# *Introduction to Comparative Legal Models of Criminal Justice 2nd edition Roberson Solutions Manual*

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# Chapter 2

## Common Law: The Courts

**CHAPTER OUTLINE**

Key Terms

Introduction

Henry II

The Magna Carta

Sir Edward Coke

Sir William Blackstone

Common Law in the United States

U.S. Court Systems Today

Federal System

U.S. Court of Appeals

U.S. District Courts

U.S. Magistrates

Participants in a Criminal Case

Trial Judge

Defendant

Prosecuting Attorney

Law in Action: The Case of Wen Ho Lee

State Attorney General

Defense Counsel

Te Right to Represent Oneself

Privileged Communication

Clerk of the Court



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Bailiff

Court Reporter

Court Commissioners

English Court System Today

Court of Queen's or King's Bench

Supreme Court of Judicature

Magistrates' Court

Crown Court

Royal Courts of Justice

Comparisons between the United States and the United Kingdom

Practice of Law

Canadian Legal System

Court Structure

Provincial and Territorial Superior Courts

Provincial and Territorial Courts

The Judiciary

Right to Fair Trial versus Freedom of the Press

Scottish Legal System

Australian Legal System

Legal System

Classification of Crimes

Summary

Questions in Review



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**TEACHING OUTLINE**

- The common law system was established from a case-to-case approach.
- At first, English common law developed as essentially feudal land law, and later in its formative years was shaped and defined by the French invaders.
- The Magna Carta, signed by King John in 1215, was the forerunner of many of the protections involving individual rights.
- Coke, one of the most eminent jurists in the history of common law, issued volumes of reports on common law principles.
- For centuries, Blackstone's Commentaries have been considered a source of the laws of England.
- When English settlers came to America in the 1600s, they brought with them the English common law.
- There are two court systems in the United States, federal and state.
- The term "dual federalism" is used to describe the concept of the federal and state systems.
- The justice system in the United States and England is considered an adversary system in that there are two sides and the judge acts as the umpire or referee.
- In the United States, many aspects of criminal procedure are controlled by the U.S. Constitution and the judicial interpretation of the Constitution.



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- The U.S. Constitution provides that a defendant has the right to the assistance of counsel.
- Communications between a U.S. defense attorney and his or her client are generally considered privileged communications.
- The English court system has a unitary judicial system in which all the courts fit into a single national hierarchy.
- The English Supreme Court of Judicature consists of the Court of Appeal and the High Court of Justice.
- In the United States, the systems rely on a due process model that emphasizes the rights of defendants, while the English system stresses crime control.
- English courts do not have the exclusionary rule.
- In Canada, responsibility for various parts of the criminal justice system is shared and divided among the federal, provincial, and municipal levels of government.

**TEST BANK**

**<u>True/False</u>**

1. A retained counsel in the U.S. courts is one that is appointed by the judge. [F]
2. Henry II was forced to sign the Magna Carta in 1215. [F]
3. Sir Edward Coke was famous for his *Commentaries on the Laws of England*. [F]
4. Blackstone still has a strong influence in U.S. Courts. [T]
5. The United States has a dual court system. [T]



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6. Most criminal cases in the United States are tried in federal courts. [F]

7. The English courts use the exclusionary rule to control police misconduct. [F]

8. The magistrates' court in the United Kingdom is concerned primarily with criminal jurisdiction. [T]

9. Canada is a federalist country. [T]

10. The courts in Canada are organized in a four-tiered structure. [T]

11. Scotland's legal model is different from the one in England. [T]

12. The Scottish system is considered more welfare oriented that the English system. [T]

**Multiple Choice**

1. The highest level of court in Canada is the

   a. provincial court.

   b. federal court.

   c. district court.

   d. supreme court. [d]

2. Author of the *Commentaries on the Laws of England*

   a. Jeremy Benton

   b. Henry II

   c. Sir Edward Coke

   d. William Blackstone [d]

