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LEGAL RHETORIC AND PERSUASION IN PLEADINGS: A COMPARATIVE STUDY BETWEEN THE CONTINENTAL AND COMMON LAW SYSTEMS

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Abstract. European legal rhetoric has deep roots in the Roman tradition and classical revival, fundamentally influencing how legal professionals communicate and persuade within modern judicial systems. The article explores the evolution of legal pleadings across two distinct traditions: the Continental system, characterized by rigid formality, deductive logic, and statutory authority, and the Common Law system, defined by procedural flexibility, inductive reasoning, and the supreme value of precedent. An essential difference lies in the approach to evidence: Continental systems require documentary substantiation from the initial phase, while Common Law systems benefit from robust discovery processes. Both traditions integrate narrative and storytelling techniques to enhance persuasion, although in different proportions and contexts. Successful advocacy requires balance between logical and emotional appeals, adaptation to local legal cultures, and fulfillment of fundamental ethical responsibilities. Recent trends demonstrate a movement toward simplification of pleadings and the use of plain language, supported by digitalization and the adoption of electronic filing systems. Convergence between the two systems is observed in the incorporation of storytelling elements, logical structure, and rhetorical coherence, highlighting the ongoing evolution of the art of legal persuasion in the context of globalization and cross-border cooperation. Mastery of persuasive pleadings requires not only legal knowledge but also acute awareness of cultural expectations, audience considerations, and ethical responsibilities that shape global legal rhetoric.

Key words: Legal Rhetoric, Legal Pleadings, Continental System, Common Law, Binding Precedent, Deductive Logic, Inductive Logic, Legal Storytelling, Ethics in Advocacy, Legal Convergence

Introduction.

The origins of legal rhetoric in Europe can be traced back to the influence of Roman law and the intellectual revival of classical rhetoric during the medieval period. Roman legal traditions, deeply rooted in the art of persuasion, provided foundational frameworks for structuring arguments and articulating legal principles, which were later adopted and adapted by medieval scholars. In medieval Europe, the resurgence of classical rhetorical theory in universities significantly shaped how legal professionals learned to communicate and persuade, emphasizing logical structure, eloquence, and the ethical dimensions of advocacy. Over time, these rhetorical foundations became



embedded in both the Continental and Common Law systems, setting the stage for their respective approaches to legal pleadings.

Main text

As the legal systems of Europe evolved, two distinct procedural traditions emerged: the adversarial system, characteristic of Common Law, and the inquisitorial system, prevalent in Continental Law jurisdictions. The adversarial tradition, with its roots in English legal history, centers on direct contestation between parties before a neutral judge, requiring lawyers to employ persuasive rhetoric to advocate for their clients' positions. Conversely, the inquisitorial model, influenced by Roman-canonical procedure and later civil law codifications, positions the judge as an active investigator, with the role of counsel being more circumscribed and focused on assisting the court rather than overtly persuading it. These divergent traditions have profoundly shaped the nature of legal pleadings and the strategies employed for persuasion within each system.

The enduring influence of historical legal texts continues to inform and inspire modern pleading styles in both Continental and Common Law systems. Foundational works, such as judicial opinions, treatises, and legislative writings, not only serve as repositories of doctrine but also provide models for effective legal argumentation and rhetorical technique. Modern legal practitioners and scholars routinely draw upon these historical sources to frame their arguments, interpret statutes, and craft persuasive pleadings. By studying the evolution of legal rhetoric through these texts, professionals gain insight into both the continuity and innovation that characterize contemporary legal discourse.

Continental legal systems are characterized by stringent formal requirements in their pleadings, reflecting their roots in codified statutes and methodical procedural codes. These requirements often dictate not only the content but also the structure and presentation of legal arguments, demanding precise articulation of facts, legal grounds, and supporting evidence within tightly defined formats. For example, parties must clearly state the legal basis for their claims and ensure that every submission adheres to prescribed templates, which promotes procedural consistency and predictability in



litigation. This formalism is intended to minimize ambiguity, facilitate judicial efficiency, and uphold the integrity of the legal process by ensuring that each case is presented on a level playing field for both sides.

In contrast, pleadings within Common Law systems are generally more flexible in both structure and format, evolving from a tradition that values the adaptability of legal argument and the pragmatic needs of adversarial proceedings. This flexibility allows litigants and their counsel to craft pleadings that respond directly to the unique circumstances of each dispute, emphasizing persuasive narrative and strategic argumentation. While certain procedural rules still apply, the overarching approach permits greater latitude in how facts, evidence, and legal theories are presented, thereby encouraging creativity and responsiveness to the evolving dynamics of a case.

