Czech University of Life Sciences Prague

Faculty of Economics and Management

Department of Law

Bachelor Thesis

Difference Between Common and Continental Law (Employment Contracts)

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BACHELOR THESIS ASSIGNMENT

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Thesis title

Difference between Common and Continental law (employment contracts)

Objectives of thesis

The main goal is to identify features of the legal regulation of the employment contract in the Russian Federation and the United Kingdom, consider the structure of common law and continental law and its sources, to study the formation of continental and common law and their difference from each other.

Methodology

The methodological basis of the study consists of a general scientific, private and individual process of cognition, including methods of historical, formal, structural and functional analysis and the method of comparative law.

The proposed extent of the thesis

30 – 40 stran

Keywords

Common law, Continental law, formation of law, legal regulation, employment contract

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Recommended information sources

David E. Guest, Kerstin Isaksson, Hans De Witte. Employment Contracts, Psychological Contracts, and Employee Well- Being// An International Study, 2010. ISBN 978-0-19-954269-7

David R., Joffre-Spinozi K., Basic Legal Systems of Our Time: Translated from French. V.A. Tumanova. – Intern. relationship, 1996. ISBN 5-7133-0892-8

Elizabeth Aylott. Employment Law, 2014. ISBN 978 0 7494 6974 0

Harold J. Berman, Law and Revolution. The Formation of the Western Legal Tradition, 1983. ISBN 0-674-51774-1

Kosarev A.I., History of the State and Law of Foreign Countries. Textbook. 2012. ISBN 978-5-9516-0233-6

Nick Howard, Beginning Constitutional Law, 2013. ISBN 978-0-415-69222-9

Open Research Online, Stephanie Pywell (2013). Untangling the Law. New Law Journal, https://oro.open.ac.uk/39446/9/Delegated%20legislation%20article%20030213%20Edit%20for%20ORO.pdf

Peter Newman, The New Palgrave Dictionary of Economics and the Law, Palgrave Macmillan 1998. P. 388. ISBN 978-0-333-99756-7

Polly J. Price. Natural Law and Birthright Citizenship in Calvin's Case. Yale Journal of Law and the Humanities, Winter 1997. https://www.uniset.ca/naty/maternity/9YJLH73.htm

R. Leger. The Great Legal Systems of Our Time. Comparative Legal Approach. 2010. ISBN: 978-5-466-00663-6

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Declaration

I declare that I have worked on my bachelor thesis titled "Difference Between Common and Continental Law (Employment Contracts)" by myself and I have used only the sources mentioned at the end of the thesis. As the author of the bachelor thesis, I declare that the thesis does not break copyrights of any their person.

In Prague on 23.03.2020 _____

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Difference Between Common and Continental Law (Employment Contracts)

Summary

The bachelor thesis deals with the consider the structure of common law and continental law; considering employment contracts in the Russian Federation and the United Kingdom. The main goal is to identify features of the legal regulations and their differences of the employment contracts in both countries. The theoretical parts give the notion of the emergence and formation of continental and common law, stages of development of both systems of law; current state of the law. Consideration of the separation of the right to public and private law. The practical part presents the general and differences in legal regulation in Continental and Common law. Features of the legal regulation of an employment contract in the Russian Federation and the United Kingdom. Overview of the content of civil contracts; types of employment contracts; parsing of mandatory conditions of an employment contract in both countries. The work includes the conclusion under the result of the study in both legal systems and employment contracts. The methodological basis of the study consists of a general scientific, private and individual process of cognition, including methods of historical, formal, structural and functional analysis and the method of comparative law.

Keywords: Common law, Continental law, formation of law, legal regulation, employment contract.

Table of content

1 Introduction

Historically, the basis of common law is case law, which then includes legislative incursions, while continental law begins with a legislative basis, and in some cases may include elements of case law. The common law was developed in England from the fourteenth century and became the basis of the legal systems of countries that were colonized by England. The primary source of law in common law countries is a combination of common law, equity and legislation. Common law consists of the application of legal principles developed in past cases to determine the outcome of present cases (Daly, Speedy, Jackson, 2014, p. 156). In continental law, the degree to which the creative function of the judiciary is feasible is substantially less than in general law and insufficient to change the nature of the legal system.

The relevance of the study is due to the fact that the legal system, like any system, depending on the characteristics of regulated social relations unites and interconnects legal norms, institutions, and industries. This is about the internal structure of the law. The English common law system (Anglo-Saxon or Anglo-American), divided into groups of English law and US law. Common law is based upon the doctrine of precedent (i.e. by looking at how cases have been decided in the past and applying the principles developed in those cases to the present). Cases that have an important impact on the common law are reported in law reports relevant to particular courts (Daly, Speedy, Jackson, 2014, p.156). The continental law or civil law family of legal systems is often further divided into the French legal tradition and the German legal tradition. The French legal tradition is based on a rigid separation between: (a) private and criminal law which are based on codes resulting from Napoleonic codification; and (b) public or administrative law which has been elaborated and developed by the administrative courts. Each of these two categories of law within the French legal tradition have their own courts, unique legal concepts, and commentators and learned authors. The German legal tradition is based on a more dogmatic and systematic study of Roman material which has resulted in a conceptual, systematic law produced to a high level of abstraction in the German Codes which are different from the French Codes in their organization, tone, mode of expression, and extraordinary precision (Prosterman, Hanstad, 1999, p. 10). Since our goal is not to search for the historical prerequisites for the formation of law in Europe but to state the fact of existence. There are two branches of continental law, one of them is German (Switzerland,

Austria, Germany) with the dominant role of the German law system, another one is Romance (France, Luxembourg, Holland, Belgium, Spain, Italy, Portugal) with the leading role of the national legal system of France.

Therefore, in my thesis on the example of two countries of Russia and Great Britain, I compare continental and common law.

Over the past decade, Russia has undergone significant changes in the field of modernization of the socio-economic and legal relations and the formation of the legal system, which could meet modern requirements and realities. The country began the active development of the rule of law and civil society. However, effective implementation requires, on the one hand, improvement of legislation and public administration, and on the other to ensure a high level of legal culture of citizens.

First of all, we need to determine what is legal culture. Legal culture - a quality state of the legal life of society, which is reflected in the achieved level of perfection of legal acts, legal and law enforcement, legal awareness and legal development of the individual, as well as the degree of freedom of its behavior and mutual responsibility of the state and the individual, positively affecting the social development and the maintenance of the very conditions of existence of society.

Historical features of the formation of the legal culture of Russian society was a patriarchal and religious character of social life. People did not believe in the force of law but faith in the power of God and the king. For several centuries can be traced obedience and acceptance of many rulers' unjust decisions. In modern Russia, citizens have given quite a lot of rights and freedoms, which people do not know how to use, which gives rise to legal nihilism - a denial of the significance and usefulness of laws.

One of the necessary conditions for creating a democratic and legal state is a citizen who educated in a legal sense. In modern Russia, unfortunately, there are many gaps in the process of establishing a legal culture. The reasons for this are the legal illiteracy of citizens and the disagreement between legal acts and reality. These same facts were the result of legal nihilism in Russia, which later led to the denial of moral principles.

In the UK, the formation and development of the legal culture of the population followed a different path. Back in the Middle Ages, traditions of commercial law and general legal traditions that formed from local customs formed in Great Britain. It happened due to the development of the institution of justices itinerants (Hasted, 1797). Their activity was based on the principle of justice, as well as taking into account local traditions and

customs. The desire to establish uniform legal norms, as well as to their uniform interpretation, led to the emergence of the common law. Consequently, common law was formed not directly from the king, but directly from the people, which indicates a high level of socialization of law and the legal worldview of the population. Today, one can notice striking differences in the legal culture of Russia and Britain, because the level of legal culture of the latter is much higher In foreign countries, the formation of a positive attitude to law, in particular in the countries of the Anglo-Saxon legal family, begins with childhood. Then the development of active citizenship and training in the basics of law is carried out through civic education in schools and universities. After the process of education is conducted through various law societies, legal associations, and legal aid funds.

A higher level of legal culture and legal literacy in the UK, evidenced by the fact that the British often go to court. First of all, it means that people know their laws, know their rights. Secondly, this is an indicator that the British believe in the judiciary: in its justice, integrity, efficiency. In Russia, citizens do not often go to court to restore violated rights. Despite the cooperation between Russia and Great Britain, the rapprochement of the Roman-German and Anglo-Saxon legal families, the interaction of the legal cultures of these two countries do not observe, nor is the borrowing of individual elements of culture. In this thesis, I compare two legal systems, and in the practical part, we will consider the features of labor contracts in both countries. The Russian Federation and Great Britain are two major and strong powers in the world, but the judicial systems of Russia and England do not have common features, due to historical and legal differences and the originality of each country. In the UK, the creation of a modern system of fair values has been going on for several centuries. The state values protect and develop progressive thoughts regarding human rights. As for Russia, laws do not work or work poorly. Legal nihilism is thriving at all levels, a low legal culture. There are many problems in the field of labor law. One of the relevant issues is discrimination in the world of work, which is most often manifested when concluding labor contracts. All of the above determines the extreme relevance and practical significance of the topic, the need for its scientific understanding, theoretical development.

