

Common Law and Equity Essay.

In very early times – before King Alfred (849-899), there was no system of justice, which applied to the whole of the country. The population was not ruled by a single monarch, transport and communications were available to very few and no law books were available, however, the population was very small at this time, therefore meaning it was not required as much as nowadays.

In 1066, William I made changes to the old system, introducing the Curia Regis and appointing judges – common law was first introduced during this time. The king's representatives were sent throughout the land to check local administration and hear local cases.

Cases were interpreted and customised to suit the whole country.

The Common law however, was not written down immediately, however after a period of time it was written down and later a further development was made and the ruling made by kings, were also written down. This was a huge development for Common law in the legal system as it gave some sort of guidance with cases.

Henry II also played a major role in the development of the Common law. Henry II made tours by judges to local villages/shires. Henry II then divided the country into circuits and circuit judges were introduced.

Initially judges would use local customs to decide cases, yet over a period of time things began to change and the judges would discuss cases with the king at Westminster.

Eventually, the best customs were decided and became uniform, enabling the laws to be the same throughout the country.

The Common Law was based on the writ system, which could cause difficulty, as it was sometimes difficult to find writs, which fitted the exact case.

The Common Law was praised however as time has gone on and people's circumstances have changed it was noticed that the Common Law was rigid and as a result was unable to satisfy the growing needs of the people.

Equity was first introduced to the legal system by the Court of Chancery. It has been described as a 'gloss on the common law'. It was introduced to fill in gaps of the legal system and make justice fairer.

In the beginning people sent their petitions to the King to be examined, however as pressure grew on the King it was inevitable that a court was opened to deal with the problems. With the opening of this court it meant the Chancellor was no longer bound by the writ system or technical rules of common law.

The Lord Chancellor could base his decisions on conscience and right. This caused friction with common law courts and in 1851 the Court of Appeal in Chancery was introduced, however the Judicature Acts 1873-1875 abolished this court and its jurisdiction transferred to the Court of Appeal.

Unlike common law, equity recognised and enforced the rights of the beneficiary – not only as against the trustee but also against any transferee of the legal interest who knew of the interest of the beneficiary.

Common law has changed throughout the years however it still fails to comply with all legal aspects of today's population it is for this reason that equity was introduced, equity now helps the justice system work more efficiently.

Nowadays, equity is used in many situations, but is mainly used in mortgage and trust problems.

The relevance of equity today is highlighted in the promissory estoppel. Lord Denning first suggested it in *Central London Property v High Tree House LTD*, 1947. Since this case it has been decided that it would be unfair in some situations to allow one party to rely on the strict terms of a contract because they had led the other party to believe that they will not do so.

An equitable principle is used to stop one party using a contract enforcing his rights when he has given his word that he will not.

Nowadays, equity is also used often in conjunction with cases concerning the husband and wife splitting up.

In a case such as the one mentioned the wife would have an equitable interest in the matrimonial home even if it were not owned jointly. This meant the mother could remain in the property until the children were of 16 years old. Common law wives also have the same right.

Equitable remedies are also used in employment law. An example of this is when employees can be prevented from disclosing trade secrets, or an injunction may be granted against a trade union to prevent an unlawful industrial action. A relevantly recent expansion of equity is Mareva injunctions. “Mareva Company’s Naviera v International Bulk-Carriers, 1975”. In this case this is used where there is a risk that the assets of one of the parties will be removed out of the UK before the case has come to trial. A Mareva injunction freezes the assets of the parties involved. This ensures the assets will be available at the end of the case enabling damages to be paid. Another recent expansion to equity is the Anton Pillars Orders. This orders the defendant to allow the plaintiff to enter his or her premises and take away documents or materials that may be relevant to the case. This is valuable in the case of equity as it prevents the defendants destroying what may be very valuable evidence.

This is highlighted in the case of Anton Pillars KG v Manufacturing Process LTD, 1976.

Even though many remedies have been made through equity the Courts are prepared to extend these remedies. The principle that they are all discretionary still remains.

Equity has already seen many changes and new areas of law have been developed, however equity and its laws and constantly reviewed and new areas are still being developed.

More recent attempts to extend equity have been resisted by the house of Lords (Scandinavian Tanker Co AB v Plota Petroleum Ecutorania, 1981), however more and more possible extensions of equity are constantly being brought before the attention of the House of Lords, enabling equity to continue to grow.