

Практическое занятие № 18

Тема: Право и справедливость. Виды права.

Цель: Работа с текстом профессиональной направленности.

Содержание работы:

1. Прочитать текст, устно перевести
2. Выполнить задания

Common Law and Civil Law

Common Law, term used to refer to the main body of English unwritten law that evolved from the 12th century. The name comes from the idea that English medieval law, as administered by the courts of the realm, reflected the “common” customs of the kingdom. This system of law prevails in Britain and in those countries, such as Canada and the United States, that were originally colonized by English settlers.

The common law is based on the principle of deciding cases by reference to previous judicial decisions, rather than to written statutes drafted by legislative bodies. Common law can be contrasted to the civil-law system, based on ancient Roman law, found in continental Europe and elsewhere. Whereas civil-law judges resolve disputes by referring to statutory principles arrived at in advance, common law judges focus more intently on the facts of the particular case to arrive at a fair and equitable result for the litigants.

General rules or precedents are guidelines for judges deciding similar cases in the future. Subsequent cases, however, may reveal new and different facts and considerations, such as changing social or technological conditions. A common law judge is then free to depart from precedent and establish a new rule of decision, which sets a new precedent as it is accepted and used by different judges in other cases. In this manner, common law retains a dynamic for change. As the U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in his book, *The Common Law* (1881): “The life of the [common] law has not been logic; it has been experience.”

Civil Law, term applied to a legal tradition originating in ancient Rome and to the contemporary legal systems based on this tradition. Modern civil law systems, which were originally developed in Western European countries, have spread throughout the world. The term civil law also applies to all legal proceedings that are not criminal. Under this definition laws regulating marriage, contracts, and payment for personal injury are examples of civil law.

The most obvious feature of a civil law system is the presence of a written code of law. The code is a systematic and comprehensive compilation of legal rules and principles. Although the contents of codes may vary widely from country to country, all codes are intended as a blueprint of social regulation that attempts to guide individuals through society from birth to death.

The civil law tradition makes a sharp distinction between private and public law. Private law includes the rules governing civil and commercial relationships such as marriage, divorce, and contractual agreements. Public law consists of matters that concern the government: constitutional law, criminal law, and administrative law. In many countries with civil law systems, two sets of courts exist—those that hear public law cases and those that address matters of private law.

The role of judges in civil law jurisdictions differs considerably from that of judges in common law systems. When different facts or new considerations arise, common law judges are free to depart from precedent and establish new law. The civil law tradition views judges as government officials who perform essential but uncreative functions. Civil law judges administer the codes that are written by legal scholars and enacted by legislators. They may also consult legal treatises on the issue in question. The civil law system assumes that there is only one correct solution to a specific legal problem. Therefore, judges are not expected to use judicial discretion or to apply their own interpretation to a case.

1. Answer the following questions:

1. What does the term common law refer to?
2. In what countries does common law system prevail?
3. How common law can be contrasted to the civil-law system?
4. What is the main principle of the common law legal system?
5. What is the difference in resolving disputes between common-law judges and civil-law judges?
6. What is a precedent?
7. When a judge can depart from the precedent?
8. What are the two meanings of the term civil law?
9. In what countries is civil law system used?
10. What is the distinction between private and public law?
11. What is the difference in the role of judges in civil law jurisdictions and in common law systems?

2. Найдите в приведенном выше тексте английские эквиваленты следующих слов и выражений:

Решать дело, ссылаясь на предыдущие судебные решения; составленные законодательными органами; разрешать споры; ссылаясь на предписанные законом принципы; добиться честного и справедливого результата для сторон; отклониться от прецедента и установить новую правовую

норму; движущая сила для перемен; всеобъемлющий сборник правовых норм и принципов; программа социального регулирования; правовые трактаты; свободный выбор судьи.

3. Заполните пробелы словами и словосочетаниями из поля:

evidence, legislators, differs substantially, changed, information, prior judicial decisions, hearings, advice

Civil law systems do not have any process like the common law practice of discovery - the pretrial search for conducted by the parties involved in the case. The trial of a case under civil law also from a common law trial, in which both parties present arguments and witnesses in open court. In civil law systems the judge supervises the collection of and usually examines witnesses in private. Cross-examination of witnesses by the opposing party's attorney is rare. Instead, a civil law action consists of a series of meetings, , and letters through which testimony is taken, evidence is gathered, and judgment is rendered. This eliminates the need for a trial and, therefore, for a jury. Systems of common law and civil law also differ in how law is created and how it can be Common law is derived from custom and precedents (binding judgments made by). In the common law system, the precedent itself is law. Therefore, the judges who decide which party will prevail in any given trial are also the creators of common law. Civil law, on the other hand, is made by who try to supplement and modernize the codes, usually with the of legal scholars. Civil law judges administer the law, but they do not create it.

4. Answer the following questions:

1. How do the trials under civil law differ from a common law trial?
2. How is law created and how can it be changed in both systems?