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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BAL 506

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Lecture-8





LECTURE-8

“Equity is not past the age of child bearing” (per Lord Denning MR, *Eves v Eves* [1975] 1 WLR 1338, CA):

When equity originally developed as a gloss on the common law it was innovative; it developed new remedies and recognised new rights where the common law failed to act. The efficacy of equity was largely due to its ability to adapt and innovate, yet inevitably, this development itself became regulated in a similar way to the development of the common law. There are maxims of equity which may determine the outcome of disputes. Although the judge has a discretion in the granting of an equitable remedy, that discretion is exercised according to settled principles. Thus, it

might be said that equity can develop no further; the rules of precedent predetermine the outcome.

Yet, this is belied by a number of new developments in equity, for example, the recognition of restrictive covenants, the expansion of remedies, the development of doctrines such as proprietary estoppel, the enhanced status of contractual licences and, as referred to in the quotation from the judgment of Lord Denning MR, the new model constructive trust, are all illustrations of developments in equity. There is an attempt, however, to justify these new developments, which are all examples of judicial creativity, by precedent.

As Bagnall J said in **Cowcher v Cowcher** [1972] 1 WLR 425 at p. 430: ‘This does not mean that equity is past childbearing; simply that its progeny must be legitimate—by precedent out of principle. It is well that this should be so; otherwise no lawyer could safely advise on his client’s title and every quarrel would lead to a law-suit’.

Equity developed the remedies of the injunction, specific performance, account, rectification, and rescission. The injunction has been a growth area. The search order (developed in the case *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55), reflects the growth of new technology and the need to protect ownership rights in that property. Intellectual property such as video and audio tapes and computer programs can easily be destroyed before an action for breach of copyright can be brought.

Confidential information relating to industrial processes can disappear leaving a claimant with no means of proof. The search order developed to allow a claimant to enter a defendant's premises to search for and seize such property where there was a clear risk that such property would be destroyed before trial. As an area of equitable creativity, it is still being refined by the judges, with cases such as **Columbia Picture Industries Inc. v Robinson** [1986] 3 All ER 338 and *Universal Thermosensors Ltd v Hibben* [1992] 1 WLR 840

laying down guidelines for the exercise of such a Draconian order.

The freezing injunction is another example of a refined application of an established remedy developed in the case of **Mareva Compañía Naviera SA v International Bulk Carriers SA** [1975] 2 Lloyd's Rep 509 following *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093. While a claim may succeed, if it is impossible to enforce a judgment because there are no assets, then the judgment is worthless.

In international disputes, assets may be transferred abroad to make the judgment debt impossible, or at least, very difficult, to follow. Recognising this dilemma, the judges in the *Mareva* case were prepared to grant an order freezing the defendant's assets. Further cases have demonstrated that the courts are prepared to make this order available worldwide in certain circumstances (see, for example, **Masri v Consolidated Contractors International (UK) Ltd (No 2)** [2008] EWCA Civ 303; *Dadourian Group International Inc v Simms* [2006] EWCA Civ 399; *Derby & Co. Ltd v Weldon (No. 3*

and No. 4) (1989) 139 NLJ 11; Republic of Haiti v Duvalier [1990] 1 QB 202 and see Civil Procedure Rule r. 25.1(1)(f)).

Equity initially recognised the trust. This was one of the original developments of equity. However, the protection granted to equitable owners behind a trust has developed significantly over the last 30 years with the new model constructive trust, the contractual licence and the doctrine of proprietary estoppel. **(to be continued)**

MCQs

1. **'This does not mean that equity is past childbearing; simply that its progeny must be legitimate—by precedent out of principle.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
2. **The search order (developed in the case Anton Piller KG v Manufacturing Processes Ltd [1976] Ch 55), reflects the growth of new technology and the need to protect ownership rights in that property.**
 - i. True
 - ii. False

- iii. Cannot say
 - iv. None of these
- 3. Equity developed the remedies of the injunction, specific performance, account, rectification, and rescission.**
- i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 4. Equity initially recognised the trust.**
- i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 5. The freezing injunction is another example of a refined application of an established remedy developed in the case of Mareva Compañía Naviera SA v International Bulk Carriers SA [1975] 2 Lloyd's Rep 509.**
- i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
