

The Common Law in Tennessee

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by

Daniel Towers Lewis

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The common law is in force in the state of Tennessee

Tennessee Jurisprudence

Tennessee Jurisprudence 6, Common Law:

Introduction

§ 1. Scope. -- This title deals with certain aspects of the body of law known as the common law. The following discussion will by no means be exhaustive; instead only limited treatment is intended. In-depth analyses of the common law appears under specific headings throughout this work. This section will focus on the rules and principles worthy of special attention.

§ 2. Constitutional and Statutory Provisions. -- "All laws and ordinances now in force an in use in this State, not inconstant with this Constitution, shall continue in force and use until they expire, be altered or repealed by the Legislature; but ordinances contained in any former Constitution or schedule thereto are hereby abrogated." The effect of the constitution provision was that it adopted the common law of England as it stood in 1776 and before the separation of colonies, it being derived from North Carolina, out of which state the State of Tennessee was carved. The law prevails unless and until changed by the legislature.

§ 3. Definition and General Consideration. -- The common law, properly so called, is that law by which proceedings and determinations in the King's ordinary court of justice are guided and directed. It consist of such principles, matured and established by the judges of England, upon

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fitness of things ascertained by observation. It has been said that the common law is the people's protection against offenses notoriously against public decency and good morals. The common law has been aptly called the "lex non scripta," because it is a rule prescribed by common consent and agreement of the community as one applicable to its different relations, and capable of preserving the peace, good order and harmony of society, and rendering unto every one that which of right belongs to him. Its sources are to be found in the usage, habits, manners and customs of a people. Its seat is the breast of the judges who are its expositors and expounders. The common law of a country will, therefore, never be entirely stationary, but will be modified, and extended by analogy, construction and custom, so as to embrace new relations, springing up from time to time, from an amelioration or change of society.

It is universally conceded that the fundamental principles of the common law are unchangeable, yet the courts recognize the necessity of flexibility in the application of old rules to new cases, so as to enable them to adapt these rules to the every varying conditions and emergencies of human society. The common law is not like the statute law, fixed and immutable by positive enactment, except where a principle has been adjudged as the rule of action. Where the reason for the rule fails, the rule should not apply.

II. Adoption of the common Law.

§ 4. Adoption Acts. -- The State of Tennessee has adopted the common law of England as it stood at and before the separation of the colonies.

§ 5. Extent of Adoption. -- So much as the common law as has not been abrogated or repealed by statute is in full force and in effect in Tennessee. The rules of common law are not repealed by implication, and if a statute does not include and cover such a case, it leaves the law as it was before enactment.

§ 6. Effect of Adoption. -- The common law governs in a state unless changed by statute. The General Assembly is not prohibited from changing or abolishing the common law in force at the adoption of the state constitution, in the absence of restriction in that state or federal constitution; the phrase "law of the land" as used in the state constitution merely refers to the common and statute law then existing, but does not prohibit the change of the common law. Within constitutional limitations the power of the General Assembly to change the common law and make special definitions of the status of persons is plenary. However, common-law rights will not be abrogated by implications and will be denied only when expressly so provided by statute, which will not be construed to alter the common law further than the act expressly declares or than is necessarily implied from the fact that it covers the whole subject matter. The Tennessee Code governs, in case of conflict between its provisions and the common law.

The common law binds courts only less firmly than statutes. Its rules are gradually, almost imperceptibly, enlarged or contracted by the courts, by construction, in the course of their application to new states of fact, to meet the needs of a progressive civilization, but it is not allowable to change them by passing over certain proceedings. This can only be done by legislation.

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§ 7. English Statutes and Decisions. -- Statutes Generally. -- The Tennessee statutes are built on ancient English statutes. An alteration of a British statute is generally deemed as adoption of the *pare re-enacted*, and a rejection of that not within the purview of the alteration. Such British statutes therefore, as were not previously in use, and as such have been altered since the formation of the Tennessee Constitution, are not in force. Of these the court must judge.

