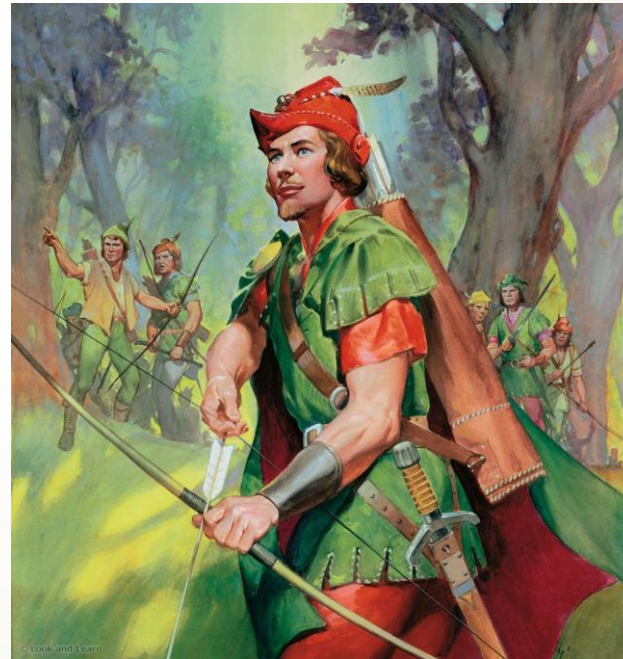




# **English administrative judiciary**

# Historical Development





# Historical Development

- The Court of King's Bench – damages claims, Medieval times, part of King's entourage
- XVII century changes:
  - a) King lost the right to remove judges
  - b) Prerogative Writs (Certiorari, Mandamus, Prohibition and Habeas Corpus)
- XIX century:
  - High Court competent for administrative disputes – the Queen's Bench Division – later became the Administrative Court
- Appeal to the Court of Appeal and then to the House of Lords – as of 2009 Supreme Court of the UK

# Albert Venn Dicey



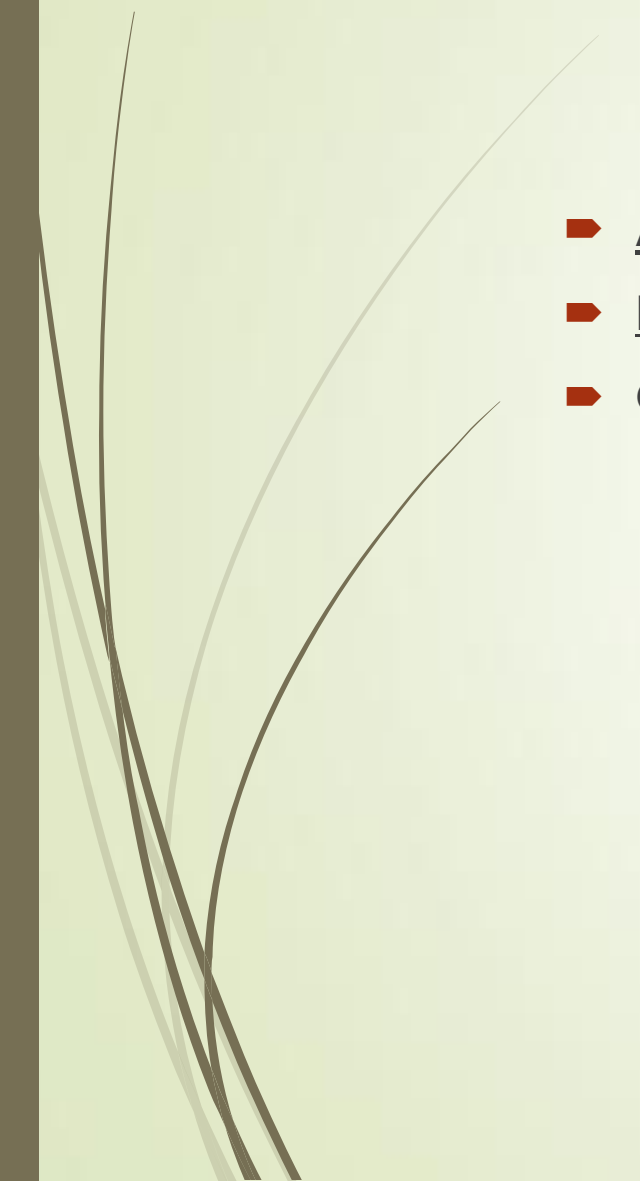


# Historical Development

- **Administrative Tribunals:**
- 1660 – the Commissioner of Customs and Excise
- 1799 – the General Commissioner of Income Tax
- XX century phenomenon – more than 80 by the end of XX century
- Product of the Welfare State
- *Ad hoc*, without plan, huge procedural and organizational variations
- No guarantees of independence and due process, no lawyers within
- Quasi-judicial entities



# Historical Development

- **Administrative Tribunals:**
  - Franks Committee on Tribunals and Enquiries (1957):
  - Openness, fairness and impartiality
- 

