Australian law

Law

To range the extent, it is important to understand the source of law, the Australian legal system, the history of the Australia, the formation of the Australian legal system and the relationship between Australia and British law system. Back to history, source of law need refers to the historical development of a law or a legal system. 1 Now Australia Legal system is self-developing even include the Aboriginal Customary Law and no longer binding with English legal system. There are several segments for this case.

Before Colony settlement, Aboriginal Customary Law applies in all tribal throughout the continent; After Colony, 1788 to 1900, law of England were to apply all colony, there was no recognition of Aboriginal law; 1901 to 1986, Australia became to a member of Commonwealth, the appeal and ultimate court from the Australian courts was an England court; After 1987, Australia has got the independence of judicatory.

Segment 1, Before Colony settlement

Aboriginal law and customs were part of an oral tradition, not written down, were passed on to each generation through stories, songs, rituals and ceremonies. Before Captain Arthur Phillip arrived at Sydney Cove 1778, there is no legal relationship between Australia and England.

Segment 2, Colony Period, 1788~1900

Governor Phillip actually arrived on the Eastern coast in January 1788 and formally founded the colony of New South Wales on 26 January, he hoisted the Union Jack and declared Australian Continent to be British, which include all people living in Colony and All Aboriginal people became subjects of King George III of England and were bound by his law. There was no recognition of

Aboriginal law, no negotiation with the Aboriginal people. In fact, it was not until two centuries had passed that “ English law” would give due expression and legal validity to Aboriginal customary law, beginning with the landmark native title High Court decision of 1992 in Mabo No. 2. 2 During this time, the legal system was a copy from England.

In generally, the principles of setting new common laws are based on the England legal system. All case law was judged by the same, notwithstanding the condition of difference between these two different land, cultural and nationality. It could be named as " Reception of English law into Australia". In formal speaking, English statutes in existence at the time of settlement as appropriate to the circumstances of the colony. And English case-law (un-enacted law) in existence at time of settlement as appropriate to the circumstances of the colony. Australia received English common law (including equity). Australian (colonial) courts were part of the English legal system and bound to follow decisions of superior English courts, English domestic legislation passed in England did not apply in the colony, But the English parliament could pass laws for any and all English colonies - which applied of paramount force.

Even in those 112 years, Australian had developed the legal system, established of colonial courts & parliament, passed Australian Courts Act: s243. It said “ all laws and statutes in force within the realm of England at the time of the passing of this Act [25 July 1828] ... shall be applied in the administration of justice”.

Segment 3, National and Commonwealth Period, 1901 to 1986

The Federation of Australia was the process by which the six separate British self-governing colonies together formed one nation. All colonies collectively became states of the Commonwealth of Australia on 1 January 1901. Also the Constitution was approved in a series of referendums held over 1898–1900 by the people of the Australian colonies, and the approved draft was enacted as a section of the Commonwealth of Australia Constitution Act 1900, an Act of the Parliament of the United Kingdom. In effect, Australia has nine legal systems—the eight state and territory systems and one federal system.

However, it is the state and territory criminal laws that mainly affect the day-to-day lives of most Australians. In this new entity, Australian people still could appeal to England Court, and the British held part of the legislation authority for Australia. The acquisition of total legal independence was " evolutionary not revolutionary" 4. The majority in Sue v Hill5declared it to be sometime between 1901 to 1986 England became a “ foreign power”. It showed that, the origin legislation followed the English principles of hundreds of years’ accumulation. Or, sentences could be denied in the Privy Council of England. Therefore, Australian still maintains ties with England which prohibits it from absolute autonomy.

Segment 4, Legislative Independence, after 1987

The historical turning point happened in 1986, in Australia Act 1986. It eliminated the possibilities for England to own the legislation authority in Australia; The High Court was also given the power to allow or reject appeals to the Privy Council resulting in a more liberated judiciary. 6 It shows the British could still legislate for Australia, but only with “ the request and

consent” of the Australian Government. 7 Australia was reluctant to give up ties to Britain. But it desired to keep its link with Britain because of " defence, trad, investment and ethnic and cultural affinity" as well as the state's mistrust of the Federal Government. 8 It has shown that since 1986 is yet to occur; vast milestones of independence have surely been made in a multiplicity of areas to the point where Australia exists functionally as Independent.

