

Common law and equity

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



The Development of Common Law and Equity Common Law has been functioning in England since the 1250's, two centuries after William the Conqueror defeated Earl Harold Godwinson in the Battle of Hastings in 1066 and became King. It was then in 1066 that Law began to be standardised. There were, however, problems with the Common Law system and people were becoming dissatisfied with the remedies distributed by the Court. As a result, the Court of Chancery was established and could provide whatever remedy best suited the case.

This type of justice became known as equity. When William the Conqueror gained the English throne in 1066, he constituted the Curia Regis, an instrument he used to govern the country and a court for deciding disputes. Representatives from the Regis were sent out to the different localities of the country to check local administration and were ordered to make judgement of the effectiveness of the custom laws functioning in their designated locality and report back to the King in Westminster.

When the representatives were summoned back, they were able to discuss the various customs of each locality and were able to form, through rejecting unreasonable laws and accepting those that appeared to be rational, a consistent body of rules. During the process of sifting, the principle of 'stare decisis' was created, which translates to 'let the decision stand'. Whenever a new problem of law was to be decided, the decision formed a rule and it was mandatory that the rule was followed in all similar cases. By 1250, a common law had been established, that ruled the whole country.

However problems soon arose regarding the remedies distributed by the Common Law Court and people soon became dissatisfied with the system.

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One of the first complaints was concerned with the writ system. In the common law courts, civil actions had to be started by a writ. Early on, new writs were created to suit new circumstances, however this stopped in the thirteenth century. Litigants had to fit their circumstances to one of the available types of writ. If the case did not fall into the existing writ, the case could not be taken to court.

Many people found their cases to be rejected for the reason that there was no writ to satisfy their case and so they were not given justice. A second complaint was related to the remedy of damages. What the court did not realise was that money was not always an adequate solution to every problem. A final problem that arose with the system was that it was inflexible. The principle of ‘stare decisis’ meant that when a decision was given in a case of a certain kind, the same legal principle had to be followed in subsequent cases, no matter what the situation of the claimant.

As a result, people started to petition the king who was thought of as the ‘fountain of justice’. After a while, the king passed on these petitions to the Chancellor who was usually a member of the clergy and was thought of as ‘the keeper of the king’s conscience’. Before long, litigants began to petition the Chancellor himself and by 1474 the Chancellor had begun to make decisions on the cases on his own authority rather than as a substitute for the king. This was the beginning of the court of Chancery.

In the court of Chancery, litigants appeared before the Chancellor and he would deliver a verdict on the presented case based on his own moral view of the situation. Unlike the Common Law court, the court of Chancery could provide whatever remedy best suited the case and this type of justice

became known as equity. Before equitable rules could be applied, equity devised maxims, developed to certify that the verdicts made were morally fair, which had to be contemplated prior to a final court decision.

One of these maxims, “ He who comes to equity must come with clean hands”, states that claimants who have in some way been in the wrong in the past will not be granted an equitable remedy. An example illustrating this maxim would be the *D+C Builders v Rees* (1966) case, where the Rees was denied an equitable estoppel as they had taken unfair advantage of the builder’s financial difficulties and therefore had not “ come with clean hands”. A second maxim, “ He who seeks equity, must do equity”, articulates that anyone who seeks equitable relief must be prepared to act fairly towards their opponent.

In the *Chappel v Times Newspapers Ltd* (1975) case, newspaper employees applied for an injunction to prevent their employers from carrying out the threat of sacking them unless they stopped their strike action. The court said that in order for them to be awarded the remedy, the strikers should withdraw their strike action if the injunction was granted. The employees refused and so the injunction was not granted. Another maxim is “ Delay defeats equity”. This maxim states that where a claimant takes an unreasonably long time to bring an action, equitable remedies will not be available.

This is exemplified in the *Leaf v International Galleries* (1950) case where the claimant, Leaf, had bought a painting for a considerable amount of money however he found, five years later, that it was not the genuine constable he thought it was. When he claimed the equitable remedy of rescission, it was

refused as the delay had been too long. In response to the complaints regarding the remedies offered by the common law courts, equity increased the number of remedies available to the wronged party.

Instead of just being given then remedy of damages, claimants could now be granted an injunction, which is an order given to defendants to do or not do something, specific performance, which compels a part to fulfil a previous agreement, a rescission, which restores parties of a contract to the position they were in before the contract was signed and rectification, which is an order that alters the words of a document which does not express the true intentions of the parties to it.

These remedies offered by the court of chancery are discretionary. A claimant who wins a common law court case is given the remedy of damages as of right, however the courts may choose whether or not to award an equitable remedy. Equitable remedies are therefore not given as of right. Due to the improvements made by equity regarding remedies, the court of chancery became very popular and caused some resentment amongst the common law courts.

The lawyers of the common law courts argued that the quality of the decisions made in the court of chancery varied with the length of the chancellor's foot, meaning that the outcome of each case depended on the qualities of the individual chancellor. The tension between the two courts grew to an all-time high in the Earl of Oxford's case (1615), where a judgment of Chief Justice Coke was allegedly obtained by fraud. The Lord Chancellor issued a common injunction of the Chancery prohibiting the enforcement of the common law order.

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The two courts became locked in a stalemate, and the matter was eventually referred to the Attorney General. The Attorney General upheld the use of the common injunction and concluded that in the event of any conflict between the common law and equity, equity would prevail. Equity's primacy in England was later enshrined in the Judicature Acts (1873-75), which provided that equity and common law could both be operated in the same court and there would no longer be different procedures for requesting remedies from equity and the common law.

To conclude, it was William the Conqueror who came up with the initial idea of establishing a common law and after two centuries of sifting through the custom laws of the numerous localities of the country, a common law had been established that ruled the whole of the country. However problems in the common law system soon arose regarding the writ system, the inflexibility of the system, and the remedy of damages. The court of chancery was established and it is here that equity functioned.

Equity brought in new equitable remedies such as injunctions, specific performance, rescissions, and rectifications however before these remedies could be granted, the case being presented had to conform to the equitable maxims which were developed to certify that the verdicts made were morally fair. The court of chancery became very popular and caused some resentment amongst the common law courts, whose lawyers argued that the quality of the decisions made in the court of chancery varied with the length of the Chancellors foot.

As a result of the Earl of Oxford case, whenever there is conflict between the common law courts and equity, equity will prevail, which allows for the <https://assignbuster.com/common-law-and-equity-research-paper-samples/>

further development of equity today. The Judicature Acts of the 1870's provided that equity and common law could both be operated in the same court and there would no longer be different procedures for requesting remedies from equity and the common law. In short terms, if it was not for common law and the faults found in its system, equity would cease to exist.