1.1 Aims and Objectives

The main goal of this work is to analyze the difference between continental and common law, to reveal the difference in the legal regulation of employment contracts in the Russian Federation and the UK.

The following objectives are set for the fulfillment of the goal:

1. To give a notion of development and structure of the continental and common law;
2. To present the difference of two legal systems;
3. To consider Private Law and Public Law;
4. To analyze features of the legal regulation of the employment contract in the Russian Federation and the UK;
5. To make conclusions under the results of the research.

1.2 Methodology

The methodological basis of the study consist of the scientific works of Russian and foreign scientists in the field of comparative private law, civil law, administrative law and labor law. Used such sources of law as: the Constitution of the Russian Federation, United Kingdom Labor Law and Labor Code of the Russian Federation. Research general and particular methods to knowledge, including legal system and legal method, historical method and systematic analysis.

1.3 Literature review

During the preparation of this work the following sources were used. The practical part of the study is the analysis of the employment contract in both systems of law. Note that many studies have been conducted in the field of labor relations. Historical aspects are disclosed in the works: Grafsky V.G. *The General History of Rights and State: Textbook for University*. - 2nd ed., 2007. The textbook provides systematic knowledge in the field of the general history of law and the state (history of the state and the law of foreign countries) as a fundamental discipline in modern legal education. Kosarev A.I., *History of the state and law of foreign countries. Textbook*, 2012. The author pays special attention to the multivariance of the leading processes and development trends of the state and law. The basic principles of legal systems were investigated: David R., Joffre-Spinozi K., *Basic legal systems of our time: Translated from French*. V.A. Tumanova. - Intern. relationship,

1996. The study of legal systems is carried out by comparative law, or comparative studies. One of the most prominent figures in this area is the French scholar Rene David, who gave his own classification of legal families based on a combination of two criteria: ideology and legal technology.

An employment contract as a subject of study is presented in the works: Elizabeth Aylott. *Employment Law*, 2014. The author has to review sources of Employment Law. David E. Guest, Kerstin Isaksson, Hans De Witte. *Employment Contracts, Psychological Contracts, and Employee Well- Being- An International Study*, 2010.These authors have to research the difference between permanent and temporary contracts.

Universal work on labor topics, covering all areas of labor law, can be called research Peter Newman, *The New Palgrave Dictionary of Economics and the Law*, *Palgrave Macmillan*, 1998. The textbook is uniquely placed by the quality, breadth and depth of its coverage to address this need for building bridges. Drawn from the ranks of academics, professional lawyers, and economists in eight countries, the 340 contributors include world experts in their fields. Among them are Nobel laureates in economics and eminent legal scholars. Nick Howard, *Beginning Constitutional Law*, 2013. Nick Howard breaks the subject of constitutional law down using practical everyday examples to make it understandable for anyone, whatever their background. Starting with the basics and an overview of each topic, it will help to come to terms with the structure, themes and issues of the subject.

2 Formation of the continental and common law

2.1 Stages of development and the current state of the law of England.

International law in the form of a holistic system governing private law relations has emerged quite recently. Based on the generally accepted principles of international law and international private law, these are a community of legal norms, containing both international treaties and domestic legislation and also the practice of judicial and arbitration type.

The formation and development of private international law was mainly the result of the work of professional scientific legal thought in European continental countries, such as Italy; Germany; Netherlands; France, etc. Therefore it is possible to explain the formation of several different legal theories.

The geographical independence of England from continental Europe was an obstacle to the formation of private international law in Great Britain.

In England were two judicial systems. One of them is common law and the second one is the right to justice.

The common law is formed and established in decisions on certain cases by the judges themselves. These decisions should subsequently be applied to other similar cases.

The union of Scotland and England in 1603 pushed for the formation of a new extraordinary situation. In England was applied the Anglo-Saxon legal system. The Scottish legal system was subject to the strongest influence of the Romano-Germanic law. This led to obvious legal conflicts of laws in England with Scotland.

This issue was first noted in Calvin’s case in 1608. Involving all the important English judges of the day, Calvin's Case addressed the question of whether persons born in Scotland, following the descent of the English crown to the Scottish King James VI in 1603, would be considered "subjects" in England. Calvin's Case determined that all persons born within any territory held by the King of England were to enjoy the benefits of English law as subjects of the King. In this case, the English judges confessed to Calvin who was born in Scotland and was an heir by English law. (Polly J. Price, 1997). Since that time, the international private law of England indicates that court decisions began to be taken independently in each specific case and situation.

The first research papers on private international law were created by a famous American lawyer named Joseph Story (1779–1845).
So that justice doesn't lose thus the fundamental principles of private international law were established.
According to the theory of statuses. Laws of foreign origin can be applied if they do not find contradictions to state policy, as well as established public policy.
English law of the 20th century subjected to further modernization. Firstly, caused by fast and profound changes in the economic, social and political structure of post-industrial British society. Secondly, the objective convergence and influence of the two legal systems, which are the Roman-Germanic and Anglo-Saxon. Thirdly, the entry of Great Britain into the European Union, which stimulated the processes of its legal integration (Grafsky V. G., 2007). After all, we can see the trends in the development of modern English law.

1. English law in the 20th century is developed not through judicial rule-making, but based on legislative acts of parliament. Among them are public bills (which establish universal rules governing important issues); private bills (related to specific groups, individuals and territories); hybrid bills (containing general rules and affecting individuals). The reduction in the scope of application of judicial law is caused by constant complication and the growing diversity of human action, which needs effective and adequate regulation.

Judicial precedents couldn't the ability to change dynamically and cover all new areas of public relations with legal regulation. This could do only laws issued by Parliament. In the second half of the 20th century, there was a deviation from the principle of the binding power of a precedent. According to which decisions of the court of the House of Lords, the Court of Appeal, the High Court are binding for these courts and Lower Court.
According to this rule, the House of Lords could not revise its own decisions. This right in the early 20th century became the exceptional prerogative of parliament. In 1966, the House of Lords officially announced the renouncement of the principle of precedent and allowed the possibility of reviewing its own decisions.

2. The dominance of statutory legislation as the main source of English law in the 20th and 21st centuries did not mean the termination of judicial precedents. Despite the loss by the judicial precedent of its supremacy in the legal system, the relationship between law and precedent was not so plain.

The dualism of law and precedent in the system of sources of modern British law since that law takes precedence over judicial precedent because the last one can be canceled by the rule of law. Secondly, the judicial precedent has supremacy about the law, which follows from the responsibility of the court to interpret acts of parliament.

Legislative norms which have received judicial interpretation, are considered part of the common law. As a result, in the consideration of cases, the courts do not apply the rule of law but the rule that arises in its interpretation. Thus, a new source of law emerged as precedents of statutory law (Krasheninnikova N.A., Zhidkov O.A., 2004)

3. In the 20th century emerged another source of law. This is Act of Statutory Instrument, especially in such areas as education, health care, social insurance, etc. These include legislative acts applied by the government on matters requiring maximum urgency and confidentiality, based on the transfer of the function of legislative regulation by the parliament to the discretion of the government (Principles of Delegation).

SIs were created by the Statutory Instruments Act 1946. Section 1(1) is entitled "Definition of 'Statutory Instrument'" and provides that there are two ways in which delegated legislation ("orders, rules, regulations or other subordinate legislation") may be made. If the law-making power is conferred on the Crown, it is exercisable by Order in Council; if it is conferred on a Minister, it is exercisable by SI. In either case, the resulting document "shall be known as a 'statutory instrument'". By definition, therefore, Orders in Council are a form of SI, rather than a separate type of delegated legislation (Stephanie Pywell, 2013)

4. Sources of law which regulated various aspects of the life of British society in the 20th century often contained provisions which mutually exclude each other or rather archaic and contrary to the requirements of the time.

For this reason, the need arose in the systematization of acts in the form of consolidation and codification. In 1949, the Parliament passed the Consolidation of Enactments (Procedure) Act. This act eliminated archaisms and the ambiguity of legal institutions. Consolidating acts have the force of law after approval in parliament. However, attempts to codify English law were not successful, despite the creation by parliament in 1965 of a special The Law Commission.

On the path of codification of British law are conservative legal traditions and the specific legal culture of England. English law of the 20th century did not have a division into

branches, therefore, their subsequent separation is rather arbitrary and undertaken only with the aim of a more accessible and systematic presentation of the norms and institutions of modern English law (Kosarev A.I., 2012).

According to international theory, all the fundamental basic rules and the beginnings of private international law have a universal character. They are common to diverse legal systems around the world.

