

CERTIFICATE IN BUSINESS PRACTICE: BUSINESS ENVIRONMENT: PART ONE

INTRODUCTION

Welcome to our first mailing

I do hope you enjoy studying with us.

We will cover the complete syllabus but in a different order to the way matters are written in the ICSA module outline. We are starting with the syllabus topic: "Legal Forces and Responsibilities".

The principal reason for this is that the law is the most intellectually demanding part of the course and if you can understand this you will have no difficulty with the rest of your studies.

We are going to teach more law than is necessary to pass this exam but enough law to lay a foundation for all the remaining subjects in the ICSA.

This booklet contains the following topics:

Nature & Sources of Law

- Unit 1 Development of Common Law and Equity.
- Unit 2 Case Law.
- Unit 3 Statute.
- Unit 4 EU Institutions, their role and impact on UK Law
- Unit 5 The Court Structure.
- Unit 6 The Legal Profession.

Question 1: Section A(1) type questions for submission.

Unit 7: Chapter 3: The Legal Environment: ICSA Manual

Introduction to the law of contract.

- Unit 8 Introduction to Contract.
- Unit 9 The Four Elements: Offer & Acceptance, Consideration & Intention to create legal relations.
- Unit 10 The Content of a Contract.
- Unit 11 Discharge & Remedies for Breach of Contract.

Question 2: Section A and B type questions on contract for submission.

Unit 12 Introduction to Agency

Question 3: Section A questions on Agency and Section C type question from past examinations for submission.

Please read the whole booklet quickly to get a feel for the subject. Then work your way through in detail a unit at a time. After you have completed the first 6 units please try Question 1 and send to me for marking. Please follow on with questions 2 and 3 when ready.

You will see that we have included the textbook "Business Environment" which is edited for your course. This is actually a compilation from three other books, one of which – *The International Business Environment* - was written in part by Ian Brooks who is your examiner.

Also with this mailing is a CD including the pilot paper and all the examinations from the first in November 2005 to the latest, June 2009. We include the suggested answers when available. Do look at these as we will be referring to them throughout the course.

That is enough introduction. The best approach to studying a new subject is to start and see how you get on. Do feel free to call me if you find difficulty and I will do my best to help.

Good Luck
Alan

NATURE & SOURCES OF LAW

UNIT ONE: DEVELOPMENT OF COMMON LAW & EQUITY

The English legal system is a product of English history.

It was not planned but developed in response to specific problems encountered by people in power at the time.

Therefore the only way to understand the development of common law and equity is through history.

A brief legal history of the UK.

Have you ever wondered why the British state has so many different names – UK, Anglo, Britain, Great Britain, England/ Scotland/ Wales/ N Ireland, British Isles?

Britain is a country of immigrants and each group leaves its mark as it settles and this is reflected in the names and words of the language which is itself, a hybrid. So Britain is named after the Celtic tribe the *Britons*, *Anglo* and *England* after the Angles who settled with the Saxons, the *United Kingdom* after the Act of Union uniting the two Kingdoms of Scotland and England under James 1 of England (who was James VI of Scotland).

Some of the immigration was welcomed and sometimes opposed. The last successful invasion was in 1066 when an expatriate Viking living in Northern France landed in the south and took control of the country. He was William the Conqueror and it is from his reign that we will look at the development of English law.

The effects of this invasion can be found in the language you use today. William and his supporters spoke a type of French and the people he conquered spoke English. For a period of time there were two languages in operation: that of the conqueror and that of the conquered. They eventually merged so that today you would say the following -

Cow, *Sheep* and *Pig* when the animal is alive and needs to be looked after which is the job of the peasant: these are from the language of the Angles.

When you visit the butcher you do not ask for cow's meat but for *beef*, *mutton* and *pork* which is eaten by those who can afford it – the rulers. These words are French in origin.

The new rulers faced the problem of all colonisers: how to enforce their control without destroying the society they had conquered.

