

EQUITY AND TRUSTS NOTES

Introduction

- ☒ 'Equity' = from English High Court of Chancery
- ☒ HC of Chancery dealt with petitions addressed to the King based on oppression/injustice --> intervened with injunctions to prevent obnoxious claims or judgements
- ☒ Equity refers to body of cases, principles, maxims, remedies etc. which derive from the jurisdiction of the Court of Chancery
- ☒ Key pillar of Aus legal system (Bankstown City Council v Alameda) BUT not law in same sense as statute or common law = set of principles

☒ Nature of Equity - Lord Cowper in *Dudley v Dudley* (1705):

☒ "... equity ... qualifies, moderates and reforms the rigour, harshness and edge of the law. [T]he office of equity [is] to support and protect the common law from shifts and crafty contrivances against the justice and the law. Equity therefore does not destroy the law, nor create it, but assists it."

☒ PL Loughlan:

☒ Key principles of equity established historically =

1. Equity **supplements** a 'common law' that is inadequate to deal justly with a claim
2. Aristotle = equity is 'a reification of law where the law falls short by reason of its universality' --> generality of common law is a problem as its not moulded to fit particular circumstances of each case
3. Equity focuses on flexibility and good conscience as opposed to common law' rigid enforcement of legal rights

☒ While in Eng equity and common law were largely administered separately - in Aus = never 2 sets of courts but distinct jurisdictions in colonies

☒ History of Equity:

☒ Equity operates in 2 jurisdictions =

1. Concurrent jurisdiction --> Chancery entertained cases that could have proceeded in a common law court = The inherent, original, exclusive jurisdiction which administers such matters as (inter alia) trusts, fiduciary relationships and deceased estates
2. Auxiliary jurisdiction --> Chancery granted relief against breach of rights not protected by concurrent = provides remedies not available at common law, such as specific performance, injunctions, rescission, and rectification [conscience of the law]

☒ History of equity divided generally into 3 stages:

1. Medieval Period
2. Formative Period
3. Period of Systemisation

1. Medieval Period:

☒ 1066 = England conquered by Duke from Normandy (William the Conqueror)

☒ Henry II = King who started organising legal system --> organised into Criminal law and Civil law then imposed hierarchy of courts (highest [only for civil] = Court of Common Pleas --> Sizes [crim and civ] --> Petty sessions [crim and civ])

- ☒ Right hand man of King Henry II was Thomas Beckett (murdered in Canterbury Cathedral) = called Henry II's Chancellor
- ☒ Lord Chancellor of England (almost always an ecclesiastic - generally Archbishop of Canterbury) held a number of powerful positions = Head of King's privy council, Head of Chancery, Keeper of the Great Seal (controlled process of issuing common law writs - based on issue of writs for bringing an action to court), head of treasury
- ☒ **Chancellor also dealt with matters that couldn't be dealt with under common law** (e.g. property of widows and orphans, guardianship of minors and those unable to look after own affairs + administration of uses --> call them TRUSTS today) = matters were administered in equity's inherent, original, exclusive jurisdiction
- ☒ TRUST = arrangement where one person (trustee) holds legal title to property for the benefit of another (beneficiary) --> common law did not (and still doesn't) recognise the beneficiary's interest in the property
- ☒ Chancellor determined who the trustee would be
- ☒ Lord Chancellor also dealt with variety of petitions addressed to the king --> often requesting the issue of a common law writ or a remedy for a grievance where the common law was unable to provide a just and fair solution [= as no court of appeals] --> Chancellor would apply Christian principles to appeals (as an ecclesiastic)
- ☒ Provision of Chancery of a solution that could not be reached at common law became the auxiliary jurisdiction of equity (damages not always appropriate, sometimes need something else that you can't get at common law)
- ☒ Eventually Court of Chancery created (original jurisdiction)
- ☒ Character and personality of Lord Chancellor had great impact on justice administered (especially as not trained lawyer)

2. Formative Period:

- ☒ Separation between common law and equity (materialised during 14thC at end of medieval period) developed further
- ☒ Significant event in 1529 when Henry VIII appointed Sir Thomas Moore as Chancellor = IMPORTANT because from this time trained lawyers were appointed to the office of Chancellor (not ecclesiastics)
- ☒ Principled development of equitable doctrine occurred in 1557 when first reports of Chancery proceedings published --> contributes to following precedent and systemisation of equity
- ☒ Earl of Oxford's Case in Chancery (1615):
- ☒ **Facts:** a plaintiff obtained a judgment from a common law court in his favour. The defendant filed a plea (appeal) to equity. The appeal was upheld and the original plaintiff was prohibited by the Lord Chancellor from executing that judgment
- ☒ Lord Ellesmere =
 - a. Impossible to make a general law to suit all diverse actions of men
 - b. Office of Chancellor is to correct men's consciences
 - c. Law + Equity = distinct but both aim to do Right
 - d. When a judgement obtained by oppression/wrong, chancellor will frustrate it for the fact that it is wrong NOT for an error in the judgement (application of law) [... when a Judgment is obtained by Oppression, Wrong and a hard Conscience, the Chancellor will frustrate and set it aside, **not for any error or Defect in Judgment**, but for the **hard Conscience** of the party..." (HL, 4)]
- ☒ Lord Chief Justice Sir Edward Coke retaliated against this
- ☒ James I Royal decree = established supremacy of equity over common law

3. Systemisation:

- ☒ Marked by the development of classification of rules and principles found in equity today