

Review Reading 1:5

Write it down – if you didn't bother to do it.

Difference French/British Early LAw

- French Law – CODIFIED – as in written down
- English Law – NOT CODIFIED – still apparently – much of English Law isn't written down.
- Really??

Tangent – Reason for British Laws not being codified “Apparently”

- Essentially because the country has been too stable for too long. The governing elites of many European nations, such as France and Germany, have been forced to draw up constitutions in response to popular revolt or war.
- Great Britain, by contrast, remained free of the revolutionary fervour that swept much of the Continent in the 19th century. As a result, this country's democracy has been reformed incrementally over centuries rather than in one big bang. For younger countries, including the United States and Australia, codification of their citizens' rights and political systems was an essential step towards independence. Ironically, several based their written constitutions on Britain's unwritten version.

Tangent – so how does Britain function with no Constitution – (Codified Laws)

- From a comparative perspective, Britain has what is known as an 'unwritten constitution', although some prefer to describe it as 'uncodified' on the basis that many of our laws of a constitutional nature are in fact written down in Acts of Parliament or law reports of court judgments.
- There are a number of associated characteristics of Britain's unwritten constitution:
- In law, Parliament is sovereign in the sense of being the supreme legislative body.
- Since there is no documentary constitution containing laws that are fundamental in status and superior to ordinary Acts of Parliament, the courts may only interpret parliamentary statutes. They may not overrule or declare them invalid for being contrary to the constitution and 'unconstitutional'.
- So, too, there are no entrenched procedures (such as a special power of the House of Lords, or the requirement of a referendum) by which the unwritten constitution may be amended.
- The legislative process by which a constitutional law is repealed, amended or enacted, is done by an Act of Parliament –
- An **Act of Parliament** creates a new law or changes an existing law. An **Act** is a Bill approved by both the House of Commons and the House of Lords and formally agreed to by the reigning monarch (known as Royal Assent). Once implemented, an **Act** is law and applies to the **UK** as a whole or to specific areas of the country.

Feudalism and it's Injustices

- 1066 – Duke of Normandy conquered France – introduced Feudalism.
- All land divided up amongst the lords who ruled their land (Manor/Estate)
- The Lords were the 'Law of the Land' and acted at the judge whenever a Vassal broke the law.
- So that means the Lord can technically do whatever he wants to his vassals. Death for you, Hand cut off for you, I want to marry your daughter, so nothing or you.

Why is it called Common Law?

- To fix the problem of Lords being unjust judges, the king appointed Judges to travel throughout England that would hold hearing and trial “ assizes’
- These judges met regularly in London to discuss the trials and share experiences
- By the 13th century the laws and punishments were more similar for criminal and civil cases.
- As these regular punishments were developed for specific crimes they became *common for the whole of England*, not just one Manor or another – Thus COMMON LAW.

Rule of Precedent – how it works / Canada

- Common law based on Rule of Precedent
- Something that has already been done, so this later serves as an example of how things should be done
- All judges who heard cases with similar facts could give similar decisions
- People who were dissatisfied with the judges decisions could go to the monarch to settle the dispute at this time.
- Today : Trial Lawyers spend a lot of time looking at previous cases to sway the judge to give a similar ruling, The accused can look back at other cases and know what to expect as an outcome.

Follow Precedent too closely?

- If the Precedent isn't recent this can cause problems
- Laws for horse-drawn buggies ... don't work with vehicles.

What is Case Law? What is Citation?

- Common Law = Case Law
- More judges = more cases meaning there is no way to remember them all, so they had to write them down
- They are written down into CASES.
- Each case is given a title – A CITATION.
- Citation – lists the basic information in a case: who, public/private, year, where the case was heard, and the law reporter
- Makes for easy location.

Case : R. vs. Davies

- Discuss.

Terms to Know:

- THE RULE OF LAW – King John of England thought he was above the law (1199-1216) The most powerful groups came together to make him sign the MAGNA CARTA.
- The MAGNA CARTA – instated the RULE OF LAW – meaning everyone had to obey the law, including the king, and all subsequent kings.
- Now no ruler could restrict the rights of the people without reason.
- HABEAS CORPUS – MAGNA CARTA also instated this rule – it means: That any person who was imprisoned without an explanation was entitled to appear before the courts within a reasonable amount of time.

Canada and Rule of Law

- Canadian's are governed by rule of law.
- This means every dispute must be settled by peaceful means. (Discussion, Negotiation, Due process in court)
- Government officials may not make up or change rules without consulting everyone else.
- The rule of Law brings order to peoples lives by preventing the use of violence and the abuse of human rights.

Terms to Know:

- **Parliament** – formed in Britain to reduce the power of the king in 1265
 - Nobles were called from all parts of England to form the first parliament
 - For 400 years they fought for power with the monarchs.
- **Bill of Rights** – Passed by parliament in 1689 – guaranteeing free speech, free elections and freedom of assembly
- Statutes – The parliaments job was to pass laws know as – Statutes.
 - Common Law/ Case Law didn't have all the answers so parliament would pass these Statutes to fill in the gaps, as a result these laws were codified – into The Acts of Parliament.