

Equity and common law

Law



The tradition of English common law has bequeathed the concept of equity to all the legal systems that have derived from that tradition. This concept of equity developed out of the need to soften the hand of the law when the strict adherence to legal provisions and precedent would prove too harsh. This concept has on occasion been termed “ natural justice,” as it seeks to consider more than the bare facts of the cases to which it is applied. The concept of equity has been placed in contrast with statutory law as well as with common law, which comes about as a result of the principles ruled by judges .

The development of equity, as distinct from common law, came about as a result of the exceeding rigidity of the courts of law as they existed in their medieval forms. This led to the rejection of many plaintiffs’ claims where fairness might have been achieved with the application of a more flexible and understanding judgement. However, with the filing of a petition to the king, persons were often granted the relief necessary via the advocacy of the monarch . Soon the king would begin to pass on such offices to the Chancellor, and eventually the Chancery became empowered in judicial areas.

Particular development of equity occurred in England through the particular practice of disseisin—which literally means dispossession. It was often the case that persons faced intruders upon their lands who bore arms, and such land owners were forced to claim disseisin as they had been driven from their property. The writ of entry that they demanded of the courts would bear the full weight not just of the courts but also of the crown. When (as mentioned above) Chancellors became the only persons able to grant such

claims of equity, it was found that given the non-existence or paucity of precedents, judgement were widely variable .

However, the advent of Thomas More to the Chancery led to a development in which all newly appointed Chancellors had to first have been trained lawyers. Thus began not only the regulation of the Chancery, but also the establishment of equity in its own right. Still, however, criticisms of equity abounded, and equity judgements were often found to be in direct conflict with common law to the extent that the enforcing common law as an alternative to the equity judgement would become punishable by law.

Equity soon became the primary area of law in England, as demonstrated in a famous case concerning the Earl of Oxford which was ultimately decided by Attorney General Francis Bacon. Later, the Judicature Acts came into being which granted that equity be practiced in regular courts and that no difference should exist in the methods in which remedies of equity are sought as compared with the remedies granted by common law . Equity versus Common Law The most distinct difference that can usually be made between common law and equity is best seen in the awards given by the courts as a result of the application of each to a given case.

Courts of law are generally found to award money or damages following the arguing of a case. However, when equity is applied in a given case one finds that the awards change their form. This change is demonstrated by injunctions or commands given by the court usually prompt persons to act in a certain manner or to refrain from performing a course of action. With the use of equity, the court releases itself from the rigidity of the common law,

realizing that it is often more profitable to the litigant to have relief given in such a form rather than the awarding of money or damages.

However, equity can only be invoked in a court of law when common (and statutory) laws hold no adequate means of redress for the particular situation. Therefore, no court will engage in the use of equity unless it is demonstrated that monetary remedies are insufficient as a means of rectifying the situation at hand. Equity is also only applicable where a jury is unavailable or otherwise not required in a particular case. The judge is in such cases the “trier of fact”, and the expendability of the jury (and hence the applicability of equity) in any such cases depends largely on the kind of relief requested by the litigants.

When damages or other forms of monetary relief or returns are requested by the plaintiff, the common law is considered to apply to the case. However, when such requests as judgements, contract modification or performance, injunctions, or other forms of relief that are non-monetary in nature are requested by the litigants, equity would be considered to apply to such a case. The source from which the rulings are handed down also denotes another important difference between common law and equity. Wherever common law is applied to a case, the rulings that are handed down are based on the statutes or other forms of doctrines that apply.

These are referenced during the case and decisions are made according to the rules or precedents that govern. Equity, on the other hand, presents a more flexible approach to the rulings, as the emphasis is usually placed on the fairness of the judgement being handed down. Therefore, rulings are usually based on guidelines or maxims rather than strict laws, and these

maxims of equity leave the judgements to the guided discretion of the judge or other person empowered to make the decision. Throughout the years, criticisms of equity have, however, caused even this flexible form of law to become increasingly rigid.

This has led to the increased use of precedents in formulating judgements in cases of equity . Equity and Common Law Since the Judicature Acts created the single system of filing for common law and equity forums, as exercised under the Supreme Court of Judicature, it has now become possible to file all types of claims in any court. Yet, the foreseeable problem that would arise in such a court that applies both common law and equity is that conflicts might exist between the remedies that would have been granted by either form. The Judicature Act of 1873 provides for the prevailing of equity wherever such conflicts should come up.

However, according to Maitland, “ the two streams have met and still run in the same channel, but their waters do not mix. ” This refers to the fact that despite the housing of the two forms under the same courts, they have not managed to become merged into a common principle of both equity and common law. Since then—in fact, within the past 40 years—new remedies have been developed that have modified the relationships that exist between equity and common law. The changes began officially with two particularly important occurrences: the recognition of the Anton Piller Orders and the Mareva Injunctions by the English courts.

These matters took place in 1974 and 1975 respectively. The Anton Piller Orders are orders that courts began granting plaintiffs the right to enter defendants’ properties and remove documents that are pertinent to the

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plaintiff in regard to his property. Such orders are now issued as a method of preventing the destruction of evidence in on-going cases. This can be seen as the law of equity working in conjunction with the common law, as it prevents the unfair outcome of a case that may in fact be decided along the lines of common law .

The Mareva Injunctions also represent, to some extent, the support of the common law with equitable considerations. This is an equitable injunction that prevents the removal of certain property from the country in an effort to ensure the hearing of the case beforehand. In fact, in the particular case, the International Bulk Carriers were issued the equity injunction so that their financial assets would be frozen and prevented from being taken out of the country before the hearing of the case.

Among other things, this would ensure that should monetary awards be made under the common law, the assets would be present and transferable at the time of the ruling . Other areas exist in which the common and equity laws have managed to work in conjunction with each other. However, the precedence of equity over common law still exists even today in cases where they may both be applied and bring to bear differing judgements.

Many have argued that the idea of “ reality versus abstraction” places common law at a disadvantage once testimonies have been heard and the judges’ emotions have been aroused. Still, the rigidity of the common law has historically been shown to be excessive on occasion and in the pursuit of fairness in justice, the appeal to equity has and will continue to serve as a method of softening the common law. Therefore, the complementary nature of two laws as a method of meting out true justice can be seen.