CIVIL LAW

Historically, civil law referred to a legal system codified by the Roman Emperor Justinian, under the guidance of the jurist Tribonian, around 533 AD covering all aspects of law in a given state, nation or city; the *Corpus Juris Civilis*—'the body of civil law'. The *Corpus Juris Civilis* (which comprised the Digest (or Pandects), the Institutes (or Code) and the Novellae (or Novels) of Justinian) covered the law of persons, the family, inheritance, property, torts, unjust enrichment, and contracts and set out remedies by which interests falling within these categories should be protected by the law. Although radically modified since the 6th century, the first three books of the Institutes of Justinian (Of Persons, Of Things, Of Obligations) and the civil codes promulgated in Europe in the 19th century, and adopted throughout Latin America, all deal with substantially the same issues and are the foundations of modern 'civil law' systems. The Roman legal system predates this system and was first promulgated in the form of the Twelve Tablets. This was a foundation for the work carried out under Justinian and, in turn, has become the building blocks for a legal system (or systems) that dominates most of Western Europe, all of Central and South America, many parts of Asia and Africa, part of North America (Louisiana, Quebec, Puerto Rico and Cuba), as well as Russia and most of Eastern Europe.

Strictly the legal structure established under Justinian should be referred to as a 'legal tradition', as distinguished from a 'legal system' which is "an operating set of legal institutions, procedures and, rules", John Merryman, *The Civil Law Tradition* (1985). Thus, there are separate law systems in France, Germany, Turkey, Switzerland, etc., which are based on the civil law tradition. The tradition is based on a code that defines the role of law in society and the political structure that is required to maintain this set of rules. In essence, Roman law may be considered the greatest contribution to Western civilization.

In modern usage, 'civil law' may be used generally to refer to a system of law that has its origins in the tradition referred to above or more specifically a system based on a civil code, or other state enactments, as contrasted with **common law** which develops "from precedent to precedent", or a 'socialist' system of law. It is in effect the law of the entire of the nation. As a rule, under civil law judicial decisions (*la jurisprudence*) is not a source of law; although a decision of the highest court (e.g. the French *Cour de cassation*

or *Conseil d'Etat*) may have similar authority to legislation in the applicable country.

This civil law has five subdivisions, civil, commercial, civil procedure, penal and criminal procedure, each with its own code. The civil law subdivision covers the law of persons (natural and legal), the family, inheritance, property, and obligations.

The civil law system may be divided into three major categories, i.e. Of Persons, Of Obligations, Of Things. In this context, 'things' includes object that can be perceived by the senses, which includes property (**corporeal** and **incorporeal**) and rights of **ownership** (***dominium***), **possession** and **servitudes**.

The civil law (*droit civil*) deals with rights, which are divided into real rights (rights *in rem*) and personal rights (rights *in personam*). A **personal right** (*jus in personam*) represents a right that is in only enforceable against a person or persons. These rights are the subject of the law of obligation and may be subdivided into right arising from **contract**, **quasi-contact** or **unjust enrichment** and other rights enforceable by law, and rights arising from tort, notably **delict** and **quasi-delict**. In most civil codes, the Law of Obligations has parts to deal separately with various special types of contract (e.g. gifts, loans, letting and hire or leasing, agency, letters of credit, surety, employment, commercial representation). This may be compared with the **common law**, where such matters are dealt with on the basis of the general principles of the law of contract, whereas in civil law they are considered more in line with the traditions or rules that apply to the specific types of contract.

In French law, *droit civil* is concerned with the law of persons; the law of property (***biens***); the law of obligations, which includes *responsibilité civile* (tort or ***délit***) and **contrat** (contract); the family (including the matrimonial regime and succession); ***sûreté*** (law of credit), and *libéralité* (gifts or **donation**, and testamentary disposition). A lease (***bail***) (except for a long-term ground lease), although it may be granted in respect of any form of personal or real property (*biens meubles ou immeubles*) (C. Civ., art. 1713) is strictly a personal right and, as a rule, cannot be the subject of a possessory action, nor can it be mortgaged. In the event that there is no agreement to the contrary, many of the major terms of a lease agreement are governed by the provisions of the civil code (C. Civ., arts. 1717 et seq.).

In researchonrealestate.com 'civil law' refers to a codified system of laws that may be based on the French Civil Code, a Roman or Roman-Dutch Code, or a Germanic Code or a Code drawn up for a particular country, which is usually based on one of the aforementioned.

A. T. von Mehren & J.R. Gordley. *The Civil Law System* (2nd ed. Boston, MA: 1977).
J.H. Merryman. *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* Stanford, CA: 1985).

F.H. Lawson. *A Common Lawyer looks at the Civil Law* (Oxford: 1953).

This information is intended as an introductory guide and is intended to point out issues that may be of interest to a foreign investor.

It does not constitute legal advice and should not be relied on as such. Professional advice is recommended on any issue referred to herein.

Also, please see Disclaimer.

Terms in bold are defined and explained in the Encyclopedia of Real Estate Terms, Third Edition or **ONLINE**