

# English Law and Terminology.

JUSTINE K. COLLINS

# Objectives.



- ▶ To provide a introductory insight into English law, legal system and legal culture.
- ▶ To illustrate the important aspects of English legal culture.

# Course Content.

- ▶ Week 1 Class 1: Exploring the Characteristics of Legal Language & Depicting what is English Common Law. (November 21st).
- ▶ Week 1 Class 2: Identifying and defining the Sources of English Common Law. (November 21st).
- ▶ Week 2 Class 1: Examining the English Court System. (November 28th).
- ▶ Week 2 Class 2: Analysis of Legal Personnel. (November 28th).
- ▶ Week 3 Class 1: A look at an English Trial System.. (December 12th).
- ▶ Week 3 Class 2: An Introduction to the English Pre-Trial Civil Procedure. (December 12th).
- ▶ Week 4 Class 1: Exploring English Constitutional Law. (December 19th).
- ▶ Week 4 Class 2: A look at English Legal History (legal transfer from England to the British Caribbean). (December 19th).

# The Characteristics of English Legal Language.

## Jargons- Specialised Language

- ▶ Terms of Art- words with a definitive legal meaning.
- ▶ Words or terms particular to persons within the legal profession (*tort*).
- ▶ Certain terms of art apply to the entire body of law (*claimant, defendant, appeal*). Others refers to specific areas of law (*consideration, murder, trustee*).

## Argot- Esoteric use of words.

- ▶ Words used by legal professionals to avoid long explanations (*Blackacre, Whiteacre*).
- ▶ Ordinary words can have different meanings in a legal context (*party, suit, Instrument, consideration*).
- ▶ Traces of French and Latin influences meant that 3 languages were used in legal expressions. Latin- *obiter dicta, ratio decidendi & bona fide*. French- *laches, in lieu & per autre vie*.

# What is Common Law?

## Various meanings of common law.

- ▶ In the legal context it does not mean **ordinary** or **vulgar**.
- ▶ It distinguished between specialised areas of law within England- **law of merchants, equity** and **ecclesiastical laws**.
- ▶ It is a synonym for case law- law created by decision of judges.
- ▶ Ultimately, it defines a legal system which contrasts greatly from the civil law systems of continental Europe.

## Historical Development of common law.

- ▶ No definitive date marking its commencement.
- ▶ CL's history resides in the history of its institutions such as the law courts.
- ▶ The English courts traced the rise & evolution of the complexities of English society- criminal law's development (**breach of peace offence & maintenance of public & social order**).
- ▶ Old contract, tort and land laws reinforced feudal society.
- ▶ Growth of commercial law due to increase in trade and commerce- late 18th century.

# The Time before the Norman Conquest.

- ▶ Romans have the earliest written records on customs in England- their advanced legal system of law did not remain.
- ▶ Celtic customs were present from Bronze and Iron ages.
- ▶ Other influences were from conquerors over centuries- Angles, Saxons & Danes.
- ▶ England remained divided during these conquests and started unification via Alfred of Wessex from 9th-10th centuries.

**The Angles were a Germanic tribe who settled in Britain after the fall of the Roman Empire**



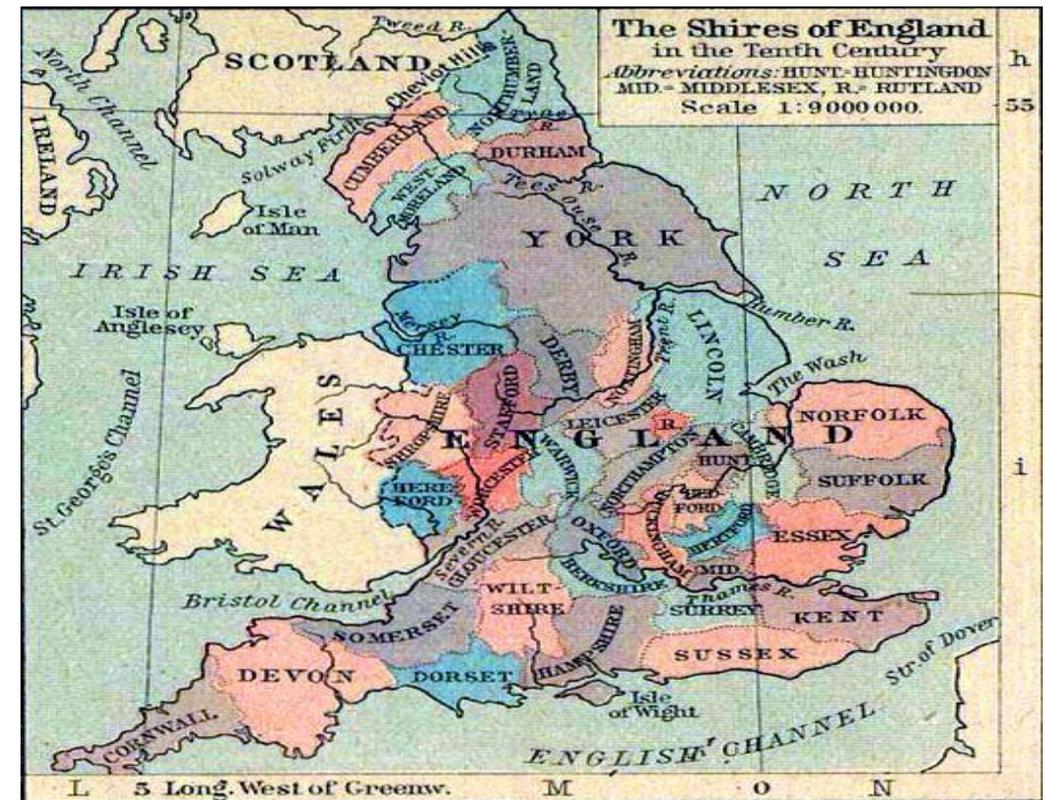
**Ruling in Britain together, they were known as the Anglo-Saxons**



