

LAWS303: EQUITY AND TRUSTS

EXAMINATION SUMMARY BOOK

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LAWS 303 – Equity and Trusts

WEEK 1:

Introduction to Equity and Equitable Remedies

Chapter 1: An Overview of Equity

What is Equity?

- The most obvious meaning for the word equity is fairness and justice – *Somers J in Elders Pastoral Ltd v Bank of New Zealand [1989] 2 NZLR 186, 193.*
- Equity sometimes refers to principles applied by judges where the law is deficient for some reason
- Equity corrects, or supplements the law but does not replace it

Institutional equity

- the essence of this equity is in the creation of a special court having the power to modify or correct the general law – England's Court of Chancery
- many courts in this country have inherited that power
- the first paradox of institutional equity is that it is premised on the existence of a court which no longer exists
- secondly the Court of Chancery never had the power to correct injustices in the law

The emergence of institutional equity: medieval origins

- medieval common law was a highly centralized system of justice, with process initiated by the issue of a writ issued by the Chancery
- the issue of writs was the basis for the formulator system of law
- claims could only be brought before the court if it was contained within the wording of the writ
- those who could not bring the claim within the writ would petition to the king
- the king often referred the complaints to the chancellor who was generally an ecclesiastic who had legal training in civil and canon law
- the real differences between the common law and equity in its formative stage concerned not substantive law but the procedures applied by chancellors to obtain evidence

Reform and the judicature legislation

- the *Judicature Acts 1873-6* enacted reforms which improved the administration of common law and equity but which, with a few exceptions, did not change the substantive law
- the *Judicature Act 1873 (Imp)* made the following major changes
 - the old superior common law courts were abolished and replaced by divisions of a new high court of justice, including common law divisions
 - a unified code of procedure applied to both common law and equitable claims. Equity's discovery and interlocutory procedures were extended to the common law

- section 24 made provisions for giving effect to equitable estates, interest and defenses in legal proceedings in the manner that the Court of Chancery would have done
- section 25 resolved a number of conflicts between common law and equity either by providing that the equitable rule was to prevail or by enacting new law
- the legislation never intended to fuse or integrate legal and equitable rights

The reception of equity in Australia

- the **First Charter of Justice** in 1787 created a Court of Civil Judicature which did not distinguish between common law and equity
- the **New South Wales Act 1823** conferred on the newly created Supreme Court the power to exercise locally the jurisdiction that the Chancellor exercised in England
- it was pressure exerted by the state's first equity judge, Willis J, which resulted in the provision for the appointment of a Primary Judge in Equity by the **Administration of Justice Act 1840**
- the Supreme Court structure created by other states required the judges to administer both common law and equity

The judicature legislation in Australia

- most states have their legislation reduced to a short common form
- an example is as follows
- **Supreme Court Act 1986 (Vic) – s 29**
- **Law and equity to be concurrently administered**
 - (1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in Victoria in any civil proceeding must continue to administer law and equity on the basis that, if there is a conflict or variance between the rules of equity and the rules of the common law concerning the same matter, the rules of equity prevail.
 - (2) Every court referred to in subsection (1) must give the same effect as before the commencement of this Act—
 - (a) to all equitable estates, titles, rights, reliefs, defences and counter-claims, and to all equitable duties and liabilities; and
 - (b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any Act—

and, subject to the provisions of this or any other Act, must so exercise its jurisdiction in every proceeding before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of proceedings concerning any of those matters is avoided.

The place of equity in modern law

- the subject-matter of equity can only be determined by reference to legal history not logically produced from general propositions
- the existence of a separate body of equitable principles means that much of Australian private law exhibits a dual character – law and equity

A Map of Equity

Equitable remedies

- “right and remedy are indissolubly connected” – *Chase Manhattan Bank NA v Israel-British Bank (London) Ltd* [1981] Ch 105, 124
- Equitable claims are remedy driven
- Generally speaking Australian judges have not permitted basic equitable concepts to be stretched or distorted solely for the purpose of enabling the plaintiff to gain relief which is unavailable at the common law
- A fundamental distinction is made between the *exclusive* jurisdiction and the *auxiliary* jurisdiction
 - *exclusive* jurisdiction of equity consists of matters which prior to the judicature legislation could only be adjudicated upon by the Chancery and not by common law courts
 - **IE.** The enforcement of trusts and other fiduciary obligations, equitable obligations of confidence and the rescission of contracts on equitable grounds like misinterpretation or unconscionable conduct
 - **Only equitable remedies can be awarded when equity acts in its exclusive jurisdiction, common law damages are not available**
 - Equity acts in its *auxiliary* jurisdiction when a tort or breach of contract has been committed and the common law damages are an inadequate remedy for the plaintiff
 - **IE.** The remedy of specific performance or an injunction
 - the distinction between these two jurisdictions creates a hierarchy of remedies. Only equitable remedies can be awarded in the exclusive jurisdiction when common law damages are unavailable
 - contrary to this in the auxiliary jurisdiction the court considers whether damages will adequately compensate for the plaintiff's loss and if of that remedy is not adequate will the award of an equitable remedy be considered
 - damages are inadequate if: the monetary award will not enable the plaintiff to purchase a market substitute for the defendant's performance

