

# An Introduction to the Common Law (England and Wales and the International “Commonwealth” Legal System)



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 module<sup>1</sup>

A very warm welcome to the module, An Introduction to the Common Law (England and Wales and the International “Commonwealth” Legal System).

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). A few weeks in to the course, classes will then turn to consider how the common law operates within some of the “commonwealth” nations and internationally.<sup>2</sup> Its primary focus will be on the ideas, principles, and sources that underpin the common law’s 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 most 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 present 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 – the European and the commonwealth legal systems being the two most obvious.

Given the clear impact “Brexit” – or the United Kingdom (UK) leaving the European Union – had on the now non-European nature of the legal system in E&W, part of the module will consider the consequences facing the 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 Union followed the British electorate having been invited by the UK Government to participate in a rare referendum vote on its continued membership, which was held on 23 June 2016. The vote led to a narrow majority (based on the total overall number of voters) of the electorate electing to leave the Union, consequently leading to the Government invoking Article 50 of the Treaty of the EU (Withdrawal).<sup>4</sup>

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, which is and should be the primary focus any legal module – indeed, to remain apolitical is a general trend common the practice of law in E&W, or at least among those responsible enough to observe the convention. However, inevitably some examples will be offered throughout the course, demonstrating 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 resultant changes in law and legal structure that have followed the UK’s new found independence, so as to emphasis the state of the system in its present state.

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<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. The special lectures given by those specialising in commonwealth and international law may use terms specific to their jurisdiction, which will be explained during their lecture or notes.

<sup>3</sup> When this guide was first written (spring 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) >> and << <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration> >> (last accessed 6 May 2021). A new link is available by the EU: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/new-way-forward-eu-uk-relations\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/new-way-forward-eu-uk-relations_en) (last accessed 8 April 2024).

<sup>4</sup> TEU, Art 50 (1) and (2) << <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> >> last 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. However, many commentators – political, legal and otherwise – argue the departure was rushed and unplanned. Some of the legal issues arising today seem to point to this, evidence for the module will consider. Despite the Withdrawal Agreement being a formal process and document, it is effectively “live”, and so it is and will remain the subject of significant dispute, and will likely be the subject of legal proceedings for many years to come.

Overall, the module will entail an attendance workload of approximately 28 hours. This does not include your consultation of reading and materials, and any extra-curricular study, which you are directed to and encouraged to pursue in your own time (private study). Formal timetabled teaching and sessions will take place over the course of five weeks, beginning on the week commencing 27 May 2024. One week will then be allotted for your assessment, on the week commencing 8 July 2024, with a pre-examination revision class, and then an open book, online examination, allowing you the freedom to post your exam any time during the day of 12 July 2024. Full details on the module classes and schedule will be listed in the module handbook. The course will end following the examination on 12 July 2023, before which there will be a consultation and revision classes in the last week. Results will then be published by the FU Berlin administration team.

Students have usually performed extremely well on the module after full consideration of the lectures and recommended materials, and the examination is designed in such a way as to generously grade and reward such effort. Should there be a conflict between your examination on this module and your core FU examinations, adjustments can usually be made to accommodate your examination submission.

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 in the module.

Your Lecturer and Professor welcomes any questions you may have ahead of or during the course. Please contact him on an email address associated with his primary institution.

This is a redacted version of the Module Handbook. A full text version will be uploaded and circulated to students on the week commencing 20 May 2024, one week ahead of the module commencing.

In the meantime, please forward any questions to Kieran Lee Marshall ([kieran.lee.marshall@fu-berlin.de](mailto:kieran.lee.marshall@fu-berlin.de), or his primary institution address, outside of term time) or the FU Berlin administration team, as relevant.

Thank you for your interest. We look forward to welcoming you.