

**QUESTIONS AND
ANSWERS ON
COMMON LAW AND
EQUITY PLEADING**

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Questions and Answers on Common Law and Equity Pleading by Wilber A. Owen

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WILBER A. OWEN

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Questions and Answers

ON

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Common Law and Equity Pleading.

PREPARED WITH THE AID OF STEPHEN, CHITTY, GOULD,
AND McKEEVIE ON COMMON LAW PLEADING, AND
STORY, MITFORD AND TYLER, LANDELL, AND
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MENT OF THE COMMON LAW QUESTIONS.

SECOND EDITION.

BY
WILBER A. OWEN, LL. M.

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Questions and Answers on Common Law Pleading.

[CHAPTER I.]

1. What is the technical meaning of the term "pleading?"

It is the statement in a logical and legal form of the facts which constitute the plaintiff's cause of action or the defendant's ground of defense.

They are the mutual allegations or statements of the parties to a suit affirming on the one side and denying on the other the matters in dispute.

2. What is the object of pleading?

It is to apprise the opposite party of the charge against him, or of the defense interposed, and the consequent production of an issue, so that due preparation for trial may be had.

3. How are actions classified?

In to civil and criminal. Civil actions are divided into legal and equitable. Legal civil actions are divided into real, personal and mixed.

Real actions are those brought for the specific recovery of lands, tenements, or hereditaments.

Personal actions are those brought for the specific recovery of goods and chattels, or for damages, or other re-

dress, for breach of contract, or other injuries of whatever description, the specific recovery of lands, tenements, and hereditaments only excepted.

Mixed actions are such as appertain in some degree to both the former classes, being brought both for the specific recovery of lands, tenements, or hereditaments, and for damages for injury sustained in respect of such property.

Actions are also classified into those arising *ex contractu* and those arising *ex delicto*,

4. What were the three superior courts at common law?

The Court of King's Bench, the Court of Common Pleas, and the Court of Exchequer.

5. What was the original distribution of business among them?

The cognizance of crime, and of such matters of litigation in general as directly concerned the Crown, (those relating to the royal revenue excepted,) was exclusively appropriate to the King's Bench; civil suits between subject and subject, to the Common Pleas; and matters relating to the royal revenue, to the Exchequer.

6. What changes took place in this distribution, and how were they brought about?

Encroachments were made on the jurisdiction of the Common Pleas by both the other courts by reason of the privilege of certain persons to be sued only in those courts. By certain fictions this privilege was extended to all persons. (See 56-60.)

7. What is the result of these changes?

The King's Bench and Exchequer retain their original jurisdiction, and in addition have cognizance of all personal actions whatsoever. The Common Pleas retains its original jurisdiction, and still has exclusive jurisdiction of all real and mixed actions.

8. How are actions commenced in the different courts?

In the King's Bench and Common Pleas, either by original writ or by bill; in the Exchequer, by bill only.

9. What is an original writ?

An original writ is a mandatory letter issuing out of the Court of Chancery under the great seal, and in the king's name, directed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him in most cases to command the defendant to satisfy the claim, and on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non-compliance.

10. What is the object and effect of the original writ?

Its object is to compel the appearance of the defendant in court; and its effect is to give the court in which the writ is returnable jurisdiction of the cause.

11. Why was strict conformity between the declaration and the original writ necessary?

Because the writ gave jurisdiction to the court to proceed in the particular cause therein named, and if the declaration

stated a different cause the court would not have authority to proceed.

12. How did the different forms of writs arise, and why cannot an action be maintained unless it falls within some known writ?

The ancient writs provided for injuries then known, and as time progressed new cases of injury arose with new circumstances, for which new writs were devised under the authority given the Chancery by the statute of Westminster II, 13 Edward I. No case is considered actionable which does not come within the limits of some known writ, and these instruments have consequently had the effect of limiting and defining the right of action itself.

13. What are the principal real and mixed actions?

The writ of right, writ of formedon, writ of dower, and writ of quare impedit.

14. What is the writ of right?

The writ of right is the remedy appropriate to the case where a party claims the specific recovery of corporeal hereditaments in fee simple, founding his title on the right of property, or mere right, arising either from his own seisin or the seisin of his ancestor or predecessor.

15. What is the writ of formedon?

The writ of formedon lies where a party claims specific recovery of lands and tenements as issue in tail, or as a remainderman or reversioner upon the determination of an estate tail.

16. What is the writ of dower?

The writ of dower lies for a widow claiming the specific recovery of her dower, no part of it having yet been assigned to her.

The writ of right of dower lies for the widow when part of her dower has already been assigned.

17. What is the writ of quare impedit?

The writ of quare impedit is the remedy by which, where the right of a party to a benefice is obstructed, he recovers the presentation, and is the form of action now constantly adopted to try the disputed title to an advowson.

18. What is the modern action to recover possession of, and try the title to, real property?

Ejectment. Originally this action could only be maintained by a tenant for years who had been ousted from possession; but now, by the use of certain fictions, it lies in all cases relating to the title or possession of real property.

19. Name the most common personal actions?

Debt, covenant, detinue, trespass, trespass on the case, and replevin.

20. What is the action of debt?

An action brought for the recovery of a debt, i. e., a liquidated or certain sum of money alleged to be due the plaintiff.

21. What is the action of covenant?

An action for the recovery of damages for a breach of covenant, that is, a promise under seal.

22. What is the action of detinue?

An action for the specific recovery of goods and chattels, or deeds and writings, detained from the plaintiff.