Source: The First Part of the Institutes of the Laws of England by Sir Edward Coke (his commentary upon Littleton)

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- Land is anciently called Fleth. Section 4a.
- The agreement of the parties cannot make that good which the law maketh void. Section 51b.
- For when the law doth give any thing to one, it giveth impliedly whatsoever is necessary for the taking and enjoying of the same. Section 56a.
- Lex est summa ratio. Section 62a.
- The law doth never enforce a man to doe a vaine thing. Section 79a.
- And as usage is a good interpreter of lawes, so non usage where there is no example is a great intendment that the law will not beare it ....Section 81b.
- The law compells no man to impossible things. The argument *ab impossibili* is forcible in law. Section 92a.
- Nota, the original writs are (as it were) the foundations and grounds of the law, and, as it appears here by *Littleton*, are of great authority for the proofe of the law in particular cases. Section 93b.
- By the ancient common law of *England*, a man could not alien lands as he had by descent, without the consent of his heire; yet he might give a part to God in free almoigne, or with his daughter in free marriage, or to his servant *in remuneratione servitii*. Section 94b.
- It is a maxim in law, that no distresse can be taken for any services that are not put into certaintie, nor can be reduced to any certainty .... Section 96a.
- And here is implied a maxime of the common law, that where the right (as our author here speaketh) is spirituall, and the remedy thereof onely by the ecclesiasticall law, the conusans thereof doth appertaine to the ecclesiasticall court. Section 96a.
- And here is implyed another maxime of the law, that where the common or statute law giveth remedy in *foro seculari*, (whether the matter be temporall or spiritual) the conusans of that cause belongeth to the king's temporall courts onely; unlesse the jurisdiction of the

ecclesiasticall court be saved or allowed by the same statute to proceed according to the ecclesiasticall lawes. Section 96b.

- And the law, that is the perfection of reason, cannot suffer anything that is inconvenient. Section 97b.

- It is better, saith the law, to suffer a mischief that is peculiar to one, than an inconvenience that may prejudice many. Section 97b.

- ... a maine maxime of law, that there is no land that is not holden by some service spirituall or temporall. Section 97b.

- And there is another strong argument in law, *Nihil quod est contra rationem est licitem*; for reason is the life of the law, nay the common law itself is nothing else but reason, gotten by long study, observation, and experience, and not of every man's natural reason; for, *Nemo nascitur artifex*. This legall reason *est summa ratio*. Section 97b.

- Note, that by the civill law every man is bound to warrant the thing that he selleth or conveyeth; albeit there be no express warranty; but the common law bindeth him not, unlesse there be a warranty, either in deed or in law; for *caveat emptor* .... Section 102a.

- ... cities were instituted for three purposes. ... For conservation of laws, whereby every man enjoyeth his owne in peace; for tuition and defence of the king's subjects; and for keeping the king's peace in time of sudden uproars; and lastly, for defence of the realme against outward or inward hostility. Section 109b.

- *Consuetudo* is one of the maine triangles of the lawes of *England*; those lawes being divided into common law, statute law, and custome. Section 110b.

- Of every custome there be two essentiall parts, time and usage; time out of minde, (as shall be said hereafter) and continuall and peaceable usage without lawful interruption. Section 110b.

- And it is to be observed, that in special cases, a custome may be alledged within a hamlet, a towne, a burgh, a city, a mannor, an honor, an hundred, and a county; but a custom cannot be alledged generally within the kingdome of *England*; for that is the common law. Section 110b.

- Also here is implyed a maxime of the law, viz. that whatsoever was at the common law, and is not ousted or taken away by any statute remaineth still. Section 115b.

- "Common law." The law of England is divided, as hath beene said before, into three parts; 1, the common law, which is the most generall and ancient law of the realme, of part whereof *Littleton* wrote; 2, statutes or acts of parliament; and 3, particular customes (whereof *Littleton* also maketh some mention). I say particular, for if it be the generall custome of the realme, it is part of the common law.
  The common law has no controler in any part of it, but the high court of parliament; and if it

be not abrogated or altered by parliament, it remains still, as *Littleton* here saith. The common law appeareth in the statute of *Magna Charta* and other statutes (which for the most part are affirmations of the common law) in the original writs, in judiciall records, and in our bookes of termes and yeares. Section 115b.

