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Common Law

Equity fulfils the common law, although it does not endeavour to displace it with a moral code.

In order to be influential, the law is to be professed as both certain and predictable, and also flexible and fair. Specifically, it needs clear rules on the one hand, but flexibility on the other to produce exceptions to cases that lead to apparently incongruous or unjust conclusions if the rules are applied rigidly. Equity is an essence of principles, doctrines, and rules advanced initially by the Court of Chancery in positive competition with the rules, doctrines and principles of the Common Law Courts.

The obliteration of the old Court of Chancery and the Common Law Courts, has led to the proposition that the distinction between law and equity is now outdated; that the two approaches are now 'fused.' On the contrary, the better analysis, is that the common law and equity remain distinct but mutually dependent features of law: 'they are working in different ways towards the same ends, and it is therefore as wrong to assert the independence of one from the other as it is to assert that there is no difference between them.'

For a long time, the two structures of common law and equity ran uncomfortably side by side. Until 1615 it was by no means established which one was to prevail in the event of a dispute. Yet, even after that year the inconsistency between the two systems continued for a very long time. After the restructuring of the English court system in 1865, it was decided that in the event of a conflict between the common law and equitable principles, equity must prevail. The Judicature Acts 1873-1975 created one system of courts by amalgamating the common law courts and the courts of equity to form the Supreme Court of Judicature which would administer common law and equity. Accordingly the court 'is now not a Court of Law or a Court of Equity, it is a Court of Complete Jurisdiction.'

The area of law recognized as Equity developed in England and Wales in the Middle Ages in situations where the ordinary common law had failed to afford suitable redress. Many legal actions, for example, originated by the issue of a writ but the slightest inaccuracy on the writ would invalidate the entire action. Another inadequacy in the ordinary common law involved the fact that the only remedy was damages; that is, compensation, therefore, the court orders did not exist to require people to do something or to desist from some conduct, for example, sell a piece of land according to an agreement made or stop using a particular title.

Dissatisfied litigants frequently preferred to petition the King for him to mediate in a specific case, the courts were, in any case, the King's courts. These petitions' for justice were dealt with by the King's Chancellor who determined each case according to his own discretion. Over the years, the decisions made by Lord Chancellor became known as the rules of equity, derived from the Latin meaning levelling. These new-found rules came to be applied in a special court, the Chancellor's Court, which became identified as the Court of Chancery. Equity began to appear as an apparent set of principles, rather than a personal jurisdiction of the Chancellor, during the Chancellorship of Lord Nottingham in 1673. By the end of Lord Eldon's Chancellorship in 1827 equity was recognized as a precise jurisdiction.

Nevertheless the development of a parallel but distinct system of dispute resolution was certainly bound to generate a conflict. An individual wronged by a failure of the common law to remedy a gross injustice would apply to the court

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of equity. The Chancellor, if the case accepted it, would approve of a remedy preventing the common law court from imposing its order. The catharsis transpired in the Earl of Oxford's Case, where the court of common law ordered the payment of a debt. The debt had previously been paid, but the deed giving affect to the requirement had not been cancelled. The court of equity was prepared to grant an order preventing this and resolving the deed. The collision was in due course resolved in favour of equity; where there is an inconsistency, equity prevails. This rule is now preserved in the Supreme Court Act 1981, s 49.

The history of equity is regarded by its constant ebb and flow between compatibility and competition with the common law. More recent developments in equity include, for example, the recognition of restrictive covenants, the expansion of remedies, the development of doctrines such as proprietary estoppel, the enhanced status of contractual licences, and the new model constructive trust. There is an effort, then again, to validate these new developments, which are all illustrations of judicial inspiration, by precedent. As Bagnall J said in *Cowcher v Cowcher*: 'this does not mean that equity is past childbearing; simply that its progeny must be legitimate- by precedent out of principle. It is well that this should be so; otherwise no lawyer could safely advise on his client's title and every quarrel would lead to a law-suit.'

In all probability the single most significant feature of equity is the trust. If title to any property is vested in a person as trustee for another, equity not only restrains the trustee from denying his trust and setting himself up as absolute owner, but impresses on the trustee positive duties of good faith towards the other person. Although one of the original development of equity, the protection granted to equitable owners behind a trust has developed considerably over the last 50 years.

