THE MACHRNERY OF JUSTICE

公平机制
——法律体系和程序导论

（英汉对照）

Lewis Mayers **原著**
宋　雷　谢金荣 **翻译**
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CONTENTS 目录

1 How legal rules are made

The legal rules which guide our courts and other tribunals in deciding the particular matters that come before them are expressed in varying forms. There are, of course, the enactments[1] of our legislatures, federal, state, and local, and of the myriad of executive agencies authorized to promulgate regulations[2]. Also, we have the authoritative opinion of a court, rendered by it in deciding a case before it, setting forth the precise construction[3] to be given to a specific statutory provision. But in addition to these, there are rules, or perhaps more correctly, doctrines[4], which are of wide importance and yet are to be found in no express enactment and in no one judicial opinion. They are the traditional doctrines which have been developed over the years, in some cases[5] over the centuries, as the outcome of the views expressed by the courts in disposing of particular cases. Such doctrines, rather than being set forth in definitive form in any one court opinion, are to be collected from a long succession of such opinions[6].

Legal rules and "law"

The body of our legal rules[7] is, of course, usually referred to as "the law." This term, in contrast to the term "legal rules" (or "rules of law") is, however, sometimes used in a wider sense. The term "legal rules" unequivocally describes merely a collection of man-made regulations, at a given time[8] recognized by the public power[9] as binding, and enforced by it, while the term "law" has been used by some thinkers to connote a body of eternal principles, having an existence independent of transient man-made regulations. To distinguish this latter concept, the term "natural law"[10] has been employed, while the body of rules enforced by the state, in contradistinction, is termed "positive law."[11] Needless to say, our concern in these pages[12] is solely with positive law.

1 enactments 制定法。等同 statute。

2 regulations 条例、地方法规。具有法律效力，由行政机构或地方政府所颁布，也称为 agency regulation、subordinate legislation 或 delegated legislation。

3 precise construction 准确解释。construction 指对法律文件(如 statute、opinion以及instrument等)的解释。

4 doctrines 学说、原理。指广泛被遵循的法律原则。

5 cases 案件、案例。

6 are to be ... such opinions 从一连串类似的判决意见提炼而成。opinion 判决意见。指法官解释其对特定案件判决的说明，通常包括诉争事实陈述、法律要点、理由、法官附带意见等，也称为 judicial opinion。

7 legal rules 法律规则。在法律文件中，rule (规则)、principle (原则)和 doctrine (原理或学说)有时可交替使用，但总体说来，rule 表示最一般和原始之规则，经提炼和升华到 principle，而 doctrine 则具有更高的概括和理论层次。

一 如何制定法律规则

指导法院和其他裁判庭裁定其所审具体事项的法律规则形式很多。联邦、州和地方立法机关以及各种受权制定条例的行政机构的法令当然包括其中。此外，我们还有法院在裁定案件时所作的权威判决意见，其就具体法律规定作有精准的阐释。然而除此之外，还有一些规则，或许更为确切地说是一些原理，尽管它们很重要，但无法在明文法令或司法判决意见中找到。它们是经过多年演进而成的传统原理，有些甚至历经数个世纪，是法庭处置特定案件时所表达意见的结晶。这套原理不是由任何一个法庭的判决意见以确定的形式所建立，而是由一连串类似判决意见所提炼而成。

法律规则和“法”

诚然，我们的这一整套法律规则常被人称为“法”。但与“法律规则”（或“法律的规则”）相比较，“法”有时所表达的意思更为宽泛。毫无疑义，术语“法律规则”指的只是在特定时间内为公权所认可并由其实施的大量具有拘束力的人为规则；而术语“法”则被一些思想家用来指一整套永恒原则，独立存在于转眼即逝的人为规则之外。为区分后一概念，人们使用了“自然法”这一术语，作为对比，由国家执行的那套规则则被称为“实在法”。毋庸讳言，本书所关注的只是实在法。

8 a given time 特定时间。

9 public power 公共权力。可授予个人或政府机构，包括各种形式的立法、司法和行政权力（various forms of legislative, judicial, and executive authority）。

