

**FACULTY OF LAW, UNIVERSITY OF VICTORIA**  
**2021-22 COURSE REGISTRATION - PRELIMINARY COURSE INFORMATION (PCIS)<sup>1</sup>**

<b>COURSE</b>	LAW 361 Historical Foundations of the Common Law
<b>UNIT VALUE</b>	1.5 Units (3 hours of instruction per week)
<b>INSTRUCTOR</b>	Mark Gillen
<b>TERM OFFERED</b>	Spring 2022
<b>CLASS TIMES</b>	See Schedule
<b>PREREQUISITES / COREQUISITES</b>	None

## **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 14<sup>th</sup> 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 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 the 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, judicial review of court decisions. The general objective noted above is furthered by considering the reception of English law in the colonies, 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 through a term paper and brief comments on specific areas 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*, 5<sup>th</sup> 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 4, 2022;
- (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 two short in-class closed-book quizzes on the material covered in class and in the readings for the specific topics covered in class;
- (iv) 20% of the final mark will be based on two 1,000 word comments (10% for each one) each based on chapters of your choosing from the required text for the course other than the chapters covered in class.

## **ACADEMIC INTEGRITY**

Attention is drawn to the University's *Policy on Academic Integrity* at: <http://web.uvic.ca/calendar2014/FACS/UnIn/UARe/PoAcl.html>

May 28, 2021