

## **MLP405 NOTES**

### **Week 1 – History and Nature of Equity**

#### **What is equity**

A concept of fairness

Latin reference to balance

Body of law that emerged within the Chancery jurisdiction

Discretionary principles

Remedies to support excl actions

Maxims to regulate implementation

Focuses on substance over form

Needed in every rational legal system to address the defects of a universal law – aristotle

Equity supplements common law

Essential nature is a rectification of law where the law is defective b/c its generality

Equity has a discretionary operation: it operates to meet the demands of individual circumstances and does not abide by generalised, formal doctrine.

In operating as a form of corrective justice, equity gives effect to the spirit and intent of the law. Equity ensures that the written word of the law is construed according to reason and spirit rather than according to the precise interpretation and limitation of the word

In its function as a corrective jurisdiction, equity interprets the law according to substance rather than form. Consideration is given to the underlying intent of the law rather than its strict form.

Most equitable principles are concerned with prescribing standards of conduct; these standards are based upon the basic precepts of good faith, honesty and generosity. Whether consideration is being given to a behavioural, relational or proprietary matter, equity imposes broad-based standards, which form the foundation for an examination of the circumstances in issue.

Core concept is unconscionability, which is the modern derivation of the doctrine of equitable fraud

- The bell group (in liq) v Westpac banking corp (no 9) → fraud is abhorrent to the good conscience on which the principles of equity are based

#### **Five stages of equity**

1. Intro of CL theory of binding precedents and resulting case law equity
2. As a legitimate consequence, the crystallisation of equity culminating under Lord Eldon
3. Adoption of equitable actions and equitable defences in the CL
4. The conjunction of legal and equitable juris in the same courts. This has happened all across CL juris and

5. Abolition of the distinction b/w law and equity in procedure and the resulting power of courts to administer both or either in the same action

### Aristotle

- Equity is a species of justice which is superior to legal justice b/c its function as a rectification of the law
- Equity is superior to the universal form of justice b/c it can cater for the individual
- Equity is not better than absolute justice but better than error that arises from the absoluteness of that statement

### Equitable maxims: a selection

1. Equity follows the law → supplements, not overrules
2. Equity is equality → tries to balance out transactions in the form of relief granted
3. Equity does not suffer a wrong w/o a remedy → where there is a wrong, there is a remedy (ubi jus, ibi remedium)
4. Equity regards substance rather than form
5. Where equities are equal the first in time will prevail (qui prior est tempore potior est jure)
6. Equity assists only those w cleans hands
7. Equity deems to be done which ought to be done
8. Relief in equity is discretionary – personal and damages must be inadequate

### Equitable maxims: application

| CASE           | INFO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Riggs v Palmer | <ul style="list-style-type: none"> <li>• A grandson was the beneficiary under his grandfathers will</li> <li>• The grandson murdered the grandfather</li> <li>• At the time statutes reg the making, proof and effect of wills and development and devolution of property under wills made no exception in the case of a beneficiary who killed the testator to gain the bequest</li> <li>• Under the clear and unambiguous terms of the law, the grandson was entitled to benefit under the will</li> <li>• To avoid the incongruous result the court said – such a construction ought to be put upon a statute as will best answer the intention which the makers had in view for qui hoeret in litera, hoeret in cortice (he who adheres to the ltter adheres to the bark)</li> <li>• If you stick to the literal meaning of the law, you will not be able to reach the substance</li> </ul> |

### Distrust of equity

Uncertain concepts

Strong influence of religious principles in the evolution of equity

Fear of religious absolutism

Exploitation of discretion – uncertainty re scope of remedy can generate commercial difficulties

Fact based analysis

### Scope of equity

| CASE                          | INFO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| Bofinger v Kingsway group ltd | <ul style="list-style-type: none"> <li>Equity has been said to lack the necessary exacting taxonomic mentality when providing an appropriate remedy for unconscientious activity</li> <li>Better view is said to be that liability in unjust enrichment is strict, subj to particular defences while the unreliability of conscience offends the precept that like cases must be decided alike and not by a private and intuitive evaluation</li> <li>The exp of the law does not suggest debilitation by absence of sufficiently rigid taxonomy in the application of equitable doctrines and remedies</li> </ul> |

### **Equity – excl juris**

Principles only recognised by equity and t/f only supported by equitable remedies

CL remedies not available

e.g., breach of confidence – CL damages not available but equitable compensation is available

### **equity – concurrent jurisdiction**

The concurrent jurisdiction will apply to situations where both equity and the common law recognise the unfairness and are prepared to apply relief.

equity concurrently recognises that a remedy should be available but will only provide it where it can be est that the CL relief which is concurrently available is inadequate on the facts

### **equity – auxiliary juris**

equitable principles which support the bringing of a legal action

e.g., doctrine of discovery of docs which originated in equity

in this juris, equity acts as an aide

### **historical evolution**

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| Medieval period             | <ul style="list-style-type: none"> <li>Inflexible procedures surrounding CL writs – form of action prescribed every aspect of the case</li> <li>If an action did not correspond CL not available and an applicant would petition to the king for divine justice</li> <li>These petitions first dealt w by Kings council but during 14<sup>th</sup> century a practice developed of delegating the matters to the chancellor</li> <li>The chancellor was the keeper of the great seal and head of chancery</li> <li>Usually at this point, the chancellor was also a bishop or archbishop and knew canon law</li> <li>First chancellor not exercising a judicial function but rather an exec function</li> <li>Chancellor could use his power to develop special writs</li> </ul> |
| 15-17 <sup>th</sup> century | <ul style="list-style-type: none"> <li>Equitable principles started to emerge and clash w CL</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

