of Judgments and private collections. Law Commission, founded in 1955, opposed the weakening of the rule of judicial precedent. The courts tend to follow even unusable for India British precedents. However, the decision of the judges could be canceled of amendments of the Constitution.

- **NORTHEN IRELAND**

In Northern Ireland is recognized the English doctrine of judicial precedent by which decisions of higher courts are obvious for themselves (with rare exceptions) and Irish lower courts. Judicial precedents used as a source of law, including decisions of the Irish courts taken before and after 1921.

Depending on the circumstances, lawyers refer to the rigidity or flexibility of precedent law. Softening due to recent federal structure of the country, the need to prevent insurmountable difference between the law of states. Obligation of judicial precedent is not very different from the perception of voluntary judges the doctrines of their predecessors. Administrative law institutions also use a flexible doctrine of precedent, but with even greater independency. Judicial precedent can be both ,higher and lower law institutions. The Higher courts cancel unwanted precedent. It is considered as the Supreme Court is not immune to mistakes, so it's best to make flexible judgments. Supreme Court and higher courts were not bound states of its own precedents. Supreme Court use the Constitution of The USA.

Now secondly, will be described judges and their role in process.

Judges. Role of judges

- Fairness and to make an appropriate process
- Procedural matters must e ruled by them
- Determine applicable law
- Can be fact finder (Bench trial, summary proceeding)
- Hand down sentences (Except capital punishment in the USA)

Selection of judges

- Constitutional Reform Act of 2005 (For first time in 900 years , Lord Chancellor will not have total control over selection process)
- Mixture of committee recommendations , Lord Chancellor veto and Queen's consent
- Statutory retirement age of 70(All appointed positions are for life to 70 ; most part-

time and unpaid positions are by contract)

Removal of judges

- Superior Judges can be removed by Queen upon recommendation of both Houses (This has happened once)
- Inferior Judges can be removed by Lord Chancellor for misbehavior or incapacity(This has only happened once)
- Free-Paid, Part-time Office Holders can have their contracts not renewed for a variety of reasons

Supreme Court of Justice

- 12top judges in judicial system
- Vacancies filled by special judicial appointments commission with approval of Lord Chancellor
- Only superior court judges are nominated

High Court Judges

- Also called Puisne Judges
- Sit in one of three divisions of High Court (107 JUDGES)
- Appointed by Queen upon recommendation of Lord Chancellor and Judicial Appointment Comm.
- Must have "Right of Audience'' or to be former Circuit Judge
- Dress depends on division and type of case

Circuit Judges

- Sit in Crown (criminal) or County (civil) courts
- "Appointed" by Queen upon recommendation of Lord Chancellor and Judicial Appointment Commission
- Qualification : 10 years right of audience before Crown or County Court
- 3 years as either Recorder or District Judge

Recorder

- Part-time judges in Circuit Courts

-Not to be confuse with title of "Honorary Recorder", which is given to senior Circuit Judges
-Held by practicing lawyers
-Restricted to Circuit Bench Work
-Can be appointed to hear either criminal or civil matters

- Same appointment process as Circuit Court Judges

District Judges

- Sit in County Court (civil) or Magistrates Court(criminal)
- "Appointed" by Queen upon recommendation of Lord Chancellor and Judicial Appointment Comm.
- Must have "right of audience" for at least 7 years
- Usually sit as Deputy District Judge first
- Normally dress in suits

3.5 Jury and types of juries

This part is include describing of juries and types of juries which exist in Common law system and how they consider and which one of them have more power .

Where are exist two types of juries **: Grand jury and petit jury.** I would like to start with Grand jury.

Grand Jury is board of jurymen, they are convene to check the grounds for indictment person in the criminal case and the question of the possibility to transfer of his/her case to the court where the case will be dealt with " petit jury ".

GJ is an ancient institution, which found in England in the XII century when Henry II was a king . Gradually, till XV century developed 2 Juries: 'Guilty' of 23 people (Grand jury) and trial – of 12 people (petit jury). Institute of Grand jury has been rooted in the legal system of the British colonies, and after in the United States. Federal Grand jury consists of 23 jurors but enough for a quorum is 16 people, and in some states is 12 people. Lists of potential jurors usually taken from the lists of permanent residents that are satisfying the requirements.

Grand jury is convene by Court for the request of the prosecutor and swear in court. In all else, it does not depend on the court. When Grand jury called together, the prosecutor introduce the draft indictment act, which kept clear and concise statement of the essential

facts that substantiate the prosecution against specific person. Meeting of Grand jury is closed and disclosure of secrets meeting punishable as contempt of court. The accuse person and his lawyer are not allowed to attend the meeting. In some states Grand jury may approve the attendance of the accused, which in this case is not obliged to answer questions of character, which alleges to defend themselves against self-incrimination privilege, but it can get a council on the subject of his lawyer, who is sitting outside the room.

- Grand jury also has the right to call for questioning the prosecution witnesses and force them to appear in the court .
- Grand jury may accept evidence of "second-hand" that the court considered unacceptable, but has no right to make evidence obtained as a result of illegalness.
- After the checking of proves Grand jury makes an inscription on the indictment act, which means an act or statement of the indictment and trial of the accused transfer or cancellation of charges.
- Sometimes , Grand jury. may get together if receive the indictment of any crime, known by the jury and make a written representation of a criminal case, which is an indication for the government to prepare the indictment act.
- The procedure of selecting jurors in special Grand jury is the same as in the simple; initial term duty - 18 months from renewable term with the right to continue this term three times in six months.
- In areas of federal jurisdiction, where are live more than 4 million people, the court must convene a special Grand jury least once in a half year.

This part is describing the **Petit jury** and it role during procedure.

Petit jury (trial jury) is the jury which is decide person is guilty or not guilty. They were developed in new modern system and have various rules for investigating crimes and criminal forms its called criminal procedure. E.g. some of those rules requiring to use petit and grand juries in United States Constitution (Bill of Rights).

PJ is also a type of jury service . It consist of people that lives in the same place they are called together to listen to evidence presented by prosecution and defense in criminal procedure and defendant in a civil trial.

Petit jury trial is open to public and can have as many people in court room as could be hold there.

Jurors in petit juries participate in one single trial as they have been selected before and not longer than ten days.

Jurors have to finish everything even if some high-profile cases last few months .

Petit jury has to be unanimous when make a decision to convict or acquit the person, but if in case some of them have different opinions and split from each other , then the judge can declare mistrial or hung jury . Here will be a chance for prosecution to try their case again .

To summarize Chapter I. This Chapter contain the information about Common law system , its history and development , features and important figures in court .

Chapter II

I would like to start with a definition of the Roman Law in the second chapter as in a previous one.

