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CHAPTER 2

HISTORY AND THE LAW

LEARNING OBJECTIVES

- To understand the nexus of law and history
- To understand the common law and civil (Romano-Germanic) law history and traditions
- To understand the development of the United States law in the English tradition
- To understand the law as a profession, including legal education

SUMMARY

The goal of this chapter is to provide students with a miscellany of historical antecedents in order that they understand that the law builds on the rules which governed older civilizations and that it evolves through an incremental process. Also discussed are the four legal models—the common law, the Romano-Germanic (civil), the socialist, and the religious—that dominate today's interconnected and intermingled economic, political, and legal systems. Exposure to other legal systems is critical because the common law is certainly not the primary legal system in much of the world. However, because it is the predominant system in the United States, the development of the common law is emphasized, as is the development of the legal profession in this country.

OUTLINE

I. Introduction

II. Law Through the Ages

III. The English Heritage
   A. Development of the Common Law
   B. Development of Equity

IV. The American Experience

V. The American Legal Profession

VI. Conclusion

TERMS/CONCEPTS/PEOPLE

Code of Hammurabi
Islam
Canon law
Henry II of England

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Talmud
Cicero
Justinian
Corpus Juris Civilis
Injunction
Solicitors
Twelve Tables
Court of Common Pleas
Specific relief
Commentaries on Laws of England
Christopher Columbus Langdell
Henry I of England
Romano-Germanic law
Pentateuch
Magna Carta
Exchequer
Barristers
Natural Law School
Napoleonic Code
Inquisitorial process
Muhammad
Socialism
Æthelbert
Canute
William the Conqueror
Equity
Legal education
Praetors
Court of King's Bench
Substitutionary relief
Chancery
Henry of Bracton
George Wythe
William Blackstone
Edward I of England
Curia Regis
Patricians
Koran
Salic law
Accusatorial process
Sharia law

TEST QUESTIONS

1. In the British system, solicitors:

A. Are primarily trial lawyers.
B. Are never university trained.
C. May establish their own solo practice immediately upon completion of their training.
D. Must join one of the Inns of Court.
E. Are the initial conduit between the barristers and the clients.

Answer: **E**

2. Certain principles of contract law—identification of parties and specifications regarding obligations—can be traced to:

A. Mesopotamians.
B. Greeks.
C. Romans.
D. Canon law.
E. Hebrews.

Answer: **A**

3. Today, lawyers:

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A. Receive their legal training in formal educational settings.
B. Are not controlled in the practice of their profession by any governing bodies.
C. Are known as either solicitors or barristers in this country.
D. Enter the legal profession through apprenticeships.
E. None of the above.

Answer: **A**

4. The Inns of Court in England:

A. Are the only organizations that may call people to the bar.
B. Are composed of chambers or groups of offices of solo practitioners.
C. Are the British equivalent of Holiday Inns.
D. A and B.
E. B and C.

Answer: **D**

5. The primary function of French (and other civil law) prosecutors is to:

A. Secure convictions.
B. Ensure that justice is done.
C. Ensure that society's interests are served.
D. A and B.
E. B and C.

Answer: **E**

6. The most important factor in the selection of law school is:

A. Price.
B. Location in the state where you plan to practice.
C. Prestige.
D. ABA approval.
E. All of the above.

Answer: **D**

7. Which of the following statements is correct?

A. The law of the United States is *not* the product of experience.
B. The jurisprudence of all the states is based solely on the common law traditions of Great Britain.
C. One of the earliest extant sets of laws is the Code of Hammurabi written around 2000 BCE.
D. Laws are created in a vacuum.
E. All of the above.

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Answer: **C**

8. The person known as the first professor of law in this country was:

A. George Washington.
B. George Wythe.
C. George Clooney.
D. George Foreman.
E. None of the above.

Answer: **B**

9. The roots of the common law system in this country lie in:

A. German legal decisions.
B. English legal decisions.
C. Chinese legal decisions.
D. Scandinavian legal decisions.
E. Scottish legal decisions.

Answer: **B**

10. Which of the following is correct?

A. Initially, laws relating to family matters and to inheritance were decided primarily on principles from religious entities under both Islamic and Christian cultures.
B. Under Æthelbert in England, injuries to persons or property resulted in fines as determined by the code.
C. Under the Chancery, writs provided access to the courts for payment of a fee, determined which court heard the case, and directed the sheriff to summon the parties to court.
D. All of the above.
E. None of the above.

Answer: **D**

11. Equity:

A. Is known for its flexibility.
B. Requires that the wrong be completed and then assesses damages.
C. Was not developed through the Chancery in England.
D. Is vested in a separate court system in this country.
E. B and D.

Answer: **A**

12. The system of law that is based on the notion of an appeal to the conscience of the judge and to a higher

system of justice is:

A. Equity.
B. Substantive law.
C. Procedural law.
D. Constitutional law.
E. Contracts.

Answer: **A**

13. Under the theory of the divine right of kings in medieval Europe:

A. The pope, in religious matters, and the king, in secular matters, were deemed God's representatives on Earth.
B. All law, spiritual and temporal, was inspired by God.
C. Law was considered to be eternal and immutable.
D. Disobeying the monarch was tantamount to disobeying God and carried punishment.
E. All of the above are true.

Answer: **E**

14. Which of the following is correct regarding the origins of British jurisprudence?

A. The native population had no established system of justice before the Norman Conquest.
B. The first codification of laws in Great Britain took place under George III.
C. The Plantagenets are credited with centralizing the judicial system and the beginning of common law.
D. Feudalism, the social system based on a series of reciprocal obligations, had no effect.
E. All of the above.

Answer: **C**

15. Which of the following is *not* correct?

A. American lawyers today are trained in the traditional method of "reading" law with practitioners.
B. The solicitors in the British system are those who represent clients at trial in the higher courts.
C. French judges are elevated from among the ranks of practicing attorneys.
D. The American system is the only one that requires an apprenticeship for young lawyers.
E. All of the above.

Answer: **E**

16. The distinction between civil (Romano-Germanic) systems and common law systems is:

A. The types of activities that are barred or condoned.
B. That the civil law tradition was spread by colonization of new areas while common law was not.

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C. The approach taken in legal reasoning and methodology.
D. That the civil law tradition is found only in Western Europe while common law dominates in such far-flung places as Australia.
E. All of the above.

Answer: **C**

17. *Corpus Juris Civilis* is the:

A. Code of Æthelbert.
B. Code of Justinian.
C. Treatise written by Draco.
D. Collected works of Plato.
E. Statute written during the Plantagenet era in France.

Answer: **B**

Essay Questions

1. Identify and discuss the contributions of past legal systems to American jurisprudence.

2. Discuss the *Corpus Juris Civilis,* its origins, its history, effect of natural law school, and its role as the dominant legal system in the world.

3. Compare and contrast the differences between the common law system and the Romano-Germanic law including, but not limited to, antecedents and approach to legal reasoning.

4. Discuss the characteristics of a socialist system of law.

5. Discuss the law and legal systems in Anglo-Saxon England.

6. Discuss the role of the crown from the time of William the Conqueror through the Plantagenets on the development of English law, including equity.

7. Trace the development of equity and discuss its import.

8. Discuss American law during the colonial and immediate post-Revolutionary periods.

9. Discuss the training of American lawyers and contrast that with other systems.

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