

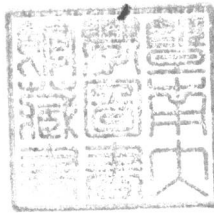
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READINGS AND MOOTS AT THE INNS OF COURT IN THE FIFTEENTH CENTURY

VOLUME II
MOOTS AND READERS' CASES

EDITED FOR
THE SELDEN SOCIETY
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PREFACE

This volume must be deemed to have reached due maturity even by the venerable standards of the Society's cellars. A collection of early moots was first proposed by Professor Thorne in 1949, as an appendix to his edition of early readings. Parts of the French text of the Inner Temple discussions in MS. Harley 1691 and MS. Hargrave 87 were set in galley proof in 1951, but the decision was made to split the volume into two and to expand the collection of moots. Volume I (Readings) was published in 1954. Ten years ago Professor Thorne entrusted Volume II to me, and much of that time has been spent looking at manuscripts. Among the new finds were a number of 'moot books' and collections of set problems which, somewhat to our surprise, carried the history of mooting back to the time of Edward III and even established a link with the law teaching of the thirteenth century.

It is not often that one has the privilege to delve into a species of legal literature which has been almost completely overlooked. This has proved on full investigation to be a genre too vast for adequate treatment in a single volume. Indeed, there remains an enormous corpus of neglected and often wrongly catalogued material, in numerous libraries: 186 items are listed in an appendix to the introduction. We have therefore decided to keep to the original title and concentrate on the fifteenth century, for which century alone there is enough surviving material to make selection difficult. The bulk of the volume (Part III) consists of Inner Temple discussions from the 1480s and 1490s, these being the earliest substantial series to survive. Parts I and II are devoted to moots in the strict sense of the word, as represented by the moot books (Part I) and a recently discovered manuscript in the Wiltshire Record Office (Part II). We considered including the fourteenth-century *Quaestiones de statutis*, but have contented ourselves with an illustrative selection from these and other early texts, hoping that someone will tackle the fourteenth-century learning exercises as a separate enterprise. We have also omitted some Gray's Inn moots from the time of Henry VIII which were set in proof in 1951; these are entirely worthy of publication, but there is a good deal of further Gray's Inn material from that period which would need to be compared. We earnestly hope that the publication of readings and moots will not be allowed to die with the appearance of this instalment. Further volumes on the sixteenth and seventeenth centuries would be highly instructive.

The preface to Volume I undertook that a general account of late medieval legal education would appear in Volume II. With considerable trepidation, I accepted Professor Thorne's invitation to fulfil that undertaking alone; and I owe it to him to acknowledge that he shares none of the blame for the outcome. My introduction should be read in conjunction with Professor Thorne's introduction to Volume I, since I have not thought it necessary to repeat, let alone rewrite, his account of the fifteenth-century readings. I have not yet carried out the other promise, to supply a catalogue of known readings; that work is well under way, but will best be published separately.

J.H.B.

TABLE OF SIGLA
USED IN REFERRING
TO COLLECTIONS OF MOOTS

A=BL MS. Harley 739, ff. 312^v–316^v.

C=CUL MS. Add. 8590.

D=CUL MS. Dd. 13. 24, ff. 99–100.

E=CUL MS. Ee. 2. 26, fo. 81^v.

G=*Cases de Greys-Inn* (1680).

H=HLS MS. 180.

L=CUL MS. Ll. 1. 11.

M=BL MS. Harley 1807, ff. 292–309^v.

T=TCC MS. R. 15. 7, ff. 1–41^v.

W¹=Wilts. Record Office 9 (Savernake Collection), Year Book MS. I (formerly Bruce MS. 10).

W²=Wilts. Record Office 9 (Savernake Collection), Year Book MS. II (formerly Bruce MS. 11).

