

LAW3111

LAW3111: EQUITY

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SYNOPSIS

Introduction to the nature and function of equity in the modern Australian legal system. Students learn about the relationship between equity and the common law within the broader context of Australia's judge-made private law, and study key doctrines of equity. These include: breach of confidence, fiduciary relationships and the duties to which they give rise, equitable remedies (both personal and proprietary), as well as equity's role in the assignment of rights to property.

UNIT LEARNING OBJECTIVES

1. Articulate and critically analyse the key doctrines of equity, their relationship to common law, their development in Australia, and their theoretical underpinnings, with reference to international and comparative perspectives;
2. Engage in critical analysis and make reasoned and appropriate choices among alternatives;
3. Demonstrate cognitive skill, creativity and professional judgement to research and synthesise relevant legal and practical issues, to interpret and evaluate professional conclusions, and to formulate appropriate responses to complex legal problems;
4. Communicate and collaborate effectively orally and in writing; and
5. Learn and work with autonomy, independence and professionalism, and reflect on and assess their own capabilities and performance.

TOPIC 1: INTRODUCTION

Consideration of what 'equity' is as a body of substantive law. We do so by surveying its institutional origins and development in the English Court of Chancery - the historical English court in which equitable duties were enforced and equitable remedies administered. We then explore equity's special place in modern Australian private law.

- The language in equity is charged with a language of morality - equity operates on a discretionary basis
- Compared to contract/constitutional which are statute disciplined
- Equity operates to fill gaps for deficiencies in the common law - equity operates on the common law, its not a self-standing or independent body of law. Its only there to correct the common law or supplement, fill gaps and deficiencies
- Equity is very sensitive to changing circumstances in our society - changing norms, values issues, has to be flexible and adaptable so that it can respond to any of these deficiencies in the common law

Background

- Operation of equity and its interaction with the common law
- Foundation for remedies
- Common law = derived from the law of the King's bench - laws necessary for the good governance of a country such as laws related to commerce, contracts, criminal, constitutional, torts
- Equity developed in response to the laws of the King's bench - a reaction operated as an exception to the laws created by the King's bench
- Equity is a separate body of law/jurisdiction

Sources of law in Australia

Equity + common law = general law/judge made law as opposed to statute

Equity Definition

- A system of jurisprudence or a book of doctrines and rules developed in England and followed in other common law countries, serving to supplement and remedy the limitations and the inflexibility of the common law.
- Sourcebook - '[E]quity refers to the principles, doctrines and remedies applied by Australian courts exercising the jurisdiction of the English Court of Chancery prior to the enactment of the judicature legislation . . .'
- The Butterworths *Encyclopaedic Australian Legal Dictionary* defines equity as: The **separate body of law**, developed in the **Court of Chancery**, which **supplements, corrects, and controls the rules of common law**.
- **It is a separate area of judge made law**

Common law - meaning depends on the context

- 1) To describe the overall system of law in a country
 - Common law systems vs Civil code systems
- 2) As the body of law made by judges (judge-made law) in contrast to legislation (statutes and regulations)
 - Judicial precedent, stare decisis
- 3) To differentiate between two bodies of judge-made law, being equity and common law.

1.1: Equity as Law

- A Jurisdiction (Forum) for: certain types of claims, certain types of relief
- Relief in a broad/vague sense is said to operate on the conscience or that it operates in personam against the person or defendant - concerned with the idea of correction some injustice on the particular facts and circumstances before it
- That relief will always be addressed or concerned with correcting some insufficiency or deficiency in the common law
- Equity is just concerned with corrective justice - not a standalone, independent jurisdiction, it always has to operate on the common law
- Although equity is judge made and common law in that sense, its a separate jurisdiction
- Common law generally doesn't emanate from the body of law as we know it in equity - technical distinction between equity and the rest of the common law because they are separate
- There is discretion in equity - it doesn't just operate in a vacuum, judges aren't constrained by particular norms or standards/rules that have developed in equity as to the limit of the discretion

What is Equity?

•Equity is a 'supplementary' law , 'a sort of appendix added on to our code.....a gloss which used to be administered by courts, designed especially for that purpose, but which is now administered by the High Court of Justice as part of the Code (Maitland, *The Origin of Equity*)

Equity is a separate body of law, developed in the courts of Chancery which aims to:

- Supplement
- Correct and
- Control the rules of the common law rules

(Butterworths Encyclopaedic Australian Legal Dictionary)