

Is there a significant difference between the common law system and equity?

Discuss.

Common law form the basis of the legal system in England and many other English countries especially those that were former British colonies. Common law was invented in England by three courts in order to establish a system of law that could override the judgment of local courts. Also, in terms of its application to civil law, common law was used by everyone and to compensate people who suffered wrongful acts. This is why it is called common law.

However, common law does gives a defect. The writ system is one of the defects of common law. In the early days of English, common law system of law, the legal system was entirely subordinate to the king. All access to the king's court was controlled by the king's designated representatives. In legal system these writ writers issued special document called writs which is work as the king's permission for the complaining party to sue or to make complaint one another of the king's subjects in the king's court. The complaint will only be allowed if the essence of complaint came within the scope of the writ which usually come with a fee.

As time pass by, the writ system has become extremely formal and beset with technicalities and claims which would only be allowed if they could fit into an existing writ. If only there is no writ, there will be no remedy for anyone who wants to claim something. In 1258, the Provision of Oxford disallow the issue of new writs without any permission from the King in Council. Therefore, common law become rigid and it was operated unjustly. After quite some time, in the year of 1285, the Statute of Wesminster II authorized the clerk to issues new writ but only if there are merely the same to those cases before 1258. This was restrictive and made further development of the common law very technical. Usually, the judges would spend more time on examining the validity of writs rather than the merits of the claim even if the writs was already obtained.

As work of the common law courts grew, the judges began to use previous decisions as a guide for later cases. It also has become a very important role in a common law. It ensures certainty and consistency and logical progression and development in the law. The downside of the precedent is that there is the drawback that once a decision has been made, if there is no change and the same decision is followed again, a bad decision will be perpetuated. And common law system are all about following precedents, so changes take a long time to happen. In the meantime, a bad decision continues to be upheld. Besides judgments are made on the basis of precedent and when there is no precedent the system come to a standstill which many problems arises and people are lost. Furthermore, in order to make these precedents to be followed by all other courts or in many more cases, lengthy, detailed records have to be maintained. As to make it easy for the accessing of these cases and previous decisions, uniform indexing methods have to be created and followed diligently.

There are also other faults with the common law courts. For instance, common law courts used 12 juries which could be easily intimidated and corrupted. He juries may decide based on the impressiveness of the lawyer even though they are lying because juries do not know about the cases. Sometimes juries are reluctant to become juries as they will need to sacrifice their job and wasting time on waiting for the case to settled. Besides, the common law only offers one remedy which is damages whom always is inadequate.

Regarding to the early disappointment of common law, disappointed litigants began to send petitions to the king as the "Fountain of Justice", the procedure being to present a bill asking him to do justice in respect of some complaint. The king will pass all the petition to the chancellor as the amount of bill increased. Then it will be brought up to Court of Chancery to deal with all the bills. The chancellor dealt with these petitions on the basis of what was normally right. The chancellor would give or withhold relief according to individual sense of rights and wrongs. In 1474, the

chancellor then issued the first degree in his own name by freeing the Court of Chancery from the King's in Council.

Later, new procedures were brought up. The word of 'equity' means fair and just which most importantly it's the rules developed to mitigate the severity of the common law. Equity was not bound with any writ system. The chancellor did not use juries and he concerned himself with questions of facts. The chancellor also issued subpoenas compelling the attendance of the defendant or witnesses whom he could examine on oath.

In respect to breach of contract the common law remedies of damages and repudiation may not be adequate to compensate the injured party effectively for his loss. Equity therefore developed the equitable remedies of specific performance, injunction, rescission and rectification. Specific performance is an act issued by the court which orders are defendant to perform the promises he has made. Such an act is likely to be made only where the injured party has no solution to his problem by ordinary dealings in the market. Injunction is an act which compels a party to do an act or refrain from doing an act. In relation to the law of contract, it can be used in order to prevent a party from committing a breach of contract or in a simple word a negative stipulation. While rectification allows a written document to be modify if it did not represent the actual agreement made by the parties. Last but not least is, rescission. Rescission allows parties to a contract to be put back in their original position in the case of a contract induces by a misrepresentation. In other words, it allows a party to cancel the contract.

As a conclusion, common law does not differ from equity. This is because they were both used in a court. Both common law and equity needs to go through the same procedure in order to be used. The only thing that make it different is that the remedies. Equity has a better option compared to common law which only gives damages as the remedy. Equity can also be said as the alternative to the common law.