- It is commonly said, that three things be favoured in law; life, liberty, and dower. Section 124b.
- Therefore the law forbiddeth such recoveries, whose ends are vaine, chargeable, and unprofitable. Section 127b.
- There be three things, as here it appeareth, whereby every subject is protected, viz. *rex, lex, et rescripta regis*, the king, the law, and the king's writs. The law is the rule, but it is mute. The king judgeth by his judges, and they are the speaking law, *lex loquens*. The processe and the execution, which is the life of the law, consisteth in the king's writs. Section 130a.
- ... one of the maximes of the common law, viz. that all customes and presumptions that be against reason are voyd. Section 140a.
- (Quoting Littleton): "It is against reason, that if wrong be done any man, that he thereof should be his own judge." For it is a maxime in law, *aliquis non debet esse judex in propria causa*. Section 141a.
- So as in truth justice is the daughter of the law, for the law bringeth her forth. And in this sense being largely taken, as well the statutes and customes of the realme, as that which is properly the common law, is included within *common right*. *Littleton* in this his treatise nameth *common right* sixe times. Section 142a.
- Note, it is a maxime in law, that the rent must be reserved to him from whom the state of the land moveth, and not to a stranger. Section 143b.
- ... it is a maxime of law, that no man shall take advantage of his owne wrong. Section 148b.
- ... an act in law shall worke no wrong. Section 148a. and Section 149b.
- ... the old rule, That the incident shall pass by the grant of the principall, but not the principall by the grant of the incident. Section 152a.
- Here be two maximes of the common law. First, that no man can hold one and the same land immediately of two severall lords. Secondly, that one man cannot of the same land be both lord and tenant. And it is to be observed, that it is holden for an inconvenience, that any of the maximes of the law should be broken, though a private man suffer losse; for that by infringing of a maxime, not onely a generall prejudice to many, but in the end a publike incertainty and confusion to all would follow. Section 152b.

- "*Seisin*," or *seison*, is common aswel to the English, as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire* a verbe. Section 153a.

- So as in this case usage and ancient course maketh law. And it seemeth to me, that the law in this case delighteth herselfe in the number of 12; for there must not onely be 12 *jurors* for the tryall of matters of fact, but 12 judges of ancient time for tryall of matters of *law in the Exchequer Chamber*. Also for matters of state there were in ancient time twelve *Counsellors of State*. He that wageth his law must have *eleven others with him*, which thinke he says true. And that *number of twelve* is much respected *in holy writ*, as 12 *apostles*, 12 *stones*, 12 *tribes*, &c. Section 154a.

- *Propter delictum*. As if the juror be attainted or convicted of treason, or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witnesse, or in a conspiracie at the suite of the king, or in any suite (either for the king, or for any subject) be adjudged to the pillory, tumbrell, or the like, or to be branded, or to be stigmatique, or to have any other corporall punishment whereby he becommeth infamous, (for it is a maxime in law, *repellitur a sacramento infamis*) these and the like are principall causes of challenge. So it is if a man be outlawed in trespasse, debt, or any other action, for he is *ex lex*, and therefore is not *legalis homo*. And old bookes have said, that, if he be excommunicated, he could not be of a jury. Section 158a.

- "*Writ of right* (briefe de droit)," *breve de recto*. Writs of right be of two natures: 1. A writ of right, whereof *Littleton* here speaketh, which is the highest writ of all other reall writs whatsoever, and hath the greatest respect, &c. and the most assured and finall judgement; and therefore this writ is called a writ of right; and this in old books is called *dreit dreit*; and this writ *est darrein remedie de touts recoveries enter touts ordres des pleas*; and the jury in this writ is called *magna assisa*, or *magna jurata*, as *Littleton* here saith. 2. Writs of right in their nature, as the *rationabili parte*, and *ne injuste vexes*. Section 158b.

