Revision Box Questions: Guidance for approach

Revision Box Chapter 1

1. Ensure that you can answer the following questions:

(a) How did distinctive ‘equitable jurisdiction’ develop within English law?
(b) What was the impetus for equity’s development?

These are closely related questions requiring you to be able to explain that the origins of a distinctive equitable jurisdiction within English law lies in the arrival of the common law tradition in Britain following the Norman Conquest, and appreciating the nature of custom and practices associated with key tribes up until that point. The common law gradually evolved over centuries after this to put in place a framework of universal rights and entitlements and obligations and duties which underpins the terminology of ‘common law’, and which were enforced by the Court of the King. Equitable jurisdiction developed alongside this as the common law itself evolved, and this was strongly premised on asserting the value of a universal position for law, but being able to respond to the needs of individual claimants on a discretionary basis where it could be shown that strict application of law would result in an outcome which was not just in the particular circumstances. Equity’s concern with matters of justice and good conscience reflect its ecclesiastical origins during times of a ‘church state’ and where the court of the King reflected this. It would be centuries before lawyers came to occupy the position of Chancellor at the heart of equitable jurisdiction.

(c) What was the special court administering equity called and when did equitable jurisdiction cease to be administered separately from the common law courts?

The Chancellor’s ability to apply this individually focused conscience based jurisdiction is what gradually evolved into the Court of Chancery, which continued to be administered separately from the Common Law court until the late nineteenth century when the Judicature Acts were passed.

(d) From your reading so far, what kind of things does equitable jurisdiction appear to do?

As suggested above, Equity’s jurisdiction is associated with providing solutions of conscience and justice where a strict application of the ‘universal’ position applicable at common law would result in an injustice. Today this is most strongly associated with providing flexibility for those whose rights law will recognise, and justice for those without legal rights. However it is also important to remember that in all these situations equity leaves the basic universal position at law intact, and we will see instances where equity plays an important role in supporting legal rights.

(e) In what ways is the operation of modern equity both similar to and also different from its early origins?

Following the fusion of the jurisdictions of law and equity in the nineteenth century they are no longer administered separately and claimants no longer required to pursue...
separate routes for different remedies. Equity itself remains a discretionary jurisdiction which is premised on a universal position ‘at law’ which is how it originated. As such it will only provide an alternative for a claimant on a discretionary basis, and because it remains (as it originated) a jurisdiction of conscience, it continues to be mindful of how a claimant has himself behaved. In these regards equity remains very faithful to its origins. However, although it is a discretionary jurisdiction, its application is much more formalised today than it was historically; the principles on which an alternative solution of conscience and justice would be applied remained ‘ad hoc’ until becoming formulated into the maxims and principles of equity.

(f) What is the significance of the so-called ‘maxims’ of equity?

Following on from the above, these provide a guiding framework for the operation of equity today. They acknowledge that even discretionary jurisdiction must be underpinned by principle and clarity, whilst remaining faithful to equity’s interest in securing a just outcome for an individual where one is possible and where this is appropriate whilst reinforcing the supremacy of law in providing a universal framework of rights and entitlements and duties and obligations.

2. From this, consider the following scenarios referenced in this chapter, and in relation to each one:
   - identify the ‘injustices’ and/or inflexibility that recognizing only legal rights and/or accessing only remedies at law may present;
   - think about the difficulties that might arise from equity intervening in these circumstances to provide a more just/flexible outcome; and
   - think about the particular problems that might arise where third parties—those other than the individual defendant and the claimant seeking equity—are potentially affected.

(a) The doctrine of proprietary estoppel, which seeks to prevent a person going back on a representation made to another in relation to property on which the other person has been relied

(b) The doctrine of promissory estoppel, which seeks to prevent a contracting party from reneging on his promise not to enforce his legal rights (such as seeking full payment due under the contract) upon which the other party has relied

In both these scenarios equity is concerned about those who are led to believe something by another and has relied on this, and where there is an attempt to renego on what is said or done. Here equity’s interest in justice and good conscience will hold a person making representations to what he has said or done because not doing so would mean that the position of the party who has relied on what has been said or done will be prejudiced. This is responding to the disadvantage created for a party who has acted in a way which he would not have done so had a different situation been presented to him.

(c) The doctrine of undue influence, which seeks to prevent a party from exerting improper pressure on another in the formulation of legal agreements
Here equity wishes to ensure that when a legally binding agreement is reached between parties that this reflects the will of the parties. Legal agreements are ones which law recognises and will enforce and have far-reaching implications, the import of which must be reflected in genuine agreement to be legally bound. In these circumstances it is considered unconscionable for one party to be able to pressurise another and ‘overbear’ their freewill.

(d) The ‘deserted wife’s equity’, under which a wife’s a right to occupy a family home arises from particular circumstances

As a reaction against judicial attempts to insist that where a claimant cannot establish an ownership interest in a shared family home a ‘deserted wife’s equity’ was capable of binding a purchaser of the property, National Provincial Bank v Ainsworth insisted that any right to occupy the family home in such circumstances amounted to mere equity. Such an entitlement is significantly less strong than what is known as an ‘equitable right’ by virtue of lacking identifiability, stability and permanence required to be binding on purchasers in the light of the need for certainty and confidence in conveyancing.

(e) The personal remedy of specific performance, when one contracting party is unwilling to perform his contractual obligations

(f) The use of an injunction to prevent ‘wrongdoing’ on the part of an individual.

It makes sense to consider these together as they concern equity’s role in the law of obligations, where breach of contractual obligations is a breach of legal rights as far as law is concerned, as is commission of a tort against another. In both situations a remedy is available as of right to the aggrieved party, and this has become primarily an entitlement to a compensatory monetary award to put you either in the position you would have been in had the contract been performed, or in the position you would have been in had the tort not been committed. They both illustrate how equity’s ability and willingness to look at the needs of an individual situation and can provide flexibility for those with legal rights in some circumstances. In the former situation a contracting party can actually be compelled to perform his contractual obligations rather than be able to compensate for not doing so, whilst in the latter, someone who causes harm to another isn’t required merely to compensate for this, but required to desist from it.