

最新不列颠法律袖珍读本 (英汉对照)



英国法律体系

English Legal System



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英国法律体系

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出版说明

最新不列颠法律袖珍读本(英汉对照)系列丛书之原本是英国卡文迪什出版有限公司(Cavendish Publishing Limited)最新推出的,我们采用英汉对照的形式出版,以利于读者研习法律及法律专业英语之用。该读本系列包括了对不列颠法律的广泛介绍,其中每一本都是研习一个专业科目的完整的袖珍指南。其精致的文本、原版的法律专业英语、规范的专业汉译以及简明的格式、友好的界面使得该读本系列成为读者研习各个学科的基本理论和最新研究成果,尤其是学习纯正的法律英语的理想帮手。

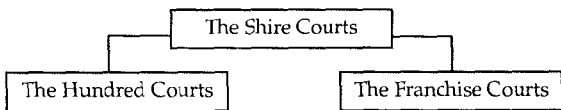
1 Sources of law

Common law and equity

Development of the common law

Before the Norman Conquest, there was no unified system of law.

Types of courts



The Norman Conquest

Generally, law is regarded as beginning with the Norman Conquest, which made many changes. There was a strong centralised government headed by the King and advised by his Council (*Curia Regis*).

The common law

A common law was established by the 'general eyre', which eventually created the first national courts. Good local customs were applied promoting certainty and consistency; the doctrine of *stare decisis* ('the decision stands') was born.

Defects of the common law: rise of equity

Writs were very specific. In common law, if there was no writ, there was no remedy. Money damages were the only remedy. The law favoured the rich and many rights were

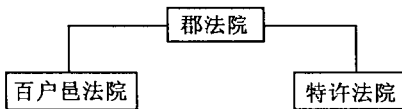
1 法律渊源

普通法与衡平法

普通法的发展

在诺曼征服之前,英国并不存在统一的法律体系。

法院类型



诺曼征服

通常,英国法律被认为始于诺曼征服。诺曼征服带来了许多变化,在那之后,英国建立起了一个由国王领导,御前委员会(国王法庭)辅佐的高度集权的中央政府。

普通法

普通法通过“一般巡回审判权”的行使得以形成,这最终导致了第一批国家法院的诞生。良好的当地习俗得以适用,习惯法的确定性和一致性得以提高;“遵照先例”原则(法院对某案的判决对后来发生的同类案件适用)得以产生。

普通法的缺陷:衡平法的兴起

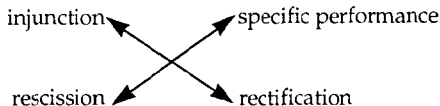
令状都是非常特定的。在普通法中,如果没有令状,当事人就得不到救济。而金钱补偿曾是惟一的救济。法律偏袒富

not recognised. No right of subpoena existed to compel witnesses to give evidence.

The rise of equity

Equity created new rights. New procedures were introduced, for example, the right to subpoena and discovery of documents. The rich nobles resented equity because of the reduction in their incomes. This resulted in the Provisions of Oxford 1258, prohibiting expansion of writs. This statute was later modified after complaints.

Equitable remedies



Advantages of equity

Equity was less rigid and formal than the common law, resulting in more flexibility. It was fairer, dealing with cases on their merit. It was described as a 'gloss upon the law'.

Defects of equity

Equity lacked certainty. It varied from chancellor to chancellor. It became overburdened and slow moving.

The Judicature Acts 1873–75

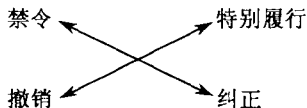
The Judicature Acts resolved the difficulties and reorganised the existing courts, fusing the common law courts and the court of chancery. Both common law and equity decisions could be given in any court.

