ORIGINS OF LAW

Introduction

Law is not an exact science. Important in the study of law is:
   a) The Role of Precedence
   b) The Use of a Law Library

Some sources of law are as follows:
   a) Case Law
   b) Statute Law
   c) West’s California Law Encyclopedia
   d) Black Law Dictionary
   e) California Code
   f) California Statute Index

Land Surveying requires knowledge of mathematical sciences as well as law. To solve boundary problems, an individual need to be good in science (math) and also good in arts (law). The quality of land surveyor you become depends on how well you understand the law, how well you can collect evidence in the field and your mathematical ability you have to link the evidence

Land Surveyor's are Quasi-judicial officers (Justice Cooley). Quasi- means semi or almost. Judicial- means related to judges courts and their decisions. For example, the types of judicial decisions made are whether a stone is the original monument, or whether the fence is evidence of the corner.

There are many reasons for judicial decisions. The following are some of them.

   i) Surveyor has final judicial decision to location of boundary (unless the action goes to court).
   ii) There is absolutely no correct answer. A boundary decision is based on "best evidence available". Behind every survey is a potential lawsuit, so the evidence you found should be better than that of other surveyors.
   iii) It is not unusual to survey one parcel and 5 years later survey parcel next door, and you don't agree with your own boundary from 5 years earlier. Should you make yourself agree?
   iv) Surveyor's are frequently asked for an opinion verbal, written, or graphical (plan). In any opinion, there is a risk of liability, but the risk is higher when a written opinion, or a plan is signed e.g. gas location shown on the plan when the gas location was wrong on the ground.
In court cases, lawyers and surveyors should work as a professional team. Tendency for lawyers to belittle surveyors. The truth is that lawyers will know less of boundary law cases than the surveyor and will rely on you to prepare the cases to be used in trial.

It is important to realize that law cannot be memorize there is too much of it. The best way to learn law is to read about it. Cases can't be memorized they are two complicated. They must be précis.

**ORIGIN OF LAW**

*English law*

1066- William Conqueror invaded England
   - Beginning of English law
   - Became William I of England
   - Owned all the land, but control of Empire was impossible so superstructure began.

William parceled out large tracts of land to faithful Barons. He granted land to be held of the King (Teneo = held, hence tenure). Barons had to pay for land by service.

There was Socage tenure that was freehold, but most tenure required service. The most important types of service were:
   - Knight Service - military service
   - Serjentry - personal service
   - Frankalmoin - church service

The most common type of tenure was Burgage (leasehold). Barons delegated their authority in lands to lesser tenants for tax and rent.

A pyramid structure developed

```
  king
 /    \
|      |
/  service  \ 
|  |       | |
land       barons
 /  \
|   |
barons    land
 /     |
|       |
lesser tenants
```

Compare this structure with a modern day lease.
In 1290- Quia Empatores was enacted. With Quia Empatores the express consent of King was needed for a grant to the church and to remove sub-infeudation.

In feudal times, if a tenant died possessed of Blackacre and left no heirs, the Baron simply got back what was his in the first place. In modern form, if someone dies intestate with no heirs, property escheats to state. Closely aligned to forfeiture in the fact if a tenant committed a felony, his lands were forfeited to the Baron.

With the rise of socage tenure, developed the doctrine of estates. More than one person can possess rights in a piece of land.

Right of O + Right of A = all right of Blackacre

It can be said that O is "seized of an estate Blackacre". The estate is the full circle, or part of it. If O is owner in fee simple, he can give to A the right to possess for an indefinite or definite period of time. Nobility high on the triangle, received for an indefinite period, and were not saddled with the servile requirements of those below them. i.e. freeholders who have rights to possession had “seisin”. He was seized of Blackacre and because he had possession of an estate of indefinite duration he had a legal right against “all the world”. Someone with possession of a definite duration had less rights - non-freeholder (leaseholder).

The addition of “seisin” to higher estates made it necessary to control their use. For hundreds of years the creation and transfer of freehold interests in land could be accomplished only by a formal procedure in which it was necessary to hand over the land by a symbolic delivery. O would go on the land for sale with A, for all to see, and hand over a piece of earth or the branch of a tree. The delivery or “livery of seisin” persisted for a very long time and is the predecessor of the modern form of conveyance.