**The Saxons were another Germanic tribe who occupied Britain as well**

# Time before Norman Conquest cont.

- ▶ Unification did not result in creation of uniform system of law.
- ▶ The country was divided into *Shires*- many which remain today but now called *Counties*.
- ▶ Shires were subdivided into *Hundreds* which had several smaller divisions.
- ▶ Disputes were resolved by regular assemblies in the Shires and hundreds- *shire moots*.
- ▶ Shire moots were a mixture of administrative, legislative and judicial functions. No fixed rule for evidence or procedure.
- ▶ *Trial by Ordeal*- common custom- an appeal to God to settle a dispute by fire or water.
- ▶ Other customs which were many, were unwritten.



# Trial by Ordeal example.

## Trial by Ordeal

### Trial by hot iron / Trial by fire

- the accused was forced to hold a hot piece of iron
- The burn was bound for a number of days
- If the wound was healed when the bandage was removed, the person was innocent, if not, they were guilty
- Wounds rarely healed because bandages were not sterile and would cause infection



## Trial by Ordeal

### Trial by Water

- Also called “swimming a witch” when used to judge a case of witchcraft
- The accused was thrown into a pond or lake with hands bound
- If they sank they were innocent (but often drowned before being rescued)
- If they floated, it was said that the purity of the water had rejected them, proving their guilt



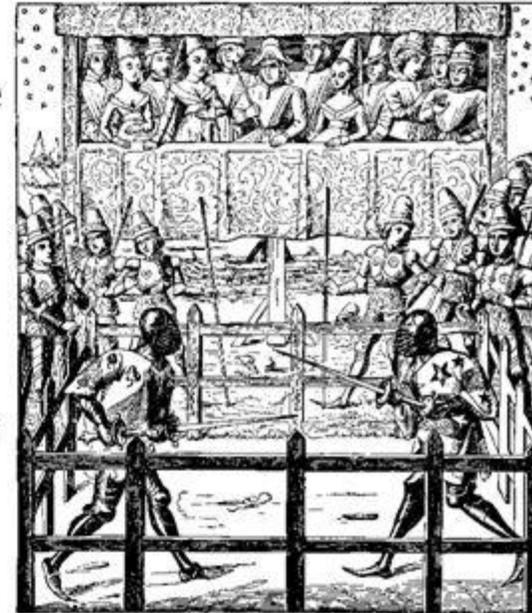
# The Time following the Norman Conquest.

- ▶ 1066 England conquered by William the Conqueror- Duke of Normandy.
- ▶ The Normans did not bring a system of law but introduced specialisations of laws- *trial by battle, discrimination between French & English Courts, separation of Ecclesiastical courts from courts of Shires and Hundreds.*
- ▶ *Curia Regis*- members of the King's main advisory board- travelled from county to county to dispense the law of the king- *Royal Justice- was the 1st uniformly applied law throughout England-hence common law.*
- ▶ *Assize of Novel Disseisin* 1166- the King instituted this to stop fighting among the lords of the county over land- it provided remedy to lords who had their land taken by others lords-the lord would apply to the royal courts to have their land returned.
- ▶ Royal Courts provided a central source of written records of cases by the late 12th century- which provided clarity and transparency for parties concerned.