A key distinction between the two traditions lies in the source and influence of the rules governing pleadings: Continental systems are guided predominantly by statutory provisions, whereas Common Law systems often rely on judge-made rules and precedents. In civil law jurisdictions, the legislature plays a central role in shaping procedural requirements, which are codified and subject to relatively infrequent change. Conversely, in common law countries, the judiciary wields significant authority to interpret, refine, and develop procedural norms through case law, resulting in a more organic and occasionally idiosyncratic evolution of pleading practices.

The use of narrative and storytelling techniques serves as a powerful persuasive tool in legal pleadings, bridging the gap between rigid formalism and effective rhetoric in both Continental and Common Law systems. In Continental systems, pleadings are often crafted with a structured narrative that situates the facts within a logical progression, aligning the story with statutory requirements and legal norms. Conversely, Common Law pleadings may leverage storytelling to a greater extent, using vivid narratives and context to humanize the parties and frame the dispute compellingly for the judge or jury. This emphasis on narrative allows lawyers to weave facts into a coherent story that resonates with legal principles and the court's expectations. Key elements of legal storytelling include:

- Humanizing parties through character development



- Establishing a clear sequence of events
- Emphasizing cause and effect to highlight liability or innocence.

By integrating these storytelling elements, lawyers not only fulfill procedural requirements but also enhance the persuasive impact of their arguments, making their cases more memorable and relatable to the court.

Precision and clarity in legal arguments are fundamental to persuasion, particularly given the complex nature of legal disputes and the need for accurate interpretation by the court. In Continental systems, the formal structure of pleadings necessitates precise language and logical organization, with arguments meticulously presented to conform to statutory frameworks. On the other hand, Common Law pleadings, while sometimes more flexible in format, still demand clarity to ensure that the judge or jury can readily follow the argument and the legal basis for the claims. A clear and precise pleading accomplishes several goals:

- Avoids ambiguity and potential misinterpretation
- Facilitates efficient judicial decision-making
- Demonstrates the lawyer's command of both facts and law.

By focusing on precision and clarity, legal practitioners strengthen their credibility and increase the likelihood that their reasoning will persuade the court.

The balance between emotional and logical appeals in pleadings varies between legal traditions, reflecting differing judicial expectations and rhetorical strategies. In the Continental system, pleadings are typically anchored in logical reasoning and statutory interpretation, minimizing emotional appeals to maintain objectivity and adherence to the rule of law. In contrast, Common Law pleadings may occasionally employ emotional rhetoric to reinforce the logical basis of an argument, particularly when addressing a jury or seeking to underscore the real-world impact of a legal decision. However, excessive reliance on emotion is generally discouraged, as judges often caution against it to maintain the integrity of legal proceedings. Effective pleadings, therefore, blend logical structure with carefully measured emotional content to maximize persuasive force without undermining credibility.

In Continental legal systems, the process of persuasion is deeply influenced by



the necessity to anticipate judicial reasoning, as judges in these jurisdictions often play a more investigative and interpretive role than their counterparts in common law systems. Legal practitioners must construct their pleadings with an acute awareness of how judges are likely to analyze the facts, apply legal principles, and articulate their decisions, often prioritizing logical coherence and systematic argumentation. This anticipatory approach requires lawyers to consider the doctrinal framework and the hierarchical structure of the judiciary, ensuring that their arguments align with established legal reasoning and precedents recognized by the court. As a result, pleadings are typically crafted to address the judge's perspective directly, incorporating detailed references to statutes and scholarly commentary to guide judicial deliberation.

In contrast, persuasion in common law systems is often tailored to the specific audience—whether a jury or a judge—necessitating distinct rhetorical strategies depending on the forum. When addressing a jury, legal practitioners tend to emphasize narrative elements, clarity, and accessibility, using relatable stories and emotional resonance to communicate complex legal issues in an understandable manner. Conversely, when the audience is a judge, arguments focus more on legal precedent, logical structure, and technical language, with the goal of demonstrating both the strength of the case and the advocate's mastery of the law. This audience-centered approach underscores the party-driven nature of common law litigation, where the persuasive force of pleadings is closely linked to the identity and expectations of the decision-maker.

