

Fundamentals of Anglo-American and Polish Legal Systems – The Sources of Law

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Legal Systems

- Poland (civil law/
unitary state)
- United Kingdom
(common law/
unitary(?) state)
- United States of
America
(common law/
federal state)



The Sources of Law in Poland

- The Constitution (art.8)
- EU law (art.91)
- International Conventions (art.91)
- Statutes (art.87)
- Regulations (art.92)
- Local laws (art.94)



The Sources of Law in Poland



- The Constitution is directly applicable (art.8(2))
- Judicial review
- Unitary state

The Sources of Law in the US

Federal law

- The US Constitution
- International Conventions
- Statutes
- Regulations
- Local laws



State laws

- State constitution
 - Statutes
- Regulations
- Local laws
- Common law

The US as the federal state



- 50 states = 50 jurisdictions
- 49 common law states
- Top: NY, Tx, Cal
- 1 mixed jur. state (Lousiana)

Federal vs state laws

Federal law

- Source/limitation in the US Constitution
- Judicial review (*Marbury v. Madison (1803)*)
- No federal common law (*Erie Railroad Co. v. Tompkins (1938)*)

State laws

- Broad application in everyday life
- Judicial review
- Reception statutes
- Stare decisis

The Sources of Law in the UK

- Constitution
- EU law → Retained EU law
- European Convention of Human Rights
- Statutes
- Common law
- Books of authority
- Custom



The Parliamentary sovereignty



- Parliament can make laws concerning anything.
- No Parliament can bind a future parliament.
- A valid Act of Parliament cannot be questioned by the court. Parliament is the supreme lawmaker.



English or British ?



- English private law
- British public law

- Unitary state?
- The devolution statutes: Scotland Act 1998, Government of Wales 1998, Northern Ireland Act 1998
- West Lothian Question



The UK Constitution

- No single authoritative text
- Constitutional statutes
- Common law rules
- Conventions, constitutional practice



E.g. statutes of 1215, 1679, 1689, 1701, 1911, 1949, 1972, 1998, 2005, 2018-2019 etc





EU law



- EU Member 1973-2020
 - European Communities Act 1972
 - European Union Act 2011
 - European Union
(Withdrawal) Act 2018
- Brexit





EU Law



- European Union (Withdrawal) Act 2018
- European Union (Withdrawal) Act 2019
- European Union (Withdrawal) (no 2) Act 2019

- The Exit Day is 31 January 2020 at 11.00 p.m.
- EU Law → Retained EU Law
- ‘Henry VIII clauses’

European Convention of Human Rights

- The Human Rights Act (1998)
- The declaration of incompatibility



The Statute Law

- Henry II, Edward I (English Justinian)
- Magna Charta (1215)
- Habeas Corpus Act (1679)
- Bill of Rights (1689)
- Act of Settlement (1701)
- Parliament Acts (1911, 1949)



The Statute Law

- The European Communities Act (1972)
- The Human Rights Act (1998)
- The House of Lords Act (1999)
- The Constitutional Reform Act (2005)
- The European Union (Withdrawal) Acts (2018-2019)



The Statute Law (in private law)

- The Statute of Frauds (1677)
- The Sale of Goods Act (1893)
- The Law of Property Act (1925)
- Consolidation acts (19th-20th cc.)

(statute of frauds or Statute of Frauds?)

The Common Law

- Several meanings of common law :
- common law versus civil law
- common law versus statute law
- common law versus equity law
- common law versus local law

The Common Law

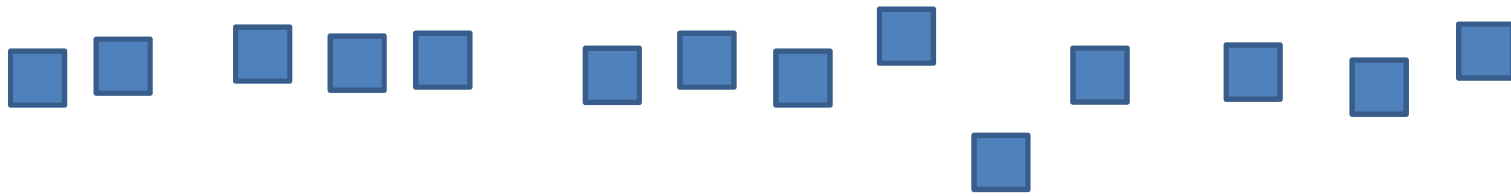
- Judge-made law = case law
- Rule of precedent
- Precedent vs principle
- Medieval forms of action
- Rivalry with the equity law



Writs vs General Rules



General rule: if you cause damage you should pay for it



Trespass Nuisance Assumpsit Detinue Ejectment

.....and many more writs (forms of actions)

Writ of trespass

- Colan vs West (1367): “with force and arms, namely swords etc., he so improvidently drove a certain cart..., that a certain piece of timber fell upon the aforesaid Christine and knocked her to the ground... against the peace of the lord king”.



