Equity and Trusts Concentrate: Law Revision and Study Guide (8th edn)
Iain McDonald and Anne Street

p. 1

1. The history and development of equity

Iain McDonald, Senior Lecturer in Law, University of the West of England, and Anne Street, Visiting Lecturer, SOAS, University of London

https://doi.org/10.1093/he/9780192865632.003.0001
Published in print: 05 August 2022
Published online: September 2022

Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter discusses the development of equity. Equity tackles injustice caused by a strict application of common law rules or unconscionable behaviour. Equity was originally dispensed by the King. However, this was soon delegated to the Lord Chancellor and the Court of Chancery. Equity and the common law were originally administered by separate court systems that coexisted uneasily until the *Earl of Oxford's Case* (1615), when the King held that equity prevailed over the common law in the event of a conflict. The administration of equity and the common law was unified by the Judicature Acts 1873–75, meaning that all judges could apply both equitable and common law rules and responses.

Keywords: equity, common law, Lord Chancellor, Court of Chancery, Judicature Acts 1873–75, maxims, unconscionability

Key facts

- Equity tackles injustice caused by a strict application of the common law rules or unconscionable behaviour.
- Equity was originally dispensed by the King. However, this role was soon delegated to the Lord Chancellor and the Court of Chancery.
- Equity and the common law were originally administered by separate courts. The two court systems coexisted uneasily until the ***Earl of Oxford's Case (1615)***, when the King finally held that equity prevailed over the common law in the event of a conflict.
-

The administration of equity and the common law was unified by the **Judicature Acts 1873–75** with the result that all judges could apply both equitable and common law rules and responses.

- It is still debated today whether the **Judicature Acts** 'fused' equity and the common law into a unified body of rules. While the two systems have become closer over time, the distinction still remains of importance in some areas.
- Equity benefits from a number of equitable maxims which can guide the courts in the exercise of their discretion.

p. 2

The history of equity

Revision tip

It is unlikely that you will be asked simply to discuss the history of equity in an examination. It is more common for questions to reference some aspect of the development of equity as a basis for discussing the operation of equity today. Try to think about the themes which characterize equity's development and their significance to modern equity.

The legal system of England and Wales began to emerge in the twelfth century. However, as the common law began to emerge, so too did instances of injustice and unfairness. These situations were brought about by both:

- the operation of the legal system itself; and
- the strict application of common law rules.

Problems with the early common law system

The early common law system was complex and expensive. Legal actions were based on writs, which had to be spoken precisely in Latin. Consequently, cases were often lost on a technicality due to mistakes being made in their delivery. This problem was compounded by the **Provisions of Oxford 1258** and the **Statute of Westminster**, which limited the number of writs and sometimes precluded a legal action simply because there was no legal writ which covered it—no remedy without a writ.

The strict application of common law rules could also lead to injustice. For example, where someone built a home on land on the understanding that ownership of the land parcel would be transferred to him on completion, if the landowner refused to carry out this promise the builder of the home would have no action under the common law as *legally* the land did not belong to him. Moreover, the remedy of damages available at common law was not always appropriate. For example, if someone trespassed upon your property, an award of damages would not prevent the defendant from repeating their actions.

The origins of equity

Alongside the common law system, it was possible for individuals to appeal directly to the King's conscience. As the number of these appeals rose, the King delegated this role to the Lord Chancellor. Originally, the position of Lord Chancellor was held by high-ranking religious officials, and the justice dispensed was rooted in the religious morality of the times. Over time, a separate court of equity, the Chancery Court, was established in the fifteenth century, and equity as a rival system of law began to take shape. This process was continued during the ↵ sixteenth century as the position of Lord Chancellor gradually came to be held by lawyers, rather than religious officials.

