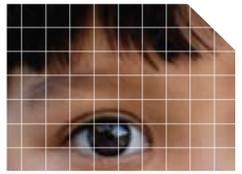
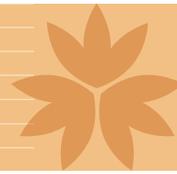


common Law



Definition:

Common law is the body of rules and standards that derives its authority from ancient customs, and from the collection of court decisions recognizing, affirming, interpreting and enforcing those customs. *Western Union Telegraph Co v Call Publishing Co*, 181 US 92; 21 S Ct 561 (1901).

History:

The common law predates writing in most cultures. At one time it was passed on orally and committed to memory. *Blackstone's Commentaries* (1765), Section 3, p 63. For this reason, common law is called *lex non scripta* (unwritten law) as opposed to *lex scripta* (written or statutory law passed by the legislature). *Id.*

The Romans passed on much of their law when they occupied England in the 1st to 5th Centuries A.D. After the Romans left, their laws became part of the ancient Saxon common law, which also incorporated the Mosaic code, Christian mores, and old Celtic and Germanic customs. The first codification of this common law was the Book of Dooms by King Alfred the Great in the 9th Century A.D.

Ancient common law was repealed by the Normans after they conquered England in 1066, but was restored by the Magna Carta in 1215:

The city of London is to have all its ancient liberties and customs. Moreover we wish and grant that all other cities and boroughs and vills and the barons of the Cinque Ports and all ports are to have all their liberties and free customs.

Magna Carta, Clause 9 (1215).

English common law came to the New World with the British conquest. After the American Revolution, English common law was adopted by the states either through their state constitutions or through laws like the Northwest Ordinance of 1787, which provided:

There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction.

The inhabitants of the said territory shall always be entitled to ... judicial proceedings according to the course of the common law.

State common law:

In the U.S., each state has its own common law, which is made by the highest appellate court of each state. *Wheaton v Peters*, 33 US 591 (1834).

It is often said there is no federal common law. *Erie R Co v Tompkins*, 304 US 64; 58 S Ct 817 (1938).





Editorial Comment:

This is not totally true -

An example is the U.S. Supreme Court's original jurisdiction over cases between two states. US Const, art III, § 2, cl 2. This means the U.S. Supreme Court functions as the "trial judge" over these kinds of cases. A relevant example is when a "downstream" state sues an "upstream" state over the use of an interstate water body by people in the upstream state. The Supreme Court has developed a common law doctrine called "equitable apportionment" to decide these cases when there is no compact or federal legislation in place. *Kansas v Colorado*, 206 US 46; 27 S Ct 552; 46 L Ed 2d 838 (1902); *Wyoming v Colorado*, 259 US 419; 42 S Ct 552; 66 L Ed 999 (1922); *New Jersey v New York*, 283 US 336; 51 S Ct; 75 L Ed 1104 (1931).

Michigan imported the common law of England when it became a state. *Lamphere's Case*, 61 Mich 105; 27 NW 882 (1886).