



# In search of future alternatives for family business: Family law contributions through Civil and Common Law comparison



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## ABSTRACT

One of the major issues in family business field is the understanding of what makes family businesses different. Despite an increasing development of research during the last 30 years, little attention has been paid to the legal component of the family. The aim of this article is to explore the way legal attributes of the family, comparing Civil Law and Common Law, foresight the heterogeneity and the future of family business. The identification of a Civil Law specificity, No Exit Option, and the Common Law specificity, Exit Option, supports the formulation of different alternatives for family business futures.

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## 1. Introduction

The last three decades have seen a great increase in family business research development. Researchers encourage the “*incorporation of family considerations*” to better understand family business [14–40–45]. Sister disciplines, like psychology or sociology (Aldrich & Cliff, 2003) have greatly contributed to the identification of the place taken by non-economic goals in family business, which is one of the most genuine components of family business (Chrisman, Chua, Pearson, & Barnett, 2012). At the same time, different futurists have looked at the evolution of the family exploring the role of men and women (McCorduck, 1996), the evolution of parenting and marriage and the way the family can build up in the future particularly in the US (Jones, 1996; Haley, 2000). One of the major issues in family businesses research remains the different influences the family could have on the business and the development of the idea that family businesses are heterogeneous [28–9–24–13–43].

Until now, the legal dimension of the family has never been taken into account to understand the distinctiveness and heterogeneity of family businesses. However, as explained by (Marcus, 1980) “*if the law dimension of the family is not taken into account, the distinctive nature of family firms cannot be fully understood*”. The philosophy of the law, which is fundamentally different in the case of Civil Law and the case of Common Law, defines the formal structure of relationships between family members into free-will and precedent. The family is the only social group which is at the same time the result of legal relationship constraints and emotional-affective motivations. The evidence is the positive influence of the Civil Law system in the place of family business in a country’s landscape. In Civil Law countries, for 67% of firms a family owns more than 20% of the shares and for 44% they are managed by a family member [6–15–38–39–18]. However, the vast majority of academic research on family business was made in and based on the Common Law system. The two systems present the same aim with a very different philosophy. Civil Law, mainly developed in Continental Europe, a part of Asia and Africa and across South America is based on a deterministic approach and aims to protect the family group considered as a pillar of the society. A set of contracts defines constraints in people’s intimacy and interactions with members (Plucknett, 1956). The

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Common Law mainly developed in the United-Kingdom, the USA, and the Commonwealth and former British colonies, is based on freedom and the protection of individuals' rights rather than social group rights. This system lets owners free to make decisions during their life time and at the time of death which are supposed to be based on moral obligations towards family but it is not necessarily the case (Plucknett, 1956).

We assume that the future alternatives of a family business are linked to the influence of the system of law on the family functioning and therefore on the family business. One way to forecast the future of family business integrating the law dimension of the family could be to construct alternative futures. "Scenarios can be useful not just for imagining alternatives, but also in terms of organizing strategic action around an issue" (Montgomery, 2008).

The aim of this article is to shed light on family business heterogeneity through future scenarios coming from the legal component of the family. No Exit Option is coming from the Civil Law and is based on the fact that the legal system constrains prevail on personal free-will whereas Exit Option is coming from Common Law and is based on the possibility of free-will in personal choices concerning the family. The difference between Common Law system and Civil Law system stands basically on the predominance of the group over the individual through legal filiation (vs natural filiation), a reduction of family members' free will to take part in the family (vs the free choice of family members) and high legal constraints in family membership and relationship around rights and duties (vs group socialization through values). The evolution of NEO according to the genealogical proximity of family members and the similarity of family members' goals leads to four different alternatives of the future for a family business giving way to four different future scenarios of family business (Tables 1–3).

This article makes several contributions for research in family business. The first main contribution is to highlight of the potential of law in understanding the heterogeneity of family businesses and future alternatives. NEO, proper to Civil Law systems, and OE proper of the Common Law system give way to different futures. The second main contribution is the introduction of genealogical proximity coming from NEO and the elaboration of four scenarios for the future of family business. The third contribution is the link between the type of family business, the legal type of family and the regulation needed to maintain family continuity through socioemotional dynamics or formal structured mechanisms.

The paper starts with the history of the family concept and the way family became an institution. Then we develop the comparison between the Civil and the Common Law systems to finally explore the new orientations of family influence on the business, family business transmission and family business governance issues produced by the Civil Law alternative and the Common Law alternative.

### 1.1. The Family concept through the Legal System: Common Law vs Civil Law

The development of Republican nations based on hard law systems placed the family as the center pillar of the society. The family plays a role of socialization of individuals through social, cognitive and behavioral norms that are transferred from generation to generation. "The society delegates the citizen education and training to the family. The emotional connection is not enough to establish the family. The family ties do not become standard structure by its own but because it is based in an institutional structure that gives the family establishing its normative status. The family is instituting because it is established, recognized, defined and supported in its social difference. The family then receives its legitimacy not because of natural ties but because of its institutional structure. Thus, the family can only survive as an institution and only last because it is an institution" (Lavaud, 1997). Therefore, the family can be seen as an institution, "a set of ordered relationships among people which defines their rights, exposures to the rights of others, the privileges and the responsibilities" (Schmid, 1972: 893). The law has an important role in the definition and the functioning of a family (Marcus, 1980). The main difference between Civil Law and Common Law lies in the focus and in the formalism of the law and rules. Civil Law emerged in continental Europe in the Middle Ages. It is based on the continuity of ancient Roman law. Common Law was created in England in the Middle Ages. It is

**Table 1**  
Main differences between Civil Law System And Common Law System.

| points of differences                | Civil Law   | Common Law   |
|--------------------------------------|---|--|
| Place Of rules, law in everyday life | Total control of family life  | Little influence in everyday family life   |
| Formalization                        | High  | Place of free-will   |
| Drafting laws                        | Government legal system   | Low  |
| Family membership                    | Totally determined by law   | Statute and precedent  |
|                                      | No possible choice  | Determined by law with a space for free-will to choose who will get what from whom |
|                                      | Testimony possible only to choose the type of goods but not their value | Role of testimony during succession for example                                    |
| Value                                | Constrains  | Freedom and free-will  |
| Philosophy                           | Family reign  | Individualism reign  |
| Foundation of relationship           | Equality  | Kinship  |

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