p. 3

Conflict between equity and the common law: the *Earl of Oxford's Case*

The laws of England and Wales therefore became the sum of the common law rules and the equitable decisions of the Court of Chancery. Where the common law courts would apply their legal rules, the Court of Chancery acted as a check upon these rules, ensuring that their application did not lead to a manifest injustice. However, this relationship was not a settled one and judges in the common law courts would frequently reach decisions based on the common law rules, despite knowing that the Court of Chancery would reach a different result. This created confusion and expense for claimants, who would have to mount two separate actions to reach a satisfactory conclusion. Moreover, these differences led to resentment that equity was interfering with the certainty of the common law. John Selden famously attacked the discretionary nature of equity by comparing it to the length of 'a Chancellor's foot'—insinuating that it was a random standard that would change from Chancellor to Chancellor. This conflict came to a head in the ***Earl of Oxford's Case (1615)***:

Earl of Oxford's Case (1615) 1 Rep Ch 1

A defendant appealed against a judgment in the common law courts on the ground that the judgment had been obtained through fraud. The Lord Chancellor, Lord Ellesmere, agreed and issued a 'common injunction' restraining the claimant from enforcing the judgment. These 'common injunctions' were seen as a direct challenge to the authority of the common law courts as they effectively deprived the recipient of the ability to pursue a remedy from the common law courts. However, the Lord Chancellor argued that there was no conflict between the two courts, as equity did not interfere with the operation of the common law. Instead, it acted *in personam*, meaning against the conscience of the recipient. Therefore, the common law decision was left undisturbed; equity only acted to compel the recipient to act according to good conscience. This dispute was finally resolved by King James I in 1616, when he declared in favour of the Court of Chancery. This gave birth to the equitable maxim that where the law and equity conflict, equity prevails.

Reform of the administration of common law and equity

With the primacy of equity now confirmed, the Court of Chancery continued to grow—but so too did delays and corruption. However, the existing legal system underwent major reform in the nineteenth century through two Acts, commonly referred to as the **Judicature Acts 1873–75**:

- The previous dual system, comprising courts of common law and equity, was merged into a single Supreme Court, comprising the High Court and the Court of Appeal.
- The jurisdiction of judges in the new Supreme Court was 'fused' so that all judges were able to use the whole range of common law and equitable rules. This meant that litigants no longer faced the delays and expense of pursuing two separate actions at common law and equity.

p. 4

- **Section 25 Supreme Court of Judicature Act 1873** gave statutory authority to the principle that where the common law and equity conflicted, equity prevailed. (This was later re-enacted by **s 49 Senior Courts Act 1981**.)

The 'fusion' debate

The reforms introduced by the **Judicature Acts 1873–75** mark the birth of the modern legal system of England and Wales. While it is clear that the **Judicature Acts** fused the *administration* of common law and equity (see Figure 1.1), there is continuing debate over whether the Acts, in fact, created a *unified system of rules*:

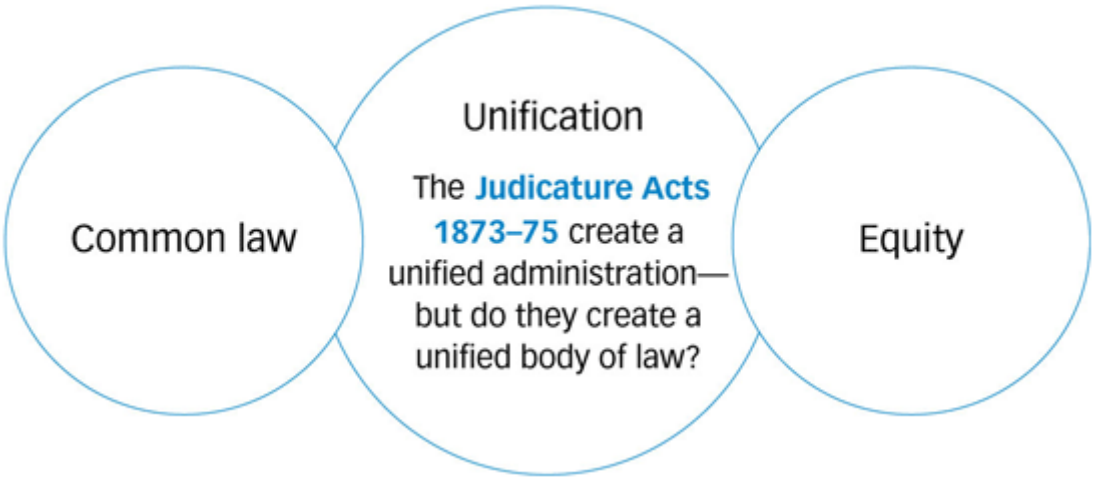

Figure 1.1 The fusion of equity and the common law

There are three main positions regarding the fusion debate:

The Judicature Acts only unified the administration of the law

This position argues that the **Judicature Acts** only created a unified *court system*. Ashburner in *Principles of Equity*, 2nd edn (1933), eloquently expressed this viewpoint when he likened the common law and equity to two streams running alongside one another, but never mingling their waters.

The Judicature Acts effected a more substantive fusion of equity and the common law

In ***Walsh v Lonsdale (1882)***, Jessel MR argued that 'There are not two estates as there were formerly, one established at common law … and an estate in equity … There is only one Court and the equity rule prevails in it'. More explicitly, in ***United Scientific Holdings Ltd v Burnley Borough Council [1978]***, Lord Diplock argued that Ashburner's metaphor of the two parallel ↵ streams had become 'mischievous and deceptive' and that the 'streams' of equity and the common law had long since mingled together.

p. 5

It is clear that the rules and remedies of equity and the common law have moved closer together:

Seager v Copydex Ltd [1967] 1 WLR 923

The claimant had been involved in negotiations with Copydex Ltd regarding the marketing of a new type of carpet grip. While these negotiations did not come to anything, the defendants later unwittingly used confidential information received from the claimant on how his idea could be improved to develop their own product. Breach of confidence is only protected in equity and Seager sought an injunction to prevent their use of this information. He also argued that the equitable remedy of account of profits (see chapter 12) would be inadequate. The Court of Appeal agreed and awarded the claimant common law damages which could more readily take into consideration the loss of the claimant's ability to exploit his invention.

The House of Lords also proved willing to grant equitable remedies more flexibly in respect of the breach of a *legal* right in exceptional circumstances:

Attorney-General v Blake [2001] 1 AC 268

George Blake, an infamous spy who had defected to Russia, entered into a contract to publish a book about his experiences, for which he was to receive £150,000. The memoirs contained sensitive information which he had contracted with the state not to reveal. The usual remedy of damages for breach of contract would be inadequate as the government had an interest in discouraging its

servants from breaching their commitments. Therefore, the Attorney-General sought a different *equitable* remedy, account of profits, to ensure that Blake would not be allowed to benefit any further from this breach.

As the information contained in the book was no longer confidential, it was difficult to argue that there was a continuing **fiduciary** obligation towards the state which would enable such a remedy to be granted. However, the court noted that the existence of more commonplace equitable remedies for breach of contract, such as specific performance or injunctions, was based on the idea that normal damages may be inadequate. Therefore, in exceptional circumstances, it was prepared to award an account of profits to protect the state's legitimate interest in discouraging such conduct.

These cases suggest only an incremental and, often, exceptional coming together of equity and the common law. Indeed, there are many more examples of how the law has retained a distinction between common law and equity. For example, the concept of the trust still relies on the distinction between legal and equitable ownership (see chapter 2) and the rules for tracing property into the hands of third parties differ at common law and equity (see chapter 12).

Moreover, equity and the common law also perform different functions:

- Common law—establishes general rules which provide certainty. This allows individuals to plan ahead and promotes commercial efficiency.
- Equity—acts as a check upon the common law. This remedies hardships which may arise from a strict application of the common law. Equity restrains the full exercise of legal rights where this would be **unconscionable**.