According to the theory of vested or acquired rights, acts duly perfected and judgments properly issued in one jurisdiction should enjoy universal recognition across all legal systems. Even though vested rights theory became very popular among the earlier common law writers, the theory plays relatively limited role in modern systems of conflict of laws (Peter Newman, 1998)

Without violating the principle of territoriality of the impact of the law, the court has the right to take into account the rights of the plaintiff, which were acquired under the laws of a foreign state or according to decisions of foreign judicial authority.

Thus, the post-territorial (extraterritorial) impact is not possessed by the norms of foreign legislation themselves, but only by the rights that they created on their own. According to the theory of local law, this theory is a kind of territorial theory.

The idea of national sovereignty attribute of the modern state national has the privilege to enact laws within its own territory and to remain free to ignore all other but its own in the governance of the people and of property located within its territory (Peter Newman, 1998).

Understanding that this particular dispute is complicated by a foreign element, the court is not obliged to mandatory apply the legislation of the country of the court, which could be applied in the event of a purely domestic dispute.

Due to social experience, as well as practical convenience, it is necessary to take into account the legislation of a foreign country. In this way, they form their own local rules, which are as close as possible to the legislation of the state in which any specific decisive events occurred.

2.2 Becoming of continental law and its difference from the common law

Modern rules formed over many centuries. Even in prehistoric times, there were attempts to systematize and normalize relations between people. To have the laws that we have

today, humanity needed to make a lot of mistakes - from the primitive and cruel laws of the slave system to modern liberal acts, a whole chasm. Consider the essence of continental law.

Continental law has a very "venerable age". Alma Mater is Ancient Rome. The “childhood” of the system lasted until the 13th century when the experience was accumulated, basic terms were defined, and mechanisms for the application of legislative norms were developed.

Roman law continued to develop after the fall of the Roman world, but already under the "supervision" of barbarian tribes. Their customs and rules of government left an imprint on the dogmas of the Roman system, but not in the best possible way (Tagunov D.E., Sazhina V.V., 2007).

What follows is the “youth” of continental law, this happened in the Renaissance era. Immediately began to develop forgotten and tightened barbarians' norms, laws, and regulations. This time is called the period of the re-creation of classical Roman law. The laws of this period "talked" about humanitarianism, assured that they provide security and the correct order of things. Those norms were too liberal.

This was followed by the stage of “hardening” in the Middle Ages when kings and feudal lords turned to the primary sources of the Roman system. They completely rejected the experience of the previous era and used a direct interpretation of the source of laws.

The prerequisites for the formation of the “new” Roman law were associated with numerous wars, the redistribution of territories, and as a result, the intensification of economic activity.

The spread of this form of law was also due to one territory of the countries, one religion and, of course, one story for all.

Continental law is a Roman-German system of relations that are used several countries, primarily in Europe, as a result of the influence of Roman norms.

This legal system of norms consolidates the systems of several countries of mainland Europe, and Russia is no exception. The main source is a regulatory document (law).

The continental law system is distinguished by a clear industry division, which in turn also has a pair of subsystems - private and public sectors.

Continental law in private kinds can be ranked:

1. Family Law - a set of rules for regulating personal and property relations between people (marriage, kinship, adoption);

2. Civil Law- implies features of regulation of property and personal relations between citizens;
3. Labor Law - regulates the relationship between the employee and the employer;
4. International Private Law- regulates and integrates the legislative framework within the country and relations between countries in different areas of a private nature (personal relations of individuals) (Kosarev A.I., 2012).

Legal relations in the public system can be ranked:

- Criminal Law - the basis for regulating the relationship “crime and punishment”;
- Administrative Law - consolidates and manages relations in the field of government;
- Constitutional Law - determines the forms and methods of government;
- Public International Law- a collection of fundamentals of regulation of interstate relations.

These concepts are constructed based on Roman law.

The system of continental law, which is often referred to as the "Romano-Germanic group", includes many legal models of European sovereign states. Subgroups of these group can be ranked:

- Romance, or Napoleonic (France, Belgium, Spain, Italy, Netherlands, Romania, Monaco, Luxembourg, including African countries - formerly French and English colonies);
- Germanic (Germany and Austria, Hungary, Greece, Latvia, Russia, Slovakia, Ukraine, Czech Republic, Croatia, Switzerland, Estonia);
- Scandinavian (Denmark, Iceland, Finland, Sweden, Norway) (David R., Joffre-Spinozi K., 1996).

The history of jurisprudence of continental law goes back when Roman philosophers developed a philosophy of law. This understanding can be called "legal thinking".

The Constitution has the dominant legal role in states with a continental system of law - basis for the development of other laws and regulations. The most important court is the constitutional court.

The jurisprudence of continental law is characterized by the fact that the interpretation of laws by judges is included in the rules equally for everyone.

Such a concept formed the principle of thinking “from the general to the particular” in lawyers. Many researchers believe that lawyers of continental traditions are predominantly of an intuitive psychological type.

After all, when a lawyer is trained in studying a problem (breaking the law), he must be guided by general laws to highlight the norms that were violated earlier.

Legal education in the countries of the continental family provides for numerous classifications and extensive terminology for all occasions.

The essence of the precedent of European judicial practice is that, when making this or that decision, various instances rely on the practice used earlier. When determining a solution in any situation, they use experience and traditions. Mandatory implementation of the principle of precedent in the judicial practice of the EU and several other countries where the system is based on continental law (Veniosov A.V., Danilov V.A., 2012).

In judicial practice, quite often, judgments are influenced by their understanding of the meaning of a normative act.

But sometimes the decision of the European court is optional since it is possible to challenge or not comply with the judicial authorities of another country.

The general difference for different systems is the precedent of a convincing court decision. The role of this factor is more influenced by the authoritative position of the court itself and the degree of trust in it. The decision made by the court is perceived as an “unwritten truth” and is adopted not only in the homeland but in other countries.

It’s not worth asserting with absolute certainty that some kind of court is the most humane court in the world. In different circumstances and at different judicial institutions, different decisions are possible. But laws can be interpreted in different ways. And to say that some judge correctly, while others do not, will also be a mistake.

So, the formation of today's system of legal relations in European countries was influenced by the Roman and ancient Greek philosophy of law. Legal thought developed over many centuries, improved and adapted to different situations. Around the same time, jurisprudence was appeared, which is an integral part of a regulation.

The borders where continental law was popularized have long ceased to be limited only to the countries of the European continent. Mixed systems have long existed, based on continental, maritime, and Anglo-Saxon (Kosarev A.I., 2012).

The main role in the Roman-Germanic system of law is played by the private sphere, namely, the regulation of personal relations between individuals. These are relations of a family nature, in resolving disputes between individuals and many more similar areas. In this model of legal regulation, there is a fact of the rule of law that has the prevailing legal force. And this implies that upon entry into force of the law, all other by-laws and regulatory documents must be brought into agreement with this law. Otherwise, such an act is considered insolvent, or a decision based on it can be appealed.

3 The structure of common and continental law

3.1 The structure of common law and its sources

The institute of legal, political, social and other nature always has a concept and a certain structure. English law, in this case, is an offshoot of law in its classical form. Thus, to competently study all interpretations of the legal system of the British Isles, it is necessary to consider its starting points. That is a need to find out what constitutes law.

This concept has the meaning of a system of legal norms that are protected and guaranteed by the state, and are also universally binding for all people. It should be noted that law in each country manifests itself in the form of a system, which, in turn, consists of legal culture, consciousness, and implementation.

Any legal phenomenon is characterized by several certain signs. When we speak specifically about law, then there are also peculiarities. Today in the scientific community there is no single approach regarding the signs of this regulator of public relations. However, there are several common features, the existence of which many allow. Given this, we can distinguish the following main features that characterize the law, namely:

- the whole system of norms is a set of rules of behavior with which a large number of people are familiar;
- a mandatory character suggests that the system of norms extends its effect to everyone;
- the state guarantees the effect of the law by establishing legal liability;
- the law expresses the consciousness and will of people;
- the system of norms is expressed in official state acts.

It should be understood that these signs presented are the most classic. That is, they also be characteristic of many branches of a classical law.

The English legal system has a large number of industries. By analogy with the continental legal structures, industries regulate social relations of one nature or another. Moreover, each of them has a number of its specific features. For example, English criminal law is derived from a general system of norms. As for the crimes themselves, they have two elements, which, in turn, characterize the objective and subjective features of the committed act. The main feature of the English criminal industry is the fact that there is no codified act (Afanasieva M.V., 2008).

There are other legal sectors within the British system, for example:

- constitutional law;
- administrative law;
- labor industry, etc.

The most controversial in academia is English civil law. Because its existence in most cases is simply denied.

