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Editors' Notes

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A particular issue in any collection of essays is the standardisation of referencing. Different authors have, for good reason, preferred different editions for certain texts (such as Glanvill); and in other cases an author's work may have been published many times in different forms or collections (such as the work of Maitland). While not perfect, the approach in this volume has been to provide a standard reference to selected texts at the outset, but within each essay to keep the full reference the first time a book or article is referred to, with subsequent ones taking a standard abbreviation of the author's name, and a contraction of the title of the work.

Certain other, common, abbreviations have been used (which are expanded upon, next):

CUP	Cambridge University Press
HUP	Harvard University Press
OUP	Oxford University Press
UCP	University of Chicago Press
Glanvill, X.2	Glanvill, Book 10, Chapter 2
B&M	Cases from Baker & Milsom, *Sources of English Legal History*

Coke, *Institutes*
Blackstone, *Commentaries*
Stubbs, *Select Charters*
Pollock & Maitland, *HEL*
Holdsworth, *HEL*
Plucknett, *Statutes*
van Caenegam, *Common Law*
Milsom, *Historical Foundations*

Selected Legal Texts

Richard FitzNigel	(Sometimes FitzNeale.) *De Necessariis Observantiis Scaccarii Dialogus* or *The Dialogue of the Exchequer* (c 1179) (Clarendon Press, Oxford, 1902 ed). Reprinted E Amt, SD Church, eds, (Clarendon Press, Oxford, 2007).
Ranulf de Glanvill	*Tractatus de legibuset consuetudinibus regni Anglie*, or *The Treatise on the Laws and Customs of the Realm of England* (c 1187) GDG Hall, ed (OUP, Oxford, 1965, Reprinted 2002).
Henrici de Bracton	*De Legibus et Consuetudinibus Angliae* or *On the Laws and Customs of England* (c 1260) (SE Thorne, ed, CUP, Cambridge, 1968).
Fleta	*Commentarius juris Anglicani* or *The Common Law of England* (c 1290) (Vols 72, 89, 99, Selden Society, London).
Britton	*Britton* (c 1300), FM Nichols (ed), (John Byne, Washington DC, 1901).
St German	*Doctor and Student* (1523, 1530) (Selden Society, London, 1974).
Thomas de Littleton	*Treatise On Tenure* (c 1466)
Anthony Fitzherbert	*La Graunde Abridgement* (c 1514) (Richard Totell, London, 1577) (Reprinted Law Book Exhange Ltd, NJ, 2009).
	New Natura Brevium (c 1534) (The Assigns of Richard & Edwards Atkins, London, 1704).
Edward Coke	*Institutes of the Lawes of England* (1628, 1642, 1644) (reprinted S Sheperd, ed, *The Selected Writings of Sir Edward Coke*, Liberty Fund Inc, Indiana, 2003).
Matthew Hale	*The History of the Common Law of England* (1713) (Reprinted, UCP, Chicago, 1971).
William Blackstone	*Commentaries on the Laws of England* (Clarendon Press, Oxford, 1765-69) (reprinted UCP, Chicago, 1979).
J Chitty	*A Practical Treatise on the law of Contracts not under Seal* (S Sweet, London, 1826).
T Lewin	*A Practical Treatise on the Law of Trusts and Trustees* (Maxwell, London, 1837).

E Bullen, SM Leake	*Precedents of Pleadings in Personal Actions in the Superior Courts of Common Law* (Stevens & Sons, London, 1860).
EHT Snell	*The Principles of Equity* (Stevens & Haynes, London, 1868).
W Stubbs	*Select Charters and Other Illustrations of English Constitutional History* (Clarendon Press, Oxford, 1870).
OW Holmes	*The Common Law* (Little Brown & Co, Boston, 1881).
J Story	*Commentaries on Equity Jurisprudence* (Hilliard Gray, Boston, 1836). See also WE Grigsby, ed, 1st Eng ed, (Stevens & Hayes, London, 1884) (Reprinted by The LawBook Exchange Ltd, NJ, 2006).
F Pollock	*Principles of Contract at Law and in Equity* (Stevens & Sons, Oxford, 1876).
W Anson	*Principles of the English Law of Contract* (Clarendon Press, Oxford, 1879).
F Pollock & RS Wright	*An Essay on Possession in the Common Law* (Clarendon Press, Oxford, 1888) (Reprinted Hein & Co, NY, 2000).
F Pollock & FW Maitland	*The History of English Law Before the Time of Edward I* (CUP, Cambridge, 1895) (reprinted Liberty Fund Inc, Indianapolis, 2010).
W Holdsworth	*History of English Law* (In 17 vols) (1903-1966) (Little Brown & Co, Boston, 1941 ed).
JB Ames	*Lectures on Legal History* (HUP, Cambridge USA, 1913).
TFT Plucknett	*A Concise History of the Common Law* (1929) (5th ed, Little, Brown & Co, Boston, 1956).
FW Maitland	*Equity and the Forms of Action*, AH Chaytor, WJ Whittaker, eds (CUP, Cambridge, 1929).
WJ Victor Windeyer	*Lectures on Legal History* (Law Book Co, Australia, 1949).
RC van Caenegem	*The Birth of the English Common Law* (CUP, Cambridge, 1973).
AWB Simpson	*A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Clarendon Press, Oxford, 1975).
SFC Milsom	*Historical Foundations of the Common Law* (OUP, Oxford, 1981).
JH Baker & SFC Milsom	*Sources of English Legal History* (OUP, Oxford, 1986).

Chronology

Names of English monarchs appear in italics.

753 BC	By tradition, Romulus founds Rome.
509	The Roman Republic is founded.
384	The birth of Aristotle (384-322 BC).
43 AD	Roman legions invade southern Britannia. Roman traders found a market settlement on the river Tamesis at a place named Londinium.
325	The Emperor Constantine (272-337) calls a conference of Christian leaders to meet at the city of Nicea (in modern Turkey) with the agenda of establishing a unified (or "catholic") Christian church throughout the Empire.
393	Honorius (384-423) is proclaimed Roman Emperor of the West at a time when his brother Acardius (378-408) is the sitting Emperor at Constantinople, thus formally dividing the Empire between East and West.
407	The last Roman soldiers remaining in Britain depart for Gaul.
476	The conventional date of the collapse of the Western Empire and the beginning of the Early Middle Ages (still sometimes called "the Dark Ages").
527	Justinian (482-565) becomes the Eastern Roman (or Byzantine) Emperor.
529	First edition of the *Codex* (loosely, the Code) is promulgated.
533	Justinian promulgates the *Digest* (432 titles, in 50 books) and the *Institutes* (98 titles, 4 books), which, together with the *Codex* and the *Novels* (a collection of pronouncements of Roman Emperors), constitute the *Corpus Iuris Civilis*.
800	Charlemagne (742-814), King of the Franks, is crowned Emperor by Pope Leo III.
871	*Alfred the Great* becomes King of the West Saxons (Wessex) and styles himself "King of the Angles and Saxons".
1015 c	*Cnut*, King of Norway, invades Britain, defeats Anglo-Saxon resistance and claims the title "King of All England".
1042	*Edward the Confessor* (reigns 1042-1066) becomes King of England and the last Anglo Saxon to hold the title.
1066	*William I* (reigns 1066-1087) and Duke of Normandy invades England and takes the throne. The King's court, typically involving the King in person, is constituted as the *Curia Regis* (or *Aula Regis*), said to be first convened by William the Conqueror in his own hall. The King's Court comes to be comprised of professional judges, but it is itinerant. It hears pleas of debt, but not in respect of "private agreements". The Baron's Courts, Courts of the Shire and Hundreds administer most local justice.

