



Fall, 2023

MEDIEVAL STUDIES 117: CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND



Tentative Syllabus

Professor
Donahue

Ms. Shadrina

The syllabus is on two web pages. This page describes the course. The [second page](#) has daily assignments and a calendar.

[Requirements](#)

[Background](#)

[Meeting times](#)

[Readings](#)

[Prerequisites](#)

[Papers and Exams](#)

[Work load](#)

[Offices](#)

[The Course](#)

[Assignments \(the Syllabus Proper\)](#)

[Classes](#)

[Calendar](#)

Requirements

There are four requirements for credit in the course: (1) a short reaction (questions, comments, arguments) to one of more of the readings for each class posted on the Canvas Discussion Board by noon on the day of the class; (2) a *short* paper (no more than five double-spaced typed pages exclusive of notes); (3) an hour exam (Fri., 13 Oct.); (4) a final exam (“take-home”). (We will consider allowing students to write a term paper in lieu of taking the final exam. More about this under “[Papers.](#)”)

Meeting times.

This course is also listed as Law 2371. The FAS students will meet together with the law students for classes on Mondays and Wednesdays in the Law School from 4:30 to 6:00 (Room TBD). There is a separate section for the undergraduates (time and place to be arranged; it’s listed on the syllabus proper as if it were on Fridays). By and large, Ms. Shadrina will lead the section, but in some weeks Prof. Donahue may do so.

The Law School calendar is just a bit different from that of the FAS. Our first class will not be until Wed., 6 Sep., and the day after Columbus day (Tue., 10 Oct.) is an artificial Monday in the Law School calendar. If you can't make it to that class, Prof. Donahue will do a make-up.

Prerequisites. None. See below under "[Background](#)".

Work load

For a history course, the reading load is fairly light, but much of it is documentary material, and is thus relatively slow going. Give priority to the documentary materials. Not all classes have documentary assignments, but those which do will devote a considerable amount of time to the documents, and you'll be lost if haven't read them in advance. You should bring the multilithed documentary *Materials* (see below under "[Readings](#)") in either digital or paper form with you to every class.

The key to keeping up with this course is preparation for each class, particularly with the documents, and attendance at classes and sections. Much of our time in class will be spent discussing the documents. When I have previously given this course, I have noted that students who read the documents and attended classes did well, even if they hadn't done all the secondary reading. (In fact, a number have done quite well even if they did very little of the secondary reading.)

The Course

This is a survey course on the legal history of England from the time of the Anglo-Saxon invasions to the 18th century. We begin with a barely literate, largely pagan, people, whose laws and institutions are best studied with the techniques of anthropology and historical linguistics, and we end with a world power, whose laws and institutions, though different from our own, are recognizably the ancestors of those of Great Britain and the United States today. Our chronological span covers roughly 1100 years, from Aethelberht (r. ?584–616) to Queen Anne (r. 1702–1714), and we have 24 classes (Mon. and Wed. 4:30 to 6:00) and 11 section meetings (time and place TBA) in which to do it. (The undergraduates are not responsible for anything that happened after the death of Queen Elizabeth [1603], but we hope that you will be as fascinated as we are with the class and a half that take a glimpse at the next chapter in the story.)

Obviously we cannot cover in depth all aspects of English constitutional and legal history in this long period. One way to handle the problem would be to deal with a few topics in depth and ignore the rest. Such an approach is particularly tempting for historians like ourselves who believe that legal and constitutional history can only be properly understood in its social, economic and political context and who also believe that no one should study history after grade school without looking at primary source material. On the other hand, there is something about that great sweep of development from the early Middle Ages to the early modern period that we find irresistible. Some place in the university someone ought to try to "put it all together."

We have divided our 1100 years into four major periods: Anglo-Saxon, High Middle Ages, Later Middle Ages, Early Modern. In each period we will consider first the major historical developments, particularly the "constitutional" developments, in the period, then the legal institutions and, finally, one or more of the central themes of the substantive and procedural law in the period. Thus, the first part of the course is devoted to the emergence of the kingdom of England and of the concept of legal wrong in the Anglo-Saxon period. The second part is devoted to how institutions of royal governance interacted with the lords,

tenants, and the church to produce notions of private property in land in feudal England. The third part is devoted to how the notion of wrong split into what today we call contract and tort against a backdrop in which Parliament emerged as a major force in English governance. And the fourth part is devoted to how ideas of equity shaped property, contract and tort during the political, social and religious conflicts of the late medieval and early modern periods.

