

**INTRODUCTION TO THE COMMON LAW SYSTEM**  
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**Course Outline**

**INTRODUCTION**

**I. “COMMON LAW”**

- A. “Common Law” as a reference to the English legal tradition;
- B. “Common Law” as a reference to the law of the judges;
- C. “Common Law” as a reference to the law of the judges of the royal courts

**II. IMPORTANCE OF HISTORY**

**PART ONE: HISTORY OF THE COMMON LAW**

**I. PRE-1066: ANGLO-SAXON LAW**

**II. THE FORMATION OF THE COMMON LAW (1066-1485)**

**III. THE RISE OF EQUITY (1485(End of Wars of the Roses) -1832)**

- A. Chancellor’s ad hoc interventions
  - Trust Example
  - Mortgage Example
  - Duress Example
- B. Chancellor’s jurisdiction becomes Court of Chancery
  - Increase in frequency
  - Corresponding Modification of Procedure
    - Simple procedure at firsts
    - Problems Arise
    - Procedure Modified after 1529

**IV. THE CRISIS BETWEEN COMMON LAW AND EQUITY**

**V. THE MODERN PERIOD**

- A. 19<sup>th</sup> century: The Age of Reform
  - The Need for Reform
  - Bentham
  - The Judicature Act
    - 1. Elimination of the system of forms of actions
    - 2. Reorganize the court system in a more rational fashion
    - 3. Improve coordination between Law and Equity
  - Equity since 1873
  - Changes in the Substance of the Law since 1873
- B. 20<sup>th</sup> century: The Welfare State

**VI. RECEPTION OF ENGLISH LAW ABROAD**

- Discovery/Conquest Distinction
- “Discovered” Colonies
- “Conquered” Colonies
  - Labelling Problem
  - Line Blurring Problem

A. Classification Question

B. Date of Reception Question

Principle

Qualifications:

1. Only pre-existing English law applicable in the new colonial setting
2. Explicit derogation in the legislation constituting the
3. “imperial legislation

*Judicature Act Example*

C. Case Law Question

“Natural Law” v. “Human Law” Conceptions

1. Equal Treatment of All Decisions?
2. Absolute Weight of Decisions

## **VII. US LAW**

A. History

English Colonial Theory

US Practice

17<sup>th</sup> century

18<sup>th</sup> century

American Revolution of 1776

B. Special Features

1. Lesser resistance to statutory law
2. Federal/State law division
3. Judicial review of constitutionality
4. Is there a “federal common law”?  
NY/NJ Contract Example
5. Natural Law Conception
6. Lasting importance of the jury in US legal system
7. Decentralization of American legal profession
8. Presence of a Constitution
9. American Restatements and “Codes”

## **PART TWO: SOURCES OF THE COMMON LAW**

Hierarchy of the sources of law at civil law?

Hierarchy of the sources of law at English common law?

Hierarchy of the sources of law at US common law?

### **I. CASE LAW**

A. Civil law

B. English law: Rule of precedent

*Riggs v. Palmer*, p. 164

*Pepper v. Hart*, p. 172

*Cundy v. Lindsay*, p. 132

*Parker v. British Airways Board*, p. 135

- Preliminary identification of potentially applicable prior decisions
- Selection, from among these cases, those that are “applicable
- Identification of *ratio decidendi* –“holdings”--of applicable cases.
- Decision as to what to do with these rules.  
“Overrule”/“Distinguishing”/“Applying”
- Application of the rule to case at hand.

1. Applying & Distinguishing may lead to same conclusion
2. Applying & Distinguishing may not be entirely distinct
3. Ratio never settled once and for all
4. “Ratio” v. “Obiter”

Waddams, p. 126-127  
*National Mutual Insurance Co. v. Tidewater Transfer Co.*,

## **II. STATUTE LAW**

A. Statute Law in the US

B. Statute Law in England

1. Literal construction technique: *Pepper v. Hart*  
Constitutional Argument  
Statutes Inherently Defective Argument  
Style of Statutes Argument
2. Contradiction technique: “*Dr. Bonham*”
3. Crystallization technique
4. Activation technique

*Degelman v. Guaranty Trust Co. and Constantineau* [1954] S.C.C.:  
*Riggs v. Palmer* (1889, Ct. App. N.Y.):

CONCLUSION: Most important distinctive feature?

## **PART THREE: ADDITIONAL EXERCISES**

-*Bell v. Lever Brothers*, *Solle v. Butcher* and *Great Peace* decisions  
-*Redgrave v. Hurd* and *Leaf v. Int’l Galleries* decisions