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Chapter 1 : Equity (law) - Wikipedia

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History[edit] In 18th century, the earliest British of the East India Company acted as agents of the Mughal emperor. As the British colonial rule took over the political and administrative powers in India, it was faced with various state responsibilities such as legislative and judiciary functions. Over time, between , a series of British parliamentary acts were passed to revise the Anglo-Hindu and Anglo-Muslim laws, such as those relating to the right to religious conversion, widow remarriage, and right to create wills for inheritance. The changes triggered discontent, call for jihad and religious war, and became partly responsible for the Indian revolt against the British rule. As more literature emerges, and is translated or interpreted, Mayne noted that the conflict between the texts on every matter of law has multiplied, and that there is a lack of consensus between the Western legal scholars resident in India. Later writers assumed that the Smritis constituted a single body of law, one part supplementing the other and every part capable of being reconciled with the other. The Gentoo Code , in its English translation is "worthless" [27] because Halhed translated it from Persian, not from Sanskrit. This time period can be split into two main phases. The first phase, starting in and ending in , is marked with three main proponents that include the translations of the dharmasastras by the British scholar administrators, the use of court pandits to define laws and rules, and the rise of case law. The second phase, starting in and ending in , is marked by the dismissal of court pandits, rise of the legislative processes, and a codified law system. Furthermore, they thought that different commentaries and interpretations could be systematically sorted out by school and region. This led to the "objectification" of India, where the translation of the law code of India rendered it to more colonization. Hastings was aware that British law was too technical, complicated and inappropriate for the conditions in India. In , Hastings wrote to the Lord Chief Justice denying the idea that India was ruled by nothing more than "arbitrary wills, or uninstructed judgments, or their temporary rulers". Hastings was confident that the Hindus and other original inhabitants of India knew written laws, and these were to be found in ancient Sanskrit texts. The original Sanskrit text was translated into a local language, which was then ultimately re-translated into English. Chains of translations were quite common and negatively impacted the value of the original text. The translation, completed by N. The collector would be assigned to a defined area district with provincial boundaries and would have mixed executive and judicial power in these areas. Hastings is a very significant figure in the realm of British Imperialism; he was the man who knew the natives and who was to represent the forces of law and order. He maintained that the natives had an effective administration structure consonant with Indian theory and practice. Though it was clearly not based on European principles, he premised his plan on this notion. Fortunately, Hastings was more than qualified to essentially start anew. He had a European education and for the first fifteen years of his career, he was stationed near the court of the last effective provincial governors of Bengal. Hastings knew how an Indian state functioned and believed that it was the textual tradition that was relevant to developing British administrative institutions. One court dealt with revenue and civil litigation and was called the court of Dewani. The other court dealt with internal order and criminal law and was called the Faujdari court. The "collector", as mentioned above, acted as a judge as he established the facts in the case based on testimony, most commonly depositions from the witnesses, and the documentary evidence was put before the court. His assistant dewan and a pandit then found the law that was applicable to the case. Legal specialists, or law professors, interpreted the codes in the legal texts and provided authoritative decisions on the applicable codes. This was the basis for Anglo-Hindu case law. He was skilled at Sanskrit and developed his own conception of the nature and function of Hindu law. Colebrooke led the English in fixing an interpretation of variation in legal texts and this eventually became standard in the British courts in India. He suggested that regional

