

<b>COURSE</b>	LAW 361 Historical Foundations of the Common Law
<b>UNIT VALUE</b>	1.5 Units (3 hours of instruction per week)
<b>INSTRUCTOR</b>	Mark Gillen
<b>TERM OFFERED</b>	Spring 2025
<b>CLASS TIMES</b>	See Schedule
<b>PREREQUISITES / COREQUISITES</b>	LAW 105/105I Contracts is a required prerequisite

### COURSE DESCRIPTION

As the title to the course suggests, the focus is on the historical foundations of the common law. The course *primarily* deals with the period in England from the Norman Conquest in 1066 to the end of the 14<sup>th</sup> century when, as Sir John Baker has said, the foundations of the common law were largely in place. After a brief note on historiography, the word “history”, and the expression “legal history”, the course takes note of some key features of the legal system in Anglo-Saxon England prior to the Norman Conquest to set the stage for what was different about the legal system that developed over the ensuing centuries. The course examines the foundations of the common law, in part, through the development of common law courts, courts of Equity (beyond the end of the 14<sup>th</sup> century) and the role of ecclesiastical courts. It also examines the foundations of the common law through the development of forms of action, juries, and pleading. The course then considers the reception of English law in Canada and its effect on Canada’s Indigenous peoples. Time permitting the course *may* cover other topics such as the development of judicial review and courts of appeal, the legal profession and legal literature or specific areas of law, such as contract law, real property law, negligence, and criminal law.

### OBJECTIVES

One general objective of the course is to develop a better understanding of the historical development of selected procedural and substantive aspects of the common law. This includes the development of courts such King’s Bench, Common Pleas, Exchequer, courts of Equity, and ecclesiastical courts. It also includes the development of forms of action, juries, pleading, and, time permitting, judicial review and courts of appeal. The general objective noted above is furthered by considering the reception of English law in the colonies, and, time permitting, other topics such as the legal profession, legal literature, and some substantive areas such as contract law, negligence, criminal law, or real property law.

Another general objective is to allow students to examine legal history topics of their own choosing. This is done through a term paper and a brief comment on a specific area not otherwise covered in the course.

### METHODOLOGY

The reading materials for the course are set out in the syllabus. The basic text will be J. H. Baker, *An Introduction to English Legal History*, 5<sup>th</sup> ed. (Oxford University Press, 2019), supplemented with other readings, such a set of *Notes on Historical Foundations of the Common Law*. There will be lectures and discussion. There may also be guest lectures on particular topics. Some classes at the end of the term will be devoted to student presentations of their papers.

### EXPECTED EVALUATION METHODOLOGY

The following elements will determine the mark in the course:

- 50% of the final mark will be based on a paper of a minimum 7,500 words (not counting footnotes, table of contents or bibliography—roughly 30 double-spaced pages) that can count as a major paper. The topic for the paper must be chosen by Friday, January 31, 2025;
- 10% of the final mark will be based on the in-class presentation of the paper mentioned in (i) above;
- 20% of the final mark will be based on a short in-class close-book test with one or more questions drawn from a set of questions provided in advance and designed to demonstrate knowledge of the material covered in class and in the readings for the specific topics covered in class by requiring use of the material in crafting responses to the questions provided in advance;
- 20% of the final mark will be based on a 1,000-word comment based on a chapter of your choosing in J.H. Baker, *An Introduction to English Legal History*, 5<sup>th</sup> ed. (Oxford, Oxford University Press, 2019) that has not been covered in the course.

<sup>1</sup> The information in this document is provided for course registration purposes only and is **subject to change**. More detailed course information about course content and evaluation will be provided upon the commencement of the course. Students seeking additional information about the course prior to its commencement may contact the instructor or, if no instructor is listed, the Law front office ([law.studentservices@uvic.ca](mailto:law.studentservices@uvic.ca))

**ACADEMIC INTEGRITY**

Attention is drawn to the University's *Policy on Academic Integrity* at:  
[https://www.uvic.ca/calendar/undergrad/index.php#/policy/Sk\\_0xsM\\_V](https://www.uvic.ca/calendar/undergrad/index.php#/policy/Sk_0xsM_V)

*June 5, 2024*