

Common law and equity essay



Common law originally developed under the inquisitorial system in England during the 12th and 13th centuries, ^[11] as the collective judicial decisions that were based in tradition, custom and precedent. Equity is designed from the English law system and its role as a common law, as the common law was created and analysed the basis of equity was brought up and is now used in the royal courts, the story of Equity brings us back to the days of 1066 when William the Conqueror invaded England, he found that there was no single system of common law but rather a system where the local courts based rulings of traditional courts, such as Shires, Boroughs and Hundreds, and applied local rules and customs to the cases. These were openly known as the customary laws which later on became the foundations for the common law.

William I using subtle tactics gained control of the country and then introduced the feudal system, where all land belonged to the King and where he would grant areas of land to those people who supported him and were willing to help him. He made himself available to any landlord who had a dispute or problem and who could not get redress from his lord. This idea of applying directly to the King became known as the “ King's Justice” and became available to everyone. This King's Justice was administered by the “ Curia Regis” (King's Court), which was a body of advisers to the King. The Curia Regis would apply a system of rules which applied to whole country thus it became known as the ‘ common' law which applied in a series of Royal Courts which were erected as time came to pass.

At first people recognised that this law was indeed fair and with it being common to England was just.

However, later problems were found with this law; two in specific:

- The fact that there were only one remedy available, damages soon became a problem. Damage being money ordered to be paid as compensation for injury or loss. It soon became a common issue that remedy was not always the appropriate form of remedy and this would have no significant concluding impact within cases.
- The other major issue was that a civil action, legal action to protect a private civil right or to compel a civil remedy, could only be started with a writ. A writ was a document on which was written why and what the legal basis the person was being sued.

Circumstances arose that when a problem was not covered by the writ, this meant making a new document every time one arose, however this was stopped in the 13th century. This meant if your case was already not under a writ it was not carried forward.

People found themselves very frustrated under this common law, where they found they may have had to settle for remedies they did not want or their case was sometimes found not even actually taken to the courts as it was not under the ' writ.'

As the public became dissatisfied with the system they began to petition to the King, as the “ foundation of justice” for a remedy. The King took note of the petition, which resulted in the case being taken up by the Chancellor when people found that the ' common law' would not help them with their cases.

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Gradually, over the years he built up a large body of principles, which he had gathered from cases which he had dealt with in which he decided what he thought was fair. These principles together then formed a law; 'Equity'.

Equity can be simply thought of as 'fairness' and was a very powerful source of law as it overcame any problems with the common law, because of the right justification it was thought to give. It gave people a 'safety valve' allowing them to seek different appropriate remedies and even actually be given a case when common law did not.

However, the law of equity would have been useless to this day if the dispute between the two would have not been resolved. Because of the conflict, a decision to resolve the two was finally made in 1616 when it was referred to King James. The dispute between the two systems was eventually resolved as a result of the Earl of Oxford's Case 1616; the outcome of this case was that if the two were to be in conflict and may contradict each other "equity would prevail." The outcome was important as equity would have been worthless as it could not fill in the gaps of the common law unless it was dominant. Common law could just override equity if common law is more important, equity would have been powerless.

After many years had gone by the judicature act 1873-1875 came into place. Before this common law and equity had separate courts. The judicature acts did not fuse the common law together, however, did fuse the administration.

This is significant due to the established court structure we have today, provided that equity and common law could only be administered by all

courts and that there would no longer be different procedures for seeking common law and equitable remedies.

In conclusion they were joined into one High Court, they are still separate laws which have different principles, common law being the major law, and equity brought into cases when needed. Because of the fact that they have different principles and were not fused together when the administration were, they are referred to as ' The Twin Pillars'