The Relationship Between Common Law, Equity And Statute Law

In this essay, I will be evaluating the relationship between common law, equity and statute law using examples to further illustrate the points I will be making.

This essay will also assess devolution in the UK and its role in changing the law based on country and how it can affect the development of law.

Common law originated in 1066 after the Norman conquest with the aim of providing standards for legislation whereas before this, law differed based on the local community in the time of the Anglo Saxons. However, the implementation of law was not instant, the Normans then proceeded to send representatives of the king from Westminster throughout the whole country of England to monitor the control of the local government. Upon return, a consensus of the common law was achieved and created in England through reviewing customs encountered in each region by adopting those that were reasonable and discarding those that were not. Riches (2013)

Although the common law system seemed efficient at determining justice in the courts, in some cases it was difficult to determine the right action due to some of the faults/ loopholes were present in the system. For instance, individuals that were significantly affluent could bypass the court system through bribery. In addition to this, the common law did not adapt to the rapid evolution of society, thus resulting in cases where if there was no applicable legislation, the victim would not be able to acquire compensation. Riches (2013)

This is where the strengths in Equity lie. Equity acts as an addition to common law rather than substitution and aims to take common law into account and deliver an alternative solution.

Statute law is authorized by the Parliament in London and in Scotland. It is also approved by the Welsh Assembly. Statute law is created by the government with the intent of controlling the public and limiting certain behaviours, whereas common law is based on precedent, mainly cases in the past. Therefore, it can be seen that the main purpose of statutory law and when it is best utilised is when there is no precedent set for a case and a verdict cannot be reached by a judge. In this scenario, statutory law can provide a definitive punishment for the severity of the crime.

The purpose of devolution in the UK was to transfer the powers of the UK parliament in London into congress in parts of Wales like Cardiff and the Scottish Parliament. This restructuring of authority allows the other parts of the UK to gain some independence in terms of some of the powers that have been devolved to them, making it less likely that a break-up of the UK will occur. In addition to this, the other regions of the UK have significantly different needs in terms of powers due to factors such as population size and certain demographics thus illustrating how some may argue how devolution is an absolute necessity for the UK.

Moreover, one could argue that devolution is crucial for the structure of law in different areas because of the differences in infrastructure from one nation to another. This links back to the

introduction of equity which aided common law as the evolution in society made it difficult to bring justice to certain cases based solely on the common law that was written, this is being explored again in modern society with the usage of the internet. Furthermore, the differences between nations also relate to the Barnett formula which is an instrument used to calculate the distribution of public expenditure in Scotland, Wales and Northern Ireland. Through its use, the amount administered to each devolved government is calculated. One could argue that it is an example of how devolution and its effects on the development of law have impacted public spending. This has led to disputes surrounding how effective it is as England receives the least out of the other nations despite having the largest GDP.

The division of power in the different sectors of the UK also implies that the responsibilities of the UK government will be more evenly dispersed and divided, resulting in decisions in parliament being more catered to individuals in an area, leading to a more balanced, contempt and autonomous society. Government decisions would also be more efficient as each nation can concentrate on their own struggles and the central government can focus on the larger tasks involved with the nation.

On the other hand, devolution is not always the best solution for a nation. For some of the citizens in Scotland, it may have illustrated to them how much more efficiently the country was being run, which lead to the Scottish referendum in 2014. The passing of the vote will have implied that the residents in Scotland could have a say in how wealth is spent and other significant decisions. It will also have independence on choosing policy that was not given through devolution. In the Brexit vote, the majority of Scotland citizens voted remain by 62% to 38% (Hunt & Wheeler, 2018), however evidently this did not have a strong enough impact on the overall decision as factoring in the other areas of the UK, it was decided that Britain would leave the European Union. Had Scotland been independent, its own citizens would have been able to dictate their ties with the EU rather than mainly England having the deciding vote due to the population differences. In the context of Brexit, independence for Scotland may have been favourable to them, although overall it is difficult to say as the economic security of being part of the UK and having a shared currency is a massive bonus for them. Scotland becoming independent could also imply that businesses pull out to different locations with more stability. This highlights the positives and negatives of devolution and its connotations on the future of a nation such as Scotland. Trench (2007)

Some of the powers that have been devolved to Scotland, Wales and Northern Ireland include Education, Agriculture and Local government.

An example of how the education power has been used since it has been devolved to Scotland is the fact that young residents in Scotland (under the age of 25) do not pay tuition fees at University. This was put into place in 2007 and is applicable for young students who have not abandoned full-time education for a period longer than three years.