Terminology tip

Unconscionability—describes conduct which goes against good conscience. While the early Lord Chancellors restrained unconscionable behaviour on moral grounds, common examples of 'unconscionable behaviour' gradually hardened into the rules of equity (see JH Baker, *An Introduction to English Legal History*, 4th edn (2002), p 106). Today, it is no longer correct to assume that equity will restrain all immoral conduct. As equity has always attempted to respond to changing social conditions, 'unconscionability' remains a flexible device through which the court may choose to intervene. However, the inherent flexibility of 'unconscionability' also brings a degree of uncertainty as to how the actions of a party will be evaluated. See, for example, ***BCCI v Akindele [2004]***, discussed in chapter 12.

While it is difficult to argue that equity and the common law have been fully fused, the **Judicature Acts** have encouraged the development of a more *supportive* relationship between the two systems.

Equity and the common law should be fused

This third position accepts that while equity and the common law have become closer, there is a pressing need to complete the unification of the two systems. Sarah Worthington, in her book, *Equity*, 2nd edn (2006), argues that as equity and the common law continue to develop, each increasingly encroaches on the other's usual territory. This creates the risk that like cases will not be treated alike and that the ability of judges to make clear and principled decisions will be clouded.

Worthington convincingly argues that equity and the common law have always borrowed from one another and that neither system now occupies a distinctive conceptual position. A good example of this is the parallel development of **undue influence** in equity and **economic duress** by the common law, both of which look to questions of knowledge and unconscionability, but approach similar factual situations through increasingly difficult factual distinctions.

Looking for extra marks?

You will need to do additional reading if you are to do well on a question about the fusion debate. Sarah Worthington's book, *Equity*, 2nd edn (2006), manages to be both detailed and accessible. The main thrust of her argument can be found in the first and last chapters. These chapters also provide useful cross-references to the more detailed discussions which make up the remainder of the book.

The maxims of equity

During the nineteenth century, a number of general rules of thumb began to emerge from the court's exercise of its equitable jurisdiction. These are known as the maxims of equity. They do not have their own authoritative value but operate at the level of broad general principles which can guide the court in the exercise of its equitable discretion.

p. 7

Revision tip

Trusts and equity cover a diverse range of situations and it can sometimes be very difficult to get a sense of how these areas of law operate. Having a good knowledge of the maxims of equity can provide you with an effective template to discuss both the successes and problems of many different areas of equity and trusts. This type of question is common in examinations and to perform well it is important not just to know what the equitable maxims are, but also to be able to provide illustrations of their application.

Maxims concerning the nature of equity and its jurisdiction

Equity will not suffer a wrong without a remedy

Equity does not intervene in respect of every *moral* wrong. It will only intervene to prevent an *unconscionable* reliance upon legal rights. Three examples illustrate this principle well:

- In a trust, the trustees hold the legal title to the trust property. Should they claim the property for themselves the beneficiaries have no *legal* right to enforce. It is equity which recognizes the beneficiaries' equitable entitlement to the property. In an express trust, the legal ownership of trust property is only transferred to trustees on the basis that they will hold it for the benefit of the beneficiaries. Therefore, for the trustees to claim the property for themselves would be unconscionable.
- In *constructive* trusts of the family home, it would be unconscionable for a legal owner to insist upon their full legal rights due to an agreement to share the property combined with detrimental reliance on that agreement (see chapter 9 on implied trusts).
- Search orders—injunctions are typically awarded only after a court has heard arguments from both parties. If the claimant has to inform the suspected person of their action, it is likely that the defendant could hide or destroy the stolen documentation, thus making it impossible for the claimant to prove their case and depriving them of a remedy. Search orders are a type of **interim injunction**, which is awarded **ex parte** (ie without notice to the defendant), allowing the defendant's premises to be searched, thus preventing normal court procedures from frustrating the claimant's action (see chapter 13 on equitable remedies).

