Meaning and Historical Evolution of Equity

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The Meaning of Equity

In normal parlance, equity means justice and fairness. In the legal world, equity means this and much more. All legal systems all over the world, over the ages, have always had a concept of equity embedded in their administration of justice. The Civil Law jurisdictions of Europe inherited the Roman Legal system. In Roman law and most other legal systems, there was a fusion of law and equity. However, this was not the case in England.

Equity in England evolved separately from the law and became rules that were used to mitigate the harshness of the common law. These specific rules of equity are referred to as technical equity.Â In order to fully understand the concept of equity, its evolution over the years to its present state would be very important. The study of the evolution of equity in England is very important for the Nigerian situation since Nigeria makes use of the common law of England.

Historical Evolution of Equity

Like most other legal systems, equity was initially fused into the law of England. This equity was in the general sense and not the technical equity as we understand it to mean today. The late Anglo-Saxon and early Norman Kings were the fountains of justice. Whenever the law courts provided inadequate remedies for a case, the parties petitioned to the king who resolved them according to the dictates of justice. The Lord Chancellor was the Secretary of State and as such, it fell on him to write down and issue the Kingâ€™s royal writs[1].

Over the years, the Lord Chancellor invented writs according to the prevailing circumstances. The Parliament saw this as a usurpation of their role and limited this in the Provisions of Oxford. This stalled the development of equity till the *in consimili casu* clause in the Statute of Westminster in 1258. This clause allowed the Lord Chancellor to issue writs when there was a similar case which had a writ but the present case didnâ€™t have a writ.

As the petitions to the King became burdensome, he delegated the task of dealing with these petitions to the Lord Chancellor. The Lord Chancellor was usually a clergyman and as a result, his court ruled according to the dictates of his conscience. As a result, the holdings of the court of chancery/equity were according to the Lord Chancellorâ€™s personal opinion. This prompted John Selden to state that the judgement of the Court of Chancery varied like the foot of the different Lord Chancellors.

The Clash of Equity and Common Law

The presence of the two courts led to the inevitable clash between the court of Common Law and the Court of Chancery. Litigants that werenâ€™t satisfied with the judgement at the Common Law Courts instituted actions at the Court of Chancery in order to set aside the holdings of the Common Law court.

This greatly angered the common law justices. In the case of ***Neath vs. Rydley[2]*** the court held that where a matter can be directly traced to common law, a litigant canâ€™t institute an action for the same matter in the court of Chancery.

Lord Justice Coke took it further in the case of ***Courtney vs. Glanvil*** where he threatened to imprison anyone who, after getting a judgement at the common law courts, went to the court of chancery to have it overturned.

Matters came to a head in the ***Earl of Oxfordâ€™s Case***. In this case, the plaintiff â€“ who had a lease on a piece of land â€“ built a house on it and also planted a garden. The defendant, the owner of the land, subsequently ejected him from the land and sought to make the house and garden his own. The plaintiff sued at the Common Law court to prevent this. However, the Common Law court ruled against him.

He thus sought an injunction in the Court of Chancery to prevent the defendant from making away with his house. Lord Ellesmere â€“ the Lord Chancellor â€“ ruled in the plaintiffâ€™s favour. He held that by the laws of God, any man who built a house had the right to live in the house.

He also stated that where a judgement which causes injustice is brought to the court of Chancery, the court would overturn the decision. The overturning of the decision would not be due to a defect in the judgement but due to the hard conscience of the party who had judgement in his favour.

Lord Justice Coke â€“ the Chief Justice of the Kingâ€™s Bench â€“ and the other justices of the Kingâ€™s Bench protested that the Lord Chancellor was trying to pervert the course of the common law.

The justices brought the matter before the King who referred it to Lord Francis Bacon for adjudication. Lord Bacon ruled in favour of the Chancery. Subsequently, when there was a conflict between the Common Law Court and the Court of Chancery, the court of chancery prevailed.

The two courts remained separate till the **Judicature Act of 1873** consolidated both courts into the Supreme Court of the Judicature.

[1] Writs were the kingâ€™s orders. In modern use, they are simply court orders.

[2] (1611) Cro Jac 335