In the middle ages, in England, the Chancellor was the keeper of the King's conscience. Wars in the middle ages, required Knights to protect their estates and they would convey their interests in a piece of land to friends expecting them to hold them for the benefit of the grantor.

There were two results:
1) Grantor would enjoy fruit of land if he could trust grantees.

2) Common law courts determined that control of land lay with grantees.

The Chancellor was the keeper of the King conscience. It was his task from earliest times, not only to be a watchdog on the King and refuse to accede to his solutions to legal and marital problems, but to aid the King’s people wherever possible. The extension of his powers gradually grew, and the extension of the powers of the Chancellor to disputes between private citizens had more effect on the development of our legal system than any other single factor.

The refusal of a feoffee to uses, which had been trusted and betrayed that trust. The vulnerable position of the original feoffor unable to seek redress in the legal system provided a natural evolution for the court of the Chancellor. The aim of the court of the Chancellor was to ensure morality was preserved, honesty dispensed and promises relied upon. Failure to keep these precepts could result in orders from the chancellor, which would not be disobeyed. Death was the punishment for betrayal. Hence the rise of equity in English Law.

At common Law
Blackacre Originally owned by O
O convey to A to hold for benefit of O (or B)
O has no claim to Blackacre, A has a legal claim.

At Equity
Blackacre originally owned by O
O conveys to A to hold for benefit of O (or B)
A has a legal interest O (or B) has an equitable interest

The end result is that A is a titular owner, and O (or B) could force him to do with the land what they had planned from the beginning.
**Beginning of Modern Conveyancing.**

O did not go through livery of seizing with A but meanly signed a contract, a deed, to convey Blackacre to A and accepted a purchase price from A, failure of O to go through with bargain did not leave him open to any legal action.

At Common Law - no livery of seizing.  
At Equity Law - inequitable for O to hold money and land, O should hold land for benefit of A.

In the 1500's, Henry VIII had trouble with wives, the church and money. These problems were all related. The upward flow of money was being stifled by "uses". In 1535, a statute call the "Statute of Uses" was passed. The effect of the statute of uses was:

**Before 1535**
- O conveys Blackacre to A and his heirs for use of B and his heirs.  
- A had legal fee simple. B had equitable fee simple.

**After 1535**
- O conveys Blackacre to A and his heirs for use of B and his heirs.  
- B had legal fee simple.

The effect on modern conveyancing was that O and A could conclude a deal for land in solicitor's office. Note that modern deeds contain the words bargain and sale.

In the same year 1535, the English Parliament passed "the Statute of Enrollments." It stated that when land was conveyed in freehold by a bargain and sale deed, it must be recorded in an appropriate public place.

In 1677, the statute of frauds was passed in England. It required that any transfer of an interest in land had to be in writing and signed by both parties.

**Colonial Settlement**

At the time of Colonial settlement all the laws of England were brought into the colonies. After independence, great attempts were made to untie the knots of English land law.

**Some examples are:**

In England, "uninterrupted enjoyment of land" gave landowner an easement of light and air. Plots with good view could block buildings being erected on adjacent plots. By late 19th century every state except 3 had rejected this easement.

The doctrine of adverse possession was eagerly embraced in U.S. Nevada dropped the time period to 5 years. New trust laws developed.
Dower - Life estate (widows right to 1/3 of late husbands real property (land). Husbands could not defeat dower by sale or divorce). It was abolished in most states by 1860. Indiana abolished it in 1852.

Many doctrines of land law contributed to weak titles:

1) Adverse Possession
2) Poor administration
3) Tax titles

Title companies sprang up to check and insure titles for a fee. One solution lay in title registration under an Australian system called Torrens. In the American method of recording, deeds mortgages and land contracts are deposited and noted in a public-office. In the Torrens system, the state of the title in examined and a certificate of title issued. However the act did not catch on.

**ENGLISH LAW**

English Law is made up of several parts:

a) Statute Law and Legislation
b) Common Law
c) Equity
d) Custom Law

a) Legislation and Statute Law

Legislation comprises the rules of law adopted by government agencies to regulate social behavior. The term is commonly used specifically for laws enacted by representative assemblies, as well as the process of enacting laws.

