

Chapter 2

Common Law Model: The Courts

Common Law Model

- Used in United States and United Kingdom
- Precedent as a basis for judgment
- Built on a case to case approach
- Adversarial system
- Developed from the feudal land law
- English settlers brought common law to the colonies.

Birth of Common Law

- After Norman Conquest in 1066-England was two nations within one
 - Franci-French
 - Anglici-native English persons
 - Two nations were separated by a wide gulf
- For centuries the common law of England consisted of a system of remedies
- By 13th Century, selected decisions were published in Year Books

Henry II [1139-1189]

- Duke of Normandy and later King
- Expanded the Anglo-French domains and strengthened the royal administration
- Developed new judicial forms and solidified common law.

Magna Carta

- King John was forced to sign in 1215
- Became a permanent part of the law
- Provides guarantees against the arbitrary disregard of feudal rights
- Provided protection for all freemen
- Clause 39 required judgment by peers

Sir Edward Coke [1552-1634]

- First solicitor general and later chief justice
- Expert on Year Books
- Published a 11 volume work on common law
- Drafted Petition of Right
 - No imprisonment without cause
 - No quartering soldiers
 - No martial law in peace time
 - No taxes without consent of Parliament

Sir William Blackstone

(1723-1780)

- Published Commentaries on the Laws of England
- Still cited today in judicial decisions
- Most influential jurist in the history of common law

Common Law in U.S.

- After revolution, enacted statutory law was what was formerly English common law.
- Dual federalism
- Majority criminal cases tried in state courts
- Common law crimes have been codified by penal codes

U.S. Federal Court System

- Supreme Court
- Twelve U.S. Courts of Appeal
- U.S. District Courts
 - At least one in each state
 - General trial court for federal cases
 - Judges appointed by president and confirmed by senate
 - Life time appointment
- Federal Magistrates

Participants in Criminal Case

- ◉ Judge- primary duty is to preside over the court in a fair and impartial manner and instruct the jury on the law
- ◉ Prosecutor- primary duty is to promote justice, secondary duty is to prosecute
- ◉ Defense Counsel- spokesperson for defendant- assures defendant receives his or her rights
- ◉ Jury-finder of fact

English Court System Today

- Unitary judicial system
- Court of Queen's or King's Bench-appeals from inferior courts
- Supreme Court of Judicature-comprehensive body, below House of Lords
- Magistrates' Court-inferior courts
- Crown Court-intermediary court
- Royal Courts of Justice-Law courts

Comparisons between U.S. and U.K.

UNITED STATES

- Constitution- law of the land
- Judicial review of legislation
- Generally stresses due process model
- Defendants rights based generally on constitutional rights
- Exclusionary rule

UNITED KINGDOM

- No written constitution
- No right to judicial review of legislation
- Generally stresses crime control model
- Defendants rights based generally on case law and statutes
- No exclusionary rule