人,许多权利都不被认可,也不存在强制证人出庭作证的传唤权。

衡平法的兴起

衡平法创造了新的权利,新程序得以采用,如当事人申请传唤证人和提供证据清单的权利。富有的贵族们由于收入减少,对衡平法怨声四起。这导致了 1258 年《牛津条例》的制定,旨在遏制令状的数目扩张。该条例后经申诉被修订。

衡平法上的法律救济方法



衡平法的优点

衡平法不像普通法那么严格和正式,因而更为灵活。它根据案情的是非曲直处理案件,因而更为公平。它被形容为“对法律的注释”。

衡平法的缺陷

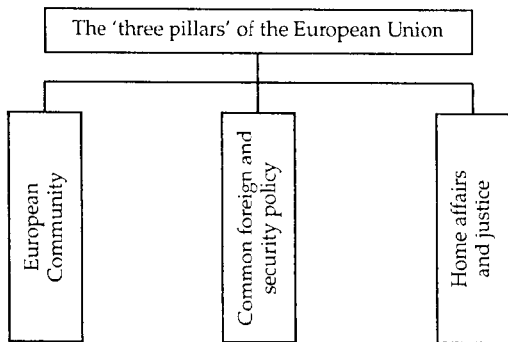
衡平法缺乏确定性,因法官的不同而有所不同。它变得负担沉重,行动迟缓。

1873~1875 年《司法制度法》

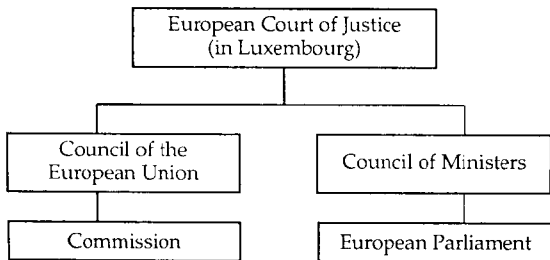
《司法制度法》解决了这些困难,重新安排了当时的法院体系,实现了普通法法院与衡平法法院的合并,规定各个法院都有权作出普通法和衡平法判决。

European Community law

As a result of the European Communities Act 1972, the UK and its citizens are subject to European Community law. The Community is part of a wider legal institution, the European Union.

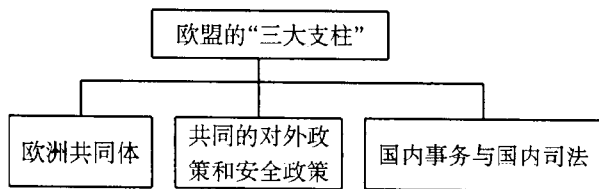


European institutions

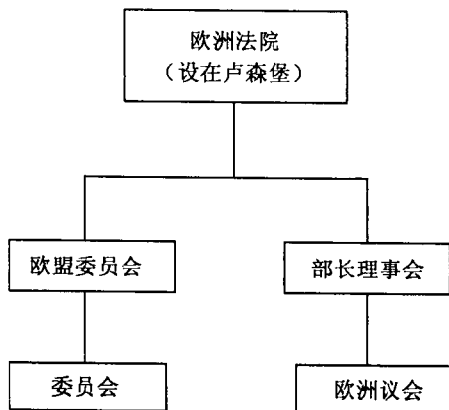


欧洲共同体法律

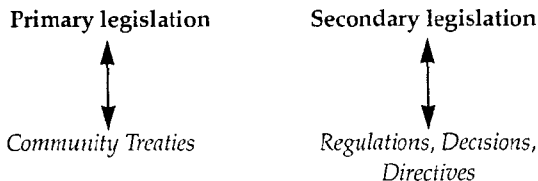
根据 1972 年《欧洲共同体法案》，英国国家及其公民都必须遵守欧洲共同体法律。而共同体只是一个更为广泛的法律体系——欧盟的一部分。



欧盟机构



Sources of Community law



Community law has a higher legal status than domestic law. In *Factortame Ltd v Secretary of State for Transport (No 2)* (1991), the House of Lords considered the relationship between UK and Community law. It confirmed that the effect of the European Communities Act 1972 was that Community law has supremacy over all UK law (in this case, the Merchant Shipping Act 1988), even in the face of Parliament's express intention to contradict Community law. This case has significant constitutional importance, since it suggests that the Parliament of 1972 was able to bind the Parliament of 1988, going against traditional notions of parliamentary sovereignty. Parliament, though, still retains the right to repeal the 1972 Act and, therefore, to leave the jurisdiction of the European Union.

European Convention on Human Rights

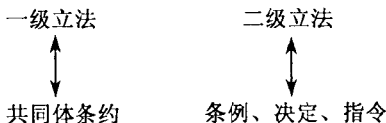
The Convention is signed by the 43 members of the Council of Europe. It protects the fundamental rights and freedoms of all members of the signatory States.

