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Specific Features of Legal Services in Case Law Jurisdictions*

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Dear Audience,

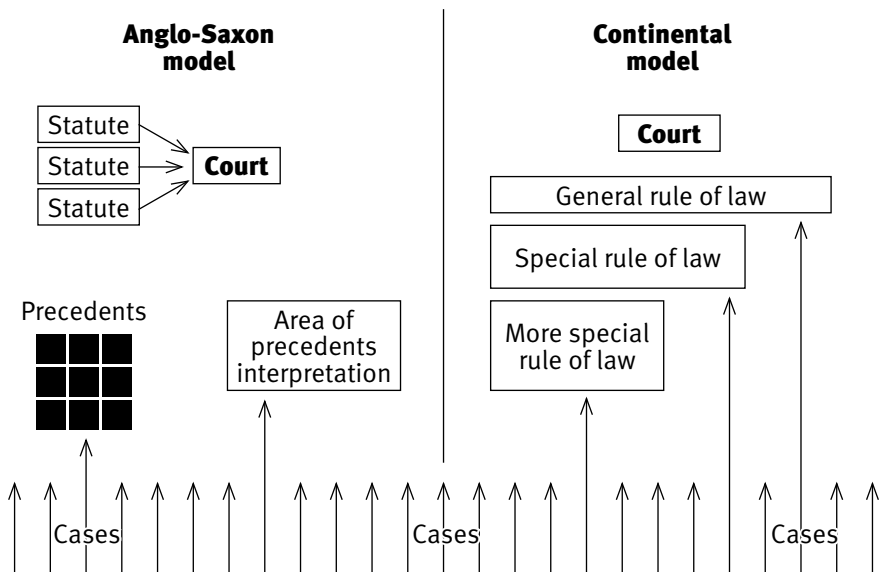
All of us know well that our business is characterized by a specific spirit of professional competitiveness in both outer and inner spheres of law firms' work. Speaking of what could be called a macrolevel, most significant for the market is competition between the law companies of civil law jurisdictions and common law jurisdictions. The services offered by these two groups of so-called business entities demonstrate a distinct watershed, and it exists in any country where UK or US law firms come.

Much has been said and written about the key distinctive features of an Anglo-Saxon type of legal systems. They include the hierarchy of authorities, the existence of a lot of specialised administrative tribunals, the principles of judicature, the significance of procedures, principles of proof etc. But the aspect that mostly determines and influences the nature of legal services is that the judges, lawyers and other parties are not strictly bound by the statutes or, to put it in our civil law language, laws. The authorities which apply law are guided by written rules, but substantiate their decisions by references to precedents that are extracted from immense volumes of court practice. Whatever is said, the purpose of such precedents is to enable the provision of various reasons for a decision taken.

Then what, you may ask, restrains judges from acting arbitrarily or taking bribes in the common law countries which cope with this task very well? – The answer is: a compact judicial corpus which follows the most

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advanced standards of self-regulation and self-control, the traditionally high status of the judge and rigour in punishment for corruption.

Features of legal services in case law

1. The system of common law with its quite specific classification of spheres and institutes of law, the absence of the public/private law dichotomy, which is fundamental for Continental law, and existence of infinitely divisible legal disciplines, such as, for example, trust, torts, conflicts of laws etc., predominantly dictates a much narrower specialisation of lawyers within law firms. They may be engaged only in environmental law or solely in social security law, and the professional perspectives of such a specialist includes hundreds and hundreds of precedential decisions in his area of specialization and thousands of document precedents for various practical circumstances. That is why we see much more employees in law offices and a larger size of the offices themselves. In London, New York, Los Angeles and other cities, they may occupy entire multi-floor houses or huge spaces, across dozens of floors, at mammoth centres.

2. Since law does not play a central role which would establish the framework of permitted conduct, advisors in case law are, in principle, less capable of making legal predictions. Instead, they are used to describing risks

and making suggestions in lengthy analytical opinions, expert memoranda etc. In addition to these services, a system of professional liability, including insurance and other (by contrast to civil law) conditions of liability for damages, has become widespread. For instance, an advisor issuing a confident opinion is responsible not only to the client but also to third parties for any negligence which may result in their damages. Due to these reasons, an advisor in Anglo-Saxon law has less incentive to propose an effective solution or describe risks accurately, without exaggeration.

