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Law

Made Simple

Eighth edition

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To G. T. P.

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Preface to the First Edition

This book covers the elements of English Law, the law which is the basis of all legal systems throughout the English-speaking world. Today one-third of all mankind is ruled by laws that originally came from England, however much they may have become adapted to the needs and conditions of different countries.

The text is primarily designed for students of further education preparing for the examinations in (1) the law content of relevant BEC courses and for (2) the General Certificate of Education at 'A' level of the Associated Examining Board. In addition the book covers the syllabuses in law at intermediate stage set by many examining authorities for professional students such as Secretaries, Accountants, Bankers, Hospital Administrators, Surveyors, Estate Agents, and similar persons either attending colleges of further education or working alone.

For the general reader the book provides an excellent background to English legal practices and institutions. It is especially valuable as a guide to the Law of Contract, Law of Property, and Law of Tort. Throughout the text constant reference is made to cases and statutes available in major reference works.

I should like to offer my sincere thanks to Geoffrey Whitehead and Leslie Basford, both of whom gave most valuable and generous help during the preparation of the text. I should also like to thank Rigby Hart, Clive Hamblin, Robert Coram, and Frieda Morley for most helpful criticism at various stages.

C.P.
1970

Preface to the Eighth Edition

In writing this new edition I have endeavoured to retain the character of previous editions, while ensuring that the book continues to meet the changing needs of its readers.

Since the last revision a number of important statutes have been passed and many cases reported. The aim of this edition has been to take these into account as far as possible. Also, several changes have been made to the text particularly with regard to legal aid, legal services, contract and tort.

D. L. A. Barker
1992

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INTRODUCTION

1. The Nature of Law

The term 'law' is used in many senses: we may speak of the laws of physics, mathematics, science, or the laws of football or health. When we speak of the law of a state we use the term 'law' in a special and strict sense, and in that sense law may be defined as *a rule of human conduct, imposed upon and enforced among, the members of a given state.*

Man is by nature a social animal desiring the companionship of his fellows, and in primitive times he tended to form tribes, groups, or societies, either for self-preservation or by reason of social instinct.

If a group or society is to continue, some form of social order is necessary. Rules or laws are, therefore, drawn up to ensure that members of the society may live and work together in an orderly and peaceable manner. The larger the community (or group or state), the more complex and numerous will be the rules.

If the rules or laws are broken, compulsion is used to enforce obedience. We may say, then, that two ideas underlie the concept of law: (a) **order**, in the sense of method or system; and (b) **compulsion**—i.e. the enforcement of obedience to the rules or laws laid down.

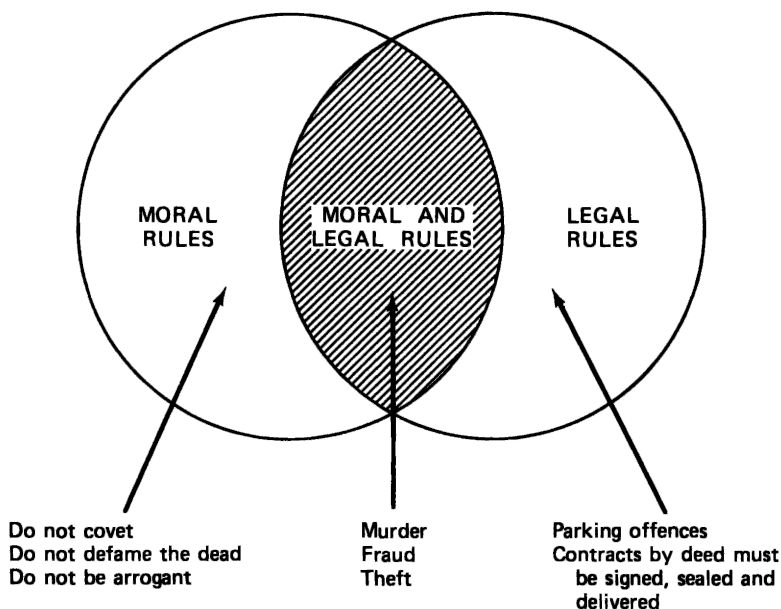
2. Custom, Morality and Law

When we examine the definition of law given above we notice certain important points.

(a) **Law is a body of rules.** When we speak of 'the law' we usually imply the whole of the law, however it may have been formed. As we shall see later, much of English law was formed out of the customs of the people. But a great part of the law has been created by statute. Common law and statutory law together comprise what we refer to as the 'Law of England'.

(b) **Law is for the guidance of human conduct.** Men resort to various kinds of rules to guide their lives. Thus moral rules and ethics remind us that it is immoral or wrong to covet, to tell lies, or to engage in drunkenness in private. If we transgress these moral or ethical precepts we may lose our friends or their respect. The law, however, is not concerned with these matters and leaves them to the individual's conscience or moral choice and the pressure of public opinion: no legal action results (unless a person tells lies under oath in a court, when he may be prosecuted under the Perjury Act, 1911).