- "*De recto*." *Rectum* is a proper and significant word for the right that any hath, and wrong or injury is in French aptly called *tort*; because injury and wrong is wrested or crooked, being contrary to that which is right and straight. ... And *injuria* is derived of *in* and *jus*, because it is contrary to right .... Section 158b.

- "*Sherife*." ... And he hath a threefold custodie, *triplicem custodiam*, viz. First, *vitae justiciae*; for no suit begins, and no processe is served but by the sherife. Also he is to returne indifferent juries for the triall of mens lives, liberties, lands, goods, &c. Secondly, *vitae legis*; he is, after long suits and chargeable, to make execution, which is the life and fruit of the law. Thirdly, *vitae reipublicae*; he is *principalis conservator pacis*, within the countie, which is the life of the common wealth, *vita reipublicae pax*. Section 168a.

- ... a maxime in law, *quod minor jurare non potest*. For example an infant cannot make his law of *non summons*; and therefore the default shall not grieve him; for seeing the meane to excuse the default is taken away by law, the default it selfe shall not prejudice him. But yet this rule hath an exception, that an infant, when he is of the age of 12 yeares, shall take the

oath of allegiance to the king: and this was, as *Bracton* saith, *secunduum leges sancti Edwardi*; but indeed such was the law in the time of king *Arthur*. Section 172b.

- And the reason of this is, for that it is a maxime in law, that every man's grant shall be taken by construction of law most forcible against himselfe. Section 183a.

- ... for it is another maxime in law, *quod legis constructio mon facit injuriam*. And therefore if tenant for life maketh a lease generally, this shall be taken by construction of law an estate for his own life that made the lease; for if it should be a lease for the life of the lessee, it should be a wrong to him in the reversion. Section 183b.

- The reason of the law is the life of the law; for though a man can tell the law, yet if he know not the reason thereof, he shall soone forget his superficial knowledge. But when he findeth the right reason of the law, and so bringeth it to his natural reason, that he comprehendeth it as his own, this will not only serve him for the understanding of that particular case, but of many others; for *cognitio legis est copulata et complicata*; and this knowledge will long remaine with him. Section 183b.

- If a man be seised of a house, and possessed of divers heirlomes, that by custome have gone with the house from heire to heire, and by his will deviseth away the heirlomes, this devise is void; for *Littleton* here saith, the will taketh effect after his death, and by his death the heirlomes by ancient custome are vested in the heire, and the law preferreth the custome before the devise. And so it is if the lord ought to have a herriot when his tenant dieth, and the tenant deviseth away all his goods, yet the lord shall have his herriot for the reason aforesaid. And it hath been anciently said, that the herriot shall be paid before the mortuary. Section 185b.

- "*Also, it is commonly said, &c*." That is, it is the common opinion, and *communis opinio* is of good authoritie in law. *A communi observantia non est recedendum*, which appeareth here by *Littleton*. Section 186a.

- "*If they be in like reason, they are in the like law*." Here Littleton citeth one of the Maximes of the Common Law. That wheresoever there is the like reason, there is the like law. ... And here it appeareth that *argumentum a simili* is good in law. Section 191a.

- ... and the law shall never seek out a person, when the parties themselves have appointed one. Section 210a.

- Here is good counsell and advice given, to set down in conveyances every thing in certaintie and particularitie, for certaintie is the mother of quietnesse and repose, and incertaintie the cause of variance and contentions; and for obtaining of the one, and avoyding of the other, the best meane is, in all assurances, to take counsell of learned and well-experienced men, and not to trust only without advice to a precedent. For as the rule is concerning the state of a man's bodie, *Nullum medicamentum est idem omnibus*, so in the state and assurance of a man's land, *Nullum exemplum est idem omnibus*. Section 212a.

