

EQUITY AND LAW

The fusion of law and equity in common law systems was a crucial moment in the development of modern law. Common law and equity were historically the two principal sources of rules and remedies in the judge-made law of England, and this bifurcated system travelled to other countries whose legal systems were derived from the English legal system. The division of law and equity – their fission – was a pivotal legal development and is a feature of most common law systems. The fusion of the common law and equity has brought about major structural, institutional and juridical changes within the common law tradition. In this volume, leading scholars undertake historical, comparative, doctrinal and theoretical analysis that aims to shed light on the ways in which law and equity have fused, and the ways in which they have remained distinct even in a ‘post-fusion’ world.

John C. P. Goldberg is the Carter Professor of General Jurisprudence at the Harvard Law School in Harvard University.

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FUSION AND FISSION

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Abbreviations

Printed law reports and legal periodicals, other than those referred to in this list, are cited according to the usual legal conventions. The abbreviations will be found in D. Raistrick, *Index to Legal Citations and Abbreviations*, 4th edn (London: Sweet & Maxwell, 2013).

Ashburner, <i>Principles of Equity</i> , 2nd edn	W. W. Ashburner, <i>Principles of Equity</i> , 2nd edn, D. Browne (ed.) (London: Butterworth, 1933)
Baker, <i>I.E.L.H.</i> , 4th edn	J. H. Baker, <i>An Introduction to English Legal History</i> , 4th edn (London: Butterworths, 2002)
Baker, ‘The Common Lawyers and the Chancery: 1616’	J. Baker, ‘The Common Lawyers: 1616’, in <i>Collected Papers on English Legal History</i> (Cambridge University Press, 2013), vol. I, ch. 28
<i>Baker and Milsom</i>	J. Baker, <i>Baker and Milsom: Sources of English Legal History</i> , 2nd edn (Oxford University Press, 2010)
Bankton, <i>Institute</i>	Lord Bankton (A. McDouall), <i>An Institute of the Laws of Scotland</i> (Edinburgh: Kincaid and Donaldson, 1751)
B.L.	British Library
B.L. MS Add. 25199	Reports of Thomas Sterrell
B.L. MS Add. 32527	Abstracts of law cases by Roger North
Burrows, ‘We Do This at Common Law’	A. Burrows, ‘We Do This at Common Law but That in Equity’ (2002) 22 O.J.L.S. 1
C.6	P.R.O., Chancery, pleadings, Collins series

C.9	P.R.O., Chancery, pleadings, Reynardson series
C.10	P.R.O., Chancery, pleadings, Whittington series
C.22	P.R.O., Chancery, country depositions
C.33	P.R.O., Chancery, decree and order books
ch.	chapter
C.J.	Chief Justice
C.J.C.P.	Chief Justice of the Common Pleas
C.J.K.B.	Chief Justice of the King's Bench
C.O.201	P.R.O., Colonial Office, New South Wales original correspondence
col.	column
C.P.	Court of Common Pleas
(E. [year])	(Easter Term [year])
E.126	P.R.O., Exchequer, king's remembrancer, entry book of decrees
E.H.R.	English Historical Review
<i>Equity and Administration</i>	P. G. Turner (ed.), <i>Equity and Administration</i> (Cambridge University Press, 2016)
f.	folio
Feldman and Smith, 'Behavioral Equity'	Y. Feldman and H. E. Smith, 'Behavioral Equity' (2014) 170 J. Inst'l & Theoretical Econ. 137
Finch, 'Manual' and 'Prolegomena'	H. Finch (Lord Nottingham), <i>Lord Nottingham's 'Manual of Chancery Practice' and 'Prolegomena of Chancery and Equity'</i> , ed. by D. E. C. Yale (Cambridge University Press, 1965)
<i>First Report Chancery Commissioners</i>	United Kingdom, Chancery Commissioners, <i>First Report of Her Majesty's Commissioners Appointed to Inquire into the Process, Practice, and System of Pleading in the Court of Chancery, &c.</i> (London: H.M.S.O., 1852)
<i>First Report Common Law Commissioners</i>	United Kingdom, Common Law Commissioners, <i>First Report from the Commissioners for Inquiring into the Process, Practice, and System of Pleading in the Superior Courts of Common Law</i> (London: Eyre and Spottiswoode, 1851)

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| <i>First Report Judicature Commissioners</i> | United Kingdom, Judicature Commission, <i>First Report into the Operation and Constitutions of High Court of Chancery, Superior Courts of Common Law, Central Criminal Court, High Court of Admiralty, and Other Courts in England and into the Operation and Effect of Present Separation and Division of Jurisdiction between Courts</i> (London: H.M.S.O., 1868–69) |
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| <i>Goff and Jones: Unjust Enrichment</i> , 9th edn | C. Mitchell, P. Mitchell and S. Watterson (eds), <i>Goff and Jones: The Law of Unjust Enrichment</i> , 9th edn (London: Sweet & Maxwell, 2016) |
| (H. [year])
H.C. Deb. | (Hilary Term [year])
United Kingdom, House of Commons’ Debates |
| H.C. Jour.
H.C.P.P. | United Kingdom, House of Commons Journal
United Kingdom, House of Commons Parliamentary Papers |
| H.L. Deb.
H.L. Jour.
H.L.S.P. | United Kingdom, House of Lords’ Debates
United Kingdom, House of Lords Journal
United Kingdom, House of Lords Sessional Papers |
| Ibbetson, <i>Historical Introduction</i> | D. Ibbetson, <i>A Historical Introduction to the Law of Obligations</i> (Oxford: Clarendon Press, 1999) |
| Ibbetson, ‘A House Built on Sand’ | D. Ibbetson, ‘A House Built on Sand: Equity in Early Modern English Law’, in E. Koops and W. J. Zwilwe (eds), <i>Law & Equity: Approaches in Roman Law and Common Law</i> (Leiden: Martinus Nijhoff, 2014), ch. 3 |
| Ibbetson, ‘ <i>The Earl of Oxford’s Case</i> ’ | D. Ibbetson, ‘ <i>The Earl of Oxford’s Case (1615)</i> ’, in Charles Mitchell and Paul Mitchell (eds), |

