

Englische Rechtsterminologie – Skript 4

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1. Sources of Law and their Hierarchy

- enacted law (= constitutions, statutes, treaties, court rules, administrative agency rules and decisions)
- case law (= court decisions of individual cases)

1.1. Common Law

- in this context: the body of law developed and articulated solely through judicial decisions
- is a separate source of law

1.2. Case law interpreting enacted law

- stare decisis, controls similar cases in future
- today, the principle of legislative supremacy has won
- → legislature has the power to abolish or modify common law rules by way of acts and statutes

2. Nature of the Judicial Process in Common Law Adjudication

What is the ultimate source of common law rules where no precedents are in effect?

- current theory: general idea that judges make the law
- inevitably they apply their conception of what they think the appropriate public policy is

legal realists in the 1930's:

- law was made, not declared or discovered
- greater self-consciousness of the judges
- have become more reluctant to be lawmakers
- see themselves more as law-interpretors

2.1. Common Law Approach to statutes

- is distinctive for the system and differs fairly from civil law countries
- statutes are largely seen as merely containing specific rules of law that will be applied fairly according to their terms, but not beyond
- subject matter outside the terms is still governed by the common law
- civil law systems view and interpret codes as germinating principles from which specific rules can be developed
- furthermore they may often reason by analogy from a statute and even apply it to situations that are not within its literal terms
- US courts are not likely to find/write broad principles in legislation that can be successfully used for the germination of rules → broad rules exist in common law
- normally will not reason by analogy to a different rule

Vokabelliste

• enacted law	Gesetzesrecht
• case law	Fallrecht, Präzedenzrecht
• common law	Bezeichnet das Rechtsgerüst, das durch das Fallrecht seit dem 11. Jhdt. entstanden ist
• to prevail	sich durchsetzen
• legislative supremacy	Vormachtstellung des Gesetzgebers
• promulgation	Verkündung
• local customary law	lokales Gewohnheitsrecht
• substantive law	materielles Recht
• to cite as precedent	als Präzedenzfall anführen/zitieren
• adjudication	Rechtsprechung
• applicable	anwendbar
• conceptual change	begriffliche Änderung / Wandel in der Begrifflichkeit
• „Legal Realism“	aus den 1930ern; Hervorhebung der sozialen, politischen, ökonomischen etc. Prägung von Richtern bei der Rechtsfindung (kritischere Betrachtungsweise)
• caveat	Einspruch, Vorbehalt, Warnung
• practical impact	praktische Auswirkung
• settled authority	bereits entschiedene Rechtsfragen
• subject matter of an action	Prozessgegenstand
• distinctive	unterscheidend

- germinating principles

grundlegende Prinzipien

- literal terms

Wortlaut