Like many other provisions of the British legal system, its basis is completely atypical sources for the continental system. Specificity, in this case, exists for various reasons. For example, a significant role is played by historical development away from continental trends. After all, English law has always evolved autonomously, because of Medieval Roman law no influence on English law.

Thus, the main sources in English law today are the following sources:

- Legislation (primary and secondary)
- The case law rules of common law and equity, derived from precedent decisions
- General customs
- Books of authority.

The indicated sources are listed in order of their legal force. As we can see, legislation plays a key role in English law.

“Legislation is written-down law, made by a legislative body. It is important to distinguish between primary legislation, and secondary legislation.

Primary legislation consists of statutes made (or 'enacted') by Parliament (i.e. the House of Commons, the House of Lords, and the Queen). They are known as Acts of Parliament.

Many Acts of Parliament have direct constitutional significance, e.g.:

- Parliament Acts 1911 and 1949
- European Communities Act 1972
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Anti-Terrorism, Crime and Security Act 2001
- Government of Wales Act 2006.

Another key aspect in which the UK's constitution differs from those countries is that, traditionally, the UK's courts have been unable to amend, or set aside Acts of Parliament. This is known as the doctrine of Parliamentary sovereignty.” (Nick Howard, 2013)

“Most of the legislation made in the UK is secondary (also known as 'delegated' or 'subordinate') legislation. Secondary legislation is made (or 'enacted') in the form of Statutory Instruments, often with the title 'Regulations' or 'Order'. In 2011, there were 3,136 statutory instruments made in the UK and only 25 Acts of Parliament.

The reason for this is that, as the pace of social and technological change increases, Parliament simply does not have enough time to make all the laws that the UK needs. So, typically, an Act of Parliament establishes a broad framework of principles in relation to a particular matter, and then delegates powers to other bodies to make more detailed laws to fill in the detail required to make those principles work.

Secondary legislation is made by UK Government Ministers. in Scotland and Wales, secondary legislation is also made by the Scottish Executive and the Welsh Ministers using powers given to them by the Scottish Parliament and National Assembly for Wales respectively.

Unlike Acts of Parliament, secondary legislation can be challenged in the courts on the basis that it is outside the powers conferred by the enabling Act under whose authority it was made, is in breach of EU law, or is in breach of the Human Rights Act 1998.

Case law, also known as the common law, is the body of recorded judicial precedent. As individual disputes are brought before the courts, the judges decisions develop the body of common law on a case by case basis. A key function of a constitution is to regulate the relationship between private individuals and the state. Sometimes, cases arise which result in decisions laying down principles of constitutional importance.” (Nick Howard, 2013)

In addition to the indicated main sources of the English legal system, that is the legal custom. In the UK, there are two varieties of this phenomenon. The first type is the constitutional traditions. They play a significant role in the process of the entire state. After all, constitutional traditions determine the competence of most authorities. The second type is the customs that regulate social relations of various natures. But there are some features. The fact is that tradition in the UK will be recognized if it has an ancient character. It also largely distinguishes the English system of law from the Continental .

So, we examined the English law. This legal system in its classical form has no direct analogs in the world. For several centuries in a row English law has been effectively regulating the social relations of its society. Therefore, many states should note the advantages of such a conservative system for the modernization of their legal structures.

3.2 The structure of continental law and its sources

Anglo-Saxon and continental systems of law are often opposed to each other. The intellectual basis of the first system comes from a judicial act passed by the court and gives case-law powers to previous court decisions. In continental law, the courts are much less influential.

The Continental law proceeds from abstractions that formulate general principles and distinguish material rules from procedural ones. Case law it is secondary and subordinate to the law.

In the continental system, there are large differences between the statute and the article of the code. The most pronounced features of continental systems are their legal codes with short legal texts that usually avoid specific incidents.

The primary difference between the two systems is that the Continental European legal system is based on the codification of laws as opposed to “case law". Legal system consists essentially of written laws. Nearly all potential regulatory areas are the subject of formal and detailed codification (Buecker, 2002, p. 2).

The features of the continental system of law include specific codification. The purpose of the codification is to provide all citizens with a written code of laws that apply both directly to them and about courts and judges. This is the most widespread system of law in the world, operating in one form or another in approximately 150 countries. This is largely due to Roman law, possibly the most complex legal system known to date to the modern era.

The main source of the law of the continental system is the code of a systematic collection of interconnected articles, ordered by subject in a certain order, which explains the basic legal principles, prohibitions, freedoms, etc.

Unlike a collection of laws or case law catalogs, the code sets out general principles that act as independent legal norms.

In the first case, judicial precedents play the role of full-fledged legislative acts, while in continental law the courts do not play such a large role.

Unlike Anglo-Saxon law systems, continental jurisdictions traditionally do not see much value in case law. The advantages that lawyers receive in the process of the case, based on the experience of past court decisions, are preserved in the Anglo-American legal structure. Courts in the continental system of law usually decide cases using the provisions of the code on an individual basis without reference to other judicial precedents.

The specific work of the courts in the continental system of law is often criticized by lawyers committed to the Anglo-Saxon system, most often British and American. Although continental law jurisdictions rely little on court decisions, they generate a phenomenal number of registered legal opinions. However, this is usually uncontrollable, since there is no regulatory requirement that any case is registered or published in the legislative report, except for the advice of state and constitutional courts. Except higher courts, all publication of legal opinions is unofficial or commercial.

So, the characteristic features of the continental system of law include:

- the secondary role of judicial precedents;
- developed codification;
- state and local legislative acts as the main sources of law;
- initially undeveloped (in comparison with Anglo-Saxon law) individual rights of citizens, a tendency to statism.

Continental law originates from classical Roman law (approximately 1-250 years of our era) (Kermit L. Hall, 2002), and in particular from the Corpus Juris Civilis (6th century A.D.), and it owes its further growth and development to the Late Middle Ages (Harris, 2000). At this time, it developed under the strong influence of canon law.

The doctrines of the Corpus Juris Civilis provided a sophisticated model of contracts, rules and procedures for family law, rules for making wills, and a strong monarchical constitutional system. Roman law developed differently in different countries. In some, it came into force through a legislative act, that is, it became positive law, while in others it was distributed in the society by influential scholars and legal experts.

Roman law developed without interruption in the Byzantine Empire until its final fall in the 15th century. However, given the numerous incursions of the Western European powers into Byzantium in the late medieval period, its laws began to be widely adopted and applied in the West.

For the first time, this process began in the Holy Roman Empire, partly because laws based on Roman law were considered noble and "imperial" in origin. Recycled, it became the basis for the laws of medieval Scotland, although it was severely deformed due to the influence of feudal Norman law. In England, he was taught at Oxford and Cambridge, but adapted only the right to testament and matrimony, since both of these laws were inherited from canonical and maritime law (Osakwe Christopher, 2000).

Consequently, none of the two ways of Roman influence completely dominated Europe. Roman law was a secondary source, which was applied only when local customs and laws did not contain a recipe for solving an incident. However, after some time, even local legislation began to be interpreted and evaluated on its basis, since it was a common European legal tradition and, therefore, in turn, influenced the main source of law. In the end, the work of civic glossators and commentators led to the development of a single code of laws and regulations, a common legal language and a method of teaching jurisprudence. Thus, the Romano-Germanic legal family has become common to all European countries.
An important general characteristic of continental law, in addition to its ancient Roman origin, is a comprehensive codification, that is, the inclusion of numerous general rules in the Civil Code. The earliest codification is the Code of Hammurabi, written in ancient Babylon in the 18th century BC. However, this and many subsequent codes were mainly lists of civil and criminal offenses, as well as methods of punishment for crimes. Codification, typical of modern civil systems, arose only with the advent of the Corpus Juris Civilis.
Germanic codes were developed by medieval lawyers during the 6th and 7th centuries to clearly outline the law applicable to German privileged classes compared to their subjects, about which the rules of archaic Roman law were applied. By feudal law, several separate codes were compiled, first within the framework of the Normans empire (Très ancien coutumier, 1200-1245), and then in other places for registration of regional sources of law - customs rules, court decisions, and fundamental legal principles.
These codes were ordered by the noble lords, who presided over court hearings on the affairs of the feudal courts, to know about the progress of the trials. The use of regional codes, originally drafted for influential cities, soon became commonplace in large areas. By this, some monarchs strengthened their kingdoms, trying to unify all available codes that would serve as a law for all their lands, without exception. In France, this process of centralization of the continental system of law began since the time of Charles VII, who in 1454 asked his jurists to draw up an official law on the crown. Some codes of laws of that time greatly influenced the creation of the Napoleonic Code and, importantly, Magdeburg Law which was used in northern Germany, Poland, and Eastern Europe.
The concept of codification developed especially during the 17th and 18th century. As an expression of both Natural law and the ideas of the Enlightenment, The political ideal of

that era was expressed by the concepts of democracy, protection of property and the rule of law (Tushar Kanti Saha, 2010).

