

Common Law and the Legal System in England and Wales (E&W)



The Supreme Court, London: P. Coleman, The Supreme Court (supremecourt.uk) via Google.



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

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1. About the module¹

This module will study the origins and development of common law, and how the system specifically operates within the jurisdiction of England and Wales (E&W).² It will explore the ideas, principles, and sources that underpin its contemporary set up; the distinct branches of law and common areas of legal practice that exist within it before, then, moving to consider the institutions, personnel, customs, and methods that are essential to its everyday operation. In the latter respect, the module will specifically focus on some of the policies, practices, and procedures that have contributed to, or inhibited, the development of common law in E&W, as well as the attempts that have been made to modify or reform the present structure. To better appreciate the most important features of the legal system in place in E&W and common law in general, the lectures, seminars, and materials will occasionally refer to comparative sources, comparing the E&W jurisdiction to that of common law, civil, and/or code-based systems in other parts of the world.

Given the impact it will have on the legal system and laws of E&W, part of the module will focus on the consequences facing the United Kingdom (UK) following its decision to leave the European Union (EU). As of 23.00 hours on 29 March 2019 the UK will no longer be a member of the EU;³ this follows the British electorate having been invited by the UK Government to participate in a referendum on continued membership of the EU, which was held on 23 June 2016. The vote led to a narrow majority of the electorate voting to leave the EU, and the UK Government triggering Article 50 of the Treaty of the EU (Withdrawal).⁴ This module will not consider the social and political ramifications surrounding the UK's vote to leave the EU; rather, its focus will be on the legal processes leading up to and following the vote, and the legal consequences facing E&W and its legal system following its departure.

The module will entail a workload of approximately 30 hours, not including private reading and online or audio media, and extra-curricular study, which you will be expected to pursue in your own time. Teaching and sessions will take place over the course of 6 weeks, beginning on the week commencing 3 June 2019. The language of instruction will be English (British / United Kingdom), though your Professor / Lecturer speaks a number of other languages and may occasionally refer to certain words, terms, or expressions in these languages for ease, understanding, and/or comparison. No prior knowledge of the laws of E&W, the UK generally, or common law, is required to participate in this module.

Your Professor / Lecturer, Kieran Lee Marshall, welcomes any questions you may have ahead of signing up to the course. A brief biography and his contact details can be found overleaf.

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

² E&W means 'England and Wales'. As appropriate, it may also mean 'English and Welsh'.

³ At the time of writing (4 February 2019), this date is the subject of widespread debate. If the departure date is not altered, and the transition period is used to agree a deal, then, the 29 March 2019 will remain the official 'leave date'. If the date is altered, then, this will merely mean that the point at which some of the proposed changes come in to force will be at a later date than first envisaged, after which point the transition period will then commence. The process and effect of such changes will be discussed regardless of the date.

⁴ 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 46, 501, 421 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. The UK has an estimated population of 66 million people (England, Wales, Scotland and Northern Ireland). This is not the total number eligible to vote.

2. Your Professor / Lecturer

Your Professor / Lecturer for this module will be Kieran Lee Marshall. He can be contacted on kieranlee.marshall@kcl.ac.uk -or- k.l.marshall@durham.ac.uk ahead of and for the duration of the course.

Kieran Lee is a Teaching Fellow in Law at The Dickson Poon School of Law, King's College London and a Visiting Assistant Professor and Researcher in Law at Durham Law School, University of Durham. He presently teaches (i) the law of property (LLB); (ii) the law of trusts and equity (LLB) and (iii) the law of employment / labour (LLB / LLM). His research covers (i) the law of professional regulation and discipline and (ii) employment. Other interests include (iii) environmental and sustainability, food, and waste law and policy, and (iv) the interaction between law, social sciences, and the humanities.

Kieran Lee will be visiting the Freie Universität Berlin as an Erasmus Professor and Lecturer in Law for the duration of summer 2019, combining teaching and research through a partnership agreement formed between the FU and University of Durham.

3. Module dates, location and access requirements (disability/additional needs)

This module will begin on the week commencing 3 June 2019, and will end on the week commencing 8 July 2019, with classes being hosted on Thursdays and Fridays. The first class will take place on Thursday 6 June 2019, while the last class and examination will take place on Friday 12 July 2019.

Thursdays from 14.00 to 16.00 will entail a 2-hour lecture (attendance required), with a 10-minute break (optional) between the lectures, Part A and B. Fridays from 09.00 to 10.00 will entail a 1-hour seminar, then, from 10.00 to 12.00 a 2-hour counselling / feedback / question and answer session (attendance required), with a 15-minute break (optional) between the seminar and sessions. Further detail on the content of both days and each week is available from the guidance overleaf and will be discussed during your first lecture and introductory tutorial. Weeks 5 and 6 are the only exception to the above pattern, with a moot taking place on week 5 and revision and examination taking place on week 6: see the guidance on each week for further information.