Institutions

European Commission of
Human Rights

European Court of Human
Rights (in Strasbourg)

共同体法的渊源



共同体法律的法律地位高于英国国内法律。在 1991 年的 *Factortame Ltd v Secretary of State for Transport (No 2)* 案中,英国议会上议院考虑了英国法与共同体法之间的关系,认定 1972 年《欧洲共同体法案》有这样的法律效力:共同体法的效力高于一切英国法(在该案中为 1988 年《商船海运法》),即使议会有明显的抵制共同体法的意图。这个案件有着极其重大的宪法性意义,因为它表明,1972 年的议会能够约束 1988 年的议会,而这是与传统的议会主权观念背道而驰的。但是,议会仍然拥有废止 1972 年《欧洲共同体法案》和脱离欧盟管辖的权力。

《欧洲人权公约》

该公约由欧洲委员会的 43 个成员国签署,保护所有签约成员国成员的基本权利和自由。

机构

欧洲人权委员会

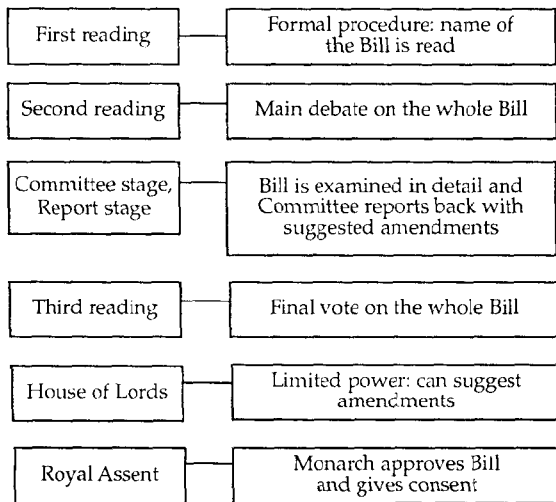
欧洲人权法院(设在斯特拉斯堡)

Human Rights Act 1998

On 2 October 2000, the Human Rights Act 1998 came into force, incorporating key parts of the Convention into UK law. All public bodies now have a duty to act in accordance with the Convention, and those who have their rights infringed have a remedy in the domestic courts. Also, the courts must construe all legislation, so far as possible, in a way which is compatible with the Convention. If it is impossible to do so, a declaration of incompatibility must be made. The impact of the Act is already proving to be significant and wide-ranging.

Domestic law

The legislative procedure

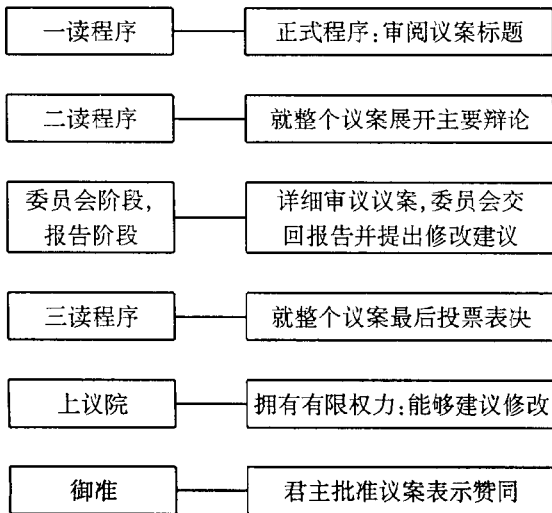


1998 年《人权法》

1998 年的《人权法》于 2000 年 10 月 2 日开始生效, 该法将《欧洲人权公约》的主要部分囊括进了英国法。所有的公共实体现在都有义务按照《公约》行事, 所有权利受到侵犯的人都可在国内法院获得救济。并且, 法院必须尽可能地以与公约相一致的方式解释所有立法。如果不可能这样做, 就必须作出不一致的宣告。该法的影响已经被证明是深远而广泛的。

国内法

立法程序



Acts of Parliament

Delegated legislation

Promulgated by bodies other than Parliament itself, this type of legislation is necessary for expediency. It is sometimes known as subordinate legislation, but is not inferior to other legislation.

Orders in Council

Statutory instruments

Byelaws