

Common Law vs Equity

Since the terms Common Law and Equity represent two branches or avenues of Law not created by legislation, we should get to know the difference between common law and equity. One understands Common Law to mean precedent or law created by decisions of the courts. Equity, on the other hand, is associated with the principles of fairness and equality. Although the tendency is to use the two terms synonymously, there are differences between the two that are more fully explained below.

What is Common Law?

Common Law is more popularly known as **case law**, **precedent law** or **judge-made law**. The reason for the above names is because Common Law, in fact, constitutes rules of law developed by the courts through its decisions. The origins of Common Law can be traced back to the early centuries to rules developed by the royal courts after the Norman Conquest in 1066. These rules developed by the royal courts were recorded and thereafter used as authority or as a guide for future cases or disputes. The decisions, therefore, were viewed as rules of law.

Today many countries, such as the United States of America, Canada and India, have as their basis the rules of Common Law, which is the law derived from the English Common Law system. The unique feature of Common Law is that unlike statute or legislation, Common Law rules are developed on a case-by-case basis. For example, if the parties to a case are at odds in relation to the law applicable to the dispute at hand, the court will look to precedent or previous court decisions/reasoning to find a solution and apply it to the facts. If, however, the nature of the case is such that precedent does not directly apply, the court will take into

account the present trends in society, practice and rules of law and thereafter deliver a judgment tailor-made for that particular case. This decision thereafter becomes precedent and therefore binding on any future cases of a similar nature. Common Law thus has a unique capability to adapt to the changing trends in society.



What is Equity?

Equity is often referred to as the second branch of English law which originated after the introduction of Common Law. In medieval England, parties aggrieved by a decision of the court would petition the King to do justice regarding the harsh judgment. The King, in response to such petitions and complaints, in turn relied on the advice of the Lord Chancellor, who looked into the dispute and sought to deliver a 'fair' outcome against the rigid principles of Common Law. The Lord Chancellor's role in administering equity was thereafter transferred to a separate court called the Court of Chancery. Equity was developed with the intention of alleviating the harshness and inflexibility of the Common Law rules at the time or the rigid interpretations given to such rules by the Courts. A body of general principles developed and these general principles are more commonly known as maxims of equity. Some of these maxims include:

- Equity will not suffer a wrong to be without a remedy.

- He who comes to equity must come with clean hands.

Furthermore, where there was a conflict between Common Law and Equity, it was accepted that the rules of Equity prevailed. Principles governing Trusts, equitable interests over property and equitable remedies fall within the purview of Equity.

What is the difference between Common Law and Equity?

- Common Law is a body of law based on precedent or court decisions. Equity constitutes general principles and serves as a supplement to Common Law.
- Equity, simply put, is a form of legal relief in the event such relief cannot be found in the rules of common law.
- Equity is based on a judicial evaluation of fairness, reason, good faith and justice. Common Law entails applying the rules of common law to the issue before the court.