

Foundations of Law Notes

Common Law and Equity

- Person's rights and responsibilities usually derive from common law, equity or statutes
- **Common law:**
 1. happened incrementally over long period of time in response to changes in society.
 2. reasoning is dynamic as it allows for change over time.
 3. Scope of legal rule depends on what legal facts can be reapplied in a similar situation to when the rule was first announced.
 4. Form of inductive reasoning → moves from specific issues to general principles.
 5. Uses 'reasoning by analogy' where a case is described, it is made into a rule of law, and then applied in the next similar case by finding similarities in legal facts or principles.
- **Common law early origins:**
 1. Disputes usually resolved by family feuds and private conflict esp around Norman invasion of England in 1066.
 2. Over time, disputes increasingly became resolved by local assemblies according to local custom e.g. Primogeniture which is land passed down to the eldest son. This feudal society had courts of a very primitive kind.
 3. During Henry 2's reign, royal court sent out justices to hear cases including 'common pleas' where people's disputes could be resolved by the king's judge.
 4. Travelling justices were part of King's court called 'Curia Regis' (body of legal advisors to the monarch)
 5. Over time, one body of judges became fixed in one place. Called 'Bench'.
 6. In 14th century, there were 3 royal courts. Kings Bench did matters relating to the crown, Exchequer was matters relating to tax and revenue and Common Pleas included all other matters. Emergence of courts and lawyers. Their function was to prepare written documents for people who had disputes. Called Writs.
 7. Courts bought claims through Writs: letters requesting permission to use king's court. Writ outlined the complaint and demanded defendant take action or answer an allegation. Whether the Writ was satisfied by the court, developed legal principles. E.g. Writ of Replevin: used to recover goods that were wrongly acquired by someone. System of formalised documentation thus, developed.
 8. Decisions made by the courts began to be recorded and shared in common by justices across England which marked the beginning of Common law.
- Common law was developing as society became more complex and people interacted with each other in more complex ways e.g. the emergence of money demanded the need for courts as issues with money between people or organisations and land settlements/disputes arose. Thus, common law developed in response to social and economic changes in society.

- **Pleadings:** documents that put the plaintiff's specific question for decision by jury. Answer was filed by the defendant.
- **Early origins of equity:**
 1. Over time, common law courts began too rely to rigidly on common law as a way to achieve consistency in the law leading to dissatisfaction from people who believed the justices were concerned with the correctness of writs rather than justice in each particular case. Equity developed due to imperfections of common law.
 2. Large number of petitions went to the king who then gave his Lord Chancellor special powers to investigate and resolve the issues.
 3. Led to formation of Court of Chancery.
 4. Chancery looked beyond logic, reason and formalities of common law and began to resolve complaints based on equitable principles of fairness and justice.
 5. No juries and court made decisions based on legal knowledge and conscience which was infused with Christian precepts because Chancellors were usually bishops from the Church.
 6. Chancery had power to make decisions 'In Personam': against litigant personally so person was obligated to do something. While common law courts made orders 'In Rem': against property or goods.
 7. Precedents and principles developed by Court of Chancery became Equity.
- Tensions between common law and equity jurisdictions were resolved in the 17th century as it was accepted that conflict between common law and equity would result in equity prevailing. *"Equity came not to abolish the law, but to fulfil it" (Maitland)*. Equity accepts common law principles but will override them in good conscience to ensure a just and morally righteous outcome prevails.
- Major reforms occurred in 19th century as courts in England were able to administer both common law and equitable doctrines. This followed into Australia in the 20th century, specifically in 1970 in New South Wales.
- **Example:** if a person validly purchased land under a contract through rules of common law, they will be the owner. However if the purchaser used unfair tactics, exerted pressure to get a very low, unfair price and took advantage of the seller, the seller could seek an order for rescission in equity to disband the contract on the basis of unconscionability.

Connecting with the Law Chapter 4:

- **Common law:** also a term used to distinguish between common law and civil systems
- **Common law systems:**
 1. predominate Commonwealth countries like UK and Australia.
 2. Derived majorly from customary laws from England that evolved and were eventually written down.
 3. Common law lawyers argue there are many sources of law including common law, statute law, customary and international law.
 4. Focuses on binding precedent and therefore concentrates on key parts of legal judgements.
 5. Common law countries have an adversarial legal system, where the judge and jury cannot seek information outside what the parties present.
- **Civil law systems:**
 1. Dominate Europe (France, Germany, Switzerland), some Asian countries, Latin America and some African countries.
 2. Based on Roman law which was consolidated in 534CE.
 3. Civil lawyers treat civil codes as the primary source of law.
 4. Civil law countries are not bound by precedents.
 5. Inquisitorial system of justice where judges can conduct their own personal investigation and cross examine witnesses.
- **Statute law:**
 1. body of acts, regulations and rules created by parliament.
 2. Common law used in Australia except when superseded by statute law.
 3. Statutes different from common law in 3 ways; created in a process that originates from people, politicians and parliament. Widespread social thinking occurs as community views are taken into consideration to form the statute. Statutes largely stated in legislation.
 4. Statute laws can be changed at any time but require parliament to do so, not a judge.
- **Effectiveness of Statute Law:** Parliament is proactive in this sense because it attempts to prevent future problems through legislation while common law tries to resolve disputes that have already occurred. *
- **Equity:**
 1. developed by courts to provide remedies where use of common law would result in injustice.
 2. Focuses on whether parties have acted in good faith. Unique feature of common law, arising from english legal history.
 3. The moral aspect of equity is captured in the 'maxims of equity' e.g. [one can't seek equity if you have done something unfair yourself.](#)