

2017

Mixed Cases of Law and Equity in Mississippi Courts

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35 Miss. C. L. Rev. 386 (2016-2017)

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MIXED CASES OF LAW AND EQUITY IN MISSISSIPPI COURTS

Deborah J. Challener and Michael H. Hoffheimer***

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I. INTRODUCTION

Plaintiffs often seek both common law relief, like damages, and equitable relief, like an injunction or a constructive trust, in the same lawsuit. Under Mississippi law, no single trial court has the power to resolve all kinds of disputes. While the Mississippi Constitution vests jurisdiction in chancery courts over equity and some other matters,¹ circuit courts retain general original jurisdiction over other claims. Thus, chancery courts have jurisdiction over actions for injunctions or divorce, but circuit courts have jurisdiction over tort lawsuits for money damages.²

Liberal pleading rules permit parties to join multiple claims in a single complaint,³ and failure to raise claims or counterclaims can lead to their

1. See *infra* Part II.

2. The legislature prudently avoided this dilemma in creating county courts. MISS. CODE ANN. § 9-9-21(1) (2014) (giving county courts jurisdiction “concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars (\$200,000).”). But county courts do not exist in all counties and do not have jurisdiction over divorce, probate, and other non-equity matters vested in chancery court.

3. Miss. R. Civ. P. 8(e)(2) (permitting pleading of alternative and inconsistent claims); Miss. R. Civ. P. 13 (permitting any counterclaim against the plaintiff and requiring counterclaim that arises from the same transaction or occurrence); Miss. R. Civ. P. 18(a) (permitting joinder of all claims against opposing party); Miss. R. Civ. P. 20(a) (permitting liberal joinder of parties with respect to claims and defenses arising out of the same transaction, occurrence, or series of transactions or occurrences where there is a common question of

extinction under principles of *res judicata* and collateral estoppel.⁴ Moreover, the choice of court has a decisive bearing on the right to a jury trial preserved by the Mississippi Constitution.⁵ Circuit courts try actions for damages to a jury. In contrast, there is no right to a jury in cases within the equity jurisdiction of chancery court.

The Mississippi Constitution requires trial courts to respect their jurisdictional limits, and the Mississippi Supreme Court has repeatedly addressed the problem of which court should hear cases where parties seek both a common law remedy and equitable relief.⁶ As the court itself has acknowledged, it “has not drawn a bright line concerning equity and law jurisdiction.”⁷ And it has given mixed signals about which court should try cases of mixed jurisdiction.

The resulting uncertainty about which trial court should decide mixed jurisdiction cases is undesirable. Conflicting decisions leave parties uncertain about where to file, encourage manipulative tactics, and provide trial judges with no clear guidance. This leads to frequent interlocutory appeals that delay trial, inflate litigation costs, and require appellate resources to be expended unnecessarily.

fact or law).

4. *E.g.*, Miss. R. Civ. P. 13(a) (compulsory counterclaims arising from the same transaction or occurrence must be raised or they cannot be raised subsequently); *Charlot v. Henry*, 45 So. 3d 1237, 1243 (Miss. Ct. App. 2010) (holding defense of adverse possession was waived when not raised as counterclaim).

5. MISS. CONST. art. III, § 31. The Mississippi Supreme Court has recently reaffirmed the fundamental importance of the right to trial by jury. See *Riverboat Corp. v. Harrison Cty. Bd. of Supervisors*, 198 So. 3d 289, 295 (Miss. 2016) (“The jury represents the community’s conscience and common sense—qualities not always exhibited by the government. Nothing gives our citizenry more direct participation in the running of their own government than voting and jury service ‘The right of trial by jury, as it exists here, is derived from the common law, and it is so highly valuable to the citizen, so essential to liberty, that it is secured as a constitutional right, and must, in a government like ours, be understood to extend at least as far as it did at common law, and if alterations are made, policy would dictate an extension rather than a restriction of a privilege invaluable in itself, and so highly prized by the citizen.’”) (quoting *Smith’s Adm’r v. Smith*, 1 Howard 102, 105 (Miss. 1834)).

6. The *de novo* standard applies on appellate review of both challenges to subject matter jurisdiction and alleged deprivations of the right to trial by jury. “The cases are legion where we have stated that the issue of jurisdiction is a question of law which we must review applying a *de novo* standard.” *City of Starkville v. 4-County Elec. Power Ass’n*, 909 So. 2d 1094, 1101 (Miss. 2005) (citing *Trustmark Nat’l Bank v. Johnson*, 865 So. 2d 1148, 1150 (Miss. 2004), *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045, 1048 (Miss. 2003), *Rogers v. Eaves*, 812 So. 2d 208, 211 (Miss. 2002)). See also *Copiah Medical Assoc. v. Mississippi Baptist Health Sys.*, 898 So. 2d 656, 660 (Miss. 2005) (citing *Briggs & Stratton Corp.*, 854 So. 2d at 1048). The court also conducts *de novo* review of denials of the right to trial by jury. See *Riverboat Corp. v. Harrison Cty. Bd. of Supervisors*, 198 So. 3d 289, 290 (Miss. 2016) (observing that jury trial is a constitutional right and “[t]he standard of review this Court employs for constitutional issues is *de novo*”).

7. *Briggs & Stratton Corp.*, 854 So. 2d at 1048. Over a decade ago, Justice Carlson decried the increasing frequency with which the Mississippi Supreme Court was forced to address the problem on interlocutory appeal. *Trustmark Nat’l Bank v. Johnson*, 865 So. 2d 1148, 1153 (Miss. 2004) (“We take this opportunity to inform the trial bench and bar of an ever-increasing problem we are encountering—this Court is inundated with interlocutory appeals, many of which involve the issue of whether a case has been appropriately commenced in circuit or chancery court.”). *Id.* at 1152. As an aid to the court, he urged trial judges “to studiously and timely” consider motions for transfer. *Id.* Further, he implored trial judges to articulate the grounds for denying motions for transfer on the record to facilitate appellate review. *Id.* at 1153. Justice Carlson observed that the majority of motions for transfer were from chancery to circuit court. *Id.* (citing *Briggs & Stratton Corp.*, 854 So. 2d 1045 (Miss. 2003), *City of Ridgeland v. Fowler*, 846 So. 2d 210 (Miss. 2003), *United States Fidelity & Guar. Co. v. Estate of Francis*, 825 So. 2d 38 (Miss. 2002)).

This Article reviews the legal sources that have led to the current state of the law and proposes a practical solution to the forum dilemma presented by mixed jurisdiction cases. Specifically, Part II surveys the historical background of the jurisdictional division between common law and non-common law courts in England and in early Mississippi history. Part III discusses the treatment of the problem under the Mississippi Constitution of 1890. Part IV examines Mississippi Supreme Court decisions that address mixed jurisdiction cases. Part V proposes a framework for resolving the question of mixed jurisdiction. Consistent with the majority of the court's decisions, this Article proposes that, absent exceptional circumstances, cases of mixed common law and equity claims should be brought in circuit court or transferred to circuit court from chancery court. The Article further proposes that such transfers should occur within a reasonable time after the commencement of the action.

II. HISTORY OF JURISDICTIONAL CONFLICTS

A. Law, Equity, and Mixed Jurisdiction in England

In medieval England, two distinct legal systems evolved: common law and equity. The common law was administered by the central royal courts, which fashioned "an aristocratic law, for and of the gentry and nobility"⁸ separate from the local laws administered in county or manorial court systems. Over time the relief provided by common law courts ossified into the forms of action embodied in common law writs. When a person could not obtain a remedy in the common law courts, however, he or she could still petition the crown directly. The king's chancellor heard such petitions, and in adjudicating disputes the chancellor purported to "do equity" to distinguish his work from that of the royal common law courts.⁹ "Through a long and complex process, chancery itself became a court."¹⁰ Chancery in theory exercised its power only to supplement the work of the common law courts. To establish the chancellor's jurisdiction and show entitlement to an equitable remedy, a party was required to show the absence of an adequate remedy at common law.¹¹

In dispensing equity, the chancellor purported to apply principles that were less rigid than the rules of decision applied by common law courts. The chancellor even claimed "the power to dispense with unjust rules."¹² Over time, parties in the common law courts increasingly relied on trespass forms of action

8. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* xvii (3d ed. 2005).

9. The chancellor was a powerful royal official who kept the king's seal. *Id.* Early chancellors were often ecclesiastics and were "said to be 'keeper of the king's conscience.'" *Id.* at xviii. The idea of "equity" as distinct from law thus served a jurisdictional purpose (to explain the adjudication of cases that were not appropriate to law courts) and had a moral component (to justify the divergence of rules administered by the chancellor from legal norms).

10. *Id.*; see also J.H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 97-115 (4th ed. 2002) (discussing the development of chancery courts and equity as a body of law separate from the common law).

11. See FRIEDMAN, *supra* note 8, at xviii (stating that the chancellor "would dismiss a case if the plaintiff had an 'adequate remedy at law'").

12. *Id.* at xviii; see also BAKER, *supra* note 10, at 103 (stating that the chancellor's "court was a court of conscience, in which defendants could be coerced into doing whatever conscience required in the full circumstances of the case").

that resulted in judgments for money damages as the remedy. Common law courts had limited power to compel performance or other forms of specific relief.¹³ In contrast, the chancellor sitting in equity developed a variety of remedies to coerce parties to perform obligations, including the subpoena, injunction, and constructive trust.¹⁴ And the chancellor enforced obligations—notably uses and trusts—that were not recognized by common law courts. Additionally, the two judicial systems developed different procedural rules.¹⁵ Parties enjoyed the right to jury trial in common law actions seeking money damages, but the chancellor sat without a jury in equity.¹⁶

For a variety of reasons, including the fact that a single chancellor was responsible for overseeing all equity cases, the very word “chancery” became “synonymous with expense, delay and despair” by the 1800s in England.¹⁷ Charles Dickens dramatically portrayed the ruinous state of affairs in *Bleak House* (1852-53). By the end of the nineteenth century, the movement for law reform in England achieved the institutional merger of law and equity in a single court system.¹⁸

B. Law and Equity in Early American Jurisprudence

Each North American colony developed its own legal system,¹⁹ but colonial courts shared common structural characteristics. Each had “a pyramid of courts,” with a high court at the top, intermediate courts, “and at the base a single judge, justice of the peace, or the equivalent.”²⁰

As the colonial court structure became more complex in the eighteenth century, the “[f]unctional specialization of courts” occurred more frequently.²¹ One of the specialized systems that emerged was a chancery system,²² but chancery courts did not develop the same way in each colony. Some colonies did not create separate equity courts.²³ Instead, “other courts handled, piecemeal, those equitable matters felt essential.”²⁴ Other colonies created

13. FRIEDMAN, *supra* note 8, at xviii.

14. *Id.*

15. *Id.*; see also BAKER, *supra* note 10, at 103-04 (describing early chancery procedures).

16. FRIEDMAN, *supra* note 8, at xviii.

17. BAKER, *supra* note 10, at 111-13 (discussing the defects that developed in the English chancery system); see *id.* (noting that “[i]t is the height of irony that the court which originated to provide an escape from the defects of common-law procedure should in its later history have developed procedural defects worse by far than those of the law”).

18. FRIEDMAN, *supra* note 8, at xix; see also BAKER, *supra* note 10, at 113-15 (discussing the merger of law and equity in England). In the United States, in contrast, “the distinction between law and equity lingered on for a surprisingly long time.” FRIEDMAN, *supra* note 8, at xix.

19. FRIEDMAN, *supra* note 8, at 30-31 (quoting GEORGE L. HASKINS, *LAW AND AUTHORITY IN EARLY MASSACHUSETTS* 6 (1960)). The growth of these individual systems was influenced by “[g]eographical isolation, the date and character of the . . . settlements, [and] the degree of absence of outside supervision or control.” *Id.* at 31. Thus, “[a]t any particular time . . . the law of a certain colony was made up of a set of related traditions, some English, and some local—modified in light of current conditions.” *Id.*

20. *Id.* at 44.

21. See *id.* at 45.

22. *Id.*

23. *Id.* at 47.

24. *Id.*

equity courts—or an equivalent system where judges would alternate sitting “at law” and “in equity.”²⁵ Although “[i]n some of the leading colonies, equity, as a remedial system . . . had no existence at all,”²⁶ the “southern colonies quite generally had courts of chancery.”²⁷

Because American colonists were hostile to chancery courts, equity jurisdiction did not develop as quickly as the jurisdiction of the common law courts.²⁸ Many reasons have been offered to explain the hostility towards chancery during the colonial period. First, “[c]hancery was closely associated with executive power, [and] in turn with the English overlords.”²⁹ Second, because there was no jury in chancery court, “public opinion could not effectively control the use of the court as a tool of imperial policy.”³⁰ Third, because equity courts generally sat only in the capital, equity, unlike the common law . . . was not brought to every man’s doorstep.³¹ Fourth, “chancery procedures were clumsy, inefficient, interminable.”³² One scholar surmised that the fundamental reason for colonial hostility to equity jurisdiction was “the fact that the colonists regarded equity as an appendage of the Crown’s prerogative, and, therefore, inimical to their individual liberties. Chancellors were accordingly regarded as “royalist persons administering the law of an effete monarchy.”³³

Despite the colonists’ hostility to equity jurisdiction, the American Revolution did not lead to the abolition of separate chancery courts.³⁴ But over time most states followed the federal courts in merging law and equity. Today, Mississippi is one of only three states that maintain a separate system of common law and equity courts.³⁵

25. *Id.*

26. Robert von Moschzisker, *Equity Jurisdiction in the Federal Courts*, 75 U. PA. L. REV. 287, 287 (1927).

27. FRIEDMAN, *supra* note 8, at 20.

28. von Moschzisker, *supra* note 26, at 288.

29. FRIEDMAN, *supra* note 8, at 21; *see also* von Moschzisker, *supra* note 26, at 288 (stating that colonial hostility to equity jurisdiction “may . . . have been a later reflection of the spirit of antagonism to the Chancellor’s power, which existed in England” where “the administration of equity was not . . . based on settled principles, but depended upon the exceedingly flexible conscience of the Chancellor”).

30. FRIEDMAN, *supra* note 8, at 21.

31. *Id.* at 48.

32. *Id.* *See also* von Moschzisker, *supra* note 26, at 288-89 (noting that the fact that the “supplicatory form of a bill in equity was opposed to” the Puritan religion and “popular distrust of the legal profession” may also have negatively affected “the progress of equity”).

33. von Moschzisker, *supra* note 26, at 289 (quoting J.H. Beale, *Equity in America*, 1 CAMBRIDGE L.J. 21, 23 (1921)).

