

Law of equity emerged



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The law of equity emerged to “mitigate the severity of the rules of common law”. Instead of simply replacing or adding to the common law, equity grew up as a separate branch of jurisprudence, leading to a system of “common law dualism”. The reasons for the creation of equity firstly, and secondly its distinction from the common law go back to the thirteenth century. Briefly, the law of equity developed due to the “inflexibility of the common law”. Claimants would only have a successful claim if the claim could be matched with an existing writ. Thus petitions for remedies were made to the King, which were in time delegated to the Chancellor, which in time was taken over by the Chancery, which was seen as separate to the common law courts. Equity thus became “a kind of supplementary jurisprudence which was intended to fill up the gaps in common law”

Equity and common law worked separately, administered by different courts until the Judicature Act fused the different courts of equity and the common law, so that a claimant could go to a court and have both equity and common law available to him, instead of having the two separate courts. However despite being merged in administration, the two “streams of jurisdiction...did not mingle their waters”, meaning that the rules and principles from equity and common law still exist separately as they did before, but are now applied by, and are available to all courts. If ever a dispute between law and equity arose, “the rules of equity shall prevail”, this rule is to ensure that equity actually has an application when its used to supplement the common law.

Ashburner’s quote is proven by the trust, in which “English law still draws a fundamental distinction between legal and equitable rights” The trust “

refers to the duty or aggregate accumulation of obligations that rest upon a person described as trustee” . The trustee is bound to hold the land on behalf of a beneficiary, and thus under the common law the land belongs to the trustee, equity would hold that it belongs to the beneficiary.

“ Equity supplements but does not contradict the common law” according to Lord Templeman. This issue is a source of lucrative debate, with most agreeing with Lord Templeman, but some argue that equity is contradictory in nature, Worthington suggests that because equity was applied where common law was inadequate, it follows that equity’s rule would have to be different than those of the common law, which would naturally lead to conflict and contradiction . Following the Judicature Acts the debate over the nature of equity became more important, with both systems being at a judges disposal they could be conflicting than ever.

Using the trust as an example, the classic point thought to be a contradiction between common law and equity is where A (trustee) is the owner in law, and B (beneficiary) is the owner in equity. Hohfeld is one academic who believes that equity is contradictory. The example used by him is firstly to imagine what the state of things were like without equity. B would ask A to hold the land on his (B’s) behalf, however A, under common law has no obligation to do anything, A is now owner of the land and can do with it as he pleases. Similarly B has no rights over the land, he does not even have a right to be on the land. Hohfeld then goes on to imagine Parliament enacting a statute that states that A, on holding the land for B is under a duty to hold the land for B’s benefit and to not do as he pleases with it. Hohfeld states that this “ statute conflicts, substantively, with the common law rules, and <https://assignbuster.com/law-of-equity-emerged/>

repealed them” . Thus in extending this analogy to the modern trust and equity, Hohfeld hope to show that equity and the trust are contradictory to the common law. However Hohfeld is assuming that because equity reacts differently to a trust than common law does there is a contradiction, this is a misunderstanding of what equity is trying to achieve, which is a supplement to the common law which is not necessarily a contradiction. Equity builds upon the common law to improve it. So A must own the property in common law in order that he can fulfil B’s wishes and to protect his interests in it. B being see as the owner in equity has his superior interest in the property secured. Equity and common law are working together, proving why Maitland describes the trust as “ the greatest and most distinctive achievement...in the field of jurisprudence”

Maitland disagrees with the idea of having two “ owners” of the land, He stated that if A and B were both owners, there would be “ civil war and utter anarchy” and there would be the contradiction that Hohfeld spoke of.

According to Maitland “ equity never said that the cestui que trust was the owner of the land, it said that the trustee was the owner of the land” but with the added burden of holding the land for the beneficiary’s benefit.

Furthermore if there was a contradiction here Maitland points out that the Judicature Act would have abolished the trust.

Hohfeld seemed to see equity as a rival system to the common law, which we ought not to do says Maitland. Equity is more of a parasitic system, it needs the common law to survive as alone it is nothing as its doctrines and rules build upon the pre-existing common law. To take Maitland’s example, if equity were to be abolished, the common law would stand up fine on its own,

however if the common law were abolished, there would be anarchy. “

Equity was not a self-sufficient system at every point it presupposed the existence of common law”. Equity does not act contrary to the common law and does not go against it, it works with it to create a more just system.

In conclusion Maitland is right when he says that equity is supplementary.

Equity should be seen as an addition to the common law, an added extra.

The rules of equity with regards to the trust do not say that the common law is wrong, instead it adds rules on, rules that only exist within equity, so the existing common law rules can stand. With the example of a trust, the common law says A is the owner, and in equity agrees with this, but adds the fact that A must hold the property on behalf of B. Without the common law the idea of a trust would disappear completely if A could not be the owner of the land at law, or else he would not be able to fulfil his duty as trustee on the beneficiary's behalf. . Without the intervention of the trust the common law alone would allow A to do anything with the land B asked him to hold, a truly unsatisfactory and unfair outcome, equity mitigates this harshness, by building on it, it does not contradict it by creating a antithetical system.