10 “natural law” “自然法”。与“实在法”（positive law）相对，一般说来，指一种对公正或正义秩序的信念，是因人类自然要求而永远存在的法则。

11 “positive law” “实在法”。国家制定或认可的法律，包括成文法、判例法和习惯法，也称为 made law。

12 in these pages 在本文中。

The operation of rules of law is, of course, twofold. They guide and control the agencies of government, executive as well as judicial[1]; and they guide and control the individual, to the extent that he is familiar with them, in his dealings and behavior. The actions of individuals are of course guided and controlled also by innumerable rules and standards of conduct[2] which are not enforceable[3] by any agency of government; but such rules and standards, particularly if they relate to property or business transactions, or to family obligations, from mere custom tend to become rules of law[4], recognized and enforced by the tribunals of the state. A large part of our rules of law had its origin in such community custom, rather than[5] in any deliberate act of legislative creation.

The formulation of the law: cases and statutes

When the judge or lawyer must ascertain the legal rule governing a given state of facts, he of course turns in many cases to the statutes[6] enacted by Congress, or by the state legislatures. In a host of situations, however, there is no applicable statute[7] — not because the question is a new one, but, more likely, because it is an old one, and the rule applicable to it has long been well-settled and well-understood, so that no need has been felt for a legislative declaration[8].

Initially our law, as carried over from England, was chiefly traditional rather than statutory: that is to say, it had been formulated not through enactments by Parliament[9] but through the pronouncements of the courts over the two or three centuries preceding, as new questions arose in the cases brought before them. Today, by contrast, over very large areas of our law, the starting point is a statute enacted by the legislature, in conjunction, perhaps, with a regulation promulgated by an executive agency pursuant to statutory authorization[10].

Nevertheless, the statement, so common in our elementary textbooks on American government, that today the legislature makes the law and the courts merely interpret[11] it, greatly oversimplifies the situation. It fails to take into account the fact that a case before a court may, and in fact often does, present a situation in which there exists no established rule of law by which the court may be guided. Where this occurs[12], the courts do not hesitate, in a proper case[13], to create a new rule of law. A rule so created governs the particular case in which it is announced, and may be followed in subsequent cases presenting the same question. It is, of course, always open to the legislature to change

1 agencies of government, executive as well as judicial 政府机关，除司法外还包括行政机关。

2 rules and standards of conduct 行为规则和标准。

3 enforceable 可强制执行的。

4 from mere custom tend to become rules of law 常从一般的习惯变成法律规则。介词短语 from mere custom 在此作为状语，修饰动词 tend。

5 rather than 而不是。

6 turns in many cases to the statutes 在很多案件中求助于制定法。其中，介词短语 in many cases 作为插入语放到了短语 turn to 的中间，此种用法在法律英语中颇为常见。statutes 制定法，成文法。指由立法机关制定并颁布的法律。

7 applicable statute 可以适用的成文法。

法律规则的实施当然具有双重性。它们指导并规制政府机关，既有司法部门，也有行政机构；它们也在人们熟悉规则的范围内指导和规制个人的交易和行为。个人行为当然还受到许多不为任何政府机构强制执行的行为规则和标准的指导和规制，它们经常从习惯演变成法律规则，国家各种裁判庭予以认可和执行，尤其是当它们与财产、业务交易以及家庭义务相关时。我们的法律规则一大部分便起源于此种社区习惯，而不是创建立法之任何故意行为。

法律体系：判例法和制定法

当法官或律师必须查明决定特定事实状况的法律规则时，在许多情况下，他自然要求助于国会或州立法机关所颁布的制定法。但有很多情况是并没有可适用的制定法——不是因为问题是新问题，而更有可能的是正因为是老问题，适用的规则早已确立并为人所熟知，因此觉得没有必要以立法形式予以确认。

美国的法律最初由英格兰因袭而来，主要是传统法而非制定法；也就是说，立法未曾经由议会程序，而是依据法院两三百年的诉讼实践，在处理所审案件出现的新问题时通过宣判而形成。相比之下，如今在很大范畴所适用的美国法是基于立法机关颁布的制定法，或许还与行政机构根据制定法授权所颁布的条例相关。

