Action of Assumpsit – In one sense the term refers to a contractual obligation that is 'assumed' within the exchange. Actions of Assumpsit were invented in the 16C to allow parties to seek justice in cases were there no act of trespass – especially where the loss was incurred by deceit. They also could be pursued without a deed, so long as there was a of quid pro quo (or consideration) given for the promise. Baker tells us this was a rare action in the medieval period.

Action of Assumpsit in Lieu of Debt – Failure to pay debt does not fit well into a category like trespass, because it is neither an act, nor directly destructive. It is also the absence of 'consideration' – which is part of what forms an agreement. As a result of this (and other factors like the prohibition on interest – usury, the entailment of real property, and the rules of inheritance) made debt collection difficult in medieval and early modern law. The action of assumpsit in lieu of debt was invented when the Kings Bench began allowing plaintiffs (M16C) to separate the existence of the debt (debt on contract) from the deceit inherent in the failure to pay a debt that was assumed in its existence (assumpsit). The former action (writ of debt) could be defended against by wager or law (e.g. the debtor could purchase oath helpers). Assumpsit went to the jury.

The Kings Bench used assumpsit in lieu of debt to instruct juries to examine evidence of the existence of the debt as binding the debtor. The Court of Common Pleas demanded that this action required the jury to determine if a secondary promise was made and also that there be consideration on the promise to pay! These instructions would defeat the whole idea behind the action for the seller or creditors' perspective. This confusion was made even worse when the Exchequer (a court of equity) began reversing decisions by the King's Bench that enforce debts in the L16C. The conflict within common law courts and between law and equity on the issue of debt repayment was not resolved all at once, but the motivations behind action on assumpsit in lieu of debt won a critical victory in the E17C ruling in Slade's Case.

Annulment and Divorce - are terms that define the end of a marriage. Annulment was an ecclesiastical process for declaring that a marriage was never valid; divorce was a civil action to dissolve it. Until the early-modern period divorce was not possible; annulment could be granted by the Church in cases where the marriage was made under duress or one of the parties was mentally incompetent. It could be ranted for sexual impotence, prior marriage, consanguinity (blood relation), affinity (legal relation). Divorce emerged in law as an act of parliamentary assemblies, and much later began to be processed by the courts. From the 17C to the M19C divorce was very uncommon (outside of the U.S.). It was granted in cases where the promises of marriage contract had been broken: infidelity, failure to provide,

abandonment, and cruelty. In the L20C, these grounds were themselves dropped, and today divorce can be obtained as an act of naked will without establishing fault.

Annulment is indicative of a sacramental understanding of marriage as covenant or a feudal understanding of it as akin to the lord-vassal relationship. Divorce introduced a civil or contractual practice of marriage, and arose with women's political and economic rights to self-determination.

Appeal & Appellate Courts did not develop until the L18 and 19C, because prior to this period (under the nisi prius system) judgments were not given at trial (only verdicts on fact). Review of error was exercised infrequently by the Privy Council, by Chancery, and by the House of Lords. Appeal was not a statutory right in Canada and England until 1907, although in 1848 a court of "Crown Cases Reserved" was established to review a number of criminal cases each year. The practical transition toward a right of appeal was more dramatic and earlier in the US – following the American Revolution.

BREACH OF COVENANT AS TRESPASS OR ASSUMPSIT - was an enlargement of royal jurisdiction for a failure of an act that one takes upon themselves. It required no deed, and was consistent with trespass on the case.

> **Misfeasance –** refers to failure to fulfill an obligation that one has undertaken (poor performance to the point where the act fails). Here the breach is a failed act, rather than a broken promise.
>
> **Nonfeasance** – is the failure to perform an act required by an agreement or by statue or by policy.
>
> **Deceit –** A trespass on the case for deceit is based on a broken promise (warranty of quality) rather than intent (purposeful lying). Here the deceit requires a positive statement from the party; otherwise the rule of buyer beware applied (caveat emptor).

Canons of Descent are the rules that determine inheritance.

Caveat Emptor – refers to the common law doctrine whereby law courts reject a plea to judge whether an exchange was equitable or just, and place the burden on the plaintiff to show either deceit or misfeasance or nonfeasance by the defendant who had either signed a deed or taken a responsibility on through their actions (assumpsit).

Copyhold/Freehold – these refer to forms of tenure. A copyhold came out of tenure in villeinage (base services) and was initially tenure according to the custom of the manor.

