

Chapter 1 : TRIPLETT, COMMONWEALTH vs., Mass. 26

Excerpt from A Rubric of the Common Law, Being a Short Digest of the Common Law The general principles of common law are on the whole simple and clear; and it is the mass of cases reported, a large proportion of which turn upon their own peculiar facts, to which facts the general principles have to be applied, that makes each branch of law.

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Chapter 2 : ROGERS V. TENNESSEE

A rubric of the common law: being a short digest of the common law: illustrated throughout by leading cases, with an appendix and very copious indexes.

William Edward Nelson Language: University of Georgia Press Format Available: Americanization of the Common Law remains one of the standard works on the transformation of law in America from the late colonial period to the end of the early republic. In a straightforward manner, William E. Nelson analyzes the profound ideological movement that grew out of the American Revolution and caused substantial structural change in the legal and social order of Massachusetts and, by extension, in the nation at large. The Revolution, Nelson argues, transformed a hierarchical and communitarian legal and social order into an egalitarian and individualistic one. Melvin Aron Eisenberg Language: Harvard University Press Format Available: Much of our law is based on authoritative texts, such as constitutions and statutes. The common law, in contrast, is that part of the law that is established by the courts. Common law rules predominate in some areas of law, such as torts and contracts, and are extremely important in other areas, such as corporations. Nevertheless, it has been far from clear what principles courts use--or should use--in establishing common law rules. In this lucid yet subtly argued book, Melvin Eisenberg develops the principles that govern this process. The rules established in every common law case, he shows, are a product of the interplay between the rules announced in past precedents, on the one hand, and moral norms, policies, and experience, on the other. However, a court establishing a common law rule is not free, as a legislator would be, to employ those norms and policies it thinks best. Rather, it can properly employ only those that have a requisite degree of social support. More specifically, the common law should seek to satisfy three standards. First, it should correspond to the body of rules that would be arrived at by giving appropriate weight to all moral norms, policies, and experiential propositions that have the requisite support, and by making the best choices where norms, policies, and experience conflict. Second, all the rules that make up the body of the law should be consistent with one another. Third, the rules adopted in past precedents should be applied consistently over time. Often, these three standards point in the same direction. The central problems of legal reasoning arise when they do not. These problems are resolved by the principles of common law adjudication. With the general principles of common law adjudication as a background, the author then examines and explains the specific modes of common law reasoning, such as reasoning from precedent, reasoning by analogy, drawing distinctions, and overruling. Throughout the book, the analysis is fully illustrated by leading cases. This innovative and carefully worked out account of the common law will be of great interest to lawyers, law students, students in undergraduate legal studies programs, scholars interested in legal theory, and all those who want to understand the basic legal institutions of our society.

Chapter 3 : Key Features of Common Law or Civil Law Systems | Public private partnership

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In most cases contractual relationship is subject to private law and courts that deal with these issues. Most PPP arrangements are. It is important to seek local legal advice to check whether these rules apply in a particular civil system. It is also important to note that in a civil law jurisdiction, unless the contract specifies that the parties have agreed to arbitration, the contract will be enforced by the administrative courts. Some of the key administrative rules that apply to delegated management arrangements are listed below. Governments may wish to include these rules in the arrangement, and when they are part of the underlying law it may not be necessary to repeat them in the contract. But relying on just the underlying law is problematic because the rules are sometimes ambiguous. A contract that takes a background administrative law principle and spells out exactly how it is to be applied will generally be effective. But, changing or overriding an administrative law principle may or may not be legally possible—that would need to be checked. For example, it may not be possible to completely remove the ability of a contracting authority to unilaterally change service standards. Some civil law codes also contain mandatory notice periods before termination for breach of contract that cannot be avoided or overridden. Rights of contracting authority that may override contractual provisions

Right of unilateral modification The contracting authority may, as in France, have the right to modify aspects of the contract unilaterally when it deems the change to be in the public interest.

Right of unilateral cancellation The contracting authority has the right to cancel the contract early although it must compensate the operator.

Right to continuity of service The operator in an administrative contract may not suspend the execution of its obligations under the contract, even if the contracting authority breaches the contract. Under a concession or affermage-lease, the operator is deemed to assume duties relating to operating a public service, even beyond those included in the contract such as investing to address increasing demand or adapting to new technologies. For example, when the contracting authority imposes a unilateral modification, it must also adjust the financial terms of the arrangement so that the operator is not worse off for example, if the contracting authority required higher service standards, it might also have to allow a higher tariff.

