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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BBALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BBL 506**

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# Lecture-3





## **THE NATURE OF EQUITY:**

### **1. Philosophical ideas of equity:**

The following ideas come from Aristotle's Ethics, and could be understood as considering the difference between common law and equity:

“For equity, though superior to justice, is still just ... justice and equity coincide, and although both are good, equity is superior. What causes the difficulty is the fact that equity is just, but not what is legally just: it is a rectification of legal justice.”

So it is that equity may provide for a better form of justice than the common law because it provides for a more specific judgment as to right and wrong in individual cases which rectifies any errors of fairness which the common law would otherwise have made:

“The explanation of this is that all law is universal,

and there are some things about which it is not possible to pronounce rightly in general terms; therefore in cases where it is necessary to make a general pronouncement, but impossible to do so rightly, the law takes account of the majority of cases, though not unaware that in this way errors are made.

... So when the law states a general rule, and a case arises under this that is exceptional, then it is right, where the legislator owing to the generality of his language has erred in not covering that case, to correct the omission by a ruling such as the legislator himself would have given if he had been present there, and as he would have enacted if he had been aware of the circumstances.”

Thus, equity exists to rectify what would otherwise be errors in the application of the common law to factual situations in which the judges who developed common law principles or the legislators who passed statutes could not have intended.

## **2. Early case law on the role of equity:**

*Earl of Oxford's Case* (1615) 1 Ch Rep 1, per Lord Ellesmere:

“the office of the Chancellor is to correct men’s consciences for frauds, breach of trusts, wrongs and oppressions ... and to soften and mollify the extremity of the law”

***Lord Dudley v Lady Dudley*** (1705) Prec Ch 241, 244, per Lord Cowper:

“Now equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness, and edge of the law, and is an universal truth; it does also assist the law where it is defective and weak in the constitution (which is the life of the law) and defends the law from crafty evasions, delusions, and new subtleties, invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless: and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of the law. Equity therefore does not destroy the law, nor create it, but assist it.”

### **3. The fusion of common law and equity:**

The conflicting approaches of various judges: e.g. Lord Nottingham and Lord Mansfield.

Judicature Act 1873, its effect on equity

#### 4. The structure of English private law:

Common law and equity were always distinct: the courts of common law were in Westminster Hall at one time, the courts of equity were in Lincoln's Inn Hall.

For a good illustration of the difficulties caused by this distinction see Charles Dickens's *Bleak House* and the course of the fictional *Jarndyce v Jarndyce* litigation which keeps people in poverty for many years before wasting the testator's fortune on legal fees.

Judicature Act 1873 merged the two streams of courts, however the intellectual distinction between common law and equity remains very important.

#### **Common law**

*Examples of claims:*

Breach of contract

Negligence

Fraud

#### **Equity**

Breach of trust

Tracing property

Claiming property on insolvency

*Examples of remedies available:*

Damages

Common law tracing

Compensation

Equitable tracing

Money had and received

Specific performance

Injunction

Rescission

Rectification

Imposition of constructive

trust

Imposition of resulting trust

Subrogation

Account, etc.

## MCQs

1. ***Earl of Oxford's Case* was decided by-**
  - i. Lord Ellesmere
  - ii. Lord Baltimore
  - iii. Lord Chelmsford
  - iv. Lord Halper
  
2. **“Now equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness, and edge of the law, …………….” Who said it?**
  - i. Lord Ellesmere
  - ii. Lord Baltimore
  - iii. Lord Chelmsford
  - iv. Lord Cowper

**3. Judicature Act 1873 merged the two streams of courts, however the intellectual distinction between common law and equity remains very important.-**

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

**4. Equity therefore does not destroy the law, nor create it, but assist it.”**

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

**5. For a good illustration of the difficulties caused by this distinction see Charles Dickens’s Bleak House and the course of the fictional Jarndyce v Jarndyce litigation which keeps people in poverty for many years before wasting the testator’s fortune on legal fees.**

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

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