1086	The *Domesday Books* are completed.
1087	*William II* (reigns 1087-1100).
1088 c	Irnerius (c 1050-1125) begins lecturing on the *Corpus Iuris Civilis* at the University of Bologna, inaugurating the age of the "Glossators".
1100	*Henry I* (reigns 1100-1135).
1135	*Stephen* (reigns 1135-1154).
1145	Theobald (c 1090-1161), Archbishop of Canterbury, brings Roger Vacarius (c 1120-1200), who studied in Bologna, to England. Vacarius lectures on the *Corus Iuris Civilis* at Oxford and compiles a legal compendium known as the *Liber Pauperum* (the Book of Poor Men).
1150 c	The approximate birth of Azzo of Bologna (c 1150-1230). Azzo's *Summa* to the *Digest* and *Institutes* becomes widely available in Bologna.
1154	*Henry II* (reigns 1154-1189).
1166	The *Assize of Clarendon* provides that persons charged with crimes may be convicted "by twelve more lawful men". Around this time, Henry II also provides for an assize (writ) of novel disseisin to deal with the "national vice" amongst the nobles, dispossession (disseisin) of property.
1176	Henry II promulgates the *Assize of Northampton*, introducing the writ of mort d'ancestor.
1177	Richard FitzNigel (c 1130-1198) writes *The Dialogues of the Exchequer*. The sheriffs and servants of the King are called to account twice a year at Exchequer Chamber in London.
1180	Henry II makes Ranulf de Glanvill (c 1112-1190) the Chief Justiciar of England.
1187 c	An unknown author, supposed by tradition to be Glanvill, writes *The Treatise on the Laws and Customs of the Realm of England*.
1189	*Richard I* (reigns 1189-1199).
1199	*John I* (1199-1216).
1215	The *Great Charter of Liberties* (*Magna Carta*) is affixed with the King's seal on 15 June at Runnymede, a meadowy island of the Thames in Surrey. On 25 August, at John's request, Pope Innocent III declares *Magna Carta* a nullity and a rebellion erupts leading to the First Barons' War (1215-17). The rebels fight for Louis (1187-1226), Dauphin of France and claimant to the English throne, against John and Henry III.
1216	*Henry III* (reigns 1216-1272). Henry III is 9 years old on his succession. William Marshal, Earl of Pembroke (1147-1219), reissues *Magna Carta* in Henry's name.
1217	Louis agrees to the Treaty of Lambeth, ending the First Barons' War. Pembroke reissues *Magna Carta* again.
1225	The birth of St Thomas Aquinas (1225-1274). Henry III, now an adult, reissues *Magna Carta*, being the third time.
1227	Henry III sends an "Irish register of writs" for the government of Ireland, which is likely the earliest surviving (but abbreviated) register.
1235	*Statute of Merton* 1235 (20 Hen III c 1).
1245	Henry de Bracton (c 1210-1268) is appointed a Justice in Eyre.

1260 c Bracton writes *On the Laws and Customs of England*.

1258 A group of nobles meets at Oxford in June and agrees to the *Provisions of Oxford*, a reforming charter that goes beyond *Magna Carta* in purporting to restrict the power of the King.

1263 Defenders of the *Provisions of Oxford* break into open revolt against the King in the Second Barons' War, led by Simon de Montfort (c 1208-1265).

1264 In December, de Monfort orders the propertied men of the counties and boroughs to elect and send representatives to a Parliament.

1265 In January, the first elected Parliament in English history is held. Henry III rejects the assembly and violence continues between Parliamentary and Royal forces. On 4 August, de Montfort is killed at the Battle of Evesham.

1267 *Statute of Marlborough* 1267 (52 Hen III). Statute marks a compromise, and the end of the Second Barons' War.

1272 *Edward I* (reigns 1272-1307), later called the "English Justinian" for his interest in law and legal reform.

1275 *Statute of Westminster I* (3 Edw I). The Statute is chiefly directed to remedying complaints of malpractice against local officials.

1285 *Statute of Westminster II* (13 Edw I stat 1). Cap 1 (*de donis conditionalibus*), sometimes referred to separately as the Statute *De Donis*, or Statute of Entails, recognises land grants in fee tail. Cap 24 (*consimili casu*) provides that where there is an issue "much like the case" (of an established writ) involving the same law and requiring the same remedy, the clerks of Chancery should frame one.

1290 *Statute of Westminster III* (or *Quia Emptores*) (18 Edw I). Statute brings an end to sub-infeudation in England.

1290 c An unknown author writes *Fleta: seu Commentarius Juris Anglicani* (*Fleta: or a Commentary on the Law of England*), an update and abridgment of Bracton.

1300 c An unknown author writes the legal tract known as *Britton*. The name is probably derived from a false attribution of authorship to John le Breton, Justice and Bishop of Hereford, who died in 1275.

1307 *Edward II* (reigns 1307-1327).

1327 *Edward III* (reigns 1327-1378).

1348 A plaintiff successfully claims a variation of trespass against a ferry boat master who overloaded his ferry: *Bukton v Tounesende* (*The Humber Ferry Case*) 22 Edw III, Lib Ass, pl 41 (B & M 358).

1349 Edward III orders that petitions formerly brought to him personally should be directed to the respective Courts (of Common Pleas, King's Bench or Exchequer), or to the Lord Chancellor.

1369 c A plaintiff brings an action "on the case" against a veterinarian surgeon for negligently killing his (the plaintiff's) horse: *Waldon v Marshall* (1369) YB Mich 43 Ed III, fo 33, pl 38 (B & M 359).

1377 *Richard II* (reigns 1377-1399).

1398	An official document, the *Enrolments of States of Accounts in Exchequer for the King's Remembrancer*, makes reference to a meeting of the King in Council in the "starred chamber" of Westminster Palace. The probable origins of the Court known as the Star Chamber.
1399	*Henry IV* (reigns 1399-1413).
1413	*Henry V* (reigns 1413-1422).
1422	*Henry VI* (reigns 1422-1461; 1470-1471).
1450 c	Gutenberg invents the printing press, and the Bible is printed c 1455.
1453	The Ottoman Sultan Mehmed II captures Constantinople. The last Byzantine Emperor, Demetrios Palaiologos, surrenders soon afterwards, bringing the Empire to an end.
1461	*Edward IV* (reigns 1461-1470; 1471-1483).
1466 c	Littleton writes his *Treatise On Tenures*.
1483	*Edward V* (reigns 1483). *Richard III* (reigns 1483-1485).
1485	*Henry VII* (reigns 1485-1509).
1492	Christopher Columbus, after crossing the Atlantic, lands in the Bahamas, believing himself to be somewhere in south-east Asia.
1499 c	General recognition of the writ of assumpsit (*assumpsit et fideliter promisit*), an action sur trespass sur case.
1500s	Reception and adoption of Roman Law (Civil system) in Continental Europe. Cases begin to be reported more regularly by judges and counsel, published under their names, and known as the "Nominate Reports". These are collected in the English Reports (ER), published in 1900.
1509	*Henry VIII* (reigns 1509-1547).
1514	Anthony Fitzherbert (c 1470-1538) publishes the first part of his *Magnum Abbreviamentum*, later entitled *La Graunde Abridgment*.
1517	Martin Luther (1483-1546) writes his *Disputation on the Power and Efficacy of Indulgences*, or *Ninety-Five Thesis*, prefacing the Protestant Reformation.
1528	Christopher St German (c 1460-1540) writes *Dialogus de Fundamentis Legum Anglie et de Conscientia* (*Dialogue on the Foundations of English Law and of Conscience*) more commonly known as *Doctor and Student*.
1531	The first Register of Writs is published.
1533	Parliament passes the *Submission of the Clergy Act* (25 Hen 8 c 19) declaring that the "Bishop of Rome" (the Pope) has no ecclesial or civil jurisdiction in England.
1534	Anthony Fitzherbert (c 1470-1538) writes *La Novel Natura Brevium,* a commentary on the existing register of writs with reference to the most recent cases.
1536	*Statute of Uses* (27 Hen VIII c 10). The Statute abolishes "uses" in respect of land.
1540	*Statute of Wills* (32 Hen VIII c 1). The Statute allows for the first time freehold land to be devised by will.
1547	*Edward VI* (reigns 1547-1553).

