Equity means Natural Justice, Fairness and morality

The term “equity” is in a general sense, associated with notions of fairness, morality and justice. It is an ethical jurisdiction. On a more legalistic level, however, “equity” is the branch of law that was administered in the Court of Chancery prior to the Judicature Acts 1873 and 1875. This was a jurisdiction evolved to achieve justice and to overcome the rigorous and deficiencies of the common-law. Although an ethos of conscience pervades this aspect of the law, equity never bestowed an unfettered jurisdiction on the Court of Chancery to do what was fair in the settlement of a dispute. Embodying aspects of ecclesiastical law and Roman law, equity developed and gradually emerged as a distinct body of law. In time, the system became as hidebound by rules and principles as it common-law counterpart.

It was not until 1875 that equity was practised in the common law courts. The existence of a dual system entailed that, for example, when a defendant had an equitable defence to a common law action, he would have to go to the Court of Chancery to obtaining an injunction to suspend the proceedings in common-law court. He would then begin a fresh action for relief in the Court of Chancery. Facing duality persisted until the Judicature Acts which created the Supreme Court of Judicature and allowed all courts to exercise both a common law and equitable jurisdiction.

Common Law is a form of law developed by judges through tribunals and decisions of courts rather than executive branch action and legislative statutes.Following this common law tradition, legal principles were referred to as Equity, this is commonly said to “mitigate the rigor” of common law.

Precedent determines the outcome in majority of cases, although equity derived from common-law it is now argued but this has become more regulated in recent years, although I consider there are certain examples which showcase that equity has continued to expand, I believe this can be seen in areas such as new model constructive trusts, proprietary estoppels, recognition of restrictive covenants and the varied remedies available.

Equity and its functions are discussed in the case of Tinsley V Milligan; this case consisted of two women who jointly shared a home under one name, thus allowing the other to claim benefits, during conflict the legal owner of the home decided to evict her partner. Upon this the other woman stated she had equitable interest within the property, the case was disallowed due to the fraudulent use of their relationship, I. E. the claimant categorised afoul of the aphorism "he who comes to equity must come with clean hands", this decision was later reversed in the Court of Appeal, although they agreed with the proverb however the facts presented before them permitted them to decide that this wasn't an affront and endorsed her claim. The House of Lords rejected this supple approach and argued that it would lead to great uncertainty in dealing with something as difficult as to enumerate public ethics. From this it is made apparent that the courts have no flexibility in conjunction with this maxim, therefore ought to persist to pertain it to refute any unconscionable plaintiff relief.

Owners of equitable trusts have developed significant protection over the last 30 years, as stated in areas of new model constructive trusts, proprietary estoppels and contractual licences. A constructive trusts is usually imposed by the court where no contribution to property purchase price exists, however there is proof that the legal owner acts in inequitably, fraudulently or illegally, and Lord Denning in the case of Hussey V Palmer depicts a constructive trust via stating " one imposed by law

wherever Justice and good conscience requires it". In the case of Eves v Eves a man lies to his wife in which he states that she might not hold an authorized title to their assets (property) as she is under the legal age to do so, in this situation the woman was offered 25% share as it was shown that she had done extensive work on the house. Ever since the verdict in the Lloyds Bank v Rosset it is perceptible that only by showing a direct financial contribution will impose a trust.

An additional exemplar of an equitable doctrine which has developed considerably, is proprietary estoppel, this is visible in the case of Dillwyn v Llewellyn, quintessentially where encouragement and acquiescence is visible equity will arbitrate and regulate the privileges of parties, an example of this can be seen in Inwards v Baker, in this a son was encouraged by his father to build a bungalow on his father's land, in promise that his son would retain land once the father passed away, in actuality after his father passed away his beneficiaries asserted right to the land, the Court of Appeal said that the son could continue living there as the father be estopped from fallaciously commencing promise due to the son acting upon his father's reliance. We see the widening of this doctrine in the case of Gillet v Holt in this case a boy left school and worked on a farm in reliance that he would ultimately obtain the farm, the promise of the farmer was not upheld and inevitably the boy was granted the freehold of the farm and a reward of £100,000 in compensation, as it was deemed that the farmer's actions were unconscionable. This doctrines flexibility can be seen in coincide with Gillett v Holt in which a fee was awarded, however the case of Matharu v Matharu the right to remain on land was the overall outcome, with the courts main issues being satisfying the claimant whilst upholding justice.

Developments in areas of equitable remedies in coincidence with injunctions can be seen in the case of Anton Pillar KG v Manufacturing Processes Ltd in which a

search order was developed thus allowing a claimant to enter the defendant's premises allowing the person to search and seize property with a risk of it being destroyed before trial, this continues to be developed and is still used today. Equity at times faces setbacks but continually seems to be refined, when new principles are developed and judges rationalise they do so with equitable principles within the forefront of their minds.

At one time, the maxims of equity were regarded as the fundamental principles of equity on which the whole of the equitable jurisdiction was based. This view has long since been abandoned and they are best regarded not as rules to be literally applied, but as indicators of the approach that equity takes to particular problems. Of the large number of alleged maxims of equity, twelve are now commonly referred to, and these will now be considered.

The first maxim is "Equity will not suffer a wrong to be without a remedy" Reliance cannot be placed on this comprehensive maxim in modern law, but, historically, it lies behind the Chancellor's intervention on the grounds of conscience and natural justice.