Also talking about the independence of the legislation and judicial, the legal battle which Milirrpum v Nabalco Pty Ltd9 and Mabo v Queensland10 effect a lot. It is the first litigation on native title in Australia. A doctrine of common law native title had no lands in a settled colony. In 1968, the Yolngu Clan who were the traditional owners of the Govepeninsula in Arnhem Land, were asked to leave their long-live lands. In 1971, the request had been denied. However in 1992, Mabo v Queensland case, the clan people led to the success of getting their lands back. Despite this, the most important meaning of it is the independence of Australian legal system gradually forbade the settlement laws and became an independent legal entity in the modern world. Now in Australian legal system, there are:

Aboriginal Customary Law — Recognition (ALRC DP 17) 1980; Aboriginal Customary Law — Marriage, Children and the Distribution of Property (ALRC DP 18) 1982; and Aboriginal Customary Law — Criminal Law, Evidence and Procedure (ALRC DP 20) 1984. In conclusion, It shows the Australian has a common law system based of England Legal system from the date of 1788, but since the judicial independent in1986, Australia has its own functionally generally legal independent and will develop on its own effect and condition.

Answering Discuss: Lord Denning’s judgment in Central London Property v High Trees11 is a case involving the Property law and Contract law which played a significant role in establishing the doctrine of promissory estoppel within the English courts, even more impact the doctrine of English world and also their Legal system.

Since 1937, there was a lease for the property between plaintiff (Central London Property Trust) and defendant (High Trees House) over 99 years. But during the World War II, tenants in London were scarce and ran to suburbs, thus resulting in the plaintiffs' occupancy rate, Central London Property Trust Ltd halving the original rent on the lease from £ 2, 500 to £ 1, 250 a year. The concurrence between two sides to reduce the rent did not have time limit. For the next five years to mid-1945, the defendants paid this reduced sum for their tendency. However circumstances (The war finished) soon became favored to the plaintiffs since most of their flats were now let and so it becoming more profitable for the rent to be raised back to the original £2 500 on the lease. The plaintiffs furthermore demanded rent for the last two quarters of 1945.

Traditionally estoppel only applies to representations fact- Jordan v Money (1845)12, the consideration would be difficult to identify, the promise may not have a cause of action. But Lord Denning J. was the presiding judge in the case and he made the ratio that the full rent was payable from the time that the flats became fully occupied in mid 1945, Central London would not have been able to get the full rent from 1940 onwards based on Hughes v Metropolitan Railway Co. 13 This legal ruling had an incredible impact on the world because of it essentially created the doctrine of promissory estoppel.

That equitable doctrine could hardly apply in the present case before, because without consideration. But with regard to estoppel, the representation made in relation to the offer could trade as a representation. The law has not been standing still since Jordan v Money (1854) 5 H. L. C 185. After the case ruled, the promise in business behaving must be honored. The promises - promises intended to be binding, intended to be acted on, and in fact acted on. Jordan v Money (1854) 5 H. L. C 185 have been distinguished. The doctrine has been widely used in the cases related to business law and contract law in the English Legal System around the world.

It reflects the modern civil law for dynamic security as well as the pursuit of equal value." Although, trust principle can't like a specific rules, made up of the constitutive requirements and legal effect is very clear; however, trust principle also has relatively certain legal effect, and gives the corresponding calculation required legal effect of the core elements. The application of the principle of trust, performance based on certain facts, through the reasonable degree of trust, trust and responsible regularity degree of weighing, to determine the corresponding legal effect to elastic." The case is a milestone in legal world, Lord Denning said in his judgment, “ not only includes the basic requirement of estoppel: promise, trust, damage, justice, and broke through the equitable estoppel is used only for a statement of the facts of barriers, to estoppel principles apply to the commitment to the future”, for the first time in the history of British promise of the first official gave no consideration to legally binding.

To sum up the scholars point of view, and the principle of trust protection structure for the private law: trust the facts (including the appearance of truth, the good faith and due to the trust for behavior), himself and, trust of rationality and legal effect, and one of the most important is the fact, I look like and the rationality of the other party trust. After this case established, there are Ricketts v. Scothorn, 14 (1968) regarding the property law, Wright v. Newman15, 266 Ga. 519, 467 S. E. 2d 533 (1996) regarding family law; even in Amalgamated Investment and Property Co Ltd (in Liq) -v- Texas Commerce International Bank Ltd; CA [1982] 16it developed itself act as a sword and as a shield. The doctrine of promissory estoppel after High Trees to create a new inroad into the rule in Pinnel’s.

At the same time, it is important to note that the principle of estoppel is civil and commercial law and the " fair" and " good faith" principle of corresponding, it is to enforce the power of the contract, to clear the duty and responsibility, to improve the connection between the law and reality, to implement the unified contract law rules of fairness, to Conducive to maintaining the social and public interests and to promote trade relations velocity, protect the safety of the transaction.