

# Is equity still relevant today? essay sample

Law



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Prior to the Norman conquest in 1066, different areas of England were governed by different systems of law. William the Conqueror gained the English throne in 1066 and began standardizing the law. "Itinerant justices" were able to discuss the various customs of different parts of the country. The principle of 'stare decisis' grew up and by 1250 a 'common law' has been produced. Common law is the basis of our law today. It is an unwritten law that developed from customs and judicial decisions. However, common law was very technical and had a lot of loopholes as it was operated by the writ system and the remedies given were only damages.

Therefore equity, which means 'fairness', was created by Lord Chancellor and Chancery courts to overcome any problems associated with the common law, because of the right justification it was thought to give. As it was developing, equity had no fixed rules and each Chancellor gave judgment according to his own conscience. This led to the criticism about the outcome of cases and John Selden, an eminent seventeenth century jurist, declared, "Equity varies with the length of the Chancellor's foot". Equitable remedies are discretionary, they are only allowed if the common law remedies are plainly inadequate. Equity introduced a few remedies which the common law could not provide. These include injunctions, specific performance, rescission and rectification.

Equity was not a complete system of law, it merely filled the gaps in the common law and softened the strict rules of common law. The two systems of common law and equity operated quite separately, which led to conflict between them. Because of the conflict, a decision to resolve the two was finally made in 1616 when it was referred to King James. The dispute

between the two systems was eventually resolved as a result of the Earl of Oxford's Case 1616; the outcome of this case was that if the two were to be in conflict and may contradict each other " equity would prevail." After many years, The Judicature Acts of 1873-75 came into place and provided that equity and common law could both be administered by all courts.

Equity developed maxims to ensure decisions are morally fair. For example, ' He who comes to equity must come with clean hands'. This requires both parties to be of good intentions and equitable remedies will not be granted to a claimant who has been in the wrong. To illustrate, in the case of D & C Builders v. Rees (1996), Mrs Rees took advantage of the company's financial situation. She claimed the work has not be done properly and therefore the company agreed to not charge her full payment. Afterwards, the company sued Mrs Rees for the remaining amount of money. As the Rees had taken advantage on the workers, they had not come with clean hands. The company won the case. Other maxims include ' He who seeks equity must do equity' and ' Delay defeats equity'. Equity principles have their greatest impact in the development of law of property, contract, trusts and mortgages.

Equity has proven itself capable of creating new remedies. In the 1970s, two important new remedies were created, which includes the search order and the freezing order. Equity has also developed various types of estoppel including promissory estoppel and proprietary estoppel. One development was promissory estoppel. This was first suggested by Lord Denning in Central London Property Ltd v. High Trees House LTD. In that case a block of flats in South London was leased to a company for a period of 99 years, and <https://assignbuster.com/is-equity-still-relevant-today-essay-sample/>

the company then sublet individual flats to residents. The landlord promised to reduce rent paid by the residents during the wartime. However, towards the end of the war, the landlord decided to change the conditions and claimed the full rent again.

The landlord is entitled to the amount claimed. But Denning indicated that if the landlord had claimed the full rental for the entire period, the claim would have failed because the landlord would have been estopped to go back on his promise to accept the lower sum. Promissory estoppel applies when one party to a contract promises the other that he will not enforce his rights under the contract in whole or in part. This gives rise to negative rights. The proprietary estoppel applies where an owner of land has implicitly or explicitly led another to act detrimentally in the belief that rights in or over land would be required. This can give rise to positive rights. In 2011, celebrities such as Andrew Marr and football player Ryan Giggs made use of super-injunction to prevent media from reporting on his affairs.

The injunctions are ‘super’ because they prevent reporting of the details of the protected matter and also hide the fact that this particular person has even sought an injunction. The availability of discretionary remedies means that equity still fulfils the traditional function of supplementing the common law, providing just and practical remedies where the common law alone is not enough but new equitable remedies can be genuinely and justly deserved.

In conclusion, equity is still very relevant today. Equitable rights, interests and remedies remain important. Equity has contributed to the efficient

development of the law by laying down vital rights, doctrines and principles. Concepts such as mortgages and trusts are founded on the idea that one person owns the legal interest in property but has no use that property for benefit of another.

This person is said to have an equitable interest in the property. It is difficult to imagine a life without mortgages as the vast majority of homeowners buy their property with the aid of mortgage. Trusts are widely used in setting up such matters as pension funds, as well as within families when property is settled on younger members of the family or between spouses. Until today, such principles and concepts are still widely applied in most, if not all countries around the world. Therefore, the importance of equity towards the law, society and country is definitely undeniable.