Copyhold tenure was terminated upon the death of the tenant (or a specific date), but by custom restored to his heir in the lord's court - after the fee returned to the lord and the feudal incident was collected. The terms of copyholding were specified upon the manorial rolls, which held a copy or record of them. By contrast, a freehold tenure was not one without obligations, but one that vested the vassal and his heirs with perpetual rights to the holding. Perhaps the terms of free holding were better with fewer feudal incidents, but much depended on the quality of the land and its development. The services of freeholding had initially been of a military nature, and they were converted to rents which declined in value over time.

Chancery is an administrative records office that came to England with the Normans. It held the royal seal and rolls, and produced the royal writs, letters patent, and other charters and commissions. It was relocated from the royal household to Westminster with the Exchequer of Pleas, the Court of Common Pleas, and the King's Bench in the late 13C. The Court of Chancery became one of the superior courts during this period, and it served as venue for the law of equity to be used when there was no common-law remedy that could be pursued. It was part of a four-way medieval partition of the royal household/court (*curia regis*) that was reunited by the Judicature Act of 1873 and a Supreme Court of Judicature. Also see Baker Chapter 6.

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.

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.

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.

COMMON LAW PLEADING was a civil process including complaints, requests to the court for relief, and writs from the courts to the defendant that required a legal response (plea). The various parts of the pleading could only be set into motion if the situation could be made to fit into the

forms of action recognized by the common law; as a result, procedural considerations tended to take precedence over wider questions of equity. So too, the procedural specificity tended to encourage the creation of legal fictions that would allow justice to be pursue within the confines of the forms of action.

> **Traverse** was a type of plea that denied the facts as presented in the complaint and request for relief. If the traverse was 'general' all was denied; if it was 'special' then it the issue turned on one disputed fact. Traverse created an issue for the court to pursue the case.
>
> **Demurrer** was a type of plea that admitted the facts stated in the initiating complaint, but denied that they produced a legal issue requiring a trial.
>
> **Confession and Avoidance** was the type of plea that admitted the facts stated in the initiating complaint, but added facts that nullified their legal force. This plea removed the issue and required the plaintiff to respond for the case to proceed.

Common Recovery – was a process (and a legal fiction) created at the end of the Middle Ages (15C) that allowed estates entailed to be converted into estates in fee simple. Click here for excellent summary

Court of Requests was another conciliar court of equity sitting at White Hall in London that handled cases of equity for English commoners (the 'poor'). It too became a source of complaint by the L16C for encroachment upon common law (it provided a less costly alternative) processes for handling civil disputes. It was abolished during the English Revolution (1640s) and the small claims cases it heard were litigated at the local level.

Courts of Admiralty was another court that extended from the King's council. It filed the gap in common law processes created when it was impractical or impossible to convene a jury for events that occurred on the seas or outside of England. Admiralty applied the civil law tradition (as opposed to the common law), and its cases were decided by judges. They were a point of contention in British North America during the late 18C, because they could remove disputes from a local court of common pleas (and jury system) to a civil law court operated by royal appointees hundreds of miles away. In America, it became part of the federal courts, but it survived in England during the 19C (after 1875) as a division of the High Court, and was transferred to the Queen's Bench in 1975.

Common Pleas (*de banco* or Common Bench) was the superior common law court for hearing cases that did not involve the crown from the E13C to the L19C. In the early-modern period, it would take on about four times as many cases as the King's Bench and about 40 times as many cases as the Exchequer or Chancery. It was supposed to have lone jurisdiction over real property, but this was obviated by 'legal fictions' that allowed for pleadings to move to the

King's Bench, Chancery, and the Exchequer.

Conciliar Courts is a general term for courts that extended (like Chancery and the Exchequer) from the *Curia Regis* during the late medieval period, and applied the law of equity when the common law forms of action could not address a dispute. These courts became more active under the Tudors and lost legitimacy during the English Revolution (1641).

Conversion is a form of tort action for the intentional damage or theft of personal property. It is the civil recovery equivalent for burglary, robbery, fraud, and criminal infringement of use.

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.

Coverture – (*feme covert*) is a general term for the legal invisibility (or disability) of women. Until the 19C-20C, women lacked property rights, voting rights, and it was difficult for them to access legal redress. It would not be accurate (in my view) to say that a wife was the property of her husband, or that a daughter was merely a servant for their father, but these overstatements do capture the patriarchal character of legal culture prior to the struggles and victories of modern feminism.

***De Donis Conditionalibus* or Statute of Westminster (1285)** – a statute that established the law of entail, which prohibited the sale of landed estates away from the heirs. When combined with the practice of primogenitor, the inheritance of land and noble status by the eldest son, this law created the ideal form of property conveyance among lords in feudal England.

Detinue is a form of tort (a civil wrong that is recoverable at common law) action on personal property when a plaintiff argues they have a greater claim than the current possessor. Detinue is the wrongful withholding or detaining of goods.