1553	*Mary I* (reigns 1553-1558).
1558	*Elizabeth I* (reigns 1558-1603). Parliament passes the *Act of Supremacy* (1 Eliz I c 1) and *Act of Uniformity* (1 Eliz I c 2), parts of the "Elizabethan Settlement" of religious controversy in England in favour of a single national church that is theologically protestant.
1572 c	General recognition of the writ *indebitatus assumpsit*, a variation on assumpsit.
1585	The Exchequer Chamber is created to hear writs of error from the King's Bench.
1595 c	Shakespeare writes *Romeo and Juliet*.
1602	*Slade's Case* (1602) 4 Co Rep 92b (76 ER 1074) decides that the writ of trespass *sur* case *sur* assumpsit and the writ of debt are alternatives, and that every contract executory imports an assumpsit.
1603	*James I* (reigns 1603-1625). The two Kingdoms of England and Scotland are legally distinct, each having its own Parliament and institutions of government. Thomas Egerton, first Viscount Brackley, is made Baron Ellesmere and Lord Chancellor (1603-1617), having been Lord Keeper since 1596.
1605	An attempt to bomb Westminster Palace ("the Gunpowder Plot") and reverse the Elizabethan Settlement in favour of Catholicism fails.
1606	Sir Edward Coke (1552-1634) is appointed Chief Justice of Common Pleas. James I grants Royal Charters to the Virginia Company, London Company and Plymouth Company to colonise the east coast of North America.
1607	The Virginia Company arrives in North America, in the territory of the Powhatan Confederacy, and builds "James Fort", later, "Jamestown".
1608	Coke expresses the opinion (in person to James I) that the King has no authority to hear cases in person or to personally exercise a power of arrest or law-making. Coke quotes *Bracton*, *quod Rex non debet esse sub homin, sed sub Deo et lege* (the King must submit not to any man but to God and to the law). Reported as *Prohibitio Del Roy* 12 Co Rep 65 (77 ER 1342). See RG Usher, "James I and Sir Edward Coke" (1903) 18 *English Historical Review* 664, 669, for a survey of the contrasting accounts of the incident, some of which are not at all flattering to Coke.
1609	Hugo Grotius (1583-1645), Dutch jurist, publishes *Mare Liberum* (*The Free Sea*), an early treatise on international law.
1610	*Dr Bonham's Case* (1610) 8 Co Rep 107a (77 ER 638). Coke opines that the common law could "control Acts of Parliament and adjudge them void".
1613	Coke is transferred from the Common Pleas to the Kings Bench and elevated to Chief Justice of England against his will, as a sort of punishment, because the higher office attracts a lesser income.
1615	Lord Ellesmere decides *The Earl of Oxford's Case* [1615] 1 Ch 1 (21 ER 485).
1616	James I dismisses Coke from office.
1618	Francis Bacon is appointed Lord Chancellor (1618-1621). Start of the Thirty Years War, embroiling most of Europe.

1623 Parliament enacts a *Statute of Limitations* (21 Jac I c 16).

1625 *Charles I* (reigns 1625-1649).

1628 Coke publishes the first volume of his *Institutes*.

1637 Presbyterian Scots ("the hotter sort of Protestant") riot against Charles I after his attempts to impose the English Book of Common Prayer on the Church of Scotland. (The quote is from Percival Wiburn in 1581, and a reference to the Scots' "godly knowledge" and "zeal", not the attractiveness of their appearance. See M Todd, "The Problem of Scotland's Puritans" in J Coffey & PCH Lim (eds), *The Cambridge Companion to Puritanism* (CUP, Cambridge, 2008), Ch 10.)

1639 War breaks out between armies of the King and supporters of Scottish Presbyterianism, the First and Second Bishops' Wars (1639-1640).

1641 Catholic rebellion explodes in Ireland against the English Crown from fears of an Anglo-Scottish protestant invasion. The English House of Commons ("the Long Parliament") passes the *Great Remonstrances*, a list of grievances against Charles I.

1642 Royal bailiffs attempt to arrest the leaders of the Long Parliament. The Parliament declares that its Acts have the force of law even without royal assent. Parliament mobilises a militia (the "New Model Army"), Charles musters his own army and the two sides go to war, the First English Civil War (1642-1647).

1647 Charles is arrested at Northamptonshire.

1648 The New Model Army purges the Long Parliament of opposition; the remaining members become known as the "Rump Parliament". The Rump Parliament convenes a special court to try Charles for high treason. He is convicted and sentenced to death.

The Peace of Westphalia ends the Thirty Years War and affirms principles of territorial sovereignty (eg, a prince has authority to decide religious questions within his territory).

1649 Charles I is beheaded. The Rump Parliament rules "the Commonwealth of England" together with the commander of the Army, Oliver Cromwell.

1653 Cromwell dissolves the Rump Parliament and declares himself "Lord Protector" of the "Commonwealth of England, Scotland and Ireland".

1658 Cromwell dies of illness. His son Richard succeeds him as Lord Protector and is an ineffectual leader.

1659 A reconvened Rump Parliament reasserts control over the Commonwealth.

1660 The Restoration. *Charles II* (reigns 1660-1685). The Long Parliament is reopened and provides for the election of a Convention Parliament, which in turn resolves to invite Charles II to return from exile. After the Restoration, legal documents are treated as if Charles had succeeded to the throne in 1649.

Tenures Abolition Act (12 Car II c 24). The Act converts all remaining incidents of land tenure into socage.

1673 Sir Hineage Finch, Lord Nottingham, is appointed Lord Chancellor (1673-1682).

1677 *Statute of Frauds* (1661, 29 Car II c 3). The Statute requires certain transactions to be proved by writing.

1685 *James II* (reigns 1685-1688). James is married to the Spanish Catholic Mary of Modena; his Catholicism is an open secret and causes political turmoil.

1688 William Duke of Orange invades England at the invitation of a group of English Parliamentarians, an event remembered as "The Glorious Revolution". James II flees for the Continent.

1689 *William III* (reigns 1689-1702) *Mary II* (reigns 1689-1694); Mary is James II's daughter and wife of William III; they reign as co-sovereigns.

Bill of Rights (1 Will & Mary c 2).

1700 *Act of Settlement* (12 & 13 Will III c 2). The Act sets down the rules for succession to the throne (with a religious test) and also includes a provision protecting judicial independence.

1702 *Anne* (reigns 1702-1714).

1706 The *Union with Scotland Act* (6 Anne c 11) creates the Kingdom of Great Britain; the Parliament of Scotland is dissolved.

1714 *George I* (reigns 1714-1727).

1727 *George II* (reigns 1727-1760).

1736 Sir Matthew Hale's (1609-1676) *Historia Placitorum Coronae* (*The History of the Pleas of the Crown*) is published posthumously.

1756 William Murray, Earl Mansfield (1705-1793), is appointed Lord Chief Justice of the King's Bench (1756-1788).

Beginning of the Seven Years War (1756-1763) between Britain and France.

1758 Sir William Blackstone (1723-1780) is appointed the first Vinerian Professor of English Law at Oxford.

1759 The British defeat the French at the Battle of Quebec.

1760 *George III* (reigns 1760-1820).