Remedies represent some interesting illustrations of the difference between law and equity; a difference which arose as; 'an accident of history,' according to Lord Nicholls in *A-G v Blake*. Ordinarily legal rights and remedies remain separate from equitable ones. Some similarities do, nevertheless, occur. For illustration, an injunction, an equitable remedy, can be sought for an anticipatory breach of contract, or to stop a nuisance, both common law claims. In *A-G v Blake*, the House of Lords authorized the equitable remedy of account of profits for an assertion for violation of contract where the common law remedy of damages would have been insufficient. The equitable remedy of account of profits is usually accessible where there is a fiduciary relationship but the House of Lords endorsed its request otherwise in exceptional cases where it was the operative way to remedy a wrong. By distinction, in *Seager v Copydex*, proceedings were brought for breach of confidence in regard for confidential information exposed by the defendants about a carpet grip. Such a claim is equitable and normally the equitable remedies of injunction and account are obtainable. On the other hand, an injunction would have been unsuccessful and he judges awarded damages. It would appear, consequently that a common law remedy is available for an equitable claim for breach of confidence.

The new model constructive trust resulted in the main due to the resourceful activity of Lord Denning MR. In *Hussey v Palmer*, Lord Denning explained the constructive trust as one 'imposed by the law wherever justice and good conscience require it.' Cases such as *Eves v Eves*, where the woman was awarded an equitable interest in the property signifying her involvement in terms of heavy work, and *Cooke v Head*, a comparable case, regard this progress further. On the other hand, it might be that this progression has come to a standstill since the retirement of Lord Denning. A number of modern cases, including *Lloyds Bank v Rosset*, have re-established former ideology in this sphere relating to the survival of a common intention that an equitable interest should occur, and the existence of a direct financial contribution. These ethics are more analogous to those relating to the formation of a resulting trust.

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The new model constructive trust has been for the most part thriving in the field of licences. At common law, a contractual licence was controlled by the doctrine of privity of contract, and failed to present protection against a third party. Equitable remedies have been made accessible to avoid a licensor violating a contractual licence and to permit a licence to bind third parties.

It has been acknowledged that certain licences may produce an equitable proprietary interest by means of a constructive trust or proprietary estoppel. In *Binions v Evans*, it was decided by Lord Denning that purchasers were compelled by a contractual licence between the former owners and Mrs Evans, an occupant. A constructive trust was imposed in her preference as the purchasers had bought specifically subject to Mrs Evans' interest and had, for those grounds, paid a reduced price. Also in *RE Sharpe*, a constructive trust was imposed on a trustee in bankruptcy regarding an interest obtained by an aunt who lent money to her nephew for a house purchase on the arrangement that she could live there for the rest of her life.

The volatility of these progressing fields is once more shown in recent case law which seems to hold back from an advancement which may have pushed the boundaries too far. Obiter dicta from the Court of Appeal in *Ashburn Anstalt v W J Arnold & Co*, accepted in *Habermann v Koehler*, propose that a licence will only give effect to a constructive trust where the conscience of a third party is influenced: it will be imposed where their behaviour so deserves. Judicial resourcefulness in equitable disciplines is therefore made subject to refinements by judges in later cases.

Proprietary estoppel is an additional illustration of an equitable doctrine which has seen momentous progression in the interest in justice ever since its formation in the leading case of *Dillwyn v Llewelyn*. The dogma is established on encouragement and acquiescence whereby equity was equipped to arbitrate and adjust the rights of the parties. Its relevance has been further improved by the Court of Appeal in *Gillet v Holt*, where a wider line of attack to the doctrine was taken that depended, eventually, on the unconscionability of the act. Once more, it is an advancement which is outside of the organization of property rights and their registration recognized by Parliament.

Cases such as *Jennings v Rice* show that the principle of proprietary estoppel and the protection of licences by estoppel continue to be a successful means used by the judges for the protection of licences and equitable rights. The extent to which the right welcomes protection is adaptable owing to the conditions of the particular case. For example, in *Matharu v Matharu*, the licence did not bestow a beneficial interest but presented to the respondent a right to live in the house for the rest of her life.

A different prevailing progression in equity has resulted from the decision of the House of Lords in *Barclays Bank plc v O'Brien*. The case has proclaimed the re-emergence in a broad sense of the equitable doctrine of notice. They present that, where there is undue influence over a co-mortgagor or surety, this may provide augmentation to a right to prevent the transaction. This right to avoid the transaction amounts to an equity of which the mortgagee may be considered to have constructive notice. This revivification of the equitable doctrine of notice in a contemporary situation reveals evidently the flexibility of equity. A number of cases pursued this pronouncement. In *Royal Bank of Scotland v Etridge*, the House of Lords laid down common procedures for the application of the doctrine of notice in this situation.

In summary equity fulfils the common law, although it does not endeavour to displace it with a moral code. There have been setbacks and refinements, over the last 50 years, in the progress of new doctrines relating to the trust, above all when later judges seek to rationalise and consolidate new ideology. Nonetheless it is apparent that equity remains its own work - we do not condone plagiarism! If you need custom essay help, then check out our essay writing service.

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