

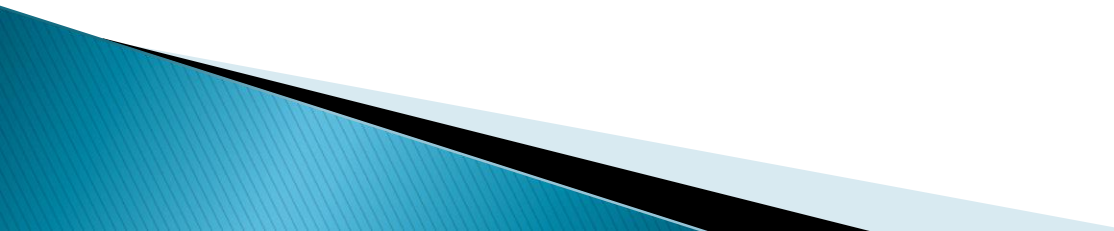
English for Lawyers 1

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The Historical Development of Law



What do you remember about these concepts?

- ▶ customary law
 - ▶ first codifications
 - ▶ Law of the Twelve Tables
 - ▶ classical Roman period
 - ▶ Corpus Juris Civilis
 - ▶ reception of Roman Law
 - ▶ first national codifications
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Brief history of law

- ▶ before the advent of writing – law derived from customs
 - ▶ source of law known as: CUSTOM or CUSTOMARY LAW
 - ▶ CODIFICATION: process of laying down the rules of law in a written form (a.k.a. a code)
 - ▶ modern codifications: legislation
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Brief history of law

- ▶ first known codifications:
 - the Code of Hammurabi
(ca. 1760 BC)
 - one of the earliest examples of codification made public for everyone to see
 - lays down prohibited conduct and punishment
 - e.g. punishment of death for bearing false witness or a builder whose house collapses killing the owner



Brief history of law

- ▶ first known codifications:
 - the Law of the Twelve Tables (ca. 450 BC)
 - early Roman law – customary
 - codification of some basic rules
 - some inspiration from Solon's laws from Ancient Greece



The Law of the Twelve Tables

- ▶ **Table I.**

1. If anyone summons a man before the magistrate, he must go. If the man summoned does not go, let the one summoning him call the bystanders to witness and then take him by force.

2. If he shirks or runs away, let the summoner lay hands on him.

- ▶ **Table II.**

2. He whose witness has failed to appear may summon him by loud calls before his house every third day.

- ▶ **Table IV.**

1. A dreadfully deformed child shall be quickly killed.

5. A child born after ten months since the father's death will not be admitted into a legal inheritance.

The Law of the Twelve Tables

- ▶ **Table VII.**

9. Should a tree on a neighbor's farm be bent crooked by the wind and lean over your farm, you may take legal action for removal of that tree.

- ▶ **Table VIII.**

2. If one has maimed a limb and does not compromise with the injured person, let there be retaliation. If one has broken a bone of a freeman with his hand or with a cudgel, let him pay a penalty of three hundred coins. If he has broken the bone of a slave, let him have one hundred and fifty coins. If one is guilty of insult, the penalty shall be twenty-five coins.

3. If one is slain while committing theft by night, he is rightly slain.

23. A person who had been found guilty of giving false witness shall be hurled down from the Tarpeian Rock.

26. No person shall hold meetings by night in the city.

The Law of the Twelve Tables

- ▶ **Table IX.**

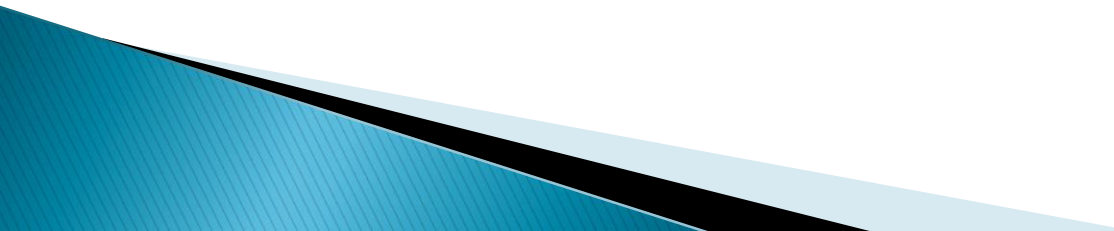
4. The penalty shall be capital for a judge or arbiter legally appointed who has been found guilty of receiving a bribe for giving a decision.