Equity is the word used to name an area of law that deals with questions of civil justice that could not be made to fit into a form of action (writs and pleadings) recognizable in English common law. The Crown held a general authority to address these claims for relief and delegated this task to the office of the Chancery. The court of Chancery could act on conscience, rather than established procedure, statute, or past decisions – common lawyers typically considered this an arbitrary use of royal authority. Americans – in particular – were offended by it.

Ecclesiastical Courts are another forum using civil law processes and reasoning according to

Church canons (pronouncements from the Vatican). In England the jurisdiction boundary between royal and ecclesiastical courts was established in the 14C, giving church courts power over family, marriage, sexual, breach of promise, and defamation disputes. Additionally, church courts handled some disputes of church property or tithing, and had power of clerical discipline – but they were not the final word in criminal law. These courts were transferred to the Church of England during the reformation and retained their jurisdiction until the 19C.

Ejectment – is the process of evicting a tenant.

Exchequer of Pleas was a less expensive and more efficient court of equity than the Chancery Court which separated itself from the King's household in the late 12C. The highest official in the Exchequer was the Lord Treasurer, and so the initial function was to hear disputes about taxes and other debts owed to the crown. Because taxes were also involved in cases dealing with trusts, holdings, tithing to the Church, and land purchases, the Exchequer's remit in equity grew in the early-modern period.

Fee (*feodum*) is the Norman word that replaces *bocland* (book land) to name land granted by the lord in return for the loyalty of the vassal, and with this word also comes the destruction of *focland* and *allodial* ownership by the kin group (tribal groups).

When the Normans introduced the fee, they also displaced the whole Anglo-Saxon nobility (following the conquest of 1066). A Norman noble family in England became defined by a fee where possession of land (tenure) was secured from the King (or other lord) through military (knights) service or by non-military offices such as Grand Serjeanty. These are also called "free chivalrous" tenures. Nobles (and clerics) might have made up 5% of the population in the Middle Ages.

For clerics, the initial Norman terms of the fee involved performance of sacramental rituals, study, and keeping books. These forms of spiritual tenures could either require specific ritual performances for ancestors, or require more general ministry - *frankalmoin*.

Most people worked the land (95%). Peasant fees required servile (base) labour such as digging, plowing, cutting, harvesting, animal husbandry, or perhaps some lower forms craft production.

Free peasants held (typically larger) fees with explicit obligations for service. These were transformed into moneyed rents between the L12C to the L14C, and when this happens we call it *socage*. So, socage is a form of free holding (the others were the tenancy of knights and clerics) by rent, and it was achieved by perhaps 15% of English families working about 20% of

the land before the 14C.

Unfree tenants were called villeins, and the terms of their fees were in *copyhold* in the L11C – meaning they were defined by the custom of the manor, held at the will of their lord. Villeins could seek justice only at their lord's court, and so the lord also determined what "custom" meant – that is why it was 'unfree' tenure.

Between the L12C and the 14C, royal courts amended these manorial prerogatives for villeins (about 40% of the population working about 45% of the land) and gave a legal recourse to freemen, craftsmen, and merchants outside of manorial courts. However Baker says little about another 40% percent of English peasants were unfree borders or cottars who lacked sustainable tenures (or were completely landless bondsmen who lived on the *demense* – the domain – of a noble Lord or Abbott). These people were invisible in terms of property law.

Fee Tail/Fee Simple – a fee was tenured property held by a vassal of a lord. Fee simple had more than one form (it could include rents and conditions), but it refers to freehold which could be alienated by the tenant. A fee tail was inalienable, and upon the death of the tenant would pass by the rules of descent to his heirs. In other words, a fee tail was a form of property which limited the transferability of title by lineage, and nullified the significance of its measurable value or its market exchange.

Feudalism is the word we use to describe a social order based on vassalage and land tenure. It was established in England under the Anglo-Saxon Kings (prior to the 11C), and continued to develop when the Normans established manorialism (11C-15C). The transition from feudalism to capitalism is one of the most contested and ambiguous areas of historical debate, but we can say several things about it in England. The transformation 'happened' prior to industrialization of production, between the 13C and the 17C. The decline in feudalism was related to the establishment of a merchant class in towns that were under Royal protection, and the rise of the Atlantic world enriched by African slavery and new world colonies. The rise of capitalism was institutionally framed by changes in the law of real property, contracts, patents/monopoly, torts and negligence, trusts and corporations, and labour.

***Filius nullius* –** means son of no one. This biological impossibility signifies the patriarchal practices whereby a son had no legal claim to his father or his families inheritance and status if born out of wedlock.

