

Common Law and the Legal System in England and Wales and the Commonwealth Nations



The Supreme Court, London: (by P. Coleman) from Google (images.google.com).



The Great Hall, Royal Courts of Justice, London: from Flickr (flickr.com).

by Kieran Lee Marshall

1. About the module¹

A warm welcome to the Common Law and the Legal System in England and Wales and the Commonwealth Nations module!

The course will explore the origins and development of the common law, and how the system specifically operates within the jurisdiction of England and Wales (E&W), with a brief look at how the same operates within some of the commonwealth nations.² Its primary focus will be on the ideas, principles, and sources that underpin its contemporary operation and set up; the distinct branches or ‘jurisdictions’ and areas of legal practice that exist within it, before then turning to examine the institutions, personnel, customs, and methods that are essential to its everyday function.

In the latter respect, the module will specifically focus on some of the policies, practices and procedures that have contributed or inhibited the development of common law in E&W, as well as the various attempts that have been made to modify or reform the system in to its presently form. To better appreciate the most important features of the legal system in E&W, and common law in general, the lectures, seminars, and materials will occasionally refer to comparative sources, comparing the jurisdiction of E&W to that of common law, civil, and/or code-based systems in other parts of the world – European and the commonwealth legal systems being the two most obvious.

Given the clear impact Brexit has had on the legal system in E&W, part of the module will consider the consequences facing the United Kingdom (UK) following its departure from the European Union (EU). As of 23.00 hours on 31 January 2020 the UK ceased to be a member of the EU.³ The UK’s departure from the Union follows the British electorate having been invited by the UK Government to participate in a referendum on its continued membership, which was held on 23 June 2016. The vote led to a narrow majority (based on the total number) of the British electorate voting to leave the EU, and consequently the UK Government invoking Article 50 of the Treaty of the EU (Withdrawal).⁴

This module will not directly consider the political ramifications surrounding the UK’s vote to leave the EU, insofar as these will detract from the law, and to remain apolitical is a general trend within E&W – or at least among those responsible enough to observe the convention, though examples will be offered where this has been departed from. The focus on this module will be on the legal processes leading up to and following the vote, and the changes in in law and legal structure that follow the UK’s new found independence.

¹ This may be subject to change, as required by FU Berlin or changes in the law before or after the course commences.

² E&W means ‘England and Wales’; as appropriate, it may also mean ‘English and Welsh’. Any discussion of Northern Ireland will be given as NI; Scottish law may be referred to as ‘Scots law’ or ‘Scot.’, and common law may be given as CL. The special lectures given by those specialising in commonwealth law may use terms specific to their jurisdiction, which will be explained during the talk.

³ When this guide was originally written (May 2019) the date was subject to widespread debate, owing to the lack of agreement between politicians in the UK and members of the EU. The UK’s departure from the EU was finally agreed within the form of a Withdrawal Agreement: << https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement_en >> and << <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration> >> accessed 6 May 2021.

⁴ TEU, Art 50 (1) and (2) << <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> >> accessed on 3 April 2021. A total of 33,551,983 of the electorate turned out to vote: 17,410,742 in favour of leaving and 16,141,241 in favour of remain, with a majority of 1,269,501 tipping the balance in favour of leave. The UK has an estimated population of 66 million people (England, Wales, Scotland and Northern Ireland) with 46,500,001 of these eligible to vote (ONS 2016).

In terms of the new legal order in the UK and timescales, you may be aware that the original 'Brexit' date was 29 April 2019 at 23.00 hours, however, this was changed on the 12 April 2019, after the European Union granted the UK a six-month extension. The UK therefore had until 31 October 2019 to arrange to leave the EU with a deal. It then applied for this to be extended again, which took it up to 31 January 2020. It finally left the EU under the Withdrawal Agreement it agreed shortly before departure. Despite the Withdrawal Agreement being a formal process and document, it remains subject to significant dispute, and will likely be the subject of legal proceedings for many years to come.

The module will entail an overall workload of approximately 28 hours, not including your consultation of reading and materials, and any extra-curricular study, which you are directed and encourages to pursue in your own time (private study). Teaching and sessions will take place over the course of 6 weeks, beginning on the week commencing 30 May 2023; details on the classes will be listed further along in the module outline. The course will end following your examination on 13 July 2023, before which there will be a consultation and revision class. Results will then be published by the FU Berlin administration team.

Students have usually performed well on the module after a thorough consideration of the lectures and recommended materials, and examination grading rewards such effort. Should there be a conflict between your examination on this module and your core FU examinations, adjustments can usually be made.

The language of instruction will be English (British, United Kingdom), though your Lecturer and Professor uses a number of other languages and may occasionally refer to certain terms or expressions in these languages for ease, understanding, and/or comparison. No prior knowledge of the laws of E&W or the common law is required to participate.

Your Lecturer and Professor welcomes any questions you may have ahead of or during the course; a brief biography and his contact details can be found overleaf.

This is a redacted version of the Module Outline. A full text version will be uploaded and circulated to students on the week commencing 1 May 2023.

In the meantime, please forward any questions to Kieran Lee Marshall (address above). Thank you for your understanding.