The specific location of classes will be advertised by the FU. Any questions about the course should be directed to your Professor / Lecturer, Kieran Lee Marshall. Any access requirements or additional needs should be communicated to your course administrator at the FU, so adjustments can be made in advance to enable you to participate. This includes any concessions to which you may be entitled for the examination, if applicable. Should you think your Professor / Lecturer can in anyway help, then, please email him or ask your support teacher / assistant / translator or interpreter to contact him on your behalf. Naturally, support staff / animals are very welcome at the lectures / seminars and sessions.

4. Teaching and feedback, advice, and support

All lectures will be hosted on Thursdays, while seminars and one-to-one or group counselling, feedback, question and answer sessions will be hosted on Fridays; attendance to both is compulsory. In respect of sessions, details on appointments and how to sign up will be shared by your Professor and Lecturer on the day of your first class. Absences from lectures, seminars or sessions, if any, should be reported to your Professor / Lecturer. An outline of each lecture and seminar, along with details on the course structure, is available on from the next page onwards.

At the end of the module, there will be a 1-hour revision lecture and 1-hour 'question and answer' session ahead of your examination. The lecture will be used to broadly summarise the module themes, materials, and online and media content, and to offer students guidance on how the essay plan (20%) and examination assessment (80%) will work.

5. Module overview: coverage and content

Week 1 | The UK and its law: an introduction

2-hour lecture, 1-hour introductory tutorial, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

Thursday 6 June 2019, from 14.00 to 16.00

Lecture 1, Part A: Understanding the basics

- (a) A History and Geography Lesson: Welcome to the UK!
- (b) The UK Constitution and the Laws of England and Wales
- (c) The Legal Structure, Institutions and Personnel in England and Wales: Who's Who and Who does What?
- (d) A Few Essentials and What is Common Law?

- 10-minute break (optional) -

Lecture 1, Part B: Finding the law

- (a) Sources of Law: Domestic
- (b) Sources of Law: European and International
- (c) Finding and Using: Legal Databases, Research and Citation
- (d) Conventions and Customs
- (e) Practice *v* Scholarship

Friday 7 June 2019, from 09.00 to 12.00

Introductory tutorial: getting to know the module

Much like a seminar, but more informal, this introductory tutorial is intended to ensure you are familiarised with the themes covered in this module, and to give you the opportunity to ask questions about the first lecture, upcoming lectures, module structure and content, assessment, and/or provide general guidance on the first seminar planned for Week 2.

- 15-minute break (optional) -

Counselling, feedback, 'question and answer' sessions

Per the guidance noted on page 4 and 5, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Professor / Lecturer during your first class.

Preparation for Week 2

This week you should ensure to reflect upon the lecture, seminar, reading and other media linked to Lecture 1 – Part A and B, ahead of Seminar 1 in Week 2, for which you will be provided set questions.

Week 2 | Legal reasoning and methods in England and Wales

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

Thursday 13 June 2019, from 14.00 to 16.00

Lecture 2, Part B: From finding to reading and applying

- (a) Legislation and Statutory Interpretation
- (b) The Case Law Method
- (c) The Doctrine of Precedent
- (d) The Relationship Between Case Law and Precedent
- (e) Two Principles: *ratio decidendi* and *obiter dictum*

- 10-minute break (optional) -

Lecture 2, Part B: Some issues with the current legal system

- (a) Meaning, Mischief and Interpretation in Modern Law
- (b) Statute and the Common Law: Parliament and the Judges
- (c) Civil Law and the Common Law: Old *v* Young?
- (d) Equity and the Common Law: Justice *v* Injustice, Flexible *v* Inflexible?
- (e) Judicial Independence, Diversity, and Bias
- (f) The Qualifying Law Degree, Professional Education and Practice
- (g) Making New Laws

Friday 14 June 2019, from 09.00 to 12.00

Seminar 1: The courts and sources of law in England and Wales

This seminar is intended to review the materials covered in Lecture 1 (Part A and B). It has been structured in such a way as to help you understand the systems and concepts introduced by this lecture, so as to ensure you will better understand the topics covered by Lecture 2 (Part A and B). The questions provided are intended to help facilitate discussion relating to your first lecture.

- 15-minute break (optional) -

Counselling, feedback, question and answer sessions

Per the guidance noted on page 4 and 5, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Professor / Lecturer during your first class.

Preparation for Week 3

This week you should ensure to reflect upon the lecture, seminar, reading and other media linked to Lecture 2 – Part A, and prepare by reading one case: *R v Bentham* [2005] UKHL 18. The case will form a part of a discussion in Seminar 2 in Week 3, for which you will be provided set questions.

Week 3 | Systems and Classifications: Criminal v Civil, Public v Private?

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, 'question and answer' sessions

Thursday 20 June 2019, from 14.00 to 16.00

Lecture 3, Part A: The Criminal and Civil Justice Systems

- (a) The Justification for Systems and Classifications
- (b) The Criminal Justice System
- (c) The Civil Justice System

-10-minute break (optional) -

Lecture 3, Part B: The Difference Between Public and Private Law

- (a) What is Public Law?
- (b) What is Private Law?