5. Treason: he who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment.

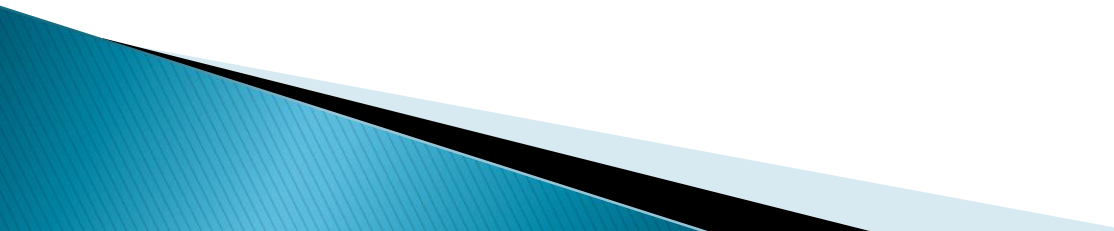
6. Putting to death of any man, whosoever he might be unconvicted is forbidden.

Brief history of law

- ▶ classical jurists (1st c. BC – 3rd c. AD)
 - ▶ sophistication of law
 - ▶ development of important legal concepts and principles
 - ▶ development of jurisprudence – the theory/science of law

 - ▶ fall of the Western Roman Empire – disruption in the development of Roman law
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Brief history of law


- ▶ Byzantine emperor Justinian
 - ▶ **Corpus Juris Civilis**
 - ▶ 529–534 AD
 - ▶ a systematic and comprehensive codification of laws
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Brief history of law

▶ Corpus Juris Civilis

- the Codex
 - a collection of imperial pronouncements of law from the 2nd c. onwards (*constitutiones*)
- the Digest (the Pandects)
 - a collection of juristic writings, excerpts of legal treatises and opinions
- the Institutes
 - a student textbook
- the Novellae
 - new laws enacted by Justinian, added later

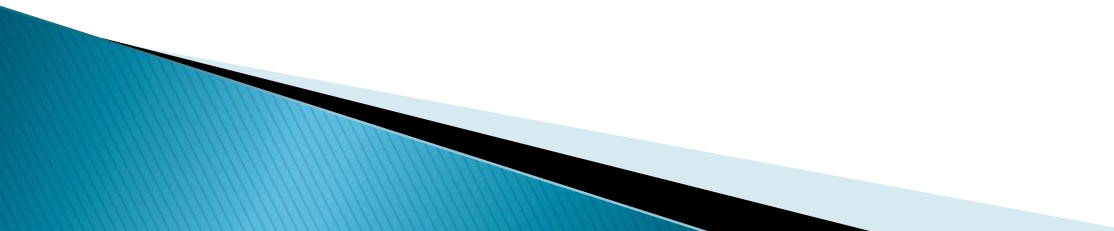
Brief history of law

- ▶ six centuries later – revived interest in Roman law
 - ▶ first universities (Bologna)
 - ▶ canon law and Justinian's civil law – basis for the **ius commune**, the **common law of continental Europe**
 - ▶ mutual influence and complementation
 - ▶ glossators and commentators (postglossators)
 - ▶ **reception of Roman law**
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Brief history of law

- ▶ end of 18th century – emergence of nation states
- ▶ national codifications
- ▶ Napoleonic Code 1804, a.k.a *Code Civile* (the French Civil Code)
- ▶ *Bürgerliches Gesetzbuch* (BGB) 1900