ABBREVIATIONS AND BIBLIOGRAPHY

For a bibliography of original texts containing moots, see Appendix I

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|---|--|
| Baker, 'Education of Lawyers' | J. H. Baker, 'The Education of Lawyers' in <i>The Reports of Sir John Spelman</i> , II (1977), Selden Soc. vol. 94, 125–135. |
| Baker, 'Learning Exercises' | J. H. Baker, 'Learning Exercises in the Medieval Inns of Court and Chancery', in <i>The Legal Profession and the Common Law</i> (1986), 7–23. |
| Baker, 'Inns of Court and Legal Doctrine' | J. H. Baker, 'The Inns of Court and Legal Doctrine', in T. M. Charles-Edwards and others ed., <i>Lawyers and Laymen. Studies in the History of Law presented to Professor Dafydd Jenkins</i> (Cardiff, 1986), 274–286. |
| Baker, <i>The Legal Profession and the Common Law</i> | J. H. Baker, <i>The Legal Profession and the Common Law. Historical Essays</i> (Hambledon Press, 1986). |
| Baker, <i>Serjeants at Law</i> | J. H. Baker, <i>The Order of Serjeants at Law</i> (Selden Soc. Supplementary Series Vol. 5, 1984). |
| BBLI | <i>Records of the Honorable Society of Lincoln's Inn. The Black Books</i> , I (R. D. Walker ed., 1897). |
| BIHR | Bulletin of the Institute of Historical Research (<i>since 1987 called Historical Research</i>). |
| BL | British Library, London. |
| Bland, 'Learning Exercises' | D. S. Bland, 'Learning Exercises and Readers at the Inns of Chancery in the 15th and 16th Centuries' (1979) 95 LQR 244–252. |
| Brand, 'Courtroom and Schoolroom' | P. Brand, 'Courtroom and Schoolroom: the Education of Lawyers in England prior to 1400' (1987) 60 BIHR 147–165. |
| C | Public Record Office, Chancery Records: |
| C1 | Early Chancery Proceedings. |
| C54 | Close Rolls. |
| C66 | Patent Rolls. |
| C78 | Decree Rolls. |
| C142 | Inquisitions post Mortem. |
| C145 | Inquisitions Miscellaneous. |
| Cal. Coroners Rolls of London 1300–78 | R. R. Sharpe ed., <i>Calendar of Coroners Rolls of the City of London A.D. 1300–1378</i> (1913). |

- Cases de Greys-Inn* *Certain Select Moot-Cases, Intituled, Les Cases de Greys-Inn, which Have been formerly mooted by that Society* (1680). Printed, with this separate title, as Part IV of a collection beginning with T. Williams, *The Excellency and Praeheminence of the Law of England*, at pp. 263–318.
- CFR *Calendar of Fine Rolls preserved in the Public Record Office.*
- CIPM *Calendar of Inquisitions post Mortem.* This first series has now reached Henry IV.
- CIPM Hen. VII *Calendar of Inquisitions post Mortem. Henry VII* (1898–1955), 3 volumes. A separate series.
- CJCP Chief Justice of the Common Pleas.
- CJKB Chief Justice of the King's Bench.
- CLJ Cambridge Law Journal.
- CP Court of Common Pleas.
- CP 40 Public Record Office, Plea rolls of the Court of Common Pleas.
- CPR *Calendar of Patent Rolls preserved in the Public Record Office.*
- cr. created.
- CUL Cambridge University Library.
- D'Ewes, *Autobiography* *The Autobiography and Correspondence of Sir Simonds D'Ewes*, I (J. O. Halliwell ed., 1845).
- DNB *Dictionary of National Biography.*
- Dugdale, *Origines Juridicales* W. Dugdale, *Origines Juridicales* (1666; 3rd ed., 1680).
- Early Records of Furnival's Inn* *Early Records of Furnival's Inn* (D. S. Bland ed., Newcastle-upon-Tyne, 1957). A typescript transcription from a 17th-century MS. in the Middle Temple.
- ELM J. H. Baker, *English Legal Manuscripts*, I, II (Zug, Switzerland, 1975, 1978).
- ELMUSA J. H. Baker, *English Legal Manuscripts in the United States of America*, I (Selden Soc., 1985).
- Fitz. Abr. A. Fitzherbert, *La Graunde Abridgement* (1514–17). The editor has used the 3rd ed. (1577).
- Foss E. Foss, *The Judges of England* (1848–64), 9 volumes.
- Hammer, 'Bolts and Chapel Moots' C. I. Hammer, 'Bolts and Chapel Moots at Lincoln's Inn in the 16th Century' (1970) 11 JSPTL 24–28.
- HEHL The Henry E. Huntington Library, San Marino, California.
- HLS Harvard Law School, Cambridge, Massachusetts.
- IT Inner Temple.
- Ives, *Common Lawyers* E. W. Ives, *The Common Lawyers of pre-Reformation England* (Cambridge, 1983).