Relief under fait du prince requires the following conditions: The operator is entitled to compensation for financial difficulties arising from large and unforeseen changes in economic conditions that render execution of the agreement financially hazardous. The adverse economic impact of these events must not only be exceptional but beyond all limits foreseen by the contract.

Force majeure Unpredictable and uncontrollable events that render the performance of the contract materially impossible exonerate the operator from its obligations. For example, a spill from a chemical factory causing permanent pollution of the only water source would be considered force majeure. Natural phenomena such as hurricanes and droughts may also be considered force majeure. Similar concepts exist in Mali, Tunisia and Algeria, for example.

Gross-up clauses Under the French tax code article quarter gross-up clauses related to indemnification of withholding taxes on interest are not to be binding on French tax administration when the debtor is a French entity.

Bankruptcy In Common law jurisdictions, such as England and the US, the emphasis when a business gets into financial trouble is on seeking a reorganization rather than a liquidation to keep the business as a going concern eg US, Chapter 11, UK administration. In Civil law jurisdictions the process focuses on liquidation although reform of some bankruptcy laws such as France and OHADA countries is now permitting reorganizations of debtors before they become insolvent.

Security interests and syndicated loans Common law systems have greater flexibility in granting different types of security over assets - an important feature of PPP arrangements involving commercial funding such as BOTs. They also have the concept of trusts, which enable security interests to be held by a trustee for lenders in a syndicated loan situation without the need for formal transfer or re-registering of security interests in names of new lenders. Civil law does not have such a concept and so security interests generally required to be re-registered in the name of the new lender involving additional registration costs and notarial fees. France is in the process of introducing a trust law which will resolve a number of these issues. In

OHADA countries, however, filings involving public notary are required for formalizing security interests.

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Facts[edit] Rogers stabbed James Bowdery with a butcher knife on May 6, Bowdery survived, but due to cerebral hypoxia Bowdery slipped into a coma. Eventually Bowdery developed a kidney infection, from which he died on August 7, , 15 months after the stabbing. The medical examiner ruled the cause of death as cerebral hypoxia "secondary to a stab wound to the heart. Rogers appealed to the Tennessee Court of Criminal Appeals , arguing that the year-and-a-day rule was part of the common law of Tennessee, despite its absence from the Tennessee homicide statute. Rogers appealed again to the Tennessee Supreme Court. The court held that the common-law year-and-a-day rule survived in Tennessee, but was outmoded. It therefore abolished the rule. Rogers had also argued that abolishing the rule after he had committed his crime would violate the Ex Post Facto Clause of Article I of the U. The Tennessee Supreme Court disagreed, reasoning that although judicial decisions can be ex post facto laws, retroactive abolition in this case would not offend due process principles because the year-and-a-day rule was so outmoded that a reasonable person would not expect it to exist under modern law. Majority opinion[edit] The Court evaluated this case under the rubric of due process rather than the limitations on ex post facto lawmaking present in the Constitution. This is so because the Ex Post Facto Clause limits only legislative actions rather than judicial decisions. However, limitations on ex post facto judicial decisionmaking are inherent in the notions of due process. For instance, in *Bouie v. City of Columbia* , U. Bouie and subsequent cases applying *Bouie* made clear that the Due Process Clause of the Fourteenth Amendment did not incorporate the Ex Post Facto guarantee against the states in any particular manner. The rationale of *Bouie* rested on "core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct. Put another way, imposing a strict prohibition against ex post facto lawmaking on common law courts would deprive such courts of the ability to interpret the law in a manner consistent with settled expectations of parties before it who live in the modern world. Common law courts at the time of the framing undoubtedly believed that they were finding rather than making law. But, however one characterizes their actions, the fact of the matter is that common law courts then, as now, were deciding cases, and in doing so were fashioning and refining the law as it then existed in light of reason and experience. Due process clearly did not prohibit this process of judicial evolution at the time of the framing, and it does not do so today. Rogers should have anticipated that the year-and-a-day rule might no longer exist under modern circumstances. Thirteenth century medical science was not capable of determining the cause of death beyond a reasonable doubt after a significant amount of time had elapsed following the ultimately fatal blow. For this reason, the year-and-a-day rule served as a kind of limitation period on murder prosecutions. This pervasive change in the law should have put Rogers on notice that, although the rule had not been formally abolished in Tennessee, it was clearly moribund in American law generally and Tennessee law specifically. Why should the fact that it was the state supreme court that abolished the rule make a difference? The process of lawmaking by common-law courtsâ€”applying legal principles to novel fact situationsâ€”is not interrupted by forbidding them from applying new legal principles to new factual situations, after all. Scalia thus believed that there was no reason not to apply the Ex Post Facto Clause to "unelected judges" just as it applied to the "elected representatives of all the people. Blackstoneâ€”and the Framers who were formed by Blackstoneâ€”would clearly have regarded that change in law as a matter for the legislature, beyond the power of the court That explains why the Constitution restricted only the legislature from enacting ex post facto laws. Under accepted norms of judicial process [that prevailed in the time of the Framers], an ex post facto law For these historical reasons, Scalia believed, the majority should not have circumvented the strictures of the Ex Post Facto Clause by analyzing what the Tennessee Supreme Court had done under the rubric of due process. Other common-law crimes had outmoded elements, and certainly a common-law court could not say those

