# THE SYSTEMATIZATION OF MARITIME AND PORT LEGISLATION

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**ABSTRACT**

Professors I. Ceterechi şi M. Luburici stated that, in general, a classification of law systems according to the criterion of law is a historic and fundamental classification and it represents the key to understanding the law in its historical evolution. A significant influence on the formation of the legal systems of Western countries had some of the oldest systems – the religious systems and "the canon law". Following Antony Brunetti's systematization, in terms of historical evolution and of the influence more or less exercised by the French Code of 1807, the maritime legislation is grouped into three categories.

**Keywords:** *The Anglo-American system, the Roman-Germanic system.*

## 1. INTRODUCTION

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## 2. THE ANGLO-AMERICAN SYSTEM

The Common-Law is the third largest contemporary legal system and it is a legal system that governs vast territories that go far beyond the limits of Great Britain [1].

The *common-law* system does not cover the entire United Kingdom and Northern Ireland, since, at least in the case of the Scottish law, it is based on principles completely different from the English ones . Likewise, the U.S. law or the Canadian one is not integrally part of the *common-law,* Quebec and Louisiana being important exceptions. The *Common-law* is not fully implemented in Orkney and Shetland Islands. The Isle of Man is governed by an old custom, from the eighth century, while the islands of Jersey and Guernsey, in the English Channel, are subject to several laws of French origin. A characteristic feature of the *common-law* system is also the inexistence of the concept of branch of law [2]. Unlike the German and Roman legal systems, in the English law, the main rules are of jurisprudence origin. By means of the consecration of the judicial precedent, the Anglo-Saxon system knows no division into branches of law. *Common-law* means common law, *and* the State *Law* refers to those acts adopted by the Parliament [3]. The most original aspect of the Common-law is the coexistence of three normative subsystems, which are autonomous and parallel.

### *2.1. The Common-Law Subsystem*

**The Common-Law** (narrowly understood) contains the rules established by judicial rulings, i.e. rules which are pronounced by courts and which become binding for lower courts in similar cases.

### *2.2. The Equity Subsystem*

**Equity** is a corrective element brought to common-law rules; it is an attempt of the English law to keep pace with changes in society, with the natural evolution of legal institutions. The Common-Law became, since medieval times, a brake in the emancipation of law. The equity, by means of its terminological essence, expresses the admirable idea that in case of an unjust law, the ordinary citizen can appeal to the king; in fact, the complaints were not solved by the king but by the royal house official, named Chancellor. However, over the centuries, the equity brought essential improvements and additions to several common-law institutions. A fundamental principle which had been introduced was providing that "the violation of law can not remain without punishment" and that equity means equality between the parties to the process.

### *2.3. The Statutary Law Subsystem*

**The Statutary law** is the third branch which consists of rules of law created by written law. A feature of this branch arises from the fact that the English law knows neither the implied repeal nor the desuetude: this explains why many laws remain in force, laws which have never been repealed and which date for centuries. In constitutional matters, Britain has no constitution, in the sense of a fundamental unique act, in order to regulate its political organization. The Constitution consists of several categories of legal rules that are found in Statutary-Law, the common-law, the constitutional practice (the unwritten law, made up of practices). In this matter, the Statutary-Law has a privileged position, consisting of:

- **Magna Charta Libertatum, enforced** to King John **Lackland**, in 1215, by the rebelled nobles and town

people, who secured their privileges, limiting the royal authority.

- **Habeas Corpus Act,** edited in 1679, 20 years after Cromwell's death, asserting the principle of separation of powers (parliament, magistrates and King).

- The **Bill of rights,** developed in 1689, by means of which the Parliament acquired legislative power.

The tripartite division described above, typical to the Anglo-Saxon system, has nothing to do with the Latin division of the branches of law. In *common-law,* in *equity* and in *statute law* there are rules which, in the conception of continental jurists, would be of public law and others which would be of private law [4].

