

## Common Law and Equity

### Past Year Questions Paper 1:

#### **QUESTION 2 [NOVEMBER 2004]**

'Equity was nothing more than a gloss on the common law'. Critically evaluate this statement and assess the past and present contributions of equity to the growth of the common law. [25]

#### **QUESTION 3 [JUNE 2005]**

Identify some of the rights and remedies introduced by equity to English law. Explain why they were necessary and assess whether they have been effective. [25]

#### **QUESTION 4 [JUNE 2006]**

'Equity is irrelevant in the modern world'. Discuss. [25]

#### **QUESTION 5 [NOVEMBER 2006]**

'Equity still has a role to play in English Law'. Discuss. [25] QUESTION 6 [JUNE 2007]

'The development of equity has made the law fairer'. Discuss. [25]

#### **QUESTION 7 [JUNE 2008]**

'He who comes to equity must come with clean hands.' (D & C Builders v Rees [1966]) Consider critically the contribution made by equity to the law. To what extent does it remain relevant today? [25]

#### **QUESTION 8 [JUNE 2009]**

'Equity has brought benefits to many litigants who would otherwise have been disadvantaged by the common law'. Discuss with reference to decided cases. [25]

#### **QUESTION 9 [JUNE 2010]**

'The system of equity is a very great system.' (Charles Dickens in Bleak House).

With reference to decided cases, analyse the extent to which this statement can be substantiated. [25]

#### **QUESTION 10 [NOVEMBER 2010]**

'Equitable maxims and equitable remedies have been vital tools in the development of justice.' Identifying and illustrating both maxims and remedies, discuss how far you would agree with the above statement. Your answer should refer to decided cases. [25]

#### **QUESTION 11 [JUNE 2011]**

In 1990, Lady Carbury purchases a painting from the art dealers Melmotte & Co., which they assure her is the work of the celebrated artist Ghiselli. In 2009 she takes the painting to the television programme 'The Fine Art Road show', where an expert advises her that her picture is a worthless fake. She now wishes to recover from Melmotte & Co. the £20,000 she paid for the painting. Discuss briefly whether equity will assist her. To what extent has equity generally assisted those seeking remedies in the civil courts? [25]

### QUESTION 12 [NOVEMBER 2011]

Mrs Norris agrees to pay £5,000 for the landscaping of her garden. Rushworth completes the work satisfactorily. Aware that Rushworth has gambling debts and is in urgent need of money, Mrs Norris tells him 'You can have £4,000 immediately — but not a penny more! Ever!'

Would equity assist either party in this situation? To what extent have equitable remedies and maxims promoted fairness in the law? [25]

### QUESTION 1 (JUNE 2012)

'It is no longer accurate to say that equity varies according to the length of the Chancellor's foot.' With reference to decided cases, consider critically the role of equity in modern law. [25]

### Sample Examination Question

**How do we account for the growth of equity? Consider the contributions made by equity to the law. Has it made the law fairer? To what extent does it remain relevant today? [25]**

- I. Before the Norman Conquest in 1066, different areas of England were governed by different systems of law. When William the Conqueror gained the English throne in 1066, he established a strong central government and began to standardise the law. By about 1250 a 'common law' had developed that ruled the whole country-
- II. The common law gradually changed from a dynamic and adaptable system to one that was **inflexible** as actions had to be begun by writ, **inadequate** as the only remedy at common law was damages, the common law was also **rigid** owing to binding precedent, **expensive** and cases were sometimes lost owing to **procedural defects and technicalities**.
- III. Dissatisfied parties petitioned the King, who later passed these petitions to the Lord Chancellor who as the number of petitions rose, established the Court of Chancery.
  - The **growth of equity** was due to the defects of the common law and the fact that equity ensured justice as the court could grant **discretionary remedies other than damages** and decisions were based on **good sense and fairness**. Further equity also **adapted and expanded to meet new needs** as explained below. The Court of Chancery was also **less formal and cheaper** than the common law courts.
  - Equity also created **maxims** (designed to ensure that decisions were morally fair) which had to be satisfied before equitable rules could be applied. For example he who comes to equity must come with clean hands. In ***D & C Builders v Rees*** - Lord Denning refused to apply the doctrine of equitable estoppel on the grounds that the defendant (Rees) had taken unfair advantage of the builder's (plaintiffs) financial difficulties and therefore had not come with clean hands.

- **The Judicature Acts 1873-75** fused the administration of the common law courts and the Court of Chancery creating a unified system of courts and procedures.

### Equity created new rights.

- I. While the common law only recognises legal ownership, the **law of trust** recognises dual ownership. The legal and equitable ownership in the same property may vest in different people in different ways at the same time. Hence equity recognised the **rights of the beneficiary** under the law of trusts. Trusts are used in setting up pension funds and settling property on younger members of the family.
- II. The common law only recognised the legal owner of the property. Equity recognised the **rights of the mortgagor** to redeem his property. The equity of redemption allows the mortgagor to redeem his property from the mortgagee upon payment of the principal and interest outstanding. The majority of homeowners buy their property with the aid of a mortgage.

### New equitable remedies

- I. An **injunction** is an order of the court compelling the defendant to do or not to do something. A mandatory injunction is an order of the court compelling the defendant to do something whereas a prohibitory order is an order of the court prohibiting or preventing the defendant from doing something. Injunctions are often ordered in cases of domestic violence as a protection for the abused partner. Injunctions are also used to prevent nuisances.
- II. **Specific performance** refers to an order of the court compelling a party to perform his part of an agreement that he had promised to fulfil.
- III. **Rectification** is an order which alters the words of a document, which does not express the true intention of the parties to it.
- IV. **Rescission** refers to an order that restores the parties to a contract to the position that they were in before the contract was entered into. In the 1970s, two important new remedies were created by extending the scope of injunctions.
- V. A **mareva injunction (freezing order)** is a court order to a third party to freeze the assets of a party to a dispute where there is a danger that they may be removed from the court's jurisdiction.
- VI. An **anton pillar order (search order)** provides that the court can order defendants to allow their premises to be searched and for relevant documents to be removed.

### The doctrine of promissory estoppels

The doctrine of promissory estoppel which originated from Lord Denning's obiter statements in **Central London Property Trust v High Trees House** is another contribution of equity.

## Conclusion

- I. Equity refers to a specific set of legal principles which came into existence to fill gaps in and supplement the common law by providing just and practical remedies where the common law was not adequate. However equity is not and was never intended to be a complete system of law.
- II. The equitable rights, interests and remedies discussed above remain relevant and important today. The discretionary nature of the remedies and the equitable maxims ensure that the remedies are granted where they are felt to be genuinely and justly deserved. In this sense equity has also made the law fairer.

- **THE END** -