

Equity- Introduction to Equity and Trusts

Equity

- Equity is not merely about principles but was a court in its own right and that is how it has developed. It is not an area of law but is more a legal concept.
 - **W.S. Holdsworth (1916)** – ‘the root idea of equity is the idea that the law should be administered fairly, and that hard cases should as far as possible be avoided.’
 - **Table Talk of John Selden (1689)** – ‘Equity is a roguish thing; for at Law we have a measure we know what to trust to. Equity is according to the conscience of him that is Chancellor, and as that is larger or narrower so is Equity.’
 - Different words are used when discussing equity but most common ones are fairness, justice, equity and conscience. They can all mean different things depending on the context we place them in; it is difficult to confine the words in a legal context.
- The flexibility of equity has also been deemed both its strength as it has the capacity to adjust itself to different circumstances that the common law can’t and it’s also a weakness, as it does not have the level of certainty that you would expect from any other area of law.

Equitable History: Medieval Period

- The courts that are referred to are the common law courts, the equitable courts and the courts of chancery. You must understand the historical development of equity in order to understand the difference between each court.
 - The root notion of equity is that the law should be administered fairly and that there is a relationship between fairness and justice.
 - Under the common law the courts are:
 - The kings bench -responsible for matters relating to constitutional law, crime and trespass;
 - The court of the common place - examined debts and contracts;
 - The exchequer – dealt with tax and writs.
- There was some early evidence of equity in the common law courts but this disappeared over time and it was replaced by a development of a rigid formula’s in the writ system whereby it was declared no new writs could be written.
 - Disappointed litigants would appeal to the Monarch, as he was responsible for resolving disputes amongst his subjects.
 - Petitions delegated from the King to the Lord Chancellor, who acted as a PM in this period.
 - The high volume of cases lead to the LC to open up a new court, the Chancery) and the decisions in this court became known as equity.

Equitable History: Lord Chancellors Court

- The process originated by a simply worded bill as opposed to a formal writ.
- If a bill disclosing a prima facie case, a writ of subpoena would be issued compelling the defendant to attend court.
- It was an informal inquisitorial process with no jury. The Lord Chancellor himself found the facts.
 - His lack of legal training meant that the basis for his decision was his conscience. This would naturally differ according to the conscience of the individual chancellor.
 - **John Seldon** critiqued the inconsistency of the rulings and stated that ‘equity varied with the length of the Chancellors foot.’
- The decisions of the courts came to be known as a body of law under the name of equity, the court had the power to grant injunctions, such as:

- **Prohibitory injunctions**, where they would tell an individual not to do something
- **Mandatory injunctions** where they would compel you to do something
- **Breach of order** where contempt of court was punishable by fine or prison
 - The main remedy at common law was damages but it would not directly address the issue and would merely compensate the party for their loss.
 - There was an inevitable conflict between the common law and equity as there were two courts administering different legal rules and principles to the same issue.
 - **Earl of Oxford's Case (1615)**

Equitable History: Relationship between Common Law and Equity pre 1873

- This is the period where equity moved away from making decisions based on conscience to equity with the formulation and regulation of equitable doctrines.
 - **Lord Nottingham in Cooke v Nottingham** stated 'the conscience by which I am to proceed is merely civilis et politica and is tied to certain measures.'
 - **John Selden in Table Talk** 'Equity is a roguish thing; for at Law we have a measure we know what to trust to. Equity is according to the conscience of him that is Chancellor and as that is larger or narrower so is equity. Tis all of one as though they should make the standard for the measure we call a foot, to be the Chancellors foot what an uncertain measure this would be: one chancellor has a long foot, another a short foot and a third an indifferent foot. Tis the same thing in the Chancellors conscience.'
 - **Lord Eldon in Gee v Pinchard** 'The doctrine of this Court ought to be as well settled and made as uniform almost as that of the common law, laying down fixed principles, but taking care that they are to be applied according to the circumstance of each case. Nothing would inflict on me greater pain in quitting this place than the recollection that I had done anything to justify the reproach that the equity of this court varies like the chancellors foot.'
- Equitable jurisdiction dealt with the following areas:
 - Uses and trusts which were the core business of Chancery
 - Mortgages
 - Restrictive Covenants
 - Estoppel
 - Fraud (including undue influence)
 - Breach of Confidence – a 19th century development prompted by the publication of Queen Victoria's etchings
 - **Prince Albert v Strange**
 - Equitable remedies that were offered included: specific performance, injunctions and account where the primary question was 'what did the D gain by wrongdoing?' instead of 'what has P lost as a result of the D's wrongdoings?'
- The common law courts took the judicial notice of equitable doctrines and vice versa – the common law occasionally absorbed equity doctrines into the common law so that they could give effect to equitable rights when this could be done consistently in the common law.
 - The common law courts would not entertain an action based solely on the alleged infringement of equitable rights for this the plaintiff had to sue in the Chancery. This was also known as Chancery exclusive jurisdiction.
 - Chancery's concurrent jurisdiction was where the Chancery would grant equitable remedies not only in cases where equitable rights had been infringed but also where a common law had been infringed provided that the legal right was that established in common law.