

# Contents

<i>Abbreviations</i>	xvii
1. Introduction	1
I. Equity in International Law	1
A. The Concept of Equity	1
B. Equity, Law, and Justice	3
II. Scope of the Book	6
A. Overall Purpose	6
B. Coverage of International Courts and Tribunals	8
III. Outline of the Book	11
PART I PRELIMINARY MATTERS	
2. Origins of Equity	17
I. Introduction	17
II. Greek and Roman Law Origins: From Aristotle to Cicero	18
III. From the Middle Ages to the Late Modern Period	23
IV. Equity in English Law	24
V. Later Development	27
VI. Conclusions	28
3. Equity before International Courts and Tribunals	29
I. Introduction	29
II. Mixed Claims Commissions and Early Arbitration Tribunals	30
III. The Permanent Court of International Justice	37
IV. The International Court of Justice	38
A. Maritime Delimitation and Allocation of Maritime Resources	39
B. The <i>Barcelona Traction</i> Case: A Missed Opportunity?	50
V. The International Tribunal for the Law of the Sea	58
VI. Interstate Arbitration	59
A. The <i>Rann of Kutch</i> Case	60
B. The <i>Anglo-French Continental Shelf</i> Case	61
C. Later Cases	63
VII. Conclusions	65

PART II EQUITY IN GENERAL

4. The Purpose of Equity	69
I. Introduction: ‘The way is equity, the end is justice’	69
II. Equity as Corrective Justice	70
A. Equity as Individualised Justice	71
B. Softening Law’s Rigidity	74
III. Equity as Distributive Justice	76
A. Allocation of Resources, Distribution of Benefits and Burdens	77
B. The Common Heritage of Mankind	79
C. Intergenerational Equity	80
D. Equitable Representation	81
IV. Equity as Supplementary Justice	82
V. Conclusions	83
5. Traditional Typology of Equity	84
I. Introduction	84
II. Three Kinds of Equity	85
A. Equity <i>infra legem</i>	85
B. Equity <i>praeter legem</i>	87
C. Equity <i>contra legem</i>	91
III. The Limitations of the Traditional Typology	92
IV. <i>Antigone’s Law</i>	99
V. Revisiting Equity <i>contra legem</i>	101
VI. Conclusions	103
6. Power to Resort to Equity	104
I. Introduction	104
II. Equity and Law	105
III. A Principle and a Rule	108
IV. Equity as a Source of Law	113
A. Treaty Law	114
B. Customary International Law	122
C. General Principles of Law	128
D. Customary International Law Revisited: General Principles of International Law	132
V. Conclusions	135

PART III SPECIFIC ASPECTS OF EQUITY

7. Jurisdiction <i>ex aequo et bono</i>	139
I. Introduction	139
II. International Courts	142
III. Interstate Arbitration	145

IV. International Investment Arbitration	147
A. Investment Law's <i>ex aequo et bono</i> Decisions	147
B. <i>Ex aequo et bono</i> as a Ground for Annulment	151
V. For What Types of Disputes Is <i>ex aequo et bono</i> Appropriate?	154
VI. Compatibility with the Judicial Function	158
VII. Conclusions	159
8. Variations on Equity and Related Concepts	161
I. Introduction	161
II. Equality	162
III. Reasonableness	163
IV. Estoppel	165
V. Acquiescence	168
VI. Good Faith	171
VII. Unjust Enrichment	173
VIII. The Clean Hands Doctrine	174
IX. Abuse of Rights	178
X. Proportionality	181
XI. Conclusions	184
9. Equity, Compensation, and Costs	185
I. Introduction	185
II. Compensation	186
III. Costs	193
A. Allocation of Costs	194
B. Security for Costs	195
IV. Conclusions	198
10. Conclusion	199
<i>Index</i>	203