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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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Lecture-4





LECTURE 4

AN INTRODUCTION TO THE JUDICATURE ACTS:

The **Judicature Acts** are a series of Acts of Parliament, beginning in the 1870s, which aimed to fuse the hitherto split system of courts in England and Wales. The first two Acts were the Supreme Court of Judicature Act 1873 (36 & 37 Vict c. 66) and the Supreme Court of Judicature Act 1875 (38 & 39 Vict c. 77), with a further series of amending acts (12 in all by 1899).

By the Act of 1873 (ss. 3, 4), the Court of Chancery, the Court of Queen's Bench (known as the King's Bench when there is a male Sovereign), the Court of Common Pleas, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court of Divorce and Matrimonial Causes were consolidated into the Supreme

Court of Judicature, subdivided into two courts: the "High Court of Justice" ("High Court"), with (broadly speaking) original jurisdiction, and the "Court of Appeal". Besides this restructuring, the objects of the act were threefold:

- to combine the historically separate courts of common law and equity;
- to establish for all divisions of the new Supreme Court a uniform system of pleading and procedure; and
- to provide for the enforcement of the same rule of law in those cases where equity and common law recognised different rules.

The enactment was bold and revolutionary. By one section, the Queen's Bench, the Common Pleas (in which only serjeants formerly had the right of audience), and the Exchequer, and all their jurisdiction, whether criminal, legal, or equitable, were vested in the new court.

The fusion of the systems of law and equity was not complete, however, as the Chancery (equity) division retained a distinct existence within the new court from the Queen's Bench (common law) division, having a certain range of legal questions under its exclusive control, and possessing to a certain extent a peculiar machinery of its own for carrying its decrees into execution. Nevertheless, all actions could now for the first time be initiated in a single High Court,

and (subject to such special assignments of business as mentioned) could be tried in any of its divisions.

The meaning of common law:

- After unifying England and, judges from London travelled around the country to administer common law, rather than leaving it to local courts who had variations in the rules. This produced a higher quality of law, more justice through circuit court.
- What was administered by QB as opposed to Chancery. Both judge-made law, today decided by the same judge.
- Judge-made law (common law + equity) as opposed to enacted law made by Parliament.
- When dealing with inter-jurisdictional disputes, common law system = primarily judge made with overlay of statutes; civil law system = based on civil code and influenced by Roman Law, e.g. Germany, France, Mexico, Quebec, Japan.

Common law can do two things for C when they make a judgment against D:

- 1) Order to pay you money, e.g. damages, pay debts
- 2) Order for possession of something e.g. land, goods

Equity is important today mainly because of the large range of attractive remedies available.

Many people view equity as a supplement to common law. Common law does all the basic work to protect fundamental values. However, equity later developed its own substantive rights. Breach of confidence is a free standing equitable right. Equitable maxim: come with clean hands, cannot have bad behaviour yourself. It would inform the way the discretion is exercised, which is different from common law.

Equity generally tries not to conflict with common law, and respects common law decisions. Ex: A is entitled to possession at law, B is entitled to possession in equity. Equity does not overturn common law. A is still entitled to possession at law but is compelled by equity to use that legal right of possession for B's interests and benefit.

MCQs

1. The **Judicature Acts** are a series of Acts of Parliament, beginning in the 1870s
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

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. **Breach of confidence is a free standing equitable right.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

4. **Judge-made law is common law + equity.**
 - i. True
 - ii. False

- iii. Cannot say
- iv. None of these

5. Equity generally tries not to conflict with common law, and respects common law decisions.

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