In the United States, the codification process began with the Field Code, adopted in New York in 1850, and then the California Codes (1872) and federal revised charters (1874). A striking example of American codification is the current United States Code, adopted not so long ago by the standards of the history of jurisprudence in 1926.

Some authors consider the Romano-Germanic branch as the basis for the strict socialist legislation in force in the communist countries, which was a continental law interspersed with Marxist-Leninist ideals. Even so, this legal system existed long before the advent of socialist law, and some East European countries returned to pro-socialist civil law after the fall of socialism, while others continued to use socialist legal systems.

Some civil law mechanisms were borrowed from medieval Islamic sharia and fiqh. For example, Islamic hawala (Hundi) underlies the original Italian legislation, as well as French and Spanish law - this is the invisible legacy of the Arab conquest of the 10 till 13 centuries.

I will conduct a comparative analysis of the interpretation of the law that has developed in two legal families of the western tradition of law: in general and in continental Civil law. Let us analyze the influence of the ideas of the philosophy of natural law, judicial practice, features of the interpretation technique and the significance of interpretative acts.

The family of Common law and the family of Continental law belong to the legal tradition, which is called Western. One of its foundations is the general concept of the rule of law, formed under the influence of the philosophy of natural law (Osakwe Christopher, 2000), where the law is the most important legal source.

According to Harold J. Berman, “In the Western legal tradition law is conceived to be a coherent whole, an integrated system, a “body,” and this body is conceived to be developing in time, over generations and centuries.” (Harold J. Berman , 1983).

The duration of this legal tradition in both legal families also unites them and gives a certain similarity, since the law has been functioning effectively for a long time and is perceived by citizens as an important social value.

At the same time, legal systems of General and Continental law differ markedly in their legal style, in particular in such factors as:

- the historical origin and development of the legal system;
- the prevailing doctrine of legal thought and its specificity;

- legal institutions distinguished by their originality;
- legal sources and methods of their interpretation;
- ideological factors (Zweigert K., Ketz H., 2019).

Features of the legal style of Common law and Continental law are reflected both in understanding the very nature and role of the law and in the tradition of its official interpretation by public authorities. The importance of the interpretation of the law is recognized in both legal families: it is regarded as the basis for the stability of any state, without which legal activity is impossible (Tonkov E. N., 2015).

As noted in modern comparative studies, civilization has developed two fundamentally different approaches to the interpretation of the sovereign's order: one of them has been tested by several generations in France, Germany, Russia, and other continental states, the other in Great Britain, Commonwealth countries, the USA, etc. .(Tonkov E. N.,2013)

Even if the role of the doctrine in France, England and Germany are different, French, English and German lawyers are inspired by the same philosophical ideas so that Britain, Germany, and France are based on values, which for the most part are common.

It is justifiable to consider the similarities and differences in the interpretation of the law by comparing the English and French traditions, according to R. Leger, they are the great legal systems (Leger R., 2010) and the first keys to the legal universe (Leger R., 2010) formed the main interpretation paradigms in General and Continental law.

At a time when operational state decisions and predictable regulation were necessary for the development of the British Empire, haphazard English judicial practice held back the development of economic relations.

Therefore, in the late 18^{th} and early 19^{th}- century statutory law begins to develop actively. And since the English law (statute) as a source of law was formed under the strongest influence of judicial practice, it was she who determined its main features: English law is drawn up concretely, as if it combined several specific decisions, therefore it is often lengthy, with many divisions (Leger R., 2010).

English lawyers have always shown restraint about general abstract principles and general formulas, which can often be found in French codes (David R., Joffre-Spinozi K., 1996). And although the classical theory sees in the law (in the strict sense of the word) only a secondary source of law (David R., Joffre-Spinozi K., 1996), at present when there is a law, it is considered the first source of law.

However, judicial practice in the 19th century and later does not at all lose its leading position among other sources of law and retains special significance in the legal system. This is also embedded in the classical theory of law. The law introduces only some amendments and additions to the law created by judicial practice. It should not be sought in the principles of law, but only solutions that clarify or reinforce the principles developed by judicial practice (David R., Joffre-Spinozi K., 1996). The parliament creates law in the primary sense and it produces and proclaims.

The court does not produce the right but finds the right among laws, precedents, and customs. Thus, the competence of finding the right belongs to the court (Romashov R.A., Vetyutnev Y.Y., Tonkov E.N., 2015). As R. David wrote that the judges apply the law, but the norm that it contains is adopted completely, is fully incorporated into English law only after it has been repeatedly applied and interpreted by the courts, and in that form, as well as to the extent which the courts will establish (David R., Joffre-Spinozi K., 1996).

The interpretation of the law by the judge in the direct application of the rule of law is an important part of Common law, is key to the existence of English law (without it, the law does not exist).

B. Leoni notes that for the British people the law is something that needs to be discovered, not put into effect (Leoni B., 2008).

It should be noted that judicial practice has developed quite stringent requirements of the doctrine of interpretation, which is mandatory. Firstly, in English legal theory, it is customary to separate interpretation (clarification) and in the strict sense construction (explanation).

A.K. Romanov explains the interpretation as the process of reading the law, which allows you to determine what is written in the law, what is said in it (Romanov A.K., 2014). When this is not enough and doubts arise (for example, the ambiguity of a word, phrase, etc.), using interpretation in the form of an explanation, it is possible to eliminate ambiguities and possible discrepancies, taking into account the meaning of what was said (Romanov A.K., 2014).

Thus, any law whose content is considered by the court requires interpretation (clarification), and construction (explanation) occurs only in the presence of inaccuracies, etc.

The legislative act must be implemented, but in the form in which the court will put it into practice through its interpretation when making the decision (Tonkov E.N., 2013).

Interpretation gives the law practical significance, defines the content, meaning, place in the hierarchy of due, distinguishing the random passages of the legislator from significant innovations (Tonkov E.N., 2013).

Secondly, there are compulsory canons of interpretation of statutes developed by judicial practice (special rules, presumptions, linguistic maxims), as well as auxiliary tools and approaches. The basic classical rules include the literal rule (grammatical interpretation), the golden rule (semantic interpretation), and the rule for eliminating harm (targeted or historical interpretation).

The main purpose of the canons of interpretation is to determine the extent to which English judges can consider themselves free and not be afraid of their decisions to conflict with the legislature.

Other sources are also used, which can significantly simplify the comprehension of the meaning and content of the statute. These sources are previous laws on the same topic, judicial precedents, dictionaries of the time the statute was issued, a parliamentary report illustrating the search for the intentions of parliament, a report of bodies responsible for law reform, international conventions.

Thirdly, the legislative basis of the doctrine of interpretation has been created, which includes special acts Interpretation Act of 1850, 1889, 1978. Besides, many modern laws already contain special sections explaining the terms used in this statute (Romanov A.K., 2014). Of great importance for interpretation are applications that become part of the statute if there is a direct link to them in any of these articles. The annexes are used to provide a more detailed description of the rules, accompanying explanations, listing the provisions repealed by law and to explain transitional provisions (Tonkov E.N., 2013).

The role of the interpretation of the law in the English legal tradition is difficult to overestimate. On the one hand, it makes a significant contribution to limiting the arbitrariness and bias of public authority, being an effective tool in the system of checks and balances in the mechanism of separation of powers. When interpreting the legislative norms, a connection between the state and society is mediated by judicial practice. In this, if we ignore political assessments, we should recognize a rather effective instrument of legal regulation (Lafitsky V.I., 2010).

The English doctrine of the interpretation of the law is the guarantor of legal stability, since the judiciary, consisting mainly of lawyers with many years of practice, is not committed to the ideas of the party and government, but is interested in the stability of the

existing judicial doctrine (Tonkov E.N., 2013). At the same time, it is impossible to turn to the legislator for clarification whenever a need arises (Romanov A.K., 2014).

On the other hand, strict requirements on the actions of judges themselves when interpreted oblige the interpreter to creatively analyze the rule of law about specific legal relations choose the optimal solution not only from the text of the statute but also based on the law of justice and common law.

The authority of the judicial interpretation of the law is so high that in England they will always prefer to quote a court decision applying this law instead of the text of the law. Only with such decisions will the English lawyer know what the law wanted to say since it is in this case that the rule of law will appear in the usual form of a court decision for him (David R., Joffre-Spinozi K., 1996).

As V. Lafitsky observes that in the process of enforcement there is an " absorption "of statutory law by general (in this context, Judicial law) (Lafitsky V.I., 2010).

Thus, I can state that the activity of the English courts over a long historical period is extremely high not only in lawmaking, but also in the application of the law based on our interpretation, and this gives very noticeable results. The place and role of the judicial interpretation of the law is an urgent topic for Civil law.

