

I. BACKGROUND MATERIAL

A. Equity: Distinctive Characteristics:

1. Legal remedies: Generally are directed against the property of D. For example, D is ordered to pay money damages of P. Equitable remedies, on the other hand, generally are directed against the person of D. D is ordered to do or refrain from doing some act
2. Enforcements of judgments at law: P can enforce a judgment against D by proceeding against D's property. Typical enforcement mechanisms include execution and garnishment. Sheriff seizes and/or sells D's property to satisfy money judgment. Equitable decrees are enforced against D's person through civil contempt. See below
3. Modernly, equity and law courts are merged. The "Clean Up" Doctrine is employed to take care of both law and equity problems. Thus, chancellor may impanel jury for any legal issue (punitives) then take that judgment and proceed in equity
4. Equity acts in personam: Requires personal jurisdiction over subject matter and person
 - a. Order of preference:
 - 1) P, D and Res before the court
 - 2) P and D before the court
 - 3) Res before the court
 - 4) Long Arm
 - b. Full faith and credit: Discretionary: If court grants equitable remedy where no equitable jurisdiction exists, decree not void for lack of jurisdiction but may be subject to reversal on appeal
 - c. Decrees affecting land in another State: Court has no power to order a conveyance without personal jurisdiction over seller. Court may act in personam to land outside state but if D (seller) fails to execute conveyance and departs jurisdiction, decree is ineffective
 - d. Decrees affecting acts outside of State: If court has personal jurisdiction, it can grant injunctive relief but has no enforcement power
5. Enforcement of equitable orders:
 - a. Civil contempt: P can use civil contempt to force D to comply with equity court's order. Contempt is directed against D's person. Court can jail D or fine D until D complies with equitable order. Once D complies, contempt sanctions cease.
 - b. Procedure for civil contempt: D is entitled to notice and hearing before court can impose sanction of civil contempt
 - c. Effect of reversal of underlying order on civil contempt: If underlying equitable order is reversed on appeal, civil contempt sanction must also be vacated as P is not entitled to enforce order that has been reversed
 - d. Criminal contempt distinguished: Criminal contempt is sanction for D's affront to the dignity of the court. Criminal contempt sanction is not vacated even if underlying equitable order is reversed on appeal. D in criminal contempt is entitled to constitutional criminal procedure protections, e.g., right to counsel, right against self-incrimination, etc.