34. FRIEDMAN, *supra* note 8, at 21.

35. Delaware and Tennessee also have separate equity courts. Other states, like New Jersey, have a separate chancery division, while South Carolina uses “masters-in-equity” to preside over litigation of equitable matters.

C. Law, Equity, and Mixed Jurisdiction in Mississippi Before 1890

1. Courts in the Mississippi Territory (1790-1817)

The Mississippi Territory was established by federal legislation in 1798, and over time the territorial court system evolved into a system of inferior county courts, superior territorial courts, and a supreme court.³⁶ The superior territorial courts, or Superior Courts of Law and Equity, were comprised of territorial judges who were appointed by the President under federal law.³⁷ Among other things, the superior courts sat as trial courts and had “exclusive jurisdiction over matters where the amount in controversy exceeded fifty dollars.”³⁸ Although the federal law that created the Mississippi Territory “specifically imposed only the common law on the territory and granted the territorial judges ‘common law jurisdiction,’” the territorial legislature “bestowed equity jurisdiction on the superior territorial courts in 1802.”³⁹ Thus, Mississippi courts early inherited the dual jurisdiction of law and equity.⁴⁰

2. Courts Under the Constitution of 1817

Under the first Mississippi Constitution in 1817,⁴¹ the Mississippi legislature created separate superior (or circuit) courts and chancery courts, among others.⁴² The legislature gave the circuit courts original jurisdiction over all “suits and actions” at law,⁴³ but, as mandated by the constitution, imposed an amount in controversy of fifty dollars or more in civil cases.⁴⁴ Additionally, the legislature authorized the circuit courts to hear “every case *not* given to some other court.”⁴⁵ The legislature granted the chancery courts exclusive jurisdiction over equitable matters,⁴⁶ as long as the amount in controversy was at least fifty dollars.⁴⁷

At the same time, the legislature gave circuit courts power to grant equitable relief in the form of injunctions and writs of *ne exeat*.⁴⁸ This provision appeared to contradict both the constitutional and statutory directives regarding

36. Michael M. Hoffheimer, *Mississippi Courts: 1790-1868*, 65 MISS. L.J. 99, 105-16 (1995).

37. *Id.* at 108, 114-15.

38. *Id.* at 116.

39. *Id.* at 112.

40. *Id.*

41. *Id.* at 116.

42. MISS. CONST. of 1817, art. V, §§ 1 & 6. *See generally* Hoffheimer, *supra* note 36, at 119, 121-36.

43. Act to Reduce into One the Several Acts and parts of Acts Concerning the Establishment, Jurisdiction and Powers of the Superior Courts of Law § 16, June 1822 Miss. Laws 30, Rev. Code of the Laws of Mississippi 105-06 (George Poindexter comp. 1824) [hereinafter Rev. Code Miss. 1824]. *See generally* Hoffheimer, *supra* note 36, at 121-22.

44. MISS. CONST. of 1817, art. V, § 4; Rev. Code Miss. 1824, *supra* note 43. *See generally* Hoffheimer, *supra* note 36, at 119, 122.

45. Rev. Code Miss. 1824, *supra* note 43, at 105-06.

46. Act to Establish a Court of Chancery, § 2, 1822 [Nov. 1821] Miss. Laws 105, Rev. Code Miss. 1824, *supra* note 43, at 84.

47. Act to Establish a Court of Chancery, § 21, 1822 [Nov. 1821] Miss. Laws 111, Rev. Code Miss. 1824, *supra* note 43, at 90. “The legislature never created inferior courts of equity, nor did it bestow equity jurisdiction on the county courts or justices of the peace.” Hoffheimer, *supra* note 36, at 136.

48. Rev. Code Miss. 1824, *supra* note 43, at 144.

the chancery courts' exclusive equity jurisdiction, as well as the legislative mandate that circuit courts had jurisdiction to hear only those cases that were not given by statute to another court.⁴⁹ Furthermore, although equity jurisdiction required the absence of an adequate legal remedy, chancellors could still acquire jurisdiction over legal claims in various ways.⁵⁰

3. Courts Under the Constitution of 1832

During the era of Jacksonian democracy, white Mississippians demanded more power in government, which resulted in a constitutional convention and a new constitution in 1832.⁵¹ Like the 1817 Mississippi Constitution, the new Mississippi Constitution and the laws enacted under it gave circuit courts general original jurisdiction over "all . . . civil . . . cases not given exclusively to some other court" where the amount in controversy exceeded fifty dollars.⁵² The circuit courts "continued to have broad remedial power to issue extraordinary writs."⁵³ In a significant change from the first Mississippi Constitution, however, the 1832 constitution authorized the legislature to give *circuit* courts jurisdiction over matters in equity where the amount in controversy did not exceed five hundred dollars,⁵⁴ and the legislature quickly did so.⁵⁵

Furthermore, the 1832 Mississippi Constitution "conferred full equity jurisdiction on a single chancellor" who sat as the superior court of chancery,⁵⁶ and the legislature eventually created inferior chancery courts that had concurrent jurisdiction with the superior court of chancery over claims up to five hundred thousand dollars.⁵⁷ Over time, however, the legislature became hostile to the chancery courts.⁵⁸ The legislature enlarged the power of circuit courts to grant equitable relief,⁵⁹ and in 1857 all chancery courts were eliminated by a constitutional amendment that vested full equity jurisdiction in the circuit courts.⁶⁰ Although the reasons for the legislature's hostility to the chancery courts are uncertain, the legislature was likely motivated by economic and efficiency concerns⁶¹ as well as by the difficulty and expense of obtaining

49. See Hoffheimer, *supra* note 36, at 122-23.

50. *Id.* at 125-26.

51. David G. Sansing, *Mississippi's Four Constitutions*, 56 MISS. L.J. 3, 7 (1986).

52. Hoffheimer, *supra* note 36, at 144 (citing MISS. CONST. of 1832, art. IV, § 14).

53. *Id.*

54. *Id.* at 146 (citing MISS. CONST. of 1832, art. IV, § 16).

55. *Id.* (citing Act to Organize and Establish Circuit Courts § 6, Jan. 1833 Miss. Laws 28-29, in LAWS OF THE STATE OF MISSISSIPPI; EMBRACING ALL ACTS OF A PUBLIC NATURE FROM JANUARY SESSION, 1824, TO JANUARY SESSION 1838, INCLUSIVE 404 (1838)).

56. MISS. CONST. of 1832, art. IV, § 16.

57. Act to Establish an Inferior Court of Chancery in the Northern part of this State §§ 1, 3, 1842 Miss. Laws 57-65).

58. Hoffheimer, *supra* note 36, at 153.

59. *Id.* at 146-48.

60. MISS. CONST. of 1832, amended by Rev. Code Miss. 38 (1857); Act in Relation to Chancery Courts, art. 2, § II, 1856 Miss. Laws 3-38.

61. See Frank E. Everett, Jr., *Lawyers, Courts, and Judges 1890-1970*, in 2 A HISTORY OF MISSISSIPPI 375, 377 (Richard A. McLemore ed. 1973)).

equitable relief from a single chancellor who might be sitting in a distant part of the state.⁶²

4. Courts Under the Constitution of 1869

After the Civil War,⁶³ a new constitution was ratified in 1869 that established the form of the court system that has endured down to the present.⁶⁴ It created circuit courts of general jurisdiction, eliminated their equity jurisdiction,⁶⁵ and reestablished separate chancery courts, giving the chancery courts both equity and probate jurisdiction.⁶⁶

D. Law, Equity, and Mixed Jurisdiction Under the Constitution of 1890

Mississippi's current constitution was adopted in 1890. The key provisions governing the jurisdiction of the courts have remained unchanged, though later amendments required election of all judges,⁶⁷ and new courts have been created by the legislature.⁶⁸ The 1890 constitution retained the system of separate circuit and chancery courts established under the 1869 constitution, but it also recognized and attempted to address some of the problems that had arisen due to conflicts between legal and equitable jurisdiction.⁶⁹

1. The Jurisdiction of the Circuit and Chancery Courts

The 1890 Mississippi Constitution established circuit courts⁷⁰ and authorized them to hear all civil matters that the constitution did not vest "in some other court."⁷¹ These matters included "[c]ases legally analogous to those traditionally considered actions at law[] and . . . heard within the common law courts of England" and the United States.⁷² Today, circuit courts can hear claims over \$200 not vested in another court.⁷³

62. *Id.* (stating that "the persistence of the legislature's efforts to control the chancery court suggests that the legislature was equally concerned with the problem of the accessibility of equitable remedies").

63. During the war, courts ceased to function. Hoffheimer, *supra* note 36, at 165.

64. *Id.* at 169.

65. MISS. CONST. of 1868, art. VI, § 14.

66. MISS. CONST. of 1868, art. VI, § 16.

67. MISS. CONST. of 1890, art. VI, § 145 (providing for appointment of three supreme court justices by governor with consent of senate), amended to provide for the election of justices by judicial district. *Id.* (amended 1916). Comparable amendments related to other judicial officers resulted in the restoration of the elected judiciary that existed under previous constitutions.

68. MISS. CODE ANN. § 9-4-1 & 3 (2014) (creating court of appeals); see MISS. CODE ANN. § 9-9-1 & 21 (2014) (creating and prescribing jurisdiction of county courts).

69. See Hoffheimer, *supra* note 36, at 169-70 & n. 394.

70. MISS. CONST. of 1890, art. VI, § 152.

71. *Id.* § 156 ("The circuit court shall have original jurisdiction in all matters civil . . . in this State not vested by this constitution in some other court [.]").

72. James L. Robertson, *Subject Matter Jurisdiction*, in MISSISSIPPI CIVIL PROCEDURE § 1:11, at 38 (2016 ed.) [hereinafter MISS. CIV. PRO.].

73. MISS. CODE ANN. § 9-7-81 (2014) ("The circuit court shall have original jurisdiction in all actions when the principal of the amount in controversy exceeds two hundred dollars, and of all other actions and causes, matters and things arising under the constitution and laws of this state which are not exclusively cognizable in some other court . . .").

The legislature has also authorized the circuit courts to exercise original jurisdiction over a variety of matters.

The 1890 constitution also established chancery courts⁷⁴ and gave them “full jurisdiction” over specific types of cases, including “[a]ll matters in equity,” and cases involving divorce and alimony, decedents’ estates, juvenile law, and persons of unsound mind.⁷⁵ By allocating jurisdiction over such matters to the chancery courts, those cases were vested “in some other court” and therefore excluded from the circuit courts’ jurisdiction.⁷⁶ As it had done with the circuit courts, the legislature also gave chancery courts original jurisdiction over some additional types of cases⁷⁷ and authorized the circuit and chancery courts to exercise concurrent jurisdiction over some actions.⁷⁸

2. The Problem of Mixed Jurisdiction

Although Mississippi had separate circuit and chancery courts long before the 1890 constitution was adopted, “[t]he line of demarcation between the two systems and their courts was never clear or precise or discernable without difficulty.”⁷⁹ Not surprisingly, the “result was expense and delay and time consuming litigation over jurisdictional questions.”⁸⁰ While the 1890 Mississippi Constitution perpetuated separate circuit and chancery courts, it also included provisions that were designed to ameliorate some of the inevitable jurisdictional problems caused by a divided court system.⁸¹ First, recognizing that it was difficult to determine whether certain cases belonged in circuit or chancery court, the 1890 constitution explicitly gave the chancery courts “jurisdiction to grant complete relief in land title actions even if a legal remedy existed”⁸² and it gave them concurrent jurisdiction with the circuit courts over certain actions involving fiduciaries and accounting.⁸³

MISS. CIV. PRO., *supra* note 72, § 1:16, at 55-56 (discussing and citing various statutes). As courts of general jurisdiction, the circuit courts have jurisdiction over any new action that arises unless jurisdiction is specifically given to a different court. *Id.* § 1:8, at 31.

74. MISS. CONST. of 1890, art. VI, § 152.

75. *Id.* § 159 (“The chancery court shall have full jurisdiction in the following matters and cases, viz.: (a) All matters in equity; (b) Divorce and alimony; (c) Matters testamentary and of administration; (d) Minor’s business; (e) Cases of idiocy, lunacy, and persons of unsound mind; (f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.”).

76. MISS. CIV. PRO., *supra* note 72, § 1:4, at 21.

77. *See id.* § 1:17, at 62 (citing various statutes).

78. *See, e.g.*, MISS. CODE ANN. § 11-37-101 (2014) (giving a supreme court justice, circuit court judge, chancellor, county judge, and justice court judge power to issue writ of replevin); MISS. CODE ANN. § 93-9-15 (2013) (giving circuit, chancery, and county courts concurrent jurisdiction over actions to establish paternity and award child support).

79. James L. Robertson, *Constitutional Law*, in ENCYCLOPEDIA OF MISSISSIPPI LAW § 19:196, at 312 (2016 ed.) [hereinafter ENCYCLOPEDIA].

80. *Id.*

81. Hoffheimer, *supra* note 36, at 170 n. 394; ENCYCLOPEDIA, *supra* note 79, § 19:196, at 312-14.

82. MISS. CONST. of 1890, art. VI, § 160 (“And in addition to the jurisdiction heretofore exercised by the chancery court in suits to try title and to cancel deeds and other clouds upon title to real estate, it shall have jurisdiction in such cases to decree possession, and to displace possession; to decree rents and compensation for improvements and taxes; and in all cases where said court heretofore exercised jurisdiction, auxiliary to courts of common law, it may exercise such jurisdiction to grant the relief sought although the legal remedy may not have been exhausted or the legal title established by a suit at law.”).