elements no longer existed because the ancient rationale for them had changed—absporation, as an element of common-law larceny, or "breaking the close" as an element of burglary, for instance. Of course, today this behavior would be subject to punishment under statutory definitions of crimes rather than common-law definitions. Rogers might have known that the rule was outmoded, but he could not have known that the rule had ceased to exist until the court or the legislature told him so. And although the rule might have had dubious status in Tennessee law, the Tennessee Supreme Court had explained that it was the law, and the Court typically takes such statements at face value.

Chapter 5 : Rogers v. Tennessee - Wikipedia

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This court concluded that, in order to convict a defendant charged with common law obstruction of justice, the Commonwealth must prove beyond a reasonable doubt that the defendant knowingly interfered, or attempted to interfere, with the testimony of a witness in a judicial proceeding []. The case was tried before James F. Ianelli with him for the defendant. The defendant appeals from his conviction of the common law crime of "obstruction of justice. The defendant is an attorney and the chief of police of Oxford. Law enforcement officers working as part of a regional drug task force were investigating drug-related activities in the area. On December 13, , Bonneau testified before a grand jury that the defendant had questioned her on a number of occasions regarding the information she had supplied about him to the State and local police. The bill charged in pertinent part that the defendant: The defendant had told Bonneau to keep quiet about anything involving him. On or about August 20, , the defendant again sought information about criminal investigations and specifically what Bonneau had told state police. Sufficiency of the evidence. The common law crime of obstruction of justice has been recognized in the Commonwealth for many years. Reynolds, 14 Gray 87, 90 recognizing obstruction of justice as "an indictable offence" ; Commonwealth v. The indictments in those cases, however, charged each defendant with interfering with a witness at a criminal trial. We have found no Massachusetts precedent applying the common law crime of obstruction of justice to the act of interfering with a criminal investigation. In a more recent decision this court questioned whether an individual charged with removing fingerprints from a knife might be prosecuted for obstruction of justice rather than as an accessory after the fact. If we were to conclude that such an application was proper, we would confront the constitutional maxim that both statutory and common law crimes must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited. Any doubt in this regard must be resolved in favor of the defendant. Accordingly, we conclude that, in this case, it was not enough for the Commonwealth to prove that the defendant interfered with a criminal investigation. In order to convict the defendant of common law obstruction of justice, the Commonwealth had the burden to show beyond a reasonable doubt that the defendant knowingly interfered with the testimony of a witness in a judicial proceeding. This the Commonwealth failed to do. Judgment is to be entered for the defendant. Founded in by the defendant and in operation until , the task force sought to educate local citizens and eradicate the drug supply in the participating localities. We conclude it is unnecessary to address this issue on appeal. The defendant was found not guilty of one of the conflict of interest charges and the accepting money charge. The judge declared a mistrial as to the false report charge. These charges are not at issue on this appeal. The judge ruled that the only support for a conviction of obstruction of justice was the conversation alleged to have taken place on August 19, The judge instructed the jury as follows: Villatico, or an investigation of [the defendant], or an investigation of Mr. Villatico was being conducted by law enforcement authorities in the office of the Attorney General of the Commonwealth of Massachusetts. However, the Commonwealth offered no evidence that, on August 19, , the defendant knew there was or would soon be a grand jury hearing. Bonneau did not testify before the grand jury until December 13,

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Chapter 7 : What is RUBRIC? definition of RUBRIC (Black's Law Dictionary)

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