Five Knights Case – is also called Darnell's Case – 1627 – took place when the crown could force subjects to purchase bonds (forced loans to the state). Thomas Darnell refused to do so, and

when he and others were imprisoned, they sought a writ of habeas corpus which was rejected by the King's counsel. The courts upheld the King's prerogative, but the following year 'the petition of right' was passed by Parliament to restrict non-parliamentary taxation by the King.

Focland/Bocland is an Anglo-Saxon (7C-11C) distinction between land whose possession cannot be removed from the folk or kin group because they own it *allodial*, and land that can be placed into a tenurial relationship and recorded as such in books (bocland). *Lænland* (loan land) referred to focland that could be booked for a period of time before returning to the kin group. The terms help us understand the coexistence of tribal (kinship) and tenurial (lord-vassal) forms of real property in England prior to the Normans.

Formularies are collections of model documents. They specified the key phrases or sentences necessary to properly create a form of action at law. The written legal forms were in Latin, and the spoken word at law was French. Middle English was the language of common speech. An ordinary person would have known neither Latin, nor French, and only trained attorneys and serjeants at law would have command of the proper forms to create a legal action. Glanville and Bracton provided forms and these became systematized in later centuries; the forms of action and system of writs loosened in the 18C and were replaced by more accessible and standardized (mass produced) forms in the 19C.

Inns of Court were complexes of buildings originating in the L14C and 15C to advance legal training and association. Located in west London City near the Royal courts at Westminster, they were composed of great halls, residences, libraries, chapels, and gardens for hundreds of lawyers (much like medieval colleges). They provided social networks, practical experiences, and resources for advanced study after formal education at a time when there was no 'law degree' or bar examination, system of 'articling' or clerkship or licensing as we have it. Our legal profession is a product of 19C innovations, and today the Inns of Court have become professional societies.

Incidents of Tenure are payments due to the lord by the tenant at key points of life's transitions. They include the lord's right to exact payment for his children's marriage, to alienate the fee by substitution, at the death of the tenant, or if the tenant's heir was a minor.

Issue was the goal of pleadings, because it allowed a question to be put in a legal form for a jury. In its most simple form, it could be the legal instruction to the jury that said: "If you find fact X to be true, then you must find in favour of the plaintiff B."

Judgment is a sentence pronounced or a penalty ordered by a court following a verdict.

Jurisprudence is the logic of the law, and also its study. As Baker points out on pages 79-81, jurisprudence is not something that can emerge with any sophistication under practices such as trial by ordeal or compurgation, but it is likely to advance as a body of thought with the rise of tentative pleading, juries, detailed court reporting, and the fact/law distinction.

Jury is a body that takes an oath to determine facts on a legal issue that has been submitted to them by a court. In Anglo-Saxon England, juries were responsible to gather and interpret information and testimony on the case on their own accord and bring it to the court. In the L12C the procedures were reformed to make sheriffs responsible for preparing cases and naming local jurors who could testify to an issue. In the late middle ages, juries replaced "wager of law" (compurgators fell into disuse by 1600) as a means of trial, and over time they were assembled not to testify as witnesses to the issue under trial, but to weigh the testimony and evidence presented at trial.

Jus Dicere is Latin for pronouncing the law. It is a power that resides most strongly in courts of law.

Jus Dare is Latin for making the law. It is a power that resides most strongly in parliaments or representative bodies.

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.

Law/Fact Distinction was produced in part by the 13-15C emergence of a division of labour between the sheriff who was responsible for delivering writs and collecting evidence, the jury who was responsible to interpret testimony and evidence, and the judge who was responsible for instructing juries regarding matters of process and the general legal implications of specific facts.

Legal Fiction are formulaic phrases used in the pleading documents that would give a court the jurisdiction to handle a case. They are related to and distinct from *legal presumptions* or *legal principles* which are abstract concepts that allow courts to reason their ways through specific cases, such as *due care* or *trust*. For example, a *Writ of quominus* was an original writ that used the fiction of debt to the King, so the case could be heard by the Exchequer. Another fiction was to state that the dispute was part of Middlesex county to establish royal jurisdiction.

Ac etiam (L. "and also") was used in pleadings to connect the legal fiction to the actual claim or issue at hand.

Legal Scholars and Treatise Writers:

Gratian is the name of a 12C Italian cleric who put together the *Decretum* - a six volume collection and commentary (a legal treatise) that served as the basis of Canon law (Church law) for the next 800 years. *Decretum* provided rationalist approaches to evidence as an alternative to trial by ordeal and offered a comprehensive system of law. It is notable for emphasizing consent for marriage and intent for criminal responsibility.

