

# COM6655 Professional Issues

Autumn 2021-22

## Introduction to legal concepts (part 1)

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### Aims of this lecture

- This lecture introduces foundational material about sources of law and the system of courts in the UK.
- This is needed to understand later material on intellectual property, contracts, liability, computer crime and data protection.

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## Historical origin of UK law

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### Development of UK law

- The **Kingdom of England** was established in 927 AD.
- Previously the territory had comprised several independent smaller kingdoms, each with their own local legal customs.
- The **Principality of Wales** was established in 1216.
- Wales was annexed to the English crown after it was conquered by Edward I, but wasn't fully incorporated into the Kingdom of England until the Laws in Wales Acts were enacted.

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## English Law

- We focus in this course on **English law**, which is the law governing England and Wales.

Laws in Wales Acts 1535 and 1542

Citation: 27 Henry VIII c. 26

Partly repealed by the Welsh Language Act 1993

A.D.1535-6. Anno 27<sup>th</sup> HEN. VIII. c. 25, 26. 243  
C A P. XXV.  
EXPL.

An A<sup>t</sup> for Punishment of sturdy Vagabonds and Beggars.  
¶ A. I. Governor of Cities, Towns, Hundreds, Hamlets  
and other places, for the time being, within the said  
parts of the Realm, by way of Statute and chancery Alms in  
every part of the same, for the relief of such poor  
Alms as shall be thought meet by their Direction, so as none  
of them shall be compelled to labour for the same, and also  
that no person or persons shall compel every sturdy Vagabond to be kept in continual  
Labour. Children under fourteen Years of Age, and above  
four years old, shall be sent to the Master of the Workhouse  
to Service by the Governors of Cities, Towns &c to Husbandry  
or other service, as the said Master shall direct. Bringer,  
Vagabond, shall at the first Time he apprehended, sent to the  
Place where he was born or last dwelt by the Space of Three  
Years, and if he will not return to his place of birth within  
Life, he shall have the upper Part of the Grille of his right Ear  
cut off; and if after that he be taken wandering in Idleness, or  
distracted, or in his Labour, or in any other manner than a  
Master, he shall be adjudged and executed as a Felon. No  
Fines, or other sum of Money, shall be exacted of him, but five  
any Money in Alms, but to the common Boxes, and common  
Gathering in every Parish, upon pain to forfeit Ten Times for  
each sum that shall be given. There shall be no playing at unlawful  
Games."

C A P. XXVI.  
An A<sup>t</sup> for Laws and Justice to be established in Wales in like  
manner as in the Realm.

¶ ALIET<sup>t</sup> the Dominion Principality and Country of Wales  
justly and righteously is, and ever hath been incorporated  
among us, and fullers to and under the Government of  
this Realme, as a Member of the same, whereof  
the King, and Royal Majestie of our Dñe, and very Right  
is the Head, and Sovereign, and Lord of the same, because  
that in the same Country Principality and Dominion divers  
Right Ulgaic Laws and Customs be far differerent from  
the Lawes of this Realme, and divers People do daily live  
People of the same Dominion have and do daily use a Speech  
and Language divers from that which we use here, and  
within this Realme, fane rude and ignorant People have made  
Distress and Diversitie between the King's Subjects of this  
Realme, and the Subjects of the said Dominion Principality  
of Wales, whereby great Disordre Varietie Detractio Division  
Mour and Sedition hath grown between his said Subjects. His  
M<sup>g</sup>nefice therefore, of a singular Zest, Love, and Favour that he

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## Common law

- Following 1066, a unified system of law (English **common law**) slowly came into existence. It was “common” to all courts.
- Common law used earlier decisions made by judges (**precedent**) as a guide to what should happen in legal disputes.
- The Court of the King of England had central authority.
- If the King controls the most powerful court, is the King himself limited in any way, or can he do whatever he wants?