- JCP Justice of the Common Pleas.
 JGD Justice of Gaol Delivery.
 JKB Justice of the King's Bench.
 JLH Journal of Legal History.
 JP Justice of the Peace.
 JSPTL Journal of the Society of Public Teachers of Law.
 KB Court of King's Bench.
 Keil. *Relationes quorundam casuum selectorum ex libris Roberti Keilwey* (J. Croke ed., 1602). The 1st ed. (1602) has been used except where other eds. are specifically mentioned. The contents were actually written by John Caryll (d. 1523).
- KSL King's Serjeant at Law.
 LC Library of Congress, Washington, D.C.
 LI Lincoln's Inn.
 Lib. Ass. *Liber assisarum*. The editor has used the 1679 ed.
 LQR Law Quarterly Review.
 Middle Temple Report on the constitution and customs of the Middle Temple, c. 1539, BL Cotton MS. Vitellius C.IX, ff. 319–323; first printed (with errors) in W. Dugdale, *Origines Juridiciales* (1666), 193–197; also printed in W. Herbert, *History of the Inns of Court* (1804), 211–222; R. M. Fisher, 'Thomas Cromwell, Dissolution of the Monasteries, and the Inns of Court, 1534–1540' (1977) 15 JSPTL 103 at pp. 111–117. References are to the MS., but the spelling is modernised in the quotations.
 Description
- MP Member of Parliament.
 MTR *Middle Temple Records*, 1: *Minutes of Parliament 1501–1603* (C. T. Martin ed., 1904).
 PBGI *The Pension Book of Gray's Inn 1569–1669* (R. J. Fletcher ed., 1901). A second volume (1669–1800) was published in 1910.
- PCC Prerogative Court of Canterbury: wills now in the PRO, class PROB/11.
 Port, *Notebook* *The Notebook of Sir John Port* (J. H. Baker ed., 1986), Selden Soc. vol. 102.
 Prest, *Inns of Court* W. R. Prest, *The Inns of Court 1590–1640* (1972).
 Prest, 'Learning Exercises' W. R. Prest, 'The Learning Exercises at the Inns of Court, 1590–1640' (1967) 9 JSPTL 302–305.
 PRO Public Record Office, London.
 Putnam, *Early Treatises* B. H. Putnam, *Early Treatises on the Practice of Justices of the Peace in the Fifteenth and Sixteenth Centuries* (Oxford, 1924), Oxford Studies in Social and Legal History vol. 7.