III. Evidence

§ 8. Generally. -- It has been said that by the evidence of the common law is meant Tennessee's own precedents, practice and reports, and the English reports and other books usually considered the depositories of the common law before the revolution, making in all cases the necessary allowances for its applicability and suitability to Tennessee's situation. The laws of other states are presumed to be the same as those of the state where the suit is brought, until the contrary is shown.

Tennessee Code Annotated

Under the authority of T.C.A. 3-12-101 There is created the office of legal services, which has the duty to: (6) Conduct a continuing review of the Tennessee Code Annotated and unmodified public chapters and advise the general assembly as to legislation deemed necessary to remove defective or anachronistic laws in light of the common law and judicial decisions;

Under the authority of T.C.A. 3-12-101 defective or anachronistic laws are being removed in light of the common law and judicial decisions.

Under the authority of T.C.A. 8-6-109 (a) . . . the attorney general and reporter are being authorized to utilize and refer to the common law in cases in which the state of Tennessee is a party.

Under the authority of T.C.A. 9-8-307 in a case of tort liability the state may assert common law defenses and absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted by the state.

Under the authority of T.C.A. 9-8-307. Jurisdiction - Claims - Waiver of actions - Standard for tort liability - Damages - Immunities - Definitions - Transfer of claims.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the

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state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in § 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate.

(g) No language contained in this chapter is intended to be construed to abridge the common law immunities of state officials and employees.

Under the authority of T.C.A. 4-5-101 Et seq. the administrative procedure for the state of Tennessee is not being construed as in derogation of the common law.

T.C.A. 4-5-101. Uniform Administrative Procedures Act. This chapter may be cited as the "Uniform Administrative Procedures Act."

T.C.A. 4-5-103. Construction of chapter. (a) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination; and this chapter shall be given a liberal construction and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power.

Under the authority of T.C.A. 47-50-112 contracts are being enforced as written, provided, that nothing herein shall limit the right of any party to contest the agreement on the basis it was procured by fraud or limit the right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts.

(a) All contracts, including, but not limited to, notes, security agreements, deeds of trust, and installment sales contracts, in writing and signed by the party to be bound, including endorsements thereon, shall be prima facie evidence that the contract contains the true intention of the parties, and shall be enforced as written; provided, that nothing herein shall limit the right of any party to contest the agreement on the basis it was procured by fraud or limit the right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts.

(b) Any contract, security agreement, note, deed of trust, or other security instrument, in writing and signed or endorsed by the party to be bound, that provides that the security interest granted therein also secures other provisions or future indebtedness, regardless of the class of other indebtedness, be it unsecured, commercial, credit card, or consumer indebtedness, shall be deemed to evidence the true intentions of the parties, and shall be enforced as written; provided, that nothing herein shall limit the right of any party to contest the agreement on the basis that it was procured by fraud or limit the right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts.

COMMON LAW LIENS

Under the authority of T.C.A. 30-2-501. Time limitation for suit - State tax lien.

(b) Where any taxes were owed to the state of Tennessee by the decedent at the time of death,

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any and all property of such decedent, or an amount equal to the proceeds derived from the disposal thereof, shall be subject to the state's common law lien for delinquent taxes for a period of six (6) months following death or until payment within such period, which lien shall be enforceable by distress warrant in accordance with title 67, chapter 1, part 12.

Under the authority of T.C.A. 66-14-101. Right to sell unclaimed articles left for repairs.

(a) Silversmiths, lock and gunsmiths, blacksmiths, watchmakers and repairers, and artisans generally, who do work for the public, shall have the common law lien, and the right, at the expiration of six (6) months from the time of the contract and leaving with them the goods or products to be repaired, developed, processed or improved, if not claimed or called for by the owner, to sell the same at public outcry after complying with the provisions of this chapter.