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## Normans, 1066



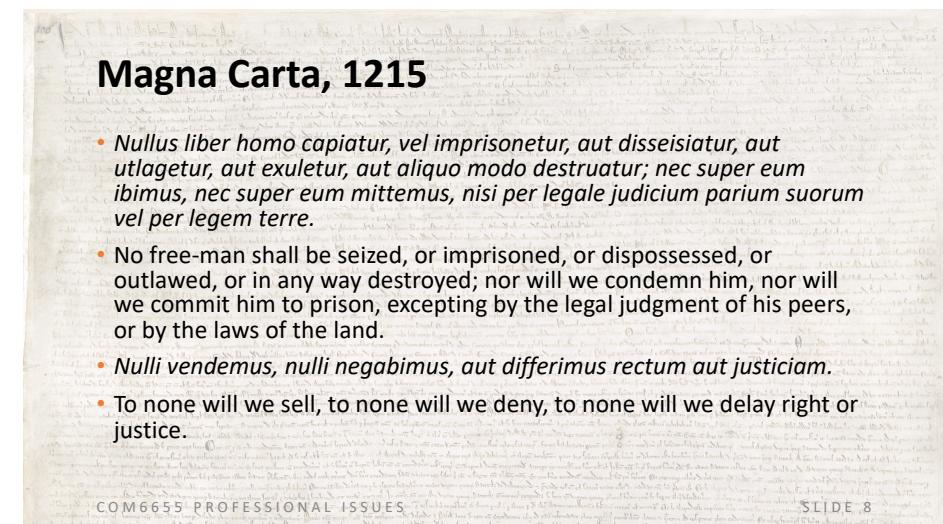
- Norman Conquest, 1066
- “Every acre of land belongs to the monarch” (1067)

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## Magna Carta, 1215

- *Nullus liber homo capiatur, vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terre.*
- No free-man shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.
- *Nulli vendemus, nulli negabimus, aut differimus rectum aut justiciam.*
- To none will we sell, to none will we deny, to none will we delay right or justice.



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## Civil law

- Civil law systems rely on written statutes (**legislation**) and other legal codes that establish legal procedures and punishments.
- Legislation is important in UK law but English law places more emphasis on **precedent** (it is a common law system).

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### Act concerning the Shooting of Long Bows (1511)

Wherefor the King... hath ordained, enacted, and established that ... every man being the King's subject not lame, decrepit, or maimed, nor having any other lawful or reasonable cause or impediment, being within 60 years, (except those men, spiritual men, justices of one bench or of the other, justices of the assize and barons of the exchequer) do use and exercise shooting in longbows, and also to have a bow and arrows ready continually in his house to use himself, and do use himself in shooting.

## Sources of law

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## Who makes the law?

- **Common law**
  - Made by judges
- **Primary Legislation**
  - Parliament / Scottish Parliament / Welsh Assembly / N.I Assembly
  - Order in Council using the “Royal Prerogative”
  - Church of England Measures (affecting the Church in the UK only)
- **Delegated Legislation** (many kinds). Examples:
  - Ministerial orders
  - By-laws made by local authorities

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## Judicial precedent

- Common law was created on an *ad hoc* basis, each problem being settled as it arose.
- How did people know what was a crime, or what their rights were in a dispute?
- The decision of a court is binding on the parties involved, but may also be binding on **future** cases.
- The principle sets a **precedent** which is incorporated into the common law.

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## Case law

- Precedent is also called **case law** (the law to be discovered by reading earlier cases).
  - For the last 400 years, important cases have been recorded in Law Reports, which constitute a major source of law.
- There are two kinds of precedent:
  - **Binding precedent** (e.g., English law) – judges are required to follow earlier judgments made in higher courts in similar cases.
  - **Persuasive precedent** (e.g., Scots law) – judges can choose to act differently if they think an earlier judgment was wrong.

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## Writs

- A writ was originally an order from the King (or other judicial body) telling someone to do something, e.g. a writ of habeus corpus:
  - *habeas corpus coram nobis ad subjiciendum*
- This is a command that a detainee should be brought before a court for examination to determine whether their detention is lawful.
- More generally, writs were used to instruct people to appear in court so that cases could be heard (lower courts issued a summons).
- Since 1999, most civil actions are launched by submitting a Claim Form.
- More information: <https://en.wikipedia.org/wiki/Writ>

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## Recent example of writ being served



Prince Andrew denies the claims (Image: PA)

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Prince Andrew's lawyers 'claim sex assault court papers were not properly served'

A bombshell writ accusing him of sexually assaulting Virginia Giuffre was handed to royal protection officers at Windsor Castle after an agent was told he could not meet the Prince in person

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## Equity

- If a common law remedy produced an unfair result the **Court of Chancery** could decide the issue.
- The Court appointed a **chancellor**, who considered the merits of each case.
- The chancellor was a priest, and was only concerned with what was fair, not common law concepts.
- The justice dispensed by Chancellors became known as equity.
- **Q. What was the problem with this system?**

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## The problem with equity

- “Equity is a roguish thing .... Equity is according to the conscience of him who is Chancellor: as it is larger or narrower so is equity. ‘Tis all one as if they should make the standard for the measure we call a foot to be the Chancellor’s foot...”