- q.
Ramsay, *Legal Profession Report of 1540*
- RHD
- Richardson, *Inns of Court*
Sainty, *Law Officers*
- SC8
- Somerville, *Duchy of Lancaster*
- SR
- Statutes of Clement's Inn
- Statutes of Clifford's Inn
- quaestio.
- N. L. Ramsay, *The English Legal Profession c. 1340–c. 1450* (Ph.D. dissertation, Cambridge, 1985).
- Report on the inns of court by Thomas Denton, Nicholas Bacon and Robert Cary, first printed in E. Waterhous, *Fortescutus Illustratus* (1663), 543–546; reprinted in C. H. Williams ed., *English Historical Documents*, v (1971), 563–573; and in D. S. Bland, 'Henry VIII's Royal Commission on the Inns of Court' (1969), 10 JSPTL 178–194. Spelling is modernised in the quotations.
- Revue d'Histoire du Droit (*also called Tijdschrift voor Rechtsgeschiedenis*).
- W. C. Richardson, *History of the Inns of Court* (Baton Rouge, [1978]).
- J. Sainty, *A List of English Law Officers, King's Counsel and Holders of Patents of Precedence* (Selden Soc. Supplementary Series Vol. 7, 1987).
- Public Record Office, Ancient Petitions.
- R. Somerville, *History of the Duchy of Lancaster*, Vol. I (1953).
- Statutes of the Realm*. Volumes I and II (1800–16) contain the statutes from Magna Carta to the end of Henry VII's reign.
- 'Le livrer des constitutions et orders del hospic' de Clements Inne', PRO 30/26/74/4 (a transcript dated 1635); inaccurately printed for the society of Clements' Inn, with a facing translation from a different text, as *The Book of Constitutions and Orders of the Honourable Society of Clement's Inn* (1880); similar (and reliable) translation in C. Carr, *Pension Book of Clement's Inn* (1960), 78 Selden Soc. at pp. 218–239. The date of the contents is unclear; the book probably codified orders from different periods. Statute no. 47 is dated 'in le terme de St Michael in le xix anne de nostre senior le roy'; in the 1880 translation this is rendered 'Michaelmas term 19 of our late King Edward IV', though the evidence for this reading is not stated.
- Statutes of Clifford's Inn, IT MS. Misc. 189. The statutes are written on a vellum triptych which hung in Clifford's Inn hall until 1903, but the condition of the text was already decayed by 1800: S. Ireland, *The Inns of Court* (1800), 77–78. C. M. Hay-Edwards, *A History of Clifford's Inn* (1912), 59, said 'nothing remains of the writing to-day, except the capital letters', which

is a great exaggeration. According to the defaced preamble, the statutes were made when [Laurence] Holland was principal (c. 1505–08) and rewritten in 1528 when Hugh Goodman was principal. (The date 20 Hen. VII given in 78 Selden Soc. lii was doubtless a misreading of 20 Hen. VIII: the figure certainly resembles a 'vii', but Goodman was not principal until the 1520s.) The date of some of the contents is older: statute no. 20 is dated 'en la fest de Seynt Martyne lan du reigne Edwarde . . .'. The following word seems to have been treated with a chemical and is no longer visible. In 78 Selden Soc. liii it is said to be Edw. III; but it seems much more likely to have been Edw. IV (which is the suggestion in Hay-Edwards, 60).

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| TCC | Trinity College, Cambridge. |
| Thorne, <i>Readings</i> | S. E. Thorne, <i>Readings and Moots at the Inns of Court in the Fifteenth Century</i> , I (1954), Selden Soc. vol. 71. |
| TRHS | Transactions of the Royal Historical Society. |
| VCH | Victoria County Histories of England and Wales. |
| Wedgwood | J. C. Wedgwood, <i>History of Parliament. Biographies of the Members of the Commons House 1439–1509</i> (1936). |
| Williams,
<i>Early Holborn</i> | E. Williams, <i>Early Holborn and the Legal Quarter of London</i> (1927). 2 volumes. |
| Williamson, <i>History
 of the Temple</i> | J. B. Williamson, <i>History of the Temple, London</i> (1924). |
| Y.B. | Year Book. |



INTRODUCTION

1 ORIGINS OF THE LEARNING EXERCISES

Although the subject of this volume is the system of learning exercises in the inns of court and chancery, the origins of that system must be sought in the century before the inns came into existence. We shall probably never know exactly when the inns were established, if only because their emergence was not the kind of event which attracted contemporary attention. There was no specific event at all, in the sense of an identifiable, datable act of foundation. However, it is quite certain that a course of instruction in the common law evolved at least half a century before the inns first appear in the light of history, and it seems a safe assumption that there was a law school or *studium*¹ of some kind in the period before the collegiate system developed and took over its functions. In that respect, as in others, our legal 'university' followed the same process of evolution as our academical universities.

