

Contents

History and Nature of Equity	2
Unconscionable dealings/ Undue Influence	4
Estoppel	9
Doctrine of Part Performance	16
Fiduciary Obligations.....	18
Liability for Third Parties for Breach of Fiduciary Duty or Trust	23
Equitable Estates and Interests	26
Assignment of Property	28
Express Trusts	35
Charitable Trusts	41
Resulting Trusts.....	48
Constructive Trusts	53

History and Nature of Equity

- Jurisdiction of equity a body of law established by early English law → corrected, supplemented and amended the strict common law and writs.
Therefore, equity more flexible, softer, cheaper, more efficient but still principled approach
Purpose= intervene when common law deficient
- Court of Chancery- equity court. Developed to counter injustices of common law courts as well as to be more efficient, less expensive.

History:

- Medieval Period: Initially no friction between equity and common law eg Lord Chancellor was both head of equity and common law positions.
Sometimes ecclesiastic Chancellors influenced equity which where got its ad hoc arbitrary jurisdiction reputation- administration of justice according to religious and natural law concepts.
Later on legally trained people became more influential in equity and applied more coherent principles based on precedent
- Formative Period: cracks between equity and common law occurred until 1529 when Henry VIII appointed Thomas Moore as Chncellor- subsequently all Chancellors were always legally trained.
Common law judges felt being undermined by equity because common law court couldn't look at equitable cases, defences or remedies. If it came up in proceedings had to be stayed and parties take it to equity court then go back to common law court → resulted in unnecessary delays and inefficiencies.
Earl of Oxford's Case (1615): common law and equity judges confronted. Litigant successful in common law but couldn't enforce because other litigant got equitable injunction against it. Lord Ellesmere (equity) intervened not because common law judge was wrong but because were other elements of unconscionability that disentitled him from common law remedies.
James I established supremacy of equity over common law to fix the tension highlighted in *Earl of Oxford's case* and reaffirmed afterwards.
- Systemization Period: established clearer principled approach to equity basis modern equity

Judicature System:

- All courts brought into single unitary hierarchy with divisions (eg criminal and exchequer)
- Brought common law and equity courts together so could deal with both jurisdictions in a single case without having move courts- means judges trained in both areas.
- Issue: What was the true effect of Judicature Reforms? Was it a) administrative fusion only OR b) substantive fusion of principles (answer leans more towards a) although

there are those that argue substantive fusion should take place)

a) Administrative running fused two courts to one- that's it. Windeyer J: 2 streams of water not mingled.

b) Argue did mingle 2 courts but reforms did not intend this so people disagree with it
Fusion fallacy: mistake to think have something new (remedies) that didn't exist before the Reforms. Just have new procedure.

- Practical changes:

All disputes went through single court and then given to correct division

All judges empowered to use equity

Also s 25(ii) equity prevail (reaffirmed in statute)

Case Note:

Harris v Digital Pulse (2003) 56 NSWLR 298: Facts- There was an express term in employment contract- employee will not compete with employer during course of employment. Employee secretly worked to benefit his own business in competition with employer. Judgments- Spiegelman J: fusion fallacy- conceptually distinct courts, may influence each other but that's it. Punitive monetary damages incompatible with fiduciary obligation in equity. Heydon JA: equity abhors penalty where penalty arises under contract, equity seeks to relieve it, even people who have breached the contract. Compensation is the aim of equity. Mason P: fusion fallacy- error in legal reasoning. Both jurisdictions could adopt and adapt each other before Judicature Acts. Fusion independent of the Acts which neither authorises nor prohibits fusion. Held- Majority stated- no power in equity to make punitive awards for breach of fiduciary duty which arises in contract. Mason P dissenting judgment.

Unconscionable dealings/ Undue Influence

- Equity recognises that equal bargaining power may not exist and will set aside transaction where it is shown that the relationship was tainted by inequality, unfairness or actual abuse.

Undue Influence

- Narrow doctrine, focus- nature of relationship → Q if nature impaired quality of consent given by dependent party
- Purpose= protect people from being forced, tricked or misled in any way by others into parting with their property: *Allcard v Skinner* at 182-3.
- *Barton v Armstrong*: mere influence (advice, persuasion, inducement, representation, commercial pressure) not enough, must be undue (fraud, abuse of relation of confidence, duress, coercion).

→ Categories: (*Allcard v Skinner*)

- o Actual Undue influence:
 - No special relationship between parties
 - Nature and extent of influence must be established
 - Actual undue influence was exerted by other party and resulted in the transaction- based on facts of the situation (*Barclays Bank v O'Brien*)
 - Onus on party exerting influence to rebut once u/f est
 - *Frederick v State of South Australia* (2006): F- SA magistrate, who recently convicted of 2 criminal offences, resigned from position during meeting with Chief Magistrate. Criminal convictions set-aside and magistrate argued resignation was ineffective on basis that procured by exertion of actual u/f by CM. Supreme Court held- magistrate not in position to be victim of actual u/f due to long career as lawyer. White J- may have been reluctant but no evidence that mind was overborne.
- o Presumed Undue Influence: *Johnson v Buttress*
 - Special relationship exists whether already est or not. 2 classes est in *Barclays Bank v O'Brien*
 - Class 2A: Courts have repeatedly recognised as being special class where presumed any transaction favouring stronger party brought about by undue exercise of party's influence. Benefit must flow from stronger → weaker party.
 - Parent-child: *Lancashire Loans v Black*. (While relationship more mutual than the others no child-parent exists due to traditional view of parental authority but also natural for parents to bestow gifts to children to assist them in life: *Wilby v St George Bank*)
 - Guardian-ward: *Hylton v Hylton*
 - Solicitor-client: *Westmelton v Archer & Shulman*
 - Doctor-patient: *Bar-Mordecai v Hillston*
 - Spiritual Advisor- worshipper: *Allcard v Skinner*; *McCullogh v Fern*; *Hartigan v International Society for Krishna Consciousness* (no single