

Class. 1 & 2 Introduction to Equity, Trusts and Equitable Remedies
Introduction to Equity
<ul style="list-style-type: none"> <li>• A body of legal principles separate and distinct from the common law.</li> <li>• Affords justice based on the “equity” of the case where the inflexible application of strict common law rules may lead to an unfair or unjust outcome.</li> <li>• Derives from the jurisdiction of the English Court of Chancery prior to the passage of the Judicature Acts.</li> </ul>
English Court of Chancery
<ul style="list-style-type: none"> <li>• Chancery began as the royal secretariat housed in the king’s chapel.</li> <li>• Originally a department of state where royal writs and charters were drawn and sealed.</li> <li>• Chancellor was head of the department; an officer of the state and minister of the Crown.</li> <li>• Chancellor had control of the great seal of England (used to authenticate documents).</li> <li>• Over time, the Chancellor began dealing with bills of complaint (i.e. a document presenting a case for resolution by the Chancellor) as a ‘clearing house’ – passing the bills on to other courts to be dealt with in accordance with law.</li> <li>• However, some bills began requesting specific remedies from the Chancellor himself (irrespective of whether proceedings were pending at common law).</li> <li>• In response, the Chancellor began issuing process and granting decrees (remedies) in Chancery instead of passing on the bills to other courts, eventually in his own name.</li> <li>• “In making such decrees, medieval councillors or chancellors did not regard themselves as administering a system of law different from the law of England. They were reinforcing the law by making sure that justice was done in cases where shortcomings in the regular procedure, or human failings, were hindering its attainment by due process. They came not to destroy the law, but to fulfil it”.</li> <li>• F W Maitland, <i>Equity</i> (1909), 17 (extract from J H Baker, <i>An Introduction to English Legal History</i>).</li> </ul>
Equity v the Common Law
<p><i>The Earl of Oxford’s Case</i> (1615) 1 Ch Rep 1; 21 ER 485</p> <ul style="list-style-type: none"> <li>• Dispute over sale of land owned by Magdalene College, Cambridge (now part of Covent Garden in London).</li> <li>• Magdalene College claimed that the original sale of the land to Queen Elizabeth I (who then granted the land to a Genoese merchant) was void and that land could instead be leased to Smith (who was later imprisoned for contempt of court).</li> <li>• The merchant brought an action at common law to evict Smith from the land. Coke CJ held that the original sale of the land was deficient and that Smith could not be evicted.</li> <li>• The case was later reopened in Chancery (i.e. before the Lord Chancellor). Smith refused to respond to the claim brought in equity and so was imprisoned for contempt of court.</li> <li>• Lord Ellesmere then granted an injunction in favour of the merchant, to prevent the enforcement of any common law judgment to release Smith from prison.</li> <li>• King James I in Privy Council issued declaration affirming the injunction:</li> </ul>

- **Rule: where common law and equity come into conflict, equity shall prevail.**
- *Judicature Act 1873* (Imp) s 25(11).
  - Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.
- *Law Reform (Law and Equity) Act 1972* (NSW) s 5.
  - 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.

### Maxims of Equity

- Not rules or principles of law, but reflect certain “broad themes” that underlie equitable concepts and principles (see *Corin v Patton* per Mason CJ and McHugh J).
- Overview of general principles on which equity would operate (written in 1726).
- Maxims
  - a) A litigant who seeks equity must do equity.
  - b) A litigant who comes to equity must come with clean hands.
  - c) Equity looks to intent, rather than to form.
  - d) Equity treats as done that which ought to be done.
  - e) Equity acts *in personam*.
  - f) Equity follows the law.
  - g) Equity does not assist a volunteer.
  - h) Equity will not perfect an imperfect gift.
  - i) Delay defeats an equity (*laches*).

### *Corin v Patton* [1990] HCA 12; (1990) 169 CLR 540

- Facts
  - Mr and Mrs Patton were joint registered proprietors of land.
  - Mrs Patton (terminally ill) wanted to give her share of the property to her brother (P).
  - Mrs Patton executed a memorandum of transfer of her interest in the property to P, who was to hold it **on trust** for her until her death.
  - Mrs Patton also executed a will leaving her estate to her children.
  - If the transfer was successful, her share of the property would have formed part of her estate.
  - Mrs Patton did not procure the certificate of title to the land from her bank (an unregistered mortgagee of the property) to enable the transfer to be registered.
  - When Mrs Patton died, P claimed her share of the land.
  - P’s claim was resisted in part because ‘equity does not assist a volunteer’.
- Held
  - the transfer of land to P was *not* complete in equity because Mrs Patton had not done everything within her power to complete the transfer (i.e. procure the certificate of title for registration before she died).
- Mason CJ and McHugh J

- *Equity will not assist a volunteer*: equitable relief is generally only granted to a person who has given provided consideration in a transaction.
- This maxim (together with the maxim that equity does not perfect an imperfect gift) is subject to exceptions and does not enunciate an inflexible or universal rule.
- Precise scope of the maxim is ill-defined and somewhat uncertain; its application did not assist in determining the outcome of this case.