Both systems demand adaptation to local legal culture and judicial expectations, compelling advocates to be attuned to unwritten norms, procedural traditions, and the unique preferences of individual courts. For example, in some jurisdictions, brevity and directness are highly valued, while in others, exhaustive detail and comprehensive citation may be expected. Legal culture influences not only the style and structure of pleadings but also the strategies used to frame arguments, select evidence, and anticipate counterpoints. Consequently, successful legal rhetoric requires flexibility and cultural competence, enabling practitioners to adjust their persuasive techniques to resonate with the specific judicial environment in which they operate.



In Common Law jurisdictions, the concept of fact pleading plays a central role in how parties present their cases to the court. Fact pleading requires litigants to state the essential facts that give rise to their legal claims, ensuring that only concrete and relevant matters are brought before the judge or jury. This approach, while designed to promote clarity and precision, can also lead to highly technical arguments as parties meticulously frame their allegations and defenses within the established procedural rules. As a result, advocates must be adept at constructing persuasive narratives that are both factually robust and procedurally compliant, often relying on careful selection and articulation of facts to withstand preliminary objections and survive motions to dismiss. This insistence on factual specificity shapes the rhetorical strategy, compelling lawyers to balance detail with persuasion from the outset.

In contrast, Continental legal systems emphasize substantiation and documentary proof in pleadings, reflecting a fundamentally different approach to evidentiary presentation. Here, parties are generally required to attach supporting documents and tangible evidence directly to their initial submissions, reinforcing their factual assertions with immediate proof. This reliance on documentary substantiation streamlines the judicial process by allowing judges to evaluate the credibility and sufficiency of claims at an early stage. Consequently, the rhetorical focus in Continental pleadings shifts from narrative construction to the strategic organization and presentation of evidence, as lawyers must ensure that every claim is directly traceable to verifiable documentation. This method not only affects the structure of pleadings but also demands a meticulous attention to evidentiary detail.

The presence or absence of discovery processes profoundly impacts rhetorical strategies in both legal traditions. In Common Law systems, robust discovery mechanisms allow parties to gather extensive evidence from their opponents, encouraging advocates to adopt a flexible and sometimes adaptive rhetorical posture as new facts emerge during litigation. Conversely, in many Continental jurisdictions where discovery is limited or virtually nonexistent, the initial pleadings assume heightened importance, as parties have fewer opportunities to supplement or revise their evidentiary submissions later in the process. This disparity influences how



advocates plan their persuasive efforts, with Common Law practitioners often anticipating a dynamic exchange of information, while their Continental counterparts are compelled to present their strongest case from the very beginning. Such procedural distinctions underscore the interplay between legal culture and rhetorical technique in shaping the art of advocacy.

Continental legal pleadings are characterized by the prevalence of deductive logic, where arguments typically begin with general statutory or codified principles and proceed to apply these rules to the specific facts of a case. This approach relies on the structured nature of civil law systems, which prioritize comprehensive codes and established doctrines over case-by-case development. As a result, legal practitioners in Continental jurisdictions craft their pleadings by first stating a legal rule and then demonstrating how the facts at hand fall within its purview. This methodical application of deductive reasoning not only ensures consistency in legal outcomes but also aligns with the expectation that judges will adhere closely to codified norms when interpreting the law.

In contrast, Common Law pleadings prominently utilize inductive reasoning, with lawyers building their arguments from specific precedents and factual scenarios to broader legal conclusions. Rather than starting from general principles, attorneys in these jurisdictions frequently cite past judicial decisions that share similar factual matrices, gradually constructing a persuasive legal argument that the court should follow the established path. Through this process, the role of precedent becomes central, as courts are expected to respect and extend previous rulings unless there is a compelling reason to deviate. This form of argumentation emphasizes the adaptability of Common Law and allows for the incremental evolution of legal standards based on accumulated experience and judicial wisdom.

Despite the foundational differences between the two systems, both Continental and Common Law traditions integrate analogical arguments as a means of persuasion, especially when addressing novel or ambiguous legal issues. Analogical reasoning involves drawing parallels between the facts or legal principles of the current case and those of previously decided matters, thereby inviting the court to adopt a similar



approach or outcome. This technique is particularly effective when neither deductive nor inductive reasoning alone provides a clear answer, allowing advocates to bridge gaps in legal doctrine or statutory interpretation through carefully selected comparisons. Ultimately, the use of analogy enriches the rhetorical toolkit of legal practitioners in both contexts, facilitating more nuanced and compelling pleadings.