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|                     | <p><b>Earl of oxfords cast (1615)</b> → est that Chancery could set aside judgements at CL where they were against conscience and affirmed that equity prevails in conflict</p> <ul style="list-style-type: none"> <li>• Lord Ellesmere: ‘The office of Chancellor is to correct men’s consciences for frauds, breach of trusts, wrongs and oppressions, of what nature soever they be, and to soften and mollify the extremity of the law....’</li> <li>• Was a land transaction in Covent garden in London where specific rules existed for the transfer of parcels of land</li> <li>• Ignoring the rule, master of magdalene college in Cambridge sold land to queen elizabeth I, the queen then granted land to benedict Spinola, a Genoese merchant who sold the land to the earl of oxford who built 130 houses</li> <li>• All parties believed the involvement of the queen negated the need to follow stat provisions on transfers of land from colleges</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Judicature act (UK) | <p><b>Overview:</b></p> <ul style="list-style-type: none"> <li>• Act intro a new ct w legal and equitable juris</li> <li>• Act intro a single consistent method of procedure</li> <li>• Act intro concurrent juris over law and equity in all divs</li> <li>• Act set out that equity would prevail over CL whenever there was a conflict</li> <li>• Act abolished the common injunction and replaced it w a new juris giving the ct the right to grant an injunction in all cases where the ct felt it be just and convenient</li> <li>• Features of the judicature system <ul style="list-style-type: none"> <li>○ All branches of the court had the power to administer equitable remedies</li> <li>○ Equitable defences can be pleaded in all branches of the court</li> <li>○ Equitable rights, title and interests can be recognised in all branches of the court</li> <li>○ Common injunction is abolished</li> <li>○ Where the rules of equity and rules of CL conflict the rules of equity shall prevail</li> </ul> </li> <li>• Concurrent juris (s 25(11)) – s 29 sup ct act (vic) → procedural prov allowing for dual jurisdiction in a single court</li> <li>• Conflict or variance provision (s 25(11) JA – s 29(1) sup ct act) → unusual provision giving equity precedence in a conflict. Conflict should h/w be rare given that equity supports the law</li> <li>• Abolition of common injunction (s 25 JA – s 37 sup ct act) → injunction may now be granted wherever just and convenient</li> </ul> <p><b>Fusion fallacies</b><br/>Despite the procedural focus of JA cases have misinterpreted it</p> <p>Walsh v Lonsdale</p> <ul style="list-style-type: none"> <li>• Written lease – not executed by deed – for seven years. Ineffective at law. Prior to J.Act – court would have issued specific performance by ordering landlord to execute a lease.</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• Post J. Act – Sir George Jessel said a tenant holding under an agreement to grant a lease of which specific performance would have been decreed, stood in the same position as if it had been decreed:</li> <li>• ‘...since the J.Act the possession is held under the agreement. There are not two estates as there were formerly, one estate at common law by reason of the payment of the rent from year to year, and an estate in equity under the agreement. There is only one Court and equity rules prevail in it.’</li> </ul> <p>Redgrave v Hurd</p> <ul style="list-style-type: none"> <li>• Sir George Jessell held that common law damages could be awarded for innocent misrepresentation (a purely equitable action) because the difference between law and equity no longer existed since the passing of the J.Act.</li> </ul> <p>Seager v Copydex &amp; Aquaculture corporation v NZ Green Mussel Co</p> <ul style="list-style-type: none"> <li>• Damages awarded for breach of confidence (purely equitable action).</li> <li>• ‘For all purposes now material, equity and common law are mingled or merged. The practicality of the matter is that in the circumstances of the dealings between the parties the law imposes a duty of confidence. For its breach a full range of remedies should be available or appropriate, no matter whether they originated in common law, equity or statute’</li> </ul> <p><b>Legitimate fusion</b></p> <p>Since the intro of JA it is reasonable to expect greater interaction</p> <p>Harris v Digital Pulse</p> <ul style="list-style-type: none"> <li>• Trial judge awarded punitive damages for breach of fiduciary obligations</li> <li>• Wrongful and reprehensible conduct calls for the manifest disapprobation of the community</li> <li>• Ct of appeal rejected this</li> <li>• Spigelman CJ and Heydon J: Punitive damages not available. No past decisions have awarded them and no equivalent notion of punishment under the equity jurisdiction.</li> <li>• High rate of interest and account of profits for breach of fiduciary duty is equivalent</li> <li>• Breach of f.duty akin to breach of contract and punitive damages not available in that context.</li> <li>• Heydon JA expressly noted that it was not ‘irrational to maintain the existence of different remedies for different causes of action having different threshold requirements and different purposes. The resulting differences are not necessarily anomalous.’</li> </ul> <p>Equity and punitive damages</p> <ul style="list-style-type: none"> <li>• “[e]quity and penalty are strangers....Punishment through monetary awards or otherwise is contrary to the basis and purpose of equity</li> </ul> |
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