Equity acts in personam

This maxim describes how equity acts against an individual to prevent them from acting unconscionably. There are a number of consequences which flow from this:

- Failure to comply with an order is punishable by **contempt of court**.
- As equity acts against the individual *personally*, it does not matter if the property in dispute is outside the jurisdiction of the court: ***Penn v Lord Baltimore (1750)***.

p. 8

- By acting personally against a defendant, equity does not interfere with common law decisions.
- This aspect of equity's operation is also sometimes expressed as the maxim, 'Where equity and the law conflict, equity prevails'. Equity prevails over the common law not because it destroys the common law right but because it imposes limits on the extent to which those rights can be enjoyed.

Equity follows the law

Equity supplements common law rules to ensure fairness; it does not replace them. Equity may prevail over the common law in the event of a conflict but the maxim 'Equity follows the law' reminds us that the relationship between the two bodies of rules is respectful. Equity will only intervene when there are exceptional reasons for doing so—typically, the prevention of unconscionable behaviour. However, the general common law rule will still remain as the starting point for any future disputes.

Maxims concerning the conduct expected of claimants

He who comes to equity must come with clean hands

Equitable remedies are discretionary in nature and are granted following a full consideration of the particular circumstances of a case. The court will consider the *past* conduct of a claimant to decide if it is appropriate for equity to intervene:

- If a claimant has themself breached an obligation or otherwise acted inequitably, an equitable remedy will not be granted: ***Cross v Cross (1983)***. This is because equity cannot be seen to favour one party if both are in breach of their obligations.
- If a claim is affected by illegal conduct on the part of the claimant, the court will use its discretion to decide whether a claim can be enforced: ***Patel v Mirza [2016]***.

Patel v Mirza [2016] UKSC 42

The claimant, Patel, transferred £620,000 to the defendant with the intention that he would use this money to bet on the changes in the share price of the Royal Bank of Scotland plc, based on the illegal use of insider information. However, this information was never received and so the plan did not go ahead. When the claimant asked for his money to be returned, the defendant refused. Patel sued for breach of contract and unjust enrichment, but the defendant argued that he was prevented from recovering his money as, following the House of Lords' decision of ***Tinsley v Milligan [1994]***, he was prohibited from relying on his own illegal actions to establish his claim.

The Supreme Court rejected the approach taken in ***Tinsley v Milligan*** and held that the claimant was entitled to recover his money. In reaching this conclusion, Lord Toulson argued that the previous approach had often produced arbitrary and unsatisfactory results. Instead, the court should use its discretion to consider (i) the effect of denying a claim on the policy which made the conduct illegal; (ii) the impact of denying a claim on other public policies; and (iii) whether denying a claim would be a proportionate response to the illegal actions of the claimant. The court considered that as the plan had not gone ahead, to deny the claimant's action would be punitive and disproportionate, and would provide an unjustifiable windfall to the defendant.

p. 9 ↵ The broader policy-based approach to illegality taken in ***Patel v Mirza*** demonstrates that the maxims of equity must not be treated as fixed rules and that equity may no longer require a claimant's hands to be spotless. In ***Grondona v Stoffel & Co [2021]***, the respondent's knowing involvement in a mortgage fraud did not prevent her from obtaining a remedy against her solicitors who had negligently failed to register her title to the mortgaged property with the Land Registry. The Supreme Court focused on the need for the law to be applied consistently rather than preventing the claimant from profiting from her wrongdoing. Denying her claim for illegality would not help to deter mortgage frauds and could suggest that solicitors need not always perform their duties diligently and professionally.

He who seeks equity must do equity

Equity looks to do justice *between* the parties. Equity scrutinizes not just the claimant's prior conduct, but also their *future* behaviour in respect of the claim. Therefore, if a claimant is unwilling or unable to fulfil their own future obligations to the defendant, equitable relief will not be granted.