Of the nature of this thirteenth-century *studium* of the common law of England we shall never know very much.² We do not know who the teachers were, what qualifications they possessed, where they taught, or whether there was any organisation of teaching beyond the private arrangements of individual teachers. What we do know about the form of instruction is derived from the surviving texts which their teaching generated. Some of these texts have been known for a long time, some are only just coming to light; but even those in the former category have not all been recognised as being the products of a law school. Those which most obviously convey the strong impression of being in a medieval class-room³ are the materials now known as *Brevia Placitata*⁴ and *Casus Placitorum*.⁵ The latter, in Plucknett's happy phrase, 'positively reeks of chalk and duster and ink'.⁶ Plucknett rightly observed that one of the most important implications of these texts is the existence of a school of common law in or before the time of Edward I.⁷ They also show us something of the methods of that school. Law teachers soon learn that legal principle is best conveyed through examples, and so we need not be surprised to find that already in the thirteenth century law teaching was based heavily on cases – sometimes real,

¹ Fortescue in the 1460s used this word for what the Tudors would call the Third University of England: *De Laudibus Legum Anglie* (S. B. Chrimes ed., Cambridge, 1942), 116.

² The best introduction is by P. Brand, 'Courtroom and Schoolroom: the Education of Lawyers in England prior to 1400' (1987) 60 BIHR 147–165.

³ Plucknett's words: *Early English Legal Literature* (Cambridge, 1958), 90.

⁴ See *Brevia Placitata* (G. J. Turner ed., 1951), 66 Selden Soc. (for 1947), which was completed by Plucknett. The earliest text is dated to around 1260.

⁵ See *Casus Placitorum and Reports of Cases in the King's Courts* (W. H. Dunham ed., 1952), 69 Selden Soc. (for 1950). These texts seem mostly to date from the 1260s and 1270s.

⁶ *Early English Legal Literature*, 90. Cf. 66 Selden Soc. at p. 195: 'Both *Brevia Placitata* and *Casus Placitorum* . . . bear evident traces of the classroom and address readers who were assumed to be familiar with its atmosphere.'

⁷ *Brevia Placitata*, 195.

sometimes imaginary – and that learners were invited to participate in the discussion of such cases. If we recognise in this case-method of instruction the origins of the moot, we must nevertheless remember that neither at this period nor three centuries later were moots uniform in character and purpose. As will be shown later, there have been several different ways of using hypothetical cases for instruction and exercise; and the term ‘moot’, which we have for convenience taken as a generic description of all exercises involving discussion *pro* and *contra*, was not used by contemporaries in such a comprehensive sense.

Lectures and disputations

The basic method of instruction, both in the universities and in the school of common law, was the lecture. A lecture, as the name implies (*lectura*, *lectio*), was originally a ‘reading’ of some text which required exposition – in the university law schools usually part of the Digest or the decretals. The lecturer would typically read the text, perhaps by dictation, summarise its purport, indicate any distinctions to be drawn in its interpretation and then illustrate and test the learning thereby generated with a series of problems or *quaestiones*.⁸ Powicke considered that in the universities the lecture became in the twelfth century ‘a series of *questiones* raised by the master of his hearers’, but that by the end of the century the dialogue form of the earlier lectures ‘gave way on the one hand to a lecture which, though still studded with questions, was primarily an exposition, and on the other hand to the formal *questiones disputatae* and *quodlibetae*’.⁹ Academical exercises were thus split into two branches: the lecture, with accompanying questions, and the formal disputation, detached from lectures, in which the learner played a more active part.

The development of *quaestiones disputatae* in the theology faculties received a great deal of attention in the 1930s, and many texts of questions have been printed.¹⁰ In theological disputations the *quaestio* was usually abstract in form, beginning *utrum* . . . ? or *an* . . . ?. In the law schools, however, there was the added refinement of a ‘case’ – a specific problem with hypothetical facts – upon which the question would be framed. This form of law disputation was established in the second quarter of the twelfth century with the questions of Bulgarus (d. 1166), and was probably modelled on the kind of argument which would have occurred in court. The question posed at the end of the problem was usually a specific question of law or procedure, in the words *queritur an* . . . ?. But by the end of the century it was also common to conclude generally, *queritur quid juris sit*?,

⁸ See the remarks of Pietro Peregroni (d. 1295), introducing a course of law lectures at Orléans in about 1260: H. Rashdall, *The Universities of Europe in the Middle Ages*, 1 (2nd ed. by F. M. Powicke, Oxford, 1936), at p. 218. For the date and authorship, see E. Meijers, ‘De Universiteit van Orleans in de xiii^e eeuw’ (1921) 1 RHD 462–464.