(c) **Law is imposed.** We sometimes think of laws as being laid down by some authority such as a king, dictator, or group of people in whom special power is vested. In Britain we can point to statute law for examples of law laid down by a sovereign body, namely Parliament. The jurist John Austin (1790–1859) asserted that law was a command of a sovereign and that citizens were under a duty to obey that command. Other writers say that men and women in primitive societies formed rules themselves, i.e. that the rules or laws sprang from within the group itself. Only later were such rules laid down by a sovereign authority and imposed on the group or people subject to them.



(d) **Enforcement.** Clearly, unless a law is enforced it ceases to be a law and those persons subject to it will regard it as dead. The chief characteristic of law is that it is enforced, such enforcement being today carried out by the State. Thus if *A* steals a fountain-pen from *B*, *A* may be prosecuted before the court and may be punished. The court may then order the restitution of the pen to its rightful owner, *B*. The 'force' used is known as a *sanction* and it is this sanction which the State administers to secure obedience to its rules.

(e) **The State.** A State is a territorial division in which a community or people lives subject to a uniform system of law administered by a sovereign authority, e.g. a parliament.

The United Kingdom, which comprises a parliamentary union of

England, Wales, Scotland, and Northern Ireland, is for our purposes the State. Parliament at Westminster legislates for England, Scotland, and Wales, and also in respect of some matters (such as defence and coinage) for Northern Ireland. Scotland has its own legal system, different in many ways from that of England and Wales, and has been influenced by Roman and Continental law to a far greater extent.

(f) **Content of Law.** The law is a living thing and it changes through the course of history. Changes are brought about by various factors such as invasion, contact with other races, material prosperity, education, the advent of new machines or new ideas or new religions. Law responds to public opinion and changes accordingly. Formerly the judges themselves moulded and developed the law. Today an Act of Parliament may be passed to change it.

(g) **Justice and Law.** Men desire justice, personal, social, or economic. There is no universal agreement on the meaning of justice, and ideal or perfect justice is difficult to attain in this life. What man strives for is relative justice, not perfect justice; and good laws assist to that end. It is the business of citizens in a democracy to ensure that wise laws are passed and that they are fairly administered in the courts of law.

3. Classification of Law

Law may be classified in various ways. The four main divisions are as follows:

- (a) Criminal Law and Civil Law
- (b) Public Law and Private Law
- (c) Substantive Law and Procedural Law
- (d) Municipal Law and Public International Law

(a) **Criminal Law** is that part of the law which characterizes certain kinds of wrongdoings as offences *against* the State, not necessarily violating any private right, and punishable *by* the State. Crime is defined as *an act of disobedience of the law forbidden under pain of punishment*. The punishment for crime ranges from death or imprisonment to a money penalty (fine) or absolute discharge.

The police are the public servants whose duty is the prevention and detection of crime and the prosecution of offenders before the courts of law. Private citizens may legally enforce the criminal law by beginning proceedings themselves, but, except in minor cases of common assault, rarely do so in practice.

Civil Law is concerned with the rights and duties of individuals towards each other. It includes the following:

(i) *Law of Contract*, dealing with that branch of the law which determines whether a promise is legally enforceable and what are its legal consequences.

(ii) *Law of Tort*. A tort is defined as *a civil wrong for which the remedy is a common law action for unliquidated (i.e. unspecified or unascertained) damages and which is not exclusively the breach of a contract or breach of trust or other merely equitable obligation.* (Salmond: *Law of Torts*.) Examples of torts are: nuisance, negligence, defamation, and trespass.

(iii) *Law of Property* is that part of the law which determines the nature and extent of the rights which people may enjoy over land and other property—for example, rights of ‘ownership’ of land, or rights under a lease.

(iv) *Law of Succession* is that part of the law which determines the devolution of property on the death of the former owner.

(v) *Family Law* is that branch of the law which defines the rights, duties, and status of husband and wife, parent and child, and other members of a household.

The above are the major branches of civil law. Its main distinction from criminal law is that in civil law the legal action is begun by the private citizen to establish rights (in which the State is not primarily concerned) against another citizen or group of citizens, whereas criminal law is enforced on behalf of or in the name of the State. Civil law is sometimes referred to as **Private Law** as distinct from **Public Law**.

(b) **Public Law** comprises (i) Constitutional Law, (ii) Administrative Law, and (iii) Criminal Law.

(i) *Constitutional Law* has been defined as *the rules which regulate the structure of the principal organs of government and their relationship to each other, and determine their principal functions.* This subject includes: choice of monarch, his powers and prerogative; the constitution of the legislature; powers and privileges of Members of Parliament; the relationship between the separate chambers of Parliament; the status of Ministers; the civil service; the armed forces; the police; the relations between the central government and local authorities; the making of treaties; admission and rights of aliens; the courts of justice; liberties of speech, of meeting, of association; and voting rights.

