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# THE ENGLISH LEGAL SYSTEM

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# OVERVIEW



# LECTURE #1: THE COMMON LAW

During the Middle Ages, 3 systems of laws emerged in the West:

- 1. Common Law** (also known as “Case Law”)
- 2. Civil Law**
- 3. Canon Law**

# COMMON LAW

- Originated in England more than 800 years ago
- Consists of law that arises from the authority of courts
- Is generally uncodified
- Is not always supported by a Constitution
- Grants courts the power to analyze/interpret laws made by other bodies
- Imposes on courts the requirement to follow **precedent** (“*stare decisis*”)
- Court decisions have the same force of laws as statutes
- Courts are adversarial

# CIVIL LAW

- Based on ancient Roman law (“rediscovered” in Europe during the 12<sup>th</sup> century)
- “Codified”—comprehensive, continuously updated legal codes
- Courts lack authority in the absence of a statute
- Limited role of the judge
- Judicial precedent is not controlling
- Courts are created for each specific code
- Courts are inquisitorial

# CANON LAW

- Law that governs the Catholic Church and its members
- Derived from the decrees and rules made by the Pope and ecclesiastical councils

# ENGLAND BEFORE COMMON LAW

- Prior to the Norman Conquest (1066), there was no national, unitary legal system
- Government was decentralized
- Legal system consisted of oral customary rules
- Courts consisted on informal public assemblies
- Trial by Ordeal was commonplace

# 1066 – WILLIAM THE CONQUEROR

- He did not bring a unified system of laws, not did he intentionally develop a common law
- Established separate ecclesiastical courts
- Continued Trial by Ordeal and Trial by Battle
- Confiscated nearly all the land
- Subjected vast tracts of land to “Forest Law”
- Parceled out seized land to loyal followers (“Feudalism”)



# FEUDALISM

- The system of political organization that dominated Europe from the 9<sup>th</sup> to 15<sup>th</sup> Century
- Chief concerns of feudalism were 1) the **law of war** and 2) the **transfer of real estate**
- This institution was the foundation of the Common Law

# KING HENRY II (“FATHER OF COMMON LAW”): 1154-1189



# WHAT DID HE ACCOMPLISH?

He institutionalized Common Law by:

1. Creating a unified court system “common” to the country
2. Insuring that these courts derived their authority from the King himself

# HOW DID HENRY II DO THIS?

1. Ended local control
2. Established secular courts
3. Developed the concept of the “King’s Peace”
4. Introduced the practice of “inquiry” into the facts of any dispute
5. Introduced a jury system of citizens
6. Curbed the power of the ecclesiastical courts
7. Appointed judges of the realm (“Curia Regis”)

## (CONTINUED)

8. Strengthened the body of criminal law
9. Imposed the concept of the “Supremacy of the Law”
10. Launched the system of “yearbooks”
11. Developed the “King’s Court”
12. Created additional courts of limited jurisdiction
13. Permitted litigants to hire representatives—the first attorneys

# RESULTS

- By the time Europe had “rediscovered” Roman law (12<sup>th</sup> century), the Common Law was sufficiently developed to prevent the inclusion of Roman Law

# LATER DEVELOPMENTS

- System of legal professionals (barristers, solicitors)
- Centers of learning for legal professionals (Gray's Inn, Lincoln's Inn, Inner Temple)
- **Magna Carta** (King John, 1215), which limited the King's power to tax without the consent of the royal council. This led to the development of Parliament
- **Star Chamber** (Henry VII, 1485), which heard matters that threatened the security of the realm

## HOW DID A CASE COMMENCE IN A COMMON LAW COURT?

- A recognized plaintiff and defendant
- Plaintiff petitioned for a “writ” based on law and custom
- “Writs” were documents issued by the court on Plaintiff’s behalf, directed to Defendant to either do justice to Plaintiff or to appear in court
- The writ system gave rise to “forms of action” based on recognized theories of liability
- The writ system was formalistic and technical; failure to select the proper form of action would result in dismissal of the lawsuit
- Three categories of actions existed: **real, mixed** and **personal**



# OTHER UNIQUE ENGLISH LEGAL FEATURES

## Courts of Law and Courts of Equity

- **Courts of Law** functioned through the system of “writs” (highly formalized)
- **Courts of Equity** did not use “writs”; rather, these courts applied principles of equity (“fairness”)

# QUESTIONS?

