



Garden State CLE  
2000 Hamilton Ave.  
Hamilton, N.J. 08619  
(609) 584-1924  
(609) 895-1899 Fax  
[www.gardenstatecle.Com](http://www.gardenstatecle.Com)  
[atty2starz@aol.com](mailto:atty2starz@aol.com)

## CLE On-Demand

**View and record the “Secret Words”**

**Print this form and write down all the “secret Words” during the program:**

**(Reporting the words is a required step in getting CLE Credit)**

**Word #1 was:** \_\_\_\_\_

**Word #2 was:** \_\_\_\_\_

**Word #3 was:** \_\_\_\_\_

**Word #4 was:** \_\_\_\_\_

# **GARDEN STATE CLE LESSON PLAN**

**A 1.5 credit course**

**FREE DOWNLOAD  
LESSON PLAN AND EVALUATION**

---

## **INTRO TO GENERAL EQUITY**

---

**Featuring...**

**Robert Ramsey**  
*Garden State CLE Senior Instructor*

**And**

**Hon. James E Rafferty**  
*Attorney*

**Program description**

The chancery division of our court system goes back to 15th century England. Find out all the history and the present of general equity in New Jersey with this 1.5 credit CLE.

## **I. Introduction**

- **Recently retired from Superior Court – retired in 2011**
- **Claim to fame – General Equity for 11 years**
- **Chancery Division – General Equity part**

## **II. History of Equity Court**

- **King established courts which became common law courts – court of common pleas – the law division in NJ today**
- **Strict process to get decision made in common pleas**
- **If case did not fit into terms of writ (causes of action), then no relief – could not go to court**
- **15<sup>th</sup> century – King developed process where you have controversy but does not fall within writ then King would make a decision**
- **King then decided that there should be a chancellor assigned to hear these types of cases**
- **Eventually chancellor created chancery court to hear these cases**
- **Initial chancellor was appointed by the King and most often one of the clerics – most famous was Thomas Moore**
- **Most famous case – Henry VIII wanted a divorce so he could remarry – chancellor said no**
- **Complex history of chancery court**
- **Chancellors were substitutes for the King – do the right thing, the fair thing – handle cases that involved issues of trust or fiduciary duty – function of chancellor was to come to a remedy that was unique, fair, equitable and reasonable**
- **Not legally, technically difficult – but hard issues to decide and be fair and just and practical**
- **To get before chancery court must establish that you have no other remedy – some type of specific relief – not just money damages, i.e. injunctive relief**
- **Money damages can never make a person whole when it comes to property because each piece of property is unique**
- **Example: Specific Performance**
  - **Contract to buy a house with down payment**
  - **Seller decides not selling**
  - **At law, traditionally, it is a contract and this is a breach of contract and plaintiff is owed money**

- **Real estate is unique**
- **If specific performance ordered by court, court must insure that burden on defendant who is forced to sell is fair**
- **Principles of general equity go back in history**
- **Long tradition of the court**
- **1600s courts split – law and equity became separate courts**

### **III. Maxims required for Chancery matters**

- **Maxims of equity are guiding principles – not statutes**
- **Clean hands doctrine – not going to get equity if party has not been fair to other side**
- **Must judge fairness**
- **Legal result is not the fairest result**
- **12 maxims of equity**
- **Maxims are very much part of equity courts in today's chancery court**
- **Maxims provide guidance to the court**
- **Look at maxims and find a basis to decide when something is fair**

### **IV. July 4, 1776**

- **Remained common law country even after independence from England**
- **Law courts and equity courts developed in US**
- **13 colonies – certain colonies established separate equity courts**
- **Today – 8-10 states have totally separate equity courts (NJ, DE – these states kept separate courts in order to be favorable to corporations to incorporate)**
- **PA has court of common pleas which is a law court that hears equity courts**

### **V. Functions of court**

- **Chancery court is available to address emergent issues, including injunctions**
- **Judge of law division can exercise equitable powers while judges of chancery division can exercise law division/common law powers to resolve cases – part of 1947 constitution**
- **NJ courts are not strict about delineation between chancery and law division cases**