Glanville, Ranulf de was an Anglo-Norman aristocrat who produced the first English (common law) legal treatise in the 12C. His work, and those that followed him, assembled into a written coherence English court practice (forms of action), but it also further the process of common learning that was a feature of legal codification under civil and canonical systems.

Bracton, Henry de was a 13C English cleric who wrote *On the Laws and Customs of England* which replaced Glanville as the foundational treatise for the common law.

Plowden, Sir Edmund was a 16C English legal scholar who produced a commentary based on more precise case reporting than existed among medieval legal writers.

Coke, Sir Edward was a 17C Chief Justice of the King's Bench and a Common Pleas jurist, publishing the *Institutes on the Laws of England* in 1628. He was a defender of the common law against equity (Chancery) and for limits to royal authority through the rule of law.

Hale, Matthew was a L17C Chief Justice of the King's Bench who produced several works that where more accessible and logically organized than previous treatise.

Blackstone, William was a L18C English jurist and writer of the influential, four volume *Commentaries on the Laws of England* (1765-69).

Maritagium – refers to the right (and responsibility) of a lord to take wardship of and see to the marriage of the daughters of his vassals in the case of their death.

Manorialism (or Seignorialism) was a feudal form under which a manor (a large house or castle) extended its dominion over a nearly self-sufficient village and surrounding lands. You might see it as an arrangement that stood in tension with both Germanic tribalism (think Vikings) and Imperial Rome. In Europe it stems from the late Roman Empire, survived Roman collapse, and was well-established on the Continent by the 8C. Manorialism was not Anglo-Saxon; it was brought to England by the Normans in the L11C, but they also brought a stronger sense of Kingship that interfered with manorial independence. It declined in England from the 13C to the 15C with the rise of the common law and royal justice.

Mortgage – is security for a debt.

Motion in Banc (en Banc) is a request for a case or a specific point of law to be handled by the whole court rather than a single judge. This was used in the Middle Ages and early modern period at trial to put aside a point of law until it could be considered *en banc.* It was an important process prior to the development of an appellate system. It allowed local courts to adjourn a case and forward it to Common Pleas when they confronted a difficult question of process/law.

***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.

Nominate (named) Reports replaced the year books in the 16C, and by the 17C famous jurists started produced their own multi-volume case reports. By the 19th-century case reporting and printing official opinions would become governmental responsibilities. Initially named reports seem written for didactic purposes (as models), rather than with the faithful attention to accurate documentation.

Yet, several factors helped shift how legal reporting was produced and used in the early-modern period. The first was the printing press, which appeared in England in the 1480s. Printing increased circulation and uniformity, while lowing cost dramatically. The second was the rise of a governmental state (under the Tudors and Stuarts in England), which was more interested in managing textual minutia and capable of creating authoritative works and records. Here, English emerges as a language fit for religion (the King James Bible), literature (Shakespeare), philosophy (Hobbes), and law (Bulstrode) – displacing Latin and French as a wholly-English culture emerged. The English grammar school replaced the monastery, advancing a literate public sphere. Slowly, legal case reports emerged as somewhat standardized, widely circulated, public documents containing authority which could be parsed through by litigants and reformers by the 19C. A similar transformation was brought about by the print and educational revolution in the area of statutory law.

Order of the Coif *was a guild of common lawyers (serjeants at law) that retained special privileges to practice law from the 13C into the early-modern period and died-out in the 19C. Prior to the serjeants at law (a lay organization), legal education and practice was almost entirely restricted to clerics and at universities centred on civil law and cannon law.*

Penal bonds – this is a contract that includes a penalty if on party fails to preform its obligation under the contract. One way to do this was to create a document on the front side that obligated a party to surrender a property or pay an amount, if the performance of a deed indicated on the back of the document was not completed by a specific date. They became more common in the late medieval period.

privity – the doctrine under contract law that contracts cannot oblige persons or entities who are not party to the contract.

***quid pro quo* and consideration** – The Latin phrase (something for something) is used to define a executed contract. Consideration referred to the things shared. Under the doctrine of consideration, a promise to give something (if not balanced by consideration) was not binding, because it was not a contract.

Remainder/executory interest – is a future interest in property.

Res Judicata is the legal practice of final ruling.

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.

Seisin was being in possession of land as a feudal tenant. The tenant was seised in the land under the dominium of the lord; the lord was seised of the tenants services or moneyed payments. Neither owned the land as moderns mean it. Earlier in the feudal period (before the L12C), the tenant had no freedom to use the land for whatever he chose (nor could they leave it untended), could not enforce a family's right of inheritance, nor will it to another, and could not sell it. Tenants often obtained permission to do these things, but not as a right that adhered to them as persons.