83. *Id.* § 161 (“And the chancery court shall have jurisdiction, concurrent with the circuit court, of suits on bonds of fiduciaries and public officers for failure to account for money or property received, or wasted or lost by neglect or failure to collect, and of suits involving inquiry into matters of mutual accounts; but if the

Second, the 1890 constitution acknowledged that some cases would be filed in the wrong court, and it mandated that such cases “shall be transferred” to the proper court.⁸⁴ Moreover, the constitution addressed a problem that had continually plagued Mississippi’s judicial system since the state’s adoption of a dual system of common law and equity: some cases had proceeded to final judgment in a court that lacked jurisdiction based on an erroneous characterization of the case as being either law or equity and then were reversed on appeal due to the jurisdictional error.⁸⁵ To resolve this problem, section 147 of the constitution provided:

No judgment or decree in any chancery or circuit court rendered in a civil cause shall be reversed or annulled on the ground of want of jurisdiction to render said judgment or decree, from any error or mistake as to whether the cause in which it was rendered was of equity or common law jurisdiction.⁸⁶

If an additional non-jurisdictional error established grounds for reversing, then section 147 gave the Mississippi Supreme Court the power to remand the case to whichever court it decided can “best determine the controversy.”⁸⁷

The drafters of the constitution did not want the possible difficulty of determining subject matter jurisdiction to impede the work of the trial courts. They anticipated that “once the circuit court transfers a case to the chancery court or vice versa, ‘the court to which it is transferred should and must proceed with the case.’”⁸⁸ Although the constitution prevented reversal solely when the trial court erred in characterizing an action as common law or equity, the legislature provided that transfer established valid jurisdiction regardless of the basis for the transfer, even if the court lacked jurisdiction prior to the erroneous transfer.⁸⁹

One issue the Mississippi Constitution of 1890 did not address was the conflict created by the interaction of section 147 and the right to a jury trial preserved by section 31.⁹⁰ Although the current version of section 31 recognizes

plaintiff brings his suit in the circuit court, that court may, on application of the defendant, transfer the cause to the chancery court, if it appear that the accounts to be investigated are mutual and complicated.”). See generally Hoffheimer, *supra* note 36, at 170 n. 394; ENCYCLOPEDIA, *supra* note 79, § 19:196, at 313.

84. *Id.* § 157 (“All causes that may be brought in the circuit court whereof the chancery court has exclusive jurisdiction shall be transferred to the chancery court.”); *id.* § 162 (“All causes that may be brought in the chancery court whereof the circuit court has exclusive jurisdiction shall be transferred to the circuit court.”).

85. JOHN RAY SKATES, JR., A HISTORY OF THE MISSISSIPPI SUPREME COURT, 1817-1948, 43-44 (1973).

86. MISS. CONST. of 1890, art. VI, § 147.

87. *Id.* (“[I]f the supreme court shall find error in the proceedings other than as to jurisdiction, and it shall be necessary to remand the case, the supreme court may remand it to that court which in its opinion can best determine the controversy.”).

88. MISS. CIV. PRO., *supra* note 72, § 1:10, at 35 (quoting Hopson v. Meredith, 719 So. 2d 1176 (Miss. 1998); Ainsworth v. Blakeney, 86 So. 2d 501 (1956) (citation omitted)).

89. See *infra* notes 97 & 322 (discussing MISS. CODE ANN. § 9-5-81 (1991)).

90. MISS. CONST. of 1890, art. III, § 31 (“The right of trial by jury shall remain inviolate.”). This section was subsequently amended to provide that “the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.” *Id.* § 31(b).

the possibility of jury trials in chancery court, it is settled that the constitutional right to a jury trial “extends only to those civil actions where a jury trial was available according to the principles of the common law.”⁹¹ Because chancery courts have jurisdiction over equity and other matters outside the common law, the constitutional right to a jury trial “does not extend to cases heard in the chancery courts.”⁹²

This means that under section 147, when a chancery court errs in exercising jurisdiction over a common law matter and denies a litigant the right to a jury trial, its judgment may not be reversed on appeal if the sole error is a jurisdictional error as between law and equity.⁹³ Consequently, section 147 limits the right to a jury trial provided for in the Mississippi Bill of Rights.⁹⁴ One commentator notes, “[T]he problem of accommodating the right of trial by jury with the occasional ability of a nimble plaintiff to bring what is essentially an action at law under some equitable rubric[] refuses to go away.”⁹⁵

III. MISSISSIPPI CASE LAW

Under the system created by the Mississippi Constitution of 1890, interlocutory appeals were not freely available. The Mississippi Supreme Court was the only appellate court, and its review occurred only when final judgments ended litigation.⁹⁶ Because the constitution eliminated the supreme court’s power to reverse when the sole error was lack of jurisdiction due to misclassification of a case as common law or equity, it effectively gave circuit and chancery courts concurrent jurisdiction over such cases when they erred in refusing to transfer them. This grant of overlapping jurisdiction was not an oversight; it was the purpose of section 147.

Appellate decisions addressing the proper court for mixed cases emerged only after the Mississippi Supreme Court began to grant interlocutory review of trial court transfer rulings. The cases display a variety of approaches to the

91. MISS. CIV. PRO., *supra* note 72, § 1:19, at 66 & n.2 (citing various cases); *see also* Luther T. Munford & E. Marcus Wiggs, III, *Commentary On the Bill of Rights in the Mississippi Constitution of 1890 and Beyond*, 56 MISS. L.J. 73, 112 (1986).

92. MISS. CIV. PRO., *supra* note 72, § 1:19, at 67. Although section 31 is inapplicable in chancery court, a chancellor may use his or her discretion to “direct a trial by jury of traditional common law issues.” *Id.* *See generally* McLean v. Green, 352 So. 2d 1312, 1314 (Miss. 1977) (“In chancery court, with some few statutory exceptions, the right to a jury is purely within the discretion of the chancellor, and if one is empaneled, its findings are totally advisory.”).

93. *See* MISS. CIV. PRO., *supra* note 72, at 34-35.

94. *See* Munford & Wiggs, *supra* note 91, at 112-13.

95. MISS. CIV. PRO., *supra* note 72, § 1:19, at 74-75.

96. Under appellate procedure in 1890, appeals of right lay only from final judgments of circuit courts, MISS. CODE 1892 § 32, and certain chancery court decrees (including denials of demurrers), *id.* § 33. Chancellors in their discretion could authorize appeals for interlocutory decisions. *Id.* § 34. *See* MISS. CODE 1848 ch. 54 § 37 (permitting chancellor to grant appeal from interlocutory order). Circuit courts had no such power. Justices of the Mississippi Supreme Court could grant appeals of interlocutory decisions in chancery, but only under limited circumstances that did not include jurisdictional error. MISS. CODE 1892 § 4344. Through subsequent legislation, the Mississippi Supreme Court acquired broader authority to grant review of interlocutory decrees in chancery when the chancellor refused to grant an appeal. MISS. CODE ANN. § 9-3-33 (repealed 1991) & § 11-51-7 (repealed 1993). The legislature has since authorized the supreme court to prescribe rules for interlocutory appeals to the court, MISS. CODE ANN. § 9-3-61 (2014), and the criteria and procedures for interlocutory review are now set forth in Miss. R. App. P. 5.

problem of whether mixed jurisdiction cases can be brought in a single court and, if so, which one. This part will first consider the cases that address the power of circuit courts to hear cases that raise mixed questions of law and equity. It will then consider the decisions that recognize chancery court jurisdiction over such cases.

A. The Power of Circuit Courts to Hear Cases that Raise Mixed Questions of Law and Equity

1. Circuit Court Jurisdiction Over Mixed Cases Filed in Circuit Court

Mississippi circuit courts are not, strictly speaking, common law courts. Rather they are courts of general jurisdiction with judicial power to decide all matters (including common law claims) that are not taken away from them under the Mississippi Constitution. Even if deprived of jurisdiction under the constitution, the legislature may restore it.⁹⁷

The drafters of the 1890 Mississippi Constitution obviously assumed that some cases were exclusively within the jurisdiction of either chancery or circuit court, because they provided mechanisms for the transfer of such cases.⁹⁸ Over the years the Mississippi Supreme Court has clarified what kinds of cases fall within the exclusive grant of jurisdiction to the chancery court. For example, simple cases of equity lie within chancery court's exclusive jurisdiction, while tort actions by injured minors or against estates do not fall under the class of cases involving minors or decedent's estates that are vested in chancery court.⁹⁹

Nevertheless, given liberal pleading requirements and the fact that equitable relief is discretionary, many cases seeking an equitable remedy also request legal relief as an alternative or supplement. The Mississippi Supreme Court has repeatedly explained that circuit courts may exercise jurisdiction over equity claims in cases where there is some appropriate basis for circuit court jurisdiction. “[I]f one issue is properly before the circuit court it has jurisdiction to decide all issues.”¹⁰⁰

97. Circuit courts are given authority to issue injunctions and all other remedial writs by statute, though they are returnable in the proper court, MISS. CODE ANN. § 9-1-19 (2014), and to enter declaratory judgments by rule, Miss. R. Civ. P. 51. They are given jurisdiction over cases over \$200, MISS. CODE ANN. § 9-7-81 (2014), even though the Mississippi Constitution vests jurisdiction in justice court over such matters, MISS. CONST. art. VI, § 171 (fixing maximum jurisdiction of justice court at \$500 or greater amount as determined by legislature).

Legislation also specifically vests jurisdiction in circuit and chancery courts over matters that are transferred to them, see MISS. CODE ANN. § 9-5-81 (1991), *infra* note 322, and the supreme court has held this vests courts with valid subject matter jurisdiction even when the transfer was erroneous, *Burch v. Land Partners, L.P.*, 784 So. 2d 925, 928 (Miss. 2001) (quoting *Hopson v. Meredith*, 719 So. 2d 1176, 1177 (Miss. 1998)). The case law establishes that the transferring court loses jurisdiction when it issues the order of transfer. *Id.*

98. MISS. CONST. of 1890, art. VI, § 147, quoted *supra* text accompanying note 86.

99. See *infra* notes 106 & 109. Similarly, declaratory judgments are “jurisdictionally neutral” and thus not exclusively within chancery court jurisdiction. See *RAS Family Partners, LP v. Onnam Biloxi, LLC*, 968 So. 2d 926, 928-29 (Miss. 2007).

100. *RAS Family Partners, LP*, 968 So. 2d at 928 (quoting *IP Timberlands Operating Co. v. Denmiss Corp.*, 726 So. 2d 96, 111 (Miss. 1998)). See *Derr Plantation v. Swarek*, 14 So. 3d 711, 716 (Miss. 2006) (recognizing that a complaint asserting variety of legal and equitable claims or demanding both legal and equitable remedies could be brought in either circuit or chancery court).

2. Transfer of Cases to Circuit Court Where Chancery Court Lacks Jurisdiction or Jurisdiction is Doubtful

The Mississippi Supreme Court has made it clear that chancery courts must transfer actions to circuit court when there is no basis for jurisdiction in chancery court. In *Dixie National Life Insurance Co. v. Allison*, an insurance company denied coverage, and the insured brought a claim in chancery court to enforce the policy.¹⁰¹ The plaintiff styled her claim as a request for specific performance.¹⁰² The chancery court entered a decree holding the insurer liable for hospital expenses for a specific period of time but did not determine the amount due for that period.¹⁰³ The court reversed, finding that the decree was not sufficiently certain to be enforceable.¹⁰⁴ Moreover, the court proceeded to address the question of jurisdiction, though there is no indication that any party raised the issue:

We note further that this action was predicated on the theory of specific performance. Actually, it was nothing more than a suit for breach of contract and should have been brought in the Circuit Court Therefore, we remand the case to the Circuit Court.¹⁰⁵

In *Robertson v. Evans*, a minor's guardian brought a personal injury tort claim in chancery court seeking money damages.¹⁰⁶ When the chancellor refused to dismiss or transfer to circuit court, the defendant petitioned for interlocutory appeal.¹⁰⁷ In a short opinion the court cited the right to trial by jury and then quoted language from *McLean v. Green*, a similar case in which the defendants had not challenged the court's jurisdiction until after a final judgment.¹⁰⁸ The *McLean* court had found itself constrained to affirm under section 147 but opined that the tort action on behalf of minors was not properly

In unusual cases, it is even theoretically possible that circuit courts may have exclusive jurisdiction over a matter in equity when that matter relates to the small group of legal claims that cannot be heard in chancery court. See *infra* note 243 (discussing Justice James "Jimmy" Robertson's opinion in *Thompson v. First National Bank and Mutual Savings Life Ins. Co.*, 427 So. 2d 973, 976 (Miss. 1983)).

101. 372 So. 2d 1081, 1081 (Miss. 1979).

102. *Id.*

103. *Id.*

104. The short opinion raises more questions than it answers. It explains the decree's legal failure by a rhetorical question: "If an execution were levied on this decree, what amount would it be for?" *Id.* at 1085. One answer would be that the decree would be enforced not by execution but by proceedings in contempt to the extent that the defendant refused to pay an amount that was either liquidated or not in dispute.

105. *Id.* at 1081. The court presumably meant the case was really an action for damages for breach of contract.

106. 400 So. 2d 1214, 1214 (Miss. 1981).

107. *Id.*

108. *Id.* at 1215 (quoting *McLean v. Green*, 352 So. 2d 1312 (Miss. 1977)). It is not clear that section 147 actually barred appellate review in *McLean* inasmuch as the error may not have been between law and equity but rather between law and "minor's matters." *Id.* Since tort actions by minors are clearly not within the chancellor's jurisdiction, the Mississippi Supreme Court seems to have assumed that the chancellor was exercising jurisdiction over the legal claims under the grant of equity jurisdiction. *McLean*, 352 So. 2d at 1314.

brought in chancery court and should have been transferred to circuit court.¹⁰⁹ The *Robertson* case marks the beginning of the court's active interlocutory review of transfer decisions because the defendant in *Robertson* avoided the fatal error committed by the appellant in *McLean* and sought review before final judgment.¹¹⁰ The court's response indicated some initial uncertainty about how to treat such appeals. While denying the petition, the court remanded the case with directions to transfer the action to the circuit court.¹¹¹ Its short opinion reached the right result, but its brevity left room for confusion.¹¹²

Justice Robertson returned to the issue, producing a scholarly opinion for a divided court in *Tillotson v. Anders*.¹¹³ The case involved a former chancery court officer, a chancery clerk, who responded to critical newspaper coverage by suing the newspaper in chancery court.¹¹⁴ While essentially a libel action, the plaintiff's complaint invoked equity jurisdiction in three ways: it demanded an accounting; it contended that equity was required to prevent a multiplicity of suits; and it demanded a declaratory judgment.¹¹⁵ On interlocutory review of the chancery court's denial of a motion to dismiss, the court had no difficulty seeing that the lawsuit was a libel action seeking damages, "disguise[d] . . . as one for an accounting."¹¹⁶ It reversed, offering two different reasons. First, the court concluded that chancery court lacked jurisdiction: "We hold that this case lies outside the limited subject matter jurisdiction of the chancery court."¹¹⁷ Second, the court justified its conclusion, not by the complete absence of constitutional

109. *Robertson*, 400 So. 2d at 1215.

110. The court's interlocutory jurisdiction, authorized by statute, is now provided by court rule. MISS. CODE ANN. § 11-51-7 (repealed); see *supra* note 96 (discussing Miss. R. App. P. 5 and MISS. CODE ANN. § 9-3-61 (2014)).

