



# **English administrative judiciary**

# Historical Development



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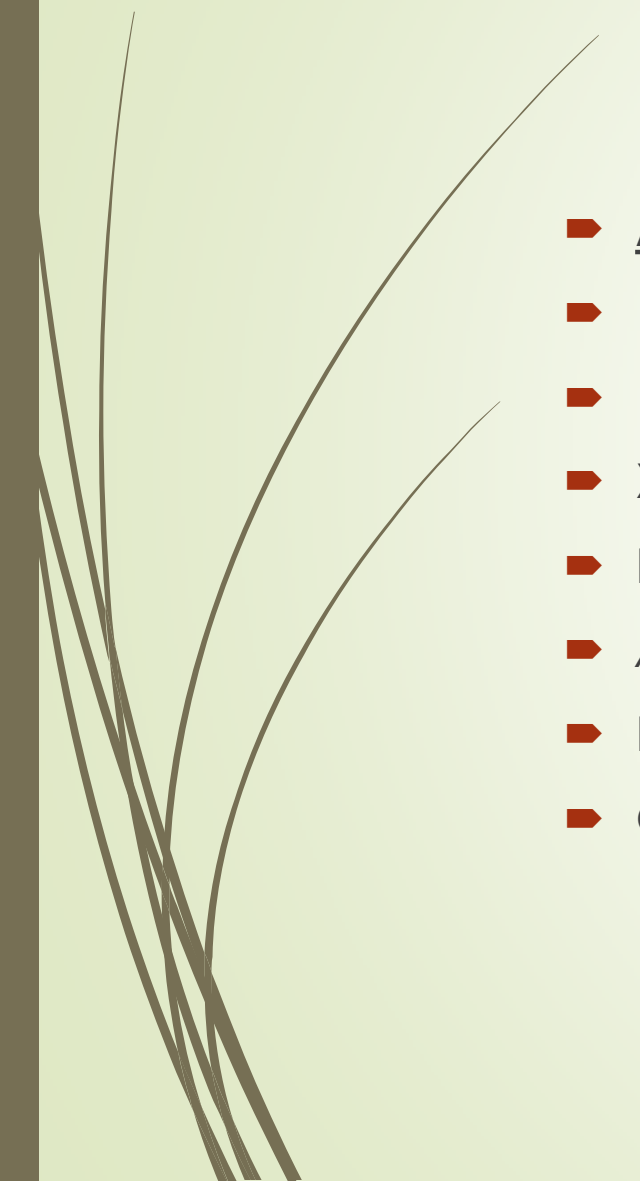
- The Court of King's Bench – damages claims, Medieval times, part of King's entourage
- XVII century changes:
  - a) King lost the right to remove judges
  - b) Prerogative Writs (Certiorari, Mandamus, Prohibition and Habeas Corpus)
- XIX century:
  - High Court competent for administrative disputes – 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



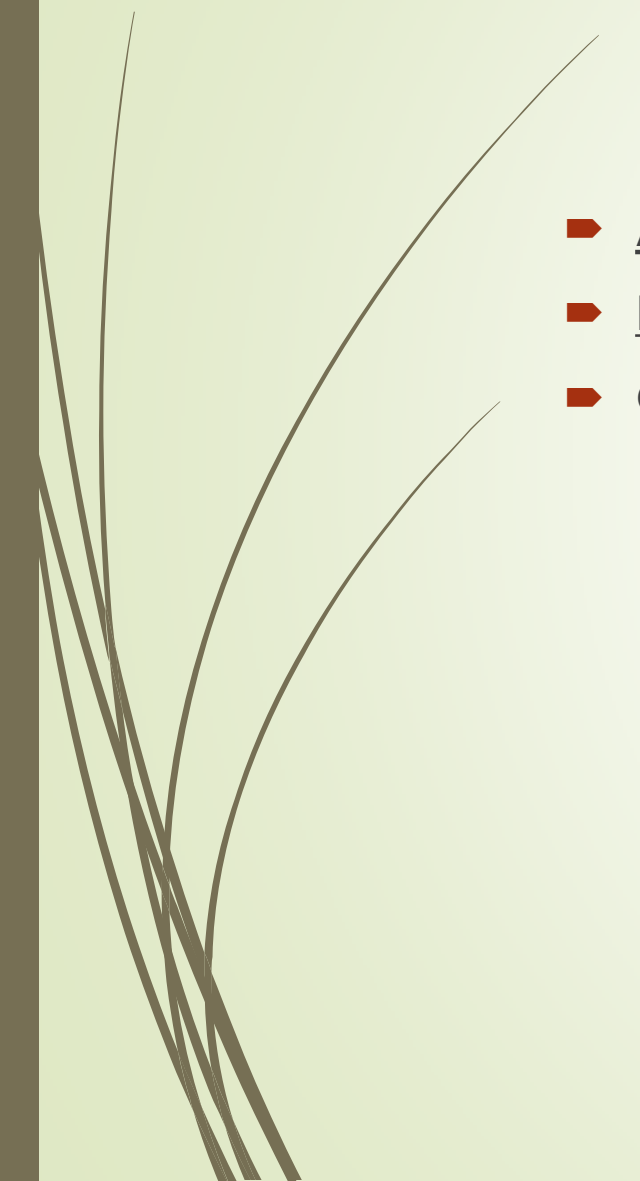


# Historical Development

- **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
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# Historical Development