The focus on particular substantive topics in each period involves a judgment that these topics best illustrate our overall theme of how the relationship between “law,” on the one hand, and politics, society, and economics, on the other, changed over 1100 years. It also involves distortions. The first of these has to do with the topics themselves. Our story of how the ideas of tort and contract came to separate does not end until *Slade’s Case* in 1602, considerably after our “age of trespass” has formally come to an end. In order to see how equity shaped the law of property in the early modern period, we are going to have to go back and pick up a story that we will have left at the Statute Statute *De donis* in 1285. These discontinuities, however, are not as troubling as what we will have to omit: Criminal law is a topic that we will barely cover (basically, one class). The older views on this topic have been largely upset, but the modern research is too disparate and inchoate to summarize in a survey course. (My colleague Elizabeth Kamali is a specialist in this field, and when she offers the course, as she probably will next year, she spends more time on criminal law.) Nor will we deal with any other “public law” topic in depth. A diachronic study of any of the modern public law topics is fraught with difficulties, while a synchronic study of public law in any given period leaves us, at least in the present state of research, without much that we can carry over to the next period. We will, however, consider a number of public law topics in our surveys of constitutional developments.

Classes

All three groups in the course, the undergraduate and graduate students in the FAS, and the law students will be reading the same books and will have the same assignments in the multilithed materials. You will find, however, that the latter ask somewhat different questions of the same materials. If that fact leads you to want to sit next to a law student during the classes so that you can share insights, that's fine. One of the things that I hope comes out of this experiment is a notion that people on one side of Cambridge Street have something to say to those on the other.

For many years, I taught this course with a separate section for the FAS graduate students and the law students. We got together with the undergraduates for classic 55-minute lectures, but then the two groups went their separate ways. This year we are much more together. Organizing separate sections in two different faculties and a separate discussion class for the undergraduates was more than the administration seemed able to handle. Also, as suggested in the previous paragraph, the FAS students and the law students ask different questions, and their questions lead the other group to insights that they might not otherwise have had.

The end result is that we have ended up with two hour-and-a-half classes per week. There will be lots of discussion in the classes. If we learned anything from our Zoom experience, it is that there is nothing more boring than an hour-and-a-half lecture. Most of the classes are divided into halves by subject-matter. For example, the very first class deals the legacy

of the ancient world, both Roman law and Christianity, and we'll spend roughly half of the class on each topic. In order to have something to discuss in each class, you need to be prepared. (That will not come as a surprise to the law students; it may be a bit more unfamiliar for the FAS students.) You not only need to be prepared, you need to have formed some questions and/or thoughts about the material so that we can have an intelligent discussion.

How to prepare? There is a section in this website called Lectures. For each class there is an outline of what we might discuss in class and a link to the section of the *Materials* that has the documents, and, in some cases, secondary readings. Some students prefer to look at the secondary materials first. I can't stop you from doing that, but I would urge you at least to try doing it the other way. Look at the documents first and see if you can make up your mind about what is going on. Then record your thoughts and/or questions on the discussion board in Canvas. All students in the course are required to post at least two comments/questions on the discussion board every week. (Until the drop-add period is over, the discussion boards will be on two separate Canvas sites. After that, we'll combine the sites.)

Last year I prerecorded a number of lectures for this course. That is another way to prepare for class. Listen to the precoded lectures, read the documents on which the lectures were based, and post questions/comments on the Discussion Board on Canvas. The Lecures tab on the website has links to the Zoom lectures.

Background

Probably everyone in this course has some pieces of the necessary background knowledge – Chaucer, for example, is a marvelous introduction to much of what we will be doing, as is, in a somewhat different way, Shakespeare – and no one, including ourselves, has all the necessary background knowledge. We will assume that you have never taken a course in English history and that you know no Latin and no French. We will explain what you need to know of these topics in class. If you have taken a medieval and/or early modern English *legal* history course someplace else or if you have had an English constitutional history course that devoted some time to legal development in the same periods, you probably should not take this course. There is a graduate reading course that next year will focus on England (History 2080). The same course will be given this spring, but the focus will be on Continental Europe.