Lord Mansfield decides *Moses v Macfarlen* (1760) 2 Burr 1005 (97 ER 676).

1763 The Treaties of Paris and Hubertusburg end the Seven Years War, with France ceding Canada to the British.

1765 Blackstone publishes the first volume of his *Commentaries on the Laws of England*.

1769 Captain James Cook, while on voyage in the Pacific Ocean to observe the transit of Venus, opens the seal on orders from the Royal Admiralty and learns for the first time that he is to search for and map *Terra Australis Incognito*, the "unknown southern land".

1770 On 22 August 1770, Cook lands at Bedanug, an island in the Torres Strait, and, "hoist[ing] English colours, and in the name of His Majesty King George III", claims "possession of the whole eastern coast from the above latitude of 38° south down to this place by the name of New Wales": See *Kaurareg People v Queensland* [2001] FCA 657, [3].

1774 A "Continental Congress" of American colonial notables meets in Philadelphia for the first time.

1776 Thirteen colonies in America declare independence from the British Crown.

1781 The *Articles of Confederation and Perpetual Union* create "The United States of America".

1787 The United States adopts a new Constitution, creating a federal government, which remains the Constitution of the United States today (with 27 amendments).

2 April 1787, George III issues the "First Charter of Justice" for New South Wales. On 25 April, the King commissions Arthur Phillip to be Governor of New South Wales, defined as the eastern half of the whole mainland plus surrounding islands.

1788 26 January 1788, Phillip holds a ceremony raising the British flag at Sydney Cove. From about 1945 this becomes known as "Australia Day".

11 February 1788, the first court (a criminal trial) is convened in NSW.

1789 Louis XVI of France summons the French Parliament, *Les États-Généraux*, for the first time since 1614. The Third Estate (a house of the Parliament) soon declares a National Assembly, with authority to govern all of France, beginning the French Revolution.

1791 The first 10 amendments are made to the United States' Constitution, limiting the power of the new federal government, collectively known as the "Bill of Rights".

1801 Lord Eldon is appointed Lord Chancellor (1801-1806; 1807-1827).

1803 The US Supreme Court decides *Marbury v Madison* 5 US (1 Cranch) 137 (1803).

1811 Joseph Story is appointed to the Supreme Court (1811-1844).

1813 53 Geo III c 20 creates the office of Vice-Chancellor in Chancery, adding a third Judge to the Lord Chancellor and Master of the Roles.

1814 George III issues letters patent dated 4 February 1814 ("the Second Charter of Justice") establishing a Supreme Court of Civil Judicature for NSW.

1819 59 Geo III c 46 abolishes Trial by Battle.

1820 *George IV* (reigns 1820-1830).

1823 The Imperial Parliament at Westminster passes *An Act … for the better administration of Justice in New South Wales and Van Diemen's Land and for the effectual Government thereof …* with the short title *The New South Wales Act* (4 Geo IV c 96), providing for the establishment of a Legislative Council and Supreme Court of New South Wales. Letters Patent dated 13 October ("the Third Charter of Justice") carry the latter purpose into effect.

1824 Sir Francis Forbes (1784-1841) is sworn in as the first Chief Justice of NSW (1824-1841).

1825 By Order-in-Council George IV creates the Colony of Van Diemen's Land (Tasmania) with a Governor, Supreme Court and Legislative Council.

1828 The *Australian Courts Act* (9 Geo IV c 83) provides that statutes in force in England as at 25 July 1828 should be applied by the courts in the Australian colonies, "so far as the same can be applied within the said colonies". Colonial legislatures have power to make "laws and ordinances for the peace welfare and good government of the … colonies respectively, such laws and ordinances not being repugnant to this act or … to the laws of England".

1829 The Imperial Parliament passes *An Act to provide … for the Government of His Majesty's Settlements in Western Australia on the West Coast of New Holland* (10 Geo IV c 63), the *Western Australia Act*.

1830 *William IV* (reigns 1830-1837).

1832 The *Uniformity of Process Act* (2 & 3 Will IV c 39) abolishes the old forms of writs and introduces a new process and common procedure for the old actions of debt, detinue, covenant, account, trespass and case.
The *Reform Act* (2 & 3 Will IV c 45) abolishes old and creates new constituencies of the House of Commons so that the number of persons represented by each is closer to equal; it also extends the franchise, though not yet to the whole adult male population (nor to women).

1833 *Civil Procedure Act* (3 & 4 Will IV c 42 s 13). The Act finally ends the wager of law as a mode of proof.

1834 The Imperial Parliament passes *An Act to empower His Majesty to erect South Australia into a British Province* with the short title *South Australia Act* (4 & 5 Will IV c 95) and Letters Patent are issued establishing the Province.

1837 *Victoria* (reigns 1837-1901).

1842 The Imperial Parliament passes the *Australian Constitutions Act (No 1*) (5 & 6 Vic c 76), which provides for (a limited form of) representative government.

1843 *Lord Denman's Act* (UK) (6 & 7 Vic c 85) permits for the first time persons with an interest in litigation to give evidence as witnesses.

1850 The Imperial Parliament passes the *Australian Constitutions Act (No 2)* (13 & 14 Vic c 59), which creates the Colony of Victoria, territory for a Parliament and Supreme Court in Victoria: s 1. It provides for the establishment of Parliaments in South Australia, Tasmania and Western Australia by Acts of the Governors and Legislative Councils: s 21.

1851 The *Evidence Act* (UK) (14 & 15 Vic c 99) permits parties to give evidence in common law proceedings.

1852 The *Common Law Procedure Act* (15 & 16 Vic c 76) reforms originating process for the common law courts. It replaces the several existing writs used to commence personal actions with a single Writ of Summons. It is not necessary to mention any form or cause of action in the new writ, but plaintiffs, reasonably cautious, continue in practice to employ old formulas. New rules of pleading are known as the Rules of Hillary Term and of Trinity Term 1853.
The *Chancery Procedure Act* (15 & 16 Vic c 86) simplifies Chancery procedure; new originating process, the "Printed Bill", replaces writs of Subpoena and Summons.

Publication by Charles Dickens of the first chapters of *Bleak House*; set (implicitly) in 1827, it satirises Chancery practice of the era as too cumbersome to achieve justice.

1853 Under the *Common Law Procedure Act 1852* new rules of pleading are promulgated (the Rules of Hillary Term and of Trinity Term 1853) making pleading practice uniform in all the common law courts.

1854 The *Common Law Procedure Act* (17 & 18 Vic c 125) further amends the process, practice and mode of pleading in common law. It confers a jurisdiction to order the specific return of a chattel: s 79. Maitland considers this the end of any meaningful distinction between real and personal property.

1855 The Imperial Parliament passes the *New South Wales Constitution Act 1855* (18 & 19 Vic c 54 Sch 1) and *Victoria Constitution Act 1855* (18 & 19 Vic c 55 Sch 1), introducing bicameral parliaments.

1856 South Australia passes *An Act to establish a Constitution*, creating in the Province a bicameral legislature with an elected lower house. Tasmania passes an *Act to establish a Parliament in Van Diemen's Land* to similar effect.

1858 The *Chancery Amendment Act 1858* (21 & 22 Vic c 27) (Lord Cairn's Act) among other things gives the Chancery the power to award damages in lieu of an injunction.

1859 The Queen executes Letters Patent creating the Colony of Queensland.

1865 The *Colonial Laws Validity Act* (Imp) (28 &29 Vic c 63) clarifies the legal consequences of "repugnancy" (inconsistency) between British colonial and imperial laws. A colonial law that is repugnant to an imperial law is "absolutely void and inoperative" to the extent of the repugnancy but only if the imperial law applies to the colony by "express words or necessary intendment": s 2. Colonial parliaments may enact amendments to their constitutions so long as such enactments comply with "manner and form" requirements: s 5.

