

# English for Lawyers 1


Lecturer: Miljen Matijašević  
G10, room 6/I, Tue 14:15–15:15  
e-mail: [miljen.matijasevic@pravo.hr](mailto:miljen.matijasevic@pravo.hr)  
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# Revision

State Governance



# Answer the questions

1. What types of proceedings involve the state?
  2. Which parties are called the same in criminal and civil proceedings, and which are called differently?
  3. Who participates in family proceedings and what are the parties referred to as?
  4. What about commercial disputes?
  5. What is ADR?
  6. What is the difference between mediation and arbitration?
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# Translate into Croatian

The legislative branch is elected by and represents the people. After the elections, the legislature is formed and the winning party chooses the prime minister. He or she then selects the members of the government. Each member is responsible for a government department. The executive proposes laws and the legislature enacts them. It also confirms the state budget proposed by the government. The courts enforce the law in the event of disputes or criminal prosecution.

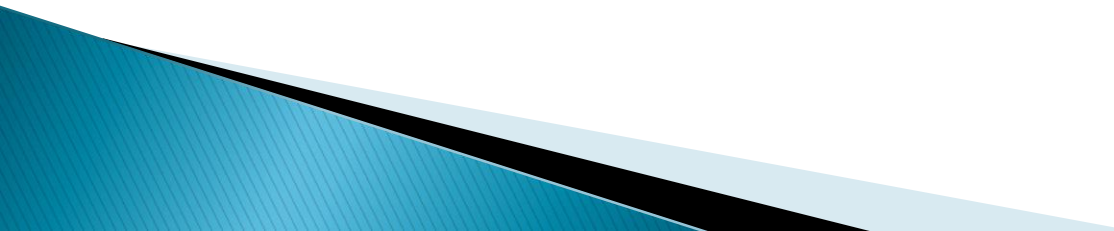
# Translate into Croatian

Zakonodavna grana vlasti izabrana je od naroda i predstavlja narod. Nakon izbora, formira se zakonodavno tijelo, a pobjednička stranka bira premijera. On ili ona zatim bira članove vlade. Svaki je član odgovoran za jedno ministarstvo. Izvršna vlast predlaže zakone, a zakonodavno tijelo ih donosi. Ono također usvaja državni proračun koji predlaže vlada. Sudovi provode zakone u slučaju spora ili kaznenog progona

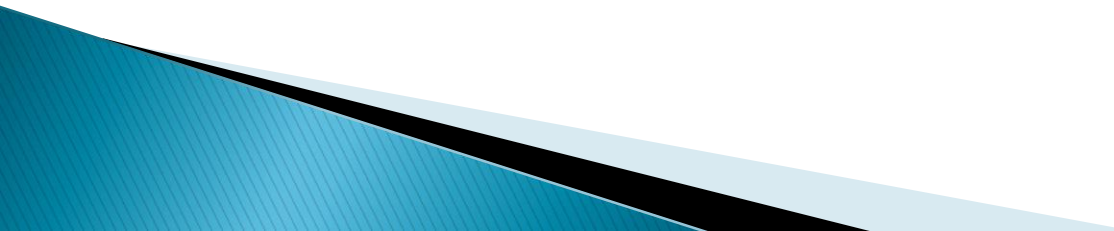
# Legal Systems of the World



# Legal Systems


- ▶ What is a legal system?
  - ▶ What components make a legal system?
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# What makes a legal system?

- ▶ according to H.L.A. Hart, 20th-century British legal philosopher:
    1. rules forbidding and rules compelling certain conduct on pain of sanctions
    2. rules requiring compensation for injury
    3. rules regulating arrangements, such as making a will or a contract
    4. a system of courts
    5. a legislative body
- 



# What makes a legal system?

1. sources of law and their hierarchy
  2. law-making institutions (and their hierarchy)
  3. law-enforcing institutions and their powers (mostly courts)
  4. substantive and procedural principles and concepts
  5. the organisation and roles of the legal profession (the judiciary, the lawyers)
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# Legal systems

- ▶ Basic elements for distinguishing legal systems:
  - sources of law
  - legal principles and concepts
  - historical background