In former times, legislation was use to define natural laws and legal codes. Legislation defined in this way still exists in a modern state with a representative system of government, but its roots lie in Greek and Roman history. The Greeks were concerned with natural law, the moral standards of justice that should govern society, but they also enacted specific laws, based on these moral judgements, to regulate social behavior and governmental activity.

With the development of the modern state, the authority for legislating was centralized in government. The development of representative assemblies as law making bodies led to the term "legislation" being applied to enactments of these assemblies.

In most of the English-speaking world, the legal systems are based upon English common law. Common law works on precedents, established by judges that date from early in English history. By the 17th century, statutes enacted by Parliament took precedent over common law. That is statutory law prevailed, and legislation became more important. Statute Law is written law and can usually be expressed in the form of a code. For example, Indiana 32-1-20-1 referred to Title 32, Article 1, Chapter 20, section 1.
The first representative assembly in America was the Virginia House of Burgesses, established in 1619. Modeled on the 17th century British Parliament, the early colonial legislatures consisted of appointed upper houses and elected lower houses.

b) Common Law

Common Law is that part of English law, which before the Judicature Acts of 1873-75 was administered by the common law courts, as opposed to equity, or that part of the law that was administered by the Court of the Chancery.

Common law is sometimes used as a contradiction to statute law, and then enters the unwritten law that does not derive its authority from any express declaration of the will of the legislature. This unwritten law has the same effect a statute law. It depends for its authority upon the recognition given by the courts to precedence, customs and rules of conduct previously existing among the people. This recognition is recorded in the law reports. Courts of appeal generate Law reports.

Common law consists of:

1) Original common law, or these rules (based upon Anglo-Saxon folk rights) that have been administered by the common law courts from time immemorial; in this sense common law is opposed to statute law.

2) Those modifications and extensions of the original common law that have been introduced by statute.

3) Customary law

With reference to the subjects with which it deals, the common law is divided into civil and criminal, the former includes the branches of private rights arising out of contracts and torts; the later deals with crimes.

c) Equity

In its primary sense equity is fairness, or that rule of conduct that in the opinion of a person or court ought to be followed by all other persons.

Equity in the sense of fairness is frequently opposed to law and legality, because that which is fair does not always constitute a legal claim or defense. Hence, when a legal rule or remedy is capable of two interpretation or applications, one literal or restrictive, the other liberal. The latter is called an equitable application.

The most important sense of the word "equity" is that it denotes a part of the general law of England as opposed to what is called common law. The distinction is purely historical and arose from the fact that in former times the common law courts provided no remedy in many cases where one was required. It was customary in such cases to apply for redress to the King or the
Chancellor. The Chancellor was an ecclesiastic and not bound to follow the ruling of the common law courts. This was the development of the court of the chancery, which until the Judicature Acts of 1873-75 in England, dealt only with matters in "equity".

Equity aims to assist the defects of the common law, by extending relief to those rights of property that the strict law does not recognize. It gives more ample and distributive redress than the ordinary tribunals afford, but it by no means controls, mitigates or supersedes the common law, but rather guides itself by analogies and does not assume any power to subvert its doctrines. This is shown in the maxims of the Court of Chancery "where the equities are equal, the common law must prevail".

d) Custom Law

Many of the original laws of England and original colonies were built on custom. The law was based on what was considered morally right. Many of the earlier colonists were fugitives from persecution and religious groups. They developed customary laws that have infiltrated many states. The Sunday observance day law was one example, prohibition laws were another. Generally speaking, statute law will always take precedence over common law and equity, but individuals will always have common law and equity rights.

ROMAN LAW

Roman Law was the law that was in effect throughout the age of antiquity in the City of Rome and later in the Roman Empire. When Roman rule over Europe came to an end, Roman law was largely, though not completely, forgotten.

In Medieval times (from about the 11th century onward) there was a renewed interest in the law of the Romans. Initially, Roman law was only studied by scholars and taught at the universities, Bologna being the first place where Roman law was taught. Soon Roman law came to be applied in legal practice, especially in the area of civil law. This process of (re-) adoption (reception) of Roman law occurred at varied times and to various extents across all of Europe (England being the most important exception). Thus from about the 16th century onward, Roman law was in force throughout most of Europe. However, in the process of adoption/reception many Roman rules were amalgamated with, or amended to suit, the legal norms of the various European nations. Thus, Roman rules, applied in Europe at this period, were by no means identical with Roman law from antiquity. Nonetheless, because the law that had evolved was common to most European countries, it was called the Ius Commune (common law).