然而，在“美国政府”这一科目的初级教科书中，认为如今是立法机关制定法律、法院仅是阐释法律的见解是太常见不过了，但这犯了将情况过于简单化的错误。这种见解没有考虑到一个事实，即法院审理案件时可能碰到(事实上也经常出现)并不存在已经确立的可以指导法院的法律规则的案情。如果出现此种情况，法院会毫不犹豫地以合理理由创立新的法律规则。这样创立的规则对于宣判特定的案例具有约束力，而且也会在今后出现同样情形的案

8 legislative declaration 立法机关正式颁布(为成文法)　指人们感到没有必要通过立法机关正式将有关问题制定并颁布为成文法

9 Parliament 议会　世界各国议会的名称各不相同，如：美国为 Congress；英国和加拿大为 Parliament；日本为 Diet；俄罗斯为 Duma；法国为 Legislative Assembly；我国则为 the National People's Congress

10 pursuant to statutory authorization 根据制定法的授权

11 interpret 解释　如 interpret the document literally 按字面意义解释文件　等同 construe。

12 Where this occurs 如果此种情况发生　在法律英语中，where 是个意思极含糊的单词，可根据上下文表示很多意思，如：if、which、in case that、where等

13 in a proper case 在合理(或允许)的情况下　proper 在此等同 reasonable 或 admissible

the rule as to future cases, or to reaffirm it by enacting it in statutory form[1]. But if it does neither, and the rule is accepted by the highest state court (or, if a question of federal law is involved, by the United States Supreme Court[2]), it may be said to be as fully a part of the law as any legislative enactment; and a very considerable part of our substantive law[3], and a measurable but smaller part of our procedural law[4], are of this judge-made character.

The extent to which our statutes have created new rules of law, rather than merely restating antecedent, traditional legal doctrine, varies greatly from one legal area to another. At one extreme is found a statute (e.g., the federal labor relations statute[5]) which created entirely novel rights and liabilities, previously unknown to our law. At the other extreme is a statute (e.g., the Uniform Negotiable Instruments Law[6]) which, for the most part, merely sets forth in systematic fashion doctrines long-accepted by the courts everywhere (and on a few points enacts a rule which some courts had adopted and others had rejected).

Despite the considerable area of the traditional law[7] which has thus been converted into statute, a surprisingly large body of our basic legal doctrine still remains purely traditional; that is to say, there exists no legislative formulation (or indeed any other systematic formulation having official sanction[8]) to which the inquirer can resort. The doctrine in such cases is not expressed in any single formulation; its purport can be gleaned only from the writings of judges and commentators (the writings of the judges being the "opinions" written by them, ordinarily only in the appellate courts[9], in explanation of their decisions in particular cases). Though this may seem, abstractly, an irrational arrangement for the formulation and communication of legal doctrine, in practice it works at least well enough to discourage any proposal for massive or comprehensive codification[10] of those areas of our law which still remain chiefly traditional, particularly since codification itself, however skillfully done, carries with it the seeds of new uncertainties of meaning. The adjudication of the legal rights of individuals[11] is not by any means carried on exclusively by the courts; a vast array of administrative tribunals[12], so-called, also adjudicate legal rights, often in matters of great importance. Like the courts, these tribunals amplify and elaborate[13] the statutes which

1 to reaffirm it by enacting it in statutory form 以制定法形式经颁布对该法律规则加以确认。

2 the United States Supreme Court 美国联邦最高法院。由于美国是联邦制国家，在法律英语中，the United States 常用做与 state（州）相对，故在翻译中，the United States（或 the US）一般应译为“美国联邦”，而非“美国”，如：US Constitution《美国联邦宪法》（而非各州的宪法）；US Code《美国联邦法律汇纂》或《美国联邦法典》（其汇集的是联邦立法机关，即国会制定的法律，而非由各州的议会或其他机构制定的法律）。

3 substantive law 实体法。指规定人们在政治、经济、文化和家庭婚姻等事实关系的权利和义务的法律，与“程序法”（procedural law）相对。

4 procedural law 程序法。指为保证实体法所规定的权利义务关系的实现而制定的诉讼程序的法律，也称为 adjective law，与 substantive law 相对。

