

The development of equity and trusts essay sample



The meaning of equity is basically a system of law which stabilises out the need for certainty in rule-making in order to accomplish fairness for individual's circumstance. Equity supports and decreases the strictness of the common law. The early common law method was very complex and costly. Legal procedures were based on writs which would be produced for each individual whom wanted to begin and take action in a centralised system that was formed during that period. This was created to bring together the legal system of the country into one centralised system.

The problems and issues of this method were stopped by the Provisions of Oxford 1258[1] and the Statute of Westminster,[2] these provisions and statutes narrowed down the number of writs and a few times they have not allowed a legal action simply due to the fact that there wasn't a legal writ that covered it. Therefore if there was not an existing writ previously formed for their action consequently it would not let them take any matters further. The strict and rigidity of the common law regulations could have an impact in leading to injustice.

The common law system in conjunction with, individuals had a possibility to appeal to the king's conscience in order for them to be supported with justice. The king as he was acknowledged as the "fountain of justice," people were complaining to the king and trying to do petitions against him. These complaints were merely passed down to the chancellor as the king did not have the time to deal with it. The chancellor was known as the "Keeper of the king's conscience." The general public ultimately began a petition against the chancellor; this made the chancellor give his own decisions with his authority without any of the king's verdict.

<https://assignbuster.com/the-development-of-equity-and-trusts-essay-sample/>

The chancellor was making decisions with religious morality. A high number of appeals continued to grow, a separate court of equity was introduced the court of chancery, it was a court where decisions were made with religious belief and morality and it gradually made equity a rival method to the common law. A conflict between equity and the common law arose in the case of, “ Earl of Oxford’s Case,”[3] “ The office of the Chancellor is to correct man’s consciences for frauds, breach of trusts, wrongs and oppressions of whatsoever nature and to soften and mollify the extremity of the law ...

When judgement is obtained by oppression, wrong and a hard conscience, the chancellor will frustrate and set it aside, not for any error or defect in the judgment but for the hard conscience of the party. ”[4] This quote above was said by (Per Lord Ellesmere LC); here in this case the King said that if equity and the common law were ever to conflict then equity would succeed, therefore the quote by Lord Ellesmere above explains this. It is very important to know that equity is a method that’s not able to work independently because it works as an add-on towards existing issues inside the common law.

This therefore means that it works along with the common law and often supports towards the issues that already exist inside the common law. In the nineteenth century the existing legal system had undertaken a major reform with two acts, often referred to as the Judicature Acts 1873-1875[5]: The Judicature Acts 1873-1875 have helped merge both equity and the common law, this approved equity and common law shall form together and to be run within one set court in order to produce a simpler and stronger legal system.

The Judicature Acts 1873-1875 have created the modern legal system of England and Wales. On the other hand the fusion debate arose from this. Professor Ashburner explained in his “ Principles of Equity (2nd edn 1933),”[6] here Ashburner famously distinguished law and equity as to being part of two separate streams that “ though they run in the same channel run side by side and do not mingle their waters. ”[7] However Professors Ashburners statement was not very helpful because it was very hard to imagine two streams in one channel and not mingling together as one.

Lord Diplock had taken Ashburner’s statement further in the case, United Scientific Holdings Ltd v Burnley Borough Council,[8] Diplock concluded Ashburner’s statement by saying, ‘ obiter, that’ “ it may be possible for a short distance to discern the source from which each part of the combined stream came, but ... the waters of the confluent streams of law and equity have surely mingled now”. [9] In the case above on agreeing with Lord Diplock, here he explains in the case above that equity and common law are fused together without any complications.

It is believed by some that equity and common law have not merged and still abide similarly together however others believe that they should merge together in order to form a strong and concise legal system. Furthermore as i have mentioned before that if equity and common law to have a conflict and go head to head then ultimately equity will claim superiority over the common law. It is evident that equity and the common law have merged closer together with their regulations and remedies.

In the case of *Seager v Copydex Ltd*,^[10] Seager was involved in negotiations with Copydex Ltd, these negotiations did not come to any conclusion, and defendants later then used seagers confidential information to improve their own product. Breach of confidence is only protected in equity and so the claimant required an injunction to stop Copydex Ltd from using his confidential information. It is evident that for an equitable claim a common law remedy is accessible. The court of appeal approved and granted Seager with common law damages.

In another case which is *Attorney-General v Blake*,^[11] it is also evident in this case that equity and the common law have merged closer together. These two cases put forward only a slight fusing and many times and exemption of equity and the common law coming together. These cases also demonstrate the modern equity of today and explain the difference between modern equity and old equity. The maxims of equity were formed during the nineteenth century. Maxims are a set of general rules that emerged from the courts during that time.

They do not have the value of their own authority however they work on the same level of complex principles and they can give guidance to the courts upon the exercise of the courts discretion. The maxims of equity are more useful than rules and cover many issues. Maxims are approximately assembled under three headings. “ Maxims concerning the nature of equity and its jurisdiction, Maxims concerning the conduct expected of claimants and, Maxims concerning the circumstances in which equity will operate. ^[12]

“ Those who come to equity must come with clean hands,”[13] this is a maxim that was used in *Lee v Haley*,[14] here the claimants failed when they put in an injunction in order to defend their trade as coal merchants. It was held in the court that they had “ unclean hands”, “ not because of the coal, but because they were dishonestly selling their customers short. ”[15] The judge said, “ if the plaintiffs had been systematically and knowingly carrying on a fraudulent trade, and delivering short weight (of coal), it is beyond all question that this court would not interfere to protect them in carrying on such trade. [16]

This maxim has been used by the judge in this particular case; however each and every court will apply this maxim in its own distinctive way. The case above defines “ Unconscionability” in other words it means unfairness. Unconscionability can also be referred to as the rule of conscience and the main aim of this rule is to stop the courts of equity from assisting those litigants who have the intention to do illegitimate and immoral conduct. The rule of conscience was part of a major ponder in the case of *Tinsley v Milligan*. 17] The function of unconscionability is very essential in the modern equity of today and therefore will continue to expand more. The modern equity is the evolution of old equity and today’s legal system shows the modern equity when it is practically applied within them.

