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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-2





LECTURE-2

What is equity?

Equity means fair and just and/or it is also regarded as “specific body of law which supplements the common law and is invoked in circumstances where the conduct of a defendant is deemed unconscionable”.

- It is a peculiar concept which is unique to English and Welsh law.
- From “a patchwork of tribal customs” (Hudson) to a system of law that is common to the entire realm.
- This is the means through which the law balances and considers the need to achieve fair results in individual circumstances.

“Equity can be described as the body of rules which

evolved from those rules applied and administered by the Court of Chancery before the Judicature Acts 1873 and 1875” ***per Hayton & Marshall.***

- Lord Halper said in 1705:

“equity is no part of the (common) law, but a moral virtue which qualifies, moderates and reforms the rigour hardness and edge of the law and its truth, and it assists the law where it is weak in the constitution and defends the law from crafty invasions and delusions which are against the justice of the law” essentially assists the law

- Equity doesn’t destroy the law as everyone has the right to the law, but equity assists it and acts consciously in the sense that on occasions it would be immoral for a certain person to assert a certain legal right
- Equity exists to supplement the law where the common law remedy will fall short of justice
- Equity consists “of distinct body of rules that seeks to introduce ethical values into the legal norms”.
- It intervened in matters that thought to have been influenced by the inequality of bargaining power between lender and borrower.
- The fact that equity acts *In Personum* is unique in that it means a court will make an order based on individual facts of the case to prevent a particular defendant from

acting in an unconscionable manner

Equity (Some Definitions):

Maitland (1909):

“Equity is the body of law that used to be administered by the court of Chancery but is now administered by courts that administer both common law and equity.”

Equity is defined in its historical terms.

The Judicature Acts 1873 and 1875 fundamentally changed the structure of courts in England.

Before the 19th century, there were many different courts, which then became reduced to only the High Court of Justice (one courts with jurisdiction over everything but had difference divisions to specialise in different things) and the Court of Appeal.

The **Supreme Court of Judicature Act 1873** said that the court can administer both law and equity, rather than split between the Queen’s Bench division and the courts of Chancery.

This was copied throughout the common law world.

The Senior Courts Act 1981 s 49 provided that wherever there is any conflict between common law and equity,

“The rules of equity shall prevail”.

This is what allowed equity to survive as a body of law.

MCQs

1. Equity can be described as the body of rules which evolved from those rules applied and administered by the Court of Chancery before the1873 and 1875.
 - i. Judicature Acts
 - ii. Special Acts
 - iii. Penal laws
 - iv. None of these

2. Equity is the body of law that used to be administered by the court of Chancery but is now administered by courts that administer both common law and equity.” This definition was given by-
 - i. Salmond
 - ii. Maitland

- iii.** Marshall
 - iv.** None of these
 - v.**
3. Equity exists to supplement the law where the common law remedy will fall short of justice.
- i.** True
 - ii.** False
 - iii.** Cannot say
 - iv.** None of these
4. The Judicature Acts 1873 and 1875 fundamentally changed the structure of courts in England.
- i.** True
 - ii.** False
 - iii.** Cannot say
 - iv.** None of these
5. Equity doesn't destroy the law as everyone has the right to the law, but equity assists it and acts consciously in the sense that on occasions it would be immoral for a certain person to assert a certain legal right
- i.** True
 - ii.** False
 - iii.** Cannot say
 - iv.** None of these