3. Annually, in countries of common law hundreds of volumes of rendered court decisions are created (in the USA, for example, it is about 400 volumes each year) which can be analysed on the private initiative as good law/bad law since a court decision is difficult to contest. This makes the authorities very voluminous. The lawyers have nothing to do but examine these volumes. Nevertheless, their services are still characterised by lower attention to the rules of law compared to the continent.

4. When Russian courts request evidence of the contents of applicable foreign law, our lawyers will search for the most authoritative doctrinal sources, such as the drafters of the laws or the most prominent professors. Wherever there is the need to describe the substance of any foreign law, British courts will, first of all, rely upon a law practitioner, even if he has just a few years of experience of speaking in trials, or a retired judge, the latter being preferred. Generally speaking, legal scholarship is less valued in case law countries compared to the continent, and university education does not enjoy supreme prestige. Education in legal colleges involves the review of case studies, and the top scholars are judges, whether acting or retired. Hence, the standard of lengthy documents and commitment to a detailed and descriptive style that is not always needed by the client.

5. The characteristic professional features of common law experts include special skills of construing legal rules. A US, English, Australian or Canadian lawyer should analyse court decisions and understand the judges' logic. First, this takes much more time; second, this can result in a not-so-effective interpretation and a vague prediction of risks.

6. Dear ladies and gentlemen, due to these and some other reasons, the services of our colleagues from the countries of the Anglo-Saxon law family are more expensive. Globe White Page's study "Moscow Market of Legal Services" shows that the average rates of legal fees are 30% higher in UK and US companies compared to European firms having their offices in Moscow.

7. Given the aforesaid, one could find quite explainable such feature of case law experts as their attention to appearance and specific entourage of both their services and some other attributes associated with their legal assistance.

8. Added to that are their capability and special skills in the field of proceedings and other legal procedures. The court hearing itself looks, to produce an appropriate impression and to bring the participants to order, like a real theatrical performance: the gowns worn not only by the judges but by the attorneys as well, a special form of witness interrogation, and the use of the jury not only in criminal proceedings but also in commercial ones.

9. The regulation of the profession in the countries using the Anglo-Saxon model is intended to protect the most important property interests and to induce clients to trust their counsel. The system of admission to legal profession ensures the selection of especially hard-working and fast-thinking young people whose appearance and manners can win people's trust.

10. A medium-size or large firm in the UK or the USA having several offices, including those in other countries, operates as a factory generating clients and projects through working very actively toward this end, replicating pro forma documents in an expedient manner, holding workshops, informing the clients about its achievements and any professional novelties implemented by it, strong lobbying in order to obtain orders etc.

11. However, there exists one distinctive feature of common law practitioners which constitutes the most important competitive edge in performing legal services. We would like to call it the quintessence of the differences. It stems from the fact that the statutory regulation of business does not lag behind the needs of life in common law countries due to the non-binding nature of the statutes themselves. And it is lawyers who can, promptly and without obstacles, unless expressly prohibited from doing so by law; respond to a client's need to develop a complex legal structure which is of vital importance to their principal and to defend it before a court or an arbitral tribunal. Once this is done, such a structure will become the firm's professional know-how and will be advertised and replicated among the clients. This allows the firm to earn high revenues for further development and implementation of new legal products which are successfully used in other jurisdictions, including the major financial centers, of which Moscow is the most important one. Since the early 1990s, the number of offices of English and US firms has reached 50, and currently they advise the largest Russian clients, institutional investors and the Russian government and have very

high profits, thus, perhaps, embodying the processes of globalization in the legal services market.

Under these circumstances, the Russian firms should, in addition to a public campaign for expanding the applicability of Russian law, pay more attention to the development and active promotion of their own legal products based on national regulation which would address the problem of any legislative prohibition in a lawful intellectual manner, in reliance upon the doctrinal opinion of authoritative executors of law. The brightest example of such a nonsense that has undermined the opportunity for concluding corporate agreements under Russian law is the narrow-minded and straightforward construction of Article 314 of the Civil Code.

*“2. In the event that an obligation does not specify any **term** for its performance and does not contain any provisions allowing determination of such term, it shall be performed within a reasonable term after the occurrence of the obligation.*

*...unless the duty to perform within a different **term** arises from any law or other legal acts, the terms of the obligation, the customs of trade or the substance of the obligation.”*