Readings

Posted on the Canvas site for the course in the Files section is a complete copy in PDF of the 'course-pack' (called 'Mat23elh.pdf'):

C. Donahue, *Materials on English Constitutional and Legal History (Materials)*

The *Materials* contain all the documents that we will be discussing in class, and they also contain some secondary readings that we will be discussing in class. They do not, however, contain any attempt to give an overview of the themes of the course. For this, you should probably read a couple of good books, a couple, because there is no really good book that covers all that this course covers.

The assigned text is:

J. H. Baker, *An Introduction to English Legal History*, 5th ed. (Oxford, 2019) (*Baker*) (a book that is also required for the law and graduate students). The book is available online through [HOLLIS](#), and may be purchased at the Coop; the 4th ed. of 2002 is equally good.

For the rest, the assignments contain some additional suggestions for secondary reading, and some advice about each of them follows. As we said before, however, the gist of course is in the documents not in the secondary readings. Ideally one would read the extracts from *Baker* indicated in the assignments, and one relatively short additional book for each of the four sections of the course. There are substitutes if you get into time trouble. You should do *some* secondary reading, but what you read is up to you.

Baker is an English legal historian whose specialty is the 16th century. His book is designed for English law students (who, like you, are undergraduates). He treats the history of law almost entirely independently of constitutional developments. It's a good book for its purpose, but it contains a great deal about developments after our period. When you read Baker, therefore, you should be particularly careful about dates. We have required Baker this year because previous students in the course found its discussions of legal doctrine helpful. Baker is arranged in an entirely different way from the way in which the course is organized, but we have included references in the syllabus at the relevant places.

The syllabus proper gives page references as possible secondary reading to: *Brown* = A .L. Brown, *The Governance of Late Medieval England* (Stanford: Stanford U. Press, 1989); *Jolliffe* = J. E. A. Jolliffe, *The Constitutional History of Medieval England*, 4th ed. (New York: W.W. Norton, 1961); *Loyn* = H.R. Loyn, *Governance of Anglo-Saxon England* (Stanford: Stanford U. Press, 1984); *Lyon* = Bryce Lyon, *A Constitutional and Legal History of Medieval England*, 2d ed. (New York: W.W. Norton, 1980); and *Warren* = W. L. Warren, *The Governance of Norman and Angevin England* (Stanford: Stanford U. Press, 1987).

Each of these books has its strengths and weaknesses. *Lyon* is a solid, if uninspiring, introduction to the constitutional and legal history of medieval England, a text-book with all the deficiencies of the genre. It probably covers the area that we are going to cover in this course better than any other single book, and it is particularly recommended if you find the "straight history" parts of the course going too fast for comfort. There are a few extracts from *Lyon* in the *Materials* to help us through the narrative history of our periods.

Brown and Warren were both first-rate historians. They are writing, however, for English audiences, and they assume a familiarity with the basic narrative history of the periods with which we are dealing. (*Loyn*, the first volume in the Brown-Warren series, is particularly recommended for those who are interested in the early period.) You will discover that Brown and Warren's idea of *governance* is not quite the same as the idea of *constitution* that we will try to develop in the course, and they treat legal developments only in passing.

Jolliffe was not written as a text-book, and he assumes a basic knowledge of the material given in *Brown* and *Warren*. *Jolliffe* is not free from error, and the book is woefully unbalanced. His treatment of legal development, social and economic development, and

the role of the church is quite inadequate. Yet, in some ways, the book is a flawed masterpiece. The organizing theme, the relationship between the exercise of governmental power and the community, is certainly one of the most, if not the most, critical in the development of the medieval English constitution. The book is, as Helen Cam said in her highly critical review of the first edition (EHR 54 [1939] 489), “brilliant, suggestive, provocative and provoking.”

In previous renditions of this course we have used Carl Stephenson and F.G. Marcham, eds., *Sources of English Constitutional History*, vol. 1, rev. ed. (New York: Harper & Row, 1971). That book is now out of print. Many of the documentary assignments in the *Materials* are drawn from it, and a list of documents from the book that are in the *Materials* can be found in the beginning pages of the *Materials*.