(John Selden, 1617)

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## Parliament

- In the 15th century, the legislative power of the King was transferred to **Parliament**.
- Courts were reorganised in the 19th century, so that all courts could apply common law and equity.
- By the end of the 19th century, legislation was becoming more important than common law or equity.

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## Civil law

- Civil law is concerned with resolving **disputes** between individuals or groups of individuals.
- Civil cases are initiated by an aggrieved party (**plaintiff**), who takes legal proceedings against (**sues**) another party (**defendant**).
- Normally the objective is to obtain **damages** (money compensation) or an **injunction** (court order).

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## Criminal law

- Criminal law** concerns the punishment of acts which can be seen as offending against society as a whole.
- Criminal cases are normally brought by the Crown, e.g., a case against Smith will be referred to as R. v. Smith.
- If an individual is acquitted, he/she cannot be prosecuted again for the same offence *on the same evidence*.
- Criminal Justice Act 2003 now allows a retrial for serious criminal cases *if new and compelling evidence comes to light*.

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## Burden of proof

- **Criminal law**

- Prosecution must demonstrate they are guilty beyond *all reasonable doubt*
- Defendant is assumed to be *innocent* until proven *guilty*
- Prosecution has to *prove* its case

- **Civil law**

- To win case, need to show claim is correct *on the balance of probabilities*
- Both parties present evidence and must convince court of their correctness

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## The legislative process

- A **Bill** (a proposed new Act) is drafted, normally under the supervision of a government minister.
- The Bill is introduced either into the House of Commons or the House of Lords (normally it must be passed by both houses).
- Several stages of **reading** and **amendment** follow.
- The Bill becomes an **Act of Parliament** following **Royal Assent**.

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## Delegated legislation

- Now we legislate on almost every aspect of life:
  - Parliament cannot find time to attend to every detail
  - Power to make regulations is delegated to other bodies, such as local authorities and government ministers.
  - Such regulations are known as **delegated legislation**.
- Delegated legislation is a **statutory instrument**, e.g.,
  - Copyright (Computer Programs) Regulations 1992

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## European Union (EU)

- The European Economic Community (EEC) established in 1957 by the Treaties of Rome. Single European market introduced in 1992.
  - The Council of the European Union and European Parliament have legislative powers.
  - The European Commission proposes draft legislation, often intended to harmonise laws of the member states.
- EU legislation has been carried over to UK law despite Brexit.
- This **retained EU law** is essentially a snapshot of 150,000 pieces of EU law at the end of the transition period on 31<sup>st</sup> December 2020.
- Example: EU General Data Protection Regulation

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## EU legislation

- **Regulations**
  - New laws directly enforceable by English Parliament and Courts.
  - E.g., General Data Protection Regulation
- **Directives**
  - An instruction to member states to alter their existing laws. A Directive requires transposition into national legislation (with minor national variations)
  - E.g., Copyright (Computer Programs) Regulations 1992 is the transposition of Council Directive 91/250/EEC on the legal protection of computer programs
- **Decisions**
  - Specific decisions regarding a member state, enterprise, company or individual.

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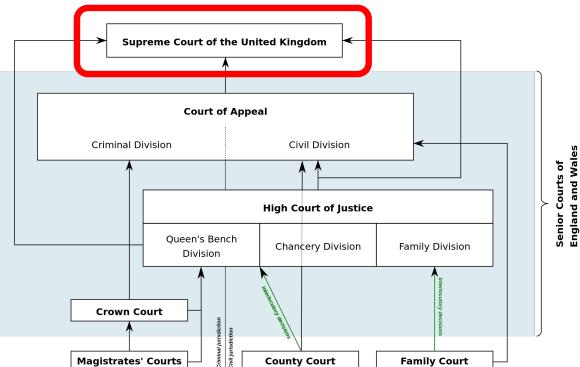
## The system of courts

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## The system of courts

By User:Dave.Dunford [Dave.Dunford]\*derivative work: Hogward - Diagram of the court system of England and Wales.svg, Public Domain, <https://commons.wikimedia.org/w/index.php?curid=32323268>



