In England and Wales, the Law of Arms is regarded as a part of the laws of England and, the common law courts will take judicial notice of it as such. These dignities, as they are called, have legal standing. But the Law of Arms is not part of the common law and the common law Courts have no jurisdiction over matters of dignities and honours, such as armorial bearings or peerages. In this respect the Law of Arms was most influenced by the civil law and may be regarded as similar to the ecclesiastical law, which is part of the laws of England influenced by canon law, but not part of the common law.

In England the exclusive jurisdiction of deciding rights to arms, and claims of descent, is vested in the Court of Chivalry. As the substance of the common law is found in the judgments of the Common Law Courts, so the substance of the Law of Arms can only be found in the customs and usages of the Court of Chivalry. However, the records of this are sparse, not least because the Court never gave reasoned judgments (the Lord Chief Justice who sat in 1954 offering the sole exception to this, no doubt because of his professional background as a common law Judge). The procedure was based on that of the civil law, but the substantive law was recognised to be English, and peculiar to the Court of Chivalry.

Until 1945 coats of arms (engravings, public paintings etc) were taxed, with no distinction made in the statute between arms granted by the College of Arms or those which were self-assumed.

Enforcement of the Law of Arms

In England the officer with power to adjudicate on legal aspects of the law of arms is the Earl Marshal, whose court is known as the Court of Chivalry. The court was established some time prior to the late fourteenth century with jurisdiction over certain military matters, which came to include misuse of arms.

Its jurisdiction and powers were successively reduced by the common law courts to the point where, after 1737, the Court ceased to be convened and was in time regarded as obsolete and no longer in existence. That understanding was authoritatively overturned, however, by a revival of the Court in 1954, when the Earl Marshal appointed the then Lord Chief Justice to sit as his surrogate. The Lord Chief Justice Lord Goddard confirmed that the Court retained both its existence and its powers, and ruled in favour of the suit before him. It should be noted however, that this was a case of unsurpation and not assumption.

However, in his judgement (Manchester Corporation v Manchester Palace of Varieties [1955] P133) Lord Goddard suggested that:

"If this court is to sit again it should be convened only when there is some really substantial reason for the exercise of its jurisdiction".

In 1970, Arundel Herald Extraordinary advised Wolfson College, Oxford (who were considering whether to invoke a controversial University privilege in order to avoid paying for a grant of arms) that the effect of Lord Goddard's dictum *"must make any further sitting of the court unlikely even for a cause of instance; and the revival of causes of office, which were obsolescent even in the seventeenth century, would be more difficult still"*.

In 1984, Garter King of Arms declined to ask the Court to rule against the assumption of unauthorised arms by a local authority, doubting whether the precedents would give jurisdiction (A New Dictionary of Heraldry (1987) Stephen Friar p.63).

Hence, although the Law of Arms undoubtedly remains part of the law of England, and although the Court of Chivalry in theory exists as a forum in which it may be enforced, there is difficulty in enforcing the law in practice (a point made in Re Croxon, Croxon v Ferrers [1904] Ch 252, Kekewich J). The absence of a practical remedy for the illegal unsurpation of arms in the law of England does not mean that there are no rights infringed, merely that it is not within the jurisdiction of the common law courts to act and that the court that is so empowered does not now sit.

Assumption of Arms

While in the continent of Europe assumption of arms has mostly remained free, in some countries, arms may not be assumed or changed at will. In particular, there is some basis for the claim that it is unlawful to assume arms in England and Wales without the authority of the Crown. This, naturally, is the view of the College of Arms and is supported by some dicta in court cases, including in re Berens [1926] Ch.596, 605-06, and Manchester Corporation v Manchester Palace of Varieties Ltd, [1955] P.133 (the only modern decision of the Court of Chivalry). However, there is no holding by a modern court directly on point. For cases considering the question but not deciding it, see Austin v. Collins, 54 L.T.R. 903 (Ch.1886); In re Croxon [1904] Ch. 252.

However, the assumption of arms has in every age been common and become particularly so after the College of Arms ceased to obtain warrants to search out the illegal use of armory by roving enquiries known as Visitations, the last of which took place at the end of the seventeenth century.

The interpretation and application of modern legal principles (such as freedom of expression) have also influenced this, and the annual tax on coats of arms was repealed in 1945.

Burke's General Armory (last edition 1884) is said to contain arms attributed to 60,000 families (The Upper Classes; Property and Privilege in Britain J. Scott (1982) p.91). But it has been calculated that there were only 9,458 armigerous families in 1798 (The Nobility of the English Gentry J. Lawrence (1824)) and a total of 8,320 grants of arms made in the 19th Century (English Nobility: The Gentry, the Heralds and the Continental Context M J Sayer (1979)), which implies, albeit on an extremely rough and ready basis, about 40,000 assumptions of arms.

Martin Goldstraw (December 2018)