

LLB205
TABLE OF CONTENTS

WEEK 1	1
WEEK 2	12
WEEK 3	22
WEEK 4	29
WEEK 5	32
WEEK 6	49
WEEK 7	64
WEEK 8	73
WEEK 9	83
WEEK 10	91
WEEK 11	98
WEEK 12	111

WEEK 1 - INTRODUCTION TO EQUITY AND TRUSTS

The Nature and History of Equity and Trusts - The Maxims of Equity

What is Equity?

Equity is the body of law developed and administered by the Court of Chancery to supplement the common law equity presupposes the existence of the common law = equity is a “gloss on the common law”

Nature of equity

A body of law founded on principles of fairness, justice and conscience

Prevention of unconscionable conduct = act or omission contrary to good conscience

Response to injustices produced by strict application of common law

Jurisdiction = ‘Fraud, accident and things of confidence’

Equitable remedies = flexible, aim to do justice in circumstances of a particular case; discretionary (not as of right)

History of Equity: Why was Equity Needed?

During the Medieval period, three courts existed to administer the common law:

- Kings Bench
- Common Bench
- Exchequer

Common law: where there’s a writ there’s a remedy but a different form of writ was needed for each form of action highly technical and affected how actions were pleaded, the mode of trial and form of relief provided - This rigidity led to harsh and unjust decisions.

Development of the Chancery

- Common law was applied strictly which led to petitions to the King from dissatisfied litigants seeking leniency
- 14th Century - King delegated to the Lord Chancellor
- This led to the development of a separate court (Court of Chancery) in 1340

Equity needed to supplement common law where:

- Common law remedy (damages) was inadequate
- Unconscionable for plaintiff to enforce their strict legal rights at common law
- No action was available at common law
- Common law lacked jurisdiction

Who were the Chancellors?

- First chancellors were Ecclesiastics/Bishops
- Early decisions framed according to Canon Law (church law) decisions guided by conscience, fairness, morality, justice etc, with no clear doctrinal foundations
- No formal legal training
- Moderating and humane approach to the common law
- Not bound by precedent
- Equity given “varied according to the length of the Chancellor’s foot”

But then...the character of the Court changed

1529 – Sir Thomas Moore (a lawyer) was appointed as Chancellor all future Chancellors were lawyers – this led to precedent; law reports, equitable doctrines, maxims + conflict between common law and equity

Conflict between Common Law and Equity

Both courts sought supremacy over each other

Examples of conflict:

1. The Use
2. The Common Injunction

The use

Enabled one person to hold the legal title to land for the “use” of another

To “A” for the use of “B”: resulting in two owners of land

Most significant part of Chancery’s jurisdiction in 15th Century a device by which those who could not own property legally (eg married women, monks) could retain benefit of their property and allow for avoidance of feudal dues

Statute of Uses (1535)

Passed by Henry VIII to regain revenue lost to the Crown “executed” the Use

Beneficial owner “B” regarded as the legal owner and therefore liable for feudal dues

THEN...equity lawyers created the “Double Use” (use upon a use): To “A” to the use of “B” to the use of “C”

Statute never abolished the double use = modern trust survived

The Common Injunction

Common injunction: used by the Chancery to prevent unconscionable conduct and challenged the authority of the common law courts

- Equitable relief – order restraining plaintiff from continuing a common law action (ie must discontinue) or enforcing common law judgment penalty for disobedience = prison (in personam)

The common law response to equity’s common injunction = Sir Edward Coke issued writ of habeus corpus which effectively released people imprisoned for contempt of Chancery decrees and nullified the effect of the common injunction

Earl of Oxford’s case (1615) resolved the conflict between equity and the common law:

- CL = Coke CJ gave judgment in common law action alleged to have been obtained by fraud
- Equity = Lord Chancellor, Lord Ellesmore issued a common injunction to prevent the enforcement of the common law judgment

Attorney General, Sir Francis Bacon upheld use of common injunction: whenever conflict between law and equity, equity prevails.

The Fusion Fallacy

Judicature Act fused the administration / procedure only

- It did not fuse the bodies of common law and equity so that causes of action and remedies could be mixed in new ways
- Judicature Act s 25(11) contemplated the continued existence of separate bodies of common law and equity

The fusion fallacy theory that with the fusion of the administration of equity and common law by the Judicature Act, common law and equitable actions and remedies also fused.

Examples of the fallacy:

- Seager v Copydex [1967] 2 All ER 415 where common law damages awarded for breach of confidence (equitable obligation)
- Harris v Digital Pulse Pty Ltd (2003) 56 NSWLR 298 > majority of Court of Appeal held no power to award exemplary damages (common law) for breach of fiduciary duty (equitable obligation), but Mason P dissented: “this fusion fallacy concept is itself fallacious and historically unsound” (at [136])

Maxims of Equity

- General guidelines in applying equitable principles
 - Not specific rules or principles of law
 - Do not give rise to causes of action
1. Equity will not suffer a wrong without a remedy
 2. Equity follows the law
 3. Where the equities are equal the first in time prevails
 4. * A person who seeks equity must do equity
 5. * A person who comes to equity must come with clean hands
 6. * Equity assists the diligent and not the tardy
 7. Equity is equality
 8. Equity looks to the intent rather than the form
 9. Equity regards that as done that which ought to be done
 10. Equity imputes an obligation to fulfil an obligation
 11. * Equity will not assist a volunteer
 12. * Equity acts in personam (cf. Proprietary rights in equity)