Friday 21 June 2019, from 09.00 to 12.00

Seminar 2: Reasoning and Method in Action

This seminar will review some of the materials covered in Lecture 2 – Part A. In particular, it will explore the ideas and process underpinning statutory interpretation, the case law method, and precedent, which are an essential feature of common law and the system in place in E&W. This session draws upon one case in particular: *R v Bentham* [2005] UKHL 18, which you were given for advanced reading last week. The questions provided are intended to help facilitate discussion in relation case and the materials relating to your second lecture.

- 15-minute break (optional) -

Counselling, feedback, question and answer sessions

Per the guidance noted on page 4 and 5, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Professor / Lecturer during your first class.

Preparation for Week 4

This week you should ensure to reflect upon the lecture, seminar, reading and other media linked to Lecture 2 – Part B, ahead of Seminar 3 in Week 4, for which you will be provided set questions.

Week 4 | The EU-UK Relationship: Life Before and After ‘Brexit’

2-hour lecture, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, ‘question and answer’ sessions

Thursday 27 June 2019, from 14.00 to 16.00

Inaugural Erasmus Lecture: ‘Putting it all in Brexpective’: The Legal System and Law Making in England and Wales – Life Before and After Brexit

Lecture 4, Part A: The EU-UK Relationship (I): The European Communities Act, ECJ and Continental Laws, Pre-Brexit Issues and the Leave Vote!

-10-minute break (optional) -

Lecture 4, Part B: The EU-UK Relationship (II): The Legal System and Law-Making Post-Brexit and the ECHR.**Friday 28 June 2019, from 09.00 to 12.00**

Seminar 3: When Law Gets It Wrong: Dealing with Legal Conflict and Making New Laws

This seminar is intended to help you understand what steps are taken when error and conflicts in law arise, and how new law is made. It will specifically review materials covered in Lecture 2 (Part B), addressing the issue of how law is developed – within and beyond the legal system; what happens when it all goes wrong, or does not turn out as intended; how conflict in common law is resolved, and some of the solutions offered by trusts and equity. It will also explore the process involved in making new laws. The questions provided are intended to help facilitate discussion in relation to your second lecture.

- 15-minute break (optional) -

Counselling, feedback, question and answer sessions

Per the guidance noted on page 4 and 5, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Professor / Lecturer during your first class.

Preparation for Week 5

This week you should ensure to reflect upon your lecture, seminar, reading and other media as linked to Lecture 4 – Part A, and prepare by reading two cases in particular: *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) and *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5. The cases will form a part of a discussion in Seminar 4 in Week 5, for which you will be provided set questions. **Weeks 5 and 6 will be structured differently to the pattern so far: see the outline on these weeks for further information!**

Week 5 | The Law and Court ‘In Action’ – A Moot and the Revision Lecture
2-hour moot, 1-hour seminar, and 2-hour one-to-one or group counselling, feedback, ‘question and answer’ sessions / Revision Lecture

Thursday 4 July 2019, from 14.00 to 16.00

The Law and Courts ‘In Action’ – A Moot

- No break will occur today, as the time will be dedicated to the moot -

Friday 5 July 2019, from 09.00 to 12.00

Seminar 4: The EU-UK Relationship: From *Miller* and Beyond

Summary to follow.

- 15-minute break (optional) -

Counselling, feedback, question and answer sessions / Revision Lecture

Per the guidance noted on page 4 and 5, sessions and appointments will be available on a one-to-one or group basis. Please sign up as advised by your Professor / Lecturer during your first class.

Preparation for Week 5

Summary to follow.

Week 6 | Revisiting key topics and examination

2-hour 'nutshell' lecture, 1-hour 'question and answer' session, 1.5-hour exam, 30-minutes post-exam feedback (required)

Thursday 11 July 2019, from 14.00 to 16.00

Lecture 5: Revisiting Key Topics - Common Law and the Laws of England and Wales in a Nutshell

Part A: Title to follow.

- 10-minute break (optional) -

Part B: Title to follow.

Friday 12 July 2019, from 09.00 to 12.00

Pre-examination tutorial / 'question and answer' session – for 1-hour only

Summary to follow.

Examination

Summary to follow.

Post-examination feedback

6. Module assessment and credits

Module assessment will be in two-parts, both of which must be submitted by Friday 12 July 2019, by 11.30 hours.

The first part will require you to construct an essay plan (20%) (to help you prepare for the exam, and the essay you opt to write during the examination), and a seen examination (80%) (made up of multiple-choice questions and an essay). Guidance will be offered during your revision lecture as to how the essay plan ought to be constructed, and on the questions and themes contained in your examination. Both parts of the examination will be seen, which means you are free to take them home and prepare in advance of the examination. However, on the day of the examination, you will only be permitted to take your essay plan in to the examination with you.

Assessment information will be released a week before the examination on Friday 5 July 2019. The examination will be 1.5 hours long, and will be held on Friday 12 July 2019, from 10.00 to 11.30 hours. Taken together, module attendance, the essay plan, and the examination, are worth 5 ECTS credits as a contribution to your FU degree studies.

7. Further information

For further information, or any module related questions, please feel free to get in touch with your FU course administrator or contact your Professor / Lecturer, as noted at the start of this guide.

KLM
4 February 2019
Cambridge, UK