

# Principles of Common Law - History, General Sources and Development

Principles of Common Law

20 September 2022

Lecture 1

Professor Kern Alexander

1. General information
2. Introduction
3. Common Law Tradition and Historical Development
4. Common Law v Civil Law
5. Common Law – some general principles
6. Modern Sources of Common Law

## Readings

**Mandatory: William Geldart (1-17); Glanville Williams  
chap 1 (1-26)**

# Information and Webpage

- Prof. Alexander:

<https://www.ius.uzh.ch/de/staff/professorships/alphabetical/alexander/person.html>

- PCL Lecture:

<https://www.ius.uzh.ch/de/staff/professorships/alphabetical/alexander/lv/vorl/hs19/pcl19.html>

- UZH login required

# Principles of Common Law

- Tuesdays, 12:15-13:45
- Online Zoom livestream
- Last lecture Tuesday 20 December 2022
- Lecturers: Prof. Kern Alexander, Dr Holly Hoch & Prof. Elisabetta Fiocchi Malaspina
- Module website: first point of contact for updates and readings
- Syllabus updated periodically

# Information regarding the Podcast

- Die Veranstaltungen werden aufgezeichnet und als Podcast zur Verfügung gestellt. Einige Sitzplätze ausserhalb des Kameraausschnitts sind vorhanden.
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- [http://www.id.uzh.ch/dl/multimedia/Podcast\\_Merkblatt\\_Studierende\\_v1-2\\_111215.pdf](http://www.id.uzh.ch/dl/multimedia/Podcast_Merkblatt_Studierende_v1-2_111215.pdf)
- <http://www.id.uzh.ch/dl/multimedia.html>
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- It may happen that due to technical difficulties individual lectures are not recorded or not without failures/disturbances. Students not attending and/or not taking notes during the lectures in person will do so at their own risk. The constant availability of recordings cannot be guaranteed for technical reasons. The temporary impossibility to access the recordings is not sufficient cause for an appeal against examination. Scripts or other materials declared as examination relevant take priority over the podcasts (Note: recommendation by MELS). In case of ambiguity contact the lecturer immediately. The recordings may be used only for private use. Redistribution in whatever form, in whole or in part, is not permitted without consent of the lecturer and may be punished by disciplinary measures or otherwise.

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- The course administrator (the Professor/the Law Faculty) is not responsible for technical failings in recording the lectures
- Therefore students run the risk of missing some part of, or all of, a lecture if they do not physically attend the lecture.
- Due to technical problems, the availability of lecture recordings cannot always be guaranteed.
- The loss of access to the lecture recordings is not sufficient cause for an appeal against the examination or an exam grade.

# Subjects areas

- General sources of law
- Contract Law
- Corporate & Commercial Law
- Intellectual property, Data Law & Anti-trust/competition Law
- Constitutional law
- Intellectual Property and Data Law
- Property Law
- Equity and Trusts Law
- Tort Law & Criminal Law

# Assessment / exam

- Booking of exam / course via 'Modulbuchungstool'
- Exam location will be announced
- Exam info:  
<http://www.ius.uzh.ch/de/studies/general/exams/bachelor/HS19.html>
- Past exam questions:  
<http://www.ius.uzh.ch/de/studies/general/exams/bachelor/Pr%C3%BCfungsarchiv-BLaw.html>
- Open book exam
- English
- Essay questions and problem questions
- Dictionaries permitted
- No correction of grammar, style, or spelling (structure!)
- Grades awarded: 1-6 (0.5)
- Passing grade: 4
- PLEASE indicate your student number and question number, number your pages and DO NOT write your name



# Typical exam questions – Essay Question

- Discuss some of the main differences between tort law and contract law (as discussed in lecture and the readings). Discuss the main principles and doctrines upon which they are based (as discussed in class and readings) and how they are different and similar.

## Typical exam questions – Hypothetical facts question

Michael was 27 years old and had come under the influence of a group of friends who had previously been involved in criminal activity. Michael lived at home with his parents. Michael's group of friends had discussed with him the possibility of robbing a bank and had proposed to him that he and another member of the group rob Bank A the following night. Michael and the other members of the group agreed that Michael and his accomplice would rob the bank. The day before the night of the planned robbery, Michael began to have doubts about whether he should rob the bank. He told his accomplice that he did not want to go through with it. His accomplice contacted the other members of the group and they all told Michael that if he did not rob the bank that they would kidnap his parents. Michael then decided to go through with it. Just before the robbery began, the police arrived and arrested Michael and his accomplice who were taken into custody.

Comment on what crimes Michael can be charged with at common law and any other applicable criminal law statutes discussed in lecture. Are there any defences that Michael can assert against these charges?