Custom protected tenants best in the area of inheritance of tenancy, but this remained entirely subject to the will of the manorial court (the lord himself) until manors began to be constrained by assize courts and common law forms of action in the L12C.

Severus – Baker implies that the word for slave - *severus* in Latin - can be read interchangeably with the word 'serf.' Historians disagree on this type of question, but his reading is in the minority. In English history, we do not usually speak of 'serfs' at all – but this is a continental

European term for those with a status most similar to the English 'villeins.' *Severus* (quite differently) is a word reserved for the very lowest status, perhaps 10% of Anglo-Saxons at the time of the Norman conquest (1066) who were captured in battle. These slaves were not like the later English villeins (a Norman word) or the European 'serfs', because they lived entirely dependent upon and at the mercy of their masters. The status of *severus* or chattle slaves disappeared under the Normans in the 12c, only to reappear under different circumstances in application to African and Native American slaves in the early-modern period.

Slade's Case – is a landmark case of English contract law decided in 1602. We will review the facts of the case in class (and they are easily found online). The ruling was that every executory contract includes the assumption to pay or deliver something, and that the mutual obligations of the agreement held if they could be shown to have been undertaken by the parties or were written into a deed. Wager of law could not be used to navigate around promises, because unpaid debts were a wrong knowable on the same level with other trespasses.

Specialty – deed that specifies terms of an agreement or provides security for debt.

Specific performance – is a court order to meet one's contractual obligations. The alternative is to seek damages through a claim of tort (wrong) or to seek an equitable remedy outside the common law.

Star Chamber sat at Westminster Palace and became more active under the Tudors (L15C). It was held by members of the King's Privy Council, and operated as a conciliar court which dealt with the issues that occupied the Chancellor. Often the appeal to the Star Chamber would be framed in terms of a violation to the King's peace (riots, sedition, forgery, extortion, unlawful assembly etc.), although the cases usually seem to have been matters of property. As a conciliar court, it could address intentional wrongdoing by powerful persons who could endlessly delay or avoid justice for offenses that would not fit into a common pleas forms of action. Because the Star Chamber could operate outside the common process, it was a source of complaint against arbitrary royal authority and was abolished in 1641. Cases of equity that it had heard were absorbed by the King's Bench.

Stare Decisis is a practice of legal reasoning were courts are bound to rule by legal precedent - reference to the past, reported opinions of other courts that are equal or superior to them.

Statute of Quia Emptores (1290) – trans. 'Because of the buyers,' prohibited subinfeudation.

Statute of Uses/Statute of Wills (1536-1540) – The statute of uses was an Henrican law designed to increase revenue from feudal incidents to the Crown (as landlord) not by

eliminating uses, but by imposing a duty on the trustees and holding the beneficiaries of the use of the land as owners for tax purposes. The statute of wills came a few years later, 1540, and represented a compromise need to pass the statute of uses. This law allowed landholders to device wills to convey land after their deaths outside of the cannons of descent.

Subinfeudation happens when tenure, or the terms of the fee (whether granted to knights or freemen or villeins), was divided by the tenant to sub-tenants. The practice increased in the L12-L13 centuries, and as subinfeudation proceeded labour service was gradually replaced by money. This process quickly made military service as a fee unpractical (what was a partial knights-service?). As a result knights-service became *scutage* – money due for armed protection. When peasant service becomes money rent we call it *socage*. Increased use of *scutage* and *socage* signalled a decline in the personal nature of feudal service, and made the way for feudal service to become taxes and rents by the L14. This process took centuries of gradual change, and even as it did - the tie between property and marriage and inheritance maintained the importance of loyalty and kinship in realty.

Supersedeas is a bond (a financial instrument that delays the payment of debt) required of a defendant who is appealing a court settlement.

Tenure is the the part of vassalage that refers directly to the fact that real property ties the tenant (who could have a status ranging from a villein/serf to a knight to a cleric) to the lord (who held dominium or ownership and could be a noble of various rank up to the King). Land tenure offers a way to refer to this relationship when service is replaced by rents in the 13-14C, which is typically understood to reduce the significance of fidelity (vassalage) and commodified the relationships around real property. It was formally abolished by statute in 1660.

Termor – is a person who holds an estate for a term of years.

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.

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.

Trover and **Replevin** are forms of tort action for the recovery of damage to personal property.

Trover is an action to recover the value of the damage in situations where a party did not take due care; replevin (from the O.F. *plevir* to pledge) is for the recovery of the property itself in cases of illegal taking of property for debt (*distraint*).