The powers that are reserved to Westminster include the constitution, defence and national security, foreign policy, immigration and citizenship and tax policy. (“A guide to devolution in the UK,”2016)

Another example of the effects of devolution can be found in the West Lothian question. Its concern is whether the MPs from the other nations in the UK other than England – Wales, Scotland Northern Ireland- in the House of Commons are allowed to vote for cases that only

concern England. This is one of the examples of the negative effects of devolution and how it can leave some nations at a disadvantage. (Bogdanor, 2009) states that, “England is by far the largest and most populous part of the UK, yet it is the only part of the UK without a Parliament or assembly of her own. It is, therefore, the anomaly in the devolution settlement.” This shows how despite one of the main arguments for devolution being accepted would be the fact that nations can possess more control of their government, it may not always be applicable to certain nations and it could potentially have significant adverse effects on them.

Devolution has also had a major influence on healthcare in the different nations of the UK. Out of England, Scotland, Wales and Northern Ireland, England is the only nation that opted for the model of “choice and competition” (Bevan, 2014). It means that patients have some decisions in the treatment that they receive in different aspects such as the provider in terms of GP and it implies that there is competition between public and private providers.

In terms of comparing common law and equity, one can look at Jones v Kernott [2011] which conveys the application of common law and equity on property ownership and co-habitation laws. The case concerned a couple that bought a house together when they were unmarried. The man in the relationship moved out using money provided by the couple. The woman remains in the house and pays the mortgage by herself for twelve years raising her daughters. When the woman eventually decides to sell the property, the man claims half the equity. However, the supreme court had ruled that the split inequity should be 90% - 10% in favour of the woman due to her financial contributions to the property despite the fact that contractually the couple owned the property equally.

Some key points that can be drawn from this case are that for one, moving in together as a couple does not grant you the same rights as if you were married. In this scenario, the man was not given rights to the property despite the fact that the couple initially moved in together and bought the house under both of their names. It also possibly communicates the relationship between common law and equity and how equity works alongside common law to bring justice. It is also worth mentioning how the co-habitation laws differ in Scotland. In s28 Family Law Act 2006 it states that the moment you move in with someone and live as a quasi-marital couple you will be able to claim a portion of the equity in the property if you suffer an economic disadvantage.

Central London Properties v High Trees House [1947] looks at contract law in relation to common law and equity.

During the second world war occupancy rates in this block of flats were suffering and as a way to make the tenants stay and carry on paying rent, the Landlords promised to give a 50% discount on the rent for the duration of world war two if they stayed in the flats. However, the landlord then tried to force the tenants to pay full rent for the last quarter during the war. It was held as the landlord was denied from doing this by promissory estoppel. The tenants relied on the promise of reduced rent for the length of the war so the landlord could not impose his legal rights until after that period. Had the length of time been contractually established beforehand that the last quarter of WWII was at full rent price, there would not have been an issue and any problems with misunderstandings between the tenants and landlords.

Finally, the connection between common law and equity can also be seen through an example of inheritance law.

The case of Re: Sigsworth [1935] 1 Ch. 98 entails a son that murdered his mother. The mother had not prepared a will and the son was the closest relative. Under normal circumstances with inheritance law, he would have inherited the estate but as he murdered her, he was not owed anything. This case also emphasises the importance of the golden rule to prioritise justice.

An example of where statute law is used can be seen in the Fisher v Bell [1961] case where a shopkeeper put a flip knife on display of the store window. It was brought to court as the knife was considered an offensive weapon. However, no liability was brought up as putting the knife on display was considered an invitation to treat.

To conclude, this essay has outlined the relationship between common law, equity and statute law and the functions that they have in modern society for UK law. It can be seen from the findings that common law and equity mostly work in parallel together to provide justice in law cases. Common law acts as a precedent in case law and it was created to provide consistency while equity aims to act as an addition to common law rather than a substitution to find the best outcome in a case. It also acts as a way for people to not be able to manipulate common law in their favour when they are not in the right.

Meanwhile, statute law in the English legal system is set by the parliament to control the behaviours of the public, while common law is based on precedent thus, statute law is most effective when a verdict cannot be made by a judge, then statute law can issue a punishment fit for the crime.

Additionally, the impacts of devolution on law have been mainly highlighted through the differences in healthcare in the UK as well as the West Lothian question. The West Lothian question also demonstrates the influence that devolution can potentially have on the development and evolution of laws as it has shown the differences in public spending in England, Scotland, Wales and Northern Ireland. Differences like these are key for the development of law as they can influence the efficiency of a country regarding how they distribute their economic reserves.