- **Municipal court – do they have equitable powers? Not constitutional courts – “inferior courts” to superior court – statutory courts**
  - **Can only exercise powers granted by legislature and Supreme Court**
  - **Equitable principles in Municipal court:**
    1. **Bail forfeiture and remission**
    2. **7:7-7(e) – fairness of how much money was charged for a discovery package – judge can adjust cost**
    3. **Restraining orders (TRO) – decision as to what restraints should be ordered**
- **Family court is an equity court**
- **Chancery division – family/matrimonial part (divorce, DV restraining orders, contempts of court, juvenile justice), probate part, general equity**
- **Judge of chancery division regarded differently – level of training and experience is given a great amount of deference, specialized knowledge in sensitive issues – recognition by Appellate Division**
- **Accept that App. Div. is going to give factual issues resolved by chancery great deference**
- **Argue legal issues not factual findings – deference given to factual issues not legal issues on appeal**

## **VI. Subject matter jurisdiction of General Equity Court**

- **Concepts of what is in equity and what is in law remain the same**
- **Go to chancery if requesting an equitable remedy**
- **“I want something other than money”**
- **Injunctive relief (a court-ordered act or prohibition against an act or condition which has been requested, and sometimes granted, in a petition to the court for an injunction) – this equitable relief that can also be granted by the law division**
- **Dissolutions of partnerships or corporations (to end a legal entity or agreement such as a marriage, adoption or corporation or unions) – “corporate divorces”**
- **Stockholder derivative actions for publicly traded companies**
- **Fight over land – deed contest – could be either chancery or law depending on the dispute**
- **Pure boundary line dispute – mistake by surveyors ...law division or equity? More likely to be filed in law division**

- **Specific performance**
- **Probate part**
- **Receivership (the process of appointment by a court of a receiver to take custody of the property, business, rents, and profits of a party to a lawsuit pending a final decision on disbursement or an agreement that a receiver control the financial receipts of a person who is deeply in debt for the benefit of creditors)**
- **Most subjects for equity court are determined by statute**
- **Basic general equity**
  - **Fairness**
  - **Justice**
  - **What “should” happen**
  - **Weigh equities**

## **VII. General procedures of Chancery division**

- **Not entitled to trial by jury**
- **Judge will make findings of fact and conclusions of law**
- **Judges make credibility findings**
- **Burden of proof: preponderance in most cases; some cases require clear and convincing evidence**
- **Should ask judge if opening statement is appropriate – most times judge is familiar with the case**
- **Motion practice: most of legal argument comes from the papers, focus on strong brief; most of the motions are not dispositive**
- **Chancery judges have a lot of flexibility substantively and procedurally**

## **VIII. How to Win in General Equity**

- **Be well prepared**
- **Know the law you are arguing**
- **Know what equity is all about – understand concepts**
- **Know if requesting equitable relief what are arguments going to be – how are you going to show that it is more fair for your client to prevail than another party – clarifying**
- **Know to establish the elements of your cause of action**
- **Read relevant cases, if any**
- **Process is similar to law division as to oral argument**

- **If proposing resolution of case, note benefits for client but also fairness to other parties**
- **Weigh equities – is it a fair decision for both sides?**
- **Most cases settle – and they should settle; cases are better resolved by agreement between the parties**
- **Need strong attorneys who can speak with and guide parties**
- **Emotional cases – sometimes difficult to settle**
- **Generally no specific caselaw fits totally into facts of the case**

## **IX. Mediation**

- **Try to get parties together and ultimately to resolve the matter**
- **Primary effort is try to get parties to agree by pointing out problems with case, weakness in case**
- **Some cases should not be decided by a judge – should be decided by religious leader or therapist**
- **Mediation – process where parties together and mediator attempts to settle the dispute; not acting as a judge, cannot order or tell parties what to do, facilitate settlement**
- **Arbitration – parties say want to arbitrate instead of trying it; mini-trial; most people go to arbitration because it is in a contract that must arbitrate; must deal with contract that requires arbitration**
- **Most people come to a mediator/arbitrator because people know the mediator and trust**
  
- **Listening is one of the most important parts of being a judge**
- **It matters to the parties that the judge heard them**
- **Need to give parties perception of “having their day in court”**