- "*THE second thing is, that no entry nor reentry (which is all one) may be reserved or given to any person, but only to the feoffor, or to the donor, or to the lessor, or to the heires: and such reentrie cannot be given to any other person....*" Here *Littleton* reciteth one of the maxims of the common law; and the reason hereof is, for avoyding of maintenance, suppression of right, and stirring up of suits; and therefore nothing in action, entrie, or re-entrie, can be granted over; for so under colour thereof pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppressed, which the common law forbiddeth, as men to grant before they be in possession. Section 214a.

- ... for as by the authoritie of *Littleton, discretio est discernere per legem, quid sit justum*, that is, to discerne by the right line of law, and not by the crooked cord of private opinion, which the vulgar call discretion.... Section 227b.

- There be three kinds of unhappie men. 1. *Qui scit & non docet*, Hee that hath knowledge and teacheth not. 2. *Qui docet & non vivit*, He that teacheth, and liveth not thereafter. 3. *Qui nescit, & non interrogat*, He that knoweth not, and doth not enquire to understand. Section 232b.

- And by reasoning and debating of grave learned men the darknesse of ignorance is expelled, and by the light of legall reason the right is discerned, and thereupon judgment given according to law, which is the perfection of reason. This is of *Littleton* here called *legitima ratio*, whereunto no man can attaine but by long studie, often conference, long experience, and continuall observation. Section 232b.

- ... for the maine rule of law is, that no man can frustrate or derogate from his owne grant to the prejudice of the grantee. Section 233b.

- And *Littleton* here is of opinion, that neither by plea nor by writ nor otherwise, he himselfe shall avoid it, but his heire (in respect his ancestor was *non compos mentis*) shall avoid it by entrie, plea, or writ. And herewith the greatest authorities of our bookes agree; and so was it resolved with *Littleton* in *Beverley's* case; where it is said, that it is a maxim of the common law, that the partie shall not disable himself. Section 247b.

- Here it appeareth that our booke cases are the best proofes what the law is, *Argumentum ab authoritate est fortissimum in lege.* Section 254a.

- ... for as knowledge increaseth, so doubts therewith increase also .... Section 264a.

- And it is to be observed, that by the ancient maxime of the common law, a right of entrie, or a chose in action, cannot be granted or transferred to a stranger, and thereby is avoyded great oppression, injurie, and injustice. Section 266a.

- *"A right cannot die." Dormit aliquando jus, moritur nunquam.* For of such an high estimation is right in the eye of the law, as the law preserveth it from death and destruction: trodden downe it may bee, but never trodden out. Section 279b.

- Here it is to be observed, of what authoritie antient lectures or readings upon statutes were, for that they had five excellent qualities. First, they declared what the common law was before the making of the statute, as here it appeareth. Secondly, they opened the true sense and meaning of the statute. Thirdly, their cases were brief, having at the most one poynt at the common law, and another upon the statute. Fourthly, plaine and perspicuous, for then the honour of the reader was to excell others in authorities, arguments, and reasons for proofe of his opinion, and for confutation of the objections against it. Fifthly, they read, to suppresse subtill inventions to creepe out of the statute. But now readings having lost the said former qualities, have lost also their former authorities: for now the cases are long, obscure, and intricate, full of new conceits, liker rather to riddles than lectures, which when they are opened they vanish away like smoke, and the readers are like to lapwings, who seeme to bee nearest their nests, when they are farthest from them, and all their studie is to find nice evasions out of the statute. By the authority of *Littleton,* ancient readings may be cited for proofe of the law; but new readings have not that honour, for that they are so obscure and darke. Section280b.

- For it is a maxime in law, that no man shall attorne to any grant of any seigniorie, rent service, reversion or remainder, but he that is immediately privie to the grantor .... Section 311a.

- *"Always the warrantie shall descend to him who is heire by the common law."* This is a maxime of the common law .... Section 329a.

- ... for that it is a maxime in law, that a grant by deed of such things as doe lie in grant, and not in liverie of seisin, do work no discontinuance. Section 332a.

- So as grave and learned men may doubt, without any imputation to them; for the most learned doubteth most, and the more ignorant for the most part are the more bold and peremptory. Section 338a.