4.1 Definition of Continental law system

Continental or Romano-Germanic system is the result of creative development of Roman private law by European scientists, mainly at universities, subject to the doctrine of Christian morality.

The law of the Romano-Germanic countries felt the impact of centuries of Christian morality, and the ruling since the Renaissance philosophical movements have highlighted the ideas of individualism, liberalism, the notion of subjective rights.

In the civil law to the forefront of the law put forward the law norms ,to be considered as a general rule of behavior for the future that meets the requirements of justice and morality.

Social and legal norms in the appointment of Romano-Germanic law caused by the need to establish principles of social order which are defined by ideas of social equality and economic development in the community.

Modern civil law developed within individual countries which are creations is based on their features.

Roman law, particularly modernized law , does not use straightly in any country.

However, the basic concepts and institutions of the continental civil law is Roman and Roman jurists developed by Roman jurists two thousand years ago. The basis of the study is also Roman law.

The Continental law characterized by the separation of the law on **private and public**, which is based on different interests, which serves private and public law. Private (civil) law serves the interests of individuals who are equal in rights. Public law serves the interests of the whole society and its main representative the state.

Separation of continental law on civil and commercial in modern terms has lost it previous value. Although there are some commercial codes in many European countries, most countries is reflected by the specific relationship between the traders, their participation in civil relations, within the civil law. This is due to complication of business, which is increasingly governed by special laws (the entities on the stock exchange and stock trading, on certain types of contracts). Thus, decreasing the proportion of rules that can be

concentrated on the Uniform Commercial Code, and the preservation of the last loses it meaning.

More detail explanation of **Romance and Germanic subsystem**[4]

The continental law can be divided into two subsystems - Romance and Germanic, depending on the laws of a country - France or Germany - is the basis, the embodiment of which is under the Central Committee of France (1804) and 1896 NTSU . These codes reflect the development of doctrine of these countries on the basis of which formed a group of Romanesque and Germanic civil law.

Civil law systems **Romance** (Napoleonic Code) adopted from institutions considered the most simple textbook of Roman law, which is part of the Codification of Justinian (Corpus JurisCivilis).

This system is called the institutional and involves grouping of civil law into **three sections**:

1) persons (i.e.entities),
2) things (objects of the law) and therefore property rights, and
3) the claims and the related to claims responsibilities
4)

So as we see in a result of the modification of this system have been removed norms of civil procedure and appeared general terms and other sections.

The system **of German group** is based on the Digest (Pandects) Codification of Justinian (and therefore called – pandect) and provides the separation of substantive and procedural private law. All substantive norms are divided into general and special parts. The general part includes norms that are applicable to any institutions of civil law and includes general norms, rules of entities, objects, object of law and the rights, in particular on the implementation and protection of others.

As a result of modernization and getting close of pandect and institutional systems in the present conditions it is impossible to speak of them as independent systems. They represent only two major subsystems of a single continental law, which is logical in terms of European integration.

[4] **HOLLAND, J; WEBB, J. Learning Legal Rules . 7th Edition. Oxford, UK : Oxford University Press. 2010. ISBN 978-0-19-955774-5**

4.2 History and development of the Continental Law

This part include the description of the historical past which will be describe in stages of development of the Romano-German law

In its development, the Romano-Germanic legal family has come through quite a long way and usually divided into **three main stages:**

- **The first stage** - the period of the custom law (V-XI century). It created the conditions for the formation of a unified system of Common law .

After the fall of the Roman Empire, the Germanic people brought in law their national customs, their national Germanic law. It consisted mainly of unwritten customs of that existed in people's memory, and with time were deprived of clarity and certainty. In that period the Germanic people understood that the law is the first how to gain people, nations, the product of the collective conscience, not as an expression of the conscious mind or will. In this sense the law was like an art, myth. This law expressed wisdom of the tribe, with which it maintained a peaceful life. The law was a means of bringing people together in a group, it sought to preserve the solidarity.

Germanic law was rather primitive as it was accessible only to very simple conditions of subsistence filled with simplistic principles of collectivism - family, tribal, citizen .

In those days, was no distinguish between legal norms and procedures, on the one hand, and the religious, moral, economic, political and other rules and practices on the other hand.

In V-VIII centuries laws of Germanic tribes that mainly consisted of their customs, first recorded in Latin. This is a so-called barbaric truth (legesbarba-rorum), or the laws of the barbarians. The oldest of those who came to us - Salian truth (496). Since VI century, most of Germanic tribes already had its own barbaric laws.

The system of justice in this period was fragmented and amorphous. In litigation prevailed appeal to the supernatural. Execution of judgments was not provided. There were no professional courts.

Western Europe in the first stage do not actually knew the legal professionals , law schools, law books, textbooks and jurisprudence.

Thus, the law in the first stage had customary, tribal, primitive and archaic character.

- **The second stage** . The formation of the Romano-Germanic legal family (XII-XVIII c). Many comparatives think that this time should be considered as time from the scientific point of view there is a system appear the Romano-Germanic

law system.

-

This stage can be roughly divided into two periods: the medieval period (XII-XV centuries.) and during the Renaissance and Enlightenment (XVI-XVIII c.)

In the medieval period, Western Europe existed as a relatively complete historical and cultural, social, political, civilizational community as regional, feudal Romano-Germanic civilization.

It is at this stage , society again realized the need of law , began to realize that only the law can ensure order and security. Return of this idea in XII-XIII centuries, undoubtedly , was a revolutionary step.

Conventionally distinguish five circumstances that significantly influenced on the formation of the Romano-Germanic law in the XII-XV centuries:

1. Reception of Roman law. The second stage of the formation of the Romano-Germanic law is associated with the perception of Roman law. In that days , Western Europe refers to the legal heritage of antiquity, especially to the Code of Justinian as the embodiment of ancient legal traditions of Rome.

2. Activities of the European universities. The idea of the reception of Roman law, it new understanding and adapting to the conditions which changed radically, was first recognized and enforced in universities thanks to the work and glossators and post glossators.

3. Effect from the canon law. According to some scholars, canon law in the middle ages had even more profound impact on law enforcement and social life of European countries than Roman law.

4. Creating of a city law. Particular attention may be paid to the Magdeburg Law, which became a model of the municipal government for the cities of Germany and Central Europe.

5. Making trade law. Since from the XII century in Europe formed the basic concepts and institutions of modern times commercial law - lexmercatoria. The emergence of this relatively isolated legal system driven by active development of trade and the rapid growth of state vendors.

Thus, the feature of forming Romano-Germanic law is that it is opposed to Common law is not a consequence of the expansion and strengthening of royal or any other authority, but the consequence of their centralization. It foundation from the beginning was the common culture and traditions of Western European countries.