In the form of the Ius Commune, Roman Law was in force in many jurisdictions until national codes superseded these rules in the 18th and 19th centuries. In many regions of the German Reich, Roman Law remained the primary source of legal rules until the introduction of the German Civil Code in 1900. Even today a special branch of the Ius Commune, known as Roman-Dutch Law, is the basis of the legal system in the Republic of South Africa.

England did not adopt Roman Law as the other countries in Europe had. In England, ancient Roman texts were never considered as rules having the force of law. Nonetheless, Roman Law was
taught at the Universities of Oxford and Cambridge, just as it was taught at Bologna. Scholars, who had studied Roman Law on the Continent (the so-called Civilians), did have considerable influence on the development of certain areas of law. Some substantive rules, and more importantly concepts and ways of reasoning, developed by continental legal scientists, based on the Roman legal tradition, influenced the English legal system.

The Romans were the first people to make law into a science. During the first two centuries of the Common Era, Roman legal science was the most fertile. This age is called the classical period of Roman Law, because the law during this time period, as it was taught and practiced, best exemplified the classic characteristics of the Roman legal tradition.

In the sixth century A.D., the Eastern Roman Emperor, Justinian (Iustinianus), ordered the compilation of several law codes. These codes were based on much older sources of law, mostly statutes and legal writings from the classical period. They were:

*The Institutes (Institutiones)*
A book largely copied from the Institutes of Gaius, written 300 years prior, and may be considered a beginners' textbook. The rules contained in the Institutes were given legal force in many countries; consequently the work may be regarded as both a textbook and a statute.

*The Digest (Digesta or Pandectae)*
A collection of fragments from scholarly writings. Like the rules contained in the Institutes, the legal opinions expressed in these fragments were often given legal force.

*The Code (Codex)*
A collection of imperial statutes.

Justinian had planned to add another collection to these three: a collection of new pieces of legislation that had come into force after the compilation of the Code (novellae constitutiones). This plan was never realized. There exist today only private collections of these novellae constitutiones. These form, together with the three codes, the Corpus Iuris. The Corpus Iuris is by far the most important written source of Roman law that has come down to us. The texts transmitted therein constituted the basis of the revival of Roman law in the middle Ages. As well, most of the insights gained by modern research on Roman legal history are owed to the analysis of texts from the Corpus Iuris.

Today Roman law has been replaced by modern codes. These codes, however, did not create new law from scratch. But rather, to a large extent, the rules of Roman law that had been transmitted were placed in a statutory framework that provided a modern, systematic order. This is particularly true in regard to the German Civil Code. So, in order to fully understand the German Civil Code, it is necessary to know about the legal foundation upon which it rests. As this is true in regard to German law, it is equally true in regard to most modern European legal systems.

Most important of all, Roman law will have great significance in regard to the formation of uniform legal rules that further the process of political integration in Europe. Roman Law is the common
foundation upon which the European legal order is built. Therefore, it can serve as a source of rules and legal norms, which will easily blend with the national laws of the many and varied European states.

Roman law was originally the basis of all the laws of Europe and Middle East. Until the upheaval of the French revolution there was no unified system of laws in France. Proclamation of a civil code was a priority under the constitutions of 1791 and 1793; little was accomplished until Napoleon Bonaparte came to power. In 1800, there were 5 commissions to examine French law and refine it under 5 headings:

1) Civil law;
2) Court systems;
3) Precedence;
4) Commercial;
5) Personal;

A civil code was not invented by Napoleon but base on Roman law. However, he was largely responsible for the code Napoleon.

The code Napoleon was divided into 3 books:

1) Individual and Family Regulation of Marriage and Divorce, etc.
2) Property.
3) Contracts, Mortgages, gift and obligations.

No code had more widespread influence. Law in Spain spread to all Latin America with modern amendments. It is still the law of France and is noticeably present in the civil law of Puerto Rico, Louisiana and Quebec.