



University of
Zurich^{UZH}

Institute of Law

Principles of Common Law Exam Review

Principles of Common Law

20 December 2022

Lecture 14

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A concise history of English Common Law

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

Selected Chapters¹

- 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

¹ http://www.constitution.org/cmt/hale/history_common_law.htm



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 (authorative 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



The Common Law tradition and Parliament Sovereignty



Edward Coke
1642 High Court Justice



William Blackstone
*Commentaries on the
Laws of England* 1765



Modern Sources of Common Law – Case Law

- Geldart, pp 17-34 (Lecture 2 – 22 Sept)
- 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



Common Law – Civil Law (not the Civil Code)

- Sets out rights and duties of persons as between themselves
- Contracts, Torts, Property, and 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

Modern Sources of Common Law

1. Case law
2. Statute
3. European Convention on Human Rights
4. International Law
5. Transnational law





Modern Sources of Common Law – Statute Law

- Acts of Parliament (primary law)
- Delegated Legislation
 - Statutory instruments
 - Orders in Council (Crown signature)
 - Bye-laws



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.



EXAM REVIEW

- REMINDER: For all questions in the exam, there is not one single correct answer.
- The point of the exam is to test your analytical and deductive reasoning skills, **not** how much you can learn by heart or copy off slides.
- Read, analyse, compare, contrast, criticise, disagree, propose solutions from readings or **your own** (marked positively!)
- Points will be awarded for identifying the relevant issues and analysing the applicable law to the facts of the cases.
- Your answer must be based on information from lectures and **readings**.
- You will **not** receive full points simply for copying information off the lecture slides.
- Please make an effort of analysis, comparison and criticism to achieve full marks.
- → Student questions?



Legal thinking > Memorization

- What is common law “legal thinking”?
 - > Analysis – applying the law to the facts of the case
 - > *Ratio decidendi* (the legal rationale/principle/rule of previous case) → *Stare Decisis* (binding precedent)
 - > Distinguishing the facts of previous cases from the current case (could lead to a different rule/principle) – *Hernandez case?* When a convicted defendant dies on appeal
- Exam
- IRAC
 - > Issue(s)
 - > Rule (s) (or ‘Principles’)
 - > Analysis (most important)
 - > Conclusion (summing up)
- Happy Holidays!