- **The third stage**. During the Renaissance and Enlightenment period were significant changes in Europe,. The Renaissance released to freedom critical spirit that still asleep. Because Roman law, which had previously been considered as a mind in written form (ratio scripta), starting from the XVI century to scholars seem like outdated and irrational laws.

The first codes and laws in their present form appeared in Europe in the XVIII century and their appearance is a result of the interaction of three factors - political demands reforms of the Enlightenment, the method of rational natural law and the impact of typography.

Furthermore revolution in the system of sources of law in the third stage of significant changes in the law. Thus, in the field of private law merged Romanized traditional law with the newest doctrine ieas of natural law. The most striking of these changes appeared in family law Civil law adapts to the free market.

In the second half of the XX century on the development of the Romano-Germanic law significantly affect the European integration processes. Their active development leads to the establishment in 50th years of XX century European Communities (EC) - the original by its legal nature the integration formations that have features of both the state and international organizations.

In connection with the formation and functioning of the EU there is a particular system of law - European law or EU law.

European law influences the national legal systems of countries - members of European Union. Yes, all the legal systems of EU Member States - is now based on common principles - general principles of EU law, which recognized the supremacy and direct effect. It's about principles such as respect for fundamental human rights, legal certainty, proportionality, the right to be heard and more.

Besides , the EU is entitled to borrow institutions given national legal system, the legal systems of other countries. For example, the administrative law of the EU is built by the French model. And thanks to the incorporation of EU law, this model is considered as the legal systems of other countries.

A major consequence of the impact of European law on the legal systems of the Romano-Germanic family is their harmonization and unification. In addition, for the same reasons is beginning the convergence of the Romano-Germanic law of the Anglo-American.

In the table is represent some characteristics in comparison between Continental model and Anglo-American model of financial market **.**

Criteria	Continental model	Anglo-Saxon model
The relation capitalization to GDP	80-100%	150-180%
The relation of banks' assets to GDP	50-100%	150-300%
The system of law	Normative	Precedent
Main financial intermediaries	Banks	Nonbank organizations: managing companies, investment companies, broker companies etc.
Numbers of shareholders	40-60% of citizens	50-70% of citizens
Role of state	Active regulation of economics by government	Liberal regulation of economics. Important place of organizations and self -regulatory organizations.
Approach to regulation	One single global regulator. State regulation is carried out mainly on the basis of legal acts.	Separate controller for each market. The significant role of self-regulatory organizations and

		professional associations.

Table 2.Comparative characteristics of the Continental model and Anglo-Saxon model of financial market.

4.3 Sources of the Continental Law

To understand more and be able to compare we have to know sources of the Continental law and what meaning they have .

Commitment of lawyers of the Continental Europe to operate general, abstract concepts and categories proposed by lawmakers in the result of study and summarized practice influenced on the formation of the relevant sources of law.

Continental law , first of all is a system of written law, a central place in the hierarchy of sources take place legal act - **the law**.

The laws in the countries of the Romano-Germanic legal family made solely by the legislature, being formally defined regulatory acts intended to cover all aspects of the order, arrange all the relationships that are just generally subject to legal regulation. At the same time gaps in the legislation can be eliminated only by law. However, the laws contain norms that are just general rules of behavior. Therefore, a lawyer is required to interpret a particular provision of the law, and apply it to specific social relations or to give judgment in every single case.

Laws are systematizing by their legal power on :
1) the constitution (basic law) and constitutional laws;

2)simple laws.

- The top level of the hierarchy is occupied by the **laws of the Constitution** by virtue of the rules enshrined in the constitutions of most states, according to which the provisions of the laws must not conflict with the Constitution.
- Central place among ordinary laws are taken by **civil codes** - consolidated, coherent and complex structured legally and logically solid regulations. Codification of civil law became widespread in all countries of the Romano-Germanic legal family and became one of its distinctive features.
- **Significant role among the sources of civil law s played by international treaties**. If try to set them among other legal sources, it should be followed the ruling in the countries of the Romano-Germanic legal family. According to it, the international agreements ratified in order of the law, have the power that exceeds the power of ordinary laws, but they should not contradict the Constitution.

Therefore, international treaties are equal to the Constitution and constitutional laws.

- A specific source of civil law in continental Europe is **legal acts** adopted by the central executive (government) as a result of "delegated lawmaking" - decrees, ordinances, rules, regulations, circulars and more. On appointment of these sub-legal acts in Europe has not developed a consensus. The adoption of these legal acts can occur either in emergency and urgent cases, or to regulate particular sphere of social relations. In other states the same (for example - German) constitution does not recognize the government of the autonomous right to the regulatory authority of the legislature, carried out by means of Decree-Law. Legal acts of the government in these countries are issued only in pursuance of the law.
- One source of civil law in countries of the Romano-Germanic legal family is used to be a **custom** but its role is very limited, since the last is applicable only in cases where the law explicitly refers to it. Western lawyers argue that the custom lost the character of an independent source of law, that is why used only as an addition to the existing law, and "it is mentioned only when it comes to interpretation of the law."

- **The doctrine** of the civil law in XIII - XIX centuries. was the source of law in the Continental Europe as it is in the universities was underwent a process of developing the basic principles of positive law. Nowadays , none of the Romano-Germanic legal family countries use the doctrine as a source of civil law. But we cannot downplay albeit indirect but important influence on the doctrine on law project work, on the process of interpretation and application of the rules of positive law.

After examining the source of the Continental saw is already seen the difference between significant sources . In Romano-Germanic law it's an **international treaties** and in Common law it's a **judicial precedent .**

4.4 Types of contracts allocated to Continental law

This part will show which types of contract we can find in Continental law .

In the Continental Law , concept of contract is central , the term of " contractual law' is rarely used, although in some cases this institution is even identified with the general norms of the law of obligations.
In all countries, the contractual relationships is settled by law. The norms for contracts are not always in a systematic form located in the Civil Code in the chapters of agreements ,liabilities and certain types of contracts, as they are also in some specific

law acts ;about terms of stock transactions in 1885 about the legal rate of interest in 1975 etc.

In general, the legal regulation of contracts and legal doctrine in the Romano-German law cover specific questions, that go beyond the general theories of agreement and responsibilities :the problem of pre-agreement relations between the action of principle of freedom of contract , in the order of contracting etc.

In the German Committee there is no official definition of the contract. In German doctrine discuss the different interpretations of the contract: as agreed between partners regulation of legal relations as a bilateral agreement in which at least two coordinated expression directed to achieve legal results as achieved by two or more persons agree wills of achieving of the legal result.

