# 8. (8). English (Legal) Historical Perspective (B): equity, the new kid on the block

**1. BE ABLE TO EXPLAIN HOW, WHY AND WHEN THE COURT OF CHANCERY AND THE BODY OF LAW KNOWN AS EQUITY EMERGED IN ENGLAND,**

- Growth of common law led to demand of litigants who could not find justice in local courts
- Equity developed as distinct result of popular demand for justice due to limitations of local
- As early as 14th century common for petitions to be made to king to exercise overriding residual power
- Later delegated to individual officials including chancellor
    - Chancellor was head of great department of state
    - Origins of chancery were as royal secretariat – from here writs were issued
    - Many exercised function akin to prime minister but were not without legal knowledge
- Emerged under Lancastrian kings – with rapid growth under Henry VI

- Conscience was ultimate court of appeal
- By end of 14th century jurisdiction developed into court known as Court of Chancery
- Informal process in the way evidence was presented
- No jury
- Chancellors role was to inquire merits of case free from rules of evidence of common law
- Earlier periods the jurisdiction was wide and cases administered quickly and with less expense
- Open as source of refuge to the poor who could not get justice
- Less open to corruption or duress
- Lord Chancellor Ellesmere 1615 – Court of Chancery was necessary because 'men's actions are so diverse and infinite that it is impossible to make a general law which may aptly meet with every particular and not fail in some circumstances" and that it should "correct men's consciences…and soften… the extremity of the law"
- Aristotle put the idea forward 2000 years prior
- Aquinas – "law is written down in order to manifest the lawgivers meaning and intention… judgment should be delivered, not according to letter of the law, but by recourse of equity" (1265-74)
- Innovation of English law is that this 'equitable' jurisdiction was exercised in a different court and developed according to a discrete set of principles
- Common law was too rigid and thus the distinction needed to be made