The three certainties are requirements that have been used in many cases and these three important requirements must be fulfilled for a private express trust to be created. The requirements were laid down by Lord Langdale MR in the case *Knight v Knight*. 18] The three certainties are;

Certainty of intention to create a trust (words), Certainty of the subject
<https://assignbuster.com/the-development-of-equity-and-trusts-essay-sample/>

matter of the trust and Certainty of the objects of the trust. Certainty of intention is recognised by taking into account all of the conditions of the case, as we know Equity “ looks to the intent rather than form. ” The meaning of this is that the person whom received the property shall hold on to it. The case of *Lambe v Eames*,^[19] ever since this particular case the courts have put forward a distinction between the use of imperative and Precatory words used.

The words that are Precatory put across a wish, hope or a moral obligation; it mainly conveys that a gift was the intention. Imperative words convey an order, duty or a demand; this means there is an intention for a trust. The differences of the wording are evident on the two cases firstly in the case of *Re Adams and Kensington Vestry*,^[20] here a testator had left his property at will and given it to his wife, “ in full confidence that she will do what is right as the disposal thereof between my children. ^[21]

The problem factor in this case was if a trust had been formed. It was held that a trust was not created on behalf of the children because of the words “ in full confidence. ”^[22] On the other hand in the case of *Comiskey v Bowring- Hanbury*,^[23] in this case the testator transferred his property under his will to his wife, “ in full confidence that at her death she will devise it to one or more of my nieces as she shall think fit. ”^[24] The wife asked the court if she was able to take the property absolutely or if a trust was created for the nieces.

Courts held a trust was created, if the wife did not do the following hence it would be divided in equal amounts to the nieces. The wording “ in full

confidence”[25] was used in this case, same as in the case of Adams, however the second sentence was an imperative wording hence created a trust. Certainty of the subject matter, in this second certainty there are two parts which define it. For example the simplest way to describe it is that there is no reason in creating a trust by issuing a certainty of intention, if firstly were not aware of which property the trust is to be held towards.

The beneficial interests must be clear and the actual property that the trust is going to be held on should be clear. In the case of *Re London Wine Co. Shippers Ltd*,[26] in this case the customers have purchased wine from a company called the LWC. Once the buyers have bought the wine they notified the company to keep the wine in their warehouse. The buyers received a certificate which specified once the wine is dispatched it will be held on trust for them.

The company went into liquidation and the buyers claimed that it was held in trust for them; however the claim went against them because the product was not separated from the larger stock of the exact same wine that’s stored in the warehouse. This was decided under the Sale of Goods Act 1979;[27] a trust was not created due to the uncertainty of the wine not being dispatched. Certainties of objects, the final certainty are broken down in to a few parts: A Fixed trust is one that the interests in the beneficiaries are fixed in the trust instrument.

There shouldn’t be any doubts on who the beneficiaries could be. It is evident in the case of *IRC v Broadway Cottages Trust*,[28] the problem in this case was if the trust was valid or void. It was held in the courts that for

uncertainty of objects the trust had to be void. A discretionary trust is one that trustees have discretion if an individual will be a beneficiary or not. The leading case to the discretionary trusts is, *McPhail v Doulton*,^[29] here the trustees were provided by a trust in order to apply for their net income receiving from a fund at their absolute discretion.

This was for the benefit, from any officers, ex- officers, employees and ex-employees of a company including relatives and defendants. The problem was if the trust was valid or was it for the fulfilment for the test of certainty of objects. It was held in the House of Lords the trust was valid hence it modified the test for certainty in order of respect for the discretionary trusts. Equity has been a provider of many remedies since it was formed. Common law is not able to do this because there were many errors inside the common law system.

The related case to this is the case of *Patel v Ali*,^[30] In this case an agreement was met for sale of a house. Consequently a long delay erupted because the seller had to have a leg amputated and gave birth to the second and third child hence relying on help from friends and family. The buyer wanted equitable remedy in order for the seller to complete the sale. This would mean now the seller will have to move away from the house. It was held that the seller will not need to complete the sale of the house due to the fact that it would be, “ hardship amounting to injustice. ^[31]

Constructive trusts do not have a clear cut meaning as similar as to the whole of equity. Millet LJ (1998),^[32] here he defined constructive trusts with this statement, “ whenever the circumstances are such that it would be

unconscionable for the owner of the legal title to assert his own beneficial interest and deny the beneficial interest of another. "[33] This quote explains that constructive trusts are formed to stop fraud and stop properties from being stolen with the help of unconscionability.

This therefore defines that if for example one individual is a beneficiary and another person who is a beneficiary as well will not gain whilst the first person is already permitted to gain something. In conclusion equity as a whole does increment the modern equity. In addition Equity has also merged closer with the common law and they both contradict and compliment each another, hence this forms the modern equity of today. To further cement i think that modern equity merging with the common law has prevented the rigidity of the law and has made the law more or less complete.