The classification of the contracts is carried out by many reasons .Each classification scheme can detect certain properties and practical features of the contract.

In the Continental law countries ,legislation and doctrine distinguish primary **unilateral** contracts , in which one part is responsible to other to act in it favor certain actions without appearing the obligation from another side. To unilateral contracts belong donation contracts, loans etc.

In **bilateral**contracts , both sides are responsible to act in their favour ,each of them have their own rights and responsibilities. Most of the contracts are bilateral :buying&selling, transportation etc.

In legal literature , bilateral agreements are divided into sygmatical and partial bilateral.

Paid contract is the contract in which is going exchanged of equivalent values that can be expressed by money set forth in rights , and free of charge in which the debtor receives nothing in exchange of their responsibilities.
In trade relations presumed payableness of the contracts ,grants agreements only in purely civilian relations.
Paid agreements are divided into exchange (communicative) in which gains or losses that may happen to sides , could be evaluated in the moment of the contract making .
Risk (aleatory) contracts which contain a condition which makes impossible to do an evaluation in the time of contract making benefits and in case of execution of the contract .

Consensual contract are made from the moment of reachment of the sides agreement on all essential terms of law and the real contracts can be make if not only will be

agreement but also is important to give the creditor the certain thing loan agreements etc).

Continental legal doctrine distinguishes the contracts with a single execution for the enforcement obligation through one action during a short period of time and with long performance in which one or more obligations are implemented over long period of time.

Contracts can be awarded in favour of sides of contract that have rights and duties ,receive benefits and bear the losses under the contract , or in favour of the third side who acquire rights under the contract to require the debtor to do the obligation but doesn't bear responsibility.

German law distinguishes between civil contracts obligations , property ,marriage, family an inheritance . Also divided them on contracts of final transfer of property of goods ,the association of entities etc.

4.5 Role of judges and juries

Here we'll see the role of judges and juries in process and will start with judges.

Judges.

Judges of Romano-Germanic legal family is not required to follow the earlier made decision of another court except the Supreme Court Practice and (or) the Constitutional Court. But in this case the higher courts do not have the right to create new norms by their decisions, and can only interpreted the existing legal acts.

A judge who works in the country, which is a part of the Roman-Germanic legal family, solving legal cases mainly provides only qualification process - building a chain of reasoning method of syllogism, where the norm plays the bigger role and the smaller are the circumstances of the particular case . It certainly does not mean the lack of creative self start in enforcement.

To properly apply the abstract norm from the concrete norm , the lawyer has to insight deeply into the nature of the situation: the circumstances of acts and personality of action person, for example, so that the application of the law was fair, humane, reasonable, that could show the nature of law.

In this sense, and in continental legal family court (case-law) practice is bound to have some standard value, to act as a factor of "pressure" or adjustment of legislation which, however, officially recognized as the preferred or even the only source of law.

Juries. Some historical moments and development.

As an alternative to the classic English model of the jury in the end of XVI century in Europe was created a special model of the jury. Historically, the first form of the continental jury was founded in France where it was first fixed in the decree of the Revolution in 1790 and the final version in the CCI (Code of Criminal Investigation)1808.

Although the fundamental principle for the Continental model became the English model, it has been substantially revised, which let to say of a new created model of the jury.

Development of the first the French model of jury became a major "classic" version of the continental model of jury. This is due to the fact the French model of jury was introduced to the territories which won Napoleon.

From 1842 to 1852 the French model of jury has been introduced into many states of the German Confederation (Prussia, Bavaria, etc.). After German reunification in 1871, the French model of jury was enshrined in the CCP of Germany (1877). Continental model of justice existed in its "classic" version over a century.

A characteristic feature of the continental model of the jury is pretty clear division of circumstances in the discovering of participation and without participation of jury.

For this reason, judicial investigation of this model has got the following features of the subject and the limits of 74:

1) To the purpose of the investigation included the circumstances of the present civil action because for continental model is inherent so-called "connected process." Although the jury never granted the right to permit civil action, the circumstances to harm someone , evidence to support the claim, investigated to a verdict by a jury.

2)Wider than the Anglo-American model of jury , the boundaries of the trial (the first part of which is held by jury).

This distinctive feature of the trial is due to two factors:

a) Strong influence of the doctrine of the relativity of evidence

b) To expand the limits of the trial had a strong influence the investigative principle, expressed in discretionary powers of the leader to use all sources to find out the truth .

Personal data about defendant became known for jury , first of all because it was made in public with their presence in the indictment, then in process of their interrogation, and

during the interrogation of witnesses, among whom was even a special category "the reputation of the defendant's witnesses."

Highly broad subject and the limits of the continental model of the trial is not exactly correlate with the essence of the jury, because this feature generates an objective risk of bias in jury, just making difficult to do verdict.

Unlike from the Anglo-American model that allows for a change (decrease)of the limits of the trial depending on the position of the parties, the continental model, based on the principle of achieving material truth not accept such rule. Therefore, the recognition of the defendant their guilty, and the rejection of the prosecutor charges do not involve reducing the trial, means the changes its boundaries.

The procedure for the trial of the continental model can be considered accessible and understandable to the jury. Unlike the Anglo-American model of judicial investigation of the continental type is provided with complex regulation order and sequence interrogation, investigation of other evidence in the absence of the jury.

Separation of the trial and argument objectively caused the ban to allow the parties to value judgments about the evidence examined during the trial.

The jury in this case had extensive rights to participate in the research of evidence. All investigations were by jury, the presiding jury could only dismiss juries (de jure(without removing them from the meeting hall)).

This approach of continental model, on the one hand, ensures the continuity of the trial and integrity of the trial jury's perception of the evidence. But on the other hand, this order creates a serious threat of prejudice in the jury and making an improper verdict.. In this is disadvantage of the continental model .Verdict of guilty the juries discuss and make with professional judge.

The continental model of the trial jury has a huge number of properties which are not meet requirements of the traditional essence of jury .

4.6 Role and functions of lawyers

It is always important to know the role of lawyers and which functions they comply in court and little comparison between French and German lawyers .

Advocacy as a public association of lawyers have a function of protection of individual rights at all stages of criminal proceedings and in proceedings by courts at m various levels and jurisdictions.

In France historically appeared the original division between lawyer and solicitor. Lawyer protects the interests of one side in court . He or she must be posses the oratory technique because his or her task to bring all facts to court that the decision what they would make was in a favor of their clients .

Solicitor is engaged in clerical , he or she preparing documents, submit claims, appeals and petitions. Until 1971 lawyer and solicitor were forbidden to interface with functions of each other because in a fact , each customer had deal with both lawyers.