The power to review jurisdictional error by interlocutory decision was not beyond doubt. See *Tillotson v. Anders*, 551 So. 2d 212 (Miss. 1989) (Robertson, J.) (providing extended constitutional and historical explanation for Mississippi Supreme Court authority to correct erroneous jurisdiction on interlocutory appeal); *id.* at 219-20 (Hawkins, J., and three other justices dissenting).

111. It concluded, in language borrowed from *McLean*, that the chancery judge should transfer this cause of action to the proper circuit court and thus avoid a clear abuse of discretion. *Robertson*, 400 So. 2d at 1214.

112. First, the court did not explain how it could simultaneously refuse to grant the petition for interlocutory appeal (presumably thereby indicating that it lacked appellate jurisdiction), yet remand with directions to transfer that would be binding on the lower court. Second, it did not explain how a refusal to dismiss or transfer an action by a court lacking any constitutional authority to decide the case could be characterized as an abuse of discretion, rather than an error of law.

The characterization of the error could affect the standard of appellate review and possibly the forms of extraordinary relief that might be available. Mandamus or prohibition, for example, would not normally be available to cure an abuse of discretion but would lie to correct the clear, nondiscretionary violation of a ministerial duty.

113. 551 So. 2d 212, 212 (Miss. 1989).

114. *Id.*

115. *Id.* at 213-14.

116. *Id.* at 212.

117. *Id.* at 215. To find a complete lack of jurisdiction would require either finding no legal basis for all of the plaintiff's theories or finding that cleanup or supplemental jurisdiction would not be available even if one or more claims were sufficient to support equity jurisdiction. See *infra* Part III.B.1 (discussing cleanup or supplemental jurisdiction in chancery court). While the majority opinion persuasively reveals the weakness of the plaintiff's theories, it hardly shows that they fail as a matter of law. The dissent identified grounds for equitable jurisdiction. *Tillotson*, 551 So. 2d at 220 (Hawkins, P.J., dissenting).

authority in chancery court, but rather by the fact that proceedings in chancery court would deprive the newspaper of its right to trial by jury.¹¹⁸

The court offered further clarification in *Southern Leisure Homes, Inc. v. Hardin*, a case where prospective buyers of a mobile home sued the seller in chancery court for breach of contract and fraud, seeking actual and punitive damages.¹¹⁹ The defendants moved to dismiss or transfer to circuit court on the ground that all the claims were legal and chancery court lacked jurisdiction.¹²⁰ When the chancellor refused to dismiss or transfer, the defendants sought interlocutory review.¹²¹

The Mississippi Supreme Court granted the defendants' appeal, explaining that interlocutory appeal was the proper way to challenge the jurisdictional error because section 147 would prevent the issue from being appealable after a final decree.¹²² As the issue was raised on interlocutory appeal, the constitutional bar did not prevent the court's review of the issue.¹²³ The court then concluded that the chancery court's refusal to transfer was erroneous as a matter of law. The court characterized the action as "clearly legal in nature."¹²⁴ While acknowledging that chancery courts have concurrent jurisdiction over some legal claims, including the discretion to award legal and punitive damages, "as long as the chancery court's jurisdiction has attached," the court saw no such basis for chancery court jurisdiction.¹²⁵ The claims, as described by the court, were for breach of contract and fraud, with demands for purely legal relief in the form of actual and punitive damages.¹²⁶

Significantly, the court provided an additional reason for its decision that might be seen as an alternative ground. While concluding that the action was legal, it also wrote, "even assuming that some doubt existed in this regard, it is apparent that this doubt should be resolved in favor of [defendant's] position."¹²⁷ The reason offered for resolving uncertainty in favor of transfer was to preserve the state constitutional right to trial by jury that would not be available in chancery court, or would be available solely at the chancery judge's discretion and with a purely advisory function.¹²⁸ The court noted "the present case is

118. *Tillotson*, 551 So. 2d at 215. The court characterized the failure to dismiss or transfer as an "abuse of discretion" (rather than error of law), suggesting the error may not have been jurisdictional. *Id.* at 218 (citing *Robertson v. Evans*, 400 So. 2d 1214, 1214 (Miss. 1981)). It reasoned, "There is good reason why we ought heed the Newspaper's arguments The Newspaper has demanded its right to trial by jury. If this action is allowed to remain in chancery court, there will be no trial by jury." *Id.* at 215.

119. 742 So. 2d 1088, 1089 (Miss. 1999).

120. *Id.* Justice Robertson discussed the curious history of the unavailability of punitive damages in Mississippi chancery court in *Tideway Oil Programs, Inc., v. Serio*, 431 So. 2d 454, 467 (Miss. 1983), where the Mississippi Supreme Court held that punitive damages are available for claims properly within the chancery court's jurisdiction.

121. *Southern Leisure Homes, Inc.*, 742 So. 2d at 1089.

122. *Id.*

123. *Id.* (citing *Robertson v. Evans*, 400 So. 2d 1214 (Miss. 1981); *McLean v. Green*, 352 So. 2d 1312 (Miss. 1977)).

124. *Id.* at 1090.

125. *Id.* (citing *Tideway Oil Programs, Inc. v. Serio*, 431 So. 2d 454 (Miss. 1983)).

126. *Id.*

127. *Id.*

128. *Id.* at 1090-91 (citing *Louisville & Nashville R.R. v. Hasty*, 360 So. 2d 925, 927 (Miss. 1978)).

essentially a breach of contract case which is best heard in circuit court.”¹²⁹ And it wrote expansively that “in cases in which some doubt exists as to whether a complaint is legal or equitable in nature, the better practice is to try the case in circuit court.”¹³⁰

The court’s broad language must be understood in the context of the specific issue that the court confronted. The issue was whether the claims arising from fraud contained any basis for equitable relief. In other words, the issue was whether a particular kind of claim could be characterized as equitable at all—and thus support concurrent jurisdiction over mixed claims. The issue was not whether some admittedly mixed questions of law and equity should be transferred to circuit court as the better or more appropriate forum.

As a matter of archival history, it may be questionable whether the court correctly characterized claims relating to fraud as lying outside equity jurisdiction.¹³¹ But as a matter of logic, policy, and justice, the court was certainly correct to find that esoteric claims to equity jurisdiction should be rejected in order to prevent the collapse of the constitutional division of labor between circuit and chancery courts and to preserve the right to trial by jury.

Subsequent cases considering challenges to chancery court jurisdiction have followed a similar pattern. Without always carefully examining the merits of the arguments supporting equity jurisdiction, which might theoretically support chancery jurisdiction over related common law claims, the Mississippi Supreme Court has found a lack of chancery jurisdiction. At the same time the court has supported its preference for circuit court in these types of cases by the general principle announced in *Southern Leisure Homes, Inc.*¹³² that in cases of uncertainty, trial in circuit court is preferable. In some cases, the court has bolstered this argument by reasoning that trial in circuit court preserves the right to trial by jury.¹³³ Because the court has offered multiple reasons in support of transfer in these cases, it was not entirely clear whether chancery courts were required to transfer such actions because of a complete failure of jurisdiction or whether they were required to do so because judicial discretion required transfer to circuit court as the forum better able to handle the cases.

Justice Mills treated the classification problem similarly in *Burnette v. Hartford Underwriters Insurance Co.*, where the Mississippi Supreme Court also required the transfer of an action from chancery to circuit court.¹³⁴ He concluded from the pleadings that the claims were legal rather than equitable, but he also reasoned that any uncertainty should be resolved in favor of transfer to circuit court, relying specifically on the right to trial by jury.¹³⁵ In *Burnette*,

129. *Id.* at 1090.

130. *Id.*

131. Justice Story devoted two chapters to equity jurisdiction over disputes involving fraud. See generally 1 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE chs. 6-7, at 194-421 (1836).

132. See *supra* text accompanying note 130.

133. See *supra* text accompanying notes 118, 127-128; see also *infra* text accompanying notes 148, 154, 163-64, 188.

134. 770 So. 2d 948, 952 (Miss. 2000).

135. “We find that the present case is legal in nature. However, even if some doubt existed in this regard, that doubt would be resolved in favor of the [plaintiff’s argument for transfer] This case must be

the plaintiffs brought the action in chancery court in February and new counsel moved to transfer it to circuit court in October.¹³⁶ The chancery judge denied the motion to transfer finding that the court had jurisdiction and that the motion was not timely.¹³⁷ The plaintiffs did not appeal, but two months later, after *Southern Leisure Homes* clarified the law, the plaintiffs filed for rehearing.¹³⁸ On rehearing, the chancellor again denied the motion to transfer, now on the sole ground that it was untimely, and the supreme court reversed.¹³⁹

Burnette illustrates the difficulty of classifying a case on the pleadings and confirms the court's wisdom in providing alternative grounds for its decision. The plaintiffs alleged bad faith breach of an insurance contract and sought a declaratory judgment and actual and punitive damages.¹⁴⁰ The underlying theory might have been conceptualized as a tort or a contract, and the declaratory relief might have been classified either as a prohibition of future wrongful behavior or as a recognition of the continuing existence of a valid contract. Justice Mills avoided potentially fruitless analytic classification. He emphasized instead that declaratory judgments are jurisdictionally neutral¹⁴¹ and cited the rule from *Southern Leisure Homes* that breach of contract claims are best heard in circuit court and punitive damages claims were legal rather than equitable.¹⁴²

The court faced another case presenting an apparent mix of legal and equitable claims in *Briggs & Stratton Corp. v. Smith*.¹⁴³ The plaintiff brought an action in chancery court, and, although the facts are not clear, the case appears to have arisen from a dispute between a retail service operator and a supplier of parts.¹⁴⁴ Justice McRae's opinion focused closely on the plaintiff's theory of the case. Of eight counts in the complaint, the first seven sought damages for various theories of breach of contract and tort, while the eighth sought an accounting related to a dispute over the plaintiff's use of inventory.¹⁴⁵

Because the plaintiff defended chancery jurisdiction over the entire case based on its jurisdiction over the accounting claim, Justice McRae examined that claim. He concluded that an accounting was not appropriate and that the accounting claim was a pretext for invoking chancery court jurisdiction.¹⁴⁶ This required transfer: "The demand for an accounting is a mask to assert chancery court jurisdiction as it was in *Tillotson*, where this Court found that '[i]t is the

transferred to circuit court so that the [plaintiffs'] right to a jury trial will be effectively honored." *Id.* at 952.

136. *Id.* at 950. See *infra* Section IV.A.3 (discussing problem of waiver).

137. *Burnette*, 770 So. 2d at 950.

138. *Id.*

139. *Id.* at 951.

140. *Id.* at 950.

141. *Id.* at 952. The defendant had a persuasive argument that declaratory judgments were within chancery court's historic equity jurisdiction. Nevertheless, the court was prudent to avoid giving jurisdictional significance to the claim for declaratory relief. The ease with which a claim for declaratory relief can be added to virtually any other claim would permit parties to manipulate jurisdiction through artful pleading.

142. *Id.* at 950-51 (citing *Southern Leisure Homes v. Hardin*, 742 So. 2d 1088, 1090 (Miss. 1999)). For the change in the court's position on punitive damages, see *supra* note 120.

143. 854 So. 2d 1045, 1046 (Miss. 2003).

144. *Id.*

145. *Id.*

146. *Id.* at 1049.

substance of the action that should be controlling on this issue, not its form or label.”¹⁴⁷ As in *Tillotson*, Justice McRae offered a second reason for transferring: “By failing to transfer the cause to the circuit court, the Chancellor denied the defendants their right to a jury trial.”¹⁴⁸

3. Transfer of Cases to Circuit Court Where Multiple Cases Were Filed and Chancery Court Lost Jurisdiction by Prior Transfer

In contrast to the previous cases where there was no basis for original jurisdiction in chancery court or where the chancery court’s jurisdiction was uncertain, the dispute in *Burch v. Land Partners, L.P.* stemmed from a land development agreement where chancery jurisdiction would be expected.¹⁴⁹ Apparently seeking to prevent the transfer of vacant lots to third persons, the plaintiff commenced an action in chancery court that seemed to fall well within the traditional bounds of equity because, although the plaintiff demanded actual and punitive damages, he also sought specific performance.¹⁵⁰ Meanwhile, the defendant commenced a parallel proceeding in circuit court, and each party moved to transfer the action in which they were named as defendant.¹⁵¹ The chancery court granted the transfer while the circuit court denied it, and after the chancery court granted a motion to reconsider, the supreme court granted interlocutory review of the proceedings in both courts.¹⁵² First, the supreme court held that the chancery court lost jurisdiction when it granted the transfer, so it lacked authority to entertain the motion for reconsideration.¹⁵³ Second, it affirmed the circuit court decision to retain the case in order to preserve the right to trial by jury.¹⁵⁴

4. Transfer of Cases to Circuit Court Where Chancery Court Jurisdiction Appears to Exist or is Clear

In *Union National Life Insurance Co. v. Crosby*,¹⁵⁵ hundreds of plaintiffs brought a suit in chancery court against insurance companies, alleging fraudulent and predatory practices.¹⁵⁶ Claiming the insurance companies sold worthless and overpriced policies, the plaintiffs sought an injunction, accounting,

147. *Id.* (quoting *Tillotson v. Anders*, 551 So. 2d 212, 214 (Miss. 1989)).

148. *Id.* at 1050. Justice McRae did not address the additional argument that the request for punitive damages created a separate ground for transfer to circuit court. *Id.*

149. 784 So. 2d 925, 926 (Miss. 2001).

150. *Id.* at 926-27.

151. *Id.* at 927.

152. *Id.*

153. *Id.* at 928. *See supra* note 97.

154. *Burch*, 784 So. 2d at 929. The court responded to arguments that focused on the right to trial by jury rather than the superior jurisdiction of circuit court, but it did observe, “The circuit court is more adept to handle equity cases, rather than the chancery court to handle legal claims.” *Id.* at 928-29. Nevertheless, it is hard to see why the specific enforcement of a land sale contract would not fit well within the category of cases that Justice Chandler would later describe as traditionally associated with chancery court. *See Derr Planation v. Swarek*, 14 So. 3d 711, 717 (Miss. 2006) (observing that land sale contracts were traditionally specifically enforced in chancery court).

155. 870 So. 2d 1175, 1178 (Miss. 2004).

