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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: LLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: LL.B. 502

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Lecture-7





LECTURE-7

Fusion:

Do courts administer common law and equity as separate bodies of law or as a single body of law?

Does it matter whether a claim or right etc. is legal or equitable? –

➤ **Remedies available:**

The extent of the remedies available- Selling land means can get damages in common law, but also enforce rights.

➤ **Formality requirements:**

Often if you want to make a transaction, there are hoops that need to be jumped through to make it valid.

Creating an equitable interest can be done with less formality, equity allows for rights to exist without the formality.

➤ **Durability of rights:**

In priority disputes, legal property rights are much more durable and protected than equitable property rights. The idea is that if you can create rights informally, it is not a bad thing if they are less likely to bind people who are unaware of their existence.

Classification of rights:

- Personal + legal right = Owed £100 in debt, can sue against a particular person in common law court.
- Proprietary + legal right = Right to possession of house can be enforced generally against others in law.
- Personal + equitable right = Duties of confidence only exist in equity; right to enforce against trustees → only enforceable in courts of equity.

- Proprietary + equitable rights = Rights *in rem* relating to things which are only enforceable in equity, e.g. freehold covenants; third party recipients of trust property.

Idea of conscience in the law of equity:

- Fortescue asserted the notion in 1452 that in cases of equity “we are to argue conscience here and not the law”
- The principal doctrine of equity revolves around the notion that it acts *In Personum* on the conscience of the defendant; concerns itself with whether or not a defendant has acted in good conscience on an individual basis
- Lord Browne-Wilkinson reasserted the idea that equity acts on the conscience of the owner of the legal interest
- The idea of conscience being a significant factor in the law of equity comes from the ancient understanding that courts of equity were essentially courts of conscience and that the Lord Chancellor was the keeper of the monarch’s conscience

In the **Earl of Oxford's Case** it was made clear that equity is enforced on a case to case basis depending on the conscience of the defendant and equitable rules are an ethical response to what would otherwise be a passive agreement to the unconscionable actions of the defendant.

- English equity shouldn't be taken to mean a person can merely cause a ruckus at lost benefits; courts must find the defendant's intention to be blameworthy and unconscionable.

Lord Ellesmere in the **Earl of Oxford case** felt that there was a multiplicity of actions which could be undertaken by members of society and so a general law would be impossible to enforce in a befitting manner as it would lead to the inevitable failure of the law to adequately meet certain circumstances.

Immanuel Kant felt that equity isn't merely summoning another to perform an ethical duty but rather is the requirement for the court to refrain the defendant from

acting in bad conscience whilst simultaneously upholding the equitable rights of a claimant.

Equity can also be seen to be a moral virtue, as stated by Lord Chancellor Cowper in 1705 who reiterated Aristotle's view that equity is a means of preventing unfairness which would arise out of the strict application of formal legal rules.

MCQs

- 1. Fortescue asserted the notion in 1452 that in cases of equity "we are to argue conscience here and not the law"**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 2. The principal doctrine of equity revolves around the notion that it acts In Personum.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

3. Immanuel Kant felt that equity isn't merely summoning another to perform an ethical duty but rather is the requirement for the court to refrain the defendant from acting in bad conscience whilst simultaneously upholding the equitable rights of a claimant.

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

4. Equity can also be seen to be a moral virtue, as stated by Lord Chancellor Cowper in 1705

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

5. Aristotle's view was that 'equity is a means of preventing unfairness which would arise out of the strict application of formal legal rules.'

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