

EQUITY AND TRUSTS

SUMMARY



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1. 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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