In *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd [No. 2] (2000) 96 FCR 491* at 498 French J noted:

The fundamental principle according to which equity acts is that a party having a legal right shall not be permitted to exercise it in such a way that the exercise amounts to unconscionable conduct …

So it can be said that the overriding aim of all equitable principle is the prevention of unconscionable behaviour—a term which can be seen to encompass duress, undue influence and ‘unconscionable dealing as such’ …

This is not to say that unconscionable conduct … is any conduct which attracts the intervention of equity. Too broadly defined it may become, in the words of Professor Julius Stone, a ‘category of meaningless reference’.

Do you agree?

Discuss when equity will intervene to prevent unconscionable conduct.

**TIPS FOR QUESTION 1:**

This question involves understanding the history and nature of equity. The expression ‘unconscionable behaviour’ is a recurring theme. This question seeks to identify the limits of equity so as to ascertain what the essential qualities of equitable relief are. It is important to put the quote into context, so there is a need to explain the case *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd [No. 2] (2000) 96 FCR 491*. This question should also be revisited towards the end of the semester. It is important to consider
how your understanding of equity has expanded with study. Almost all the topics in later chapters can be discussed in answering this question.

**QUESTION 2**

‘The reception of equity in the Australian colonies was awkward and clumsy. This can be partly explained given the nature of the British Empire and the legal system in the emerging colonies. It can also be understood with reference to particular individual personalities.’

Critically discuss this statement.

**TIPS FOR QUESTION 2:**

Attention should focus on the historical development of law and equity in each jurisdiction. The question involves discussing Australian legal history and how each state (former colony) received English law and obtained self government.

**QUESTION 3**

Explain the following equitable maxims:

(a) Equity follows the law.

(b) Equity looks to intent, rather than form.

(c) Equity acts *in personam*.

**TIPS FOR QUESTION 3:**

Equitable maxims are not rules. They represent historical events and indicate how the equity may develop. Each individual maxim should be discussed with historical and contemporary examples.

**QUESTION 4**

‘Problems are still occurring in equity despite the *Judicature Act 1873 (UK)*.’

*Do you agree?*

Critically discuss this statement with reference to relevant cases and statutes.
TIPS FOR QUESTION 4:

This question concerns the fusion of equity and common law. See the following articles:

A Burrows, 'We Do This at Common Law but That in Equity' 22(1) Oxford Journal of Legal Studies (2002) 1-16.
