

The System of Equitable Remedies

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Throughout the centuries the law of equity has experienced great evolution. Having begun as a civil procedure of a wholly different character to common law equity has developed into a comprehensive system of various equitable remedies [1].

The issue of whether the law equity is to continue its co-existence with common law is actively debated. Some critics claim that equity depends too much on loose criteria of conscience and too little on evident general principles capable of solving any problem objectively. The distinction between common law and the law of equity is sometimes regarded as a useless reminiscence of the feudal era. Thus equity scepticism is seen as dominant [4].

Nevertheless, the law of equity is still influential in common law jurisdictions. For example, the US Supreme Court has consistently reinforced the line between legal and equitable remedies. It has treated equitable remedies as having distinctive powers and limitations recalling to the historic division between law and equity. Therefore equity still has vitality and at the same time maintains the tradition [3].

The given report tries to reveal the historically determined place of the law of equity, describe the equitable remedies system and point out the meaningful connection of law and morality that is so vividly seen in equity.

1. Historically the law of equity can be explained by the rigidity that wounded common law in the 13-14th centuries. Furthermore, the authority of the Lord Chancellor also contributed. Although the Court of Chancery began as an exercise of the Lord Chancellor's religious conscience the Court became secular and backed up with the system of precedents. In the second half of the 19th century, the Court of Chancery and common-law courts merged. Though procedural differences ceased their existence the spectrum of remedies still varies in law and equity.

2. The system of equitable remedies can be described as coherent and comprehensive. Such remedies as injunction, constructive trust, subrogation, specific performance, reformation and others provide a high level of protection that is unreachable through legal remedies alone. Equitable remedies are enforced with the help of instruments known as equitable managerial devices and equitable constraints [4].

3. Equity and morality are inseparable issues. It is noteworthy that the law of equity has softened and modified many of the injustices in common law. Equity grants remedies where at law they are either inadequate or non-existent [2]. A prominent Russian philosopher Vladimir Solovyov stated that legal justice is the lowest limit or the minimum degree of morality [5]. One can say that the exercise of equity has proved this during a long successful experience.

Источники и литература

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