Papers and exams

We are asking you to write a five-page paper, exclusive of footnotes, that analyzes some document in the *Materials* or one that you find on your own. It may be a case or a statute or a piece of medieval or early modern writing about the law. The paper should *analyze* the document leading to *idea* supported by *evidence* (the document that you analyzed). We will suggest paper topics to you on the basis of your comments on the Discussion board. If you have not already chosen a paper topic by Wed., 22 Nov., you must do so by that date. The first draft of the short paper is due no later than Wed., 29 Nov. (most of you, we hope, will do it much earlier than that). We will return the draft with comments. You should turn in the final draft before the end of exam period (Fri., 15 Dec.). A fuller description of the paper requirement and some suggested topics will be available from Ms. Shadrina at the first section meeting.

If you wish to write a term paper in lieu of the final exam, you must take the hour exam and get our approval of your term paper topic. The term paper should cover material in at least two of our four periods. The term papers, as a general matter, contain an analysis of two documents from two different periods with an attempt to tie it all together. It may trace the history of a particular idea or institution from one period to another or it may compare ideas and institutions in two different periods. In order to get our approval of a term-paper topic, you will need to have completed your short paper and to turn in a one-page statement or outline of what you plan to write about by Wed., 22 Nov. Students in the past who have taken the paper option thought that it was fun but that it involved more work than taking an exam.

Offices

Prof. Donahue’s office is in Hauser 512 in the Law School. His assistant is Ms. Chaudhry-Muffuletto . Her email is smuffuletto@law.harvard.edu. Prof. Donahue’s office hours are from 1:30–3:30 on Tuesdays, or by appointment. At least to start off with, he’ll be conducting his office hours via Zoom. Email him (rspang@law.harvard.edu), and he’ll send you a link. A sign-up sheet for Ms. Shadrina’s will be announced later. Her email is shadrina@g.harvard.edu .

To see the syllabus proper, [click here](#).

To see the calendar, [click here](#).

MEDIEVAL STUDIES 117: CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND



Syllabus Proper

Professor
Donahue

Ms. Shadrina

[Syllabus](#)
[Week 1](#)
[Week 2](#)
[Week 3](#)
[Week 4](#)

[Week 5](#)
[Week 6](#)
[Week 7](#)
[Week 8](#)
[Week 9](#)

[Week 10](#)
[Week 11](#)
[Week 12](#)
[Week 13](#)
[Calendar](#)

SYLLABUS

The links on the dates on the left allow to you to flip between the assignments and the calendar. The links on the *Materials* bring you to a pdf version of the assignment, which, depending on your browser, will either show on the screen or download. The [introduction](#) to this syllabus explains what the readings are and suggests what is, and is not, important.

What follows is arranged by topics and assignment numbers as well as by date. Each assignment will take roughly one class period. The calendar that follows the syllabus gives my current estimate of when we will deal with each assignment. *Baker5* = J. H. Baker, *An Introduction to English Legal History*, 5th ed. (Oxford: Oxford University Press, 2019); *Baker4* = J. H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Butterworth, 2002); *Brown* = A. L. Brown, *The Governance of Late Medieval England* (Stanford: Stanford U. Press, 1989); *Jolliffe* = J. E. A. Jolliffe, *The Constitutional History of Medieval England*, 4th ed. (New York: W.W. Norton, 1961); *Loyn* = H. R. Loyn, *Governance of Anglo-Saxon England* (Stanford: Stanford U. Press, 1984); *Lyon* = Bryce Lyon, *A Constitutional and Legal History of Medieval England*, 2d ed. (New York: W.W. Norton, 1980); *Materials* = C. Donahue, ed., *Materials on English Constitutional and Legal History* (available on Canvas); S&M = Carl Stephenson & F.G. Marcham, eds., *Sources of English Constitutional History*, vol. 1, rev. ed. (New York: Harper & Row, 1971) (all the cited S&M documents are in the *Materials*; there's a table at the beginning that shows you where to find them); *Warren* = W. L. Warren, *The Governance of Norman and Angevin England* (Stanford: Stanford U. Press, 1987).

Topic I. *General Readings: Baker5*, pp. 3–14, or *Baker4*, pp. 1–10, 27–34, 212–19. *Jolliffe* pp. 1–138; or *Lyon* pp. 3–103; or *Warren* pp. 1–22; or *Loyn* (the whole book) (this last only recommended for those who are already familiar with Anglo-Saxon England).