⁹ F. M. Powicke, ‘Additional Note’ in Rashdall, *Universities of Europe*, 1, at pp. 490, 493.

¹⁰ For such disputations at Oxford and Cambridge in the time of Edward I, see A. G. Little and F. Pelster, *Oxford Theology and Theologians c. A.D. 1282–1302* (Oxford, 1934), being vol. 96 of the Oxford Historical Soc. The earlier of the two MSS. discussed (MS. Assisi 158) has questions from Cambridge as well as Oxford. A call for more work on disputations in Arts has been made by Fr J. A. Weisheipl, ‘Curriculum of the Faculty of Arts at Oxford in the early 14th Century’ (1964) 26 *Medieval Studies* 143–185.

which seems roughly analogous to the modern 'Discuss'. Questions in that form might raise a series of different points, and part of the exercise would be to identify them. There was considerable variety in the structure of the questions; the texts range in character from direct reports of arguments (*reportationes*) to compilations of questions by redactors (*quaestiones in scriptis redactae*).¹¹ But the essential structure of a law disputation is constant: (1) the *casus*, or problem; (2) the *quaestio*, whether general or specific, arising from the problem; (3) the *disputatio*, consisting of the arguments *pro* and *contra*; (4) the *solutio*, sometimes called the *determinatio* or *responsio*, expressing any authoritative answer or ruling given by the teacher.

Reports of such exercises from the English law faculties are not numerous, but there is a surviving Oxford series from the late twelfth century. A case from this series, concerning a decretal of Alexander III and the privileges of the knights hospitaller, with the *solutio* of John of Tynemouth, has been printed.¹²

A dated disputation from Oxford, over a century later (1318), shows the exercise in its classical form.¹³ It is headed 'Questio disputata per M. Benedictum de Paston anno domini mccc octodecimo'. As was customary in the law schools, the people in the problem are given fictitious Roman names (Titius and Sejus). A rector leased his church to a clerk who was his parishioner; the vicar took tithes of milk and wool from the lessee's animals; the animals were removed to the rector's house; and a dispute arose as to the tithes. The question is framed generally, *queritur quid juris?* There are anonymous arguments, beginning 'ex parte Seji', then by an unnamed bachelor, by the *responsalis*, and one attributed to Benet of Paston himself.

From the same generation we have the report of two more elaborate disputations in canon law at Cambridge.¹⁴ The first is anonymous and concerns a presentation to a benefice by the bishop of Norwich.¹⁵ The second is headed 'Questio disputa per M. Johannem de Atone, Doctorem in Decretis, et responsa per M. Walterum de Elvedene'. Acton, the celebrated commentator on the constitutions of Otto and Ottobuono, was a doctor of both laws by 1335,¹⁶ and

¹¹ The previous paragraph is based on H. Kantorowicz, 'The *Quaestiones disputatae* of the Glossators' (1939) 16 RHD 1-67. The principal literature on canonical disputations is reviewed by G. Fransen, 'Les *quaestiones* des canonistes' (1956) 12 *Traditio* 566-593; C. Lefebvre, 'Quaestiones' in *Dictionnaire de Droit Canonique*, VIII (Paris, 1965), cols. 407-418. For further reading on the disputations of the glossators and commentators, see P. Weimar and N. Horn in *Handbuch der Quellen und Literatur der neueren Europäischen Privatrechtsgeschichte*, I (H. Coing ed., Munich, 1973), 144-147, 241-249, 324-325, 333-336.