William the Conqueror and the Kings following him adopted the following solution:

- a. **“Nationalisation of all land”**. All land belonged to the King. He then allocated estates to his supporters who took control usually by force. Any person who opposed the King forfeited his land, which was then granted to a supporter. **This is the foundation of the law of REAL PROPERTY.**
- b. **The issue of Royal Proclamations on matters of concern to the King.** For example, hunting of deer was restricted; the legal power of the church was restricted to matters of church law. **This is the foundation of LEGISLATION.**
- c. **Most important of all, the existing law was to remain if it did not conflict with the new laws.** William proclaimed *“This I will and order that all shall have and hold the law of King Edward (Edward the Confessor – a Saxon King) as to lands and all other things with these additions which I have established for the good of the English people”*. **This is the foundation of COMMON LAW, EQUITY and their operation through the system of CASE LAW.**

The Common Law

The remainder of this unit is concerned with paragraph c above.

The problem in applying the “existing law” was that it was unwritten and varied throughout the country.

William and his followers solution was novel. He appointed Royal Commissioners to tour the country hearing cases applying the local law as they found it. They were based in London in what became the four Inns of Court to which all barristers now belong and the tours they followed were called “circuits”.

These Commissioners were the forerunners of what are now circuit judges.

At first the Commissioners heard cases with teams of local people (the forerunner of the jury) and applied the local law as understood by these people. Over time the Commissioners relied less and less on the local people. They became more and more familiar with the principles and on return to London they began to **harmonise the differences** between themselves and develop principles which were common or general to the Kingdom. These they committed to writing by recording the important decisions. The first law report appears in the year 1292. (These are the Year books and they ran for the next 300 years – they contained arguments and opinions of the lawyers and judges and can still be quoted as authority today). **This was the beginning of the common law.**

The origin of these principles is now obscure but this is of little contemporary importance as the system continues to develop to this day.

The best example of a syllabus subject that is the product of common law is CONTRACT. The principles you will learn in Units 10-14 are the product of common law and you will be studying something that has been developed over the last nine hundred years and will continue to develop as long as the common law exists.

The Rise of Equity

If you wished to bring a case in the Middle Ages, for example payment of a debt or compensation for a trespass, you went to an English lawyer who was part of a large and powerful class (it was from this class that the King chose his judges).

The procedure required that you paid the King to order a sheriff in your county to bring the defendant to court. This meant purchasing a **WRIT** from the King’s office. **The writ was a specific form stating the type of complaint** (e.g. writ of trespass) and giving details of the facts.

During the reign of Henry III the common law grew very rapidly. If existing writs did not apply, the King created new ones.

This produced political problems for the King. His Common law courts were not the only courts- there were still local courts run by the barons who found their “business” suffering as people went to the King. Pressure was applied and by the time of Edward I they had stopped the creation of new writs without the Baron’s permission. (We will deal with the relationship between the King and his Barons in more detail when we come to look at legislation). By an Act of 1285 only variations on old writs were allowed. The result was to make the Common Law unnecessarily technical and formal.

Those plaintiffs who did succeed in obtaining a writ found that there was a problem in the remedy if they succeeded. **The common law offered one remedy – money.** This is fine when seeking damages for non-payment of a debt. It is less helpful if you are trying to evict a trespasser.

According to the great legal historian, Maitland-
“Henceforth for nearly two centuries the growth of unenacted law is very slow indeed”.

IN SUMMARY COMMON LAW DEVELOPED TWO FAULTS:

- (1) **NO NEW WRITS MAKING THE SUBJECT VERY TECHNICAL.**
- (2) **LIMITED REMEDIES.**

If people are sufficiently worried by a problem and have significant funds they will try to solve it. And people unhappy with being unable to use the common law or its remedies **turned to the King directly for help.**

Every King had his **Chancellor** who was a cleric in charge of the new technology i.e. the secretarial body of King's clerks. (He was called a Chancellor because he stood in front of the large curtain by the throne called the Chancel).

Generally the Chancellor was a Bishop who had long connections with the administration of law. It was his clerics who drew up the writs. The chancellor was a member of the King's council with a limited jurisdiction of his own. (Today he is the third highest member of the government in charge of the House of Lords and called the Lord Chancellor).

People unsatisfied with the common law would petition the King through the Lord Chancellor to send for their adversary and examine him on oath personally. In short they wanted direct action by the King. The reasons they gave included "the suppliant is poor, old, sick; his adversary is rich and powerful, will bribe or intimidate or has by accident or trick obtained an advantage... a common formula was 'for love of God and in the way of charity'.