The French doctrine of the interpretation of the law began to take shape even before the revolution of 1789 under the strong influence of the ideas of the Enlightenment philosophy, which turned the law into an expression of the general will, a symbol of the struggle against the absolutism of the monarchs, a triumph of natural justice based on reason (Cabrillac R., 2007). The enlightening idea of an omnipotent legislator (an enlightened monarch or a sovereign nation), never mistaken, implied his ability to create laws that, like the laws of nature, initially have an objectively true meaning.

The revolutionary mysticism about the law, the hyperbolize of the role of the legislator were reflected in the understanding of the function of the courts in the interpretation of the law. Legal positivism perceived the theory of interpretation of the will of the legislator, which had been formed even under absolutism. Only a literal interpretation was allowed, excluding the judge's appeal to any extra-legislative factors. The law was declared the only source of law containing all rights.

One of the ideas that arose in the wake of the Revolution of 1789 was the complete subordination of judges to the law (Lukovskaya D.I., 2014). The French courts were obliged, whenever a question arises that is not directly regulated by law, each time seeks

clarification from the legislator. This meant depriving courts of their rights of independent interpretation and filling gaps in revolutionary laws (Lukovskaya D.I., 2014).

In such conditions, the direction of legal science is changing, because after the adoption of national civil codes, it seems that now law and law coincide, and universities can only interpret the new codes (Karapetov A., 2011).

According to Remy Cabrillac that the school of secular natural law made a genuine methodological and philosophical revolution in approaches to law, a kind of "The Copernican revolution". While Roman law was repelled from concrete cases, deducing the concept from fact, representatives of natural law took the opposite demarche, they created an abstract system based on certain ideas and a certain language, which are then compared with concrete reality (Cabrillac R., 2007).

The development of science as a search for new ideas is also slowing sharply. The legal basis is being created for the first in the modern sense of the school of interpretation of the law. It is exegetical (Tonkov E. N., 2015), where was considered to be the ability to manipulate the norms of the Code to identify internal logic and systematics to obtain answers to complex questions. (Karapetov A., 2011).

In France, over the decades following the Napoleonic codification, commenting dominated so much that the greatest French civilists of the 19th century presented themselves as adherents of the school of commenting (Leger R., 2010).

The doctrine of the continental interpretation of the law looks more modest and much less independent than the English in the same period. About the interpretation of legislation, the priority in science was the interpretation of grammatical, systematic and historical. The first sought the meaning of the law in its literal expression. The second is in its systemic consistency with other norms of the law. Third, in seeking the will of the historical legislator.

The teleological interpretation aimed at finding the most just reasonable meaning of the law was either rejected or considered unreliable and permissible only in the most extreme cases.

The Ideological revolution took place with the release in 1899 of the famous work of the French lawyer F. Geny "Method of Interpreting sources of Positive Private Law", in which the meaning of laws was understood taking into account the needs of citizens and new aspects of society (historical method, social goal method, sociological method). On issues not provided for in the text, a free scientific search was allowed. Thus, a more flexible and

ambitious interpretation was obtained (Leger R., 2010). If there is an applicable rule of law, the judge should interpret it taking into account the conditions that existed at the time the law was adopted and the true will of the historical legislator (Karapetov A., 2011). However, the French courts did not follow F. Geny but followed the proponents of an objective teleological interpretation, proposed at the same time by R.Saleilles and E. Lambert and still very common in French practice. Such an interpretation requires the judge to interpret the law, taking into account modern realities, the needs of society and considerations of the policy of the law, as they are understood by the court at the time the dispute was considered (Karapetov A., 2011).

According to D. Lukovskaya, now in France and other European countries as a scientific doctrine, the most realistic theory of interpretation of M. Troper according to "the real law and order are formed by judges, not parliament" (Lukovskaya D.I., 2014).

Concerning the requirements of judicial practice, in the French tradition, there is no obligation to observe special rules of interpretation similar to English. The legislator with laudable wisdom never believed that he could establish certain methods of interpretation; any rules that could be issued by him in this regard would not limit the possibility of interpretation.

Allowed free scientific search, the flexibility of interpretation. As a result, the further development of diverse methods makes it possible to combine the style of French law, where the wording of the norms is expressed like principles with the breadth of judicial discretion.

4 Legal Regulation in Continental and Common Law: General and Differences

4.1 Features of the legal regulation of an employment contract in the Russian Federation

Labour law issues remain significant for our society at all stages of the country's development. We see that this sphere of relations is continuously under the scrutiny of both the public and scientists; it continues to be studied, changed and improved. The Constitution of the Russian Federation as an essential legal document uniquely defines labor relations as a human right protected by law. (Constitution of the Russian Federation, 1993)

The Labor Code of the Russian Federation in article 56 enshrines the concept of an employment contract.

From the definition, the sides of these legal relations are visible: the employee and the employer. In the framework of article 56, the entire legitimate essence of this type of contract is briefly reflected:

- duties of the parties;
- limits of possibilities limited by the labor function, labor legislation and other regulatory legal acts, a collective agreement and local regulatory actions of organizations;
- a strict requirement from the employer to ensure working conditions and pay for labor;
- management and control by the employer as a significant element of any legal relationship.

Article 57 of the Labor Code of the Russian Federation discloses in more detail the terms of the employment contract. Unlike a civil law contract, where essential conditions are required, without which it simply cannot exist, an employment contract must contain mandatory and additional requirements.

At the same time, if a civil law contract in the absence of essential conditions can be recognized as non-concluded, then an employment contract in the absence of even any mandatory conditions to recognize as not concluded is practically impossible if there is at least some evidence that the employee was allowed to work by an authorized person.

An analysis of the legal literature and judicial practice on labor disputes shows that it is possible to improve labor law standards continually.

Judicial acts and practicing scientists highlight some provisions, the inclusion of which in the employment contract is fraught with negative consequences (Kalashnikova I.A. and others, 2017). Let us consider some of them.

As practical experience shows, not all provisions of employment contracts are safe for both the employer and the employee.

The inclusion of unlawful conditions in the contract for the employer can result in such negative consequences as the recognition by the court of this condition not applicable, for example, the employee's refusal from annual leave. Another situation concerns surcharges for conditions of work associated with harmful and dangerous.

The absence of this clause or its incorrect execution in the contract will result in penalties for the employer.

It should be clear to the employer that a decrease in the level of labor rights and guarantees enshrined in the Labor Code of the Russian Federation will entail severe consequences in the following cases: - unlawful inclusion of the district coefficient in the salary. Federal Service for Labor and Employment commented on this issue that the size of the salary and the size of the district coefficient in the labor contract must be specified separately since if it is included in the salary, the employee's salary should not be lower than the minimum wage.

This fact was reflected by the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation establishing the conditions for trial period instead of three months by Article 70 of the Labor Code of the Russian Federation for a more extended period, even if the employee agrees with this condition in the contract itself.

The court finds dismissal unlawful since a trial period of up to 6 months of the Labor Code of the Russian Federation does not even provide for all levels of managers.

At the moment, in the Russian legislation, there are such types of contracts that regulate labor relations in the Russian Federation as a civil law and labor contract. We will identify the distinguishing features of each of these contracts. A civil contract is an agreement between an individual (individuals) and another individual (individuals) or a legal entity (legal entities), or between a legal entity (legal entities) and another legal entity (legal entities) aimed at, change or termination of mutual rights and obligations.

The content of civil contracts is subdivided into:

1. Property contracts - aimed at the transfer of property (purchase and sale, gift, barter, supply);
2. Agreement for performance of work (contract);
3. Contracts for the provision of services (insurance, transportation, storage).

Unlike a civil contract, an employment contract is an agreement between an employee and an employer that establishes their mutual rights and obligations. By the employment contract, the employee undertakes to personally perform work in a particular position corresponding to his qualifications, and the employer undertakes to provide the employee with work, ensure working conditions and pay wages on time.

The mandatory conditions of the employment contract include:

1. Details of the employer and full name employee;
2. Employer TIN and employee identity document;
3. Place of work (indicating the structural unit), an indication of the place of conclusion of the contract and the date;
4. Start date;
5. The name of the job title position, specialty, profession with qualifications by the staffing of the organization or a specific labor function;
6. Rights and obligations of the employee;
7. Rights and obligations of the employer;
8. Characteristics of working conditions, compensation and benefits for employees for work in difficult, harmful or dangerous conditions;
9. The mode of work and rest (if it differs to this employee from the general rules established in the organization);
10. Terms of remuneration (including the size of the tariff rate or official salary of the employee, surcharges, allowances, etc.);
11. Types and conditions of social insurance directly related to employment.

For an employment contract, the parties are the employee (worker) and the enterprise (organization), and for the civil law, the citizen (individual) and the legal entity, regardless of its legal form.

Under an employment contract, an enterprise represented by an employer provides an employee with the necessary raw materials, materials from their resources. Under a civil contract, raw materials and materials can be provided not only by the customer but also by

the contractor. The time and conditions of work in an employment contract are necessarily regulated by labor law or the terms of the contract.

