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The **EXP** Group

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Notes

Corporate & Business Law (GLO)

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Steve Crossman
CEO The ExP Group

“Hello”

Thank you for downloading a copy of these ExPress notes and I hope you find them useful for your studies.

We provide these ExPress notes free of charge to individual students as part of our CSR initiatives. The notes are designed to help students assimilate and understand the most important areas for the exam as quickly as possible.

A word of warning though in that they have not been designed to cover everything in the syllabus so you should only use these notes for either an overview of the key areas before you start your main studies or as part of your final revision in the run up to your exams.

Importantly though, we want you to be successful in your exams so good luck with your studies and please do let us know how you get on.

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About The ExP Group

We were born with one passion, with one aim, with one desire. To use technology the way it should be used. To use technology to open up education, and in particular financial education, to whoever needs it regardless of their income, wealth, race, sex, religion or location.

We wanted to use technology to empower individuals to develop themselves through financial expertise, organisations to improve their performance through enhanced human capital and ultimately communities and families to benefit as a result.

We're on target and since our birth we have had the privilege of working with and learning from inspirational individuals and organisations from all 4 corners of the world in countries as varied as the UK in the north, Singapore in the east, South Africa in the south and the Cayman Islands in the west.

We're only part way through our journey but we're doing better than we expected. The best is yet to come though,

Education+Technology=Ethical Empowerment.

Thank you for being part of our story.

01

Different Legal Systems

The Big Picture

The three main systems which you need to be aware of are:

1. **Common Law** e.g. UK
2. **Civil Law** e.g. France
3. **Sharia Law** e.g. Iran

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Key Knowledge - CRIMINAL LAW V CIVIL LAW

Using UK law as an illustration, the key differences are summarised in the table below.

	CRIMINAL	CIVIL
Action brought by	Crown Prosecution Service	Claimant
Action brought against	Accused	Defendant
Burden of proof required	Beyond reasonable doubt	Balance of probabilities
Determination of guilt/liability	Minor offences = Magistrates Serious offences = Jury	Judge (in rare instances Jury)
Sentence/award determined by	Minor offences = Magistrates Serious offences = Judge	Judge
Case described as	Regina v Jones	Smith v Jones

Key Knowledge - JUDICIAL PRECEDENCE

This is **primarily associated** with **common law** systems and explains why in such systems judges are said to *create law*, as well as applying and interpreting the laws created by the legislative body.

Judicial precedent brings a highly desirable **consistency** to the hearing of cases, in that provided the circumstances of a later case are essentially the same as an earlier one, the decision will be the same.

Before applying an earlier case as a precedent, it will be necessary to have a positive response to the following questions:

- Was it based on a proposition of law?
- Was it part of the ratio decidendi?
- Were the material facts of the case the same?
- Was the decision made in a court of equal or (more commonly) superior status?

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Key Knowledge - COMMON LAW

Primarily associated with UK, but also seen in a number of other countries, most notably, perhaps in the USA. Common law has also influenced a number of other countries, most notably, perhaps in the USA.

Significant sources of law currently in UK are:

- Common law and equity which stem from the common law over many hundreds of years
- Statutory law which results from the passing of Acts of Parliament
- EU law applicable to UK as a member state

In countries such as USA there are procedures for judicial review to ensure that no laws are passed which would be in breach of that country's written constitution (not applicable in UK as no written constitution).

In UK there are various presumptions in relation to statutory law and guides and rules as to its interpretation that you should be familiar with.

Key Knowledge – CIVIL LAW

Main contrast with UK system is that civil law systems tend to use codification by means of legislation in order to try to bring understanding and certainty to the law. Countries adopting a civil law approach most normally have a written constitution.

Significant sources of law currently in France are:

- Constitution
- Statutory law
- Administrative Regulations
- EU law

In civil law systems, the role of judges is to apply the law and so there is much less guidance on interpretation of statutes and there is no formalised system of judicial precedent.

Key Knowledge – SHARIA LAW

Major contrast with common and civil law systems, which are essentially secular, is the fact that Sharia law is specifically related to and founded upon the Islamic religion.