The Council of Law Reporting is established in the UK, with responsibility for publishing authorised reports of cases decided in the divisional and appeal courts.

1873 *Supreme Court of Judicature Act* (36 & 37 Vic c 66) (under William Gladstone's government).

1874 *Supreme Court of Judicature Act 1873 Suspension Act* (37 & 38 Vic c 83) (under Benjamin Disraeli's government). The Act prevents the Act of '73 from taking effect.

1875 *Supreme Court of Judicature Act 1873 Amendment Act* (38 & 39 Vic c 77).

1876 The *Appellate Jurisdiction Act* (39 & 40 Vic c 59) provides for the appointment of Judicial Peers to the House of Lords.

1890 Constitution of Western Australia (53 & 54 Vic c 123).

1894 South Australia amends its Constitution to extend the electoral franchise to women (57 & 58 Vic 613).

1900 The Imperial Parliament passes the *Commonwealth of Australia Constitution Act* (63 & 64 Vic c 12).

1901 *Edward VII* (reigns 1901-1910).
On 1 January 1901, the Commonwealth Constitution commences by proclamation at Centennial Park, NSW.

1902 The *Franchise Act 1902* (Cth) entitles "all persons not under twenty-one years of age whether male or female married or unmarried" to vote in elections, except indigenous persons, the mentally ill and persons under sentence of imprisonment: s 3.

1910 *George V* (reigns 1910-1936).

1914 On 28 June, Serb nationalists assassinate the Austrian Franz Ferdinand in Sarajevo. The beginning of the Great War (1914-18).

1926 Balfour Declaration. A conference of Prime Ministers of Australia, Canada, the Irish Free State, New Zealand, Newfoundland and South Africa (now all styled "Dominions") and the United Kingdom is held in London. The Declaration recognises Dominions as "autonomous Communities within the British Empire".

1929 Sir Owen Dixon (1886-1972) is appointed a Justice of the High Court of Australia.

1931 *Statute of Westminster* (Imp). The Statute gives effect to the Balfour Declaration. The Statute provides that it will not apply in full to Australia until the Commonwealth Parliament passes adopting legislation (effected by the *Statute of Westminster Adoption Act 1942*). The Statute repeals the repugnancy provisions of the *Colonial Laws Validity Act 1865*.

1936 *Edward VIII* (reigns 1936). *George VI* (reigns 1936-1952).

1938 Germany annexes Austria. Germany, France, Britain and Italy enter an agreement to settle German territorial claims in Eastern Europe.

1939 Germany breaks the previous year's agreement and invades Poland. Britain declares war, opening the Second World War (1939-1945).

1952 *Elizabeth II* (reign 1952-).

1962 The *Commonwealth Electoral Act* extends the federal franchise to indigenous people.

1968 The *Privy Council (Limitation of Appeals) Act* (Cth) abrogates appeals to the Privy Council from decisions of all Federal Courts except, by special leave, from a decision of the High Court on appeal from a State Supreme Court.

1970 The *Supreme Court Act 1970* (NSW) and the *Law Reform (Law and Equity) Act 1972* (NSW) introduce the judicature system to NSW.

1973 *Royal Styles & Titles Act* (Cth). The Commonwealth Parliament assents to Elizabeth II adopting the style and title "by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth". She had previously been "by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith".

1975 The *Privy Council (Appeal from the High Court) Act 1975* (Cth) removes the mechanism for seeking leave to appeal a decision of the High Court to the Privy Council. (But cf Australian Constitution, s 74.)

1985 Each State passes an *Australia Acts (Requests) Act* to empower the Commonwealth to pass the *Australia (Request and Consent) Act* to give consent to the Imperial Parliament passing legislation removing the last of British governmental authority in Australia, including appeals from State Supreme Courts to the Privy Council and the practice of British Ministers advising the Queen in relation to her State-level functions.

1986 The *Australia Act 1986* (UK) and *Australia Act 1986* (Cth) are enacted, effective 3 March 1986.

Selected Glossary

Ethnography and geography

Anglo-Saxons	The Germanic peoples who settled in the southeast of Great Britain around the 5th and 6th centuries AD and from whom the name England derives.
Danelaw	Territory of Great Britain under Danish rule, *circa* 9th-11th centuries.
Mercia	Anglo-Saxon kingdom, *circa* 6th-10th centuries.
Vikings	8-11th century pirates who vexed the Anglo-Saxons (and wore unusual hats), until Cnut, King of Denmark, claimed all of England. The Normans were descended from the same clans as the Vikings, hence their name in Old English "Nor-men", "men from the north" or any Scandinavian.
Wessex	Anglo-Saxon kingdom, *circa* 6th-10th centuries. Wessex, by its leaders, was most successful, expanded and became the Kingdom of England during the 10th and 11th centuries.

Feudal rights, titles and obligations

Status

Bailiff	One who bails or carries something, also, the manager of property for another. The Anglo-Saxon equivalent was *reeve*. The King's bailiffs included the shire-reeve or sheriff. Similarly, within the manors, the bailiff was the lord's manager of business, and one of the first subjects of the writ of account.
Baron	At first the title of all the King's tenants *in capite*, then a specific ranking in the nobility.
Knight	A person holding tenure by knight-service. Later, a high military rank open to nobles. From about 16th century and after, an honour granted for service to the realm, whether military or other: see, eg, Sir Paul McCartney.
Lord	The owner of a sufficiently large tenure as to constitute a manor. The most senior lord in England was the King, "the Lords" generally referring to the barons.
Mesne lord	A person who held land by one or other forms of tenure, but grafted out of the tenure of an existing lord, rather than directly from the King. Pronounced *mean*, as in middling, or middle.

Sherriff	The King's bailiff in the county, hence *shire*-reeve. The sheriff was responsible for executing the King's writs, collecting his revenues, and maintaining order. The originating process in a royal court normally took the form of a command from the King to a sheriff (after a polite greeting: *rex vicecomiti salutem*) to give some relief or to have a person appear before the court.
Steward or procurator	The senior domestic servant in a manor, usually under the bailiff with responsibilities concentrated on the household.
Vassal	The dependant of a lord.
Villein	A rank of serf; an agricultural labourer under a legal duty to work, which duty was either attached to the land and owed to whoever held the tenure of the land (a Villein regardent) or owed personally to a lord (a Villein in gross).

Land

Tenure	From Latin *tenere*, "to hold". In theory, the King owned all of the land in the kingdom, and all others were tenants. Thus, tenure was an estate in land granted by the King to Lords or by Lords to mesne Lords. Tenure came with particular obligations, known as incidents of tenure. There were four main classes: knight service, Frankalmoigne (for religious services), serjeanty and socage.
Fee (feud, fief)	The reward (fee) granted by a lord to a vassal, in substance an interest in the lord's land. The interest could be absolute (freehold), inheritable (fee simple), or inheritable with conditions (fee tail).
Allodial	Literally land "without a lord"; land outside the tenure system.
Carucate	A unit of measure: the area of land that one plough, pulled by eight oxen, could till in one year.
Copyhold	Within a manor, a lord could grant interests tied to his own estate (ie, which did not involve further grants of tenure), to his own servants or to freeman. These grants were copied onto a register kept by the lord, hence copyhold.
Demesne	A variant of "domain", probably pronounced the same, from the Latin *dominicum* meaning "the lord's [thing]". The demesne usually referred to the whole of the lord's land, excluding those granted out by sub-tenure.
Fee simple	"The largest estate known to the law": *Amody Tijani v Secretary, Southern Nigeria* [1921] 2 AC 399, 403. The fee or freehold granted by William I to his Barons was neither alienable nor hereditable, because it was premised on personal fidelity to the grantor. The fee simple was inheritable and became alienable, and thus a vastly complex subject of law.

