

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



The Supreme Court, London: by P. Coleman ([supremecourt.uk](http://supremecourt.uk)) via Google.



The Great Hall, Royal Courts of Justice, London: from Flickr ([flickr.com](http://flickr.com)) via Google.

## 1. About the module<sup>1</sup>

This module 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 system operates within the commonwealth nations.<sup>2</sup> It's main 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 the form it is presently found. 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 arenas.

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.<sup>3</sup> The UK's departure from the EU follows the British electorate having been invited by the UK Government to participate in a referendum on continued membership of the EU, held on 23 June 2016. The vote led to a narrow majority of the British electorate voting to leave the EU, and the UK Government invoking Article 50 of the Treaty of the EU (Withdrawal).<sup>4</sup>

This module will not directly consider the social and political ramifications surrounding the UK's vote to leave the EU, insofar as these will detract from the law. Rather, its focus will be on the legal processes leading up to and following the vote, and the likely changes in its laws and legal structure that will follow as a result of the UK's new found independence. 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, and 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 today.

---

<sup>1</sup> This may be subject to change, as required by EU Berlin or changes in the law before or after the course commences.

<sup>2</sup> 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.

<sup>3</sup> When this guide was originally written (20 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](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement_en) >>

<sup>4</sup> TEU, Art 50 (1) and (2) << <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> >> accessed on 3 February 2019. 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).

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 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 31 May 2021; details on the classes will be listed further along in the module outline. The course will end following your examination on 14 July 2021, before which there will be a consultation class.

The language of instruction will be English (British / United Kingdom), though your Lecturer / 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 / Professor, Kieran Lee Marshall, welcomes any questions you may have ahead of or during the course; a brief biography and his contact details can be found overleaf.

## 2. Your Lecturer / Professor

Your Lecturer / Professor for this module will be Kieran Lee Marshall and can be contacted on marshall[dot]kieranlee[at]gmail[dot]com, before, during or after the course.

Kieran Lee is a Lecturer in Law (Assistant Professor in Law) at the School of Law, University of Reading (2020-present, full-time) and a College Lecturer and Supervisor in Law at the Faculty of Law, University of Cambridge (2019-present, part-time). Prior to joining the University of Reading in January 2020, he was a Teaching Fellow in Law at The Dickson Poon School of Law, King's College London (2017-2019), before which he was a Tutor and Researcher in Law at Durham Law School, University of Durham (2014-2017). His appointment to King's College London was followed by a period as Visiting Lecturer and Researcher at Durham (2017-2020).

In 2018/2019, Kieran Lee was invited to serve as the Erasmus Lecturer and Professor in Law at the Fachbereich Rechtswissenschaft, Freie Universität through a partnership formed between the Schools of Law at FU Berlin and University of Durham ([www.durham.ac.uk/law](http://www.durham.ac.uk/law)). He visits again in 2020/2021 under direct agreement with FU Berlin.

This is a redacted version of the Module Outline.

A full text version will be uploaded and circulated to students on Monday 31 May.  
Please forward any questions in the meantime to Kieran Lee Marshall (address above).  
Thank you for your understanding.