Contract

- the common law determines the existence of a contract and the rights and obligations of the contracting parties but equity modifies contractual obligations and provides relief both for breach and where the plaintiff's consent to the agreement has been vitiated
- the principle areas of equitable intervention are as follows:
 - the creation and modification of enforceable promissory obligations. The equitable doctrine of estoppel prevents the enforcement of some promises which would otherwise give rise to legal obligations and sometimes enforces promises which the common law does not recognise
 - setting aside contracts on the ground that a party's consent was vitiated by fraud, duress, unconscionable conduct, undue influence, mistake, misrepresentation and in some cases where a guarantee is entered into without a full understanding of its nature and effect

- rectification of the terms of a written contract where they do not conform to the agreement the party's made
- assigning the benefit of the performance of contractual obligations in equity
- preventing disproportionate relief of a plaintiff as a result of the defendant's breach of contract
- enforcement of the contract or of its particular provisions – specific performance

Property

- equities principle contribution to property law is the trust, which imposes obligations on a titleholder of property to manage the property for the benefit of another individual or for legally approved purposes
- apart from trust equitable interventions include:
 - the recognition and enforcement of equitable titles to property. The common law fee simple; life estate; lease and mortgage can also be created as equivalent equitable interests in property
 - equity also recognizes and enforces new interests in property which have no common law counterpart
 - **IE.** a mortgagee's equity of redemption; restrictive covenant affecting land
 - the creation of special rules governing the assignment of property interests
 - the recognition and enforcement of proprietary interests by application of the doctrine of equitable estoppel
 - the application of special rules, known as tracing rules, to identify a claimant's property, if the property for instance has been mixed up or become obfuscated with other land
 - equitable intervention in the law of deceased estates

Civil wrongs

- equity also relieves against some forms of wrongdoing, they can be considered as the counterparts to the common law torts but with the important qualifications that equitable bars and remedies are not comparable to common law defenses and that the grant of a common law damage is not an available remedy
- the principle equitable wrongs are:
 - breach of a fiduciary obligation
 - equitable relief is not limited to the fiduciary who has committed the breach of obligations.
 - Secondary parties, such as those who receive the proceeds of the fiduciary wrongdoing, or who assist in the breach can also be held liable
 - Breach of confidence

Civil procedure

- The final category of equitable intervention is equity's regulation of civil litigation
- The principle applications are:
 - Contribution
 - Provides that two or more persons who are liable for a loss are rateably (proportionately) liable to compensate the plaintiff
 - Subrogation

- Where legal rights are taken over by one person from another by operation of the law
- The transferee is said to be subrogated to the rights of the transferor
- Marrying
 - This doctrine regulates the enforcement of securities against a debtor where a creditor is entitled to enforce his security against more than one asset of the debtor

The Maxims of Equity

- A peculiarity of equitable legal method is that some of the principles applied by the courts are encapsulated in 'maxims' which are often recited in judgments
- What are the maxims status in equity adjudication?
 - The maxims are not equitable principles, and equity and trust problems cannot be solved solely by reference to a maxim
 - The maxims concisely express certain equitable principles and themes and those themes are more important than how they articulate themselves
- What are the maxims?
 - There is no fixed list of maxims and some are more important than others
 - More commonly applied maxims are as follows
 - Equity will not suffer a wrong without a remedy
 - Equity follows the law
 - When the equities are equal, the first in time prevails
 - He who seeks equity must do equity
 - He who comes to equity must do so with clean hands
 - Equity assists the diligent and not the tardy
 - Equity is equality
 - Equity looks to the intent rather than the form
 - Equity regards as done that which ought to be done
 - Equity imputes an intention to fulfill an obligation
 - Equity will not assist a volunteer
 - Equity will not perfect an imperfect gift
 - Equity acts in personam

Chapter 2: An Introduction to Equitable Remedies

An Introduction Equitable Remedies

- Remedies evolve from the procedures that courts apply
- Equitable remedies grew out of the practices of chancellors, sitting without a jury but assisted by clerks and masters exercising supervision
- Because current equitable practice emerged from the chancellors' delivery of individual justice based on the merits of the case and the particular parties before it, equitable remedies are often discretionary
- In equity, there is a wide array of remedies, but it is often seen that based on a particular case, there are often only a couple of remedies available to suit the particular plaintiff

Personal and Proprietary Remedies

- Equitable remedies can be distinguished according to their effect and according to the purpose they fulfill

Personal remedies

- This is an order directed to the person of the defendant
- *The defendant must comply with the order or else be in contempt of court – CFMEU v Boral*
- The award of a personal remedy has no direct impact on the defendant's property
- An award for damages for tort or breach is a personal remedy
- Equity also has personal remedies such as equitable compensation, account of profits and injunction

Proprietary Remedies

- This type of remedy is directed to property to which the defendant holds title
- The order may declare that identified property belongs to the plaintiff in equity, as constructive trust orders do
- Alternatively, the court can order the sale of that property in order to satisfy the plaintiff's judgment

Types of Proprietary Remedies

- There are 2 types of proprietary remedies
 - The constructive trust
 - This is an order that the defendant hold identified property on trust for the plaintiff
 - The plaintiff will be entitled to the property in equity, or to a proportionate interest in that property assessed by the court
 - If the property appreciates in value, then the plaintiff is entitled to that benefit
 - Conversely, if the property depreciates, then the plaintiff carries the risk of that
 - This type of trust is imposed in carefully defined situations
 - The equitable lien
 - This is a security interest over property