156. *Id.*

constructive trust, and actual and punitive damages under various contract and tort theories.¹⁵⁷ On interlocutory review of the chancellor's denial of a motion to transfer, the court held that the case must be transferred to circuit court.¹⁵⁸ The court separately considered the various legal theories of the plaintiffs and found that each one was more appropriate in circuit court.¹⁵⁹ Most were forms of torts or breaches of duties arising from a contractual relationship that were plainly within circuit court jurisdiction and that the court determined were better heard in circuit court.¹⁶⁰

Although the court could have rested its decision on the superiority of the circuit court to decide all claims, it went further, concluding that the individual equitable claims should also be transferred on their own right. Conceding that the constructive trust claim was equitable, the court reasoned that the claim required either a void contract or a breach, and because contract claims generally were within circuit court jurisdiction, "these claims are properly heard in circuit court."¹⁶¹ The court also held that the request for an injunction did not create a proper basis for chancery court jurisdiction because "Crosby has not shown that a circuit court cannot grant the injunctive relief she seeks."¹⁶²

The court reached the right result in *Crosby*, but its attempt to sort each claim as either legal or equitable was problematic. Its suggestion that constructive trusts and injunctions may lie beyond chancery court jurisdiction rests on a misunderstanding of the chancery court's equity jurisdiction and is unlikely to be followed. Nevertheless, the *Crosby* court's general preference for circuit court jurisdiction over cases that include a mix of claims, including ones within equity jurisdiction, is sound. If imprecise about equity,¹⁶³ the opinion was clear sighted in its understanding that the real problem was the conflict between respect for the plaintiff's choice of forum and respect for the defendant's right to trial by jury. Public policy favoring plaintiff choice of forum does not outweigh the right to jury trial.¹⁶⁴

157. *Id.* at 1178-79.

158. *Id.* at 1178.

159. *Id.* at 1182.

160. *Id.* at 1179-82.

161. *Id.* at 1181.

162. *Id.*

163. The court's analysis reflected an effort to link jurisdiction to the legal source of rights, placing torts and contracts generally in circuit court. This is evident also in the conclusion that because the action "sounds in tort and contract, we find that the chancellor erred in denying [the defense] motion to transfer to circuit court." *Id.* at 1182. On the contrary, a claim "sounding" in tort or contract but seeking specific performance or an injunction was historically a matter in equity. Similarly, the opinion suggested that claims for equitable relief were not properly in chancery court because the availability of such relief required establishing that the contract was void. *Id.* at 1181. But the legal source of a right or the presence of a common law defense would not eliminate equity jurisdiction. Other jurisdictions have struggled with the proper classification of quasi-contractual restitution as legal or equitable. See generally Caprice Roberts, *The Restitution Revival and the Ghosts of Equity*, 68 WASH. & LEE L. REV. 1027, 1043-44 (2011) ("Restitution has a sordid past because it has existed remedially as legal, equitable, and sometimes both. One should not mistakenly assume that restitution liability or remedies are inherently equitable."). Neither, of course, should one assume such relief is legal (as the lower court apparently did).

164. *Crosby*, 870 So. 2d at 181.

In *Copiah Medical Associates v. Mississippi Baptist Health Systems*, the court reviewed litigation stemming from the termination of a planned long-term business relationship between a partnership of doctors, a health care corporation, and a related entity, involving the lease and operation of two clinics.¹⁶⁵ When the corporation notified the doctors it was terminating the lease, the doctors sued in circuit court for breach of contract.¹⁶⁶ The health care corporation then sued the doctors in chancery court, seeking specific enforcement of the lease.¹⁶⁷ The circuit court denied the corporation's motion to dismiss or transfer to chancery court.¹⁶⁸ A week later the doctors moved the chancery court to transfer the case to circuit court, and the chancery court denied the motion.¹⁶⁹

With two parallel cases scheduled for trial, the supreme court granted interlocutory review of the chancery court's decision not to transfer.¹⁷⁰ The supreme court reversed and remanded with orders to transfer to circuit court.¹⁷¹ The starting point for Justice Carlson's explanation was his conviction that "this breach of contract claim should have been brought in circuit court *rather than* chancery court . . ." ¹⁷² The context makes clear that Justice Carlson was addressing the claim of the breach of the fifteen-year lease for which, he explains, specific performance would not be appropriate.¹⁷³ But he also writes more broadly that the issue is whether circuit or chancery court is "the more appropriate forum to decide the underlying breach of contract claim. [And he finds] . . . that the suit unquestionably sounds in contract law instead of equity and that the chancellor erred when he denied the motion to transfer."¹⁷⁴

The court's explanation leaves the impression that the court concluded the chancery court lacked jurisdiction—despite claims for an accounting, declaratory judgment, specific performance, and violations of fiduciary duties.¹⁷⁵ The idea that chancery courts lacked jurisdiction is also communicated by the observation: "We have consistently advised our trial courts that one must look at the substance, and not the form, of a claim to determine whether the claim is legal or equitable."¹⁷⁶

165. 898 So. 2d 656, 658-60 (Miss. 2005).

166. *Id.* at 658. The partners amended the complaint to add claims for breach of good faith and fair dealing, breach of fiduciary duties, punitive damages, and fees. *Id.* They also deleted a request for specific performance contained in the original complaint. *Id.*

167. *Id.* at 659. The doctors responded by seeking to amend the complaint in circuit court to add a request for a declaratory judgment declaring void the lease that was the subject of the chancery court proceeding. *Id.*

168. *Id.*

169. *Id.* Further procedural details include the health care corporation's filing of a counterclaim for an accounting in the circuit court action. *Id.*

170. *Id.* at 158-59.

171. *Id.* at 664.

172. *Id.* at 661 (emphasis added).

173. *Id.* at 660 (distinguishing *Osborne v. Bullins*, 549 So. 2d 1337, 1340 (Miss. 1989) (specific performance appropriate for breach of land sale contract)).

174. *Id.* at 656.

175. *Id.* at 658-59.

176. *Id.* at 661 (citing *Trustmark Nat'l Bank v. Johnson*, 865 So. 2d 1148, 1152 (Miss. 2004); *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045, 1049 (Miss. 2003); *Tillotson v. Anders*, 551 So. 2d 212, 214 (Miss. 1989); *Thompson v. First Miss. Nat'l Bank*, 427 So. 2d 973, 976 (Miss. 1983); *Dixie Nat'l Life Ins. Co. v.*

Nevertheless, Justice Carlson seemed to acknowledge the possibility of concurrent jurisdiction when he framed the issue as “whether the chancery court is the more appropriate forum for the present action.”¹⁷⁷ And he likewise assumed concurrent jurisdiction in providing as additional reasons for transfer the fact that the chancery court claims should have been raised as compulsory counterclaims in circuit court, and that the circuit court had “priority jurisdiction.”¹⁷⁸

In *ERA Franchise Systems, Inc. v. Mathis*, both the majority and dissenting opinions agreed that the circuit court had jurisdiction over mixed questions of equity and law.¹⁷⁹ The plaintiff sued in chancery court, asserting his own claims and derivative claims on behalf of Real Estate Professionals, LLC for various torts, breaches of contract, and breaches of fiduciary duties.¹⁸⁰ The plaintiff sought a constructive trust, specific performance, and actual and punitive damages.¹⁸¹ The chancellor denied the defendant’s motion to transfer to circuit court and announced he would bifurcate the case, first ruling on all equitable claims and then transferring any remaining legal issues to circuit court.¹⁸²

The supreme court granted interlocutory review and reversed, requiring the case to be transferred to circuit court.¹⁸³ In the majority opinion, Justice Waller acknowledged the concurrent jurisdiction of circuit and chancery courts over mixed questions of law and equity, but he emphasized the preference for litigating mixed questions in circuit court:

While we have allowed a chancery court to retain jurisdiction over cases involving questions of both law and equity, our more recent cases have held that equitable claims are more appropriately brought before a circuit court when they are connected to a contractual relationship or other claims tied to questions of law.¹⁸⁴

Justice Waller noted that doubt should be resolved in favor of characterizing a case as legal rather than equitable.¹⁸⁵ He identified factors that supported circuit court jurisdiction: the primary issues arose from contractual

Allison, 372 So. 2d 1081, 1085 (Miss. 1979).

177. *Id.* at 660.

178. *Id.* at 663 (“This Court has repeatedly stated that it is a ‘well established rule in this jurisdiction that where two (2) suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit.’” (quoting *In re* Petition of Beggiani, 519 So. 2d 1208, 1210 (Miss. 1988))).

179. 931 So. 2d 1278, 1282-84 (Miss. 2006).

180. *Id.*

181. *Id.* at 1280.

182. *Id.*

183. *Id.* at 1279, 1284.

184. *Id.* at 1283 (citing *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656, 659 (Miss. 2005); *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1175 (Miss. 2004); *RE/Max Real Estate Partners v. Lindsley*, 840 So. 2d 709, 712 (Miss. 2003)).

185. *Id.* at 1282 (citing *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 952 (Miss. 2000)).

relations, and breach of contract was “best heard” in circuit court;¹⁸⁶ the request for punitive damages indicated that the action was legal rather than equitable;¹⁸⁷ and proceedings in chancery court would deprive the defendant of its right to a jury trial.¹⁸⁸

Justice Graves dissented.¹⁸⁹ He emphasized that claims for an accounting, constructive trust, and specific performance were not pretextual and clearly established chancery court jurisdiction.¹⁹⁰ This, for the dissent, supported the exercise of “pendent” (cleanup or supplemental) jurisdiction by the chancery court over the entire action.¹⁹¹ Justice Graves identified a paradox behind the majority’s reasoning: “The majority takes the position that because some of Mathis’ claims are legal in nature, all of his claims must be adjudicated in circuit court. This position ignores prior decisions of this Court which allow Chancery courts to adjudicate pendent legal claims once original equity jurisdiction has been established.”¹⁹² Justice Graves found that no additional factors required transfer. He reasoned that chancery courts had jurisdiction to award punitive damages,¹⁹³ and because the chancery court had jurisdiction, no jury trial was required, and therefore the lack of a jury trial would violate no right.¹⁹⁴ Finally, Justice Graves emphasized that requiring transfer gave inadequate weight to the plaintiff’s choice of forum.¹⁹⁵

The opinions in *Copiah Medical Associates* and *ERA Franchise Systems* indicate that the supreme court, while often characterizing the choice between circuit and chancery courts as “either-or,” was in fact moving towards the position that both courts might have jurisdiction but circuit court’s was preferred. The decisions also evidenced an unmistakable reluctance to permit parties to split cases to allow them to proceed simultaneously in two courts.

The court followed a similar approach in *Tyson Breeders, Inc. v. Harrison*.¹⁹⁶ In that case, a farmer entered into a contract with a chicken breeding company under which the company was to provide hens, supplies, and instructions for producing eggs in accordance with company policy.¹⁹⁷ When the company removed all chickens without notice, the farmer commenced an action in chancery court seeking specific performance, injunctive relief, and

186. *Id.* at 1283.

187. *Id.* at 1282 (citing *Crosby*, 870 So. 2d at 1179).

188. *Id.* at 1283.

189. *Id.* at 1284 (Graves, J., dissenting).

190. *Id.* at 1284-89 (acknowledging that courts “should ‘be wary’” of pretextual claims asserted to invoke chancery jurisdiction (citing *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045, 1049 (Miss. 2003))).

191. *Id.* at 1284-85 (citing *RE/Max Real Estate Partners v. Lindsley*, 840 So. 2d 709, 712 (Miss. 2003) (recognizing cleanup or supplemental jurisdiction and requiring litigation in chancery court)). See *infra* Part III.B.1 (discussing cleanup or supplemental jurisdiction in chancery court).

192. *ERA Franchise Systems, Inc.*, 931 So. 2d at 1284 (Graves, J., dissenting).

193. *Id.* at 1288 (citing *RE/Max Real Estate Partners*, 840 So. 2d at 712; *Tideway Oil Programs, Inc. v. Serio*, 431 So. 2d 454, 459 (Miss. 1983) (“Because chancery court jurisdiction attached to [the plaintiff’s] claims for an accounting, constructive trust, and specific performance, it follows that the chancery court has authority to award both compensatory and punitive damages in the instant case.”)).

194. *Id.* at 1288-89 (citing *RE/Max Real Estate Partners*, 840 So. 2d at 713-14).

195. *Id.* (citing *RE/Max Real Estate Partners*, 840 So. 2d at 713).

196. 940 So. 2d 230 (Miss. 2006).

197. *Id.* at 231.

actual and punitive damages.¹⁹⁸ The company moved to transfer to circuit court on the grounds that the chancery court lacked jurisdiction and that transfer was required to preserve the right to trial by jury.¹⁹⁹ After the chancery court found that it had jurisdiction, the company moved for summary judgment.²⁰⁰ The chancery court granted partial summary judgment to the farmer, finding that the company breached the contract, and the chancery court transferred the case to circuit court for determination of damages.²⁰¹

On interlocutory review, the supreme court reversed.²⁰² First, it found that “breach of contract issues are best heard in circuit court.”²⁰³ It repeated the principle that “[i]n cases in which some doubt exists as to whether a complaint is legal or equitable in nature, the better practice is to try the case in circuit court.”²⁰⁴ The court also cited the principle that “it is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law since circuit courts have general jurisdiction but chancery courts enjoy only limited jurisdiction.”²⁰⁵ The court acknowledged cases to the contrary but repeated its policy:

Although the Court has previously allowed a chancery court to retain jurisdiction over cases involving questions of both law and equity, more recent cases hold that equitable claims are more appropriately brought before a circuit court when they are connected to a contractual relationship or other claims tied to questions of law.²⁰⁶

Chief Justice Smith’s opinion for the court reasoned that the prior cases requiring transfer established that the circuit court had exclusive jurisdiction over contract actions for damages.²⁰⁷ This led the court to reverse the chancery court’s partial summary judgment,²⁰⁸ leaving the entire case to be adjudicated de novo in circuit court.

The court expressly recognized the concurrent jurisdiction of circuit and chancery courts over mixed cases of law and equity in *RAS Family Partners v.*

198. *Id.*

199. *Id.* at 231-32.

200. *Id.* at 232.

201. *Id.*

202. *Id.* at 232-34.

203. *Id.* at 233 (citing *Southern Leisure Homes, Inc. v. Hardin*, 742 So. 2d 1088, 1089-90 (Miss. 1999)).

204. *Id.* (citing *Southern Leisure Homes, Inc.*, 742 So. 2d at 1089-90).

205. *Id.* (quoting *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1182 (Miss. 2004)).

206. *Id.* (citing *ERA Franchise Sys. v. Mathis*, 931 So. 2d 1278, 1282-83 (Miss. 2006)). See *supra* text accompanying note 184.

207. *Tyson Breeders, Inc.*, 940 So. 2d at 234 (“In *Copiah, Crosby* and *Mathis*, we have confirmed the lack of jurisdiction in chancery court and the exclusive jurisdiction in circuit court in each of the breach of contract cases, and accordingly order the transfer of each case to circuit court.”) (citing *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656 (Miss. 2005); *Crosby*, 870 So. 2d at 1175; *ERA Franchise Sys.*, 931 So. 2d at 1278)).

