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basics in  
90 minutes

# *Quicklook at* **Law**





### **About Quicklook at Law**

**E**NGLISH law has spread its influence around the world. This book explains why and how it works. We see how new law is made. Law underpins the operation of society and affects us all. It is changing very quickly.

Quicklook at Law achieves the near impossible task of compressing the subject into a read of about 90 minutes. It covers all the main areas. Crime, family law, employment, real estate, insurance and other topics are covered clearly. Even international law is dealt with.

The book explains where law comes from and how the courts operate. You are taken under the skin of a court case and given an insight into how the legal profession works.

The legal industry is a big business. What does the future hold? The book offers some ideas.

**Quicklook at**

# *Law*

Peter McGarrick



**Quicklook**  
books

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## **What is law for?**

**S**OMEONE alone on a desert island, cut off from the rest of the world, would need no law at all.

Introduce just one other person and the situation is transformed. If our two people are to co-exist, they will have to develop complex rules of behaviour. Most of the things we regard as crimes become possible. Many things covered by non criminal law, such as contract, or marriage, become possible. How are our people to decide what rules to follow? What happens if they disagree? What happens if a rule is broken? Our islanders are now grappling with issues of law.

It only takes two people to create the need for law. Consider modern society. The world has billions of people in it. They all have their own personalities, hopes, fears, beliefs, qualities and faults. Often they are crowded into quite small spaces. This certainly applies to England and Wales, the home of the law covered by this book. As we will see, this extends into almost all areas of life as it struggles to do the job of providing workable rules.

Without these rules, or laws, civilised life would become impossible. Society cannot be successful without effective laws. Democracy cannot exist without them. Law cannot be created or changed without a constitutional framework made for the purpose. It cannot be enforced without systems of detection, dispute resolution and enforcement.

## **Systems of law**

There are many of these. Usually they derive inspiration from a generally accepted moral code. Often this owes a lot to religion. Often it owes much to one or more political ideologies.

It is easy to spot common themes. Murder and other forms of unjustified attack on a person are illegal everywhere. Nearly all societies recognise the concept of ownership (even where this is largely confined to the state) and therefore theft. Everywhere there is a way of making and changing law. There must be enforcement systems and ways of dealing with disputes. These almost always involve courts. The law, or much of it, is usually written down.

Attempts to write down the law have often been made. Law in the Roman Empire was recorded in this way. This approach has been very influential and much copied. One famous example is the Code Napoleon. The vision of the French emperor was to make the laws of France so that they would all fit into a short book. Many other countries, particularly in Europe, have followed this method of setting out the law. They are sometimes referred to as the Civil Law countries – after the “Code Civil” as the Napoleonic code became.

Not all countries have followed the code approach. Law can be very ancient. After all, it remains in place unless the trouble is taken to remove it. This means that law can build up, over many centuries, often acquiring layers of complexity, or even contradictions, in the process. Sometimes there are gaps in the law (whether or not an effort has been made to write it all down).

Problems of interpretation have to be dealt with and this leads to the need for courts. Faced with uncertainty or a gap in the law, a court has to do its best to resolve the problem. One approach is for the judge to decide what seems to be the best outcome based on the facts and any law which seems at least partly relevant. The problem with this is that different courts, containing different judges, are likely to decide similar cases differently. Uncertainty in the law is undesirable.

In an effort to avoid this problem, the courts in England and Wales follow the principle of precedent. This means that if a case seems to follow in the footsteps of an earlier one, then the court will follow the earlier decision. Over time this created a great deal of court based law. By looking up reports of old cases, it became possible to predict the outcome of most disputes.

Law slowly accumulating over time, coupled with court precedent based

law, is often referred to as the Common Law. It is impossible to define when Common Law started. (Compare this with the release of a comprehensive Code). Common Law originated in England and Wales. It has been a huge export success story. It has been adopted around the world, partly in the wake of the British Empire and partly as a matter of deliberate choice by countries seeking a foundation for their own law.

Among the significant differences between the Common Law and Civil law are the ways in which disputes are approached by courts. The Common Law has an adversarial system. The parties play the lead role in presenting their evidence and arguments to the court. The judge, an experienced former lawyer, then decides the case based on what is put in front of him.

Civil law countries operate an inquisitorial system. The court sees its role as investigating the truth via enquiry. The function of the lawyers for the parties is subordinate to that. In criminal cases judges play a prominent role in directing police enquiries: something unheard of in the Common Law countries. Hearings are shorter. There is much less emphasis on reports of old cases and fewer lengthy law reports to consult. Judges follow a career path working for the state and rising up through the tiers of the court system. They rarely practice privately beforehand.

Law is becoming more international in scope. The institutions of the European Union, created by a series of treaties, now create much of the law applicable within member states, blurring but by no means eliminating differences between the Civil law and Common Law countries.

In many ways there is a process of gradual convergence. The laws governing modern France cannot possibly fit into one small book. Civil law countries pay some regard to earlier court decisions. Everywhere the challenges of modern society have generated complexity.



# *Where does law come from?*



**H**ISTORICALLY, the English monarch regarded himself as having unchallengeable law-making power. However, politics have always played a part in the law making process. The King was the most pre-eminent of a group of powerful aristocrats, many of whom exercised great authority over their own properties and the people who lived and worked on them. Usually, therefore, laws were made by the King as head of state after consultation with these powerful noblemen. (In the old days they always were men). The consultation process became formalised and those of sufficient rank (Lords and above, such as Dukes) all sat in the House of Lords, which is part of Parliament.

With the rise of the merchant classes, some of whom became very wealthy and influential, power spread further. Parliament accommodated them in the House of Commons. Members of this part of Parliament were not hereditary aristocrats and were selected via a form of public vote. For a long time the number of people eligible to vote was very limited. The right to do so depended on being able to show quite a high level of wealth based on property interests. It was also limited to men. Unsatisfactory though this system was, it contained the seeds of the much wider democracy that we have now.

Political tensions are nothing new and power struggles arose which, over time, progressively transferred power from the monarch to Parliament. Charles 1st was the last to claim a God given right to rule absolutely. After he was beheaded, successors have accepted that the monarch is “under God and the law” (and not just God). Since then it has been clearly established that law making power is shared between the King or Queen, as head of state, and both Houses of Parliament.

## *About the author*

**P**ETER MCGARRICK was a lawyer in Central London for more than 32 years. After graduating in Law from Southampton University, he qualified as a solicitor in 1972, when he joined Linklaters, then already one of the world's leading law firms. After that he worked as a solicitor for an inner London local authority (Lambeth) where he did a great deal of court advocacy.

Returning to private practice he specialised in commercial disputes as a partner with a number of West End and City firms. He was for a time head of a department of approximately 90 lawyers. For some years he was heavily involved in law firm management.

Qualified as a High Court advocate and commercial mediator, Peter had a varied caseload which would be hard to reproduce in an age of ever increasing specialisation. It embraced insurance, media and intellectual property matters, spells dealing mainly with employment and then matrimonial disputes and a number of very large cases where the sums in dispute involved many millions of pounds. Some of these involved a significant foreign element. He regularly worked with lawyers in other countries and often took part in conferences abroad attended by lawyers from all over the world.

Now living in Wiltshire, Peter is involved with publishing and still works as a mediator.

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## About the author

**Peter McGarrick** practised as a solicitor for over 30 years. He rose to partner level in the West End and later the City. He was involved in law firm management and qualified as a High Court advocate. He now works as a mediator.



**RRP £7.99**