5 the federal labor relations statute 联邦劳动关系法。

例中得以沿用。当然，就今后的案例而言，立法机关始终可以修正该规则，或者以制定法的形式颁布，予以确认。

但如果该规则既未予修正也未经确认，而是被州最高法院所接受(或假如问题涉及联邦法，则为联邦最高法院接受)，可以说完全如同任何立法一样，是法律的一部分；美国有很大一部分实体法以及一些重要的但数量不多的程序法均属于此种法官造法性质。

在不同的法律领域，制定法创立新的法律规则而非仅是再述先例(传统法律原理)的力度差别极大。一个极端是由制定法(如《联邦劳动关系法》)创立全新的权利和责任，完全不见于先前的美国法。另一个极端则是制定法(如《统一流通票据法》)的多半部分只是作一些早就被其他地区的法院所接受的体制形式原理之规定，而只在少数问题上颁布一点已被一些法院采用而遭到另一些法院拒绝的规则。

尽管很大部分传统法由此变成制定法，令人意外的是大部分美国的基本法律原理依旧保持为纯正的传统法；这就是说，不存在找寻者可求助的立法形式的规范(或事实上任何其他经官方正式认可的体系规范)。此种原理不是以任何单一形式来表示；其意思只有从法官和注释者的文字中才可寻得(法官的文字指他们所写的用以解释他们对特定案件判决的“判决意见”，通常仅在上诉法院)。理论上说，就法律原理的构成和交流而言，尽管这可能看似一种非理性的安排，实际上却运作良好，至少足以阻止任何试图对仍然主要为传统法的领域进行大规模或全面法典编撰的念头，特别是因为无论如何精心运作，法典编撰本身便带有新的意思不确定的苗头。对个人法律权利的裁决不能仅靠法院采取的任何方法，大量所谓的行政裁判机构也就法律权利进行裁定，涉及的通常是重大事项。像法院一样，这些裁判机构扩充

6 the Uniform Negotiable Instruments Law 统一流通票据法。negotiable instrument 为流通票据，也称为 negotiable paper 或 negotiable note，包括汇票(bill of exchange)、本票(promissory note)、银行支票(bank check)、存款单证(certificate of deposit)等。

7 traditional law 传统法。

8 systematic formulation having official sanction 经官方正式认可的体系规范。sanction 批准或认可。例如：The committee gave sanction to the proposal. 委员会批准了该建议。

9 appellate courts 上诉法院。

10 codification 法典编纂。

11 The adjudication of the legal rights of individuals 个人法律权利的裁决。

12 administrative tribunals 行政裁判机构、行政庭。

13 amplify and elaborate 扩充和发展。

they enforce. Their holdings[1] are in all cases subject to revision by the courts[2] on appeal; but since, in many cases, the parties[3] before them do not seek a review by the courts, their decisions in a number of instances come to be accepted as authoritative. Hence, it is correct to say that our legal rules are made by our administrative tribunals as well as by the courts and the legislatures.

English ancestry of American law

The traditional rules of law which, whether or not now formulated in statutory garb[4],comprise so important a part of our law, both substantive and procedural, are, as already indicated, largely of English rather than American origin[5]. Many of them formed part of the legal tradition which the English settlers[6] carried with them to these shores; and becoming in turn a part of the legal tradition of the Atlantic seaboard, they eventually extended their sway over the entire country[7], including those parts of it which had earlier been governed by Spanish or French legal doctrine.

The law and procedure of seventeenth century England, which the English settlers had thus transported across the Atlantic, had been a growth of some five centuries, with diverse roots[8]. The Roman occupation of England, though it endured for a period about a third as long as has since ensued[9], apparently left little permanent impress on the legal institutions of the country. Nor, during the six centuries that followed, did any of the dynasties of Norse invaders[10] who managed to establish a precarious dominion over the country succeed in setting up a centrally controlled system of justice; local custom governed law and procedure, and local magnates[11], whether lay or ecclesiastical[12], administered justice. It was the Norman conquerors[13] of the eleventh century who for the first time extended a strong central control over the whole territory of England, and subsequently over Wales as well; but only gradually did a centrally controlled system of justice[14] — central courts and a central supervision over local courts — take shape. By the beginning of the fifteenth century, the process had been substantially completed. The law which was now developed by the central courts, and was applied also by the itinerant justices regularly sent out from London, became a national or "common" law[15].