Nowadays ,most of French courts (except the Appeal Court , where is an old division of lawyer labor saved) using the services of ‘’new lawyers’’ . They are allowed to run the deal on all stages , from the preparation of documents till the presentation in court. But “new lawyer” can be solicitor in his or her judicial district , while performing a protective speech in any French court.

Unlike from France in Germany the lawyer profession was always clearly understood as a legal advisor and representative sides.

To summarize the Chapter II .It is already visible certain differences between two legal systems In their historical development and in role of judges ,juries and lawyers .

Chapter III

In the last chapter III will be given detail description about differences between the Common law and Continental Law and their practical consequences which is the main goal of this bachelor thesis.

5.1 Comparison of several aspects of the Common law and Continental law

Where are several main differences between Common Law and Continental Law . It is start from the formation of legal traditions.

Differences between the Roman-Germanic traditions and common law are significant and relate to many aspects.

- **Reasons for the differences are predetermined primarily different historical paths of development of these legal traditions.**

Romano-Germanic law. Romano-Germanic tradition is the oldest and most influential in the world. It has its origins in Roman law. Family Romance and Germanic legal systems finally formed as a result of the efforts of European universities that have developed and

evolved, since the XII century., On the basis of the Emperor Justinian Code common to all Western Europe jurisprudence adapted to modern conditions.[5]

Romano-Germanic traditions historically divided into three families: French, German and Scandinavian.

As a result of colonization and voluntary reception the Roman-Germanic system spread over vast areas and between the legal systems relating to the Romano-Germanic family, there are many differences. Essentially, each state has its own "national" law

The most fundamental of these differences which separate the law of European countries from the law of non-European countries belonging to this family. Reason for the difference is that the European countries in the XX century completely updated ideology, which dominated after the French Revolution. In the foreground were concerns about social equality and economic development, which previously could be ignored. Most important that in the West do not always understand that many institutions that govern the life of society in Europe, completely unusable in countries consisting of disparate tribes, for which a European-style democracy is meaningless. Therefore, outside of Europe legal systems related to the Romano-Germanic family acquired its specific features. Reception of norms of Romano-Germanic law in many cases was only partial: a certain part of relationships, as before, is still regulate by traditional norms.

Anglo-Saxon law become widespread and other legal family, common law system, which includes the law of Great Britain and countries that have a sample of English law. Feature of the formation of English law was originally a dualism.

During its propagation the common law has undergone significant changes due to the special conditions of countries which perceived it. These changes and additions in different countries are different. Their character depends mainly on the strength of bonds between surviving this or that country and Great Britain, as well as the influence of local civilization.

Despite the significant differences between the legal systems of different countries of the common law, the term "common law" is common practice, as a rule, without national epithet . It common law, do not want to see a system of national law: it is - the "common heritage of all the nations of the English language" designed to play the same role as that in continental Europe before the era of Roman law codification.

Differences in the hierarchy of legal systems legislation

One of the main differences between the two legal systems under consideration is to determine the formal sources of law.

[5] White M. Legal Practice and Economic Adaptation
Waldorn J. What is private property? // Oxford Journal of Legal Studies. 1985. 315.

In various systems, law, custom, jurisprudence, doctrine, justice have different meanings. One system has a religious character, and no law cannot change the rules of such law. In other countries, the law - it is only a model, which is considered a violation of the natural, if required by custom. Elsewhere judgment is given a value outside the scope of this procedure. Using the general principles and formulas may also in some legal systems serve to improve in one way or another formal norm of existing law.

Romano-Germanic tradition. In the Roman-German law new norms adopted on the basis of deduction of existing laws (constitutions, codes, simple laws, regulations and decrees). Here at the forefront pushed the norms of law, which are regarded as norms of conduct that meet the requirements of justice and morality.

The law in the broadest sense is apparently paramount these days, almost the only source of law in the Roman-Germanic legal family. All these countries - countries "written law" (pays de droitecrit). Lawyers here refer primarily to the legislative and regulatory acts adopted by the Parliament or government agencies and authorities. Lawyers see the problem mainly to using different methods of interpretation to find a solution that is in each case corresponds to the will of the legislator. Legal opinion that has no basis in law is unfounded (Jurisconsulta sine legeloquenserubescit).

For all these reasons about the importance of law in the Roman-Germanic legal system become apparent that the judge has a secondary role I decision making . Actions of the judge is best defined by the term "obeying the law"

Anglo-Saxon tradition. Characteristic features of the common law quite different than the law of all systems of Romano-Germanic family.

Common law was created by judges to resolve disputes between individuals, this seal of origin shall be given legal system so far. Common law rule less abstract than the rule of law Roman-Germanic legal family, and aims to solve a specific problem and not formulate a general rule of conduct for the future. Rules relating to the administration of justice, trial evidence, and even the execution of court decisions in the eyes of lawyers in these countries are no less, and even more important than the rules relating to the substantive law. Their main concern - the immediate restoration of the status quo and not to establish the foundations of social order. Finally, the common law by virtue of its origin is related to the royal authority.

With the formation and development of the common law doctrine of novelists based on civil law, played a very limited role. Classification of the common law, its concepts and vocabulary itself lawyers of this formation are completely different than in the legal systems of the Romano-Germanic family.

It is obvious that in the Common law judge has more ‘’free space for actions” in comparison to the Roman-Germanic practice , he or she it is not only the interpreter of the existing legal norms, but also in some extent it creator (through the mechanism of

[6]precedent). The judge must be guided by the imposition of an equitable solution, and in his or her search he/she may apply not only to the current standards, but also to the subjective criteria of fairness. On the assumption of the subjective factor can be built mechanism customize judgments in common law .

Principles of functioning legal systems and their impact on the economy

Main characteristics of the **Romano-Germanic legal systems** and **Common Law system** have the direct impact on economic principles. Although in theory both systems proclaim that 'Everything is allowed is not prohibited' in practice this principle holds only a Common law system. Romano-Germanic legislators, by contrast, tend to forbid what is not allowed.

What is the impact of differences in the interpretation of the basic principles of the legal systems of the differences in the economic development of countries with different legal systems?

Allowing what is not prohibited, common law tradition allows free competition for both domestically produced goods and services, as well as the production process itself. This leads to the fact that consumers are provided with a huge selection of just technological innovations and not outdated, obsolete items.

As a result of such actions on the domestic markets of the following situation. Countries with common law, "the selection of producing" of the most effective new technologies provide a powerful impetus to the development of its economy.

Roman countries see it as setting to action, allowing local producers to use only those methods that have been able to prove its viability, when applied in common law countries.

