

A Source-book on French Law

System · Methods
Outlines of Contract

By Sir Otto Kahn-Freund, Claudine Lévy
and Bernard Rudden

With a Preface by André Tunc

Second Edition

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Professeur de droit à l'Université de Paris-I

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Dedication

THIS edition is, with his permission, dedicated to Mr E. H. Cordeaux who, until his retirement from the office of Law Librarian in 1978, did so much for the Bodleian Law Library and for all its readers.

Acknowledgement

THIS work could not have been done without the financial assistance I received for six years from The Leverhulme Trust Fund. I should like to take this opportunity of expressing my sense of gratitude to the Trustees and to the Director of the Leverhulme Trust for the generous support they have given me throughout these years.

O. K.-F.

Preface

THIS book should go a long way towards helping British jurists acquire the knowledge of French law that is becoming more and more necessary.

For some decades, of course, on both sides of the Channel, distinguished scholars have directed their attention towards 'the other' legal system. The familiarity with it they acquired was sometimes intimate enough to enable them to write books valuable not only for their own countrymen, but also for the jurists of the system they studied. By a well-known phenomenon, consideration of a foreign system fosters 're-flection' on one's own. These scholars were able to influence pupils, some of whom developed their masters' researches. The flame of comparative study between Great Britain and France never dimmed and it would be easy to cite the names of a galaxy of jurists who, during the last decades, have worked to make it brighter.

None the less, up to the time when Great Britain joined the European Economic Community—or to the years immediately preceding her decision—the study of French law was something of a luxury. It was possible only in a few Universities and could attract only a minority of students of great curiosity of mind. Only a few of them saw in French law a matter which could be of practical interest.

The situation has now completely changed. The youngsters who are now entering Universities or the legal professions will still be in full activity during the first decades of the twenty-first century. In a period when in many respects the world seems in a state of revolution, it would need a bold man to be adventurous enough to try to describe what Europe will be in the year 2000 or 2030. Yet, in all likelihood, the relations between the various members of the European Economic Community will have greatly expanded in every domain. In particular, inter-state commerce should be as normal as domestic—as normal as it is within the United States. The European Economic Community members, it is true, do not form a nation; yet they form an economic *community*, a *common market*, and, for their common good, the walls which may be maintained by nationalisms

more or less articulate, and by the diversity of languages, should be gradually dismantled. After a long evolution during which commercial dealings between Great Britain and France increased but slowly, Great Britain has crossed a threshold: from now on the country is engaged in a process of economic merger. The study of French law by a significant number of British students suddenly becomes of vital importance, not merely to them, but to the country.

If the years 1971 and 1972 are historic ones, a tribute should be paid to all those who have worked to prepare Great Britain for entry into the Common Market and, in particular, to the jurists who have foreseen the need to enlarge the study of the law of the Common Market and of the European countries. Among them, the place of Professor Otto Kahn-Freund is pre-eminent. It would be improper for the writer to pretend to present to the public a scholar whose well-merited reputation is established all over the world and who benefits from a general admiration for his character, as well as for his science. Still, someone who has been invited to his classes, who has heard his students speak of him, who has benefited from the excellent French collections gathered on his advice in the Bodleian Law Library, may be permitted to appear as a witness: the tradition of the study of French law, established by Professor Harry Lawson, and now resting on the shoulders of Professor Barry Nicholas, has been brilliantly developed by Professor Otto Kahn-Freund. Clearly this could not have been achieved if it had not been for the close collaboration between the three authors of this book. Dr. Claudine Lévy, who is lecturer in European Law at the University of Leeds, brought to bear on this work her training and extensive knowledge as a Continental lawyer, and Dr. Bernard Rudden, who holds the Oxford University Lectureship in European Law, his wide experience in comparative studies of the laws of both Western and Eastern Europe. It is for their students, for those of other British universities who have also established a tradition of the study of French law (and one cannot help thinking, among others, of Cambridge, Manchester, London, Birmingham, Nottingham, Edinburgh, Glasgow) and for all who will follow their path, that the three authors have prepared this book.

The work seems to respond perfectly to the needs of students of French law. In its first part, by documents astutely selected and by penetrating introductory notes, it gives an excellent view of the sources, categories, and institutions of French law. The second part,

on the law of contract, is a perfect illustration of the former. It will enable the reader to understand how a Code produced before the Industrial Revolution for 'a race of peasants' (an amusing but sound remark of the authors) can still usefully govern modern business. The field of contract is probably less typical of the merits of codification than, say, the laws of family, property, succession, donation, or wills. But it is an ideal one to illustrate, without going to the extreme example of the law of tort, the interplay of the various sources of law. The second part has also an obvious value by itself, since the law of contract is one of those which will be most needed by the British practitioner.