In ***Chappell v Times Newspapers Ltd [1975]***, following selective industrial action, the defendant threatened to terminate the employment contracts of *all* union members unless they returned to work and agreed not to take further action. Several members of the trade union who had not been involved in the strike sought an interim injunction to prevent their employer from taking this action. However the claim failed as they would not agree not to take part in any future action.

Delay defeats equity

This maxim expresses the doctrine of *laches* which prevents a claimant who has delayed from obtaining equitable relief. This principle again illustrates how equity tries to do justice between the parties. It would be inequitable to allow a claim for equitable relief on an issue which the defendant has long since considered settled. In ***Leaf v International Galleries [1950]***, an attempt to rescind a contract for a painting which the vendor had innocently misrepresented to be the work of Constable failed for delay as the action took place five years after the purchase.

Note: as equity follows the law, statutory limitations such as those in the **Limitation Act 1980** will displace any equitable jurisdiction to decide whether or not a claim is too late.

Maxims concerning the circumstances in which equity will operate

Equity looks to intent, not form

This maxim provides another example of how equity tends to assess the whole circumstances of a case, rather than applying broad and generalized rules. For example:

- Certainty of intention—in considering whether a settlor intended to create a trust, the use of the word 'trust' is not essential and the court will consider the whole circumstances of the case (***Comiskey v Bowring-Hanbury [1905]***). (See chapter 3 for more detail.)

p. 10

- Constructive trusts—this maxim explains the recognition of implied trusts whereby the court may find that the circumstances of the case, including discussions between the parties or certain types of contribution, demonstrate the intention to create a resulting or constructive trust. (See chapter 9 for more detail.)

Equity will not permit a statute to be used as an instrument of fraud

Equity follows the law and will not interfere with situations governed by statute. However, equity can also act to ensure that statutory provisions are not abused. Therefore, equity will intervene if a claimant seeks to rely unconscionably on a lack of statutory formalities.

This maxim explains the enforceability of fully secret trusts (considered in chapter 8). In a fully secret trust, the testator leaves property to a legatee without mentioning their intention that the legatee should hold the property as trustee for someone else. Property disposed of by a will must satisfy the requirements of the **Wills Act 1837**. However, secret trusts do not comply with these requirements and therefore, on a strict reading of statute, cannot be valid. This would mean that the trustee could claim the property for themself. However, as the property was only left to the trustee on the basis that they would hold it for another, to allow the trustee to rely on the formalities required by the **Wills Act** would be to permit the statute to be used as a device to commit a fraud against the testator. Therefore, equity recognizes the validity of the fully secret trust.

Equity sees as done that which ought to be done

If an equitable remedy *can* be granted, equity will act as if this has already occurred. For example:

- A contract for the sale of land is specifically enforceable as it is a unique type of property for which monetary damages would be inadequate (see chapter 13 on equitable remedies). Therefore, on the completion of such a contract, the vendor is taken to hold the equitable interest on trust for the purchaser until the transfer is formally completed.

Walsh v Lonsdale (1882) 21 Ch D 9

A landlord agreed in writing to lease a mill to a tenant. The agreement stated that rent was to be payable in advance if requested. However, such leases required a **deed** and none was ever made. The tenant entered the property and began to pay rent quarterly. When he fell into arrears, the landlord demanded a year's rent in advance and, when the tenant resisted, the landlord sought to use the remedy of distress (which allows the landlord to seize and sell the tenant's property in order to recover the rent). The tenant sought an injunction against the distress on the basis that there was no valid lease *in law* and therefore no provision to allow rent to be demanded annually in advance. The court refused this application, arguing that by allowing the tenant to enter the mill and pay rent, the

agreement to lease the mill would have been specifically enforceable. As equity sees as done that which ought to be done, the tenant was to be considered an equitable lessee of the mill *on the terms of the original agreement* and, therefore, the action for distress was legal.

