Form and Substance in Equitable Remedies

Stephen A Smith

The special rules that govern the availability of specific relief in the common law are traditionally explained by reference to special features of the Chancery court from which specific relief rulings trace their origin, including, in particular, the fact that whereas rulings from the Royal Courts were ‘judgments’ of what the law requires (‘It is this day adjudged that the defendant shall recover £100 from the plaintiff’), rulings from Chancery were merely personal orders (‘It is ordered that the defendant tear down the building located at …’). This difference in form between ‘legal’ and ‘equitable’ rulings survived the Judicature Acts, but in 1998 it was abolished in the UK by the new Civil Procedures Rules. Today in the UK (but not in other common law jurisdictions), all rulings that can be satisfied by the defendant performing an act are styled as orders. Thus, defendants who are found liable to pay damages or a debt are ordered to make a payment. At the same time, UK courts continue to issue ‘specific relief’ in roughly the same circumstances that it was issued prior to the 1998 Act.

Against this background, this paper asks whether it is possible to explain the special rules governing specific relief apart from their historical origins and, relatedly, whether it makes sense to maintain these rules when, as appears to have happened in the UK, there is no longer a formal difference between specific relief and other judicial rulings.