This alignment of forces directly affect the pace of economic development of countries and establishes patterns of behavior for countries that have adopted one or another legal principle, and with it the relevant legal system. Faced with short-term fluctuations of economic conditions, countries with common law tend to stick to moderate economic growth. The rapid pace of innovation development here is compensated by the same highest rate of destruction of important socio-economic and legal institutions. Appeared in connection with a specific or typical situation for some time, they often quickly become obsolete. Then it becomes a natural or completely cancel them, or create new ones, which would include the old foundations of the complex, or belonged to the same area of economics and law.

[6] **White M. Legal Practice and Economic Adaptation. 1985**

On the other hand, the economy of the countries with the Roman-Germanic legal system, usually developing a medium pace, gets a significant boost for its further development, being "fueled by" new features local producers. However, in practice most often occurs, and the reverse process - economic stagnation due to the fact that the legislation of the Latin countries are not always allowed to use certain technology, making goods and services produced in these countries uncompetitive in the global market.

Thus, the types of economic development of the Anglo-Saxon and Roman-Germanic law differ due to the fact that the legislation of these countries directly affect the value of the time lag required for the adaptation of the economy to innovations in the production of goods and services.

Interpretation of "property rights" in different legal systems

The general paradigm of property rights. Unlike The Common law norms of the Romano-Germanic law - on the interpretation of "property rights".

When considering property rights in the Roman-Germanic system based on the following assumptions:

- consideration of property as things;
- indivisibility of formal property rights (which resulted, as shown earlier, are limited opportunities to use the principles of case law).

On the basis of property rights are understood here as a whole, unlimited and indivisible, as a kind of "indivisible monolith" This suggests that the owner of a resource can only be one person. This man is endowed with powers three major - the right of ownership (abusus), the right to use (ususfructus) and the right to dispose (usus).

It should be noted, however, that although this "triad" is considered to refer to the classic creature of property rights in the framework of this tradition can be highly doubt that it (the triad) consists of homogeneous concepts. "Possession" and "use" are in economic terms, while "order" - a legal category

Therefore, in the Romano-Germanic law major powers are defined differently. Thus, in France, they boil down to two: "Owner uses and disposes of things most absolute manner" . At the same time, many theorists of the Romano-Germanic law specifically emphasize that although all of the powers are concentrated in the hands of one person, ownership may be called exceptional, but not "unlimited." Exclusivity in this case means that it will be constrained only by the limitations are of a legislative nature.

To understand the Anglo-Saxon tradition, must be borne in mind that the benefit has many dimensions, which can be classified by:

- Time;

- location;
- form.

These measurements have dynamic characteristics within the relationship "man-thing." In addition, the physical dimensions of things added its legal characteristics reflecting the relationships between people. Variety of useful characteristics and properties of the thing makes the diversity of legal relations with her others, taking the form of entitlements. Thus, the common law is based on the concept of property as a "complex beam powers, essentially different in nature and consequences" (, the entitlement to the same resource can belong to different people. Specification assumes ownership assigned to each Authority clearly defined owner, and not the definition of a single and absolute owner of the resource. In other words, ownership is fully specified when each has its own exclusive powers owner, and access to it is limited to other objects.

However, differences in the interpretation of the property should not be exaggerated. Indeed, the three major powers of the Romano-Germanic law presented in classification

Practical consequences of the differences paradigms.

Difference between the two concepts of ownership is particularly evident in the study of the Institute of the trust. Trust is usually constructed as follows: a person that establishing a trust (settlor of the trust), stipulates that a property will be managed by one or more persons (trustees) for the benefit of one or more persons - beneficiaries (cestuisque trust = beneficiary). This institute is very often used in common law countries, as it can serve in a wide variety of practical purposes: protection of property of incapacitated persons, married women, the elimination of the inheritance; often this form is used for the organization and activities of charitable and other institutions.

Trust is a particular subdivision of property rights, some elements of which are (powers) belong to the manager, and the other - the beneficiary. None of the participants relations not possesses the totality of property rights, but each of them he keeps a part.

In the Roman-German law there is no direct analogue of the trust management of property, as in this system the separation of powers of the owner, what is happening in the establishment of a trust, in principle, impossible. So, trust management agreement "does not involve the transfer of ownership to the trustee" . In other words, the trustor does not cease to be the owner of that makes it relevant to the question of special rights and interests of the trustee, especially in cases of termination of contract by the founder..

Another Economic Institute, developed in the Anglo-Saxon system, but has not been developed in the continental tradition it's a lease.

Trust Deed in the continental tradition is an, in essence, the principle of representation, a kind of power of attorney issued by the trustor. In this case, the obvious realization of one

of the principles of the Roman-Germanic law - the owner of the ability to transfer his powers to other persons, which also occurs in the lease agreement. "The lessee shall use the leased property in accordance with the terms of the lease ... Lessee shall be entitled to take the consent of the lessor leased property sublet (sublease), and to transfer its rights and obligations under the lease to another person (tenancy)" .In other words, the owner conveys to the lessee the right to use and dispose of, remaining, however, the sole owner of the property. At the end of the contract owner expects "natural recovery" referred to them under a lease powers, even if it conveys to the lessee all of the powers (for example, when selling a car on the basis of general power of attorney).

The person in whose name the general power of attorney is framed gets all rights of the owner until the sale of the vehicle, but is not recognized by law as the owner. Therefore, the legal protection of interests of the person who has acquired, for example, the design of the car through general power of attorney is substantially weaker: the principal ("Seller") shall have the right at any time to revoke the power of attorney. In addition, the power of attorney is terminated with the death of the principal, incapacity, limited incapable or missing.

Thus, the above examples emphasize once again that if the common law at one and the same thing can be a lot of owners, while in the Roman-Germanic legal system owner is always one, and that is to guard his interests worth Law .

6. Practical part

Case Study : Court Proceeding of the Common law (England) and Continental Law (Czech Republic)

In a practical part of the bachelor thesis will be described Court Proceeding of England and Czech Republic . After the examination of two process will be made a comparison and conclusion based on results.

England

Common Law Court Proceeding

- Procedure in English is quite close local and feudal courts resembled quite closely that of other countries with a Germanic legal tradition
- England’s ability to do this was likely a result of two factors, both related to the strong monarchical system that followed the Norman Conquest (1066): the creation of the jury system and the establishment of a centralized royal court system. The jury allowed the flexibility of lay participation while offering a substitute for the antiquated methods of proof of the traditional Germanic law—ordeal, trial by battle, and wager of law

- The central courts led to the creation of a definite legal tradition, the common law, and to the administration of justice through permanent professional judges and their attendant clerks, instead of the popular assemblies or groups of wise men who rendered justice elsewhere.

England civil proceedings.