variations or differences existed in India, leading to various interpretations of the same text. The term "school of law" as it applies to legal opinions of India was first used by Colebrooke. First, the Daya Bhaga treated religious efficacy as the ruling canon in determining the order of succession, rejecting the preference of agnates to cognates. Secondly, the Daya Bhaga denies the doctrine that property is by birth, the cornerstone of the joint family system. Thirdly, the brothers of the joint family system in the Daya Bhaga recognize their right to dispose of their shares at their pleasure. The British were familiar with the latter, from other British colonies in Africa and the Middle East, as well as having initially worked as agents of the rulers of Mughal Empire. As a result, Colebrooke sought from Hindu texts and yielded a Hindu law to match what were thought of as the schools of Muslim law. When Indian scholars could not provide the texts that demonstrated this, European methods were used. After Jones announced that he intended to provide Hindus with their own laws through the mediation of English judges assisted by court appointed pandits, a legal code was in practice. The British sought consistency over time and this created a case law based on precedent. He had studied Persian and Arabic at Oxford and had published a number of translations. Additionally, Jones had an active political career and was a very influential figure of the time. Though he had no intention of ever learning Sanskrit, reacting to the defectiveness of the available translations, he became motivated to do so. He was able to discern whose interpretation of the law was correct. He wanted to provide the British courts in India, the Crown and the East India Company with a basis on which decisions could be rendered consonant with a pure version of Hindu law. Thus, believed Jones, the Anglo-Hindu law could become consistent and fair. He envisioned a digest translation completed by Colebrooke complete with Hindu and Muslim law on the subjects of contracts and inheritances. Jones plan was to find and fix a Hindu civil law with the topics that affected the ownership and transmission of property. Cornwallis agreed, and from until his death in Jones devoted his time to what would become "The Digest of Hindu Law on Contracts and Successions". By the time of his death he had compiled the Digest in Sanskrit and Arabic and had begun translating them to English. Colebrooke completed the translation in He, in , published a manual of Hindu law. Hindu Law This is a unique text in so far as it addresses the opinions of the pandits in a question and answer format. Legislation came to be the strongest source of law in India in so far as it held the highest jurisdiction when sources conflicted. Allowed widows to remarry in certain situations. Allowed for Hindus who had converted to Christianity to dissolve their marriage. The Child Marriage Restraint Act of Restricted marriages of children below a certain age. Gave special rights to Hindu married women. Made important changes to judicial administration in the three main Presidency towns of Bombay, Calcutta, and Madras. It required all judges to administer the Islamic and Hindu law. Before this, it was certain whether the judges would apply English or religious law in a particular case. They were asked to make recommendations for how to consolidate or amend these laws in ways that would prevent gaps in the law. The High Courts were established having civil, criminal, admiralty, vice-admiralty, testimony, intestate, and matrimonial jurisdiction, as well as original and appellate jurisdiction. Important step because it allowed Indians, to have a bigger influence the laws that would be administered to Hindus. This was an important step in unifying India. The Privy Council, located in London, did not only handle Indian appeal cases, its jurisdiction spanned throughout many parts of the British Empire. With regards to India, the Privy Council was successful at infusing English concepts and principles into the British Indian legal system and they thus became an integral part of Indian law.

