



## IN LAW OR IN EQUITY?

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St. Thomas More,  
English Chancellor  
1529-1532

Lawyers and businesspersons around the world read contracts every day that provide for indemnity against, or the release of, claims “in law or in equity.” Based on my conversations with civil lawyers and with business executives in the US and abroad, it seems that many of them haven’t really thought about what “equity” means in this context. Here are the basics.

- Equity jurisdiction arose in England during the Middle Ages to balance the excessive rigidity of the common law courts by allowing a royal official, the Lord Chancellor, to decide disputes based on broad concepts of fairness and good conscience.
- The distinction between law and equity is important because: (a) equitable claims are decided by a judge, not by a jury, (b) claims in equity are subject to different defenses from legal claims (the defenses of “unclean hands,” “laches,” or “undue hardship,” e.g.), (c) equitable relief being viewed as an “extraordinary remedy,” the standards of pleading and proof are generally stricter than for legal claims, requiring greater specificity and clearer evidence, (d) courts can retain jurisdiction over equitable matters long after judgment is entered, allowing them to modify or dissolve injunctions, or to appoint receivers to manage property or special masters to monitor compliance, (e) equitable judgments are enforceable by sanctions for contempt of court, and (f) equitable judgments are discretionary and therefore especially difficult to overturn on appeal.
- Most claims arising “in equity” ask the court for an injunction, that is, an order that the respondent do something or refrain from doing something. This is distinguished from claims arising “in law,” where the plaintiff demands an award of damages as compensation for injuries caused by a tort or a breach of contract. For example, a claim for breach of contract invokes the court’s legal jurisdiction; a claim for specific performance of the contract is in equity.
- Other types of equitable remedies include declaratory judgment, rescission or reform of contracts, accounting for profits, appointment of a receiver, the constructive trust, and the equitable lien.
- Whether a claim is classified as “legal” or “equitable” may depend on the jurisdiction in which the claim is asserted. For example, a claim for unjust enrichment in New York state court is a

legal claim to be tried to the jury; the same claim in Florida would be tried to the court sitting in equity.

- Historically, the Lord Chancellor's jurisdiction developed over the course of centuries into a parallel court system, alongside the common law courts, called the Court of Chancery. The U.S. Federal Courts, and all but a handful of U.S. states, have abandoned the separate system of "courts of chancery" exercising exclusive equity jurisdiction, and now provide a unitary court system in which the same judges exercise both legal and equitable jurisdiction, often in the same lawsuit. The exceptions, where separate chancery courts still exist, are Delaware, New Jersey (where chancery is a division of the Superior Court), South Carolina, Tennessee, and Mississippi.
- A complaint containing both equitable and legal claims may be handled differently depending on the court in which it is brought. For example, in New York state courts, a plaintiff pleading a single equitable claim arising from the same facts as his legal claims may be found to have waived his right to a jury trial. If he brought the same case in a Federal District Court sitting in New York, the equitable claim would be tried first to the court, and then the legal claims would be tried to a jury.

This little summary is intended merely to help people who are not trained in U.S. law to understand what "arising in law or in equity" means. Oceans of ink have been consumed in writing about equity jurisdiction, and U.S. state and federal courts continue to wrestle with controversial rules and nuanced distinctions. Observations, corrections, and anecdotes are most welcome in the comments section below.