Trusts – are relationships of duty between parties. The trustor transfers property to a trustee for the benefit of a third party called a beneficiary. Trusts could be used to avoid incidents of tenure and later to protect property from creditors. But they also had the purposes of providing security of dependents and minors. Later, trusts could be formed with multiple trustors (investors) for the purposes of a particular endeavor to be overseen by trustees.

Use was a medieval device of property law. A would convey to B on a condition that B would use it for the benefit of C. But, C could also be A. A land holder could create a use for their own benefit, and by doing this avoid paying debts, feudal incidents, or royal taxes. The legitimate purpose of a use was for the benefit of ones children or for a religious group. Between the 11-14C, uses could not be addressed via common law and they were likely to view B as the land lord, but courts of equity began acting upon them in the 14C and treating A as the land lord.

Vassalage is an unequal relationship of reciprocal obligation or fidelity (feudalism) between the vassal and his lord. The typical exchange is for the vassal to be granted possession (not ownership) of land in return for an obligation of military service. This mutual promise was called *homage*, and was ritualized in various ways. Service could also be rendered in other forms (labor on the lord's lands, road construction, or shares of produce). The lord-vassal relationship extended like a great chain of being from God to the king to nobles to knights to landed peasants. The Anglo-Saxons developed lord-vassal relationships, but the Normans extended these to cover all forms of real property (land). After the Normans all land was held of the King and no land could be held - *allodial* – in absolute ownership free of obligation (eminent domain, statutory regulation, and taxation).

Villeins or Villeinage – 'of blood' or *de sank* – was hereditary in the 11-13C. Perhaps 35% of the English were villeins at the outset of the Norman period. At common law all villeins were equally unfree relative to their lords, but not at-large. This meant that unfree status was distinct from tenurial relationship. Manumission by a lord of who the villain was bound, freed the villain completely. But the villain could not renounce his bond in blood, whereas he could renounce tenure. Villeins could be bought and sold with tenements; they could own property, but it was liable to seizure by his lord. The lord had extensive authority of corporal punishment (stocks, etc.), but villeins cound not be legally maimed, raped, or killed – as earlier *severus* could. *Villeins* could not move away, or work away from their lords. Villeins paid fees annually to their lords called 'chevage.' They also paid fees for marrying called 'merchet.' And for unwed

pregnancy – 'leywrite.'

To modern readers, this may seem like new world slavery by another name, but for one key difference. Because there was legitimate intermarriage between *villeins* and freeholding small farmers there soon was no visible, separate group of *villeins.* Certainly this was true by the early 15C. *Villeins* status did not strongly determine social status or economic opportunities. As a result it become less and less distinct in the later Middle Ages, and was extinct by the 17C.

Verdict is a statement of fact handed-down by a jury at trial (or through an ordeal).

Vesting – is a secure right in the present to a future asset.

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.

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.

WRITS were royal letters sent to the county sheriff commanding a subject to do something, or to appear before a royal court to explain their refusal to do it. In England, the practice originated with Anglo-Saxon kings, and became regularized into a set of forms of action under the Normans by the late 12C.

Writs were not practically accessible for everyone. They required the ability to pay fees for arcane pleadings and for producing the documents under seal. The process also implied travel expense and difficulty. For many the alternative was to launch a complaint in a manorial, county, and traveling court. Yet, writs allowed those with resources to seek royal authority beyond local elites, and once systematized their use (or the threat of their use) tended to make English legal and economic practices more uniform and predictable.

As one response to the increasing exercise of royal authority, beginning in the 13C the nobility was able to limit the creation of new forms of action, which also increased the bureaucratic uniformity of the system of writs. Baker outlines four "Original Writs" - praecipe tibi, praecipe, petty assize, and ostensurus quare. So, the late medieval system of Writs and Forms of Action stood for centuries, being replaced in the 19C (1833, 1852, 1875) by claim forms, subpoenas, and summons.

PRAECIPIMUS TIBI AND **PRAECIPE WRITS** were a royal commands to do something going forward, or to give explanation for refusal in front of the superior court. This writ was a demand for *rights*.

Writ of right patent is a command to restore possession of land to a tenant of a Lord.

Writ of replevin is a command to return personal property to its owner.

Writ of Advowson was a command to honour the right of clergy to a benefit; it could also be used in other forms of ecclesiastical guardianship or protection.

Writ of Easement was a command to honour the right to use or pass-through real property without possession.

Writ of Entry was a command that a tenant to surrender real property.

Writ of Formedon was a command to surrender lands as part of an estate settlement.

Writ of Right was a command to surrender lands in fee simple (ownership conditional only to the state) based on seisin (loyal possession).