3. Which one of the below courts is considered as one of the basic trial courts in the U.S. federal system?

   a. U.S. Magistrate's Court of the State of California

   b. U.S. Court of Appeals for the Ninth Circuit

   c. U.S. District Court for the Central District of California

   d. U.S. District Court for the City of New York [c]



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4. A defendant in a criminal trial in the United Kingdom is guaranteed certain rights by

   a. the English constitution.

   b. case law and statutes.

   c. the constitution and case law.

   d. the constitution, case law and statutes. [b]

5. Advocates before the English High Court is limited to

   a. barristers.

   b. solicitors.

   c. both barristers and solicitors.

   d. general counsel. [a]

**Short Essay**

1. What are the major differences between the United States and the United Kingdom court systems?

2. Who are the major participants in a court trial in a New York state criminal court?

3. How did the common law system develop?

4. Explain the importance of William Blackstone.

5. What role does U.S magistrates play in the federal judicial system?

6. Explain the differences between the Scottish system and the English system.



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# Chapter 2

## Common Law Model: The Courts

# Common Law Model

- Used in United States and United Kingdom
- Precedent as a basis for judgment
- Built on a case to case approach
- Adversarial system
- Developed from the feudal land law
- English settlers brought common law to the colonies.

# Birth of Common Law

- After Norman Conquest in 1066-England was two nations within one
  - Franci-French
  - Anglici-native English persons
  - Two nations were separated by a wide gulf
- For centuries the common law of England consisted of a system of remedies
- By 13th Century, selected decisions were published in Year Books

# Henry II [1139-1189]

- Duke of Normandy and later King
- Expanded the Anglo-French domains and strengthened the royal administration
- Developed new judicial forms and solidified common law.

# Magna Carta

- King John was forced to sign in 1215
- Became a permanent part of the law
- Provides guarantees against the arbitrary disregard of feudal rights
- Provided protection for all freemen
- Clause 39 required judgment by peers

# Sir Edward Coke [1552-1634]

- First solicitor general  and later chief justice
- Expert on Year Books
- Published a 11 volume work on common law
- Drafted Petition of Right
  - No imprisonment without cause
  - No quartering soldiers
  - No martial law in peace time
  - No taxes without consent of Parliament

# Sir William Blackstone (1723-1780)

- Published Commentaries on the Laws of England
- Still cited today in judicial decisions
- Most influential jurist in the history of common law

# Common Law in U.S.

- After revolution, enacted statutory law was what was formerly English common law.
- Dual federalism
- Majority criminal cases tried in state courts
- Common law crimes have been codified by penal codes

# U.S. Federal Court System

- Supreme Court
- Twelve U.S. Courts of Appeal
- U.S. District Courts
  - At least one in each state
  - General trial court for federal cases
  - Judges appointed by president and confirmed by senate
  - Life time appointment

  - Federal Magistrates

# Participants in Criminal Case

- Judge- primary duty is to preside over the court in a fair and impartial manner and instruct the jury on the law
- Prosecutor- primary duty is to promote justice, secondary duty is to prosecute
- Defense Counsel- spokesperson for defendant- assures defendant receives his or her rights
- Jury-finder of fact

# English Court System Today

- Unitary judicial system
- Court of Queen's or King's Bench-appeals from inferior courts
- Supreme Court of Judicature-comprehensive body, below House of Lords
- Magistrates' Court-inferior courts
- Crown Court-intermediary court
- Royal Courts of Justice-Law courts

# Comparisons between U.S. and U.K.

## UNITED STATES

- Constitution- law of the land
- Judicial review of legislation
- Generally stresses due process model
- Defendants rights based generally on constitutional rights
- Exclusionary rule

## UNITED KINGDOM

- No written constitution
- No right to judicial review of legislation
- Generally stresses crime control model
- Defendants rights based generally on case law and statutes
- No exclusionary rule