Assignment

- [Wed., 6 Sep.](#) 1. Introduction; the legacy of the ancient world (Roman law); the “reception” question — [Materials §§ 1A, 1C–1D](#) (CD bk. rev., outlines, Justinian extracts). The legacy of the ancient world (Christianity) — [Materials § 1B](#).
- [Mon., 11 Sep.](#) 2. Constitutional history of England from the invasions to Edgar — [Materials §§ 2A–2C](#) (Anglo-Saxon documents [§ 2A] and narrative [§ 2B, § 2C, p. II–9 to II–19].) Kings, lords, and families in Anglo-Saxon England; Aethelberht’s Code — [Materials §§ 2D–2F](#) (Aethelberht’s code [§ 2D], Simpson article [§ 2E], notes [§ 2F]).
- [Wed., 13 Sep.](#) 3. Constitutional history of England from Edgar to the conquest; Aethelberht’s ‘Code’ — [Materials §§ 2C–2F](#) (narrative § 2C, p. II–19 to II–22, Aethelberht’s ‘Code’, Simpson article, notes on A-S dooms).
- [Fri., 15 Sep.](#) 4. Kings, lords and families in Anglo-Saxon England; Aethelberht’s Code — [Materials §§ 2D–2F](#) (Aethelberht’s code, Simpson article, notes) (Section).

Topic II. *General Readings: Baker5*, pp. 15–43, 44–46, 60–67, 71–77, 78–81, 135–136, 185–187, 241–266, 279–298, 451–452, 499–504, 540–561, 562–578, 580–598 (sample documents; translations follow the Latin; pay particular attention to A.i, B.i, B.ii, C.i, and C.ii), or *Baker4*, pp. 12–34, 37–39, 53–76, 175–78, 223–47, 259–74, 479–97, 538–61 (sample documents) (pay particular attention to *Baker4*, pp. 538–41 (A.i, B.i and B.ii) and pp. 542–5 (C.i and C.ii.)). *Warren*, pp. 24–229 and *Brown*, pp. 100–237; or *Jolliffe*, pp. 139–362; or *Lyon*, pp. 109–115, 127–99, 217–27, 244–99, 310–36, 351–407, 408–68, 496–561, 586–612.

Assignment

- [Mon., 18 Sep.](#) 5. The conquest of England and the feudalism debate — [Materials §§ 3A–3B, 3D–3E](#) (narrative [§ 3B], White bk. rev. [§ 3D], Domesday Book extracts [§ 3E, p. III–38 to III–43]). (Try to get a sense for what the debate is all about and how one might use a document like Domesday Book to come to some conclusions about the debate.) Norman and Angevin institutions: the Exchequer and the courts — [Materials § 3C, 3E](#) (narrative [§ 3C], Pipe Roll of 31 Henry I [§ 3E, p. III-43 to III-48]).
- [Wed., 20 Sep.](#) 6. *Regnum and sacerdotium*: learned law and politics, 1066–1215 — [Materials §§ 3F–3G](#) (outlines and documents [§ 3F], narrative [§ 3G]). The assizes of Henry II as seen at his death: *Glanvill* — [Materials § 4A–4B](#). (I am

asking you to read *Glanvill* [§ 4B] before you listen to me sound off about it. The question is what do *you* make of it?)

