

Common law and equity

[Law](#), [Common Law](#)



Equity has brought benefits to many litigants who would otherwise have been severely disadvantaged by the common law. Discuss, with reference to decided cases. William the Conqueror found England with no single system of law common to the whole country. The law was mainly sets of customary rules which differed from area to area. For example, in one area you could get away with stealing, in another it would be seen as crime. There was no such thing as 'The English Legal System' until William's invasion in 1066. William developed the legal system and introduced many rules. William preserved some of the old customary laws and used them as a basis for common laws. He introduced the feudal system and King's justice, these were made to help those who supported him. Williams used subtle tactics to gain control of the country. He introduced Curia Regis, who enforced a system of rules which applied to the whole country and became known as common law. Although common law was seen for the better, it came with few problems. One of the problems was the rigidity of the writ system. In common law, if someone wants their case to be heard in court, they have to fit their complaints into the existing writs. If the writs are not similar to the existing ones, the cases will not be heard in court. The system was formal and rigid, bound by 'no writ, no remedy'. So if there was no writ to deal with the plaintiff's claim then there was no remedy. In addition to that, the common law uses damages as a remedy for cases. The aim of damages is to compensate the plaintiff which was not always an adequate solution to every problem. This is because, not everyone wanted money some wanted injunction or just an apology. Due to these weaknesses of common law, many litigants were dissatisfied hence causing them to send petitions to the

King who was known as “ The Fountain of Justice”. The King then directed his Chancellor to handle those cases under his Royal Prerogative. The Chancellor who decides the cases on principles of fairness and justice before delivering the verdicts can also award whatever remedy he judge to be most suitable for each cases. This type of justice came to known as equity. Equity has blessed the legal system with 3 major changes namely new rights, better procedures and new remedies. Equity created new rights by recognizing trusts and giving beneficiaries rights against trustees. The common law did not recognise such a device and regarded the trustees as owners. Equity also developed the equity of redemption. At common law, under a mortgage, if the mortgagor had not repaid the loan once the legal redemption date had passed, he would lose the property but remain liable to repay the loan. Equity allowed him to keep the property if he repaid the loan with interest. This right to redeem the property is known as the equity of redemption. The next major change that equity brought was better procedures. Equity was not bound by the writ system and cases were heard in English instead of Latin. The Chancellor did not use juries and he concerned himself with questions of fact. He could order a party to disclose documents. The Chancellor issued subpoenas compelling the attendance of the defendant or witnesses whom he could examine on oath. To boot, equity as well created new remedies into the legal system. The first which was injunction is used to stop a certain party from carrying out certain acts. The usage of this remedy can be seen in the case of [Davis v Johnson] where the court awarded the defendant an injunction from her husband as he was earlier convicted of assaulting his wife. The second remedy is specific performance in which the

court compels a party to fulfill a previous agreement, as in the case of [Wrath v Tyler]. Rectification which is the amendment of documents which previously did not express its true intention such as in the case of [Re Posner] in which the testator was allowed to rectify his will to reflect his true intentions, is another form of remedy. The fourth remedy is rescission where a contract is nullified, thus allowing two parties to return to their original positions prior to the agreement as seen in [Tumstem v Bhanderi] On the other hand, equity also introduced modern remedies which are Mareva Injunction and the Anton Piller order. The former which is freezing order where the court has the authority to restrain a person from transferring his assets away from the court's jurisdiction such as to another country is first established in the case of [Mareva v International Bulkcarries]. The latter is the search order granting access into another's premise to search or remove any documents or evidences. As in the case of [Anton Piller v Manufacturing Processes Ltd], the defendant was suspected of selling away his company's technical drawings to the rival company hence court granted the Anton Piller order to search his house. Last but not least, equity also established maxims to ensure decisions were morally fair. One of the popular maxims is " He who comes to equity must come with clean hands". In [D & C Builders v Rees]. Rees did not come with clean hands as he had taken unfair advantage of the building company's financial problem. Thus, he was not rewarded any remedies. Another maxim "Delay defeat" , the law states that where a claimant takes a long time to bring an action equitable remedies will not be available. This was seen in the case of [Leaf v International Galleries]. In conclusion Equity is flexible and changing to adapt to today's society.

Examples of this can be seen in the development of matrimonial law and the creation of new Injunctions. It can be said that as we develop as a society the law will change with us.