By the fifteenth century it was standard practice for these applications to be heard by the Lord Chancellor.

The idea of offering help **in the name of equity and good conscience was developed by the Chancellor. His religious belief influenced the approach.**

According to **Maitland** the Chancellors through their courts of **Chancery were doing** the following:

- (1) *"they are **supplementing the meagre common law,***
- (2) *they are **enforcing duties which the common law does not enforce:** e.g. they are enforcing those understandings known as **uses or trusts** (the law of Trusts is considered by many to be equity's greatest contribution to law – it is a foundation of the International finance industry)*
- (3) *they are **giving remedies which the common law does not give,** thus if a man will not fulfil his contract, all that a common law court can do is force him to pay damages for having broken it – but in some cases Chancery will give him the more appropriate remedy of compelling him (on pain of going to prison) to do exactly what he has promised,*
- (4) ***the procedure of the court differed in many important respects from that of other courts;** in particular it examined the defendant on oath, it compelled him to disclose what he knew about the facts alleged against him."*

So by the end of the Middle Ages "law acquired what for centuries was to be one of its leading peculiarities: IT CONSISTED OF A BODY OF RULES KNOWN AS COMMON LAW SUPPLEMENTED BY A BODY OF RULES KNOWN AS EQUITY." (Maitland).

Examples of EQUITABLE REMEDIES today are:

- a. **Specific performance** where a person is made to do what they have agreed to do.
- b. **Injunction** where a person is ordered not to do certain things e.g. not to publish secret materials.
- c. **Rectification** where a person is ordered to change a document to reflect what was agreed orally.
- d. **Rescission** where a person is ordered to return to a previous position (usually the return of goods delivered under a contract)

To assist the judge in reaching a decision equity developed a series of **EQUITABLE MAXIMS** e.g.

- a. Delay defeats equity
- b. He who comes to equity must come with clean hands
- c. Equity looks to the intent and not the form
- d. Equity acts *in personum* (this is important : whereas a common law right is available to everyone, equity's remedies will depend on the conduct of the person, that is they are discretionary)

The Relationship between Common Law and Equity.

The two systems of law – common law and equity were administered in different courts by different judges.

There were a number of disputes between the two systems. The relationship between the two reached a head in 1615.

One dispute was the case of **Courtney v Glanvil**. This involved a dispute over the true value of some jewels. The seller lied about their true worth (£150) and persuaded the buyer to pay with an early form of cheque for £600. When he discovered the true value he refused to meet the cheque when it was presented. The seller went to the common law courts who ordered payment of the amount on the cheque. The buyer then went to equity who said he should only pay the value of the jewels. The seller of the jewels refused to accept this and was imprisoned by the Lord Chancellor for contempt. The head of the common law courts, the Lord Chief Justice ordered the seller's release on the grounds that equity's imprisonment was unlawful. The Lord Chancellor appealed to the King. The decision was left to King James I. He had to choose between his Lord Chancellor and the Chief Justice. He chose the Lord Chancellor and equity. The head of the Common law courts was dismissed and equity flourished.

TO THIS DAY IF THERE IS A CONFLICT BETWEEN EQUITY AND COMMON LAW EQUITY PREVAILS.

The Great Victorian Reforms

The effect of James decision was to lengthen the process of any trial. If they had the funds losers in common law could go to Chancery. Chancery cases took longer and longer as it became more and more technical. Cases in early Victorian England could take up to 30 years to reach a decision. Charles Dickens who had been a court reporter based his novel *Bleak House* on a true case involving a dispute over land. The winner had to sell the land to meet legal fees.

The Victorians took control of the situation and reformed the whole legal system in the **JUDICATURE ACTS 1873-75**.

The Judicature Acts established:

- (1) **One supreme Court of Judicature** (the Common law courts and Chancery courts were abolished and reconstituted into a High Court and a Court of Appeal).
- (2) **Each court would recognise and apply both common law and equity.**
- (3) **Enacted the principle that where there is a conflict between equity and common law with reference to the same matter equity shall prevail.**

This completes our introduction to Common law and Equity. You are following in the tradition of law students for the last nine hundred years.