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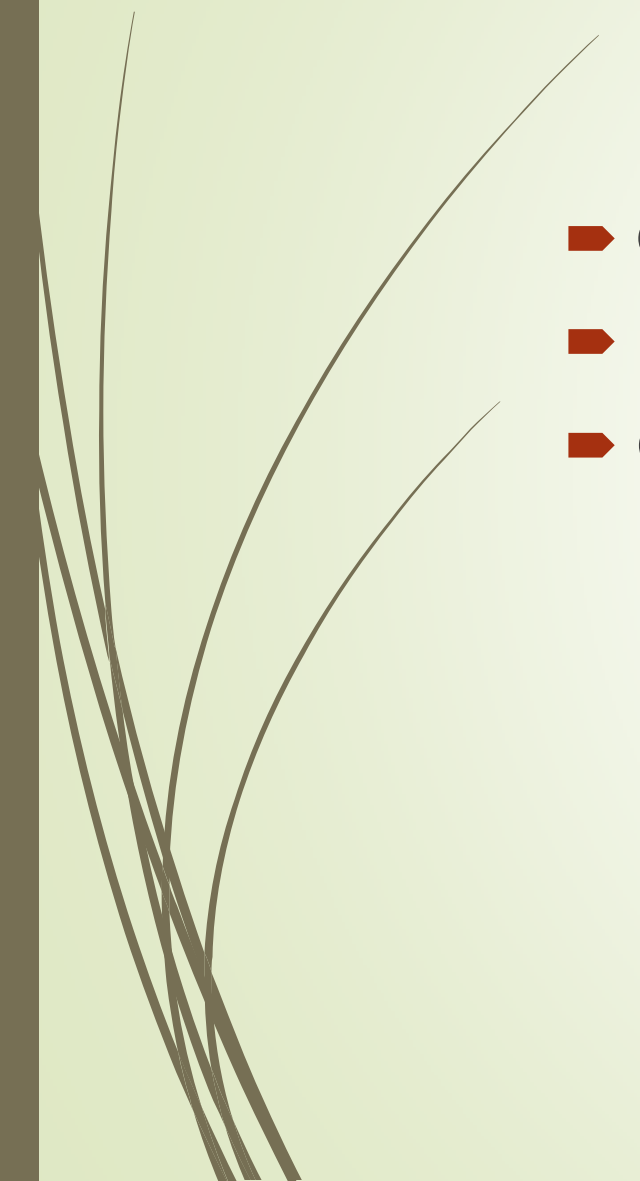


# Organization and Jurisdiction of Administrative Judiciary

- ▶ 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
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# 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
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# 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
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# 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
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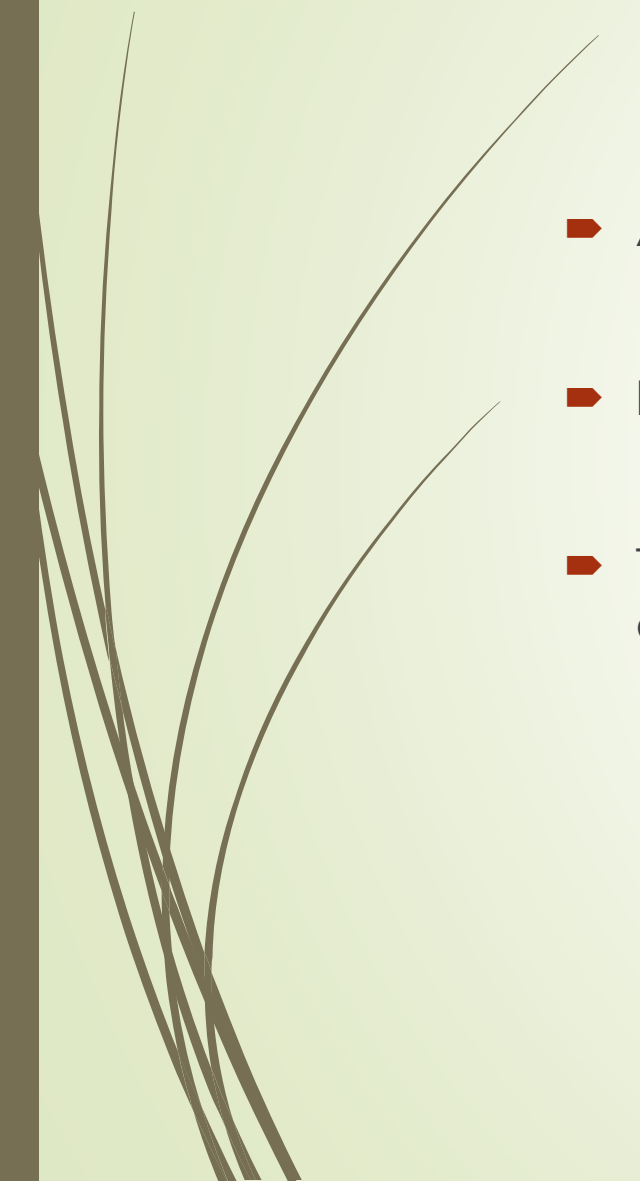


# Judicial Control of Discretionary Acts

- 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 decision 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)
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# Relations to Administrative Procedure

- No access to courts before access to tribunals
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Thank you for your attention!

