# LAWS2015 EQUITY

## 1. The History and Nature of Equity

The Australian legal system consists of:
- rules of law
- principles of equity
- requirements of statute

(HC in Alando case)

**What is Equity? History and nature of Equity**

'Equity' i.e. the specific jurisprudential notion of equity – **refers to that body of cases, maxims doctrines, rules, principles and remedies, which derive ultimately from the specific jurisdiction established by the English High Court of Chancery before 1875**

- Equity doesn't have rules
- It applies maxims – nuanced approach as opposed to common law rules which are black/white 'binary' – judicial officials exercise discretion
- Equity deals with standards rather than rules→ Standards change and fluctuate over time; less fixed rules

**The Nature of Equity**

1. Origins: to alleviate the harshness of the common law
2. Operates to supplement the common law
3. Cannot be expounded as a set of rules
4. Changes in line with community values

**Equitable doctrines:**

- Contract
- Property
- Succession

**Equitable remedies:**

- Specific performance
- Declaration
- Injunction
- Rescission
- Rectification

**Exclusive and Auxiliary Jurisdictions:**

**A. Exclusive Jurisdiction – right or the claim or the property that is equitable**

Doctrines, which are recognised only in equity e.g. the trust, fiduciary obligations

Remedies: only equity remedies available (remedies not available in common law) e.g. injunction

- Equitable remedies are usually discretionary
- But discretion is a constrained discretion

Could only be determined by the Chancery Court

**B. Auxiliary Jurisdiction**

Equity comes to the aid of common law rights – equitable remedies where its premise was a legal right

In common law, most of the time the remedy is damages. If nature of the cause of action is legal – then you look to damages. If damages are inadequate, you can use injunctions. But an injunction is an equitable remedy that is being used to aid a common law right. Equity ONLY operates if the common law is deficient – IF damages are fine, then equity does not need to act.

In contrast, it is rare where equity provides the cause of action.

*The Earl of Oxford's Case in Chancery* (1615) Foundation case

Facts:

- Land in England – in 16th/17th century wasn't developed
- Owned by one of the colleges of Cambridge University and they wanted to sell it to Benedict Spinola

- Problem was that there was a statute that prevented Cambridge colleges selling land ('prevented the alienation of land by Oxford and Cambridge colleges')
- To get around this issue, college thought they would surrender the land to the Queen and the Queen could grant it to Spinola
- But thirty years later, college was regretting the sale of this land so they tried to get it back (land was worth much more then) → by this time, The Earl of Oxford owned the land
- Lawyer came up with an idea – looked at the statute again, and said that not only does it prevent selling of the land but the surrendering of the land – so in fact, the land was still theirs
- SO to test this, they went on to the land at night with an accomplice and they leased it to him, then evicted him – they wanted to create/engineer a dispute in the court (i.e. for that lessee to sue them for wrongful eviction) and get a decision that they own the land in the absence of the Earl of Oxford
- Earl of Oxford became a party to the proceedings eventually

Issue in the common law court: proper construction of the statute – did it prevent any dealings in the land?

Held: correct construction of the statute - it did indeed prevent (i.e. make void) any dealings in the land – it made void any purported dealings with land by Oxford/Cambridge college

So College won and Earl of Oxford lost at common law

**Earl of Oxford goes to the Court of Chancery**

- Said he understood that there was final judgment given in the common law court about the construction of the statute but it wasn't fair
- He wanted to be able to argue against the judgment – **prevent them relying on their legal rights (RELIEF IN EQUITY IS THIS PRECISELY)**

Question – not substantive issues but whether in theory there is any argument that if successful in the court of Chancery, it could defeat an order in the common law court; is it possible for the Court of Chancery to in effect set aside a final judgment of the common law court?

Lord Chancellor summoned the College but they refused to come so Lord Chancellor arrested them – their representatives went back to the common law court and argued that they couldn't be legitimately locked up for refusing to answer questions. Common law court granted a writ of habeas corpus.

*Was this writ of habeas corpus rightfully granted?*

If they could be locked up – that meant that the Court of Chancery could in effect set aside the final judgment of the common law court. And if the Court of Chancery could do that, then equitable principles must trump common law principles.

On the other hand, if the college representatives were right to refuse to answer questions and if therefore their imprisonment was wrong, then that meant that their judgment was final, nothing in the equity court could change that and therefore, equity would NOT trump the common law.

SO what wins? Law or equity?
There could not be a judicial answer to this – so it went to King James.

