

COURSE	LAW 361 Historical Foundations of the Common Law
UNIT VALUE	1.5 Units (3 class hours per week)
INSTRUCTOR	Mark Gillen
TERM OFFERED	Spring 2024
CLASS TIMES	See Schedule
PREREQUISITES/COREQUISITES	LAW 105 Contracts or LAW 105I Transsystemic Contracts are required prerequisites for LAW 361 Historical Foundations of the Common Law LAW 109 Torts or LAW 109I Transsystemic Torts are required prerequisites for LAW 361 Historical Foundations of the Common Law

COURSE DESCRIPTION

As the title to the course suggests, the focus is on the historical foundations of the common law. The course primarily deals with the period in England from the Norman Conquest in 1066 to the end of the 14th century when, as Sir John Baker has said, the foundations of the common law were largely in place. After a brief note on historiography, the word “history”, and the expression “legal history”, the course takes note of some key features of the legal system in Anglo-Saxon England prior to the Norman Conquest to set the stage for what was different about the legal system that developed over the ensuing centuries. The course examines the foundations of the common law, in part, through the development of common law courts, courts of Equity (beyond the end of the 14th century) and the role of ecclesiastical courts. It also examines the foundations of the common law through the development of forms of action, juries and pleading. The course then considers the reception of English law in Canada and its effect on Canada’s Indigenous peoples. Time permitting the course covers other topics such as the development of judicial review, the legal profession and legal literature or specific areas of law, such as contract law, real property law, negligence and criminal law.

OBJECTIVES

One general objective of the course is to develop a better understanding of the historical development of selected procedural and substantive aspects of common law. This includes the development of courts such King’s Bench, Common Pleas, Exchequer, courts of Equity, and ecclesiastical courts. It also includes the development forms of action, juries and pleading, and, time permitting, judicial review of court decisions. The general objective noted above is furthered by considering the reception of English law in the colonies, and, time permitted, other topics such as the legal profession, legal literature, and some substantive areas such as contract law, negligence, criminal law, or real property law.

Another general objective is to allow students to examine legal history topics of their own choosing. This is done through a term paper and a brief comment on a specific area not otherwise covered in the course.

METHODOLOGY

The reading materials for the course are set out in the syllabus, or Course Outline, which will be handed out at the beginning of the course. The basic text will be J. H. Baker, *An Introduction to English Legal History*, 5th ed. (Oxford University Press, 2019), supplemented with other readings. There will be lectures and discussion. There may also be guest lectures on particular topics. Some classes at the end of the term will be devoted to student presentations of their papers.

EXPECTED EVALUATION METHODOLOGY

The following elements will (at least tentatively) determine the mark in the course:

- (i) 50% of the final mark will be based on a paper of a minimum 7,500 words (not counting footnotes, table of contents or bibliography—roughly 30 double-spaced pages) that can count as a major paper. The topic for the paper must be chosen by Friday, February 3, 2024;

¹ The information in this document is provided for course registration purposes only and is **subject to change**. More detailed course information about course content and evaluation will be provided upon the commencement of the course. Students seeking additional information about the course prior to its commencement may contact the instructor or, if no instructor is listed, law.studentservices@uvic.ca.

- (ii) 10% of the final mark will be based on the in-class presentation of the paper mentioned in (i) above;
- (iii) 20% of the final mark will be based on:
 - (a) a short in-class closed-book quiz on the material covered in class and in the readings for the specific topics covered in class; **or**
 - (b) a 1,000-word short essay on your choice of one question from a set of questions to be provided that relate to the development of the common law, the courts of law, the forms of action, jury and pleading, the court of chancery, or conciliar and ecclesiastical courts.
- (iv) 20% of the final mark will be based on a 1,000-word comment based on a chapter of your choosing from the required text for the course other than the chapters covered in class.

ACADEMIC INTEGRITY

Please refer to the University's [Policy on Academic Integrity](#).

June 2023