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# Introduction to English Law

## Lecture 2: Legal History

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## Structure of the lecture


1. Early English History
2. Law in Early England
3. The Rise of the Jury Trial
4. Court of Chancery and Equity

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## Section 1

### Early English History

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## Early English History (1)

**Romans (79 - 400)**  
Roman law was enforced, at least on Roman citizens  
No real lasting effect on the population (withdrew in 400)  
Enduring survival was the Christian church

**Celts, Angles, Saxons, Jutes (400 - 1066)**  
Anglo-Saxons first to use written records  
Introduced legislation but for very specific issues  
Alfred of Wessex (died 899) was first who set about to compare


**Danes (800 - 1066)**  
Attacked the east coast from 793 onwards.  
All the kingdoms fell apart from Wessex

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## Early English History (2)


**The Anglo-Saxons (400-800)**



**The Danes (800-1066)**




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## Section 2

### Law in Early England

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## Law in Early England (1)

**Absence of Judiciary**  
 Everyone resorted to self-help.  
 First reasons to create judiciary was need to prevent private warfare


**Pre 8<sup>th</sup> Century**

- Open-air meetings to discuss legal affairs
- No records, no lawyers
- Plaintiff had to prove prima facie case
- If matter couldn't be settled then proof by oath by neighbours or ordeals

**10<sup>th</sup> Century**

- Single kingdom of England divided into shires, assigned to an Earl.
- Each had its own assembly

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## Law in Early England (2)

**Organisation of the country**

<u>Division</u>	<u>Responsibility</u>	<u>Meetings</u>
Village (group of dwellings)		Village moot
Tithings (groups of ten families)	Tithingman	Tithing moot
Hundreds (100 hides)	Hundredman	Hundredmoot
Boroughs (old strongholds)		Burghmoot
Shires (old districts)	Ealdormen (Earls)	Shiremoot

Division helped: (a) raise taxes, and (b) organise local justice.  
 Whole country under the authority of the sheriffs, answerable to the King.

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## Law in Early England (3)

**William I, William the Conqueror, 1066**

- William I defeated Harold (King of Wessex) at the Battle of Hastings
- William I agreed that England could keep its law
- Undeveloped institutions rapidly expanded


**Reasons for development of common law**

- Aimed at preserving public order
- In the 11<sup>th</sup>/12<sup>th</sup> centuries had choice: local courts or king's courts
- Going to king's court meant issue settled

**Development**

- King could thus not be involved
- Developed the "writ" and delegated authority to King's own court

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## Law in Early England (4)


**Itinerant Justice**

- Creation of simple procedure removed King's involvement
- Created the post of *chief justiciar*: King's deputy (but too dangerous)
- Another method was to send justices on ad-hoc basis

**Henry II**

- 1154: Came to the throne
- 1166: Sent 2 justices around the country to enforce "assizes"
- 1176: Itinerant justices organised into 6 circuits: "justices in eyre"

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## Law in Early England (5)

**Central Royal Justice**


**11<sup>th</sup> Century**

- People still want redress at times when "eyre" not available.
- Need for other court did not decrease
- Central court in London: *Curia Regis* (King's Court)
- Anglo-Saxon origin in *Witenagemot* (*witan* – wise men, *gemot* – meeting)
- King's Court followed the King wherever he was.

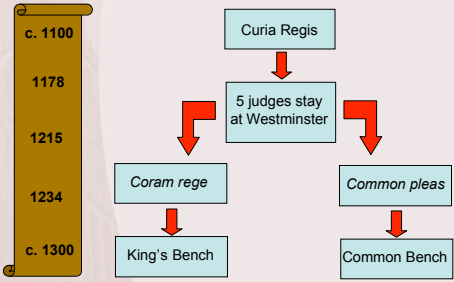
**12<sup>th</sup> Century**

- Corps of administrators and Exchequer began to stay in Westminster
- Because King involved more in the crusades, began to sit in one place

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## Law in Early England (6)



The diagram illustrates the development of the central royal justice system. It starts with the **Curia Regis** (King's Court) around c. 1100. By 1178, 5 judges began to stay at Westminster. This led to the formation of two main branches: **Coram rege** (before the king) and **Common pleas** (common pleas). **Coram rege** evolved into the **King's Bench** by c. 1234. **Common pleas** evolved into the **Common Bench** by c. 1300. A vertical timeline on the left marks the years c. 1100, 1178, 1215, 1234, and c. 1300.