The law of seventeenth century England was in part statutory; but far the greater part of it reposed not in statutes but in the accumulated decisions of the courts — case law[16], as it is called. England's case law had not, however, been shaped by a single tribunal.

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1 holdings 裁决

2 are ... subject to revision by the courts 可由法院予以更改。be subject to 受制于，如 The contract is subject to the law and regulations of the People's Republic of China. 本合同受中华人民共和国的法律和规则调整。

3 the parties 双方当事人

4 statutory garb 制定法形式

5 largely of English rather than American origin 主要来源于英国法而非美国法。

6 the English settlers 英国殖民者们

7 extended their sway over the entire country 将他们的影响力扩展到了整个国家。sway 具有支配作用的影响力。

8 with diverse roots 具有不同的渊源。

和发展其所执行的制定法。它们对所有案件的裁决若遇上诉，则均可被法院更改；但由于其审理的许多案件的双方当事人不寻求法院复审，因此在许多案件中它们的裁决成为判例被接受。因此，美国的法律规则由法院、立法机关以及行政裁决机构共同制定，这是完全正确的说法。

美国法的英国血统

如上所述，作为美国实体法和程序法重要组成部分的法律传统规则，无论其现在是否是以制定法形式出现，主要都源于英国而非美国本土。其中许多是英国殖民者带到若干沿岸定居点的法律传统的一部分；随即成为大西洋海岸法律传统的一部分，最终将其影响力扩展到整个美国，包括早期为西班牙或法国法律原理所统辖之地区。

由英国殖民者跨越大西洋携带而来的17世纪英格兰的法律和程序，已有约500年的发展史，含有不同的渊源。若从罗马对英格兰的占领时算起至今，尽管这一占领期长达整个期限的1/3，但很明显，它很少给该国的法律体系留下长久印迹。在此后600年间，任何曾在该国建立过岌岌可危统治王朝的古斯堪的纳维亚入侵者都未能成功建立起中央控制的司法体系；法律和程序由地方惯例主宰，司法则由当地世俗或宗教的权贵掌控。11世纪的诺曼征服者们首次将强大的中央控制拓展到整个英格兰疆土，尔后又拓展到威尔士；只有由中央控制的司法体系——中央法院和对地方法院监督的中央监督机构——却是逐渐成型的。到15世纪初期，该程序已经实质性完成。现由中央法院制定，而且也为巡回法官们所适用的法律定期从伦敦输出，成为国家法或“普通”法。

17世纪英格兰法律的部分内容为制定法；但更大部分却不是以制定法而是以累积的法院判例(其被称为判例法)为基础的。然而，英国判例法并非由单一的一个法院所制定。当时没

9 a period about a third as long as has since ensued 从那时(指罗马人的占领)起至今约有1/3的漫长时间(为占领期)。
10 the dynasties of Norse invaders 古代斯堪的纳维亚侵略者所建立的数个王朝。
11 local magnates 当地的权贵
12 lay or ecclesiastical 世俗的或宗教的。
13 Norman conquerors 诺曼征服者们。指诺曼底公爵威廉于1066年对英格兰的军事征服，即诺曼征服。
14 centrally controlled system of justice 由中央政府控制的司法体系。
15 “common” law “普通”法。指英国的判例法，因为它不同于以往的地方习惯，而是由国家确认的“通行于全国”的法律，故得此名
16 case law 判例法。泛指可作为先例而判案的法院判决，常与制定法(statute law)相对，是英美法系法律的一个重要渊源。

There was at this time no single high tribunal with jurisdiction[1] over the entire field of English law. Instead, there were, in addition to the regular courts dealing with civil and criminal cases[2], various special courts[3]. Thus there were (not to mention several other independent courts that had no influence on the subsequent development of English law) a special set of courts for dealing with maritime cases[4], a set of church courts for dealing with matrimonial cases and with the estates of deceased persons, and the Court of Chancery[5].