For a customer under a civil contract, these conditions are usually mostly indifferent, but they can contribute or set restrictions if work is carried out on its territory. As a result, we can say that the name of a particular contract alone cannot serve as a sufficient basis for distinguishing a labor contract from civil contracts.

Differentiation of various types of contracts in doubtful cases is possible only based on a detailed study of their actual content, this obligation should fall on the shoulders of the employees, and the responsibility for proper execution should fall into the responsibility of the employer.

Thus, the employer's competent approach to the legal requirements for the execution of the employment contract and its content will allow avoiding not only conflicts with the employee but also litigation, penalties for violations of labor laws.

4.2 Features of the legal regulation of an employment contract in the UK

Great Britain attracts many migrants workers with the opportunity for profitable employment and decent pay. However, without knowledge of the basic norms and legislative rules of this country, one may encounter an unfair reduction, discrimination by gender or age, infringement of the interests of the employee, and other unpleasant situations.

It was in England, for the first time in the world, laws were passed that established the length of the working day, as well as special working conditions for women and children. Also, an institute of insurance against industrial accidents was established in England. Moreover, in order to monitor compliance with factory legislation, the British Factory Inspection was established, which was supposed to monitor the implementation of laws in factories and punish violations. The effectiveness of factory laws depended mainly on the work of factory inspectors (Vuzru, 2017).

In the 20th century, the labor contract lost its class character. Then workers are recognized not only workers from the factory, but also other representatives of the middle class (doctors, teachers). So, the 19th century can be considered the moment of the birth of the new labor contract in England, we were convinced that it was England that became the ancestor of legal relations between the employer and the employee, and the first sought to protect the rights of workers. Many of the basic principles of an employment contract

developed by the courts of the 19th century concerning remuneration and layoffs are still valid today.

It is worth noting immediately that currently in English law, an essential problem of an employment contract is the problem of distinguishing it from related civil law contracts, for example, work contracts, agency contracts, partnership agreements.

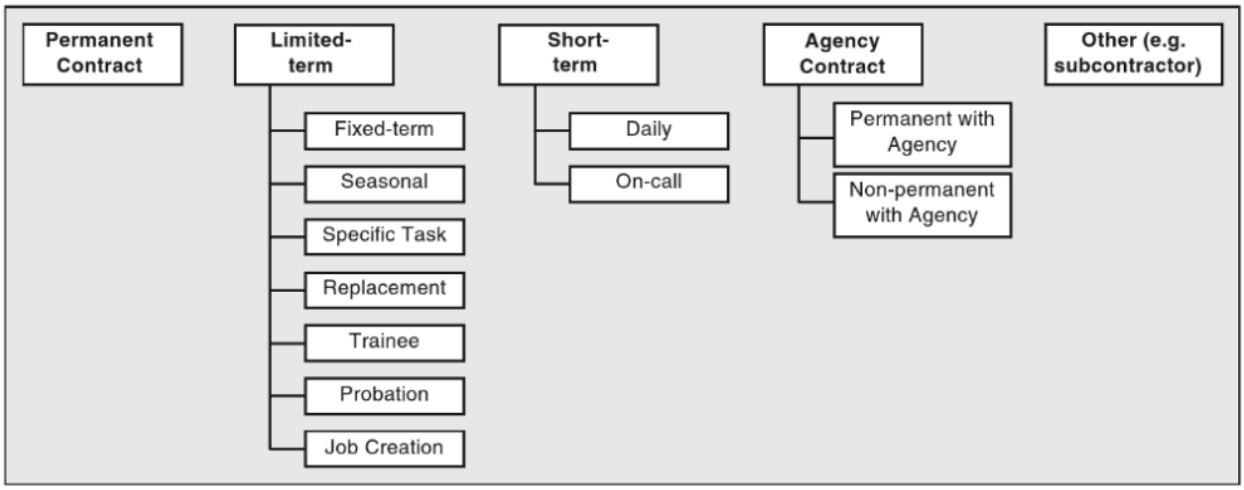
Employment law can be separated into three main themes:

- Health and safety legislation;
- Individual employment legislation;
- Collective employment legislation (Elizabeth Aylott, 2014).

Although the definition of an employment contract is enshrined in an act of Parliament. Section 230 paragraph 2 is « Employment Rights Act » in this Act "Contract of Employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing (Employment Rights Act, 1996).

Also, employment contracts are divide into temporary and permanent. The concept of standard employment, defined in terms of full-time, permanent employment with a single employer, is growing less tenable with the growth of flexible forms of employment (David E. Guest, Kerstin Isaksson, Hans De Witte, 2010). The figure 1. shows the types of employment contracts.

Figure 1. Types of employment contract



Source: David E. Guest, Kerstin Isaksson, Hans De Witte (2010)

The mandatory conditions of the employment contract include:

1. Names of the Parties (The employer's organization details and the employee's full name and address);
2. Start Date;
3. Job Title and Description;
4. Place of Work;
5. Hours of Work;
6. Probationary Period;
7. Salary;
8. Assessments (The employer can state when the employee will receive their first work assessment and the timing of all subsequent regular assessments, for example, every 12 months);
9. Deductions (This clause details all the circumstances in which the employer can make deductions from the employee's salary);
10. Expenses (The employer can agree with the employee, which work-related expenses will be covered and when the employee will be reimbursed);
11. Holidays;
12. Sickness and Disability (This clause states by what time the employee must inform the employer that they will be unable to attend work);
13. Pension (This clause states the pension provision provided by the employer, all employers have a duty to provide a pension scheme);
14. Notice (The notice period to be given by either the employer or the employee. However, this clause also provides a detailed list of actions that constitute gross misconduct allowing the employer to dismiss without giving notice);
15. Restrictive Covenants (This is only included in the Compact Law Employment Contract for Senior Staff. It protects all confidential and commercial information belonging to the employer. Prevents an employee from setting up a competing business whilst still employed);
16. Retirement (Refers to a separate Retirement Policy - which every organization should have in place. This clause and the retirement policy ensure compliance with the Equality Act 2010);

17. Severability (This standard paragraph states that each paragraph, subparagraph or clause is independent of each other, so if one is invalid or does not apply to the employee the rest of the contract remains valid);
18. Prior Agreements;
19. Jurisdiction (Confirms the contract of employment comes under the jurisdiction of the English courts; however, it can also be changed to specify Scotland, (if required));
20. Particulars of Employment (Employment Contracts).

This definition does not have sufficient clarity for uniform application in practice, which, in essence, English law has never achieved. The definition should be flexible and transformative since the UK is a country of case law, and the doctrine of stare decisis is applied, which obliges lower court judges to follow the rules arising from decisions in similar cases previously issued by judges of higher courts.

If the court decides on any issue, then courts of equal and lower instances are obliged to be guided by the grounds of the decision made when considering similar cases. Currently, the court most often accepts the principle of economic reality, the essence of which is to consider each case individually.

In the United Kingdom, several hundred by-laws on labor issued by executive public authorities are in force. They relate to a variety of labor issues, including the regulation of child labor, the vocational training tax, the issuance of licenses for the activity of labor exchanges, determine the procedures for the operation of industrial courts or affect individual industries.

A specific source of British labor law is codes of practice, which, although not considered mandatory (violation of them does not entail legal proceedings), are taken into account by the courts and other government bodies and aim to clarify the application of specific provisions of the law.

Codes are issued by various bodies (The Secretary of State for Employment, The Advisory, Conciliation and Arbitration Service (Acas), Commission for Racial Equality (CRE), The Equal Opportunities Commission (EOC), The Health and Safety Commission (HSC) on special instructions of laws and are subject to approval by both houses of parliament (David Lewis, Malcolm Sargeant, 2004).

Collective agreements are a particular source of British labor law, which has a higher specificity compared to other countries. By its legal nature, it is an agreement that has

moral, not legal force. Their enforcement through the normal judicial process is impossible. Thus, the implementation of collective agreements is not provided with legal sanctions.

So, the English labor law can be characterized by such features as:

- the similarity to civil law;
- the presence of tight control of employers in terms of maintaining the workplace for the employee;
- significant differentiation in wages;
- freedom of choice of contract terms on both sides;
- exact observance of the minimum wage established by law;
- the presence of loyal employment schemes for foreign citizens.