Fee tail	A grant in fee with limitations as to who could inherit, recognised by *De Donis Conditionalibus* (1285) 13 Edw 1 c 1. The fee tail usually descended to lineal (and legitimate) heirs only, called tenants in tail. If the succession of heirs of the original grantee ended, the fee reverted to the living heir of the grantor, and thus could result in spectacular disputes in court. Mr Bennet's estate in *Pride and Prejudice* was *a male tail* and only descended to lineal male heirs (and as that was his only estate, his daughters had no expectancy and were in serious economic peril).
In capite	Meaning *in chief*, a tenant *in capite* was granted his tenure directly by the King.
Mortgage	A debtor formed a *gage* by giving possession of some security, usually land, to the creditor. If the creditor took the rents and profits of the land, and they did not reduce the capital, then the land's fruit was dead, hence, *mort-gage*. The mortgage smacked of usury; but was tolerated, as Glanvill said (at X.6).
Primogeniture	The rule that the first-born son of the deceased was the first heir of the legal estate.
Seisin	The quality of the possession of a feudal tenant in the land, the entitlement to occupy the property, and to the rents and profits.
Subinfeudation	If the King granted tenure to a Baron, and the Baron to a mesne lord, and the mesne lord carved out of his grant a little more, the tenure was said to be subinfeudated. Abolished by *Quia Emptores*; see *Imperial Acts Application Act 1969* (NSW) s 36 and Sch 1, cl 2. After its abolition, the effect of a grant out of tenure by, eg, a mesne lord was to substitute the incoming tenant for the outgoing lord in the feudal chain, rather than make the former a further sub-vassal. The preface to the second edition of *Meagher Gummow and Lehane's Equity* suggested (obliquely, but sternly) that if the statute was ever repealed, subinfeudation would revive as a possible way to make land grants in England.
Incidents of tenure	Services rendered by a tenant to a lord in exchange for rights over the lord's land. The categories are ill-defined and not mutually exclusive.
Homage and fealty	Denoted both the ceremony that legally established the obligation and the obligation itself (much like the word "marriage"). The vassal assumed a prayer posture before the lord, the lord clasped the vassal's hands and the vassal vowed to faithfully protect and serve the lord.
Frankalmoigne	Service of a religious nature.
Knight's service	The obligation to supply a number of soldiers to the lord for a number of days in the year as specified in the grant of tenure.

Serjeanty	A generic term for personal services, ranging from grand serjeanty, such as fielding an army on the lord's behalf, to petty serjeanty, eg, carrying the lord's saddlebag.
Socage	A general and collective term for service that was not knight service, serjeanty or frankalmoigne.

Of the courts

Curia Regis	In the early Norman period, the King's inner circle of advisers and friends; prototype of the separate organs of modern Westminster government.
Privy Council	A select body of peers (Lords) succeeding the advisory function of the Curia Regis. The Privy Council came to perform a curial function in advising the King or Queen on cases (loosely, appeals) from the colonies or dominions.
Ecclesiastic	Courts invested with the jurisdiction of the Roman Church (ie, not royal), chiefly to hear matrimonial causes, succession, defamation and litigation to which clergy were party; abolished as a civil court of law during the 16th century Reformation.
Eyre	Royal court, *circa* 1166, held at places on regular circuits throughout the realm, obviating the need for litigants to follow the King; the word "Eyre" was an abbreviation of the Latin *iterare* meaning to journey, which the Court and its justices did.
Banco (Bench)	For the Courts of Common Pleas and King's Bench, usually meaning the full court (sitting at Westminster) in distinction to sittings at *nisi prius*.
King's Bench	Court invested with royal jurisdiction, originally to hear pleas of the Crown (criminal law) and by later innovation also to hear trespass and other common pleas. The Court also commonly issued the prerogative writs (administrative law) and writs of error (in the nature of appeals).
Common Pleas	Court invested with royal jurisdiction to hear common pleas (private law), most commonly debt, account and covenant, and actions on the case.
Exchequer	Court invested with royal jurisdiction, both common law and later equitable, originally in proceedings to recover royal revenue, but later also private actions (such as, a debt action brought by a person who in turn owed the King).
Exchequer Chamber	Court created by Parliament in 1585 with jurisdiction to hear appeals from the King's Bench.
Chancery	Court invested with royal jurisdiction; mostly remembered as the leading court of equity, it had a limited role as a court of common law. The Chancery was also a department of state responsible for the writing required by the King, and thus the place that issued royal writs, the originating process for the Royal Courts.

Star Chamber	Ostensibly to hear cases concerning great men by their peers, a court presided over by the Lord Chancellor, its procedure was inquisitorial and jurisdiction mostly criminal. Prominent during the reign of Henry VIII and abolished in 1641.
Admiralty	Court invested with royal jurisdiction in maritime matters.
Manorial	All tenants had a right of suit in their Lord's court; Barons were thus obligated to hold court to hear disputes between their tenants.
County	Continuation of the pre-Conquest Shiremoot, a local public assembly that adjudicated legal disputes according to local law and dealt with other public business.
Hundred	Administrative, judicial and territorial division smaller than a County, with local civil and petty criminal jurisdiction.
Borough	Courts exercising the jurisdiction of an urban municipality, eg, the Mayor's Court of London.
Staple	Established by the *Statute of the Staple* (1353) (27 Edw III, c 2) with jurisdiction to apply the Law Merchant to commercial disputes, limited at first to commerce in "staple" (certain basic and necessary) commodities.
Piepowder	Courts held at fairs and markets, with summary jurisdiction over itinerant merchants (who were piepowders, "dusty-footed").

Judges

Justiciar	Also "justicer", from the medieval Latin *justitiarius*, meaning "rectifier", "one who makes right". *Circa* 11th and 12th centuries, the King's most immediate deputy and president of the *Curia Regis*, who could perform all the functions of the King in the King's stead.
Justice	In the Norman period, a "justice" was any deputy of the King, a sense that the word retained for centuries (eg, "Justice of the Peace"). From the 13th century, the judicial functions of the Justiciar were separated out to form a distinct office, the Lord Chief Justice, being the senior judge of the King's Bench.
Lord Chancellor	An immediately powerful and central officer of the King, head of the Chancery. The custom was to appoint clergymen to the office, until 1529, when a layman and trained common lawyer, Sir Thomas More, was made Chancellor. From the 13th century, assumed the advisory and executive functions of the Justiciar. Also exercised the residue of the King's personal judicial authority (see the entry on the Court of Chancery). The Lord Chancellor was also known as the *Keeper of the Great Seal*. When there was no Lord Chancellor, the office would be occupied by a Lord Keeper or (usually) three Commissioners.

Baron	The title of the judges sitting in Exchequer, the foremost of whom was the (Lord) Chief Baron.