The proceedings is held in a open court, except where it is the opinion of the court, would not meet the purpose of judgment.
After the assistant of judge (master) decides on the appointment of a case to a hearing (the place and time of its consideration, the consideration of participation or without a jury), the claimant shall promptly send notice to the defendant in compliance of this with the deadline.

At the hearing in the case is essentially the claimant's lawyer who is giving the factual circumstances of the case and if necessary, analyzes opinions contained in legal papers of the defendant. But if the defendant in his/her explanations of action acknowledged the existence of some factual circumstances of the case, he/she is entitled to speak first.

During the performance of a lawyer is investigating the evidence submitted by the parties, which acted first. Then the lawyer of opposite side is acting that can challenge the arguments and evidence of the parties which was the first, or make a petition to the court for the examination of other witnesses and other evidence of research, submitted by him/her.
Then again, the lawyer which is acting of this side of summarizing explanation of the case. And after him/her is acting the lawyer who was spoke the first with summarizing explanation . This concludes the hearing and issues a decision.
But if the case is considered with participation in a civil process a trial jury, after speaking lawyer the judge is referring to the jury with summary of the case, with the analysis presented in the case of evidence and questions, on which they will answer in their decision (verdict). Such questions may have general character or have factual circumstances of the case . According to the verdict of a jury the court is consider its decision.
After the speech of the judge with the judgment that was considered , the lawyer of party in whose favor it is determined can make a question about award of the judicial costs .

To understand better the Court Proceeding we have to know more about Common law system of the Courts. The first one is **The House of Lords.** It is the highest court of England .It makes for consideration the appeals on resolution on civil and criminal cases, considered by appeal instances of England. From the House of Lords cases take to consideration the court of House of Lords which is consist of

the Lord Chancellor that is the head of the court ,ordinary lords o appeal and those of peers the members of the House of Lords .In a past they had the highest judicial post, including ex-lords-chancellor. Ordinary Lords of Appeal appointed to House of Lords of lawyers with experience that are usually members of the Court of Appeal. Their numbers re from 7 to 11 people .Considered by most the decision of the court of the House of Lords taking to the court which is used charged statue .It makes the final decision in accordance with the recommendations of the House of Lords.

The second is **Supreme Court** of England is led by its chairman Lord Chancellor, include three independent judiciaries:

- **The Court of Appeal**
- **The High Court and**
- **The Crown Court.**

Next one is **The Court of Appeal** consists of civil and criminal divisions and considers the panel of three or more judges of appeal on resolutions of other courts. It include the Lord Chancellor, ex-Lord Chancellor, Lord the Chief Justice (headed by the civilian branch) and other senior judicial figures and also about 18 Lords of Appeal Courts.

The High Court has three branches :

- The Royal Bench
- Chancery (department)
- Family(department)

The Royal Bench taking care about mostly in consideration of the hardest civil cases and appeals verdict of Magistrate Court on criminal cases. On the rights of court elements in the Royal Bench acting independently the Court of Admiralty which considers disputes regarding shipping, ship collisions and compensation related losses, etc. and the Commercial Court in which the defendants have many disputes of a commercial character .

Chancery, called the House for justice, often as a court of first instance consider the civil cases related to property management, asset ownership, activity of companies, bankruptcy. On the right of one of the components Chancellor department operates Patent Court for consideration of addressed petition of the General Comptroller on questions of Patent, Design and Trademark.

Family mainly consider appeals against decisions of magistrates' courts in all matters of family relations, including divorce, legal separation of spouses, child support payments, custody and guardianship.

One of the oldest is **Crown Court** was established in 1971 and fixed by the Act of the courts. It is consider in the first instance, the jury's presence is obligatory, cases of prosecution for an act of indictment, about serious crimes and also appellations of verdict and decisions of magistrates. If the jury doesn't need to be present, the case in the Crown Court dealt with by a single judge. The judges in the Crown Court is a judges of the High Court, district judges and recorders lawyers acting as judges in combination. The judicial institutions that are members of the Supreme Court of England, belong to the category of the high courts.

In England, the most serious crimes considered by the **jury**. This is a special presence in the Supreme Court of 12 people. The jury in the literature is sometimes called "Crown Court" - is the supreme criminal court of the country. In 1974 was passed the Law on the jury, under which every man can be called as a juror and compel his/her to perform those duties if he/she is registered as a voter in parliament or local government, it is not less than 18 and not more than 65 years it resides in the United Kingdom for a period not less than five years after reaching the age of 13.

To lower courts are the **courts of England and county magistrates**.

County courts (there are over 350) the main organs of civil justice, which is considered in the first instance, almost 90% of civil cases. The boundaries of the area within which the relevant county court acting is determined by Lord Chancellor, also has the right to cancel, combine or establish new courts counties.

Magistrates' courts handle the bulk of criminal cases (98% during the year). They can only condemn the condemned to a fine or imprisonment for a period, usually six months. If the magistrates came to the conclusion that the accused deserves a more severe punishment, they transfer the case to the Crown Court.

Also besides those general courts in England there are specialized courts of different jurisdiction, including antitrust trial, a canonical trial court protection, the legal committee of the Privy Council, the Court of Inquiry violent death etc.

Functions inherent to some extent of the Attorney General performs General Attorney in England. General Attorney is a official senior of the state in the sphere of criminal prosecution. His/her instructions and directives are binding for all authorities in this field.

English lawyers formed over the centuries and now operates on the basis of royal charters, individual acts of Parliament, government regulations, rules adopted by the governing bodies of the organizations of lawyers, court decisions, traditions and customs.

If we will pay attention on review of organizational and functional structure of the judiciary of England it will show that it reflects the form of government of England, which is a constitutional monarchy.

Now I am going to **the Court of Czech Republic** . As we can see that it's not so 'full' as British one . It is started with Administrative Supreme Court.

1)Administrative Supreme Court

The Courts of administrative justice decide on

a) complaints against decisions made in the sphere of public administration by an executive authority, the autonomous unit of a local administrative authority, as well as by a natural person or legal entity or another authority if entrusted with decision-making about the rights and obligations of natural persons and legal entities in the sphere of public administration

b) protection against the inaction of an administrative authority,

c) protection against an unlawful interference of an administrative authority,

d) competence complaints.

(2) Courts of administrative justice furthermore decide on

a) election matters and in the maters of a local referendum,

b) matters concerning political parties and political movements.

(Act 150 / 2002 Code of Administrative Justice)

2) Appellate Courts

The High Courts decide as courts of second instance in cases trialed by the regional courts at first instance, when belonging to its circuit. It is consists of the presiding judge, vice-court presiding judges etc

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(Act 6 of 2002 on Courts Art 25-28)

3) The CR also has a **Supreme Courts (Highest Instance)** and it has different destiny that an English one.

