

Comparing Two Codes of Law

Directions: Find the excerpts from the Justinian Code of law and the California Code of law that correspond with the slide and read them with your group members. Use the information from the excerpts to help you answer the critical thinking questions on Student Handout 2.2B.

Marriage

The Justinian Code of law: "Citizens are joined together in lawful wedlock when they are united according to law, the man having reached the years of puberty, and the woman being of a marriageable age....provided that....they have the consent of the parents.

"It is not every woman that can be taken [as a] wife: for marriage with certain classes of persons is forbidden....thus, father and daughter, grandfather and granddaughter, mother and son, grandmother and grandson, uncle and niece, etc....are incapable of lawfully marrying. Brother and sister, indeed, are prohibited from intermarriage. [However], the children of two brothers or sisters, or of a brother and sister, may (emphasis added) lawfully intermarry. A man cannot have two wives at the same time, nor can a woman have a two husbands at the same time."

The California Code of law: "Marriage is a personal relation [developing from] a legal contract between a man and a woman, to which the consent (agreement) of the [bride and groom] is necessary. Consent alone will not produce marriage....it must be licensed, solemnized (directed by either a judge, priest, minister, or rabbi), authenticated (witnessed by two people) and the certificate of registry of marriage filed with the local county records.

"Any unmarried male of the age of 18 years or upwards, and any unmarried female of the age of 18 years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

"Any unmarried male or female under the age of 18 years is capable of marrying if each of the following documents are filed with the clerk issuing the marriage license: 1) the consent in writing of one of the parents of each person who is underage; 2) [a court order] granting permission to such underage person to marry; and 3) [proof that] each person under the age of 18 [has] participated in premarital counseling concerning social, economic, and personal responsibilities [associated with] marriage.

"Marriages between parents and children, ancestors and descendants of every degree (there can be no blood relationship between the bride and groom, no matter how distant), and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews are illegal." The act of entering into a contracted marriage with one person while still legally married to another is illegal."

Assault and Battery

The Justinian Code of law: An injury is defined as "anything which is done without any just cause. An injury or outrage is inflicted not only by striking with the fist, a stick or

whip, but also by vituperation (the use of harsh and abusive language) for the purpose of collecting a crowd...or by writing, composing or publishing [words or poetry that are outrageous and untrue].

"[The amount of money] awarded [to a victim] of an injury or an outrage rises and falls in amount according to the class and character of the [victim]. For instance, [if the victim holds a government position] and is outraged by a person of low condition, [such a victim is entitled] to greater pecuniary compensation (money) than [if the injury was inflicted by another government official].

"A person who has been outraged always has his option between the civil remedy (only involving a financial penalty) and a criminal indictment (in which the accused could be sent to jail). If he prefers [a civil remedy], the penalty which is imposed depends on the [victim's] own estimate of the wrong he has suffered; if he prefers [a criminal trial] it is the judge's duty to inflict [the harshest possible] penalty on the offender."

The California Code of law: "Every person is bound, without contract, to resist from injuring the person or property of another, or by infringing upon any of his rights.

"An assault is the unlawful attempt (emphasis added), [together] with the present ability, to commit a violent injury on the [body] of another. An assault is punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding six months, or by both the fine and the imprisonment.

"A battery is any willful and unlawful use (emphasis added) of force or violence upon the [body] of another. A battery is punishable by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment."

Robbery

The Justinian Code of law: Robbery is defined as the taking of personal property by using violence or threat. "It is also declared that this [law] relates not only to robbery of travelers, but also to forcible entries on land and houses, so as to deter people from all violent [theft] upon property.

"The penalty [for robbery] is three times the value of the property, and this whether the robber be caught in the act or not. [However], if a man by mistake thought that property was his own...he cannot be convicted of robbery.

The California Code of law: "Robbery is the [unlawful] taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear. [This] fear may be either: 1) the fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or 2) the fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

"Every robbery of any person who is performing his or her duties as an operator of [any moving vehicle (e.g. taxi, train, ship etc.)] and every robbery which is [committed] in an

inhabited (people are present)...house, [sailing] vessel...which is inhabited and designed for habitation, or a trailer coach (Recreational Motor Vehicle) which is inhabited, or the portion of any other building, is robbery of the first degree. All other kinds of robbery other than those listed here are of the second degree.

“Robbery is punishable as follows: 1) Robbery in the first degree: by imprisonment in the state prison for three, four, or six years and 2) Robbery of the second degree: by imprisonment in the state prison for two, three, or five years.”

Wills and Inheritance

The Justinian Code of law: A will shall be considered legal only if it “was executed (written) at one time and in the presence of seven witnesses, to which each of the witnesses signed their names and affixed their seals.

“Those persons only can be witnesses who are legally capable of witnessing a will. Women, persons below the age of puberty, slaves, lunatics, persons deaf or mute, and those [who do not legally own any property], or whom the law declares worthless and unfit to perform this [duty], cannot witness a will.

“A man may [declare] as his heirs either free men or slaves. If a slave is [declared] heir by his own master, and continues in that condition until his master’s decease, he becomes by the will both free, and necessary heir. A man may also declare a single heir, or as many heirs as he pleases. A testator (the person making the will) may institute as his heir a person whom he has never seen, for instance, nephews who have been abroad and are unknown to him.”

The California Code of law: “An individual 18 or more years of age who is of sound mind may make a will. A person is considered of sound mind if he or she knows that he is making a will, of what his property consists, and his relations to the people who have claim upon his property and money.

“There are two kinds of wills: witnessed and holographic. A witnessed will must be signed by the testator (the person making the will) or by someone else in his presence and by his direction (if he could not write). The will shall be witnessed by being signed by at least two persons, each of whom, must be present at the same time, witnessed either the signing or the testator’s acknowledgement of his signature, and understood that it was his will. While a will might be witnessed by an interested person (someone who will inherit what the testator has willed them), if there are not two other witnesses, such a will is assumed to be illegal.

“With regard to a holographic will, the signature and the material provisions (listing of who gets what) must be in the handwriting of the testator. If the testator lacked the [physical capacity] of making the will during the time it was written, it must be proved that he was of sound mind when he made it. A letter might qualify as a holographic will if the testator [made it clear that the letter was intended to be a will].”