Space does not permit an account of the development, in the chief ports, of the special courts to deal with maritime cases — courts which, because their supervision was entrusted to the admiral of the fleet, came to be known as admiralty courts[6]; nor of the reasons why the church courts[7], long after they had lost the rest of the extensive civil jurisdiction over laymen[8] they had once possessed, continued to exercise jurisdiction over matrimonial cases[9] and decedents' estates[10]. Some account of the development of the Chancery Court is, however, essential.

Development of special doctrines and procedure "in equity"

The Chancery Court had its beginning in the closing years of the thirteenth century. There had been a growing volume of petitions for redress addressed to the crown by subjects[11] who alleged that they had been unable to obtain justice in the courts; and these had now become so numerous as to require the Chancellor[12], the chief administrative officer of the crown, to whom such petitions were referred, to develop a regular procedure for their disposition. The resulting eventual conversion[13] of the Chancery, originally merely an administrative agency, into the most powerful court in the kingdom, with the Chancellor as its highest judicial officer, was completed in the sixteenth century. With this development there emerged also forms of redress granted by the Chancery Court which were not available in the regular courts, and new legal doctrines uncongenial to the narrowly legalistic tradition[14] of those courts.

The distinctive character of the forms of redress developed by the Chancery Court was the result of the inability of the regular courts, in a variety of situations, to afford an effective remedy. Those courts had, initially, enjoyed great freedom in shaping the form of redress they gave to the petitioner[15]. For reasons and in a manner not entirely clear,

1 jurisdiction 司法管辖权
2 the regular courts dealing with civil and criminal cases 处理民事和刑事案件的一般法院
3 special courts 专门法院　指审理特定的而非一般民事或刑事案件的法院，如军事法院、铁路运输法院、水上运输法院、森林法院、家事法院等
4 maritime cases 海事案件　指涉及海商、海运、海上交通等事项的案件
5 Court of Chancery 衡平法院　对普通法法院(court of law)无法提供适当救济的案件进行救济，也称为 Chancery 或 Chancery Court
6 admiralty courts 海事法院　对所有海事事项(如合同、侵权、伤害或犯罪)实施管辖权的法院，也称为admiralty 或 maritime court
7 church courts 教会法院　指处理有关特定宗教事务(包括纪律及教会财产等)的法院，也称为 ecclesiastical court、court Christian、spiritual court

有一所高级裁判机构具有管辖英格兰所有法律领域的司法管辖权。相反，除处理民事和刑事案件的一般法院外，当时还有各种专门法院。由此便有(且不说其他几个日后对英格兰法律发展无影响的独立法院)专门处理海事案件的一套法院，处理婚姻案件和处理死者遗产的一套教会法院，还有衡平法院。

限于篇幅，本书不便就在主要港口处理海事案件的专门法院的发展进行阐述，由于对这些法院的监督权被授予舰队司令，这些法院渐渐被称作海事(军)法院；同样也无法阐述为什么教会法院在长期丧失其曾经具有的对非宗教人士的广泛民事管辖权之后，仍然能对婚姻案件以及遗产行使管辖权。不过，对衡平法院(大法官法院)作一些阐述却很重要。

"衡平法"专门学说和程序的发展

衡平法法院始于13世纪末。此前，无法从法院得到正义的臣民转而向国王提出申诉，要求予以救济的情况日见增加；如今数量变得如此之多，使得受理申诉的大法官——国王手下主要的行政官员——必须制定一种规范程序加以处置。其结果便使原来仅为行政机构的大法官法院变成王国最有权的法院，大法官成为最高司法官员，这一变化于16世纪得以完成。随着这一发展，也出现了由衡平法院准予的各种形式的救济，这些救济在一般的法院无法得到，而新的法律原理也与这些一般法院的普通法传统格格不入。

衡平法院所制定的各种救济形式体现出应对一般法院不能解决问题的特征，旨在很多情况下能提供有效救济。这些法院最初在给予原告救济形式上具有极大的权限。出于某些理由以及以一种不太完全清楚的方式，到14世纪，它们准予有效救济的权力开始严重受限，只限于非常窄小范围的救济。结果是，举个例子说，假如在土地买卖合同交易中，卖