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## The Supreme Court

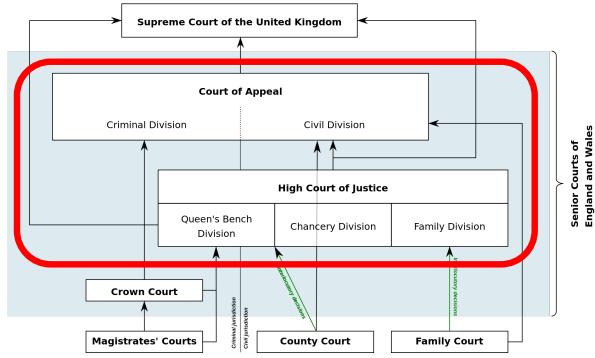
- “The Supreme Court is the final court of appeal in the UK for civil cases. It hears appeals in criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population.”
- <http://www.supremecourt.gov.uk/>

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## The system of courts

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## Court of Appeal and High Court

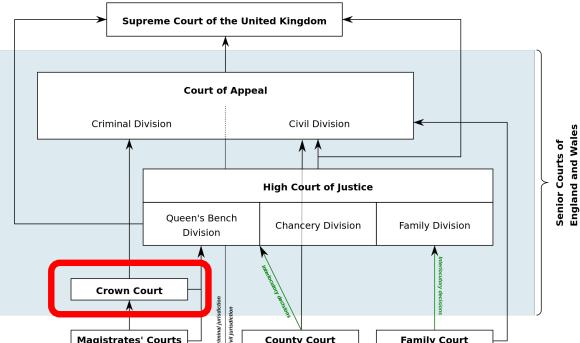
- Court of Appeal hears appeals in criminal cases from the Crown Court and civil cases from the High Court.
- High Court hears civil cases not dealt with by the county courts. Consists of three divisions:
  - Queen's Bench – personal injury, negligence, libel, human rights
  - Family – child protection, divorce, forced marriage
  - Chancery – business disputes, property, land, intellectual property

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## The system of courts

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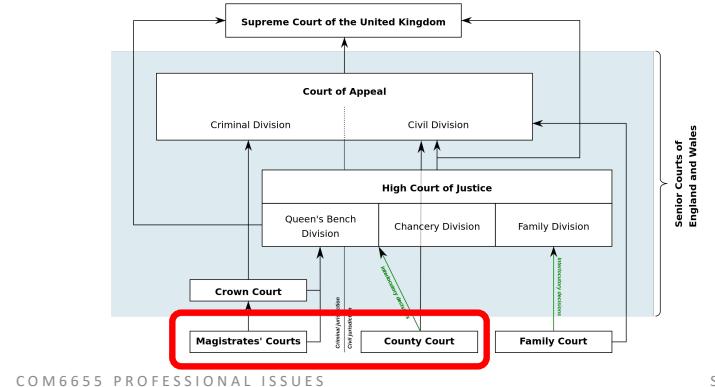
## Crown court

- Sits with a judge and jury, who decide whether the defendant is guilty or not guilty.
- Jurors selected at random from local residents.
- The verdict of the jury should ideally be unanimous, but the court may accept a majority verdict  $\geq 10:2$ .
- Defendants committed from the magistrate's court.
- Tries all serious criminal charges.

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## The system of courts



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## County and Magistrates' Courts

- **County Courts**

- Created in 1846 to settle small claims locally and cheaply.
- Deal with claims below £25,000.
- Complex or important cases are referred to the High Court.

- **Magistrates' Courts**

- Hear minor criminal offences and civil cases.
- They also enforce payment of local taxes.
- Serious cases referred to the Crown Court

- There is no jury in County or Magistrates' Courts.

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## Court of Justice of the European Union (CJEU)

- The purpose of the CJEU is to ensure uniform application of EU law across the member states.
- Controversial with some, cited as a reason for Brexit.
- However under the Brexit Withdrawal Agreement (WA) the jurisdiction of the CJEU still continues in some areas:
  - Interpretation of EU legal concepts relating to the WA, so long as that remains in place.
  - Protocol on Ireland/Northern Ireland.
  - Cases still pending at the end of the transition period (4 year limit).

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## Tribunals and arbitration

- **Tribunals** are concerned with resolving disputes in specific areas; they involve legal experts and experts from the field concerned (e.g., data protection).
- **Arbitration** is used in many civil cases (particularly in the field of business), and involves the appointment of an independent arbitrator to resolve the dispute.

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## **Summary**

- In this lecture we have covered foundational material about the legal system in the UK.
- Key concepts have been introduced, such as civil/criminal law and the idea of precedent.
- Sources of law have been explained – this is currently a fast-evolving topic because of Brexit.