In Common Law systems, precedent—otherwise known as *stare decisis*—holds a foundational role in shaping legal arguments and outcomes. The binding force of precedent requires that courts adhere to established rulings from higher courts when faced with similar facts, ensuring consistency and predictability in the law. This reliance on prior decisions means that legal practitioners must skillfully reference and distinguish relevant cases in their pleadings, as the authority of precedent can directly determine the result. Consequently, the ability to effectively identify, interpret, and apply binding precedents is a critical aspect of persuasive legal writing and argumentation in Common Law jurisdictions.

Unlike the Common Law's rigid adherence to binding precedent, Continental legal practice recognizes a more flexible approach to authority, often distinguishing between persuasive and mandatory sources. In most Continental systems, judicial decisions are not strictly binding but may serve as persuasive authority, particularly when reasoning from higher courts is respected or when consistency is deemed important. As a result, legal pleadings in these jurisdictions emphasize statutory interpretation and doctrinal analysis, occasionally invoking previous judgments to bolster arguments without being compelled to follow them. This difference shapes the rhetorical strategies employed by lawyers, who must weigh the influence of precedent against the primacy of codes and statutes.

Strategically citing legal sources is a nuanced exercise in both legal traditions, but it manifests differently due to the systems' respective views on authority. In Common Law pleadings, the careful selection and contextualization of binding and persuasive precedents can be decisive, while in Continental pleadings, the emphasis is often on synthesizing statutory provisions with doctrinal writings and, selectively, judicial opinions. Lawyers must therefore tailor their citation strategies to align with the



expectations of judges and the conventions of their legal culture, making the choice of sources and the manner of their presentation integral to effective persuasion.

In Continental legal systems, doctrinal writings—comprising treatises, systematic commentaries, and scholarly articles—play a central role in the crafting of legal pleadings. Lawyers frequently rely on established authorities and academic expositions to interpret statutory provisions and to strengthen their arguments before the courts. This reliance is rooted in the tradition that sees law as a rational science, where the coherence and consistency of legal doctrine are paramount. As a result, Continental pleadings are often rich with references to leading jurists, comprehensive legal treatises, and doctrinal syntheses, which serve to clarify ambiguities and support legal reasoning. The persuasive power of these sources stems from their perceived objectivity and the depth of analysis provided by legal scholars, making them indispensable tools for practitioners seeking to present compelling arguments.

By contrast, in Common Law jurisdictions, the analysis of case law forms the backbone of persuasive legal submissions. Practitioners focus on the interpretation and application of judicial precedents, meticulously dissecting prior decisions to draw analogies or distinctions that support their client's position. This method is deeply embedded in the principle of *stare decisis*, where binding and persuasive authorities are weighed carefully to construct a logical chain of reasoning. In their submissions, lawyers will typically:

- Cite relevant precedents to establish legal rules,
- Highlight factual similarities or differences with the current case,
- Argue for the extension, limitation, or overturning of existing case law.

Such emphasis on case law analysis not only shapes the direction of legal arguments but also ensures that the evolution of the law remains responsive to judicial reasoning and the specifics of individual disputes.

Across both legal traditions, the incorporation of academic commentary and secondary sources has become increasingly significant in enhancing the persuasiveness of pleadings. While Continental lawyers have long valued scholarly contributions, Common Law practitioners now also draw upon law review articles, treatises, and



expert opinions to bolster their arguments or to address novel legal issues. These secondary sources offer critical insights, comparative perspectives, and theoretical frameworks that can illuminate complex points of law or highlight gaps in the existing jurisprudence. Their strategic use in pleadings demonstrates a pluralistic approach to legal reasoning, reflecting the dynamic interplay between practical advocacy and evolving legal scholarship.

The professional codes of conduct form the backbone of ethical advocacy in both the Continental and Common Law legal systems, meticulously regulating legal practitioners' behavior during pleadings. In the Continental system, these codes are often codified in statutory regulations governing the legal profession, emphasizing duties of honesty, integrity, and respect for the court's authority. Conversely, in Common Law jurisdictions, codes of conduct are typically articulated by bar associations or law societies, but they likewise stress the importance of fair advocacy and the maintenance of public trust in the legal process. Such codes serve not only to delineate permissible conduct but also to protect the image of the legal profession in the eyes of the public, thereby guiding advocates in their daily interactions with courts and clients.