Writ of Debt/Detinue was a command to restore personal property or to pay debt.

Writ of Covenant was a command to pay damages for breach of promise (contract).

Writ of Account was a command to disclose records of transactions and promises.

PETTY ASSIZES WRITS were royal commands to temporarily restore land rights.

Writ of novel disseisin was a command to restore land to a recently dispossessed party.

Writ of mort d'ancestor was a command to restore land to the nearest living relative (heir) of a person who died while in loyal possession (seisin) of it.

OSTENSURUS QUARE WRITS were royal commands to rectify *wrong-doing*. Whereas the above writs told persons to accede to a demand for right or explain themselves to the royal court, this category of writ carried punishment and recompense for past transgressions.

Writ of waste required a tenant to compensate a landlord for damage to premises.

Writ of quare eject removed a tenant from the premises for wrong-doing.

Writs of trespass vi et armis was a command to someone who had harmed persons or property 'by force of arms.' **Writ of trespass on the case** was a command to someone who had harmed persons or property without force of arms. The relationship between these two types of writ played out in the 13-14C, when the distinction evaporated and this allowed the King's Bench to issue writs of trespass regardless of force of arms.

Writ of quare clausum fregit was for land trespass.
Writ of ejectment was for unlawful possession of a person who is not a tenant.
Writ of assumpsit developed as an alternative to the writs of covenant, debt, detinue, and account. It was sought by A for damages incurred by A when B failed to do something B promised to do.
Writ of conversion for intentional trespass; see conversion above.
Writ of nuisance for interfering with the enjoyment of property.
Writ of deceit for acting in someone's name which defames or harms them.
Writ of negligence for failing to take due care.

Writ Attaint & Attaint Jury provided a way for superior courts to respond to the possibility of perjury by jurors at trial during a time when the jury was an active body of investigators who also testified to the facts of the case. If the Attaint Jury of 24 persons found a juror or a jury guilt, they lost liberty, all property, and their families were evicted from their homes. This action was rarely used in the Middle Ages, and seemed to have become obsolete between 1500 and the M17C. It was formally abolished in 1825.

Writ of Covenant - a command to fulfill a promise as a right.

Writ of Debt – a command to surrender property owed to the plaintiff as a right.

Writ of Error & Courts of Error operated prior to the development of modern appeals that treated the review of error as a step in the cause, rather than requiring a separate action. The writ of error was a command to a trial court to yield the record of a case to a superior court. The court of error was the superior position; for local courts it was the Court of Common Pleas at Westminster. For the Court of Common Pleas it was the King's Bench. For the King's Bench (and Exchequer) it was the King in Council and House of Lords. This form of review was restricted and limited to the lower court record itself.

Writ of Formedon – was a command that lay when an heir sought recovery of a fee entail.

Writ of Trespass – was an order to appear in court in answer for wrongful actions caused by force of arms. This could be heard by royal courts under that idea that such violence was also a breach of the King's peace. Writs of trespass (before the L14C) often stretched the definition of 'force of arms' to seek compensation were a failure to meet one's obligations caused a loss for the plaintiff. By the L14C, common law courts began to allow trespass 'on the case' (rather than trespass with force of arms), and this allowed more room to seek damages for negligence or omission.

PREROGATIVE WRITS were commands from the Crown to a court (or other body) requiring them to do or stop doing something. They allowed for a review or rectification of alleged errors or abuses by authorities prior to the development of individual rights or processes of appeal;

later they were a source of complaint as an extension of royal power against liberty. They originated in the Middle Ages and are defined by six different types.

Prohibition was an order to stop proceedings. This allow the crown to police the jurisdictional boundaries between courts (Church courts, university courts, local courts etc). Perhaps most importantly by limiting the use of ecclesiastical courts, but also to establish uniform practices.

Quo Warranto was an order to show by what authority a court or an agent was acting.

Habeas Corpus was a command to take custody of a person to ensure that they would appear before a court. It became well-known (in the 18-19C) as a means for a court to demand that a sheriff or a warden produce a person and justify why they had been detained, but it was initially a power of detaining a person to appear before a superior court.

Mandamus was an early-modern court order to a city or an government agency to fulfill their statutory duties.

Certiorari was a command from a superior to an inferior court to release records, particularly to allow for a review of error.

Procedendo was a command from a superior court to an inferior one to proceed to judgment.

Year Books are a nascent form of case reports, but they seem to have served educational purposes. They were anonymous and formulaic – lacking specific details or even including inaccuracies about the cases. As Baker points out, they developed between the L13C, but do not seem to have been utilized (as the rolls) as a source of legal authority or jurisprudence.