One ought, perhaps, to have taught a foreign legal system to appreciate the science, labour, skill, and devotion embodied in this book and partly hidden by its elegant presentation. The French jurists, in any case, will be grateful to the three scholars who have so well depicted their legal system.

ANDRÉ TUNC

Université de Paris-I

Conventions

Codes. All references to the Codes, their addenda, and notes are to the Petit Dalloz edition.

Doctrine. The bibliography is numbered and works therein are cited in the footnotes by B. followed by the appropriate numbers. Where a work is not included in the bibliography, the full reference appears in the footnotes.

Unless otherwise stated:

- (i) passages from writers are extracts only;
- (ii) where the original bears numbers these have been preserved;
- (iii) the author's own citations are omitted;
- (iv) where textbooks are referred to but not reproduced, the number given is that of the section, not the page.

Jurisprudence. Cases are referred to in the usual French way: thus Cass. civ. 27.5.1908 means a decision of one of the sections of the *Chambre civile* of the *Cour de cassation* given on that date; Cass. req., a decision of that court's *Chambre des requêtes*.¹

The method of compiling law reports has changed from time to time, and not all writers use the same conventions.² The letters D. and S. refer to Dalloz and Sirey; D.S. to those years when the reports were united. The last number is always the page; but if, between it and the date, there appears the number 1, 2, or 3, this refers, respectively, to the section of the volume dealing with decisions of the *Cour de cassation*, of other civil courts, and of administrative jurisdictions; the pages of each section are numbered afresh. In the case of the *Recueil Dalloz*, D.H. refers to the part entitled *Hebdomadaire*, D.A. to that entitled *Analytique*, D.C. to that entitled *Critique*, and D.Somm. to the *Sommaires*. The letters D.P. are normally used by the French to refer to the section entitled *Périodique*. If the citation is simply to D. or S. followed by the year

¹ For details see below, p. 278.

² For details see below, p. 11.

and page, the reader will find the case at that page in the section of the volume devoted to *jurisprudence*.

The Gazette du Palais is published with two volumes in every year; consequently, the number refers to the volume. The work which appears under the name La Semaine Juridique is referred to as J.C.P. (Jurisclasseur Périodique). It is divided into parts indicated thus: I Doctrine, II Jurisprudence, III Textes, IV Tables etc. The last number in the citation is that of the entry.

Abbreviations

adm./admin. administratif	Dme Dame
AF Anciens francs	Doctr. Doctrine
A.J. L'Actualité Juridique	D.P. Dalloz périodique
al./alin. alinéa	Dr. Soc. Droit social
anon. anonyme	D.S. Dalloz-Sirey
art(s). article(s)	éd. édition
att. attendu	et s. et suivant(es)
Bull. civ. Bulletin civil	Fr./fr. Francs
C. contre	G.A. Grands arrêts (de la jurisprudence civile)
Cass. civ. Cassation chambre civile	G.A.A. Grands arrêts (de la jurisprudence administrative)
Cass. com. Cassation chambre commerciale	G.D. Grandes décisions (du Conseil Constitutionnel)
Cass. crim. Cassation chambre criminelle	Gaz. Pal. Gazette du Palais
Cass. req. Cassation chambre des requêtes	gén. général(e)
Cass. soc. Cassation chambre sociale	J.C.P. Semaine juridique (Jurisclasseur périodique)
Chr./Chron. Chronique	J.O. Journal officiel
C. civ. Code civil	L.G.D.J. Librairie générale de droit et de jurisprudence
C. com. Code de commerce	N./n° numéro
Comm. gouv. Commissaire du gouvernement	P.U.F. Presses universitaires de France
Comp./Cie Compagnie	R.D.P. <i>Revue du droit public</i>
concl. conclusions	Rev. ass. terr. <i>Revue des assurances terrestres</i>
Cons. Consorts	Rev. trim. dr. civ. <i>Revue trimestrielle de droit civil</i>
cons. conseil	Rev. trim. dr. com. <i>Revue trimestrielle de droit commercial</i>
Cons. const. Conseil constitutionnel	S.A. Société anonyme
C. pén. Code pénal	Somm. Sommaires
C. proc. civ. Code de procédure civile	Vve Veuve
D. Dalloz	
D.A. Dalloz analytique	
D.C. Dalloz critique	
D.H. Dalloz hebdomadaire	
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