

## Week 2: Common Law, Equity, and Statute

### Foundations and Sources of Law

In the Australian legal system, a person's substantive legal rights and interests typically derive from one of three co-existing sources: **common law**, **equity**, or **statute**. Common law and equity are frequently grouped together and referred to as the "general law," representing legal principles developed through the court system over several centuries. **Statute law** consists of law created by parliaments in the form of Acts of Parliament. While Australian law has developed its own unique character, its fundamental features—including legal reasoning, juries, court pleadings, and the distinction between common law and equity—are deeply rooted in the English legal tradition.

### Historical Origins of the Common Law

The origins of the common law can be traced back to medieval England, where disputes transitioned from being resolved through private conflict and family feuds to local assemblies following local customs, such as **primogeniture**. A significant turning point was the **Norman invasion of 1066**, which began the administrative centralization of these existing laws. During the 12th century, King Henry II began sending out "justices" as part of the royal court (**curia regis**) to resolve disputes on behalf of the monarch. These justices eventually became fixed in London at Westminster, forming a body known as the Bench.

By the early 14th century, three royal courts operated from Westminster: the **King's Bench** (Crown matters), the **Exchequer** (tax and revenue), and **Common Pleas** (all other matters). These courts utilized a system of **writs**, which were letters requesting permission to use the King's courts, and **pleadings**, which were precisely drafted documents defining the specific question for a jury. As the decisions of these courts were recorded and shared among justices across the country, they became "common" to all, marking the birth of the common law.

### The Nature of Common Law and Legal Reasoning

The common law is an organic collection of principles derived from past court decisions, known as **precedents**. It develops incrementally over time through logic and reason, specifically utilizing **inductive reasoning**. Inductive reasoning involves moving from particular issues or specific examples to create general legal principles. Central to this jurisprudence is **reasoning by analogy**, where a proposition describing one case is established as a rule of law and then applied to subsequent cases with similar facts. Common law reasoning is dynamic, as the scope of a legal rule depends on a court deciding which facts are considered similar or different to those present when the rule was first established.

### The Development and Role of Equity

**Equity** arose as a separate body of law to "soften" or correct the common law when its application became too rigid or formalistic. In medieval England, the strict application of common law procedures often led to harsh and unfair outcomes, leading parties to seek relief through the **Court of Chancery**. Equity focuses on whether parties acted in **good conscience** or good faith.

Tensions between the common law courts and the Chancery were resolved in the 17th century with the principle that if common law and equity conflict, **equity shall prevail**. Equity serves as a "gloss" on the common law; it accepts common law principles but overrides them where their enforcement would be unconscionable. Major 19th-century reforms fused the administration of common law and equity, granting modern courts the jurisdiction to administer both doctrines simultaneously.

### Statute Law and Parliamentary Sovereignty

Historically, most English law was created by courts, but over the last two centuries, **legislation** has proliferated to become the dominant source of law. Statutes are preferred because they are designed to be self-contained and allow parliaments to be **proactive**, changing the law at any time to prevent future problems, whereas courts are **reactive** and must wait for a case to arise. Under the doctrine of **parliamentary**

**sovereignty**, statute law has priority; if parliament passes legislation that modifies a right, that statute will override existing common law or equitable principles.

### **Classification of Laws**

Legal principles are broadly divided into **substantive** and **procedural** law.

- **Substantive law** creates, defines, and regulates legal rights and duties, setting out the specific elements of a law, such as the requirements for a valid contract or the definition of a crime.
- **Procedural law** regulates the process, methods, and rules by which substantive law is administered and enforced in a judicial forum, such as the rules governing how a trial is conducted.

Substantive law is further categorized into **public law** (governing relationships between the state and its citizens, such as constitutional or criminal law) and **private law** (regulating relationships between individuals or organizations, such as contract or tort law).