# Sources of law

- ▶ A distinguishing factor – the position of main sources of law:
  - legislation (a.k.a. statutory law)
  - case law (*sudska praksa*)
  - custom
  - religious law
  
- ▶ constitutional framework
  - codified, written constitution (Croatia, USA)
  - uncoded constitution (UK)

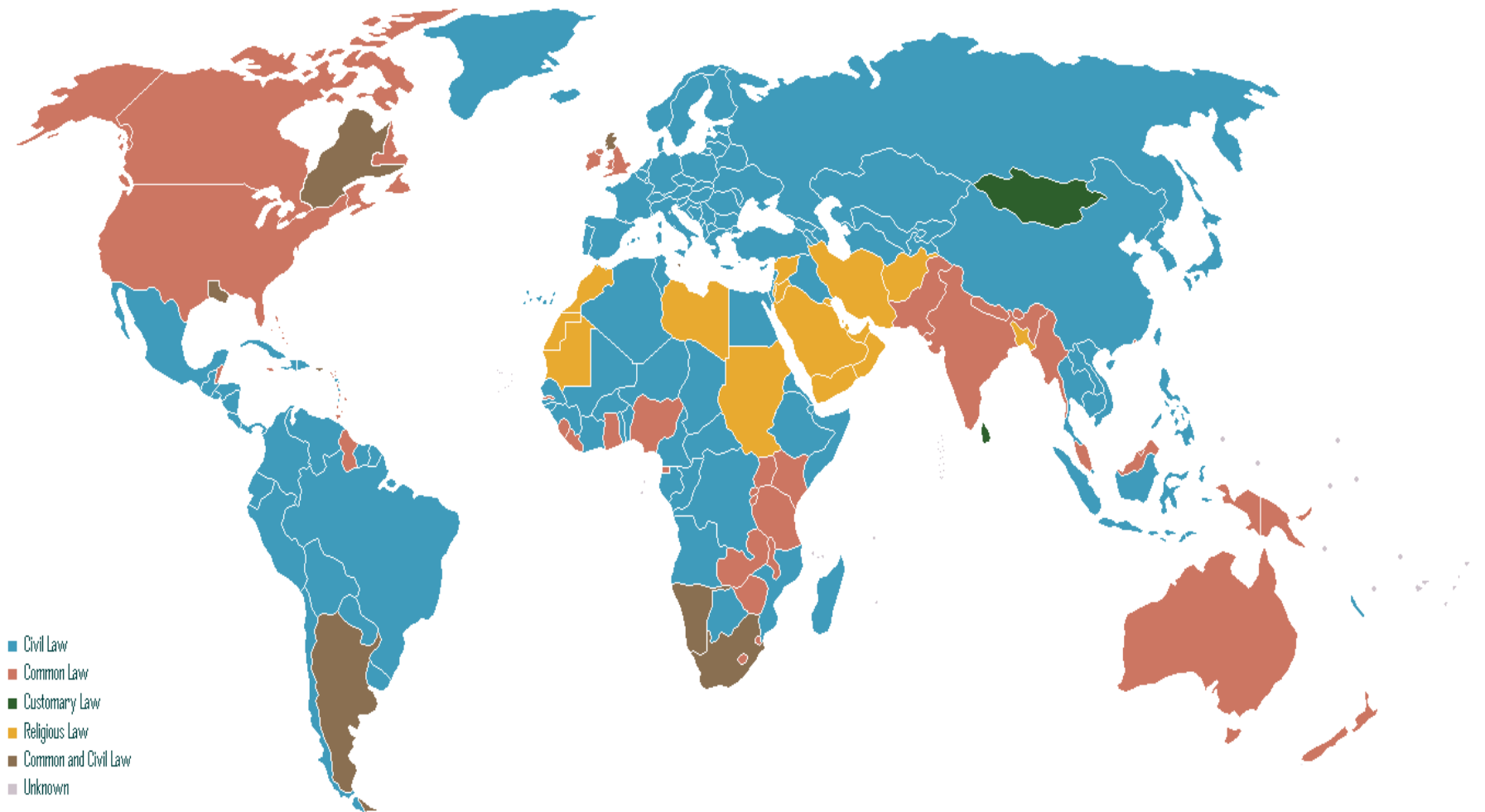
# Sources of constitutional law in the UK