¹² J. A. Brundage, 'A 12th Century Oxford Disputation concerning the Privileges of the Knights Hospitallers' (1962) 25 *Medieval Studies* 153-160.

¹³ BL Royal MS. D. VI, fo. 1 (added on fly-leaf).

¹⁴ Gonville & Caius College, Cambridge, MS. 483, ff. 4^v-6, 275. The MS. also contains (fo. 3^v) four cases which mention Cambridge and Ely. The first ends *queritur an possit?*, the second and third *queritur quid juris?*, and the third ends with a specific question and some notes.

¹⁵ Most of the fellows of Trinity Hall came from this diocese, and their college was expressly founded to promote the interests of the diocese: see J. H. Baker, 'Dr Thomas Fastolf and the History of Law Reporting' (1986) 45 CLJ 84-96, at pp. 88-89.

¹⁶ L. E. Boyle, 'The "Summa Summarum" and some other English Works of Canon Law' (1965), in *Proceedings of the 2nd International Congress of Medieval Canon Law* (Vatican City, 1965), 415-456, at p. 418.

this disputation probably took place within a decade of the Oxford specimen. The question concerns Titius, rector of a church in the Rochester diocese, who entered the Austin Friars in Cambridge¹⁷ and then left around the end of his first year; after a spell in the outside world he joined the Friars Preachers and was professed; and a dispute arose between the two orders as to the fruits of the rectory. The question in both cases is the general, evidently now standard,¹⁸ *queritur quid juris?* There is in these Cambridge reports a further refinement. After the problem is stated, there follows a clause by clause analysis of the problem, in the manner of a gloss, which is mainly concerned with the definition of terms; and at the end of this analysis, which is perhaps that of the doctor propounding the question, the question is repeated. The opening speaker then begins by stating the number of points (*dubia*) which occur in the question, after which each of the points is argued, anonymously, *pro* and *contra*.

Exercises in the common law

So far as we can tell, the very same system – with the sole exception of the introductory analysis found in the Cambridge text – was used in the teaching of the common law around the beginning of the fourteenth century. The early common-law lecture is elusive, because surviving treatises do not purport to be reports of oral instruction; but there is a convincing case for supposing many of our early treatises to have originated in the lecture room.¹⁹ Our common-law teachers did not have texts to ‘read’ in the literal sense, until they took to reading on the statutes;²⁰ but they used forms of writs and pleadings as the basis for their lectures, and they also lectured on procedure.²¹ *Hengham Magna*, though probably not itself a lecture course, may reflect this genre, since it is an exposition of the law in the 1260s²² studded with rhetorical questions. The questions are often posed with the cant phrase *Quid juris?*,²³ the hallmark of a university law disputation.

The manuscripts collected in the editions of *Brevia placitata* and *Casus placitorum* seem to preserve on parchment different aspects of a lecture course given in the 1260s, or even the 1250s, on the procedure of the central royal courts; indeed, some of the contents have found their way into both printed volumes. The teacher took as his text the writs and counts themselves. Many of the

¹⁷ Founded in 1290.

¹⁸ Professor P. G. Stein informs us that the question *quid juris?* is still used in Scottish law examinations.

¹⁹ Brand, ‘Courtroom and Schoolroom’, 154–157.

²⁰ Perhaps early in the 14th century: below, p. xxv n. 64.

²¹ The evidence for such courses in the 1270s and 1280s is discussed in Brand, ‘Courtroom and Schoolroom’, 151–155.

²² For the dating (1260–1272) and a rejection of Hengham’s authorship, see P. Brand, ‘Hengham Magna’ (1976) 11 *Irish Jurist* (N.S.) 141–169. Dr Brand discusses the names occurring in the examples, and shows that they were real people. It is possible that they were litigants, though no record of the lawsuit has been found, and an alternative suggestion is that they may have been fellow lawyers. We shall see that in later moots lawyers used each other’s names.

²³ *Radulphi de Hengham Summae* (W. H. Dunham ed., Cambridge, 1932), 38, 39, 40, 44, 45, 47. The author twice calls his answer a *Solutio*: *ibid.*, 40, 47.