# Trial By Combat

- Trial by battle or Wager of battle
  - Way of settling legal disputes in the Middle Ages.
    - Noblemen used this for years.
    - People believed that God would interfere and help the righteous person win.
    - The procedure was for the accused to fight the accuser.
    - Sometimes *Champions* fought for noblemen.
    - Women and priests were represented by others in battle.
    - Introduced to England by William the Conqueror in 1066.
    - Trial by jury gradually took its place.



# The Feudal System

- William the Conqueror introduced a system of government called **feudalism**.
- The King owned all the land and divided it among his Lords and nobles.
- In return, the Lords became the King's vassals (servants) and promised him loyalty and military service.



# Time following Norman Conquest cont.

- ▶ Royal Justice was better received by the people as there were more effective procedures and methods of enforcement than the traditional courts of the Shires & hundreds.
- ▶ The Crown received financial benefits from law cases, as fines and forfeitures went to the King.
- ▶ Hence Royal Justice was beneficial for both the Crown and private litigants- which led to the swift development of a new type of law- which became *Common Law*.
- ▶ King Henry II (1154-1189)- forwarded the expansion of common law & the decrease in use of Shire & hundred courts.
- ▶ *New common law courts* took over the legal role of the Curia Regis- as the workload became too much for royal judges. The Curia Regis retained its advisory and administrative role.



# King Henry II- Pioneer of common law.

King Henry established a series of Assizes and endeavours which led him to be seen as the founder of common law.

- 1166- Assize of Clarendon- establishment of a grand jury for investigating recent crimes.
- 1176- Assize of Northampton- established jury of presentment to decide whether cases need to be tried.
- 1181- Assize of Arms- ordered all free men to keep arms and be prepared to defend their country.
- King Henry II also developed the principle of primogeniture which enabled inheritance by the oldest son of the landed estate which allowed noble families the ability to consolidate landholding. Widows usually held a third of the estate while alive and daughter were given a dowry to ensure a profitable marriage. Younger sons were the most disadvantaged as they had to make their own way without much financial assistance.
- Another principle of Henry II was the ability of an individual to sell or give away land- which was not popular at this time in continental Europe- as land there was a family asset wherein lords and others held so many rights that its sale was difficult. This meant England developed an active market in land quite early, which bolstered social mobility and economic change.

# The Common Law Courts.

- ▶ *Court of Exchequer*- 1st common law court est. about a century after the Norman Conquest- Financial & revenue matters.
- ▶ *Court of Assize*- both civil & criminal- concerning Royal rights.
- ▶ *Court of Common Pleas*- covered cases concerning non- Royal rights- land and property cases- non criminal.
- ▶ *Court of the King's Bench*- covered offences which went against the King's peace- both civil & criminal.