8 laymen 世俗人士，非宗教人士。
9 matrimonial cases 婚姻案件。
10 decedents' estates 遗产。
11 subjects 臣民。
12 Chancellor 大法官。此处等同 Lord Chancellor，指英格兰的最高司法官员，也称为 Lord High Chancellor 或 Keeper of the King's Conscience，是上议院的发言人、内阁成员、主持上诉案件审理。
13 conversion 转变、变化。conversion *of* the Chancery *into* the most powerful court 衡平法院变成最有权力的法院。
14 legalistic tradition 普通法传统。legalistic 等同 legal。
15 petitioner 申诉人、原告。为专门用语，多用在衡平法诉讼中，与其相对应的则是 respondent (被告)。由此，petition 则为衡平法诉讼中的"诉状"。

it had come about by the fourteenth century that their power to grant effective redress had become severely restricted, being limited to a rigidly circumscribed set of remedies. Thus if, for example, in a contract to sell land[1], the seller wrongfully refused to deliver the required deed[2] to the buyer, these courts could award damages[3] to the buyer, but they could not order the seller to give him the deed. If a guardian had betrayed the interests of his ward[4], whether by embezzlement, self-dealing[5], or corrupt bargains, the regular courts could give redress for any particular act of wrongdoing proved against him, but could not require him to submit to a comprehensive inquiry[6] into all his transactions. The Lord Chancellor, as the immediate deputy[7] of the all-powerful crown, was bound by no such limitations. He would order the recalcitrant seller[8] to deliver the deed, on pain of fine and imprisonment unless he complied[9]; he could order the faithless guardian to make a complete accounting or disclosure of all his transactions and, if found delinquent[10], to make the ward's estate whole[11] or suffer indefinite imprisonment[12]. The injunction[13], the mandate, and the supervision of fiduciaries thus became the exclusive prerogative[14] of the Court of Chancery.

In doctrine, too, the Court of Chancery made new departures. The Chancellor refused to honor, in certain situations, the extreme technicality to which the regular courts, with a rigidity which sometimes thwarted justice[15], had come to adhere. Instead, he made what he considered an equitable disposition of the case before him. Thus the Chancery Court came to be known as a court of equity[16], in contradistinction to the regular courts. The latter came in time to be known as the courts of law — an unhappy terminology[17] since the church courts, the Chancery Court, and the admiralty courts were of course also, in the everyday sense of the term, courts of law. The use of "court of equity" to apply only to the Chancery Court was equally unhappy, since basically the doctrines of the courts of law, as well as of the other courts, were also intended to produce equitable results. But happy or not, the terms "equity" and "law,"[18] with the former applied to the doctrines and procedures of the Court of Chancery and the latter to those of the regular courts[19] (other than the church and admiralty courts), became part of the vocabulary of our law, and remain so to this day (long after the separate chancery court has, except in a few states, ceased to exist[20]), as do also the corresponding adjectives "equitable" and "legal."

1 a contract to sell land 一份土地买卖合同

2 deed 契据，此处指地契

3 award damages 判处损害赔偿金 damages (复数形式)损害赔偿金，常用在违约或侵权诉讼中

4 If a guardian ... interests of his ward 如果监护人侵害了被监护人的财产权益 guardian 监护人，ward 被监护人 interests 权益，尤指财产权，即 all or part of a legal or equitable right in property

5 self-dealing (受托人)自谋私利行为 如公司董事参与与公司竞争的不利于公司利益之活动等

6 comprehensive inquiry 全面调查

7 immediate deputy 直接代理人

8 recalcitrant seller 违法之卖方 recalcitrant 等同于 disobedient，指对抗法规或纪律等

9 on pain of fine and imprisonment unless he complied 如果不遵从，可处以罚金和监禁 pain 等同于 punishment fine 在刑法中为"罚金"；在民法中，作"罚款"

10 if found delinquent 如果被认定违反义务 delinquent 在此等同于 failing to perform an obligation