

English Common Law

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“The Common law is a body of law based on custom and general principles embodied in case law which serve as a precedent and is applied to situations not covered by statute.” (Origins of Common Law, 2010) Common law is a way to enable the courts to make a decision on a case based on what similar cases in the past have been decided as. As more cases that are similar in nature are brought to court and tried, the bank of information creating guidelines for what to do regarding certain cases grows. But what role does English common Law play in America and how was it set up here in the United States?

“The English common law originated in the early middle ages in the King’s Court[...] and eventually led to the formulation of various viable principles through which it continues to operate.” (Origins of Common Law, 2010) English common law emerged due to the changing and centralizing powers of the king during the Middle Ages. After the Norman Conquest in 1066, medieval kings began to consolidate power and establish new institutions of royal authority and justice.” (The Common Law and Civil Law Traditions)

About this time a new form of royal orders were developed, called *writs*. Eventually the writs, which provided a specific action for a specific wrong became so highly formalized that justice could not be served, as the system were too unyielding to allow complete justice. This caused the person to make an appeal to the court of equity. These courts of equity were “authorized to apply principles of equity based on many sources[...]” (The Common Law and Civil Law Traditions) These courts, the court of

English Common law and the Court of equity functioned as two separate entities until the abolition of the system of writs. Also influencing the rulings of cases was Christianity and ecclesiastical laws. Christianity was not considered as the law of the land, but it was the popular religion in Europe and to insult Christianity would have disturbed public peace. Ecclesiastical laws concern matters pertaining to the church. The church played an important role in England's judiciary system. (Origins of Common Law, 2010)

English common Law found its way to the United States through the English Colonists who claimed the common law system as their birthright. Common Law was adopted by each of the states either by a judicial decision or by express provision after the American Revolution. However, the colonists did not look to just the Common law system. The states were not required to observe the decisions of the common law system. They looked to other sources for information for deciding cases as well. (Origins of Common Law, 2010)

Judges in America use common law to help make decisions in some cases. However, as the society we have adapts with time and changes with modern times, new facts may be reviled in cases and as a result a judge may choose to depart form the precedent and establish a new rule. (Heathcote & Wales, 2000) U.S. supreme Court Representative, Justice Oliver Wendell Holmes, Jr states in his book, *The Common Law* (1881), "The life of the [common] law has not been logic; it has been experience." (Heathcote & Wales, 2000)

Without understanding common law, the original meaning of the Constitution is lost, and so is the way the meaning has been adapted to stay effectual in today's modern America. (Stoner) Many phrases in the Constitution are technical phrases that are defined by the common law of the era in which the Constitution was written.

“Against a common-law background, consider whether the law declares in writing the previously unwritten common law or remedies some mischief it has caused, as well as the question whether the law is contradictory or against reason.” (Stoner) Think about the context of the Constitution. What did the authors mean when they wrote a sentence in the way they wrote it?

Even today parts of the common law are in place. “[...]common-law conceptions of real estate are still the basis of much state law, modified and supplemented by statutory law[...] but not replaced.” (Stoner) Not only does the way real estate is handled have a strong basis in common law practices, but marriage does as well. “Just a decade or so ago, people in most states were surprised to find that their basic law of marriage was unwritten common law, according to which marriage was between a man and woman, intended for life, dependent on consent of the parties, and complete only when consummated by the martial act[...].” (Stoner) Now in almost all of the states the common law practice has been replaced with a requirement of public vows and a license.

Another aspect towards common law's credit is its adaptability. With common law operating on a case by case basis it applies precedents to new cases with similar aspects to that of old cases. When new circumstances arise reasoning is applied by equivalence of cases similar in nature, but not exactly the same.

English common law played an important part in the United States government being set up the way it currently is today. It also played an important part in the writing of the constitution. English common law has a long history beginning in Europe and roots in Christianity and Ecclesiastical law. English common law helps us to understand why our constitution was written the way it was and to understand some of the terms our Founding Fathers chose to use to draft the Constitution. English common law is adaptable and has been used to establish precedents for cases that have similar aspects to other cases.

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