Writ of trespass



- Rattlesdene vs Grunestone (1317): “the aforesaid Richard and Mary with force and arms drew off a great part of wine from the aforesaid tun, and instead of the wine so drawn off they filled the tun with salt water so that all the wine became rotten and was altogether destroyed to the grave damage to this Simon and against the [king’s] peace”;

Principle vs Precedent

1. The Principle :

„you **cannot** claim damages caused by non-performance of promise”

2. The Decision :

„you **can** claim damages caused by non-performance of promise”

3. Next Decision :

„you **can** / you **cannot** ...” ??

Common law : „ you **can** ...”

Civil law : „ you **cannot** ...”

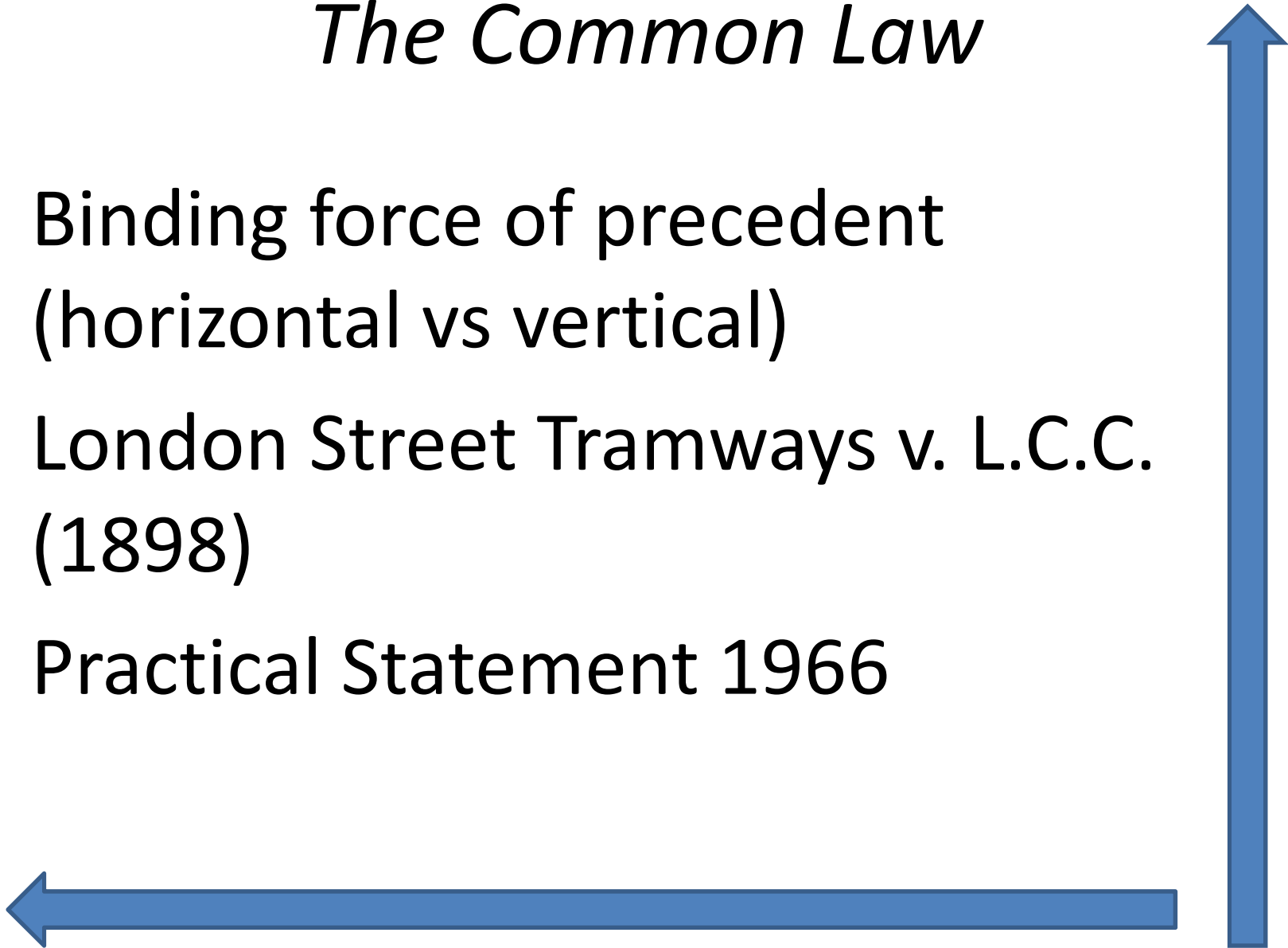
The Common Law

- Rule of precedent = Stare decisis
- Ratio decidendi and obiter dictum
- Men wearing black suits & ties shall not kill with a shot on Tuesday morning



The Common Law

- Binding force of precedent (horizontal vs vertical)
- London Street Tramways v. L.C.C. (1898)
- Practical Statement 1966



The Common Law

- The common law versus equity law
- History of courts (Westminster vs Court of Chancery)
- Forms of action, writs
- Glanville's case 1615
- Judicature Acts 1873-1875