(ii) *Administrative Law* is defined as *that body of legal principles which concerns the rights and duties arising from the impact upon the individual of the actual functioning of the executive instruments of government.* (C. K. Allen: *Law and Orders*.) For example, administrative law determines the legal rights of a private citizen whose house a local authority intends to acquire compulsorily.

(iii) *Criminal Law* has already been described, with its distinction from civil law.

(c) **Substantive Law** is the body of rules of law in the above branches. Thus, murder is a common law offence. Bigamy is a statutory offence,

contrary to section 57 of the Offences Against the Person Act, 1861. Negligence is a tort at common law.

Procedural Law lays down the rules governing the manner in which a right is enforced under civil law, or a crime prosecuted under the criminal law. Thus a legal action is started by taking out a writ in civil cases, by a summons or an arrest in criminal cases, and ends by the trial and judgment in the court itself, followed by the execution of the judgment. Procedural law governs the steps in the progress of the civil legal action or criminal prosecution.

The distinction between substantive law and procedural law is not always clear. It is an important rule of law that the prosecution may not (except in special circumstances) refer to the accused's bad character during the course of the trial, for this could clearly prejudice his case. (English law presumes that an accused person is innocent until proved guilty.) This rule may be regarded as either substantive or procedural, depending on the view taken of its nature. Some claims involving a conflict of laws are governed by the Civil Jurisdiction and Judgments Act, 1982.

(d) **Municipal or National Law** is the law operative within a State. One branch of that law is the law relating to conflict of laws, otherwise known as **Private International Law**, which determines which national law governs a case in which there is a foreign element.

Thus Jenkins, a British subject, makes a contract in Rome with Boussac, a Frenchman, for the supply of footballs to a team in Madrid. If Jenkins now takes action against Boussac in an English court of law for alleged breach of contract, the court will have to determine by the rules of private international law which law is to be applied: English, Italian, French, or Spanish.

(e) **Public International Law** is the body of rules of law which govern the relations of states *inter se*, particularly rules of war. Certain writers hold that there is no world authority with power to enforce the rules or laws and that, as public international law is incompatible with national sovereignty, the essential characteristics of law are absent.

4. Characteristics of English Law

The United Kingdom is a unitary State, not a federation of States. Nevertheless, it does not have a single system of law within that State. There are separate systems operating in (i) England and Wales, (ii) Northern Ireland, and (iii) Scotland. Due to the closeness of the association since the twelfth century between England and Wales on the one hand and Northern Ireland on the other, these countries have similar legal systems. There are, however, differences between the law of Scotland, influenced by Roman law, and that of the remainder of the United Kingdom, although since the Union with Scotland Act, 1707, these differences are now less marked on broad issues.

Two important links uniting the system are: (a) Parliament at Westminster is the supreme authority throughout the United Kingdom; (b) The House of Lords is the final court of appeal from the courts of (i) England and Wales, (ii) Northern Ireland, and (iii) Scotland.

English law is one of the great legal systems of the world, and one-third of all mankind is today ruled by laws that came originally from this small island. What, then, are the characteristics of English law which give it this pre-eminence? The most important are these:

(a) **Continuous Growth.** English law is traceable to Anglo-Saxon times. The common law, which forms the basis of English law, has endured for 900 years and has continuously adapted itself to changing social and economic needs.

Old rules of law remain law despite their age, unless expressly repealed. Thus in the case of *Ashford v. Thornton* (1818), an appeal against alleged murder, the appellor claimed and was granted the ancient Norman right of trial by battle. In point of fact the appellor's opponent refused to fight, and the right was abolished by statute in 1819.

The Treason Act, 1351, is still good law and may be invoked today despite its age.

Whereas Continental countries have been subject to continual invasions, revolutions, declarations of independence and the like, the geographical separation of England from the Continent, coupled with the Englishman's traditional respect for law, have tended to preserve the independent and uninterrupted growth of English law.

(b) **Absence of Codification.** A legal code is a systematic collection of laws so arranged as to avoid inconsistency and overlapping. Codification was a feature of Roman law and was adopted by certain Continental countries, notably France, Germany, Austria, and Switzerland. The English common law was formed from the customs of the people. Under the Norman kings these unwritten laws achieved a fairly uniform legal system. Certain parts only of English law have today been codified, e.g. the Bills of Exchange Act, 1882, and the Sale of Goods Act, 1979, though the Law Commission is working towards a codification of criminal law and contract (Law Commissions Act, 1965, see p. 43).

(c) **Judicial Character of the Law.** The early Norman judges were important figures appointed by the Crown whose justice they administered. The common law was largely 'judge-made' from the existing customary laws. It is from the records and reports of cases tried by the judges that we derive our knowledge of early case law. Judges formed or moulded the common law, and its growth and character can often be traced to outstanding men like Bracton, Coke, and Littleton. Although judges today may develop the common law within