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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BAL 506

NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-5





LECTURE-5

WHAT IS THE RELATION BETWEEN EQUITY AND COMMON LAW?

So to answer the question, **equity law** is a component of the **common law** which developed in the English Courts of Chancery. Today, most **common law** jurisdictions have “fused” these two courts together, so that legal and equitable claims can be heard in the same physical court and often in the same civil action.

Common law and equity

The procedure of the common law courts had developed along highly technical and stylized lines. For example, to bring an action in the common law courts a litigant had to file

a "writ" chosen from a set of standard forms. The court would only recognize certain "forms of action", and this led to the widespread use of legal fictions, with litigants disguising their claims when they did not fit into a standard recognised "form". The emphasis on rigid adherence to established forms led to substantial injustice.

On the other hand, the Court of Chancery (a court of equity) ran separately and parallel to the common law courts, and emphasized the need to "do justice" on the basis of the Lord Chancellor's conscience, softening the blunt instrument of the common law. However, by the nineteenth century proceedings before the Court of Chancery often dragged on and on, with cases not being decided for years at a time (a problem that was parodied by Charles Dickens in the fictional case of *Jarndyce and Jarndyce* in *Bleak House*).

Also, the practice of the court departed from the original principle of the Lord Chancellor's conscience, wary of its legal superiority, clarified for once and for all 1615, wherever it conflicted with the common law. The court undertook self-restraint to safeguard its position. It elaborated the maxims of equity, many centuries old, that restricts its jurisdiction to certain fields of law, impose preconditions for suits/applications and curtail its remedies (particularly

damages) which equity might award if there were no common law courts or statute.

The existence of these two separate systems in some of the more common areas of law enabled each party to go "forum shopping", selecting whichever of the two systems would most likely give judgment in his or her favour. A wealthy loser in one court would often try a court in the other system, for good measure.

The solution adopted by the Judicature Acts of 1873 and 1875 was to amalgamate the courts into one Supreme Court of Judicature which was directed to administer both law and equity. Pleadings became more relaxed, with the emphasis shifting from the 'form' of action to the 'cause' (or a set of causes) of action.

Writs for action were filled out for a litigant stating facts, without any necessity of pigeonholing them into specific forms. The same court was now able to apply rules of the common law and the rules of equity, depending on what the substantial justice of a case required, and depending on what specific area of law the pleadings involved. The result was that, when the issues arising from the causes of action were decided in favour of one party, that party got relief.

Special features of equity –

➤ Conscience:

You have your legal rights, but it would be unconscionable for you to use them in a certain way, we insist you obey your conscience. Chancellor was ecclesiastic and learned in Roman law, so brought the notion of conscience right at the inception of this body of law → people acting consistently in good conscience.

However, the modern pluralistic society has multiple opinions on conscionability. –

➤ Discretion:

This is primarily an exercise of judicial discretion. There is no automatic entitlement to awards in equity. This is where the discretion on whether to award or not comes in. But the law has settled down and become more certain; a systemic body of rules now exists. Not absolute discretion because that would be unreliable, court must take into account various factors → very structured discretion.

➤ Acting in *personam*:

Equity acts against the person, takes control of D and tells them they must do something.

MCQs

1. A problem that was parodied by Charles Dickens in the

fictional case of *Jarndyce and Jarndyce* in *Bleak House*.

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

2. Equity law is a component of the common law which developed in the English Courts of Chancery.

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

3. Equity acts against the person

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

4. You have your legal rights, but it would be unconscionable for you to use them in a certain way, we insist you obey your conscience.

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

5. There is no automatic entitlement to awards in equity. This is where the discretion on whether to award or not comes in. But the law has settled down and become

more certain; a systemic body of rules now exists.

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