



# Modern ideas are old news

The 1275 Statute of Westminster is the daddy of all Acts of Parliament, argues Kerry Underwood

**IN THESE TURBULENT TIMES FOR LAWYERS,** with the Legal Services Act challenging the whole concept of law and the legal profession, it is salutary to reflect on some of our earliest laws and the history of some of the institutions now under threat.

The oldest statute still in force is the Distress Act 1267, although three sections of Magna Carta, originally signed in 1215, are still extant, but they were re-enacted in 1297. Magna Carta was an agreement between the king and the barons, not an Act of Parliament. The earliest Act of Parliament was the Coparceners Act 1229, but the second oldest Act is the Attorneys in County Court Act 1235. Thus county courts and the concept of paid advocates in those courts, go back nearly 800 years.

Other 13th century statutes include the Limitation of Writs Act 1235, the Inquest Act 1267, Juries Act 1267, Suits of Court Act 1267, Champerty Act 1275, Coroners Act 1275, Maintenance Act 1275, and a forerunner of today's ASBOs, the Trespassers in Parks and Ponds Act 1275 (followed in 1331 by the Arrest of Night Walkers Act and in 1388 by the Nuisances in Towns Act).

The Recovery of Damages and Costs Act came in 1278, and if you think that 'homicide' is some modern Americanism take a look at the Homicide Act of the same year, or that the intestacy rules were a clever Victorian idea then read paragraph 27 of Magna Carta 1215.

## The birth of Parliament

However, it is the Statute of Westminster 1275 which is by far the most important early Act of Parliament and indeed some historians regard 1275 as the true beginning of Parliament in its modern form.

The Statute was a consolidating measure: "A code by itself; it contains 51 clauses and covers the whole ground of legislation. Its language now recalls that of Canute or Alfred, now anticipates that of our own day; on the one hand common right is to be done

to all, as well poor as rich, without respect of persons" says *The Constitutional History of England* by William Stubbs.

The Statute created the concept of time immemorial, that is time beyond legal memory and the formal beginning of English law, and set it at 3 September 1189, the accession of Richard I.

This was (and is) the earliest date from which evidence in land disputes could be considered because then, in 1275, a living man might be able to testify about what his father had told him existed in 1189 (rights for women were still some way off – 643 years off, actually). In the alphabetical *Dictionary of Legal Terms* "Time Immemorial" appears just four places below "Tesco Law".

## 'The Statute established the principle that the loser pays both sides' costs and also outlawed champerty'

The general right to bail was created by the Statute as was the need for fines to be proportionate to the offence.

The court system already existed, but many of the procedures were codified by the statute. Trial by jury, seemingly under constant threat from recent governments, had existed since at least as early as 1164 when it was ordered by the King, without a Parliament then, that: "The sheriff shall make twelve legal from the neighbourhood to swear that they will make known the truth according to their conscience."

Later Acts insisted that juries try matters "according to the facts" a controversial measure. Fortunately even today juries will revert to trying matters according to their conscience and, have, in appropriate cases acquitted in the face of apparently overwhelming evidence.

The most significant parts of the Statute for solicitors are those relating to costs. The

Statute established the principle that the loser pays both sides' costs and also outlawed champerty and maintenance, but see also the Maintenance and Champerty Act 1285. Peter Hurst, the Chief Taxing Officer (now, not then) frequently refers to the Statute in his judgments.

## Modern concepts are ancient

Other, apparently modern concepts, are, in fact, ancient.

Worried about fish stocks – take a look at the Salmon Preservation Act 1285. Unsure about the law on representing children – you need the Suit of Infant by Next Friend Act 1285. Consumer protection – Weights and Measures Act 1303 or paragraph 35 of Magna Carta – "Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter".

And the Woolf Reforms? – Commands in Delay of Justice Act 1328; Civil Procedure Act 1330. Domicile – see the Statute of Children Born Abroad Act 1350. Employment protection – Labourers Act 1368, Labourer's Wages Act 1389, Apprentices' Fees Act 1530.

Neither is the torrent of legislation new. In 1495 Parliament passed 65 Acts.

True it is that disabled people had no special protection until the Disabled Soldiers Act 1592, but that is still 403 years earlier than most lawyers realise.

But on gay rights – I am not sure that the Buggery Act 1533, Sodomy Act 1548 and the Sodomy Act 1562 would have encouraged any one to come out of the closet.

So before joining every latest bandwagon maybe our legislators should pause and reflect. There is little that is new in the world.

Meanwhile, I shall carry on using the Statute of Westminster 1275 in every pleading, submission and skeleton argument that I can – my total is six this week already.