HISTORY 3851 – CAPITALISM AND THE LAW
P. Ryan
Kings University College

KEY LEGAL HISTORY TERMS

*****There is no attempt to be comprehensive here; this is merely a glossary of terms that are significant for reading J.H. Baker's *Introduction to English Legal History*.

Baker, Chapter 1 and 2

wager of law or compurgation from L. com (with) + purgare (cleanse) was a method for establishing facts. A defendant's oath would be taken as proof of fact if he could produce 12 other men swearing that they believed him. The compurgators were very much like the later "jury" of peers - a group of free men entrusted to investigate and pronounce the facts of a case.

trial by ordeal was a physical test for establishing facts in the absence of a wager of law. A defendant might be burned with hot iron or lowered into water bound, and if the burn healed well or if the water accepted the body the physical test was passed. With the 1215 Lateran Council, the Church moved against trial by ordeal because it made a puppet of God, but similar practices endured through the 17C - especially in witch trials.

trial by combat was another alternative to wager of law, where adversaries who could not resolve the dispute could appeal to single combat to the death. This was a form of judicial duel was favoured by the Normans aristocrats from the L11C, and maintain legal standing into the 16C-17C.

Sake & Soke was jurisdiction in Old English, and it was a power held by Manorial Houses to hold court and compel attendance in disputes. This produced variation in law at the village or later manorial levels, especially on matters of property. The local assemblies and manorial courts declined in independence after the Norman conquest (from 11C - 15C) as the common law arose.

Witan or Witenagemot was an Anglo-Saxon council to the King based upon the older Germanic practice of local assemblies or moots. It has more interested in security and taxation than smaller disputes and lacked the ability to establish a common law or civil code.

Common Law has two primary meanings in Baker. It firstly refers to the establishment of a 'common system' of law that arose in the 12-14C around royal authority in England, as opposed to local custom or manorial courts. More generally, the term refers to several features of legal practices in English-speaking countries, which first developed in England. These features include a jurisprudence (a set of principles) standing from previous cases which are applied as law to a new set of facts or to each case - as opposed to applying a comprehensive civil code or a set of constitutional articles to a case. As a result common law systems are sometimes viewed (but these claims are all questionable) as less prescriptive and more permissive; as emerging from tradition rather than reformers, as fostering stronger and more independent courts, which

exercise judicial review (in relation to the parliament or crown); and as advancing the freedom of contract over equity of social relations.

Civil Code refers to a system of written codes (used in Quebec and Louisiana for example) that can be applied by courts in areas of private law. The civil code plays the role that common-law traditions give to standing decisions in the case law of property, inheritance, contracts, torts etc.

Circuit or Traveling Courts were instituted in the 12C by Henry II. They were one of the ways that Royal Justice became more accessible during the middle ages.

Court of Assizes were 'periodic' courts with a royal commission to hear and determine mostly criminal cases at various locations. They existed until the 1971 in England when they were replaced by crown courts.

King's Bench or *Coram Rege* was created in the late 12C to follow the King has he progressed around the countryside to distribute his justice. It was made from his court (curia) and became a permanent institution at Westminster Hall with the Court of Common Pleas and the Court of the Exchequer in 1318.

***Nisi Prius* (if not before) system** refers to a feature of late medieval procedure. A trial court with a single judge and a jury investigated the issue to determine facts and render a verdict. This determination of fact (verdict) would be forwarded to a panel of three or four judges who would give a judgment (pronounce a sentence/punishment). This system did not allow for appeal after judgment, but it separated fact from law institutionally and allow for a delay of judgment until consensus on facts and law had been reached by more than one legal body.