

COMMON LAW

Common Law is law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action.

A **Common Law System** (such as the UK or US) is a legal system that gives precedential weight to common law, based on the principle that it is unjust to treat similar facts differently on different occasions.

In common law systems, each time a judge decides on a particular set of facts his decision makes a **precedent**. The body of precedents is called "common law" and it binds future decisions (this principle is called *stare decisis* from the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed.").

In cases where parties disagree on what the law is, the Courts look to the body of precedents to see if a similar dispute has been resolved in the past. In this situation, the Court is bound to follow the reasoning used in the past decision.

If, however, the Court finds that the current dispute is fundamentally distinct from all past cases, the Judges have the authority and duty to make law by creating a precedent. Thereafter, the new decision becomes precedent, and will bind future courts. In this way, the common law system evolves.

HISTORICAL DEVELOPMENT OF EQUITY IN THE UK

People who were dissatisfied with the common law began to petition the King as 'the fountain of justice', with the ultimate authority to make laws.

These petitions were dealt with by the Chancellor, who ultimately set up the Chancery Court. Thus there were 2 different courts: the Common Law court and the court of Chancery.

Equity was not a complete system of law. It only supplemented the common law by filling the gaps, indeed, in many cases it came into conflict with the common law.

In 1616, James I decided that, in cases of conflict, Equity should prevail over the common law. From this point on, the modern court structure was established and all courts were able to apply both the rules of common law and equity.

The distinction between common law (legal) rights and equitable (beneficial) rights remains crucial to trusts.