

Introduction

History of Equity

- Levenstein – whilst originally confined to the trusts of land, it has burgeoned into one of the predominant underpinnings of modern law
- Emerged as a cure to various defects in medieval common law
- Idea of conscionability underpinned the Court of Chancery
- Misrepresentation – common law did not recognize innocent misrepresentation, permitting rescission of contract in such cases, stated it as being unconscionable to enforce a contract in which the other party entered into it because of an innocent misrepresentation
- Courts not denying the existence of the rights of a persona at common law, but prevent unconscientious of common law rights and interests, Chancery would only grant injunction where it could be shown that common law rights were being enforced where it would be unconscientious to do so
- Legislation prevails over conflicting common law and equity rules. Equity prevails over conflicting common law rules
- Trusts
 - The use – trust = transfer of land for the benefit of others
 - Free to do with the land as they wish, undertakings given by the nominees to hold the land for others benefit, it would be unconscientious if the nominees' obligations were not enforced against them:
 - Injunction – to prevent nominees from doing something that would amount to a breach of their obligations
 - Maitland – when a person has rights which he is bound to exercise on behalf of another, he is said to hold those rights in trust, and he is called a trustee
 - Waqf – ancient trustee and beneficiary terms – could not doing anything inconsistent to the terms of the use when the land was given to him

Nature of Equity

- Dudley v Dydley – equity is no part of the law but a moral virtue and is a universal truth, assisting the law where it is effective and weak in the constitution – office of equity is to support the common against shifts and crafty contrivances against the justice of the law
- Unconscionability remains the pivot on which equity turns
- Equity's exclusive jurisdiction – equitable estoppel + confidential information
- Concurrent jurisdiction – both it and common law have a role to play, ie enforcement of contracts, through specific performance or damages (thus equity is supporting the common law rights)
- Major consequence of distinction is where what needs to be established to get an equitable remedy
 - Injunction
 - Breach of contract for breach of restraint of trade clause – it would be injunction in concurrent jurisdiction, first needs to be satisfied that common law remedies are not adequate. Equity intervenes where the common law is deficient – is not unconscionable
 - Breach of trust – unknown to common law, can be no question of the adequacy of common law, as there can be no claim = exclusive jurisdiction, simply uses discretion as to whether it is appropriate to grant injunction

Maxims of equity – basic principles of equity which are not independent of each other and often overlap = merely guiding principles and do not amount to rules of equity

- Equity will not suffer a wrong to be without a remedy – dependent upon extent to which courts are willing to adapt and extend equitable principles to meet novel circumstances. Stuart v Attico Controls – while rules of equitable are not rigid when faced with novel situations, this does not mean courts should proceed on notions of justice, without regard to established principles, a principle should be applied when circumstances of a case fall within it
- Equity follows the law – is a curative supplement to the law not a rival system, Leech v Schweder; where a right existed at law and a person came only into equity because the Court had a more convenient remedy than a court of law, there equity followed the law, and the person entitled to the right had not greater right in equity than at law
- First in time equity shall prevail, and where there is equal equity, law shall prevail
- One who seeks equity must do equity – must fulfill legal and equitable obligations before seeking a remedy
- One who comes to equity must come with clean hands
- Delay defeats equity – must act promptly and diligently
- Equality is equity = proportionate equality
- Equity looks as done which ought to be have done – basis of doctrine in Walsh v Lonsdale and doctrine of specific performance
 - Swisse Bank v Lloyds Bank – although basis of equity jurisdiction is founded in an order in personam, that which ought to be done is to be treated as having been