- [Fri., 22 Sep.](#) 7. Norman and Angevin institutions: the Exchequer and the courts — [Materials § 3E](#) (Domesday Book, Pipe Roll of 31 Henry I) (Section).
- [Mon., 25 Sep.](#) 8. The assizes of Henry II as seen at his death: *Glanvill* — Review [Materials § 4A–4B](#) (Assizes of Northampton and Clarendon, *Glanvill* extracts). The Polstead saga — [Materials § 4C](#).
- [Wed., 27 Sep.](#) 9. The Polstead saga (cont'd). The assizes of Henry II as seen by the barons: *Magna Carta* — [Materials § 5A](#) (*Magna Carta* and the Treaty of Winchester).
- [Fri., 29 Sep.](#) 10. The Polstead saga and Magna Carta — Review [Materials § 4C](#) (the Polstead saga). Review [Materials § 5A](#) (*Magna Carta*) (Section).
- [Mon., 2 Oct.](#) 11. The assizes of Henry II revisited — [Materials § 4D](#) (Palmer book review). Property and the family — [Materials § 5B](#) (statutes *De donis* and *Quia emptores*).
- [Wed., 4 Oct.](#) 12. The king and the barons — [Materials § 5C](#) (documents, p. V–15 to V–26), [§ 5D](#) (narrative). Parliament — [Materials § 5E](#) (narrative); [Materials § 5C](#) (p. V–26 to V–40, esp., S&M No. 49F [p. V–34 to V–36]; A Record of Parliament [p. V–39 to V–40]).
- [Fri., 6 Oct.](#) 13. Property and the family — [Materials § 5B](#) (Statutes *De Donis* and *Quia Emptores*) (Section).
- [Tue., 10 Oct.](#) 14. The criminal law, an overview — [Materials § 9F](#) (Hay-Langbein debate); *Baker5*, pp. 540–561, 562–578, or *Baker4*, pp. 570–608. (The HLS calendar this year gives us an artificial Monday that is not observed as such in the FAS calendar. We'll use the class to do an overview of a topic that we will not cover elsewhere in any depth. It introduces the entire chronological range of the course, and beyond, and offers some thoughts about how to deal with debates in historical writing.)
- [Wed., 11 Oct.](#) 15. Court structure and social structure c.1300 — [Materials § 5H](#), [§ 7D](#) (don't ignore the ecclesiastical courts even though they are represented by only one late document at the end of § 7D). The theory of kingship and the English and French constitutions c.1300 — [Materials § 5F](#), [§ 5G](#) (Bracton on kingship [§ 5F, probably the hardest document in the *Materials*]; French outline [§ 5G, Beaumanoir and Pierre de Mornay]).
- [Fri., 13 Oct.](#) 16. Review (Section). Hour exam (taken after the Section.)

[Return to index](#)

Topic III. *General Readings: Baker5*, pp. 67–71, 77, 81–89, 165–171, 187–192, *The Age of Trespass* 206–209, 216–226, 338–349 350–368, 403–426, 427–430, 432–436, 452–464, or *Baker4*, pp. 76–81, 155–62, 165–7, 178–82, 186–8, 204–12, 317–50, 365–77, 379–90, 394–97, 401–9. *Brown*, pp. 1–99, review pp. 100–55; or *Jolliffe*, pp. 362–95; or *Lyon*, pp. 475–82, review pp. 496–561, 586–612.

Assignment

- [Mon., 16 Oct.](#) 17. Introduction to the 14th century; household, council, parliament — *Materials* §§ 6A–6B (Articles against Gaveston; S&M Nos. 57–8, 60–2, 63A–63E, 64; narrative). Late medieval constitution — *Materials* §§ 6C–6E (chronology, documents [S&M nos. 66B–F, 67–70, 73–76, 79A–B] and narrative)..
- [Wed., 18 Oct.](#) 18. King making and unmaking — *Materials* § 6G (documents concerning the depositions of Edward II, Richard II, and Edward V); review *Materials* § 6A (Articles against Gaveston). Order, social structure and the law, 1348–1500 — *Materials* § 6F (Statute of Labourers; wage rates; S&M Nos. 62D, 64C, Statute 1 Henry IV; Statute, 8 Edward IV; Sumptuary Statute; S&M Nos. 73F, 74I, 81C).
- [Fri., 20 Oct.](#) 19. 14th century governance (overview) — Review *Materials* § 6. (This is a hard one. There are a lot of different topics in § 6 and trying to come up with some kind of generalization that does justice to all of them is not easy.) (Section.)
- [Mon., 23 Oct.](#) 20. Order, social structure and the law (cont'd). Pleading and the legal profession — *Materials* § 7A (a Y.B. case). (I hope to be able to arrange at meeting in the Root Room of the Harvard Law School Library where we can see what medieval lawyers used to do there work. If that's not possible, we have quite a bit of it online.)
- [Wed., 25 Oct.](#) 21. The problem of proof and the "old" personal actions: Debt, detinue, covenant and account — *Materials* § 7B (statutes, writs, and cases); *Baker5*, pp. 338–348, 386–390, 404–411, or *Baker4*, pp. 360–71, 409–13, 440–45. Personal actions in courts other than Common Bench — *Materials* § 7D (cases); *Baker5*, pp. 348–349, or *Baker4*, pp. 371–373.
- [Fri., 27 Oct.](#) 22. What did lawyers do in the 14th century? — Consider the elite lawyers and judges in *Materials* §§ 7A and 7B, but also the Fair Court of St. Ives, § 7D, where the only visible lawyer is the steward of the abbot who is playing the role of judge (Section).
- [Mon., 30 Oct.](#) 23. Origin and development of trespass (Edward I to Edward III) — *Materials* § 7C (trespass writ, *Brainton v. Pinn*, *Ferrers v. Dodford*, *Rattlesdene v. Grunston*, *The Humber Ferry Case*, *The Miller's Case*, *The Innkeeper's Case*, *Waldon*, *The Farrier's Case*, *The Surgeon's Case*, *Anon.*).
- [Wed., 1 Nov.](#) 24. *Assumpsit* — *Materials* §§ 7C, 7E (*Watton v. Brinth*, *Anon.*, *Watkin's Case*, *Somerton's Case*, *Anon.*, *Doige's Case*, *Dictum*, *Orwell*, *Pykering*, *Slade* [We will return to the last three at the end of the course.]). Personal actions revisited — Review *Materials* §§ 6A–6B, §§ 7C, 7E..
- [Fri., 3 Nov.](#) 25. Personal actions revisited — Review *Materials* §§ 6A–6B, §§ 7C, 7E (Section).

