

EQUITY AND TRUSTS

SUMMARY



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Sample

01 GENERAL PRINCIPLES

1.1 History and Nature of Equity

Equity developed from the Court of Chancery to address the harsh application, outcomes, and deficiencies of the common law. Although the administration of equity law was formerly limited to the Court of Chancery, the *Judicature Acts* of 1873 and 1875 (Imp) and similar reforms in all Australian jurisdictions now means equity and the common law are administered together. The fundamental features of the judicature system are:

- Courts have the power to administer equitable remedies.
- Equitable defences are available in all courts (as applicable).
- All courts recognise equitable rights and interests.
- Common injunction has been abolished.
- Where conflict arises between equity and the common law, equity prevails.

At its crux, Equity seeks to:

- correct exploitations of weakness or vulnerability;
- remedy outcomes achieved through the abuse of power or confidence;
- enforce rights in harsh or oppressive circumstances;
- prevent the denial of obligations; and
- prevent or remedy the unjust retention of property.

Equitable decision-making by courts is therefore characterised by two things:

- 1) the exercise of the court's flexibility in discretion; and
- 2) the fact the court of equity is a court of conscience.

*	'Conscience' does not mean judges decide according to his or her personal convictions. Rather, equity is based on certain principles or "maxims".
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1.2 Equitable Maxims

Equitable maxims are not rules. They are generalisations that provide an understanding of the development of equity and how the principles have been applied. Whilst some are historical, some still operate today. The maxims are:

- **Equity is equality:** Equity addresses the quantum of loss pursuant to liability.

- **Whoever seeks equity must do equity:** Plaintiffs cannot seek equity if they have not fulfilled their obligations in law and equity.
- **Must come to equity with clean hands:** Improper conduct will negate a claim of equitable relief.
- **Equity follows the law:** The matter must be first considered at common law, then in equity.
- **Equity acts in personam:** Whilst equitable remedies were once only operated in personam, all Australian jurisdictions now recognise equitable proprietary interests. The most significant is the need for real property transfers to be evidenced in writing.
- **Equity looks to substance, rather than form:** Equity will address the substance of the matter as opposed to strict reliance on the procedural issues associated.
- **Equity will not suffer a wrong without a remedy:** Reflects early decisions where a common law remedy was not available.
- **When equities are equal, the first in time prevails:** Subject to exceptions, this rule governs the law of equitable priorities.
- **Equity assists the diligent, not the tardy:** A plaintiff who acts with undue delay or acquiescence may prejudice a claim.
- **Equity regards as done, that which must be done:** Where a person is under an obligation to complete a task, equity will regard the obligation as having been completed.
- **Equity imputes an obligation to fulfil an obligation:** Forms the basis of the doctrines of satisfaction, ademption and performance.
- **Equity will not assist a volunteer:** Equity is not available to a party who has not provided consideration.

1.3 Summary Overview

It is important to develop a sound understanding of the law of equity before moving to the law of trusts. Accordingly, the progression of this summary is as follows:

- Equitable defences and remedies
- Fiduciary duties
- Confidential information

- Equitable rights, interests and priorities
- Equitable assignments
- Unconscionability
- Undue influence
- Estoppel
- Introduction to Trusts law – Express Trusts
- Charitable Trusts
- Resulting Trusts
- Constructive Trusts
- Administration of Trusts
- Remedies for breach of Trusts
- Tracing



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