Modes of Trial

Trial by ordeal	A chance process with two possible outcomes, one of which, if occurred, was interpreted to be supernatural proof of the defendant's innocence. The other, unspeakable. Abolished by the Fourth Lateran Council in 1215. Maitland said, however, that it fell hard from the Englishman's preference, the fondness for "swimming a witch" continuing (illegally) for some time.
Wager of law (or compurgation)	The defendant proved his case by swearing an oath, together with (in most cases) 11 others (called oath helpers or compurgators) who swore at the same time that the defendant was telling the truth.
Wager of battle (or duel)	Introduced by the Normans for the benefit of the Norman elite, but later made available to the English, the defendant proved his case by appearing (personally or by a representative) at an appointed place at an appointed time to physically fight the plaintiff (or his representative). The defendant won if the plaintiff did not appear. If the plaintiff did appear, the battle continued until one relinquished, was irretrievably maimed, or perished.
Assize	"To assize" meant to sit down, and so "an assize" could mean the body doing the sitting, the procedure for calling the body to sit or the business of the body once seated. It could also be used to refer to the origin or process for hearing of a writ, eg, the assize of novel disseisin.
Attaint	A process of review that convened 24 men to confirm or upset the verdict of an assize.
Grand Assize	Probably by ordinance around 1179 (the Grand Assize), Henry II gave the tenant (defendant) an election to have the case decided by *recognition* (the proto-trial by jury). The recognition consisted of 12 knights from the locality of the disputed land who declared on oath (not after evidence) which of the parties had the better title. The alternatives to recognition included defending the action by battle.
Petty Assize	The name given to proceedings begun by the first possessory writs, eg, novel disseisin, mort d'ancestor and darrein presentment; the form of these writs prescribed that the case be decided by recognition.
Recognition	A procedure whereby a public official summoned to answer a question concerning events alleged to have occurred there. Closely related to the Grand and Petty Assizes, and a predecessor of the modern jury.

Trial by jury	Probably evolving from the Assizes, and the use of recognition there, in origin, a jury of locals was summoned *ad hoc* to answer some particular question of fact assumed to be known or notorious in the area. Eventually, courts summoned juries whenever issue went to proof and referred all questions of fact to them.

Writs (actions)

Writ	The order issued by Chancery containing the command of the King, hence the foundation of the Royal Courts' jurisdiction over individual cases.
Writ of Right	Probably the most ancient writ, commanded that the defendant deliver property (land) to the plaintiff.
Praecipe writ	A writ in the form of an order that the defendant do something (eg, pay a debt) and, if it is not done, appear in court to explain why not. The important ones were debt, covenant and account.
Account	11th century writ (*praecipe*) that began as a proceeding in the Exchequer to ascertain what amount the accounting party owed to the royal revenue. Later expanded to a private action.
Covenant	12th century writ (*praecipe*), commanded that the defendant keep an agreement with the plaintiff and, from the 14th century, only available to enforce agreements under seal.
Debt	12th century writ (*praecipe*), commanded that the defendant return to the plaintiff moneys unjustly detained (ie, owed to the plaintiff).
Detinue	12th century, writ (*praecipe*), commanded that the defendant return to the plaintiff specific goods or charters, or their value (at the defendant's election).
Replevin	A *plevin* was a pledge; the writ recited that the plaintiff had handed custody of goods over to the defendant on the basis that the defendant pledged to come to court to hear who had the better right to the goods.
Trover	*To find*, a 13th century standard count (allegation of fact) in detinue, *detinue sur trover*, that the plaintiff lost the goods, that the defendant subsequently found them, and that the defendant refused the plaintiff's request to return the goods. In the 16th century the same count was pleaded on the case (see below) with the addition that the defendant had converted the goods to his or her own use. In *Bishop v Montague* (1600) Cro El 824 (78 ER 1051) it was held that the allegation of loss and finding was not traversable, in effect, that it need not be proved (perhaps because the defendant having it, and the plaintiff not having it, was the point).

Novel disseisin	*Circa* 1189, probably an invention of Henry II, or clever advisers, the civil wrong of a recent (novel) dispossession of land; the writ was available only to a tenant who was seised of the land immediately before the act of dispossession. It therefore focused only on possession, not title. Hence, there was no *jus tertii* (reliance on some third party having an even better right or title) allowed. Later available in relation to chattels.
Mort d'ancestor	A variant of novel disseisin available to the heir of a deceased's estate when a wrongdoer took up occupancy of the land before the heir could be admitted as rightful heir and seised.
Darrein presentment	Also *advowson of churches*. Available to enforce the right to present a candidate for a parsonage to the bishop. The parson of a parish church owned the land the church was on and had the right to collect tithes in the parish.
Ostensus Quare	Distinguished from the *praecipe* writs were these, which appear quasi-criminal in origin, ordering an inquiry (*ostensus quare*) into whether an alleged wrong had been done and to the *damnum* (damages) from the wrong.
Trespass	*Transgressio* or wrong. Distinct from writs *praecipe*, the writ did not contain an order to do something, but was rather *ostensus quare*, a summons to the defendant to appear at court and "show why". As a wrong, a defendant was not allowed to defend by wager of law (see below). By the 14th century the "general" trespass counts were: assault and battery, *de bonis asportis* for chattels and *quare clausum fregit* (breaking the close) for land.
Vi et armis	Initially, the writ of trespass recited force and arms (*vi et armis*) and a breach of the peace (*contra pacem*). Trespass and its derivatives were tried *by the country* where the wrong occurred, later by a jury. As wrongs, these writs only sounded in the *damnum* (damages).
Conversion	Available against a defendant who unlawfully took custody (thus bringing the facts within the category of trespass) of goods, and who converted the goods to his or her own use.
Ejectment	13th century, the plaintiff claimed that the defendant had wrongly ejected him or her from land that the plaintiff was entitled to hold for a term of years. *Circa* 1500, relief became recovery of possession of land.
Case	There evolved *special* pleadings in trespass, which specially pleaded the alleged wrong in detail as the *special case*, later simply *case*, which from at least the 16th century was the predominant category of trespass.
Assumpsit	An assumption of responsibility, or undertaking or promise. It was used in respect of agreements not under seal and of negligence.

Indebitatus assumpsit	Strictly, trespass *sur* Case *sur* indebitatus assumpsit. The writ alleged debt facts (indebitatus) and a promise or undertaking to repay (assumpsit). This brought the debt action within assumpsit and therefore outside wager of law.
Common (money) counts	Factual scenarios, usually classified as indebitatus assumpsits, eliminating the requirement for special (detailed) pleading in well defined cases. Named after their key facts, they included goods sold (*quantum valebant*), work done (*quantum meruit*), money lent, money paid, money owing on an account stated, money due for the use and occupation of land, and money had and received to the plaintiff's use.
Felony	A class of crimes whose characteristic (but not unique) feature was forfeiture of all of the property of the convict to the King.
Appeal of Felony	11th century, the procedure for prosecuting suspected felons in county courts by private persons, usually the victim or the relative of a deceased. A related 12th century procedure was the approver's appeal, in which a suspect, the approver, would admit guilt and then prosecute his accomplices; a successful prosecution would entitle the approver to a more lenient punishment. From the 12th century, with the cooperation of the King, pleas of the crown were used to prosecute crimes. Appeals of Felony were abolished in 1819 (59 Geo III c 46). Cf Kerr, "Angevin Reform of the Appeal of Felony" (1995) 13 *Law & History Review* 351.
Error	A commission *to examine errors* appearing on the face of a court record (thus a means of appealing a decision): *Ball v Richard* (1702) 3 Salk 146 (91 ER 743). What was and was not part of the record, and which courts could hear appeals from which, was highly technical. For example, from 1585, error ran from the Common Pleas to the King's Bench and from there to the Exchequer Chamber, of which judges of the Common Pleas comprised the majority.
Prerogative	Collection of writs named after their key words. The oldest is *certiorari*, "produce the record", issued from at least the 1270s for the purpose of transferring suits in inferior courts to the King's Bench. A series of cases in the 15th-17th centuries tested whether *certiorari* could be used not only to transfer open cases but also to review decided cases (that could not be appealed by a writ of error). This development culminated in *Groenvelt v Burwell* (1700) 1 Ld Raym 454 (91 ER 1202), with Lord Holt deciding that the Court had authority to review disciplinary decisions made by the London College of Surgeons because "it is a consequence of every inferior jurisdiction of record that their proceedings be removable into this court, to inspect the record and see whether they keep themselves within the limits of their jurisdiction". Hence, doctrine on the availability

Prerogative (*cont*)	of the prerogative writs became the substance of modern English administrative law. Cf Jaffe & E Henderson, "Judicial Review and the Rule of Law" (1956) 72 *Law Quarterly Review* 345.