[Return to index](#)

Topic IV. *General Readings: Baker5*, pp. 46–59, 89–104, 105–125, 126–134, 137–144, 145–164, 171–184, 192–205, 209–216, 227–237, 267–278, 299–316, 317–337, 369–385, 386–402, 430–432, 436–450, 465–478, 479–498, 504–516, 517–539, or *Baker4*, pp. 97–124, 126–32, 162–65, 167–72, 248–57, 269–76, 280–96, 347–61, 409–21. One of the following: *Brown*, pp. 238–43, review pp. 1–99; or *Jolliffe*, 409–95; or *Lyon*, 567–74, review pp. 586–612, read pp. 613–49.

Assignment

- [Mon., 6 Nov.](#) 26. The Idea of Law c. 1500: Littleton, Fortescue, St. German — *Materials* §§ 8A, 9A (S&M no. 73, 74A, S&M 74B–N; Littleton, Fortescue, St. German extracts).
- [Wed., 8 Nov.](#) 27. Survey of constitutional history from the Reformation through the Restoration — *Materials* §§ 8A–8C (chronology, documents, narrative). The English Reformation — Review *Materials* § 8A (S&M nos. 74B–E, G, L–M; 81A–B, E–G).
- [Fri., 10 Nov.](#) 28. Littleton, Fortescue, St. German — Review *Materials* §§ 8A, 9A (S&M no. 73, 74A, S&M 74B–N; Littleton, Fortescue, St. German extracts) (Section).
- [Mon., 13 Nov.](#) 29. Ecclesiastical Jurisdiction, 1250–1600 — *Materials* § 9B (Donahue article; *Circumspecte Agatis*; *Articuli Cleri*; S&M Nos. 62E, G, 64F, 69B, 74B–C; *Dolling c. Smith*). The origins and development of equity; the search for a forum — *Materials* § 9C (S&M no. 71; petitions; cases; St. German).
- [Wed., 15 Nov.](#) 30. Uses and the Statute — *Materials* § 9A (St. German on uses), 9C, 9E (S&M no. 71C; S&M nos. 64E, 74H). Judges, lions and thrones; the reform movement — *Baker5*, pp. 46–59, 89–103, 145–164, 191–203, 212–216, 221–226, or *Baker4*, pp. 47–61, 97–110, 155–75, 208–14, 216–21, 223–33; *Materials* §§ 8D, 9D (Harding extracts); *Baker5*, pp. 226–235, or *Baker4*, pp. 243–52.
- [Fri., 17 Nov.](#) 31. Ecclesiastical Jurisdiction, 1250–1600 — Review *Materials* § 9B (*Dolling c. Smith*). Uses and the Statute — Review *Materials* § 9A (St. German on uses). (Section.)
- [Mon., 20 Nov.](#) 32. *The Duke of Norfolk’s Case* — *Materials* § 9E (the case); *Baker5*, pp. 299–315, or *Baker4*, pp. 318–335.
- [Mon., 27 Nov.](#) 33. *Slade’s Case* — Review *Materials* § 7E (*Orwell*, *Pickering*, *Holygrave*, *Slade’s Case*).
- [Mon., 4 Dec.](#) 34. General review (Section).

CALENDAR

The section has yet to be arranged, but the section meetings are listed here as if they were on Fridays.