A pivotal ethical distinction in legal advocacy lies between zealous representation of a client and the prohibition against misleading the court. While both Continental and Common Law traditions expect lawyers to advance their clients' interests with vigor, there are clear boundaries: advocates must not knowingly present false evidence, distort facts, or misstate the law. For instance, in Common Law systems, the duty of candor to the court is paramount, requiring lawyers to correct any inadvertent misrepresentations immediately. Similarly, Continental systems mandate that lawyers refrain from tactics that could deceive or unduly influence judicial decision-making. This balance ensures that the adversarial pursuit of justice does not compromise the integrity of the judicial process.

Sanctions for unethical persuasion or frivolous pleadings act as deterrents against abuses of advocacy and uphold the credibility of legal proceedings. Both Continental and Common Law systems impose penalties for conduct such as filing baseless claims,



fabricating evidence, or engaging in dilatory tactics. These sanctions can include disciplinary actions by professional bodies, monetary fines, or, in severe cases, disbarment. The existence and enforcement of such consequences underscore a shared commitment to constructive engagement and responsible advocacy in both legal traditions, reinforcing the notion that persuasive pleadings must always operate within ethical boundaries.

Recent years have witnessed a pronounced movement toward the simplification of pleadings and the adoption of plain language across both the Continental and Common Law systems. This trend is driven by a growing recognition that complex legal jargon and archaic phrasing can create barriers to access and comprehension, not only for laypersons but also for legal professionals who must interpret and apply these documents. In response, various jurisdictions have implemented reforms mandating or encouraging the use of clear, direct language in pleadings, aiming to improve transparency and efficiency in legal proceedings. Key measures include:

- Rewriting procedural rules to favor concise and straightforward expressions
- Training legal professionals in the principles of plain language drafting
- Developing guidelines and checklists to eliminate unnecessary technicalities.

These reforms are part of a broader plain legal language movement that seeks to balance precision with accessibility, recognizing that legal rhetoric can be powerful without being opaque.

The digitization of court processes and the widespread adoption of electronic filing systems have significantly impacted pleading practices in both legal traditions. Electronic platforms have introduced new formatting requirements and facilitated real-time access to case documents, thereby accelerating procedural timelines and fostering greater consistency in document submission. Moreover, digital tools often incorporate automated checks for compliance with court rules, reducing clerical errors and ensuring standardized presentation. As a result, digitization has not only streamlined the preparation and filing of pleadings but has also encouraged the integration of multimedia and hyperlinks, enhancing the persuasive potential of legal arguments. These technological advances underscore the ongoing evolution of legal rhetoric, as



practitioners adapt their advocacy strategies to an increasingly digital landscape.

Cross-system influences have become more pronounced as globalization and comparative legal studies encourage the convergence of pleading practices and rhetorical techniques. Legal professionals and scholars now routinely draw on experiences and innovations from other jurisdictions, leading to a blending of Continental clarity and structure with the flexibility and narrative style characteristic of Common Law pleadings. This cross-pollination is evident in the incorporation of storytelling elements, the strategic use of headings and subheadings, and the emphasis on logical coherence and audience engagement. Such convergence not only enriches the rhetorical repertoire of advocates but also promotes a more harmonized approach to legal communication across borders, supporting the broader goal of facilitating mutual understanding and cooperation between different legal systems.

Summary and conclusions

In conclusion, while the Continental and Common Law systems differ significantly in their historical development, structural approaches, and stylistic strategies of legal pleadings, both share a fundamental goal of effective persuasion tailored to their respective audiences. The Continental tradition emphasizes formal structure, precise language, and doctrinal authority, reflecting its inquisitorial roots and reliance on written submissions. Conversely, the Common Law's emphasis on narrative storytelling, inductive reasoning, and case law demonstrates its adversarial nature and focus on oral advocacy and precedent. Understanding these distinctions enhances our appreciation of the nuanced rhetorical techniques employed in each system, as well as the evolving trends toward clarity, accessibility, and cross-system influences. Ultimately, mastery of persuasive pleading in either tradition requires not only legal knowledge but also an astute awareness of cultural expectations, audience considerations, and ethical responsibilities—factors that continue to shape the art and science of legal rhetoric worldwide.

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