

Explain the historical development of common law. in particular explain the evolu...



The common law constitutes the basis of the legal systems of many other generally English-speaking countries or Commonwealth countries. Such as England, America, Australia, New Zealand, Malaysia, Singapore, Hong Kong and so on. The Australian political system is based upon elements of the British and American systems. In 1788, when Australia was first colonized, British applied the English law in Australia. In order to explain this issue, it is necessary to define the concept of 'common law', 'doctrine' and 'precedent'.

The term Common law can be defined as a part of the English law developed by the Courts of common law which judgments by judges hearing real cases. Furthermore, Doctrine can be defined as a commonly accepted set of rules and procedures. Precedent means an example serving for the future. Moreover, this essay will clarify that the historical development Australia legal system, development of common law, the evolution and operation of the doctrine of precedent. These points above will be explained in the essay. First of all, the legal system in Australian that operates today arrived with the 'First Fleet' a mere two centuries ago.

It can be explain that into three steps. Firstly, Australia received English law. Then, English statutes Australia that mean Australia can make law for the Australian colonies. When the Australia was first colonized in 1788, English naturally applied the only law they knew, that including the laws, the procedures, the institution, the value and the tradition. All English laws that were suitable to colonial setting were applied. This was because of the

doctrine of terra nullius. This doctrine meant that Australia was regarded as isolated when the English law that was suitable to the circumstances applied.

In 1853, self-government was approved by the English to the Australian colonies. Self-government meant that each colony had its own parliament which could make laws for colony. Moreover, federal government was established on 1 January 1901. It is a central government received its power to make laws belong to the whole nation from the Australian Constitution. The various states still retain the power to make laws about matter that pertain to each state. Over nineteenth and twentieth centuries, power to legislate was gradually transferred from the British imperial parliament to Australian parliaments.

As the result, in 1986, Australia had complete power to repeal English laws that had applied to Australia. Current developments in English case law can still have some importance to the development of Australian law. Australia is a federal system with a written constitution. It is a Constitutional Monarchy, the highest authority in the land is the Queen of the England's representative (Governor-General) but that person must act in accordance with the Constitution. Generally, all of these powers are exercised on the advice of the Prime Minister or Premier in a State government.

The constitution divides legislative power between federal parliament and state parliament. Parliament house are used for making Statute law. However, Common law is made by judges in court. The law that applies to all Australia has been developed over the past 200 years. Nowadays, Australian legal system and custom stem directly from the English form. It started with the British law that

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was passing out with the First Fleet. It has been developed to meet the requirements of Australian style of life through the passing of legislation by Australia Federal governments or passing by the interpretations made by courts.

There are two major legal systems used in Australia today that are statute law and common law. Australia uses common law system. This may be difference with most European countries which uses civil law system that most of the laws need to be codified. The common law is a type of legal system, it has several of meanings. Mostly, it is used to draw characteristic between the law made by the courts and Statute law made by parliaments . Also, it is also refers to that part of the English law developed by the Courts or judge-made law.

Australia like generally English-speaking countries or Commonwealth countries has a common law system. For example, England, the United States, New Zealand and Canada are using the common law system. British and Australia's law are based on the authority of the Queen and must have received royal agree to become law. Laws based on precedent, such as many of the torts, common assault and battery which can be sued in court without reference to any statute . Previous to 1016, England was divided into a number of kingdoms which had no common laws.

In the twelfth century, judges were selected as representative for the king. These judges were directed to tour different parts of the country to settle on cases. In the late medieval time, common law was concerned with certain types of cases like crimes, property, contracts and civil actions in tort .  
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During the 14th century, common law courts undergo from a number of shortage although the courts were firmly established . By the 15th century, a separate jurisdiction of the chancery was formed as a court of equity which is court of chancery.

Common law and equity evolved as separate two systems of law. These two systems were managed in England in two separate systems of courts.

Common law was administrated in common law courts and equity was administered in the court of Chancery . In 1873, the Judicature Act in England established the argument over the jurisdiction developed between the equity and the common law. Under the Act, the separate courts were replaced by one Supreme Court of Judicature in both the rules of equity and the rules of common law were administered in the one court and in one proceeding .

In Australia, there was never any separate chancery court but each Supreme Court had separate common law and equity branches. By the late 19th century, the concept of binding precedents had appeared into a rule of law.

At the same time, the House of Lords decided to be delimited by its own earlier decisions just similar as inferior courts were bound by its decisions .

For Australia, all the states have since followed the United Kingdom Judicature Act model. The development of common law can only be understood by examining the doctrine of precedent . The enlargement of common law can only be known by examining the doctrine of precedent.

The doctrine of precedent is essential to the decision-marking process of the courts and by working through a selection of the listed readings of how the <https://assignbuster.com/explain-the-historical-development-of-common-law-in-particular-explain-the-evolution-and-operation-of-the-doctrine-of-precedent-assignment/>

doctrine operates should become clearer. Certain aspects of the doctrine such as the binding force of the decisions of superior courts in the same hierarchy is fairly easy to understand. There is significantly less assurance when it comes to identifying what ratio or rationes decidendi there are in a particular case and what is obiter dictum especially if the reasons for a court's decision are contained in multiple judgements.

The common law system is a complex system device devised for producing, identifying, disseminating and applying valid primary rules that have been derived, historically, by judges in the process of formal dispute resolution. While common law judges stick on to the legal story that they did not create new legal rules to cover situations not provided by the general customary rules that they began with from the late 12th century. Over time, enormous areas of new law were increasingly developed, mostly by extension principles to new fact situations.

The application of the set of common law rules in force obviously depends upon satisfactory documentation of the leading cases. For example, in the case *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] ALL ER 482, it was held that the display was only an invitation to treat, not an offer. Somervell LJ said 'the contract is not completed until, the customer, having indicated the articles which he needs, the shopkeeper, or someone on his behalf, accepts that offer.' Therefore, this case set the rule that invitation is not an offer.

If any argument that have the similar circumstances, the court will follow the decision of *Pharmaceutical Society of Great Britain v Boots Cash Chemists*  
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(Southern) Ltd [1953] ALL ER 482. In conclusion, this essay explained the historical development of Australia legal system, the development of common law. In particular explain the evaluation and operation of the doctrine of precedent. That body of rules known generally as the law comprising the enactments of parliament or delegated bodies and the common laws as developed by the courts. The idea of this essay is understands Australian legal system.

Therefore, this essay will try set up historical Australian legal system and common law. In addition, it focuses to explain the development of common law and the evolution and operation of the doctrine of precedent. Finally, Australia is a place that has a completely legal system and the regulations relations. It aim set up essential to manner of people of society for the protection of other people and their property. Additionally, law is a rule of manner to think carefully and to which is connect some legally recognized punishment. Bibliography Alderserson, P, Legal dictionary for Australian (2003)

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