208. *Id.* at 233-34 (“Having found that the chancery court lacked proper jurisdiction to hear Harrison’s breach of contract claim, Harrison was thus not entitled to judgment as a matter of law concerning those claims.”).

Onnam Biloxi, LLC.²⁰⁹ Landowners who also owned stock in a corporation that owned adjacent land had entered into an agreement with a casino operator to lease land and sell stock.²¹⁰ Hurricane Katrina struck the day before the closing.²¹¹ When the casino operator later sought to enforce the agreement, the property owners brought a civil action in circuit court seeking a declaratory judgment that the contracts were unenforceable and for damages.²¹² The casino operator then sued in chancery court seeking specific performance of the lease agreement and damages for breach of the contract to sell stock.²¹³

The court granted interlocutory review of decisions by both the circuit and chancery courts not to transfer. In holding that litigation was required in circuit court, Justice Diaz rejected the casino operator's argument that the circuit court lacked jurisdiction over equity claims.²¹⁴ He explained that in evaluating the claims, the court should examine the pleadings,²¹⁵ and he rejected the argument that the case should be transferred to chancery court because the "paramount claim" was for specific performance, calling it "without merit."²¹⁶ There was no suggestion that the equity claims were pretextual or frivolous.²¹⁷ And the court confined its analysis to the preliminary question of whether jurisdiction was appropriate in circuit court, without attempting to identify what claims were more important for the parties.²¹⁸ Finding the circuit court had competent jurisdiction over all claims, the court then turned to the issue of whether the circuit court retained jurisdiction over all claims because the case was first filed there.²¹⁹ Noting that priority jurisdiction was a well-established principle under Mississippi law when cases were filed in multiple courts with concurrent jurisdiction,²²⁰ Justice Diaz held that the chancery court case should be transferred to circuit court.²²¹

209. 968 So. 2d 926 (Miss. 2007).

210. *Id.* at 927.

211. *Id.*

212. *Id.* The casino operator previously commenced an action in federal court, which was dismissed. *Id.* at 926. The property owner's claim for damages included a theory of wrongful filing of a *lis pendens*. *Id.*

213. *Id.*

214. *See supra* text accompanying note 100.

215. *RAS Family Partners, LP*, 968 So. 2d at 928 ("To determine whether a court has subject matter jurisdiction, we look to the face of the complaint, examining the nature of the controversy and the relief sought (citations omitted). If the complaint seeks legal relief, even in combination with equitable relief, the circuit court can have proper subject matter jurisdiction." (citation omitted)).

216. *Id.* at 929. Priority is determined by the dates of filing, provided that service of process is obtained in due course. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* The priority rule was applied to encompass a party who was subsequently added to the circuit court action by amendment under the theory that the amendment related back to the time of commencement. *Id.*

B. The Power of Chancery Courts to Hear Cases that Raise Mixed Questions of Law and Equity

1. Cleanup or Supplemental Jurisdiction

Chancery courts lack jurisdiction to adjudicate purely common law claims, even when those claims are cast in the guise of a request for equitable relief.²²² Nevertheless, the chancellor in England, when deciding cases within his equitable jurisdiction, was competent to provide additional relief that would normally be available only in common law courts.²²³ American legal authorities likewise recognized the power of equity courts to provide additional legal relief—specifically money damages.²²⁴ This power is commonly referred to as the “equitable cleanup” doctrine in other jurisdictions,²²⁵ and it is analogous to the supplemental jurisdiction exercised by federal courts.²²⁶ Mississippi courts apparently have neither employed the jargon of “equitable cleanup”²²⁷ nor developed elaborate rules to guide the discretionary exercise of judicial power under the doctrine as have other states.²²⁸ But the doctrine has a long history in

222. See *supra* text accompanying notes 101-05.

223. See generally A. Leo Levin, *Equitable Clean-Up and the Jury: A Suggested Orientation*, 100 PENN. L. REV. 333 (1951); William Draper Lewis, *Damages Given in Equity in Lieu of a Specific Performance*, 50 AM. L. REG. 394, 395 (1901) (discussing English cases). The reluctance of the chancellor to exercise this power led Parliament to enact a statute specifically authorizing the chancellor to award damages “either in addition to or in substitution for . . . [an] injunction or specific performance.” 21 & 22 Vict., c. 27, § 2 (1858), quoted by LEVIN, *supra*, at 332. There was—and is—confusion about whether it is appropriate for a court of equity to provide a legal remedy when equitable relief is unavailable. Levin argues persuasively that the key to understanding the opinions hinges on the specific facts that explain why equitable relief is unavailable. For example, a defendant who makes himself incapable of rendering specific performance after the filing of a lawsuit should be compelled to pay damages. In contrast, a plaintiff who knowingly brings a claim for specific performance against a party incapable of performing should not be able to circumvent the normal limits on equity and recover damages. Consistent with the trend of cases to remove restrictions on legal relief, Levin proposed that the cleanup rule should apply “wherever the award of damages will not perpetrate the very injustice which denial of specific performance is intended to prevent.” LEVIN, *supra*, at 351.

224. E.g., JOHN NORTON POMEROY, EQUITY JURISPRUDENCE AS ADMINISTERED IN THE UNITED STATES OF AMERICA §§ 181, 231, (5th ed., Spencer W. Symons ed., 1941); STORY, *supra* note 131, § 64. From the beginning, exercise of the power to provide legal relief presented the question of whether a jury or judge should decide the quantity of damages. See generally, LEVIN, *supra* note 223, at 320.

Some later Mississippi cases opine that contracts lie peculiarly outside equity jurisdiction, but Story discussed the jurisdiction of equity courts to provide damages in cases seeking specific performance or other forms of equitable relief. See 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA §§ 798-99, at 122-23 (3d ed. 1843).

225. E.g., In re Allstate Ins. Co., 400 F.3d 505, 507 (7th Cir. 2005) (Posner, J.); State *ex rel* Leonardi v. Sherry, 137 S.W.3d 462, 464 (Mo. 2004); Stokes v. Stokes, 491 S.W.3d 113, 118 n.3 (Ark. 2016); see generally Tabitha G. Davisson, Note, *Right to a Jury Trial for Legal Claims: Does the Equitable Cleanup Doctrine Make Sense in Missouri?*, 70 MO. L. REV. 609 (2005).

226. See 28 U.S.C. § 1367. The term “supplemental jurisdiction” was adopted by the statute instead of “pendent” or “ancillary jurisdiction,” the terms courts had previously employed.

227. Members of the court have variously referred to the supplemental power and obligation of the chancery court to provide legal remedies as concurrent jurisdiction, e.g., Atkinson v. Felder, 29 So. 767, 767 (Miss. 1900), and pendent jurisdiction, e.g., Tideway Oil Programs, Inc., v. Serio, 431 So. 2d 454, 464 (Miss. 1983).

228. See, e.g., Sherry, 137 S.W.3d at 462 (discussing history of equity cleanup cases in Missouri). See generally John E. Sanchez, *Jury Trials in Hybrid and Non-Hybrid Actions: The Equitable Clean-Up Doctrine in the Guise of Inseparability and Other Analytical Problems*, 38 DEPAUL L. REV. 627 (1989); Davisson, *supra* note 225; B.C. Ricketts, Annotation, *Right in Equity Suit to Jury Trial of Counterclaim Involving Legal Issue*, 17 A.L.R.3d 1321 (1968).

the state, and in the 1980s some justices began to refer to it as pendent jurisdiction.²²⁹

In *Atkinson v. Felder*, an early case under the 1890 Mississippi Constitution, the Mississippi Supreme Court held that it was reversible error for the chancellor to refuse to exercise concurrent jurisdiction to adjudicate closely related legal claims.²³⁰ Moreover, the court held that the chancellor was required to exercise such jurisdiction over legal matters even while sustaining the chancellor's ruling that no equitable relief was available on the merits.²³¹ The court stated the principle broadly:

It is a principle relating to the concurrent jurisdiction of courts that, when there is a distinct and equitable feature belonging to the case, and the chancery court has taken jurisdiction of the case in consequence of such a feature or incident, it will adjudicate all the rights of the parties touching the subject-matter of the litigation. . . . And the fact that the equitable feature of the suit is not available because of some defense arising thereto does not preclude the court from giving a recovery for the money claimed, though that, as it turns out, is based upon a purely legal right. The court, having lawfully taken jurisdiction, is entitled to proceed, and to adjust whatever rights may exist between the parties of whatever kind, and [even though they may be] strictly legal.²³²

Almost fifty years later, the Mississippi Supreme Court reconfirmed the duty of the chancellor to provide a forum for common law claims closely related to equity claims within chancery court jurisdiction. In *McClendon v. Mississippi State Highway Commission*, some landowners alleged that the highway commission improperly allowed a drainage ditch to become obstructed, leading to flooding of their property.²³³ They brought an action in chancery court seeking to enjoin the nuisance and to prohibit a continuing trespass.²³⁴ They further supported their claim to chancery jurisdiction by the need to prevent a multiplicity of lawsuits.²³⁵ While the action was pending, the parties reached a

229. Because the doctrine of pendent jurisdiction in Mississippi courts is analogous to the doctrine of supplemental jurisdiction in the federal courts, and because the federal system no longer uses the term "pendent" jurisdiction, this Article refers to the state doctrine of pendent jurisdiction as "cleanup" or "supplemental" jurisdiction.

230. 29 So. 767, 767 (Miss. 1901).

231. *Id.* The Felders, husband and wife, signed promissory notes secured by a mortgage. *Id.* When they defaulted, Atkinson commenced a foreclosure action in chancery court and also sought damages. *Id.* The Felders counterclaimed, contending that Mrs. Felder lacked capacity due to insanity, and sought to have the mortgage removed as a cloud on her title. The chancellor found for the Felders, declared the mortgage void, and dismissed the plaintiffs' claims in full. *Id.* The Mississippi Supreme Court held that it was error to dismiss the damages claims against Mr. Felder. *Id.*

232. *Id.* Although the court might have relied solely on a specific legislative grant of jurisdiction to award damages in foreclosure actions in chancery court, the court declined to do so.

233. *McClendon v. Mississippi State Highway Comm'n*, 38 So. 2d 325, 325-26 (Miss. 1949).

234. *Id.* at 326.

235. *Id.*

partial settlement and agreed to dismiss all claims except the claims for damages.²³⁶ When the case came up for trial, the chancellor, seeing that only common law issues survived, offered to either transfer the case to circuit court or dismiss it without prejudice.²³⁷ When the parties did not respond,²³⁸ the court dismissed, and the parties appealed. In reversing, the supreme court acknowledged the concurrent jurisdiction of chancery courts over common law claims related to issues within their equity jurisdiction:

It has long been settled in this state, as one of the pre-eminent principles of equity procedure, that the Chancery Court having taken jurisdiction on any one ground of equity, will thereupon proceed in the one suit to a complete adjudication and settlement of every one of the several disputed questions materially involved in the entire transaction, awarding by a single comprehensive decree all appropriate remedies, legal as well as equitable. . . . and in this state, the rule goes even to the extent that if the ground of equity fail under the proof, the cause may still be retained to a complete final decree on the remaining issues although the latter present legal subjects only.²³⁹

The chancery court clearly had original jurisdiction based on claims for injunctive relief and the need to avoid a multiplicity of suits. Consequently, after the claims were dismissed, “the court nevertheless still had jurisdiction to proceed to a full and complete determination of all of the remaining issues, even though they might cover only legal rights and require the granting of none but legal remedies.”²⁴⁰

In mandating the exercise of concurrent common law jurisdiction by the chancery court, the Mississippi Supreme Court quoted the provision of the Mississippi Constitution guaranteeing access to courts.²⁴¹ The court held that section 147 had no bearing as it applied solely to cases where the lower courts had improperly refused to dismiss or transfer rather than cases where the lower courts improperly dismissed.²⁴²

236. *Id.*

237. *Id.* at 326-27.

238. *Id.* at 317. The procedural posture is unclear. *Id.* at 325. The appellate decision says the parties “t[ook] no action” and the chancellor dismissed. *Id.* at 327. It is unclear what action was required or whether dismissal resulting from the inactivity could have constituted invited error. *Id.* In any event, the supreme court addressed the matter of jurisdiction on the merits. *Id.*

239. *Id.* (citing GRIFFITH’S CHANCERY PRACTICE § 28, at 31).

240. *Id.* at 328.

241. *Id.* (quoting MISS. CONST. § 24) (“All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.”).

242. *Id.* (citing *Mitchell v. Bank of Indianola*, 54 So. 87 (Miss. 1911) (reversing chancery court dismissal of claim for money damages where chancellor concluded that such relief was exclusively legal, finding both that claim for breach of trust was properly within the chancellor’s jurisdiction and that constitutional bar of appellate review had no application to decisions to dismiss for lack of jurisdiction)).

Although the Mississippi Supreme Court adopted broad language supporting the exercise of chancery court jurisdiction over common law claims in *Atkinson* and *McClendon*, it would be prudent not to overlook some of the special circumstances of those cases. First, they presented mixed questions of law and equity in chancery courts. Second, they were cases where the original equity jurisdiction of the chancery court was not in doubt and the availability of equitable relief depended on the merits. Third, they were cases where chancellors dismissed the matter absolutely rather than transferring to circuit court. Fourth, they were cases where the chancellors dismissed for lack of jurisdiction as a matter of law. That is, they were cases where the chancellors refused to acknowledge the well-established existence of some form of supplemental jurisdiction, not cases where the chancellors, recognizing such jurisdiction, exercised discretion not to proceed. Fifth, from the laconic record in both cases, it seems that each presented a particularly strong case for the exercise of jurisdiction even if it were a matter of discretion: there was no reason evident from the record not to exercise supplemental jurisdiction. Finally, in neither case did any party object to supplemental jurisdiction on the grounds that it would prevent the exercise of the right to trial by jury available in actions for damages at common law.²⁴³

2. Cases Requiring Litigation in Chancery Court

In a handful of mixed jurisdiction cases, the Mississippi Supreme Court has required litigation to proceed in chancery court. Because these decisions run counter to the court's general preference for mixed cases to be litigated in circuit court, they bear close consideration.

a. Cases Commenced Originally in Chancery Court

In *RE/MAX Real Estate Partners v. Lindsley*, a divided court held that a case against real estate agents should remain in chancery court even though the complaint sought damages for breach of contract and actual and punitive

243. Some older authority suggests that issues can be so peculiarly "legal" that they lie outside the power of equity supplemental jurisdiction. At one point chancery courts lacked jurisdiction over punitive damages claims. In a case that presented a mix of common law and equitable issues, Justice Robertson wrote, "[W]here there is in the case an issue of exclusive law cognizance (e.g., the punitive damages issue), the circuit court may in its discretion retain jurisdiction and hear the entire cause, even though there may be other issues which arguably fall within chancery court subject matter jurisdiction." *Thompson v. First Nat'l Bank & Mut. Sav. Life Ins. Co.*, 427 So. 2d 973, 976 (Miss. 1983). The case stemmed from a debtor's claim that her debt should be cancelled because the bank failed to insure the life of a co-debtor. *Id.* at 974. She sued in circuit court to cancel the debt, seeking actual and punitive damages. *Id.* Claiming the action required a complex accounting, the bank successfully transferred the action to chancery court where it was dismissed. *Id.* at 975. (The grounds for dismissal are unclear.) In reversing, the Mississippi Supreme Court remanded to the circuit court. *Id.* at 977. Justice Robertson identified two distinct errors (in addition to the erroneous dismissal). *Id.* at 975. First, though well aware of chancery court jurisdiction over most legal claims, he insisted that the chancery court lacked jurisdiction over the punitive damages issue. *Id.* He specifically reasoned that the circuit court could not confer such jurisdiction by transfer. *Id.* ("The circuit court, of course, had no power to confer upon the chancery court the power to hear punitive damage claims. Accordingly, the transfer order was in error."). Second, he reasoned that transfer deprived the plaintiff of her right to trial by jury. *Id.* at 976.

