

Equity

What is equity?

- Legal principles based on justice and fairness
- System based on equity is known as „law of equity“
- Serves as a complement to common law
- Equitable remedies are discretionary
- Allows courts to use their own will to resolve the proces on base of „justice“ , if the common law could caused an unjustice judgement
- Modified by 12 basic and 5 additional general ethical statements

Origins

- Equity was the reaction on lacks in common law, because this law was based on „writs“ (equivalent to „norms“ in continental law system)
- Writs were strickt and the applicant had to use the right formulation of writ (there were over 50 different formulations)
- Writs were often the cause of injustice
- Because of that, there was found The Court of Chancery in the 15th century with Chancellor in it´ s head

Chancellors

- Early Chancellors were catholic clerics with knowledge of Roman and canon law
- The most important Chancellor was sir Thomas More (appointed 1529), who was also a lawyer and all Chancellors after him were lawyers too

Criticism of equity

- Principle of equity is highly individual so the decisions can be different from one Chancellor to another → main point of criticisms of equity
- Criticism by John Selden: 'Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.'

Equity and common law

- In conflict between common law and equity, the equity prevails
- The penalty for disobeying equitable injunction and enforcing the common law is imprisonment
- Equity and common law became one system in the second part of 19th century (equity still prevails)

Recapitulation

- Legal principles based on justice and fairness
- Modified by 12 and 5 additional ethical statements
- Court of Chancery (15.century)
- Criticism for different decisions made by chancellors
- Sir Thomas More: lawyer-chancellor, all chancellors after him were also lawyers
- Common law vs. equity → equity should prevail
- One system with common law since the 19th century

Sources

- wikipedia.com
- Marta Chromá: New Introduction to legal English, Volume I., Karolinum, 2011