

# AUSTRALIAN COMMON LAW HISTORY

## LAWS 1201 FOUNDATIONS OF AUSTRALIAN LAW SEMSTER 1 2017 MID-SEMESTER EXAM STUDY NOTES

Timeline			
Date	Event	Detail	Importance
<b>ROOTS OF ENGLISH LAW</b>			
1066 onwards	Norman Conquest of England Battle of Hastings – King Harold slain	Duke of Normanby, William, declared that Anglo-Saxon patch-work laws would continue in force	Chain of events set in motion that resulted in common law
	Feudal system introduced	Normans refined the feudal system (a strongly hierarchical system of social and political organisation based upon land ownership)	Entrenched the allegiance of nobles and alignment of wealth and power to the King Formed the basis of English property law until the 1900s Origin of the term 'the Crown'
	Norman Kings travelled to hear cases	Norman Kings travelled around England hearing complaints <i>Stare decisis</i> used to encourage consistent justice King's decisions nationally binding Popularity of 'common law' over customary law rose. Originally, law-making authority rested with the King. Like common-law cases, statutes were the decision (royal command/decree) of the King.	Birth of the common law <i>Stare decisis</i> (like cases alike) established  Constitutional Theory: all legal authority can be traced back to royal authority
	New Legal bodies and structures established	Curia Regis (King's body of trusted advisors) given more independent duties Justiciars appointed as viceroys Justices in Eyre created Curia Regis specialised into: Court of Common Pleas, (fixed in Westminster) Court of Exchequer, King's Bench	Appointment of royal delegates – transformation of common law – king's personal instrument to an apparatus of government Justices of Eyre developed a bank of precedent
	<i>Writ System established</i>	Writ – originally a command from the King to the sheriff for someone to be brought to court for a complaint made against them Each writ had a strict template	Earliest form of procedural control over the workload of the courts Highlights the focus of procedure in common law 'form of action still present today as 'cause of action'
	<i>Lack of local knowledge</i> Wager of Law adopted	Local people were involved by the king to assess who was telling the truth in a dispute	Origin of the jury system
1200	<i>(Lack of local knowledge)</i>	Non-criminal cases – divine intervention in a battle of 'champions'	

	Trial by battle obsolete		
1215	( <i>Lack of local knowledge</i> ) Trial by ordeal abolished	Criminal cases – divine intervention	
1258	( <i>Writ System established</i> ) Provisions of Oxford	Promise from king to nobles that no new types of writs could be made without permission of the Council. Legal fictions created	
1400s	Complexity issues of the common law arose	People petitioned the king about injustice of the common law courts. Equity was established – Chancellor began to issue more discretionary writs	Development of Equity Law
1600s	King ruled that Equity prevailed over common law	After there was contention between the two	Principle that equity prevails continues today
1615	<i>The Earl of Oxford's Case</i> (1615)	Outlined the reasons and importance for the law of equity	

### FOUNDATIONS OF MODERN CONSTITUTIONALISM

1215	<i>Magna Carta</i>	King John was forced to sign the charter by nobles. Restricted the King's power in numerous aspects Free subjects could not be imprisoned or dispossessed of property unless under law. Common Pleas given a fixed place Justices and sheriffs must be learned in the law Justice would not be delayed nor denied	Early statement of the rule of law
1295	First Parliament summoned	Summoned by King Edward I, 'Model Parliament' although not the first, it was the first recognisable antecedent to the modern English parliament Originally an advisory body Bicameral – upper and lower houses Early statutes were similar to the monarch's decree	Birth of the modern Parliament  Upper house still undergoing reform
1414	King Henry V acknowledgement of statutes in Commons	King finally acknowledged that no new statutes should be made by the Crown without the formal assent of the Commons	Parliament no longer a purely advisory body
1509-1547	Protestant Reformation (Tutor Dynasty)	Henry VIII continued to increase the parliament's influence when seeking their support for religious matters Henry VIII established the Church of England after a split with the Roman Catholic Church Henry VIII's reign resulted in	Henry VIII gave more power to government, freeing them of the political authority of the original church Had a long term effect on politics  Parliamentary processes became more similar to today's