Consequently, the Anglo-American legal system (Common-Law), the laws of the Anglo-Saxon communion, have characteristics influenced by customary rules. This is because within the Anglo-American group of countries there was felt the lack of private law and customary law codifications, crystallized, provided in classic collections of written law. As already mentioned, some written laws, the "State Law" or special laws, have a great importance; they influenced the maritime law, their principles being adopted in international conferences as a "legal basis for the unification of certain institutions of maritime law". Starting from the fourteenth century, the Merchant Law has been recognized as part of the common law of the kingdom. Over time, special merchant courts were replaced by *common-law* courts *and* the commercial right was integrated into the general law. The incorporation of the customary rules of the commercial law configured the commercialization of the *common-law system.*

For England and its Dominions, there are worth noting: the written law – the "State Law" – the Merchant Vesselping Act, of the Merchant Marine Act of 1854, often amended, the 1894 text being in effect today; special laws: the Marine Insurance Act of 1906 amended 1909; the Bill of Lading Act of 1855, the Maritime Convention Act of 1911; the Pilotage Act of 1913, Merchant Shipping; the Carriage of Qoodes by the Sea Act of 1924, which reproduces the Hague Rules of 1921-1922, the Water's Carragee Act for Canada, Australia, New Zealand.

In the United States of North America: the Harter Act of 1893, on the sea carrier's liability; the Pomerene Act of 1916 on the loading policy; the Merchant Seamen's Act of 1915 [6]; the Merchant Marine Act of 1920 known as the "Jones Act" or Bill Jones, amended on May 22, 1928, when it was renamed the Jones-White Act and the "Merchant Marine Act of 1936" [5].

In countries that rely on common law, the judges' verdicts given during the trial of cases *("precedents")* represent an important source of maritime law. The laws made by judges are a fundamental feature of the legal system, in these countries, and the verdicts given in previous cases are seen as a guide for future decision making processes. What is important is that through a case on trial which was given a verdict, it was decided on the ways in which a contractual provision or a statute has to be understood, and what rule should be applied where the statute or the contract is tacit. The essence of the doctrine of the "precedent", as a Supreme Court decision, is binding on other courts, which are located below in the hierarchy, where facts are similar.

The highest authority in making decisions clearly belongs to the courts that are at the top of the hierarchical structure of courts in the countries based on Common law (e.g. the House of Lords in the United Kingdom).

## 3. THE MARITIME AND PORTUARY SYSTEM OF THE EUROPEAN COMMUNITY

In countries outside the European Community, the decisions of higher courts are only indicative and not binding; in other words, the lower courts are not bound to follow the previous decisions of some courts, situated higher in the hierarchy. Accordingly, a court decision in these countries is seen as a source of maritime law. In Europe, two systems of law have been developed for centuries, systems which have not influenced each other: the continental law and the law of the British Isles. In EU countries there are several systems of law, including the Roman-Germanic law [6] and the English C*ommon Law* - known as the law of the judicial precedent*,* which are the most popular. The *Common Law* is the work of judges belonging to higher courts and not to the legislator.

Every State that joined the European Community agrees to apply community laws, which annulled the conflict provisions of national laws. The European Economic Community has its own legislation on shipping, under the form of EEC regulations, which once made up, pass directly into the legislation of any Member State, without being adopted by any implementing legislation. These rules are thus the primary sources of maritime and portuary laws for Member States.

## 4. REFERENCES

[1] *The Common-law* (the term comes from the common ley – the common law) has its origins in the customs used in the context of the Norman Conquest and were maintained thereafter, as a statement of William the Conqueror. ZLĂTESCU, V. D., *Geografie Juridică Contemporană*, Ed. Didactică şi pedagogică, Bucureşti, 1981, p. 124.

[2] The pragmatic spirit that characterizes the English doctrinal law has led to the extinction of differences between different fields of law, that are artificially constructed by the Romano-Germanic civil law system.

[3] MACOVEI, I., *Instituţii în dreptul comerţului internaţional*, Ed. Junimea, Iaşi, 1987, p. 28.

[4] The full name of the "Seaman's Act" is the "Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States" (Act of March 4, 1915, ch. 153, 38 Stat. 1164).

[5] Kilmarx, R. A., ed. *America's Maritime Legacy: A History of the U.S. Merchant Marine and Shipbuilding Industry Since Colonial Times.* Boulder, Colo.: Westview Press, 1979, p. 9.

[6] The words "civil law" or "Roman-Germanic law" means the great contemporary European legal system which includes first and foremost the French and German systems, then those inspired by them in Italy, Spain, Holland and other states on the continent.