5 Conclusion

The differences between the common and continental legal systems are that, at first, it is the basis of the legal system. For the continental system of law, these are codes (code of laws). The English legal system is based on the experience of judicial practice. Judicial precedent is equal in legal force to the law. The number of judicial precedents in European countries ranges from 300 to 500 thousand cases, and in the United States annually published at least 350 volumes of court decisions collected throughout the country. Theoretically, the powers of judges do not include the fulfillment of the legislative function, but in practice, they interpret the law, and these formulations and explanations become law. Secondly, the creation of the law. The royal courts created English law, so it does not contain general rules and recommendations. It regulates a narrow circle of social relations. The continental system is created on a theoretical basis, has a prescribed base, and regulates a wide range of social relations. Thirdly, the terminology of law. The continental system of law originates from Roman law, and English developed to a lesser extent from the latter. For this reason, we see some differences in formulations, terminology, legal institutions. The separation of the right to “public” and “private” law. In countries with the English legal system, officials, statesmen, and institutions are responsible for their actions on a par with private individuals. The English legal system, unlike the continental, does not divide the right into public and private. Concept of codification. It is a question of the logical construction of both systems of law. The English legal system does not know codes and does not have clarity and structuring. The continental system of law is systematic. Then the source of law. In the English common law system is a precedent, and in the continental is the law. Unlike Anglo-Saxon law systems, continental jurisdictions traditionally do not see much value in case law. The advantages that lawyers receive in the process of the case, based on the experience of past court decisions, are preserved in the Anglo-American legal system. Courts in the continental system of law usually decide cases using the provisions of the code on an individual basis without reference to other judicial precedents.

The formation of today's system of legal relations in European countries was influenced by the Roman and ancient Greek philosophy of law. Legal thought developed over many centuries, improved, and adapted to different situations. Around the same time, jurisprudence was appeared, which is an integral part of a regulation. The borders where

continental law was popularized have long ceased to be limited only to the countries of the European continent. Mixed systems have long existed, based on Continental, Maritime, and Anglo-Saxon. The primary role in the Roman-Germanic system of law is played by the private sphere, namely, the regulation of personal relations between individuals. These are relations of a family nature, in resolving disputes between individuals and many more similar areas. In this model of legal regulation, the fact of the rule of law, which has the predominant legal force, is not in doubt. Moreover, this implies that upon entry into force of the law, all other by-laws and regulatory documents must be brought into "harmony" with this law. Otherwise, such an act is considered insolvent, or a decision based on it can be appealed.

Article 57 of the Labor Code of the Russian Federation discloses in detail the terms of the employment contract. Unlike a civil law contract, where essential conditions are required, without which it simply cannot exist, an employment contract must contain mandatory and additional conditions. At the same time, if a civil law contract in the absence of essential conditions can be considered null and void, then an employment contract in the absence of even any mandatory conditions can be considered null and void if there is at least some evidence that the employee was allowed to work by an authorized person. An analysis of the legal literature and judicial practice on labor disputes shows that it is possible to improve labor law standards continually. Judicial acts and practicing scientists highlight some provisions, the inclusion of which in the employment contract is fraught with negative consequences.

The concept of a labor contract in England can only be deduced by analyzing court decisions in specific cases since although most of the provisions of modern labor law in England are based on legislative acts and government by-laws, the concept of a labor contract is still disclosed through judicial precedents. Such features can characterize English labor law as proximity to civil law; the presence of tight control of employers in terms of maintaining the workplace for the employee; significant differentiation in wages; freedom of choice of contract terms on both sides; exact observance of the minimum wage established by law; the presence of loyal employment schemes for foreign citizens.

6 References

1. Polly J. Price. *Natural Law and Birthright Citizenship in Calvin's Case. Yale Journal of Law and the Humanities,* Winter 1997. https://www.uniset.ca/naty/maternity/9YJLH73.htm
2. Grafsky V.G. *The General History of Rights and State: Textbook for University. - 2nd ed.,* 2007. ISBN 5-89123-941-8
3. Krasheninnikova N.A., Zhidkov O.A., *History of state and law of foreign countries: Textbook for universities,* 2004. ISBN 5-89123-341-X
4. Open Research Online, Stephanie Pywell (2013). *Untangling the law. New Law Journal*,https://oro.open.ac.uk/39446/9/Delegated%20legislation%20article%2003 0213%20Edit%20for%20ORO.pdf
5. Kosarev A.I., *History of the state and law of foreign countries. Textbook*. 2012. ISBN 978-5-9516-0233-6
6. Peter Newman, *The New Palgrave Dictionary of Economics and the Law, Palgrave Macmillan* 1998. P. 388. ISBN 978-0-333-99756-7
7. Tagunov D.E., Sazhina V.V., *General History of State and Law of Foreign Countries: Intensive Training Course.* 2007. ISBN 978-985-470-610-8
8. David R., Joffre-Spinozi K., *Basic legal systems of our time: Translated from French. V.A. Tumanova. - Intern. relationship,* 1996. ISBN 5-7133-0892-8
9. Veniosov A.V., Danilov V.A., *History of the state and law of foreign countries. Textbook*.2012. ISBN 978-985-536-279-2
10. Afanasieva M.V., *Legal systems of the modern world. Law and Education,* 2008. ISSN 1563-020X
11. Nick Howard, *Beginning Constitutional Law*, 2013. ISBN 978-0-415-69222-9
12. Osakwe Christopher, *Comparative Law in Schemes: General and Special Parts*. 2000. ISBN 5-7749-0192-0
13. Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition,* 1983. ISBN 0-674-51774-1
14. R. Leger. *The great legal systems of our time. Comparative legal approach*. 2010. ISBN: 978-5-466-00663-6

15. Zweigert K., Ketz H. *Comparative private law*. 2019. ISBN 978-5-7133-1371-5
16. Romashov R.A., Vetyutnev Y.Y., Tonkov E.N., *Law - language and scale of freedom: a monograph*, 2015 ISBN 978-5-906792-47-1
17. Bruno Leoni, *Freedom and the Law// trans. from English Koshkina V.*, 2008 IBSN 5'91066'014'8
18. Romanov A.K. *Law and system of UK*. 2014, ISBN 978-5-91134-397-2
19. Tonkov E.N., *The Interpretation of Law in England: Monograph.//Pax Britannica*, 2013. ISBN 978-5-91419-932-3
20. Lafitsky V.I., *Comparative law in images of law. Part 1*, 2010. ISBN 978-5-8354-0653-1
21. Cabrillac R., *Codifications / Trans. From French, L.V. Golovko*. 2007. ISBN 583540378X
22. Lukovskaya D.I., *On the Evoluation of Views on Judicial Law in French Jurisprudence (end of 18th century- first quarter of the 20th century)*. 2014 https://cyberleninka.ru/article/n/ob-evolyutsii-vzglyadov-na-sudeyskoe-pravo-vo-frantsuzskoy-yurisprudentsii-konets-xviii-pervaya-chetvert-hh-v
23. Karapetov A., *The struggle for the recognition of judicial law in European and American law*. 2011. ISBN 978-5-8354-0723-1
24. Tonkov E. N., *Interpretation of law and law. Part 1*. 2015 https://www.twirpx.com/file/1805001/
25. Kalashnikova I.A., Karpova E.V., Kiva-Khamzina Yu.L., Meshcheryakova T.R., Rubanova N.A. *Entrepreneurship: Civil law, Administrative, Environmental Aspects*, 2017. ISBN 978-5-9967-1058-4
26. Vuzru, *Labor Law of UK and USA*, 2017. https://vuzru.ru/trudovoe-zakonodatelstvo-velikobritanii-i-ssha/
27. Elizabeth Aylott. *Employment Law*, 2014. ISBN 978 0 7494 6974 0
28. Employment Rights Act, 1996. http://www.legislation.gov.uk/ukpga/1996/18/section/230
29. David E. Guest, Kerstin Isaksson, Hans De Witte. *Employment Contracts, Psychological Contracts, and Employee Well- Being// An International Study*, 2010. ISBN 978-0-19-954269-7
30. Employment Contracts | What should be included?/ CompactLaw. https://www.compactlaw.co.uk/employment-contracts.html

31. David Lewis, Malcolm Sargeant. *Essentials of Employment Law*, 2004. ISBN 1843980002

32. John Daly, Sandra Speedy, Debra Jackson. *Context of Nursing*, 2014, p.156. ISBN 9780729581523
33. Roy Prosterman, Tim Hanstad. *Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia*, 1999, p.10. ISBN 0253-7494
34. Edward Hasted, *The History and Topographical Survey of the County of Kent: Volume 1* (Canterbury, 1797), p. 229-231, British History Online https://www.british-history.ac.uk/survey-kent/vol1/pp229-231
35. Buecker Bernard, Tremml Bernd. *Key Aspects of German Business Law, A practical Manual, Second Edition.* Springer. 2002, p. 2. ISBN 978-3-662-22064-1
36. Kermit L. Hall, *The Oxford Companion to American Law*, 2002. ISBN 0-19-508878-6

37. Harris Ron. *Industrializing English Law, Entrepreneurship and Business Organization*, 1720-1844. Cambridge University Press, 2000. ISBN 0 521 66275 3
38. Tushar Kanti Saha, *Textbook on Legal Methods, Legal Systems and Research*, 2010. ISBN 978-81-7534-893-6