- *"It is a principle in law, &c." Principium, quod est quasi primum caput,* from which many cases have their originall or beginning, which is so strong, as it suffereth no contradiction; and therefore it is said in our books, that ancient principles of the law ought not to be disputed, *Contra negantem principia non est disputandum.* Section 343a.

- *"Law temporall."* Which consisteth in three parts, viz, First, on the common law, expressed in our bookes of law, and judiciall records. Secondly, on statutes contained in acts and records of parliament. And thirdly, on customes grounded upon reason, and used time out of minde; and the construction and determination of these doe belong to the judges of the realme. Section 344a.

- ... for in this case and many other, the law that abhorreth suits of vexation doth avoid circuitie of action; for the rule is, *Circuitus est evitandus.* Section 348a.

- ... and treble damages were not at the common law (for the common law never giveth more damage than the losse amounteth unto) ... Section 355b.

- Here by the opinion of *Littleton*, *communis opinio* is of authoritie, and stands with the rule of law, ... Section 365a.

- Note, that warranties are favoured in law, being a part of a man's assurance; but estoppels are odious. Section 365b.

- In the meane time know this, that the learning of warranties is one of the most curious and cunning learnings of the law, and of great use and consequence. Section 366a.

- HERE is rehearsed a maxime of the common law, that every warrantie doth descend upon him that is heire to him that made the warrantie, by the common law, as here it appeareth. Section 376a.

- And hereby it may appeare, that it is not safe for any man (be he never so learned) to be of counsell with himselfe in his owne case, but to take advice of other great and learned men. Section 377b.

- In these last three Sections our author hath taught us an excellent point of learning, that when any innovation or new innovation starts up, to trie it with the rules of the common law (as our author here hath done); for these be true touchstones to sever the pure gold from the drosse and sophistications of novelties and new inventions. And by this example you may perceive, that the rule of the old common law being soundly (as our author hath done) applyed to such novelties, it doth utterly crush them and bring them to nothing; and commonly a new invention doth offend against many rules and reasons (as here it appeareth) of the common law; and the ancient judges and sages of the law have ever (as it appeareth in our bookes) suppressed innovations and novelties in the beginning, as soone as they have offered to creepe up, lest the quiet of the common law be disturbed .... Section 379b.

- HERE our author declareth one of the maximes of the common law, that the heire shall never be bound to any expresse warrantie, but where the ancestor was bound to the same warranty; for if the ancestor were not bound, it cannot descend upon the heire, which is the reason here yeelded by *Littleton*. Section 386a.

- ... where the state whereunto the warrantie is annexed is defeated, there the warrantie it selfe is defeated also, which is one of the maximes of the common law. Section 389b.

- It is to be observed, that the judgement against a man for felonie is, that he be hanged by the neck untill he be dead; but *implicative*, (as hath beene said) he is punished first in his wife, that she shall lose her dower. Secondly, in his children, that they shall become base and ignoble; as hath beene said. Thirdly, that he shall lose his posteritie, for his bloud is stained and corrupted, that they cannot inherit unto him or any other ancestor. Fourthly, that he shall forfeit all his lands and tenements which he hath in fee, and which he hath in taile, for terme of his life. And fifthly, all his goods and chattels. And thus severe it was at the common law; and the reason hereof was, that men should feare to commit felonies: *Ut poena ad paucos, metus ad omnes perveniat.* Section 392b.

- *Ratio est anima legis*; for then are we said to know the law, when we apprehend the reason of the law; that is, when we bring the reason of the law so to our owne reason, that wee perfectly understand it as our owne; and then, and never before, we have such an excellent and inseparable propertie and ownership therein, as wee can neither lose it, nor any man take it from us, and will direct us (the learning of the law is so chained together) in many other cases. But if by your studie and industrie you make not the reason of the law your owne, it is not possible for you long to retaine it in youre memorie. Section 395a.

- ... knowing for certaine, that the law is unknowne to him that knoweth not the reason thereof, and that the known certaintie of the law is the safetie of all. Section 395a.