

1. はじめに

2. イギリスの司法制度の特徴

- the common law
- Adversarial system
- Jury trial and orality
- Lay magistrates

3. ウルフ改革

(1). ウルフ改革以前

- 伝統的なイギリスの民事裁判 : lawyers' Dickensian game : slow, expensive & complex
- 1900年以降ウルフ改革までの間に、63の報告書  
全部同じテーマ : "the process is too expensive, too slow and too complex"
- The Heilbron-Hodge Report 1993 : by the Bar Council & Law Society
- The 1994/95 Practice Directions

(2). 「ウルフ・レポート」 The Interim Woolf Report 1995 and Access to Justice 1996

1.	An effective system of case management by the court, instead of allowing the parties to flout rules and run the cases.
2.	An expanded small claims jurisdiction and a fast track for cases above this.
3.	Judicial, tailored case management for cases above the fast track.
4.	Encouragement of early settlement and enabling either party to make an offer to settle.
5.	The creation of a Head of Civil Justice.
6.	A single set of High /county court rules.
7.	Court appointment of single, neutral expert witnesses.
8.	Promotion of the use of IT for case management; use of video and telephone conferencing.

(3). Civil Procedure Rules 1998 (CPR)及び Practice Directions (PD)

- 「ウルフ・レポート」の結果

4. ジャクソン改革(Rupert Jackson)

(1). Cost War : CFAs(Conditional fee agreement)の導入

- ウルフ改革のアキレス腱
- プライバシー、名誉毀損の事案において、著しく報道の自由を妨げる

(2). 「ジャクソン・レポート」 Review of Civil Litigation of Costs: Final Report 2009

- The Legal Aid, Sentencing and Punishment of Offenders Act 2012(LASPO)

法律扶助改革法→「ジャクソン・レポート」の多くを採用

- s.44 of LASPO : 裁判所による CFAs の効力の制限を許容

(3). ジャクソン改革後

- 本人訴訟(Litigant in person)
- McKenzie friends

5. 民事手続(CPR 1998)の概要

(1). 目的

The overriding objective (Part 1)

(a) ensuring that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways which are proportionate – (i) to the amount of money involved; (ii) to the importance of the case; (iii) to the complexity of the issues; and (iv) to the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly;
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
(f) enforcing compliance with rules, practice directions and orders.

(2). Pre-Action Protocols(訴訟前の行動様式)

- PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOLS

<p>6. Steps before issuing a claim at court</p> <p>Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—</p> <p>(a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;</p> <p>(b) the defendant responding within a reasonable time - 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well</p>
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<p>as providing details of any counterclaim; and</p> <p>(c) the parties disclosing key documents relevant to the issues in dispute.</p>
<p><b>Settlement and ADR (話し合いによる解決)</b></p> <p>8. Litigation should be a last resort. As part of a relevant pre-action protocol or this Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings.</p>
<p>9. Parties should continue to consider the possibility of reaching a settlement at all times, including after proceedings have been started. Part 36 offers may be made before proceedings are issued.</p>
<p>10. Parties may negotiate to settle a dispute or may use a form of ADR including—</p> <ul style="list-style-type: none"><li>(a) mediation, a third party facilitating a resolution;</li><li>(b) arbitration, a third party deciding the dispute;</li><li>(c) early neutral evaluation, a third party giving an informed opinion on the dispute; and</li><li>(d) Ombudsmen schemes.</li></ul>
<p>11. If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party's silence in response to an invitation to participate or a refusal to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.</p>
<p><b>Compliance with this Practice Direction and the Protocols (制裁)</b></p> <p>13. If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings (see CPR 3.1(4) to (6)) and when making orders for costs (see CPR 44.3(5)(a)). The court will consider whether all parties have complied in substance with the terms of the relevant pre-action protocol or this Practice Direction and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent (for example an application for an injunction).</p>
<p>14. The court may decide that there has been a failure of compliance when a party has—</p> <ul style="list-style-type: none"><li>(a) not provided sufficient information to enable the objectives in paragraph 3 to be met;</li><li>(b) not acted within a time limit set out in a relevant protocol, or within a reasonable period; or</li></ul>

<p>(c) unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so.</p>
<p>15. Where there has been non-compliance with a pre-action protocol or this Practice Direction, the court may order that</p> <p>(a) the parties are relieved of the obligation to comply or further comply with the pre-action protocol or this Practice Direction;</p> <p>(b) the proceedings are stayed while particular steps are taken to comply with the pre-action protocol or this Practice Direction;</p> <p>(c) sanctions are to be applied.</p>
<p>16. The court will consider the effect of any non-compliance when deciding whether to impose any sanctions which may include—</p> <p>(a) an order that the party at fault pays the costs of the proceedings, or part of the costs of the other party or parties;</p> <p>(b) an order that the party at fault pay those costs on an indemnity basis;</p> <p>(c) if the party at fault is a claimant who has been awarded a sum of money, an order depriving that party of interest on that sum for a specified period, and/or awarding interest at a lower rate than would otherwise have been awarded;</p> <p>(d) if the party at fault is a defendant, and the claimant has been awarded a sum of money, an order awarding interest on that sum for a specified period at a higher rate, (not exceeding 10% above base rate), than the rate which would otherwise have been awarded.</p>

(3). 訴えの提起

①. : CPR Pt.7 - HOW TO START PROCEEDINGS – THE CLAIM FORM

<p>7.2</p> <p>(1) Proceedings are started when the court issues a claim form at the request of the claimant.</p> <p>(2) 略</p>
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②. 送達：当事者主義 → 原告による