Today, claims for punitive damages are no longer outside chancery court jurisdiction. *See supra* note 120. Thus, the idea of exclusive common law jurisdiction may have been limited to punitive damages and may no longer be applicable.

damages for gross negligence in addition to cancellation and an accounting.²⁴⁴ The plaintiff property owner listed her property with the defendant real estate agency, naming as the listed salesperson a woman with whom the seller was engaged in joint real estate ventures.²⁴⁵ The seller alleged that the listing agent persuaded her to transfer title to the listed property to the agent; that the agent then borrowed \$100,000 by encumbering the title with a mortgage; and that the agent borrowed an additional \$15,000 that she used for personal matters.²⁴⁶ Most of the funds were not repaid, and the seller could not recover the property because the bank had foreclosed.²⁴⁷ Accordingly, she sought to recover the value of funds received by the listing agent in violation of fiduciary duties and in breach of contract, and she sought to trace these funds and recover interest received on them as well.²⁴⁸

On interlocutory appeal from the chancery court's denial of defendants' motion to transfer to circuit court, the Mississippi Supreme Court affirmed.²⁴⁹ Justice Diaz wrote an opinion that recognized equity jurisdiction over related legal claims.²⁵⁰ He found in the claim for an accounting a firm basis for equity jurisdiction.²⁵¹ In requiring the suit to remain in chancery court, he offered two different lines of reasoning. First, he reasoned that in a mixed case that could have been brought in either circuit or chancery court, the plaintiff's choice of forum should be respected.²⁵² The plaintiff's right to select the forum was not outweighed by the defendants' right to a jury trial.²⁵³ Second, he provided reasons why chancery court was in fact the better forum.

In resisting transfer, the seller insisted on the need for an equitable accounting for two reasons. She claimed the right to trace proceeds of funds into accounts and recover them (or their value).²⁵⁴ Justice Diaz concluded that chancery court was "in the best position to award appropriate relief in the form of a constructive trust or an equitable lien, should one of those . . . be required."²⁵⁵

This conclusion is open to question. The theories of fraud, breach of contract, and unjust enrichment against the listing agent would have supported tracing of proceeds and entitled the seller to an equitable accounting against the listing agent. But it is not clear whether the listing agent was ever named as a defendant.²⁵⁶ Rather, the seller brought claims against the agent's employers on

244. 840 So. 2d 709, 712-13 (Miss. 2003).

245. *Id.* at 710.

246. *Id.* at 710-11.

247. *Id.* at 711.

248. *Id.*

249. *Id.* at 711-12.

250. *Id.* at 714.

251. *Id.*

252. *Id.* at 713 ("Presumably with the knowledge that concurrent jurisdiction between chancery and circuit court existed for this matter, Lindsey chose to bring her suit for redress in chancery court. This was her choice and, if proper and fair, must be respected here.").

253. *Id.*

254. *Id.* at 714.

255. *Id.*

256. The listing agent's name is not included in the style of the case on appeal, and neither the majority

theories of negligent instruction and supervision.²⁵⁷ Although the accounting might conceivably provide evidence of additional damages, it is by no means clear it would do so. Nor is it clear from the facts what power the courts could exercise to recover the funds in the hands of third persons. Nevertheless, Justice Diaz characterized the accounting claim as “the pivotal claim by which the other claims will be measured and by which proper relief may be granted.”²⁵⁸

Four members of the court dissented,²⁵⁹ characterizing the lawsuit as an action at law and rejecting the significance of the request for an accounting:

The allegations in the complaint pertain to [the listing agent’s] alleged breach of contract with Lindsley, ReMax’s alleged failure to supervise [the agent], and [the agent’s] alleged conversion of Lindsley’s money, civil causes of action which are historically filed in circuit court . . . [citations omitted] A mere request for accounting does not confer jurisdiction on the chancery court; indeed, any needed accounting is easily developed during discovery in circuit court.²⁶⁰

They also disagreed with Justice Diaz’s view that there was concurrent jurisdiction.²⁶¹ Emphasizing that chancery courts are courts of limited jurisdiction, they concluded that the action should have been commenced in circuit court²⁶²—implicitly rejecting the majority’s suggestion that, in mixed cases, the chancery court should consider the benefits of litigating in chancery over circuit court.

In two other cases where the supreme court required litigation of mixed cases in chancery court, Justice Carlson wrote opinions for the court that relied in part on the fact that the cases had begun in chancery court. But there were also other circumstances supporting the decisions. In *City of Starkville v. 4-County Electric Power Association*,²⁶³ the city of Starkville brought an action to enforce a 1963 contract to purchase a power company’s facilities and service rights.²⁶⁴ After one interlocutory appeal clarified that intervening legislation did not invalidate the contract, the legislature made further changes to the law that supported a new defense.²⁶⁵ The city then challenged the constitutionality of the

nor dissenting opinion states that the listing agent was a party; nor does either opinion explain her absence. *Id.* at 710.

257. *Id.* at 711. The appellate opinion lists three appellants: RE/MAX Real Estate Partners, Inc., Re-Max Real Estate Partners, and Judith Corts. They were presumably the defendants at trial. The opinions do not explain their relationship to each other.

258. *Id.* at 714.

259. *Id.* at 714-15 (Waller, J., dissenting) (Smith, Cobb and Carlson, JJ., joining in the opinion).

260. *Id.*

261. *Id.*

262. *Id.* at 715.

263. 909 So. 2d 1094 (Miss. 2005).

264. The action sought specific performance, declaratory and injunctive relief, and damages. *Id.* at 1100.

265. *Id.*

new statute and sought to transfer the action to circuit court for a determination of actual and punitive damages.²⁶⁶

The chancery court denied the motion to transfer and entered judgment for the defendant, finding the purchase option unenforceable because the city did not obtain approval of the public service commission.²⁶⁷ The supreme court affirmed.²⁶⁸ Justice Carlson first addressed the issue of whether the chancery court erred in failing to transfer to circuit court.²⁶⁹ He emphasized that the city “chose to file in chancery court (not circuit court) . . . thus commencing this protracted litigation.”²⁷⁰ While acknowledging that most recent cases supported transfer to circuit court,²⁷¹ he observed that *Trustmark National Bank v. Johnson*, a case decided the previous year, had directed courts to consider the substance rather than the form of claims.²⁷² Noting that specific performance was a prominent claim and the basis of the trial court’s decision not to transfer, Justice Carlson wrote, “[S]pecific performance of a contract is typically the type of relief to be considered by our chancellors sitting as a court of equity.”²⁷³ He also looked to two other factors. First, the city “presumably made a knowing and conscious decision to commence this litigation in chancery court . . .”²⁷⁴ Second, the case had been extensively litigated in chancery court, appealed once, and then litigated to final judgment on the merits on motions for summary judgment.²⁷⁵

In *Issaquena Warren Counties Land Co. v. Warren County*, Justice Carlson also wrote the court’s opinion in a decision requiring litigation of a mixed case in chancery court.²⁷⁶ A dispute between developers and a county over compliance with subdivision and floodplain laws led to multiple lawsuits.²⁷⁷ Over six months, the county filed twenty-three criminal charges in county court against the individual owners of the development company.²⁷⁸ Encouraged by the trial judge, the county dismissed the criminal charges but announced its intention to seek civil remedies.²⁷⁹ The land company then brought an action in

266. *Id.*

267. *Id.* at 1100-1101. The chancery court postponed its decision to allow the city to seek approval from the commission. The opinion does not explain why the city made no effort to obtain approval.

268. *Id.* at 1115.

269. The reason why the court considered the jurisdictional issue first—or at all—is uncertain. Because the supreme court affirmed on the merits and the challenges to the chancery court’s jurisdiction focused on its power to decide matters of common law, the state constitution prevented the supreme court from reversing. See *supra* notes 86-87 and accompanying text.

270. *City of Starkville*, 909 So. 2d at 1101.

271. *Id.* at 1101-02 (citing cases).

272. *Id.* at 1102 (citing *Trustmark National Bank v. Johnson*, 865 So. 2d 1148 (Miss. 2004)); see *infra* text accompanying note 338 (discussing *Trustmark*).

273. *City of Starkville*, 909 So. 2d at 1102.

274. *Id.*

275. *Id.* “[B]ecause the chancery court had already heard extensive litigation in the case, it was certainly in the best position to hear and resolve the relevant issues in the related case which had been commenced.” *Id.* (citing *Rogers v. Eaves*, 812 So. 2d 208, 211-12 (Miss. 2002)).

276. 996 So. 2d 747, 747 (Miss. 2008).

277. *Id.* at 748-49.

278. *Id.*

279. *Id.* at 749.

chancery court for declaratory and injunctive relief, seeking to prevent multiple lawsuits and asking for a declaration that it had not violated county laws.²⁸⁰ Five days later the county commenced an action in circuit court seeking declaratory relief and damages.²⁸¹

The chancery court granted the county's motion to transfer the chancery court proceedings to circuit court.²⁸² On interlocutory appeal, the Mississippi Supreme Court reversed.²⁸³ Justice Carlson accepted the developer's priority jurisdiction argument, stating, "The priority-of-jurisdiction rule stands for the premise that if the first court in which the action is filed has proper subject matter jurisdiction, that court should retain jurisdiction over the whole controversy."²⁸⁴ Justice Carlson found the case was properly in chancery court: the chancery court had jurisdiction over claims for equitable relief in the complaint and thus had "pendent" jurisdiction over related legal claims.²⁸⁵ Applying the priority jurisdiction rule, he concluded that the case was proper in chancery court and should not have been transferred.²⁸⁶

Justice Carlson's opinion, in respecting priority of filing, did not address the conflicting practice under which the court had expressed the strong preference for requiring litigation of mixed cases in circuit court. It is not clear whether any party brought the relevant legal authority to the court's attention. Nevertheless, Justice Carlson considered the right to trial by jury that is protected by that practice. First, he cited the familiar principle that there is no right to trial by jury in chancery court.²⁸⁷ Second, he noted that the damages sought were provided

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.* at 751.

284. *Id.* at 750 (citing *RAS Family Partners v. Onnam Biloxi, LLC*, 968 So. 2d 926, 929 (Miss. 2007). *See also id.* (quoting *RAS Family Partners*, 968 So. 2d at 929) (quoting *Scruggs, Millette, Bozeman, & Dent, P.A. v. Merkel and Cocke, P.A.*, 804 So. 2d 1000, 1006 (Miss. 2001) ("To this end, this Court has stated, '[t]he "first to file" or "race to the courthouse" rule is well-established in Mississippi case law: "[w]here two suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit."'))

In *Scruggs*, one law firm brought a civil action in chancery court against other law firms to determine the right to attorneys' fees resulting from other litigation. 804 So. 2d at 1002. One of the defendant firms waited six months and then filed an interpleader action in chancery court in another county, attempting to interplead part of the fees that were at issue in the prior lawsuit. *Id.* The second chancery court refused to transfer and entered a decision relating to the interpleaded funds that was certified as a final judgment. *Id.* The Mississippi Supreme Court reversed the judgment. *Id.* at 1003. It found that the interpleader action was a compulsory counterclaim under Miss. R. Civ. P. 13(a). *Id.* It then applied the priority-of-jurisdiction rule in finding that the second chancery court erred in failing to dismiss or transfer. *Id.* at 1006. There was no question that both chancery courts had concurrent subject matter jurisdiction. *Id.* "This Court has repeatedly stated that it is a 'well established rule in this jurisdiction that where two (2) suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit.'" *Id.* (quoting *In re Beggiani*, 519 So. 2d 1208, 1210 (Miss. 1988)). *See supra* note 178 (quoting same passage).

285. *Issaquena*, 996 So. 2d at 751.

286. *Id.* (Chancery court "has priority jurisdiction to the exclusion and abatement of the complaint filed in [circuit] [c]ourt."). The fact that the demand for legal relief was first raised in the action in circuit court after the commencement of the suit in chancery court did not affect the outcome.

287. *Id.* (citing *Tillotson v. Anders*, 551 So. 2d 212, 213 (Miss. 1989); *Tideway Oil Programs, Inc. v. Serio*, 431 So. 2d 454, 464 (Miss. 1983); *Burnett v. Bass*, 120 So. 456, 456 (Miss. 1929)).

for by statute.²⁸⁸ Accordingly, the amount of damages was fixed as a matter of law and could be easily applied by the chancellor.²⁸⁹ Thus, a jury trial would be unnecessary.²⁹⁰

In *Derr Plantation, Inc. v. Swarek*, the Mississippi Supreme Court again required a case with mixed legal and equitable claims to remain in chancery court where the plaintiff originally brought it.²⁹¹ Would-be buyers alleged breach of a contract to lease and sell a large operational farm and sought specific performance, a preliminary injunction, and compensatory and punitive damages.²⁹² Over two years later, after the chancery court had denied motions for summary judgment, the plaintiffs were no longer interested in specific performance and moved to transfer the action for damages to circuit court.²⁹³ The chancery judge granted the motion and the defendant sought an interlocutory appeal.²⁹⁴

The supreme court reversed, publishing two opinions explaining why the case must remain in chancery court.²⁹⁵ Justice Chandler carefully reviewed the court's practice in prior cases and relied on the outcome and reasoning in the most closely analogous case:

As in *City of Starkville*, the chancery court acquired jurisdiction over the Swareks' complaint because the fundamental nature of their claim was for the equitable remedy of specific performance; additionally, the chancellor has presided over the matter through discovery and dispositive motions and she is thus well-positioned to fairly and correctly decide the issues to be tried.²⁹⁶

His opinion is notable for its careful review of the court's divergent practices in prior cases and its effort to harmonize the result with each. He summarized the applicable rules. First, subject matter jurisdiction of the

288. *Id.* .