Procedure and pleadings (at Law)

Count (or declaration or encoupment)	A *little story* (French, *conte*), which the plaintiff addressed to the court (orally in the early period, later in writing), stating the facts that gave the plaintiff a right to relief. It followed *after* (and was not usually included in) the originating writ.
Defence	The defendant's response (oral or written) to a count.
Confess and avoid	The pleader admitted the truth of the count and recited additional facts that (if true) would show that the plaintiff was not entitled to relief.
General issue	A denial in general words, which in effect put every aspect of the plaintiff's case in issue. In cases of writs of trespass, a plea of "not guilty" was of the general issue. Rules of court prohibited pleading the general issue after 1875: *Supreme Court of Judicature Act 1875* (38 & 39 Vic c 77) Sch 1, O 19.20
Replication	After pleading the general issue, the pleading of additional facts that would excuse or justify matters particularly.
Special traverse	A two-part pleading: in the first part, the pleader recited additional facts that would excuse or justify the facts alleged in the count and, in the second, the pleader denied the count.
Demurrer	The denial that the plaintiff was entitled to relief as a matter of law, even if the facts alleged in the plaintiff's pleadings were true. To *demur* literally being *to delay* before going forward, so the demurrer was an objection against proceeding to trial.
Essoin	A lawful excuse for not appearing in court on a particular date. Apparently abused by defendants to frustrate plaintiffs even in Glanvill's day. It became routine for defendants to cast every essoin to which they were entitled.
Joinder of issue	Pleadings at common law continued until the parties joined issue, that is, had isolated the questions of fact to be put to a jury. The issue consisted of those alleged facts the other denied.
Nisi prius	*Unless before*, form of words within a writ stating that the action was to be tried by jury at Westminster at a fixed date unless before hand it was tried by jury in the county where the cause of action occurred. The latter was the usual course. Thus *nisi prius* became synonymous with *first instance*, where questions of law might be reserved to be decided by the King's Bench or Common Pleas later at Westminster.

Statute of Jeofails	(1541) 32 Hen VIII c 30. *Jeo fail* was an Anglo-Norman expression meaning *I fail* (or my mistake, or sometimes, in the vernacular, oh dear), referring to a defect in pleadings. The statute provided that certain defects would not be immediately fatal (as they had been before) and result in a party losing his or her case.

Procedure (in Chancery)

Bill	The name given in Chancery to the plaintiff's originating process setting out in seven parts the elements that would convince the Lord Chancellor to grant relief.
Exception	In Roman law, the pleading by one party of additional facts showing that the facts pleaded by the other did not establish the legal result sought after. In Chancery procedure, the plaintiff's plea in response to a defence that the defence, even if true, did not answer the bill. Also, a process for challenging an order of a court: a *bill of exception* specified the respects in which the order was unsatisfactory.
Subpoena	An order issued out of Chancery for a defendant to appear. The order recited that the defendant was *sub poena*, literally, *under pain* of a sum of money or imprisonment if he or she did not comply. Chancery used the subpoena to obtain jurisdiction and in effect commence proceedings upon the Bill. When used as an English noun (rather than a Latin adverbial phrase) the plural is *subpoenas*.
Injunction	An order out of Chancery prohibiting or mandating the doing of something. The Lord Chancellor would issue a *common injunction* to restrain proceedings at common law when a suitor sought equitable relief that was inconsistent with legal rights. An injunction could be interim (made for the purpose of preserving the status quo while the Chancellor considered a matter) or final (as the relief granted to a successful suitor). The common law courts had no such powers until the judicature reforms, which also abolished the common injunction: *Supreme Court of Judicature Act 1873* (36 & 37 Vic c 66) ss 16, 24(5).

Orders

Accord (concord)	*Circa* 12th century, an agreement between the parties and ratified by the court, finally resolving litigation and put on the record.
Amercement	*To be in mercy*. The parties could be amerced for the conduct of a case, but usually only imposed on the party who lost, leading to a monetary penalty at the discretion of the court (and a valuable royal revenue).

Fine	From the Latin *finis*, meaning end, or finale. An agreement between litigants and approved by the court, bringing an end to proceedings. Later winningly employed as a device for conveying land through contrived litigation.
Receiver	A royal official who collected taxes, eg, the Receiver of Customs. More generally, an agent who collects payments due to the principal, receiving it the principal's use. A means of enforcing a judgment, eg, in Chancery, a person appointed to hold or receive the judgment debtor's property or income and apply it to satisfy the debt. Later, more generally, a person who manages a debtor's property on behalf of creditors.

Enforcement

Elegit	Writ that authorised the sheriff to seize and detain the land and goods of the judgment debtor until the debt was paid.
Capias ad satisfaciendum	*Ca-sa*: writ that authorised the sheriff to imprison the judgment debtor until the debt was paid.
Fieri facias	*Fi-fa*: writ that authorised the sheriff to confiscate the goods of the judgment-debtor.
Outlawry	In origin, a declaration that a convict no longer enjoyed the King's peace and could be killed with impunity, the person being, literally, outside (the protection of) the law. From the 14th century, outlawry was ordered in civil cases against judgment debtors but with less grievous consequences, which continued to relax over time. Civil outlawry was abolished in 1879: 42 & 43 Vict c 59. Outlawry was held not to be part of the common law of NSW in *R v Governor* (1900) 17 WN (NSW) 185, and arguably never was, not being very appropriate to the conditions of a penal colony.
Surety	Supposing *A* was under a duty and fails to perform, a surety was a person under a duty to perform in *A*'s place, usually to pay money.

Agreements and legal instruments

Bond	In the earliest sense, an obligation. Then, more specifically, the assurance by a surety that a defendant would appear in court. From the 13th century, a specialty (usually a deed poll) executed by an *obligor* creating or acknowledging a debt owed to an *obligee*.
Charter	From Latin *carta*, paper, a piece of paper inscribed, the making of which brought about some legal effect. A university charter, eg, was the paper that brought the university into existence. Charters were written representations of will: the will of the King or of Parliament, the will of a private donor, and so on. See, eg, *Magna Carta*.
Chirograph	Parchment on which an agreement was written; the parchment was then torn in two, one half given to each.

Deed	A kind of private charter (see above), "the most solemn and authentic act that a man can perform, with relation to the disposal of his property": Blackstone, *Commentaries*, Vol II, 295. Seals and the mode of delivery, originally evidence that a charter was authentic, tended to be treated strictly, and as unequivocally necessary for any action on the deed.
Deed Poll	When more than one party executed a deed, replica deeds were made, one for each. An indented cut was made in the paper of the replicas so that they would fit together like jigsaw pieces. When only one party executed the deed, the paper was apparently cut *poll*, meaning straight. So a deed poll was a unilateral deed.
Doom	An Anglo-Saxon word that could denote a judicial or legislative decree or a reckoning or accounting.
Magna Carta	The Great Charter, 15 June 1215, early source of English constitutional law.
Seal	A distinctive emblem that signified a person's assent to the contents of a document. Historically, the seal was usually made by dripping wax onto a ribbon laid on the document and then stamping an impression onto the wax. The device that made the impression was also called a seal, as was the person who had custody of the device. Hence, the Great Seal and the Privy Seal are seals in the second sense and the Lord Keeper of the Great Seal and the Lord Privy Seal are seals in the third sense. Not to be confused with pinnipeds.
Specialty	Writing that was sealed and thus enforceable by writ of covenant. When sued on in assumpsit, the writing could be construed as a promise and (for those who insist on contract as the explanation for everything) the seal sufficient consideration to enforce the promise.

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