Equity is equality

If more than one person claims to be interested in the same property and there is nothing to suggest what their shares should be, equity will assume that they are to have equal shares.

p. 11

Revision tip

A good discussion of the equitable maxims will recognize that they are not fixed rules but *starting points* for analysing a legal problem. This means that they are not always followed. For example, the maxim, 'Equity will not assist a volunteer', discussed more fully in chapter 4, may be said to have generated more exceptions than applications! While this has often led academics to be sceptical of their value, equity has always resisted the application of general rules in favour of a more thorough consideration of all the relevant facts.

Equity today

While equity began life as the King's conscience, it has now become a highly developed body of legal rules which continues to constrain unconscionable behaviour and provides relief from the hardships caused by the strict application of common law rules. Together, equity and its most famous invention, the trust, have continued to develop flexibly and creatively to respond to society's changing needs:

- Search orders and freezing orders allows claimants to search for documentation relevant to their claim and to freeze the defendants' assets if there is a real risk that the failure to do so will deprive them of an adequate remedy (see chapter 13 on equitable remedies).
- Similarly, in light of the incorporation of the **European Convention on Human Rights (ECHR)** into UK law through the enactment of the **Human Rights Act 1998**, the courts have further developed the use of the interim injunction (through anonymized and 'super-injunctions') to provide legal protection for individuals' private and family life under **Article 8 ECHR**. Anonymized injunctions prevent notified persons from identifying the parties involved or information about them considered private and confidential. 'Super-injunctions' go further and prohibit reporting on the existence of court proceedings and any order made. While these injunctions have proven controversial, the judiciary has been careful to develop a principled approach to their use that emphasizes doing only the minimum necessary to satisfy such claims (see, eg, ***JIH v News Group Newspapers Ltd [2011]***, ***Ntuli v Donald [2010]***, and also chapter 13 on equitable remedies).

- The recognition of constructive trusts of the family home in ***Gissing v Gissing [1971]*** and subsequent case law has provided financial relief for claimants who do not have legal title. The continuing development of this area of law has been particularly important in the face of the continued reluctance of Parliament to intervene (see chapter 9 on implied trusts).

p. 12

- The development of *Quistclose*-type resulting trusts has provided the possibility of protecting the money of innocent customers from the creditors of an insolvent company (see ***Re Kayford Ltd (in liquidation) [1975]*** and, less happily, ***Re Farepak Foods and Gifts Ltd (in administration) [2006]***).
- The increasingly flexible approach taken to formality requirements, as illustrated by the 'unconscionability' approach adopted in ***Pennington v Waine [2002]***, highlights that a lack of statutory formalities should not be used officiously to defeat agreements (see chapter 4 on constitution of the trust).

Revision tip

Exam questions on this area will invariably be essays. To do well in an essay you must address the terms of the question. Make sure you read the question carefully to identify precisely what it is asking you to discuss—a shorter but tightly focused essay will always be marked higher than a longer general essay on 'everything I know about the history and development of equity'!

Whereas once equitable relief was entirely discretionary (leading to accusations that it was subjective), many forms of equity have now hardened into equitable rights, so that where the relevant criteria are satisfied, equity *will* intervene. The acceptance that beneficiaries have certain rights under a trust, rather than simply at the discretion of the court, is perhaps the most pertinent example here.

While the discretion inherent in equity is no longer unfettered, a continuing debate on the development of equity and trusts is the *extent* of that discretion. Where equity and the common law once clashed over the ideals of fairness and certainty, arguably this battle now continues to be waged *within* equity itself. In all but the first example listed above, each development has been accompanied by great debate over whether the decision can be justified within existing equitable principles. For all that equity has matured into a substantial and detailed body of rules, it seems that it is the underlying impulse towards fairness over a rigid adherence to principle that continues to drive equity today.