- Landmark Cases in Equity* (Oxford: Hart, 2012), ch. 1
- J. Justice
- J.L.H. Journal of Legal History
- Judicature Act 1873 Supreme Court of Judicature Act 1873 (U.K.), 36 & 37 Vict. c. 66
- Judicature Act 1875 Supreme Court of Judicature Act 1875 (U.K.), 38 & 39 Vict. c. 77
- K.B.27 P.R.O., King's Bench, plea rolls
- Kessler, *Inventing American Exceptionalism* A. Kessler, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877* (New Haven, CT: Yale University Press, 2017)
- Knafla, *Law and Politics* L. A. Knafla, *Law and Politics in Jacobean England* (Cambridge University Press, 1977)
- Laycock, 'Triumph of Equity' D. Laycock, 'The Triumph of Equity' (Summer 1993) 56 *Law & Contemp. Prob.* 53
- L.H.R. *Law and History Review*
- L.C. Lord Chancellor
- L.I. Lincoln's Inn library, London
- L.K. Lord Keeper
- Lobban, 'Preparing for Fusion' M. Lobban, 'Preparing for Fusion: Reforming the Nineteenth Century Court of Chancery' (two parts) (2004) 22 *L.H.R.* 389 and 565
- m. membrane
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<i>Meagher, Gummow and Lehane</i> , 5th edn	J. D. Heydon, M. J. Leeming and P. G. Turner, <i>Meagher, Gummow and Lehane's Equity: Doctrines and Remedies</i> , 5th edn (Sydney: LexisNexis, 2015)
(M. [year])	(Michaelmas Term [year])
Milsom, <i>Historical Foundations</i> , 2nd edn	S. F. C. Milsom, <i>Historical Foundations of the Common Law</i> , 2nd edn (Butterworths: London, 1981)
M.R.	Master of the Rolls
MS	manuscript
M.T.	Middle Temple Library, London
M.T. MS 2C	Reports of Sir George Treby
n.	note
O.D.N.B.	<i>Oxford Dictionary of National Biography</i> (2004)
O.H.L.E., vol. VI	J. Baker, <i>The Oxford History of the Laws of England Volume VI 1483 – 1558</i> (Oxford University Press, 2003)
O.H.L.E., vol. XI	W. Cornish, J. S. Anderson, R. Cocks, M. Lobban, P. Polden and K Smith, <i>The Oxford History of the Laws of England: vol. XI: The Legal System, 1820–1914</i> (Oxford University Press, 2010)
O.J.L.S.	<i>Oxford Journal of Legal Studies</i>
pl.	placitum (case-number within a term)
Polden, 'Mingling the Waters'	P. Polden, 'Mingling the Waters: Personalities, Politics and the Making of the Supreme Court of Judicature' [2002] C.L.J. 575
Plucknett and Barton, <i>Doctor and Student</i>	T. F. T. Plucknett and J. L. Barton (eds), <i>St German's Doctor and Student</i> (London: Selden Society, 1974), vol. 91
P.R.O.	Public Record Office, Kew, Surrey
R.S.C.	Rules of the Supreme Court of Judicature
<i>Second Report Common Law Commissioners</i>	United Kingdom, Common Law Commissioners, <i>Second Report of her Majesty's Commissioners for Inquiring into the Process, Practice and System of Pleading in the Superior Courts of Common Law</i> (London: H.M.S.O., 1853)

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| S.S. | Selden Society (annual volumes, 1887–) |
| Stair, <i>Institutions</i> | Viscount Stair (J. Dalrymple), <i>The Institutions of the Law of Scotland</i> , 2nd edn (Edinburgh: printed by heir of A. Anderson, 1693) |
| Subrin, 'How Equity Conquered Common Law' | S. N. Subrin, 'How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective' (1987) 135 U. Pa L. Rev. 909 |
| (T. [year])
<i>Third Report Chancery Commissioners</i> | (Trinity Term [year])
United Kingdom, Chancery Commission, <i>Third Report of Her Majesty's Commissioners appointed to inquire into the Process, Practice and System of Pleading in the Court of Chancery</i> (London: H.M.S.O., 1856) |
| <i>Third Report Common Law Commissioners</i> | United Kingdom, Common Law Commissioners, <i>Third Report of the Commissioners Appointed to Inquire into the Process, Practice, and System of Pleading in the Superior Courts of Law at Westminster</i> (London: H.M.S.O., 1860) |
| V.P.R.S. 31 | Public Record Office Victoria, equity case files |
| V.P.R.S. 282 | Public Record Office Victoria, equity case files, ecclesiastical jurisdiction |
| V.P.R.S. 1697 | Public Record Office Victoria, equity suit books |
| V.P.R.S. 5507 | Public Record Office Victoria, judge's note book series, Mr Justice Molesworth |
| Worthington, <i>Equity</i> , 2nd edn | S. Worthington, <i>Equity</i> , 2nd edn (Oxford: Clarendon, 2006) |
| Y.B. | Year Book |

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