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## Law in Early England (7)


**Benches**  
Development of two benches: different competency

- *King's Bench*: royal interest, trespass, felony, crime, errors
- *Common Bench*: no royal interest and all other pleas

Dispute about how the KB/CB evolved. Regardless, King's long absences = couldn't develop into permanent court

**Growth of Common Bench**  
Easier to get justice: quicker, and the no royal element  
But KB reacted and created new remedies: legal fictions began

*E.g.* Due to fact King's Bench in Westminster (Middelsex) if wanted to allege trespass must be in Middelsex, so "D lurks and roams about". 13

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## Section 3

### The rise of the jury trial

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## Rise of the Jury Trial (1)

**Proof to trial**  
As long as had ordeals no need for pleading: God decided  
Supernatural proof absolute: no questions, no reasons, no facts, no rules


*Rise of the jury*

- In the beginning, jury was used to provide proof.
- 12 men summoned to "make recognition of the facts"
- 1215: Church decided to ban ordeals, jury trial rose

*12<sup>th</sup> and 13<sup>th</sup> centuries*

- Like witness, had to swear an oath
- Came from vicinity and had to use own knowledge
- 1215: Article 39, Magna Carta – implied right to jury trial

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## Rise of the Jury Trial (2)


*14<sup>th</sup> century*

- Also being asked to try sworn evidence
- Parties were still expected to know the juror
- However, contact prohibited in 1380
- Jurors verdicts unanimous and were actually prisoners held in court

*Today*


- In **England & Wales**, majority verdict is possible
- In **Scotland** juries consist of 15 people and can have verdict of "not proven"
- In **Northern Ireland**, juries had been banned from 1973. Had "Diplock courts" instead (trial by one judge)

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## Section 4

### Court of Chancery and Equity

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## Court of Chancery and Equity (1)

**The Chancery**  
Department of State used for drawing up writs and seals.  
Chancellor had to authenticate all documents

*Early Chancery Procedure*

- King's Bench and Common Bench were bound up in the writ system
- Probably began to be established during Richard II (1393)
- Court gave judgment as it saw fit
- Not bound to sit in one place, not bound by common law rules

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## Court of Chancery and Equity (2)

### *Business of Chancery: 1400-1600*

Increasing workload

Greatest workload during this period was in the field of real property

Mainly due to increase in King's Bench in field of real property

Chancery couldn't determine title, but could determine possession

### *Battle of 1616: The case of supremacy*

Trouble arose because saw King under God and the law, which meant:

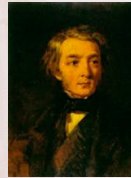
King under God and the common law judges (excl. equity)

Two main characters: Lord Coke and Lord Ellesmere

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## Court of Chancery and Equity (3)



**Lord Ellesmere, Chancellor**

Saw problems with common law:

1. Procedure caused unfairness
2. Impossible to create law for all cases

v.



**Lord Coke, Chief Justice**

Saw problems with equity:

1. No appeal to Chancery
2. No trial by jury

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## Court of Chancery and Equity (4)

### *Equity according to rule*

- Because Chancery won, increase in workload
- Equity based on equality: like treated like
- Meant had to start making records and created rules
- Ironic that court which developed to escape from defects of procedure, create its own procedure

### *Removal of chancery*

- Distinction between the courts disappeared in 1873
- Supreme Court of Judicature Act 1873
- Unified system of courts still in force today (with minor amendment)

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