

D.C. Law: Almost as Old as the Magna Carta?

Is it possible that remnants of the old British law and the laws of Maryland and Virginia are still on the books in the District of Columbia? Surprisingly, “random areas” of the law before the District had its own laws may still exist, according to David Hyden in the Legal Counsel Division of the Office of D.C. Attorney General Irvin Nathan.

One D.C. law dates back nearly to the Magna Carta. Its language is virtually unchanged. Enacted in the realm of Henry III in 1267, the provision can be found in D.C. Code, section 42-1602, prohibiting “fermors” (farmers) from the “waste, sale or exile” of a house or “woods” without written license. Punishment may include “amercement grievously” (a heavy fine). D.C. farmers: take heed.

Hyden and a colleague, James McKay, determined that 14 ancient British laws survived pretty much intact in the D.C. Code. Until recently they could be found in 29 D.C. statutes, but one was repealed -- a law dating from the realm of Queen Anne in 1710 outlawing “assaulting, beating or fighting on account of money won by gaming.” That law, D.C. Code section 22-408, was repealed in 2004.

Old laws continue to be embedded in D.C. law because of the unusual way the District was created in 1801. For example, the laws applied to the portion carved out of Maryland were to include the locally applicable statutes of Britain and Maryland as both existed in 1776, as well as British common law and maxims and principles of equity. When Congress enacted a D.C. Code in 1901 it specifically stated that the common law and British statutes in force in Maryland at the creation of the District of Columbia a century earlier would remain in force unless inconsistent or replaced by provisions of the new code. As recently as 2005 the D.C. Court of Appeals said it would look to the law of Maryland as the most authoritative body of law in the absence of District common law or precedents on a particular issue. (*In re C.A.P.*, 633 A.2d 787 (D.C. 1993); *West v. U.S.*, 866 A.2d 74 (D.C. 2005).)

Nonetheless, early reliance on British and Maryland law -- and on Virginia law in the parts of the District across the Potomac -- rapidly declined as the laws were replaced by Congressional and District legislative enactments, along with the evolving common law and rulings of the District of Columbia courts. The application of Virginia law ceased with the retrocession of the County of Alexandria back to Virginia in 1846. However, one Virginia law can still be found in the D.C. Code. Section 47-1014 embodies an 1824 Virginia act giving a tax break to shareholders in the Chesapeake and Ohio Canal, and their heirs and assigns forever. A commercially viable canal no longer exists. The stock is gone. However, the provision continues to reside in the D.C. Code.

Most of the dormant sections deal with archaic property laws, says David Hyden. There has been no urgency to repeal or replace them. However, they are more than encrusted, old legal leftovers. They are a remarkable reminder of the District’s unique past.