2) "Equity follows the law" in enforcing a trust, the Chancellor never denied the title of the legal owner, but instead that he hold it for the beneficiaries. He fully recognizes the various legal estates and interests, and followed the law by developing corresponding interests in the equitable estate. (Reference to equity history)

3) "Where the equities are equal, the first in time prevails" this maxim is sometimes quoted in its Latin form, Qui prior est tempore, potior est jure. It deals with priority of competing interests.

4) “where equities are equal, the law prevails”

5) “He who comes into equity must come with clean hands” a claimant will not obtain relief in equity where his conduct has been improper and relation to the transaction that he seeks to enforce. In Overton v Banister an infant, lies in regards to his age, therefore he induced his trustees to pay him money. He was not permitted to claim the usual protection of infancy when suing for the money again on tenant under an agreement for a lease, who is in breach of its obligations to their under, cannot compel a lease to be granted.

6) “He who seeks equity must do equity” this is closely related to the previous maximum, but looks to the future, or rather than the past. A claimant will not be granted an equitable remedy unless he is prepared to fulfil his legal obligations relating to the matter in dispute, and to act fairly towards the defendant.

7) “Delay defeats equities” this maxim is sometimes stated in the form ‘equity assist the diligent not the tardy’, or, in Latin, Vigilantibus non dormientibus aequitas subvenit.

8) “Equality is equity” this is sometimes stated in the form equity is equality, but the meaning is the same whichever way it is put. Where two or more persons are concurrently entitled to an interest in a property, then, in the absence of any provision or agreement applying to the situation, equity treats them as equally entitled.

9) “Equity looks to the intent rather than the form” equity concentrates on the substance of a transaction, rather than its form. Thus, it may hold that a trust has been created even though the word ‘trust’ has not been used.

10) “Equity looks on that has done which ought to be done” equity commonly treats a contract to do a thing as if that thing were already done. A well-known example is the doctrine of Walsh v Lonsdale.

11) “Equity imputes an intention to fulfil an obligation” this is usually listed as one of equities maxims; although it is of limited application. It puts a favourable construction on what a person has done, and is one of the basis of the equitable doctrines of satisfaction.

12) “Equity acts in personam” equity enforced its decrease by a personal order against the defendant breach of the order would be a contempt of court.

Before the Judicature Acts, they were cases in which common-law and equity had different rules that might give rise to inconsistent remedies. In such cases, the equitable rule would ultimately prevail by means the grant of a common injunction. Section 24 (5) abolished the common injunction, but even without this, the resulting in any particular case would have been the same as before the act he litigation in the High Court, because, as we have seen, every judge was bound to have regard to all equitable rights, claims, defences, and remedies. Prior to the acts, there should have been different rules relating to the same subject matter in different courts, it would have been even more strange if these conflicting rules had continue to exist when both were being administered in the same court, not withstanding provisions as to which all should prevail. What to section 25 (11) does, after dealing with particular cases, it is to provide that in all courts, where there are conflicting rules, in the sense referred to above, the legal rule is abolished and the equitable rule is to replace it for all purposes. The court in such cases has henceforward only one rule to enforce. It should be stressed that, in many cases, there were differences amid the regulations of common-law as well as equity that

did not result in conflict, and to which SS 24 and 25 had no application. Reverting to s 25

(11), this provision was applied in Berry v Berry to prevent a wife succeeding in an action on a separation deed. The deed had been varied by a simple contract, which was no defence to an action at law, the equitable rule was that such a variation is effective and that rule prevailed. Again, in Walsh v Lonsdale, there was an agreement for release of a mill for seven years at a rent payable quarterly in arrears, with a provision in titling the landlord to demand he is rent in advance. No formal lease was a fair executed in the least, as such, was accordingly buoyed at all. The tenant entered into possession unpaid rent quarterly in arrears but some 18 months, at which time he is rent was demanded in advance. In failure to pay, the landlord restrained and the action was for damages for illegal distress. The tenant argued that the distress was a unlawful; this argument is represented the common-law view before 1875. The court, however, held that the equitable view must prevail-namely, that this being an agreement of which specific performance would be granted.

The orthodox view which states whenever the principles of law and equity conflict, equitable principles should prevail was reasserted by Mummery LJ.

There are three views in regards to the rights and the effects of equity, with a amalgamation of two courts into a sole court via the 1875 High Court Judicator Act, Ashburner illustrated the traditional view: “The two streams of jurisdiction though they run in the same channel; run side by side and do not mingle their waters”, some argue that equity prevails over the common-law system, in regard to the combination of equity and common law courts, which was reportedly a concern by Sir Jessel: “There are not two estates as there were formerly, one estate in

common law by reason of the payment of rent from year to year and an estate in equity under the agreement. There is only one court, and equity rules prevail in it”

It is argued that confusion is caused via the mixing of common-law and equity, thus possible eradication of the need to separate equitable remedies from common-law, since all can be cosseted at the common law echelon, I. E. Evolution of law to guard equitable rights which are dictated by common-law but are no longer discretionary, equity does not prevail, Ashburner’s metaphor is deemed incorrect, as well as the concept that there is only court lined by equity and in personam rights and not common law and in rem rights. The following view was presented by Lord Diplock in the case of United Scientific holdings Ltd v Burnley Borough Council: it was argued that the explanation by Ashburner in which he stated distinctions between rights in personam and in rem are outdated and deemed conservative. Lord Diplock suggests that the rights in personam and in rem are fused.