

The law of equity essay sample

[Law](#), [Court](#)



1. 0 Introduction

The common law courts only provided the remedy of damages, which in some cases was an inappropriate remedy. The writ system was also slow to respond to new types of action and had many “loopholes”. (Keenan, 1993) This weakness in the common law system led to the development of equity. (Kelly, 2002) Ways in which the law of equity supplements the common law will be further discussed in this assignment.

2. 0 Common Law

Prior to the Norman Conquest of England in 1066, there was no unitary national legal system. (Kelly, 2002) A uniformed and centralized legal system later emerged under the control of a centralized power of the sovereign king. Originally, courts were no more than an adjunct of the King’s Council, the Curia Regis, but gradually, the common law courts took on distinct institutional existence in the form of the Courts of Exchequer, Common Pleas and King’s Bench which dealt with separate matters in law. (Barron and Fletcher, 2003) A writ was granted when there was a denial of justice in the local courts. These writs were standardized and provided specific rights which could be enforced in the King’s Courts. (Abbot, 1993) However, the writ system had “loopholes”; if a suitable writ was not available, the plaintiff will not be able to obtain a remedy no matter how just his claim. (Keenan, 1993)

The common law uses damages as a remedy for cases. The aim of damages is to compensate the plaintiff. (Barron and Fletcher, 2003) A case example showcasing the use of damages as a remedy is *Rogers v Whitaker* (1991) 23 <https://assignbuster.com/the-law-of-equity-essay-sample/>

NSWLR 600. The defendant was a doctor who failed to advise his patient (the plaintiff) of the risks of an designed to improved the appearance and sight of one of her eyes. As a result, the plaintiff developed a complication known as sympathetic ophthalmia, which would occur in approximately 1 in 14000 cases and became blind. The judge decided that although the risk of developing the complication was low, the defendant had a duty to warn the patient. Therefore, the defendant was found negligent and had to pay damages to the plaintiff. (Barron and Fletcher, 2003)

3. 0 Equity

Equity is defined as the body of cases, maxims, doctrines, rules, principles, and remedies which is derived ultimately from the specific jurisdictions established by the courts in the Australian legal system. (Haydon and Loughlan, 1997) It is used to supplement the common law by filling in gaps and making the legal system more complete. (Padfield, 1982) In general, equity does not intervene if the remedy of the common law is adequate.

3. 1 Remedies

While the common law's remedies are in the form of damages, the equity's remedies include specific performance, injunctions, rescission and rectification.

3. 1. 1 Specific Performance

Specific performance is an order of the court instructing a party to an agreement to perform his obligations according to the terms of that agreement. (Curzon, 1993)

A case example is *Doulton Potteries Ltd v Bronotte* (1971) 1 NSWLR 591. In this case, the plaintiffs who were owners of a die needed to produce pipes which were sent to the plaintiffs for some repairs. The defendants retained the die for a pending payment of a sum of repair jobs which the plaintiffs denied. The replacement of a new die would take four months and ironically could only be manufactured by the defendants. Hope J. then granted a specific performance ordering the return of the die. (Haydon and Loughlan, 1997)

Damages would not be an appropriate remedy as the die had a special value and deemed “irreplaceable” to the plaintiffs.

3. 1. 2 Injunctions

Injunctions forbid acts which are negative and prohibitory. It prevents the defendant from performing specific activities. (Harris, 1997)

The case, *Cooney v Ku-ring-gai Council* (1963) 114 CLR 582; (1964) ALR 98 is a perfect case example of an injunction. The defendant-appellate used a dwelling house for social functions where food drinks and entertainment was provided although it was strictly prohibited. The plaintiff-respondent then sought an injunction to prevent this but unfortunately was dismissed by Jacobs J. The suit was reversed by the Full Court of the New South Wales Supreme Court. The High Court of Australia decided that the appellate was

guilty of carrying on a “ trade” and should be restrained by an injunction. (Haydon and Loughlan, 1997)

Damages is an inappropriate remedy for this case because the damage caused by the “ disturbances” cannot be compensated by any monetary amount.

3. 1. 3 Rescissions

Rescission is the right to set side contract and be restored to the former position. (Curzon, 1993) It allows a person to terminate a contract with he was misled into making. (Harris, 1997)

In the case of *Alati v Kruger* (1955) 94 CLR 216, the equity remedy of rescission was used. The defendant blindly relied on misinterpretations made by the appellant on the average weekly takings and bought a fruit business from him. The landlord assigned a lease to the respondent but later agreed to consent a re-assignment of the lease to the appellant at the time of the trial. However, shortly before the decision by the trial judge, the appellant closed down the business and the landlord retook possession. Townley J in the Supreme Court of Queensland held the appellant entitled to rescind the contract. (Haydon and Loughlan, 1997)

The defendant was misled into the contract and required a rescission to return to his former position. Therefore, damages would be inappropriate.

3. 1. 4 Rectification

Equity has the power to rectify a written document which does not accurately express the agreement between parties. (Curzon, 1993)

A case example to explain rectification would be *Joscelyne v Nissen* (1970) 2 QB 86; (1970) 1 All ER 1213. The daughter attempted to help her father buy a residence called Martindale with a mortgage. The father, mother, daughter and her husband lived in Martindale. In 1963, the father transferred the car hire business to his daughter under an agreement with condition being the father could continue staying in Martindale " free of rent and all outgoings of every kind in any event". The daughter ceased to pay electricity and other bills after some time. The father successfully sought rectification to make clear she had an obligation to pay these items. (Haydon and Loughlan, 1997)

Rectification proved to be a better remedy than damages in this case.

4. 0 Conclusion

As a conclusion, I agree that the law of equity came about to remedy the defects of the common law system. The law of equity supplemented the common law in terms of offering remedies in the form of specific performance, injunctions, rescissions and rectifications where appropriate. This has caused the Australian legal system to work more efficiently than before; therefore successfully providing justice to the people.