The main sources of law are:

1. The Quran which is a record of the divine revelations of Allah to his Prophet Muhammad
2. The Sunnah which is derived from the sayings of the Prophet

Under the traditions of Sharia law, judges are usually clerics (Imam).

Secondary sources of law, known as Madhab, are based on the works of major jurists in the years immediately after the death of the Prophet.

Like many Muslim countries, Iran has a written constitution which upholds the traditions of Sharia law.

The role of judges is to apply the law, when interpretation is required, this must be in accordance with strict and fairly complex Islamic traditions.

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International Organisations

The Big Picture

Questions in this area are to the purview of the knowledge type. You are usually asked to explain the role and activities of two or three organisations which are usually just indicated by an acronym e.g. UN stands for United Nations.

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Key Knowledge - The European Union (EU)

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The EU is an economic and political union.

It has aimed to develop a single market by means of a standardised system of laws which apply to all member states and which are designed to provide freedom of movement of goods, services, people and capital.

Important institutions of the EU include:

- European Commission
- European Court of Justice
- European Parliament

Key Knowledge - World Trade Organisation (WTO)

Replacing the General Agreement on Tariffs and Trade set up in 1947, WTO was established by the Marrakesh Agreement in 1995.

With its headquarters in Geneva, WTO currently has 153 members representing in excess of 95% of world trade.

The WTO is designed to supervise and liberalise international trade between participating countries by providing a framework for both the negotiation and formalisation of international trade agreements, as well as a dispute resolution process designed to enforce adherence to WTO agreements.

Co-operating closely with the IMF and the World Bank, the WTO also does much important work in providing technical assistance to developing countries.

Key Knowledge - International Chamber of Commerce (ICC)

Based in Paris, the ICC was established in 1919 to “serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital.”

With representation in 130 countries worldwide, the ICC has interests covering the vast majority of private sector enterprises and frequently provides expert views to organisations such as the UN and WTO as well as individual national governments.

Amongst its most significant work has been the establishment of the ICC International Court of Arbitration in 1923 and the development of ‘incoterms’.

Incoterms (international commercial terms) are standard terms widely used in contracts for international sale of goods and have often been the source of knowledge based questions in their own right.

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Begun in 1945 after the Second World War, currently almost every independent country in the world is a member of the UN. Under its charter the main objectives of the UN are facilitating co-operation in:

- International law
- International security
- Economic and social development
- Promotion of human rights and the maintenance of world peace

In relation to legal matters, important bodies of the UN should be seen as:

1. International Court of Justice
2. International Law Commission
3. UN Commission on International Trade Law (UNCITRAL)

Key Knowledge - UN Commission on International Trade Law (UNCITRAL)

Formed in 1966 in order to “to promote the progressive harmonisation and unification of international trade law”.

Representatives of 60 member states are elected to the Commission for a period of 6 years. Elections are made by the UN General Assembly with the intention that the Commission should be representative of the world’s different regions and economic and legal systems.

Important outcomes of the Commission’s work so far as our studies are concerned have been the production of various Conventions and Model Laws.

Conventions include:

- Convention on Contracts for the International Sale of Goods
- Convention on the Carriage of Goods by Sea
- Convention on International Bills of Exchange and International Promissory Notes

Model Laws include:

- Model Law on International Commercial Arbitration
- Model Law on International Credit Transfers
- Model Law on Cross-border Insolvency

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Key Knowledge - The Council of Europe (CoE)

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Perhaps one of the most important things to note from a tax point of view, is that the CoE should **NOT** be confused with the EU.

Based in Strasbourg CoE was founded in 1949 and now covers most of the European continent, with 47 member states.

The stated objectives of the CoE are “... to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values, human rights, democracy and the rule of law”.

The CoE issues Conventions which are legally binding once adopted by member states and also publishes recommendations which act as guidelines for use by member states in the development of their own national laws.

Key Knowledge - International Institute for the Unification of Private Law (UNIDROIT)

Based in Rome, UNIDROIT was established in 1926 and currently has 63 member states drawn from all parts of the world and representing a variety of political, economic and legal systems.