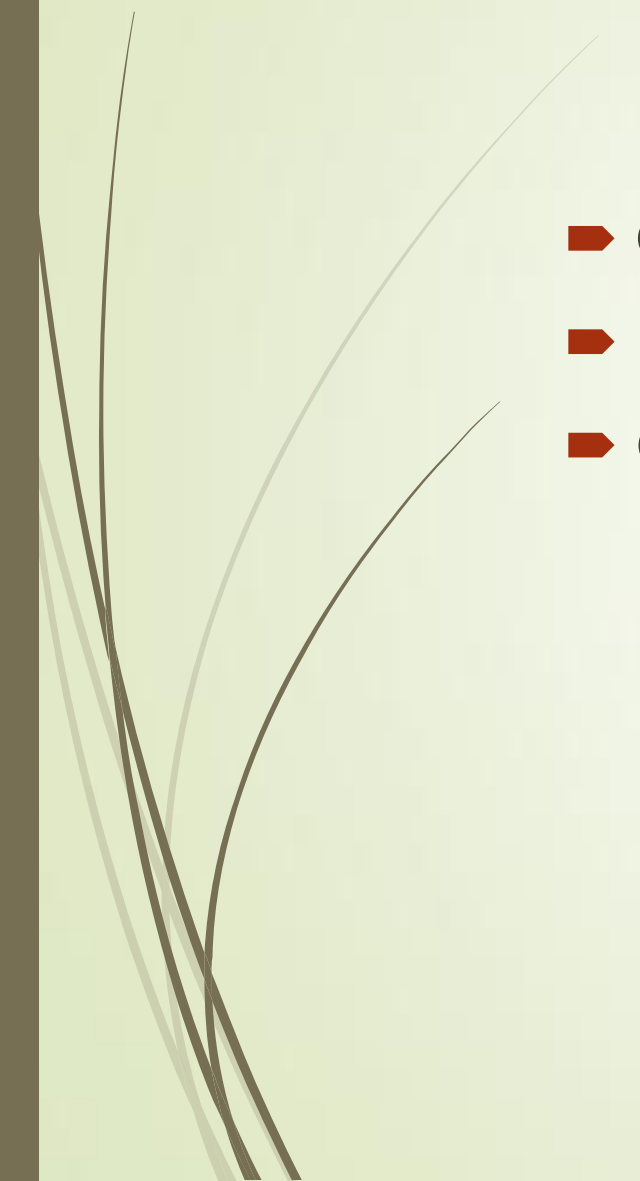


# Organization and Jurisdiction of Administrative Judiciary

- ▶ The Constitutional Reform Act (2005)
- ▶ The Tribunals, Courts and Enforcement Act (2007)
- ▶ Part 54 of the Civil Procedure Rules
  
- ▶ The Supreme Court of the UK
- ▶ The Court of Appeal
- ▶ The High Court (Administrative Court) / Upper Tribunal (superior court of records)
- ▶ The First-Tier Tribunal



# Lawsuits / Claims

- ▶ **Ordinary Claims:**
  - ▶ Damages claims, injunction, declaration
  - ▶ Ordinary courts, civil procedure
- 





# Lawsuits / Claims

- **Prerogative Writs:**
- Submitted in the name of monarch
- Since XVI century citizens submit them without monarch's approval
- 1938 – Prerogative Orders
- 2004 – renaming:
- Certiorari – Quashing Order
- Prohibition – Prohibition Order
- Mandamus – Mandatory Order



# Lawsuits / Claims

- **Judicial Review:**
- Still in the name of the monarch
- Since 1978
- Unified Prerogative Writs and ordinary claims
- Requests:
- Certiorari, Prohibition, Mandamus, declaration, injunction (for provisional protection), damages (only as an accessorial request), substitutionary remedy (since 2000 / 2007)
- Joint legal protection procedure, not single legal recourse



# Challengeable Acts

- ▶ Enactments – Laws (EU, ECHR – exception of illegality) and by-laws (direct control)
- ▶ Decisions – administrative acts
- ▶ Action – factual acts of administrative
- ▶ Failure to act – administrative silence
- ▶ Also provisional and procedural decisions and rec commendations, guidelines and public policies

# Judicial Control of Discretionary Acts

- Points of law (competence, procedure [natural justice], form of act, application of the law)
- Facts – only obvious (flagrant) mistakes
- Discretion – Wednesbury principles – legal aim (political decisions have a special treatment)
- Deference:
- derived from the principle of comity
- Similar to *Beurteilungsspielraum*
- Only unreasonable interpretation of legal standards is sanctioned



# Legal Recourse

- ▶ Appeal on points of law
- ▶ If the lower or the higher courts allow the appeal
- ▶ The First-Tier Tribunal and the Upper Tribunal can reassess their own decisions (remonstrative legal remedies)



# Relations to Administrative Procedure

- No access to courts before access to tribunals
- 

Thank you for your attention!

