

3 — Equity.

Until recent times, when the technical elaboration of law reached an advanced stage of development, a sharp line between the formal administration and the ethical idea of justice had been drawn. In the growth of legal systems a conscious as

(قوة قونية)

toward a 'constant' of fairness in legal relationships has played a large part in shaping substantive rules. Equity has stood to strict law as a 'supplementary residuary jurisdiction'. This has been necessary because legal rules are formulated generalizations and such are necessarily incomplete. So, a margin of discretionary interpretation must be left.

This may take the form of equity 'in general' — a general disposition towards a human and liberal interpretation of law; or 'particular equity' — a discretionary modification of the strict law in individual exceptional cases which are not covered by the general rule.

The popular or natural sense of justice cannot be disregarded; it has a real meaning in law, since it represents an average element in the community with which it is necessary that law should harmonize; and most of the equitable or discretionary ingredients which are constantly found in legal systems are based upon this primary sense of justice inherent in the average moral sense of the community.

Equity as a source of law may be defined as "any body of rules existing by the side of the original positive law of the country founded on distinct principles of reason, or deduced from absolute justice, and claiming to supersede the positive law in virtue of a superior sanctity inherent in those principles." Clearly, therefore, principles of equity are strongly interwoven with the idea of natural law.