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History of equity Origins of the common law[edit] After the Norman Conquest of England in the 11th century, royal justice came to be administered in three central courts: The common law developed in these royal courts. The plaintiff would purchase a writ in the Chancery , the head of which was the Lord Chancellor. If the law provided no remedy or no efficacious remedy , litigants could sometimes appeal directly to the King. These petitions were eventually delegated to the Lord Chancellor himself. In the early history of the United States, common law was viewed as a birthright. Both the individual states and the federal government supported common law after the American Revolution. Chancellors often had theological and clerical training and were well versed in Roman law and canon law. Equity, as a body of rules, varied from Chancellor to Chancellor, until the end of the 16th century. After the end of the 17th century, only lawyers were appointed to the office of Chancellor. Over time, Equity developed a system of precedent much like its common-law cousin. One area in which the Court of Chancery assumed a vital role was the enforcement of uses , a role that the rigid framework of land law could not accommodate. This role gave rise to the basic distinction between legal [disambiguation needed] and equitable interests. That writ gave him the written right to re-enter his own land and established this right under the protection of the Crown if need be, whence its value. In , to prevent judges from inventing new writs, Parliament provided that the power to issue writs would thereafter be transferred to judges only one writ at a time, in a "writ for right" package known as a form of action. People began petitioning the King for relief against unfair judgments, and as the number of petitioners rapidly grew, so the King delegated the task of hearing petitions to the Lord Chancellor. As the early Chancellors lacked formal legal training and showed little regard for precedent, their decisions were often widely diverse. In , a lawyer, Sir Thomas More , was appointed as Chancellor, marking the beginning of a new era. After this time, all future Chancellors were lawyers. Beginning around , records of proceedings in the Courts of Chancery were kept and several equitable doctrines developed. Equity is a roguish thing: One Chancellor has a long foot, another a short foot, a third an indifferent foot: The counter-argument was that Equity mitigated the rigour of the common law by looking to substance rather than to form. The two courts became locked in a stalemate, and the matter was eventually referred to the Attorney-General , Sir Francis Bacon. Sir Francis, by authority of King James I , upheld the use of the common injunction and concluded that in the event of any conflict between the common law and equity, equity would prevail. Ecclesiastical laws[edit] Ecclesiastical laws are a branch of English law and were English laws that dealt with matters concerning the church, this was so that religion and law was differentiated. These laws are considered an unwritten law of England and cannot be withheld in the court of law. Ecclesiastical laws are not currently established in the U. S as Common law. The effect of this trust was that the first person owned the land under the common law, but the second person had a right to use the land under the law of equity. Henry VIII enacted the Statute of Uses in which became effective in in an attempt to outlaw this practice and recover lost revenue. The Act effectively made the beneficial owner of the land the legal owner and therefore liable for feudal dues. The Statute recognized only the first use, and so land owners were again able to separate the legal and beneficial interests in their land. For an example, see Godwyne v. Please improve it by verifying the claims made and adding inline citations. Statements consisting only of original research should be removed. November Australia[edit] Equity remains a cornerstone of Australian private law. A string of cases in the s saw the High Court of Australia re-affirm the continuing vitality of traditional equitable doctrines. It remains one of the most highly regarded practitioner texts in Australia and England. The main challenge to it has come from academic writers working within the law of unjust enrichment. Scholars such as Professor Birks and Professor Burrows argue that in many cases the inclusion of the label "legal" or "equitable" before a substantive rule is often unnecessary. Scotland[edit] The courts of Scotland have never recognised a division between the normal common law and equity, and as