Brief history of law

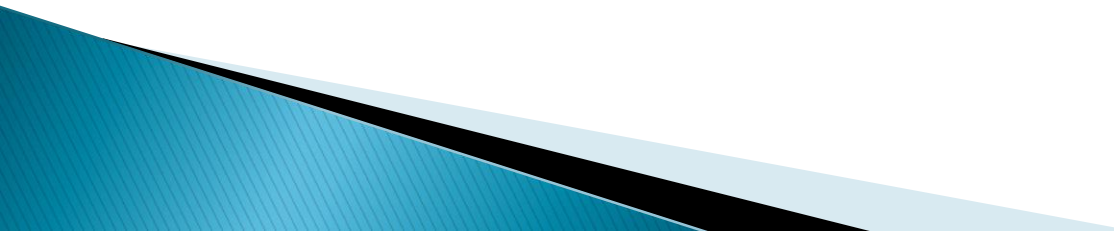
- ▶ law of England – common law (as opposed to customary law)
 - ▶ no reception of Roman law
 - ▶ developed in 12th century (Henry II)
 - ▶ a collection of court rulings
 - ▶ based on precedents, created by courts
 - ▶ supplemented by codified law (Acts of Parliament)
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English rulers

- ▶ Anglo-Saxon kings (5th – 11th c.)
- ▶ Norman kings (11th – 12th)
- ▶ House of Plantagenet (11th – 15th)
- ▶ House of Lancaster vs. House of York (War of the Roses)
- ▶ House of Tudor (1485–1603)
- ▶ House of Stuart (1603–1707)
- ▶ House of Hanover (1707–1901)
- ▶ House of Saxe-Coburg and Gota (1901 to date)

(renamed House of Windsor in 1917)

Examples of Historical English Legal Documents

- ▶ Magna Carta Libertatum (1215)
 - ▶ first legal document to limit the power of the British monarch
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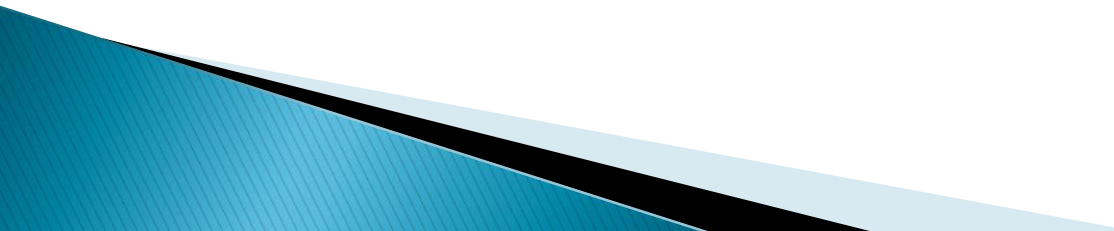
Examples of Historical English Legal Documents

- ▶ Elizabeth I (1558–1603)
 - daughter of Henry VIII
 - the last Tudor ruler
- ▶ James I (1567–1625)
 - first ruler of the House of Stuart
- ▶ Charles I (1625–1649)
 - quarrels with Parliament over his royal prerogative
 - married a Catholic
- ▶ Council of State, Oliver Cromwell, Lord Protector (1649–1660)
 - 11 years with no monarch on the throne

Examples of Historical English Legal Documents

- ▶ restoration of monarchy
- ▶ Charles II (1660–1685)
 - popular king
- ▶ James II (1685–1688)
 - pro-Catholic, unpopular, quarrel with Parliament
- ▶ 1688 Glorious Revolution
 - forced abdication of James II
 - enactment of the Bill of Rights (1689)
- ▶ William and Mary (1689–1702)
 - Mary II, daughter of James II
 - William III of Orange (the Netherlands)

Examples of Historical English Legal Documents

- ▶ the Bill of Rights (1689)
 - ▶ still today considered part of the British constitution
 - ▶ p. 29–30
 - ▶ read the excerpts and try to summarize their content in plain English
 - ▶ ex. VII
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Thank you for your attention!