Under the authority of T.C.A. 16-3-503 The inherent power of the supreme court for supervision of inferior courts is declaratory of the common law as it existed at the time of the adoption of the constitution of the state of Tennessee

The general assembly hereby declares that this part is declaratory of the common law as it existed at the time of the adoption of the constitution of the state of Tennessee, and of the power inherent in a court of last resort.

Conclusion on The common law being in force in the state of Tennessee :

Under the authority of T.C.A. 3-12-101 the office of legal services is recommending the removal of defective or anachronistic laws in light of the common law and judicial decisions.

Under the authority of T.C.A. 8-6-109 the attorney general and reporter are being authorized to utilize and refer to the common law in cases in which the state of Tennessee is a party.

Under the authority of T.C.A. 9-8-307 in a case of tort liability the state may assert common law defenses and absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted by the state. And that no language contained in T.C.A. 9-8-307 is intended to be construed to abridge the common law immunities of state officials and employees.

Under the authority of T.C.A. 4-5-101 Et seq. the administrative procedure for the state of Tennessee is not being construed as in derogation of the common law.

Under the authority of T.C.A. 47-50-112 contracts are being enforced as written, provided, that nothing herein shall limit the right of any party to contest the agreement on the basis it was procured by fraud or limit the right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts.

Under the authority of T.C.A. 16-3-503 The inherent power of the supreme court for supervision of inferior courts is declaratory of the common law as it existed at the time of the adoption of the constitution of the state of Tennessee

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So One May Conclude that:

The common law is in force in Tennessee, and the common law and judicial decisions are being used by office of legal services, as a standard, in determining which laws of the State of Tennessee the legislature ought to remove.

The attorney general and reporter are being authorized to utilize and refer to the common law in cases in which the state of Tennessee is a party.

The state may assert common law defenses and absolute common law immunities. The common law immunities of state officials and employees are not abridged.

The administrative procedure for the state of Tennessee is not being construed as in derogation of the common law.

The right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts is not limited.

Therefore it is concluded that the common law operates in the state of Tennessee as a supreme law, and that the common law is in effect in the state of Tennessee. This conclusion is further supported by:

The attorney general and reporter being authorized to utilize and refer to the common law in cases in which the state of Tennessee is a party

The state asserting common law defenses and absolute common law immunities. And the common law immunities of state officials and employees not being abridged.

The administrative procedure for the state of Tennessee is not being construed as in derogation of the common law.

The right of any party to assert any other rights or defense provided by common law or statutory law in regard to contracts not being limited.

The requirements for the common law in the State of Tennessee

Having established that the common law is in effect in Tennessee, one may examine evidence which shows instances in which the common law **MUST BE APPLIED**. This evidence goes beyond showing that the common law exists and may be used in Tennessee. This section demonstrates those instances in which the common law **MUST BE APPLIED**.

Under the authority of Article VII of Articles in addition to and Amendment of the Constitution for the United States of America, 1789, [See Exhibit 005] as protected by civil action in 42 U.S.C. § 1981 and criminal action in 18 U.S.C. 242.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

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trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law

Under Article X, Section 2 of the Constitution [organic LAW] for the 1796 State of Tennessee [See Exhibit 001], as protected by criminal action under T.C.A. 39-16-403 (a)(2):

All laws and ordinances now in force and use in this territory, not incoincident with this constitution, shall continue to be in force and use in this state, until they shall expire, be altered, or repealed by the legislature [, and]

Under An Act [LAW] for the government of the Territory South of the River Ohio of May 26, 1790 the Senate and the House of Representatives of the United States of America in Congress assembled enacted that:

. . . the government of the said territory, south of the Ohio, shall be similar to that which is now exercised in the territory north-west of the Ohio; except so far as is otherwise provided in the conditions expressed in an Act of Congress of the present session, entitled, "An Act to accept the cession of the claims of the State of North-Carolina, to a district of western territory [, and]

Under the authority of An Act [LAW] to Accept The North Carolina Cession, of April 2, 1790 the Senate and the House of Representatives of the United States of America in Congress assembled enacted:

Eighthly. That the laws in force and use in the State of North-Carolina at the time of the passing of this Act, shall be and continue in full force within the territory hereby ceded until the same shall be repealed, or otherwise altered by the legislative authority of said territory [,and]

Under the authority of the North-Carolina deed of Cession of February 25, 1790 [See Exhibit 023] presented by Samuel Johnson and Benjamin Hawkins, Senators in the Congress of the United States of America, duly and constitutionally chosen by the Legislature of the State of North-Carolina:

. . . [every] right reserved by any act [LAW] or acts [LAWS] to persons settled on, and occupying land within the limits of the lands hereby intended to be ceded as aforesaid shall continue to be in full force in the same manner as though the cession had not been made . . . [, and]

Under the Act [LAW] of North-Carolina Cession of Western Land Claims of December 22, 1789 [See Exhibit 023] the General Assembly of North-Carolina enacted:

Eighthly. That the laws in force and use in the State of North-Carolina at the time of the passing of this Act, shall be and continue in full force within the territory hereby ceded until the same shall be repealed, or otherwise altered by the legislative authority of said territory [,and]

Under the XIV of the Declaration of Rights of the Constitution [organic LAW, See Exhibit 029] for North-Carolina of 1776:

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That in all Controversies at Law respecting property the ancient Mode of Trial by Jury is one of the best Securities of the Rights of the People, and ought to remain sacred and Inviolable.

Under the authority of Article VII of Articles in addition to and Amendment of the Constitution for the United States of America, 1789: [See Exhibit 005] ". . . no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law", as protected by civil action in 42 U.S.C. § 1981 and criminal action in 18 U.S.C. 242.

Under the authority of T.C.A. 47-50-112 contracts are being enforced as written, provided, that nothing herein shall limit the right or defense of any party provided by common law in regard to contracts.

Conclusion on the requirements for the common law in the state of Tennessee:

Under the authority of Articles in addition to and Amendment of the Constitution for the United States of America, 1789 [See Exhibit 005], as protected by civil action in 42 U.S.C. § 1981 and criminal action 18 U.S.C. 242, in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law

Under the authority of Article XIV of the Declaration of Rights of the Constitution [organic LAW See Exhibit 029] for North-Carolina of 1776:

That in all Controversies at Law respecting property the ancient Mode of Trial by Jury is one of the best Securities of the Rights of the People, and ought to remain sacred and Inviolable,

and Under the authority of Articles in addition to and Amendment of the Constitution for the United States of America, 1789 [See Exhibit 005], as protected by civil action in 42 U.S.C. § 1981 and criminal action 18 U.S.C. 242, the trial by jury must be according to the rules of the common law.

Under the authority of Article X, Section VI of the 1796 Constitution for State of Tennessee, [See Exhibit 001]"That the right of trial by jury shall remain the inviolate."

Inviolate Intact; not violated; free from substantial impairment [Henry-Campbell: Black, Blacks Law Dictionary®, Sixth Edition, West Publishing Co. St. Paul Minnesota, 1990], and under the authority of Article VII of Amendment to the Constitution for the United States of America as protected by 42 U.S.C. § 1981 the trials by jury must be according to the rules of the common law.

In all Controversies at Law respecting property or RIGHTS no fact shall be otherwise reexamined in any court than according to the rules of the common law.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

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trial by jury shall be preserved.

No fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law

The ancient common law mode of Trial by Jury is one of the best Securities of the Rights of the People, and ought to remain sacred and inviolable.

The right of common law trial by jury shall remain intact; not violated; free from substantial impairment. Having established the necessity of a common-law venue, one may examine the present court system in Tennessee, to see if such a venue is accessible.

When any officials facilitate, authorize, or sanction any actions that limits these rights that such a government actor and or actors, willfully commits the felony of Official Misconduct, as defined under the authority of T.C.A. 39-16-103 (2), AGAINST THE PEACE AND DIGNITY OF THE State.