2. The characteristics of equity

This chapter analyses the essential characteristics of Equity. It identifies fourteen maxims that are useful and relevant today as guidelines for the operation of the equitable jurisdiction. The most important of the maxims are examined in some detail, namely that Equity is discretionary and is triggered by unconscionability. The meaning of discretion and the contemporary relevance of conscience and unconscionability are examined. Other maxims include that Equity will treat as done that which ought to be done and Equity responds to cynical conduct. This chapter explains the principles underlying these maxims and suggests that they are often subject to exceptions and sometimes it may even be necessary to redefine them to ensure that they are fit for purpose today.

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