- ▶ Acts of Parliament
  - Magna Carta 1215
  - Bill of Rights 1689
  - Parliament Acts 1911, 1949
  - European Communities Act 1972
  - Human Rights Act 1998
  - Constitutional Reform Act 2005, etc.
- ▶ case law
- ▶ constitutional conventions
  - roles and powers of government institutions
- ▶ works by constitutional law scholars  
(Bagehot, Dicey)

# Legal traditions

- ▶ two major legal traditions:
  - civil law (a.k.a. continental civil law)
  - common law


# Legal systems of the world



# Legal traditions

	CIVIL LAW	COMMON LAW
MAIN SOURCE OF LAW	legislation (codified law)	case law (precedents)
LAW-MAKING BODIES	legislative bodies	the judiciary
CREATION OF LEGAL PRINCIPLES	from general and abstract	from specific and individual
ROLE OF THE JUDICIARY	interprets and applies the law	creates the law
TYPE OF LEGAL PROCEDURE	inquisitorial	adversarial

# Civil law tradition

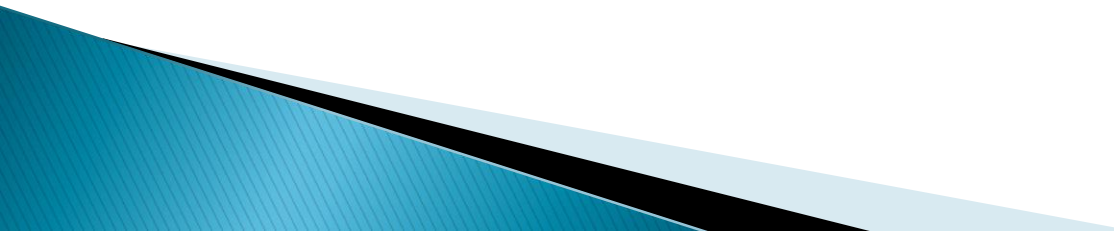
- ▶ most countries of Europe
  - ▶ historical background:
    - reception of Roman law
  - ▶ law as a science
  
  - ▶ law-making style:
    - devising systematic and comprehensive codifications
  - ▶ law developed by legal scholars (jurists)
  - ▶ created from general and abstract terms applied to individual cases
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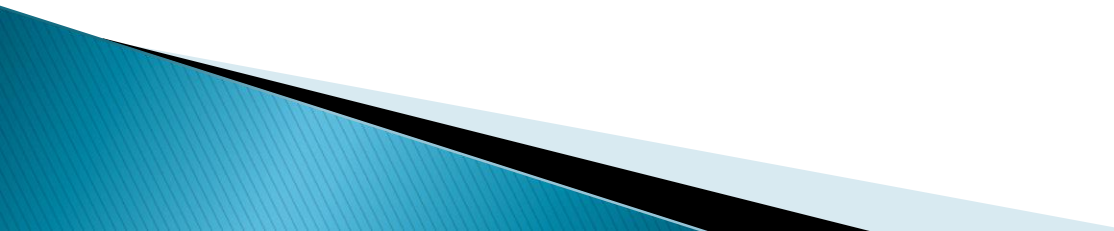
# Civil law tradition

- ▶ main source of law: LEGISLATION
- ▶ law **enacted** by elected representative bodies
- ▶ form: **codified law**
- ▶ role of the courts:
  - to interpret the meaning and intention of the law-maker
  - apply the law to particular cases
  - „the mouth of the law”


