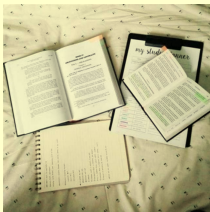


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LAW OF EQUITY & TRUST

DATE: ___/___/___

MODULE 1

CONCEPT & HISTORICAL DEVELOPMENT OF EQUITY.

- The system of equity includes that portion of natural justice which is judicially enforceable but ~~for~~ which for various reasons was not enforced by common law.
- Equity is the system of justice which was developed in and administered by the High Court of Chancery in England in the exercise of its extraordinary jurisdiction.
- Equity may be defined as a portion of natural justice which, although of a nature more suitable for judicial enforcement was for historical reasons not enforced by the common law courts, an omission which was supplied by the court of Chancery.
- DEVELOPMENT & HISTORY.
 - Before 1066 all laws were local & enforced in the manorial, shire & hundred courts. Under the Normans, Royal Courts began to emerge from the King's Council.
 - Originally the King's Council carried out the 3 functions of the state namely, legislative, executive & Judiciary. It dealt with cases in which the King had direct interest like breaches of peace etc. Eventually the courts split from the Council and formed main common law courts.
 - Two distinct systems of laws were administered by different tribunals at the same time in England till the year 1875.



- The older system was the common law and it was administered by the King's Bench. The modern body of legal doctrine developed and administered by the Chancellor in the Court of Chancery as supplementary & and co-^{law} operative of the old law was the ~~law~~ of Equity.
- These 2 systems of law were identical and in harmony leading to the maxim that "equity follows the law".
- The old laws were adopted by the Chancellor and incorporated into the system of equity, unless there was some sufficient reason for their rejection or modification. In case of conflict, the rule of Chancery prevailed, because if a common law action was brought in defiance of a rule of equity, the defendant could apply to the Court of Chancery for an order called a common injunction, directed to the plaintiff and ordering him not to continue his action.
- The common law courts which developed in English Jurisprudence by the end of the 13th Century were the King's Bench, the Court of Common Pleas & the Exchequer. Although each of these courts had jurisdiction over different subject matters, they were all regarded as "common law" courts, that is, courts governed by strict rules of law, a formalized procedure & bound by Judicial Precedent.



- In the middle ages, the courts of common law failed to give ~~addresses~~ redress to certain type of cases where it was most needed and now litigants petitioned the king, who was the "foundation of justice" for extraordinary relief.
- Equity was important in the development of English law as it resolved some of the defects of the common law, which might otherwise have led to a loss of public confidence in the legal system - since the hallmark of a civilized society is a proper legal system.
- Sir Thomas More began a new era of equitable justice by recording proceedings in the Court of Chancery which led to a number of equitable doctrines.
- As a result of inadequacies of the common law courts, people petitioned the king through his Chancellor. This developed into a full legal system and the Chancellor as petitions increased, set up the Court of Chancery the rules of which became equity.
- The Earl of Oxford case decided that if ~~now~~ equity and the common law were in conflict, equity would prevail.
- In the mid-19th century the procedure of the Chancery courts was made available to the common law courts.
- The Court of Chancery was given the power to determine matters of common law, use juries, award damages and ~~now~~ receive oral evidence.

- The Chancery developed new remedies that were able to compensate plaintiffs more fully than the common law remedy of damages. There were 4 main remedies known as injunction, specific performance, rescission & rectification.
- There were also 2 other remedies known as trusts & mortgages.

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→ LAW OF EQUITY IN INDIA

- As a Branch of a legal system Equity refers to the principles & rules arising from the process of administration of justice in those cases or areas which are not sufficiently covered by the statutes.
- Equity supplements the law with the essence of liberty & kindness.
- Equity owes its origin to the ancient Hindu period when legal experts defined the old laws and set out new rules of interpretation & equitable solution in case of any contrast or conflict between rules of different laws.
- For the administration of Equity there was never established any separate court in India since most of the law for application is codified. However the court act according to the principles of Equity, justice & good conscience in the