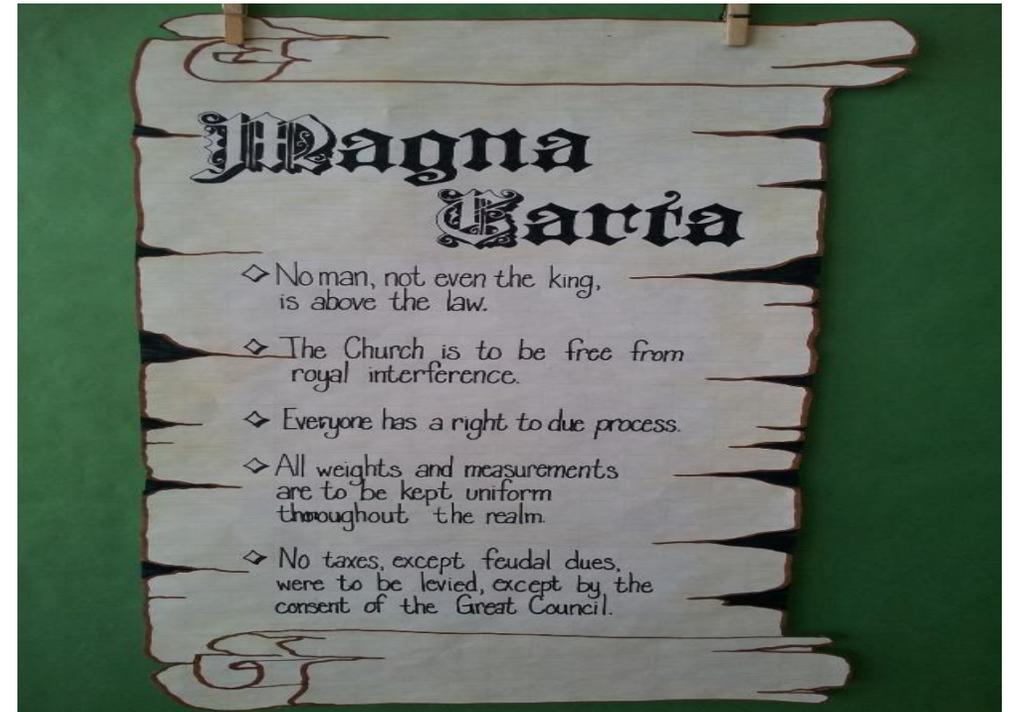


# Common law courts cont.

- ▶ The Court of King's Bench had supervisory function- of hearing appeals from lower courts and controlled royal officials through prerogative writs.
- ▶ The *writ of certiorari*- transferred a case from a lower court to the King's Bench.
- ▶ Prohibitory writs prevented lower courts from exceeding its jurisdiction whilst mandamus ones compelled a court or public officer to carry out their duty.
- ▶ *Writ*- a written mandate of the king, sealed issuing out of a court and commanding something be done concerning an action or suit- or giving commisiion to have it done.
- ▶ *Certiorari*- a certified writ by which a record of a proceeding in a lower court is removed to a higher court for review.
- ▶ *Mandamus*- a judicial writ in the King's name issued as a command to an inferior or ordering a person to perform a public or statutory duty specified in the writ.

# The Magna Carta 1215.

- ▶ *The Magna Carta*- pivotal point in the development of common law- King John (1199-1216) was a very unpopular monarch and had to create a charter of rights or face rebellion of his nobles.
- ▶ The Charter established a number of fundamental constitutional and legal principles- the Court of Common Pleas was given a fixed residence- Westminster.
- ▶ Justice was not to be denied, sold or delayed to anyone. Only justices who knew the law & intended to observe it would be appointed as such.



# Further common law courts.

- ▶ The Court of Star Chamber- emerged during the reign of Henry VII (1485-1509)- dealt with mostly criminal cases such as riots and conspiracies.
- ▶ Punishments of the star chamber courts was very severe- *heavy fines, pilloried, ears cut off, noses slit or cheeks branded*. It was abolished in 1641 due to unpopularity of the severe punishments.
- ▶ The reign of Henry VIII (1509-1547)- saw England's split from the Catholic church- which led to many changes- legal changes- specialist courts and the development of land law.



# Further significant developments.

- ▶ Over the next centuries, political, social and legal changes brought about by civil wars, *Interregnum*, *Restoration* and the *Glorious Revolution*.
- ▶ Queen Victoria's reign (1837-1901) saw the re-consideration of local courts the est. Of *County Courts* in 1846.
- ▶ Further developments in court system by the Judicature Acts of 1873-1875- which founded the present hierarchy of the courts.
- ▶ The old common law courts such as the Exchequer, King's Bench and Common Pleas were abolished & jurisdictions given to the new *High Court*.
- ▶ The old courts which remained were the new *County Courts*-recently est. & *Courts of Assize*-abolished only in 1971.



# Is Common Law Judge made?

- ▶ The belief that common law is made up law by judges is a point of interest and discussion- as in actuality common law is now an established system of law regardless of origin.
- ▶ Judges travelled during the early stages of common law's development hence they were influenced by various customs they encountered.
- ▶ However royal judges did not just adopt customs into law they had to ensure that such practices worked in a legal sense & thus had legal force- *the reasonableness test*- Which was the judges discretion.
- ▶ The reasonableness test meant that judges decided what customs were reasonable and thus law- therefore influencing the law in specific directions.
- ▶ This ability to direct what could be law meant that early common law was judge made to a certain extent.
- ▶ Currently, mostly statutes create the law though judges still preserve a considerable amount of discretion in directing the law.

# The Spread of Common Law.

- ▶ *The common law is common to all the land-* England, Scotland, Wales & Northern Ireland.
- ▶ England, Scotland & Wales= *Great Britain*. Great Britain & Northern Ireland= *United Kingdom*.
- ▶ Channel Islands- Jersey, Guernsey, Alderney & Sark plus the *Isle of Man*= *separate dependencies* of the British Crown.
- ▶ English law *usually only refers to the law of England and Wales*. Scotland has a hybrid system of common law and Roman law. None of the other territories are referred to in discussions on English law.
- ▶ The British Empire transferred their law throughout the world from North America to Africa and Oceania.
- ▶ Though most former colonies are now independent, traces of influence of the common law is still very visible- *court structure, legal system and legal professions*.



Discussion & Review.

What are the different meanings of the term common law?

How would you explain the term common law courts or their development?