# Civil law tradition

- ▶ INQUISITORIAL legal procedure
  - ▶ the role of the judge:
    - to establish facts
    - asks questions in order to get to the truth
  - ▶ the role of the legal representatives:
    - to ask additional questions to point to what they think might be relevant details in the case
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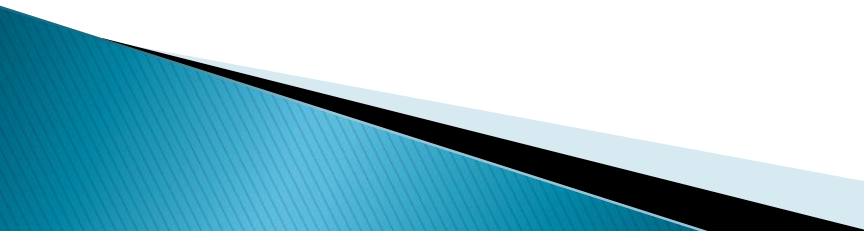
# Civil law tradition

- ▶ APPLICATION OF LAW
  - ▶ deductive reasoning: applying a general principle to a particular case
  - ▶ case law: can serve as an example of court rulings, but does not have a binding nature
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# Common law tradition

- ▶ developed in England
  - ▶ roots in 12th century – creation of the common law
  - ▶ Henry II Plantagenet, Norman king
  
  - ▶ collection of court rulings from the courts of England and Wales – basis of law
  - ▶ these rulings: **precedents**
  - ▶ they are **binding**, have the force of law
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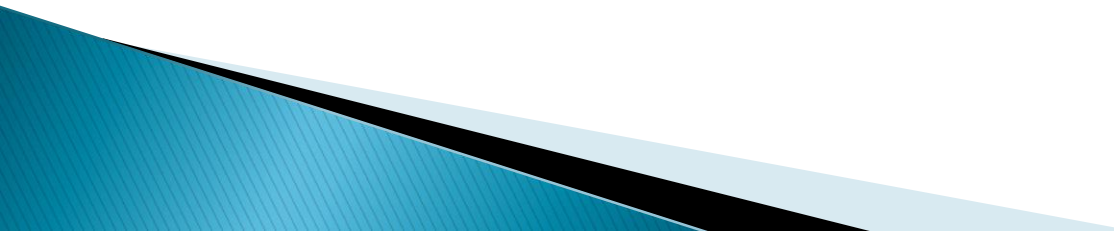
# Common law tradition

- ▶ **inductive reasoning**
  - ▶ precedents contain facts of the case and the principle of law applied by the judge
  - ▶ this principle applied in future cases
  - ▶ facts of a case compared to the facts of the precedent
  
  - ▶ legal principles derived from individual cases
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# Common law tradition

- ▶ principal law-makers: **judges**
  - ▶ judges apply previous precedents and create new ones when necessary
  - ▶ result: a vast collection of rulings
  - ▶ advantage: high precision and consistency
  - ▶ disadvantage: law disorganised and sometimes hard to find and understand
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# Common law tradition

- ▶ additional source of law: **legislation**
  - ▶ traditionally, judges create the principles and rules of law
  - ▶ but also, legislative bodies make laws that the courts must apply
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# Application of law in the common law system – examples

1. Chief Constable of Avon & Somerset v Shimmen 1986 QBD
  - application of precedent (case law)
- ▶ **Key principle:** A defendant who considers whether a risk exists and genuinely decides that there is no risk is not reckless.



# Application of law in the common law system – examples

1. Chief Constable of Avon & Somerset v Shimmen 1986 QBD
  - application of precedent (case law)

**QBD:** Defendants are not reckless if they consider the risk and decide that there is none. However, this defendant had realised that there was some risk but had thought that he could avoid it. Thus he was reckless in the sense of realising a risk and going on to take it.

# Common law tradition

- ▶ ADVERSARIAL procedure
- ▶ the role of the parties:
  - to provide evidence and convince the judge and/or jury of their version of the truth
- ▶ the role of the jury:
  - to establish facts based on the presented evidence
- ▶ the role of the judge:
  - to make sure procedure is followed and to make a ruling applying the law to the facts established by the jury or him/herself

# Converging of the traditions

## ▶ CIVIL LAW

- case law gaining more importance

## ▶ COMMON LAW

- legislation (statutory law) developing much faster than common law
- judges avoid creating new law unless absolutely necessary
- complying with codified international and EU law affects national law

# Exercises

- ▶ Do exercise 35/IV

**Thank you for your attention!**