such the Court of Session the supreme civil court of Scotland has exercised an equitable and inherent jurisdiction and called the nobile officium. The exercise of this power is limited by adherence to precedent , and when legislation or the common law already specify the relevant remedy. Thus, the Court cannot set aside a statutory power , but can deal with situations where the law is silent, or where there is an omission in statute. Such an omission is sometimes termed a casus improvisus. Under the Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. The rights codified under the Act were as under: Recovery of possession of immovable property ss. Nonetheless, in the event of situations not covered under the Act, the courts in India continue to exercise their inherent powers in terms of Section of the Code of Civil Procedure, , which applies to all civil courts in India. There is no such inherent powers with the criminal courts in India except with the High Courts in terms of Section of the Code of Criminal Procedure, Further, such inherent powers are vested in the Supreme Court of India in terms of Article of the Constitution of India which confers wide powers on the Supreme Court to pass orders "as is necessary for doing complete justice in any cause of matter pending before it". United States[edit] In modern practice, perhaps the most important distinction between law and equity is the set of remedies each offers. The most common civil remedy a court of law can award is monetary damages. Equity, however, enters injunctions or decrees directing someone either to act or to forbear from acting. However, in general, a litigant cannot obtain equitable relief unless there is "no adequate remedy at law"; that is, a court will not grant an injunction unless monetary damages are an insufficient remedy for the injury in question. Law courts can also enter certain types of immediately enforceable orders, called " writs " such as a writ of habeas corpus , but they are less flexible and less easily obtained than an injunction. Another distinction is the unavailability of a jury in equity: In the American legal system, the right of jury trial in civil cases tried in federal court is guaranteed by the Seventh Amendment in Suits at common law, cases that traditionally would have been handled by the law courts. The question of whether a case should be determined by a jury depends largely on the type of relief the plaintiff requests. If a plaintiff requests damages in the form of money or certain other forms of relief, such as the return of a specific item of property, the remedy is considered legal, and a jury is available as the fact-finder. On the other hand, if the plaintiff requests an injunction , declaratory judgment , specific performance , modification of contract, or some other non-monetary relief, the claim would usually be one in equity. Thomas Jefferson explained in that there are three main limitations on the power of a court of equity: That it shall not interpose in any case which does not come within a general description and admit of redress by a general and practicable rule. The first major statement of this power came in Willard v. Tayloe , 75 U. The Court concluded that "relief is not a matter of absolute right to either party; it is a matter resting in the discretion of the court, to be exercised upon a consideration of all the circumstances of each particular case. Tayloe was for many years the leading case in contract law regarding intent and enforcement. However, the substantive distinction between law and equity has retained its old vitality. Furthermore, certain statutes like Employee Retirement Income Security Act specifically authorize only equitable relief, which forces US courts to analyze in lengthy detail whether the relief demanded in particular cases brought under those statutes would have been available in equity. A serious movement for merger of law and equity began in the states in the midth century, when David Dudley Field II convinced New York State to adopt what became known as the Field Code of Today three states still have separate courts for law and equity; the most notable is Delaware , whose Court of Chancery is where most cases involving Delaware corporations are decided. Virginia had separate law and equity dockets in the same court until Bankruptcy was also historically considered an equitable matter; although bankruptcy in the United States is today a purely federal matter, reserved entirely to the United States Bankruptcy Courts by the enactment of the United States Bankruptcy Code in , bankruptcy courts are still officially considered "courts of equity" and exercise equitable powers under Section of the Bankruptcy Code. The procedures in a court of equity were much more flexible than the courts at common law. In American practice, certain devices such as joinder , counterclaim , cross-claim and interpleader originated in the courts of equity. Also, the modern class action evolved out of the equitable doctrine of virtual

