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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-6





LECTURE-6

EQUITY AND ITS RELATIONSHIP WITH THE COMMON LAW:

Equity is:

1. Informed by conscience;
2. In large part, discretionary and remedial; and
3. The result of a long historical developmental process.

In personam – matters against a party.

In rem- matters against property.

Features of equity:

1. Equity corrects the law, but does not overwhelm it;
2. Equity is discretionary; and
3. Equity is informed by conscience.

The core principles of equity:

Equitable maxims serve a purpose as an explanation of the nature of equity and the broad concepts which have influenced the growth of modern equity. They are a summary of a broad themes which underlines equitable concepts and principles –

Corin v Patton

The twelve propositions set out below are culled, as a list, primarily from Snell's Equity, (31st ed., 2004) by McGhee, 27. The trust is built on equitable principles and the following, key equitable principles will emerge again and again in your studies. We will consider them only in outline at this stage.

- i. Equity will not suffer a wrong to be without a remedy Equity follows the law;

- ii. Where there is equal equity, the law shall prevail;
- iii. Where the equities are equal, the first in time shall prevail;
- iv. He who seeks equity must do equity;
- v. He who comes to equity must come with clean hands;
- vi. Delay defeats equities;
- vii. Equality is equity;
- viii. Equity looks to the intent rather than to the form;
- ix. Equity looks on that as done that which ought to have been done;
- x. Equity imputes an intention to fulfil an obligation;
- xi. Equity acts in *personam*.

Hudson adds to that list three further principles:-

- i. Equity will not permit statute or common law to be used as an engine of fraud (e.g.: *Rochefoucauld v. Boustead*);
- ii. Equity will not permit a person who is trustee of property to take benefit from that property qua trustee (e.g.: *Westdeutsche Landesbank*);

iii. Equity abhors a vacuum (e.g.: *Vandervell v. IRC*).

Three basic relationship principles:

- i. *Exclusive jurisdiction*: Only capable of administering equitable relief.
- ii. *Concurrent jurisdiction*: Where both equity and common law recognize the unfairness and are prepared to apply relief: Equity only stepping in when common law would be inadequate.
- iii. *Auxiliary jurisdiction*: Provide assistance for the enforcement of legal rights and includes the award of injunctive relief.

MCQs

- 1. ***In personam*** – matters against a party.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 2. ***In rem***- matters against property

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

3. Equity corrects the law, but does not overwhelm it

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

4. He who seeks equity must do equity

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

5. Equity will not permit statute or common law to be used as an engine of fraud

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