

## Chapter 5

# Early Statutes Shaping the Common Law

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### **Introduction**

This chapter considers some of the early statutes that have been of significance (and remain of significance) in shaping English and Australian law. Detailed consideration in this chapter begins with the legislation of Edward I in the late 13th century. The efflorescence of legislation at that time introduced many statutes of major structural significance to English law for centuries. The second focus of the chapter is the legislation (and legislative commentary) of the Tudor period. By this time, statutes bear roughly their modern form. There are statutes enacted at this time whose actual text remains significant today. This period also saw jurists carefully considering the nature of statutory interpretation for the first time in English. While the legitimate scope of judicial interpretation had yet to be fixed, one may see the beginnings of many modern principles of interpretation forming in these works.

On such a topic, a chapter of this length is necessarily highly selective; it cannot hope to be comprehensive. Its focus is on private law, and on statutes that either remain of immediate relevance to the Anglo-Australian legal system or illuminate current doctrines. In considering very old statutes, it is appealing to see in them the statutory step leading directly to important modern doctrines. While that sometimes occurs, more often the early statutes are at best a prelude – something not entrenched by the next generations, but which (with the benefit of hindsight) exemplifies doctrines or propositions that have become central to different parts of the law – or may reflect concepts that retreat for some time before being resurrected with renewed force.

It is of course possible to point to many statutes in the centuries after the Tudors that have been equally influential in shaping contemporary law – such as the *Bill of Rights 1689* and the *Act of Settlement 1700* in relation to the executive and legislative branches of government, the *Statute of Frauds 1677* in relation to contract law and the equitable doctrine of part performance, the *Statute of Limitations 1623* in relation to actions generally, or the *Statute of Monopolies 1624* in relation to patent law. One may readily trace these later statutes into modern Australian doctrines. The object of this chapter is to describe how earlier statutes

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