The controversy caused by this judgment's challenge to the power of the common law, led to James I issuing a decree of 14 July 1616 which unambiguously established the supremacy of equity over the common law

- The Chancellor 'shall not hereafter desist to give unto our subjects upon their several complaints now or hereafter to be made, such relief in equity (notwithstanding any proceedings at the common law against them) as shall stand with the merit and justice of their cause, and with the former ancient and continued practice and presidency of our chancery'

**i.e. King James decided in favour of equity – rules of equity prevails where rules of equity and common law conflict.**

- Court of Chancery could deal with petitions addressed to the King/King's Chancellor, begging for discretionary relief from various forms of oppression or injustice, incl. harsh or unjust judgments in the common law courts
- Chancery attempted to deal with petitions based on harsh or unjust judgments in the common law courts by issuing common law injunctions i.e. a P who had had a legal judgment in his favour granted by a common law court was prohibited by the Lord Chancellor, form acting upon that judgment
- "That when a judgment is obtained by oppression, wrong and a hard conscience, the Chancellor will frustrate and set it aside, not for any error or defect in the judgment but for the had conscience of the party"

Note: Common law and equity are two separate bodies of law; they are separate courts

**The Effects of the Judicature Acts and the 'Fusion Fallacy'**

**Merging of the administration of equity and common law**

**Administrative system merged for equity and common law** in 1875 in England because having separate courts of common law and equity was considered to be **inefficient**.

- E.g. beneficiary can't sue for breach of trust in a common law court; common law courts couldn't award remedies of specific performance and injunctions; for breach of contract – discovery is historically an equitable remedy
- Decided that one judge should hear and decide claims in both common law and equity

*Coroneo v Australian Provincial Assurance Association* 1935

What is a mortgage?

- Mortgagor hands over title and is left with the equity of redemption (i.e. mortgagee promises to transfer title of the property back to the mortgagor if mortgagee pays back the money that's been borrowed)
- Mortgage is a transfer of title of property
- Obligation to act in good faith
- If you are a borrower and you are upset with your mortgagee, you have to bring an action in equity
- Only reason that APAA won and Coroneo lost is because they sued in the wrong court

Judicature Acts are the answer to Coroneo's problems – so now no one loses because they sued in the wrong court; same procedure and ALL judges have the power to deal with both common law and equitable cases – and accordingly, you didn't need common law injunctions

Downside of Judicature Acts – become more difficult to identify equitable principles

- Prior to the coming into operation of the judicature system by the Judicature Act in 1875, where there had been conflicts in principle between law and equity, the latter would prevail in the end by means of the common injunction
- One of the objects of the judicature system was to make it prevail at the outset → s 25(11) of the Judicature Acts provided that in the event of a conflict in rules, equity should always prevail

Judicature system was adopted in all states of Aus.

'The NSW Judicature Acts' embody the judicature system/English Judicature Acts in NSW:

- Law Reform (Law and Equity) Act 1972 (NSW) ss 5, 6, 7
- Supreme Court Act 1970 (NSW) ss 22, 57, 58, 59, 60, 61, 62, 63

***Supreme Court Act* 1970 (NSW)**

s57: The Court shall administer concurrently all rules of law, including rules of equity.

- No longer could you lose because you sued in the wrong court or division of the Supreme Court.

S 61: you shall not have any more common law injunctions

***Law Reform (Law & Equity) Act* 1972 (NSW)**

s5: In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail. (**point decided in Earl of Oxford case – that Equity prevails**)

- Reproduces the substance of s 25(11) and resolves conflicts between rules of law and equity
- Where one court hears the common law offence and the equitable defence, the equitable defence can be relied upon.

Result should be the same as it were prior to 1875, the principles of common law and equity HAVE NOT MERGED – just means it can be applied by the same person in the same person. They remain separate rules of law.

- 'The two streams of jurisdiction (streams of equity and common law), though they run in the same channel but they do not mingle their water' Ashburner's Principles of Equity – on the effect of the Judicature Acts
- Few cases that seem to say that this is not the case – BUT THIS IS WRONG

5 years after introduction of Judicature Acts

*Salt v Cooper (p16)*

Jessel MR: stated very plainly that the main object of the Act was to assimilate the transaction of Equity business and Common Law business by different Courts of Judicature. Sometimes inaccurately called 'the fusion of Law and Equity' but it was not a fusion – it was the vesting in one tribunal the administration of Law and Equity in every cause **(Didn't substantially change the law)**