Revision tip

It is tempting to think of trust law as neatly divided into different topics. However, as you can see, there are many links between different topics. While this chapter discusses major themes and developments in trusts and equity, you should use your knowledge of other topics to build on the basics set out here.

p. 13

Key cases

CASES	FACTS	PRINCIPLE
Earl of Oxford's Case (1615) 1 Rep Ch 1	Concerned a dispute over a lease and the question of which court prevailed in a conflict.	Equity prevails over the common law in the event of a conflict.
Seager v Copydex Ltd [1967] 1 WLR 923	Claimant sought common law damages in respect of a breach of confidence (which is only protected in equity).	Common law damages awarded as the equitable remedy of account would not be adequate. This case demonstrates the closer relationship of equity and the common law today.
Patel v Mirza [2016] UKSC 42	The appellant argued that the respondent's involvement in an insider dealing plot prevented him from recovering money paid to the appellant to exploit this information through betting on changes to the price of Royal Bank of Scotland shares.	The maxim that *one must come to equity with clean hands* is not to be applied simplistically. The court will use its discretion to consider whether it is proportionate or required by relevant public policy that a claim based on illegal actions should be denied.
Walsh v Lonsdale (1882) 21 Ch D 9	Concerned whether the claimant could enforce a *legal* remedy in respect of an equitable lease.	*Equity regards as done that which ought to be done*—the equitable lease was specifically enforceable on the same terms as the legal lease. This case also provides support for the idea that equity and the common law were fused by the **Judicature Acts**.

Key debates

Topic	Did the Judicature Acts do more than fuse the administration of equity and the common law?
Academic/ author	Worthington/Mason
Viewpoint	There is evidence of an increasing willingness to employ both equitable and common law remedies in hitherto unorthodox ways in order to do justice in a given case.
Source	Worthington, *Equity*, 2nd edn (2006). For a more detailed account of Commonwealth developments, see Mason (1994) LQR 238.
p. 14 ↵ **Topic**	**Should more be done to fuse equity and the common law?**

Topic	Did the Judicature Acts do more than fuse the administration of equity and the common law?
Academic/ author	Worthington/Burrows
Viewpoint	It can be argued that neither equity nor the common law now occupies distinctive positions of principle in relation to how they exercise their jurisdiction. However, this increasing closeness runs the risk of creating more confusion than clarity. Therefore, the time is right to consider further unification.
Source	Worthington, *Equity*, 2nd edn (2006), ch 10 offers a useful critique of the argument that equity and common law remain distinctive systems of rules. This book and Burrows (2002) 22(1) OJLS 1 offer a helpful analysis of how the two systems could be more closely reconciled.
Topic	**What is the role of equity today?**
Academic/ author	Watt
Viewpoint	Equity operates in an increasingly wide range of contexts.
Source	Watt, *Trusts and Equity*, 9th edn (2020), chs 1 and 2 offers a very clear and accessible account of the foundations of equity and the uses of the trust.

Exam questions

Essay question

> It is inevitable that judge-made law will alter to meet the changing conditions of society. That is the way it has always evolved. But it is essential that new rules should be related to fundamental doctrine. If the foundations of accepted doctrine be submerged under new principles, without regard to the interaction between the two, there will be high uncertainty as to the state of the law, both old and new (Glass JA in ***Allen v Snyder [1977]***).

Discuss.

See the Outline answers section in the end matter for help with this question.

Essay question

> The maxims of equity are unreliable. Though rarely completely meaningless or false, they have a tendency to obscure and mislead, and to stand in the way of analysis of the real principles and policies which shape the law (Webb and Akkouh, *Trusts Law*, 3rd edn (2013), p 14).

Discuss.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- An outline answer *<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-1-outline-answers-to-essay-questions?options=showName>* to the essay question
- Further reading *<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-1-further-reading?options=showName>*
- Interactive key cases *<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-1-interactive-key-cases?options=showName>*
- Looking for extra marks quiz *<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-1-looking-for-extra-marks?options=showName>*
- Multiple choice questions *<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-1-multiple-choice-questions?options=showName>*