The Supreme Court of the Czech Republic, with its seat in Brno, is the highest judicial authority both in civil and criminal law proceedings with the exception of the matters concerning the powers of the Constitutional Court of the Czech Republic. The Supreme Court is composed of its Chief Justice, its Deputy Chief Justice, chairmen of the Collegia, chairmen of the senates and other judges. The Chief Justice and the Deputy Chief Justice are appointed by the President of the Republic

(Art 92 of the Constitution 1993)

(Act 6 of 2002 on Courts , Section 4)

Regional courts

The Regional Courts decide as courts of second instance in cases trialed by the district courts at first instance, when belonging to its circuit. The High Court consists of the presiding judge, vice-court presiding judges and other judges.

(Act 6 of 2002 on Courts Art 29-32)

First Instance Courts

The District Courts decide as courts of first instance.

(Act 6 of 2002 on Courts Art 33-36)

- Court of Audit
- Supreme Audit Office of the Czech Republic
- Other Courts
- Arbitration Court attached to the Economic Chamber of the Czech Republic
- Jurisprudence (Case Law)

Czech Courts

- High Prosecutor’s Office in Olomouc
- High Prosecutor’s Office in Prague
- Judicial Academy
- Supreme Prosecutor's Office

Czech Republic Court Proceeding

The court proceeding in Czech Republic is not public, all files with information could be seen only by parties. But it could be allowed to public if there is no danger from the hearing :

- Information is classified and keep in secret
- Some secrets in business
- The parties have a legal interests
- The proceeding is leaded by proper and morality

An action is a start of court proceeding and it has to have general and specific requests which are obligatory in law. The case of claimants should have relevant obstacles , evidence must be written and the court must be 'familiarized' with all information from them.

They also can send in electronic form or hardcopy an action but with an original signature.

The action could be brought by defendants to the court but they cannot take copies of evidence , they can only do if it will come to court. Defendant has to submit their defense in 30 days if not then it will be considered as acknowledged.

For example :

The action in which claimant demands pecuniary payment and the facts are followed from the start , the defendant could be forced by court to pay the exercised receivable to the claimant . Within 15 days he can protest with the proceeding cost. But there also can be some promise from court if will be submitted :

1. Promissory note should be original
2. The exercise right has to have all necessary documents

Hearing

Matter's merits can be discussed by a hearing if presiding judge will order it. To have enough time for preparation the parties have to serve the defiance to hearing around 10 days .

The court is establishing the case and it is facts to the stage of proving the evidence of parties.

If parties already proposed evidence the court has limited power here but anyway the decisions can be relevant or already ensured in the file in document's form.

Time

When the proceeding have started it must be decide as soon as possible and in order to hear the case but there is no exist terms to decide a case for the court .The Complexity of case and evidence has a great impact on length of proceeding before courts. The first instance is around 1 year(sometimes 2 years).

Decision

The court is explaining it is decision , legal examination, factual findings according to the merits of a case. Also within 15 days exist a possibility for the parties to appeal against the court judgment. Not necessary the decision on merits of a case if the claimant withdraws its claim so in this case the proceeding can end.

In a Table 3 , we can look into comparison of salaries which get lawyers in Great Britain and Czech Republic and see the differences.

Comparison of the salaries of the UK lawyers and of CR lawyers		
	Min in US dollars per month	**Max in US dollars**
Corporate lawyer junior	**CZ** / $1,267 (25,000 CZK)	**CZ** / $2,026 (40,000 CZK)
	UK / $ 6,509 (37,000 GBP)	**UK**/ 101,406 (61,000 GBP)
Corporate lawyer Senior	**CZ** /$ 2,542 (50,000 CZK)	**CZ**/$ 5,083 (100,000 CZK)
	UK/142,966(86,000 GBP)	**UK**/182,864 (110,000 GBP)

Table 3. Comparison of salaries of UK lawyers and CR lawyers

Summary

After the comparison of both Court Proceeding of England and Czech Republic I can see many differences . First of all , its appeal , the difference is only in one days which not much.

There is some another difference between UK and Czech Republic if you're going to **appeal** after procedure . The time limit is to 14 days in UK case after the end of dispute period or after providing written statement of reasons and 15 days in Czech Republic.

In both court proceedings are open or public hearing except in a Common law could be closed if it would not meet the matter of judgment and in a Continental court proceeding if were exist some business secrets etc.

Next one is a very visible difference between salaries of English and Czech lawyers . In UK , Czech lawyers could become more rich.

Different courts in this two countries decides different cases. E.g. :**The Supreme Court of CR** is highest judicial authority both in civil and criminal law proceedings and in UK is the **Supreme Court** include three independent judiciaries such as : The Court of Appeal, the High Court and the Crown Court and two of them also include other divisions and the highest court of England is **The House of Lords** it consider the appeals on resolution on civil and criminal cases.

The lawyers of CR more conceptual and English lawyers are more pragmatic.

The last one is to my opinion is a very good that judge has no full power in decision making and his /her opinion just one and may seem sometimes not really objective that's why is a great idea to have juries.

To summarize, within the Continental law courts need to locate and interpret an abstract norm included predominantly in a code or other statutory instrument, i.e. their reasoning is abstract and not casuistic . Within the Common law, courts need to locate as similar binding case as possible and, unless the statute provides otherwise, extract from the practical decided case a general rule and apply it to the new case to be decided, i.e. their action is very casuistic and thus close to the business reality.

7. Conclusion

In this Bachelor thesis I tried to find out all differences and similarities between Common and Continental law . I tried to maximize all important information and aspects what need to know readers .

In a practical part was done the comparison of court proceeding of England and Czech Republic and seen the main differences in process , appeal proceeding which is has difference in one day , a big difference in lawyers salaries . English lawyer more pragmatic and Czech is conceptual.

In the theoretical part was collected all needed information about two legal systems to be able to do a comparison between them for final result. The main differences in formal sources and historical development of Anglo-Saxon System and Romano-German System .

Next one is the difference in hierarchy and impact on economy . The Common law countries have a new technologies which make better development of economy . The Continental countries opposite they use the technologies that can prove themselves . Common law countries are moderate an economic growth. From all of that is come out practical consequences what have effect not only on economy but society in general.

The aim of this bachelor thesis was done . Two legal systems were defined .Was made a comparison between them and gotten a result and two hypothesis were proved.

Nowadays , is a very important to know some legal aspects. Never know when you can use it but it's always useful if appear a problem e.g. with property and you know your rights .

The question is open about Common law and Continental law . Will this systems modernized and have more perfect jurisdiction or will continue to follow old good tradition could be known only in a couple of centuries.

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