Wed., 6 Sep.	= Assignment 1	Introduction; the legacy of the ancient world (Roman law and Christianity)
Mon., 11 Sep.	= Assignment 2	Anglo-Saxon constitution
Wed., 13 Sep.	= Assignment 3	Aethelberht's 'Code' and Anglo-Saxon law
Fri., 15 Sep.	= Assignment 4	Aethelberht (Section)
Mon., 18 Sep.	= Assignment 5	The conquest and feudalism. Norman and Angevin institutions.
Wed., 20 Sep.	= Assignment 6	<i>Regnum</i> and <i>sacerdotium</i> , 1066–1215. <i>Glanvill</i> .
Fri., 22 Sep.	= Assignment 7	Norman and Angevin institutions (Section)
Mon., 25 Sep.	= Assignment 8	<i>Glanvill</i> (cont'd). The Polstead saga.
Wed., 27 Sep.	= Assignment 9	The Polstead saga (cont'd). Magna carta.
Fri., 29 Sep.	= Assignment 10	The Polstead saga and Magna Carta (Section)
Mon., 2 Oct.	= Assignment 11	The assizes of Henry II revisited. Property and the family: the statutes <i>De donis</i> and <i>Quia emptores</i> .
Wed., 4 Oct.	= Assignment 12	The king and the barons. Parliament.
Fri., 6 Oct.	= Assignment 13	Property and the family: The statutes <i>De donis</i> and <i>Quia emptores</i> (Section)
Mon., 9 Oct.	= Columbus Day	No class
Tue., 10 Oct.	= Assignment 14	The criminal law (overview). (An artificial Monday in the HLS calendar; FAS students should attend if they can.)
Wed., 11 Oct.	= Assignment 15	Court structure and social structure c1300. The theory of kingship and the English and French constitutions c1300.
Fri., 13 Oct.	= Review	Review (Section). Hour exam (taken after the Section.) Times for both TBD.
Mon., 16 Oct.	= Assignment 16	The 14th century: household, council, parliament. Late medieval constitution.
Wed., 18 Oct.	= Assignment 17	King making and unmaking. Order, social structure, and the law, 1350–1600.
Fri., 20 Oct.	= Assignment 18	14th century governance (overview) (Section)
Mon., 23 Oct.	= Assignment 19	Order, social structure and the law (cont'd). Pleading and the legal profession.
Wed., 25 Oct.	= Assignment 20	The problem of proof and the "old" personal actions. Personal actions in courts other than Common Bench.
Fri., 27 Oct.	= Assignment 21	What did lawyers do in the 14th century? (Section)
Mon., 30 Oct.	= Assignment 22	Trespass
Wed., 1 Nov.	= Assignment 23	<i>Assumpsit</i> . Personal actions revisited.
Fri., 3 Nov.	= Assignment 24	Personal actions revisited. (Section)

Mon., 6 Nov.	= Assignment 25	Littleton, Fortescue, St. German: The idea of law c1500
Wed., 8 Nov.	= Assignment 26	Constitutional history Reformation through Restoration. The English Reformation. (Veterans' Day, but class will meet.)
Fri., 10 Nov.	= Assignment 27	Medieval legal theory (overview) (Section)
Mon., 13 Nov.	= Assignment 28	Ecclesiastical Jurisdiction, 1250–1600. Equity.
Wed., 15 Nov.	= Assignment 29	Uses and the Statute. Judges, lions, and thrones: the reform movement.
Fri., 17 Nov.	= Assignment 30	Ecclesiastical Jurisdiction and Uses (Section; last date to select short paper topic; statement of term papers due, if you choose that option)
Mon., 20 Nov.	= Assignment 31	<i>The Duke of Norfolk's Case</i>
Wed., 22 Nov.	—	Thanksgiving—no class
Mon., 27 Nov.	= Assignment 32	<i>Slade's Case</i>
Wed., 29 Nov.	= Final Lecture	Take-home exam available any time after this date..
Mon., 4 Dec.	= Review	(Section; last date for turning in short paper drafts)
Fri., 15 Dec.	= Due date	Final draft of short paper and take-home exam due.

[\[Home\]](#) [\[Syllabus Introduction\]](#) [\[Lectures\]](#)

This page last updated August 4, 2023. Contact [Rosemary Spang](#) with comments.

URL:

http://www.law.harvard.edu/faculty/cdonahue/courses/ELH/elhfaf/syllabus/syllU_Proper.php

Copyright © 2000–2023 Charles Donahue, Jr.. All rights reserved.