# Miscellaneous

- Bachelor's Thesis
- Seminar FS23:

<https://www.ius.uzh.ch/en/staff/professorships/alphabetical/alexander/seminare.html>

- Exchange students – no mobility exam
- Contact: [Ist.alexander@rwi.uzh.ch](mailto:Ist.alexander@rwi.uzh.ch)

## General ideas

- Law and Laws
- Common Law v Statute Law
- Law as a system and law as enactment
- French *Droit v Loi*; German *Recht v Gesetz*
  
- Common law pre-existing and determined through application of accepted principles to facts of case*

# The Common Law tradition

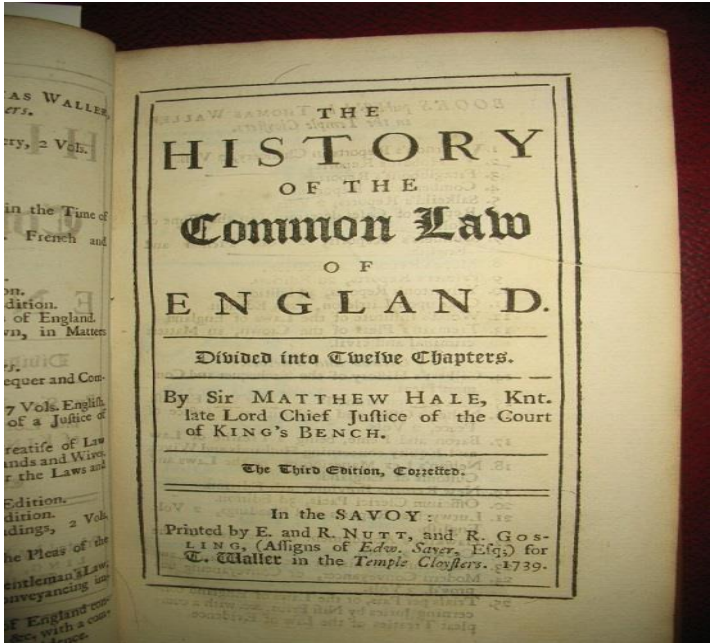


- Edward Coke
- 1642 High Court Justice



William Blackstone  
*Commentaries on the  
Laws of England 1765*

# Historical background



The History of the Common Law of England  
by Matthew Hale  
1713



# A concise history of English Common Law

**“The History of the Common Law of England” (by Matthew Hale, 1713):**

## **Selected Chapters<sup>1</sup>**

- I. Concerning the Distribution of the Law of England into Common Law, and Statute Law.
- II. Concerning the Lex non Scripta, i.e. The Common or Municipal Laws of this Kingdom
- III. Concerning the Common Law of England, its Use and Excellence, and the Reason of its Denomination
- IV. The Original of the Common Law of England
- IX. Concerning the settling of the Common Law of England in Ireland and Wales
- XII. Trials by Jury

<sup>1</sup> [http://www.constitution.org/cmt/hale/history\\_common\\_law.html](http://www.constitution.org/cmt/hale/history_common_law.html)

# Common Law vs Civil Law

## Common law tradition

- Emerged in England during the Middle Ages
- Applied within British colonies across continents.
- Generally uncodified (ie no comprehensive compilation of legal sources)
- Largely based on precedent (authoritative judicial decisions)
- Adversarial system (judge as moderator, jury without legal training)

## Civil law tradition

- developed in continental Europe at the same time and was applied in the colonies of European imperial powers.
- Generally codified (comprehensive legal codes on substantive and procedural law)
- Greater influence of legislators and legal scholars
- Inquisitorial system (lawyers hand files over to judge, judge questions parties)

See Public Law lectures in November 2018 for more detail



## English Common Law – Civil Law

- Sets out rights and duties of persons as between themselves
- Contracts, Torts, Property, and Equity/Trusts
- Aim: to provide a means by which a party can obtain compensation
  - ❑ Claimant v Defendant
- Proof: On balance of probabilities
  - ❑ Damages, specific performance, injunction

## English Common Law - Criminal Law

- Early criminal law – focused on intentional wrongs
  - goal: satisfy private party for loss and King for breach of peace
- Indictable offenses in 11<sup>th</sup> century
  - Appeal (compensation/redress) or presentment (vengeance)
- Modern: State prohibits certain action/ requires certain behaviour through statute. Sovereignty of state to define crimes
- Judges interpret common law principles of crime
  - Murder, Theft-Fraud, attempted murder, conspiracy

# Modern Sources of Common Law

1. Case law
2. Statute
3. European Law\* (Brexit)
4. International Law
5. Transnational law



## Modern Sources of Common Law – Case Law

- Geldart, (chap 2) pp 17-34
- Common Law (complete system of law) vs Equity (incomplete system)
- Equity is a separate system of law based not on formalities but on fairness
- English pragmatism: look beyond formalities to see the real situation
- *He who comes in equity must come with clean hands*
- In conflict, Equity prevails
- Both product of judicial precedents
- Advantages / Disadvantages of judicial precedent

# Modern Sources of Common Law – Statute Law

- Acts of Parliament
- Delegated Legislation
  - Statutory instruments
  - Orders in Council
  - Bye-laws

# Modern Sources of Common Law

- Three basic types of EU legislation:
  - Regulations
  - Directives
  - Decisions
- **Conflicts between English law and EU law**
- **EU Treaty free movement principle**
- **BREXIT**
- Public international law and treaties (Monism v Dualism)
- Transnational law, soft law, non-binding trade standards

# Human Rights law

## European Convention Human Rights (ECHR)

## European Court of Human Rights (ECtHR)

- Human Rights Law (Impact on English Legal System)
- 1948-2000 Judges applied human rights law as it was interpreted by English courts. Parties could appeal to Strasbourg
- 2000-present – Human Rights Act 1998. Courts must take account of ECtHR rulings in deciding claims under ECHR. Parties can still appeal to Strasbourg
- British government has discussed amending Human Rights Act so that British judges are not required to take account of ECHR rulings and instead to apply English common law principles.

# Royal accession of King Charles III

<https://www.youtube.com/watch?v=aKci6iKET2Q>