<p>7.5</p> <p>(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day <b>four months</b> after the date of issue of the claim form.</p>				
<table border="1"> <thead> <tr> <th>Method of service</th> <th>Step required</th> </tr> </thead> <tbody> <tr> <td>First class post, document exchange or</td> <td>Posting, leaving with, delivering to</td> </tr> </tbody> </table>	Method of service	Step required	First class post, document exchange or	Posting, leaving with, delivering to
Method of service	Step required			
First class post, document exchange or	Posting, leaving with, delivering to			

other service which provides for delivery on the next business day	or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

(4). 被告の対応

①. 期限：14 日以内に対応

- ・認める場合(admit the claim) → default judgment
- ・争う場合(file a defence)

<p>CPR Pt. 15 - DEFENCE AND REPLY</p> <p>15.2 Filing a defence</p> <p>A defendant who wishes to defend all or part of a claim must file a defence.</p>
<p>15.3 Consequence of not filing a defence</p> <p>If a defendant fails to file a defence, the claimant may obtain default judgment if Part 12 allows it.</p>
<p>15.4 The period for filing a defence</p> <p>(1) The general rule is that the period for filing a defence is –</p> <p>(a) 14 days after service of the particulars of claim; or</p> <p>(b) 略</p>

②. 被告が争わない場合(admit the claim) : default judgment (Pt. 12 of CPR)

default judgment とは： judgment without trial

ほとんどのケースは、これで終了

③. 被告が争う場合：defended cases

(5). 典型的な defended case

①. Small claims procedure (Pt.27)

- ・当初、ロンドン、マンチェスターで試行された手続が、普及したもの
- ・2013 年以前は、民事訴訟の 70%以上はこの手続
- ・ジャクソン改革により、「Small claims」は、倍増し、£ 10,000

- ロイヤーを必要としない簡素な手続
- hearing は公開が必要だが(European Convention in HR art 6. fair trial)、  
ただ、裁判官の執務室にて開かれる
- 裁判官の裁量

27.8 Conduct of the hearing
(1) The court may adopt any method of proceeding at a hearing that it considers to be fair.
(2) Hearings will be informal.
(3) The strict rules of evidence do not apply.
(4) The court need not take evidence on oath.
(5) The court may limit cross-examination.
(6) The court must give reasons for its decision.

②. Fast track procedure (Pt.28)

28.2 General provisions
(1) When it allocates a case to the fast track, the court will give directions for the management of the case and set a timetable for the steps to be taken between the giving of the directions and the trial.
(2) When it gives directions, the court will –
(a) fix the trial date; or
(b) fix a period, not exceeding 3 weeks, within which the trial is to take place.
(3) The trial date or trial period will be specified in the notice of allocation.
(4) The standard period between the giving of directions and the trial will be not more than 30 weeks.
(5) The court's power to award trial costs is limited in accordance with Section VI of Part 45.

③. Multi-track procedure (Pt.29)

- Case の難易度に応じ、進行は様々(簡単なものは、Fast track に準ずる)
- a case and/or costs management conference attended by lawyers familiar with the case
- a pre-trial review of the statement of issues

④. Disclosure and inspection of documents (Pt.31)

- Disclosure formerly “discovery”

31.2 Meaning of disclosure
A party discloses a document by stating that the document exists or has existed.
31.3 Right of inspection of a disclosed document
(1) A party to whom a document has been disclosed has a right to inspect that document except where –

<p>(a) the document is no longer in the control of the party who disclosed it;</p> <p>(b) the party disclosing the document has a right or a duty to withhold inspection of it;</p> <p>(c) paragraph (2) applies; or</p> <p>(d) rule 78.26 applies.</p>
<p>(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 31.6(b) –</p> <p>(a) he is not required to permit inspection of documents within that category or class; but</p> <p>(b) he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.</p>

⑤. The court's power to control evidence (Pt.32,33)

- oral, hearsay or written evidence etc.

⑥. expert witness (Pt.35)

- 1990年代以降の expert witness 利用の急増とコスト増と制限の必要性

<p>35.1 Duty to restrict expert evidence</p> <p>Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.</p>
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⑦. offers to settle (Pt.36)

- Albert Reynolds case (1996) :
  - 前アイルランド首相 Albert Reynolds の Sunday times に対する名誉毀損訴訟(libel)
  - 勝訴したものの、それに要したコストが£1 million

⑧. 標準的なトライアルの手続

1.	• 原告代理人による opening speech
2.	• 原告代理人による原告側第1証人(witness)の主尋問 • 被告代理人による反対尋問(cross examination) • 陳述書(pre-trial witness statement)が「evidence in-chief」と評価される場合には、反対尋問のみ
3.	第2証人以下につき、上記の繰り返し
4.	• 被告から裁判所に対する「no case to answer」の提出 • 裁判所がこれに同意した場合：ここで終結
5.	• 被告代理人による opening speech
6.	• 被告代理人による被告側証人(witness)の主尋問 • 原告代理人による反対尋問(cross examination)
7.	第2証人以下につき、上記の繰り返し

8.	・双方による closing speech
9.	・陪審事件でない限り、裁判所による判断 ・証明度 proof on the balance of probabilities
10.	・判決言渡
11.	・コストに関する決定
12.	・上訴に可否に関する判断

6. 結びに代えて

以上