representation, which enabled a court of equity to fully dispose of an estate even though it might contain contingent interests held by persons over which the court did not have direct jurisdiction.

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Receivers â€" Great Britain; A Treatise on the Law and Practice as to Receivers Appointed by the High Court of Justice.

Judges Judge, public official vested with the authority to hear, determine, and preside over legal matters brought in a court of law. In jury cases, the judge presides over the selection of the panel and instructs it concerning pertinent law. The judge also may rule on motions made before or during a Displaying - of results Sir George Jessel Sir George Jessel, jurist considered one of the greatest English trial judges in equity. It is said that Jessel, as solicitor general â€"73 , was the first professing Jew to hold important governmental office in England. He was much admired for his striking ability to deliverâ€¦â€¦ Sir James Fitzjames Stephen, 1st Baronet Sir James Fitzjames Stephen, 1st Baronet, British legal historian, Anglo-Indian administrator, judge, and author noted for his criminal-law reform proposals. Admitted to the bar in , Bacon was made attorney of the court of wards and liveries in Despite his Protestant sympathies,â€¦â€¦ Sir Thomas Littleton Sir Thomas Littleton, jurist, author of Littleton on Tenures or Treatise on Tenures , the first important English legal text neither written in Latin nor significantly influenced by Roman civil law. An edition or ? The work became the basis of university legal education in England and North America. Lawrence Academy in Potsdam, N. Grove was educated by private tutors andâ€¦â€¦ Sir William Scroggs Sir William Scroggs, controversial lord chief justice of England â€"81 , who presided over the trials of those accused of complicity in the Popish Plot of to put the Roman Catholic James, duke of York later James II , on the throne. Thompson studied law under James Kent and was admitted to the bar in She was the first Hispanic and the third woman to serve on the Supreme Court. Reed, associate justice of the Supreme Court of the United States â€" Reed was the only child of John A. Reed, a physician, and Frances Forman Reed, who at one time was registrar general of the Daughters of the American Revolution. After studying law in Cincinnati, Matthews was admitted to the bar in and began to practice law in Columbia, Tennessee, while also editing a weekly paper, the Tennesseeâ€¦â€¦ Stephanus Van Cortlandt Stephanus Van Cortlandt, Dutch-American colonial merchant and public official who was the first native-born mayor of New York City and chief justice of the Supreme Court of New York. Van Cortlandt began a successful and profitable mercantile career underâ€¦â€¦ Stephen Breyer Stephen Breyer, associate justice of the Supreme Court of the United States from Field, associate justice of the U. Supreme Court and chief architect of the constitutional approach that largely exempted the rapidly expanding industry of the United States from governmental regulation after the Civil War. He found the judicialâ€¦â€¦ Takahashi Hisako Takahashi Hisako, Japanese economist and government official who became the first female member of the Supreme Court of Japan â€" After graduating from Ochanomizu University, Takahashi did postgraduate work in economics at the University of Tokyo. Historians have viewed him as an unprincipled politician completely subservientâ€¦â€¦ Thomas Egerton, Viscount Brackley Thomas Egerton, Viscount Brackley, English lawyer and diplomat who secured the independence of the Court of Chancery from the common-law courts, thereby formulating nascent principles of equitable relief. Johnson studied law in Annapolis, Md. His unpopularity contributed, upon his downfall, to the anticlerical reaction that was a factor in the English Reformation. As an attorney, he successfully argued before the U. Supreme Court theâ€¦â€¦ Tom C. Clark studied law after serving in the U. After serving in the German foreign ministry from to , he became president of the German Supreme Court â€" Admitted to the bar in , Ward quickly developed a successful practice. He was elected to the state legislature as a Jacksonian Democrat in and served as mayor of Uticaâ€¦â€¦ Warren E. Burger, 15th chief justice of the United States â€" After graduating with honours from St. After serving as Tennessee attorney general and reporter of cases for the stateâ€¦â€¦ Wiley B. Rutledge taught high school and studied law in his youth, receiving his law degree from the University of Colorado in After two years of private practice, heâ€¦â€¦ William B. Woods, associate justice of the United States Supreme Court â€" After being admitted to the bar in , Woods entered private practice, in which he remained until the outbreak of the American Civil War. Cushing graduated from Harvard in , began studying law, and was admitted to the bar in

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After working as a county official, he succeeded his father in â€¦â€¦ William Elphinstone William Elphinstone, Scottish bishop and statesman, founder of the University of Aberdeen. Elphinstone was probably the son of a priest and was educated at the University of Glasgow. He was ordained priest c. As the choice of Pres. Theodore Roosevelt to succeed him and carry on the progressive Republican agenda, Taft as president alienatedâ€¦â€¦ William Johnson William Johnson, associate justice of the United States Supreme Court from who established the practice of rendering individual opinionsâ€”concurring or dissentingâ€”in addition to the majority opinion of the court. Moody began practicing law at Haverhill, Mass. He served as city solicitor â€”90 and districtâ€¦â€¦ William O. Douglas, public official, legal educator, and associate justice of the U. Supreme Court, best known for his consistent and outspoken defense of civil liberties. His 36 12 years of service on the Supreme Court constituted the longest tenureâ€¦â€¦ William of Waynflete William of Waynflete, English lord chancellor and bishop of Winchester who founded Magdalen College of the University of Oxford. Little is known of his early years, but he evidently earned a reputation as a scholar before becoming master of Winchesterâ€¦â€¦ William Paterson William Paterson, Irish-born American jurist, one of the framers of the U. He also served as an associate justice of the U. Supreme Court from to Paterson immigratedâ€¦â€¦ William R. Day, statesman and justice of the U. After graduation from the University of Michigan, Ann Arbor, , and admission to the bar, Day began to practice law in Canton, Ohio. He was made a judge of the Court of Commonâ€¦â€¦ William Rehnquist William Rehnquist, 16th chief justice of the United States, appointed to the Supreme Court in and elevated to chief justice in Rehnquist served in the U. Supreme Court justice â€”80 , one of the most respected justices of the 19th-century court. Admitted to the bar in , Strong practiced law in Reading, Pa. House of Representatives â€”

Chapter 4 : Geoffrey Nettle - High Court of Australia

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