289. *Id.*

290. *Id.* ("Putting on proof before a jury as to damages would be unnecessary where the amount properly provided for pursuant to the ordinance is fixed.")

291. 14 So. 3d 711, 720 (Miss. 2006). Co-author Hoffheimer consulted with the lawyers representing the Swareks at a later stage of the proceedings regarding a different legal issue. Co-author Challener consulted with the lawyers representing Derr Plantation at a later stage of the proceedings regarding a different legal issue.

292. *Id.* at 713.

293. *Id.* at 716.

294. *Id.* at 713.

295. *Id.* at 720. The decision to reverse was unanimous, with all justices except Justice Dickinson participating. Justices Waller, Carlson, Lamar, Kitchens, and Pierce concurred in Justice Chandler's opinion. Justice Graves concurred in the result only. Justice Randolph specially concurred in an opinion in which Justice Chandler and other justices concurred (except Justice Kitchens) and in which Justice Graves concurred in part. In other words a supermajority of justices agreed with the reasoning offered in both opinions. There is no indication of why Justices Randolph and Graves did not concur in Justice Chandler's opinion, or of why Justice Kitchens did not concur in Justice Randolph's.

296. *Id.* at 718 (citing *City of Starkville v. 4-County Elec. Power Ass'n*, 909 So. 2d 1094, 1101 (Miss. 2005)).

chancery court may be raised by any party at any time.²⁹⁷ Second, the court determines subject matter jurisdiction by “look[ing] to the face of the complaint, examining the nature of the controversy and the relief sought.”²⁹⁸ “[I]f it appears from the face of a well-pleaded complaint that an independent basis for equity jurisdiction exists, our chancery courts may hear and adjudge law claims.”²⁹⁹

Justice Chandler recognized implicitly that circuit and chancery courts share concurrent jurisdiction over mixed cases of law and equity,³⁰⁰ and he acknowledged that prior opinions had expressed a preference for circuit court jurisdiction,³⁰¹ in part to preserve the right to trial by jury.³⁰² Nevertheless, he explained, “[A] party cannot, by invoking the right to a jury trial, secure a transfer to circuit court of a case properly within the chancery court’s jurisdiction.”³⁰³

Justice Chandler addressed recent cases that had held that breach of contract cases were outside chancery court jurisdiction. He distinguished the cases, finding that equitable relief was not appropriate in them.³⁰⁴ In contrast, a claim for specific performance of a land-sale contract was firmly within the chancery court’s equity jurisdiction.³⁰⁵ Examining the complaint and the nature of the controversy, Justice Chandler found that the “primary claim” was for specific performance.³⁰⁶ This established chancery court jurisdiction over all the claims, including those that might more appropriately belong in circuit court. The chancery court’s subject matter jurisdiction was determined at the time of filing and was not eliminated by later decisions made by the plaintiffs.³⁰⁷ And,

297. *Id.* at 716 (citing *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 951 (Miss. 2000)).

298. *Id.* (citing *RAS Family Partners v. Onnam Biloxi, LLC*, 968 So. 2d 926, 928 (Miss. 2007)). Justice Chandler added, “The reviewing court must look to the substance, not the form, of a claim to determine whether that claim is legal or equitable.” *Id.* (citing *Copiah Med. Assocs. v. Miss. Baptist Health Sys.*, 898 So. 2d 656, 661 (Miss. 2005)).

299. *Id.* (citing *RE/Max Real Estate Partners, Inc., v. Lindsley*, 840 So. 2d 709, 711-12 (Miss. 2003)). Justice Chandler explained, “In that circumstance, the legal claims lie within the pendent jurisdiction of the chancery court.” *Id.* (citing *Tillotson v. Anders*, 551 So. 2d 212, 213 (Miss. 1989)). As long as the chancery court’s equity jurisdiction has attached, the chancery court has discretion to award legal and punitive damages. *Id.* (citing *RE/Max Real Estate Partners*, 840 So. 2d at 712).

300. *Id.* (quoting *RAS Family Partners*, 968 So. 2d at 928) (“Conversely, ‘if the complaint seeks legal relief, even in combination with equitable relief, the circuit court can have proper subject matter jurisdiction.’”).

301. *Id.* (quoting *Burnette*, 770 So. 2d at 952).

302. *Id.* (citing *Burnette*, 770 So. 2d at 952) (“This Court also has cited the constitutional right to a jury trial as a reason for resolving doubtful cases in favor of circuit court jurisdiction.”).

303. *Id.* at 716-17 (citing *Issaquena Warren Counties Land Co. v. Warren County*, 996 So. 2d 747, 751 (Miss. 2008)).

304. *Id.* at 717 (citing various cases and stating each of them “involved a breach-of-contract claim for which damages, a legal remedy, was the appropriate remedy [and thus chancery court lacked equity jurisdiction]”).

305. *Id.* (citing *Lee v. Coahoma Opportunities, Inc.*, 485 So. 2d 293, 294-95 (Miss. 1986)) (“A claim for specific performance as a remedy for breach of contract is within the equity jurisdiction of the chancery court.”).

306. *Id.*

307. *Id.* at 718 (“Having filed an action for specific performance within the chancery court’s jurisdiction, the fact that the Swareks now express a preference for a legal remedy does not divest the chancery court of jurisdiction.”).

because the action was properly in chancery court, the plaintiff had no right to trial by jury.³⁰⁸

Justice Randolph authored a second opinion, offering a cogent additional reason for requiring litigation of the case in chancery court.³⁰⁹ The plaintiffs had moved to transfer only after suffering adverse decisions from the chancery court judge.³¹⁰ Conceding that lack of subject matter jurisdiction can be raised at any time, Justice Randolph asserted that the doctrine of judicial estoppel prevents parties from asserting a position at one stage of the proceedings and asserting a contrary position later in the proceedings when it is to their advantage.³¹¹ Judicial estoppel and the principles of Mississippi Rule of Civil Procedure 1 “should preclude a litigant from ‘testing the waters’ in one court, suffering adverse rulings, then deciding that their initial declaration regarding jurisdiction was erroneous, and seeking transfer to a different court or judge.”³¹²

b. Civil Actions Commenced in Circuit Court that Required Transfer to Chancery Court

i. Efficiency as a Ground for Transfer

Rogers v. Eaves stemmed from a bitter domestic dispute that included unproved accusations of child abuse.³¹³ After the chancery court decided the claims for divorce, custody, and support,³¹⁴ the former wife commenced a civil action in circuit court against her former lawyers, alleging legal malpractice.³¹⁵ The circuit court granted the lawyers’ motion to transfer to the chancery court that had decided the divorce action, and the wife brought an interlocutory appeal.³¹⁶

The supreme court affirmed.³¹⁷ The opinion by Justice Easley characterized the issue on appeal as a challenge to the chancery court’s jurisdiction based on the argument that the tort claim fell “exclusively” within circuit court jurisdiction.³¹⁸ Given the framing of the issue, the court might have

308. *Id.* at 720 (Randolph, J., concurring opinion joined by majority of members of court).

309. *Id.* at 720-21.

310. *Id.* at 720.

311. *Id.* at 720-21. (“[U]nder the doctrine of judicial estoppel, a party is precluded ‘from asserting a position, benefitting from that position, and then, when it becomes more convenient or profitable, retreating from that position later in the litigation.’”) (quoting *Dockins v. Allred*, 849 So. 2d 151, 155 (Miss. 2003)).

312. *Id.* at 720.

313. 812 So. 2d 208, 209 (Miss. 2002). Justice Carlson dissented without separate written opinion, and Justice Cobb dissented in part without separate written opinion.

314. *Rogers v. Morin*, 791 So. 2d 815 (Miss. 2001) (affirming chancery court divorce decision). The former husband was ordered to pay lump-sum alimony in the amount of \$12,496.91 and granted unsupervised custody of the minor child. *Eaves*, 812 So. 2d at 209. The former wife was ordered to pay her ex-husband over \$39,000 for fees and costs he incurred in defending against the unproven allegations. *Id.*

315. *Eaves*, 812 So. 2d at 209. The chancery court decision in the divorce action was entered July 24, 1998. *Id.* On February 26, 1999, the former wife commenced an action in circuit court against the lawyers who represented her at early stages of the divorce proceedings, claiming negligent representation and breach of duty of care. *Id.*

316. *Id.*

317. *Id.* at 212.

318. *Id.* at 210.

affirmed on the narrow ground that chancery court clearly has jurisdiction over tort claims for any number of reasons—to provide equitable relief, to provide legal relief under the supplemental jurisdiction doctrine, or to avoid a multiplicity of suits.³¹⁹ But Justice Easley did not rest his decision on such a narrow ground. He made two legal steps that were unnecessary and arguably erroneous, both related to the statute under which the defendants sought to transfer the action. The defendants did not move to transfer the action under section 162 of the Mississippi Constitution, which governs actions that should have been brought in chancery court.³²⁰ Instead, they sought authority to transfer under the statute that provides chancery court with jurisdiction to decide cases after transfer.³²¹ While the statute serves to establish jurisdiction even when cases have been erroneously transferred,³²² it neither gives the circuit court authority to transfer cases to chancery court nor prevents the Mississippi Supreme Court from reversing erroneous transfers that are brought to its attention by interlocutory appeal.

Justice Easley's first analytic step was to misconstrue the grant of jurisdiction to chancery court after transfer as a grant to the circuit court of a power to transfer.³²³ His second step was to look to Mississippi Rule of Civil Procedure 1 for the criteria governing transfer decisions.³²⁴ Rule 1 prescribes that the rules of procedure be construed to secure a "just, speedy, and inexpensive determination of every action."³²⁵ It provides a principle for construing procedural rules, not statutes. Like all rules of procedure, Rule 1 is limited by the explicit provision that it "shall not be construed to extend or limit the jurisdiction of the courts of Mississippi."³²⁶

In finding that transfer promoted efficiency, Justice Easley emphasized that to prevail on the malpractice claims, the plaintiff would be required to show she would have obtained more favorable results in chancery court without the negligence of the lawyers who represented her there.³²⁷

319. The rules had not yet been amended to provide for transfer for forum non conveniens. *Cf.* Miss. R. Civ. P. 82(e) (added 2004).

320. MISS. CONST. of 1890, art. VI, § 162.

321. *Eaves*, 812 So. 2d at 210-11 (quoting circuit court's decision). In granting the motion to transfer, the circuit court found that the chancery court "will have jurisdiction of this matter upon transfer pursuant to [section 9-5-81], that this case also involves minor's business, and that in the interest of judicial economy and the just, speedy and inexpensive termination of this action, the motion to transfer should be sustained." *Id.*

See MISS. CODE ANN. § 9-5-81 (2014) ("The chancery court in addition to the full jurisdiction in all the matters and cases expressly conferred upon it by the Constitution shall have jurisdiction of all cases transferred to it by the circuit court or remanded to it by the supreme court; and such further jurisdiction, as is, in this chapter or elsewhere, provided by law.")

322. *Eaves*, 812 So. 2d at 211 (citing *Hopson v. Meredith*, 719 So. 2d 1176, 1176 (Miss. 1998)). Section 9-5-81 is the sole authority cited by Justice Easley for the jurisdiction of the court.

323. *Id.*

324. *Id.*

325. *Id.* at 210 (quoting Miss. R. Civ. P. 1) (internal quotations omitted).

326. Miss. R. Civ. P. 82(a).

327. *Eaves*, 812 So. 2d at 211.

Therefore, the Chancery Court . . . is in the best position to efficiently examine the facts and circumstances of the divorce proceeding and related issues. All of these issues of divorce, alimony and other related proceedings are all clearly within the subject matter jurisdiction specifically granted to our chancery courts.³²⁸

The court did not address the obstacle that a malpractice action for damages is not within chancery court's original jurisdiction any more than a car accident involving a minor. Efficiency, while a laudable goal, has never provided a basis for transferring or consolidating claims involving different parties.³²⁹ The court did not consider the question of whether transfer deprived the plaintiff of her right to trial by jury. Perhaps the issue was not raised. Accordingly, the Mississippi Supreme Court should consider overruling *Rogers v. Eaves*. Because the right to a jury trial was either not raised or not addressed by the court, the decision provides no authority for the conclusion that transfer under the circumstances was constitutional or that convenience and efficiency provide the sole criteria for determining whether transfer from circuit to chancery court is proper.³³⁰

ii. Purely Equitable Claims

In *Trustmark Nat'l Bank v. Johnson*, beneficiaries of a trust sued the corporate trustee in circuit court, alleging breach of trust.³³¹ The circuit court denied the trustee's motion to transfer to chancery court.³³² The Mississippi Supreme Court granted an interlocutory appeal and reversed.³³³ Justice Carlson's opinion for the court rejected the plaintiffs' argument that their claim should be considered legal because it alleged negligence and sought a legal remedy.³³⁴ He concluded, on the contrary, that the case fell within the exclusive jurisdiction of chancery court.³³⁵

328. *Id.*

329. In *Germany v. Germany*, the court refused to transfer the common law tort claims against the husband's alleged paramour to chancery court even though it required the transfer of almost all of the claims between the husband and wife to chancery court. 123 So. 3d 423, 428-34 (Miss. 2013). The factual issues necessary to decide the claims in circuit court would certainly overlap with facts being litigated in chancery court, but neither convenience nor the threat of factually inconsistent decisions provided a basis for transferring an action lawfully brought in circuit court. *See id.* at 433-34.

In fact, efficiency alone does not require consolidating all claims in a single court. *But see* Breeden v. Buchanan, 164 So. 3d 1057, 1072 (Ct. App. Miss. 2015) (James, J., dissenting) (arguing that case should have been remanded to chancery court as the only court with "complete jurisdiction" over all claims because one claim required vacating property decree in divorce action that was exclusively within chancery court's jurisdiction).

330. *Trustmark Nat'l Bank v. Johnson*, 865 So. 2d 1148, 1148 (Miss. 2004) (citing *Eaves*, 812 So. 2d at 211-12.) The court referred to dicta in *Eaves* as additional support for its holding in *Trustmark Nat'l Bank*, discussed *infra* text accompanying notes 339-340.

331. 865 So. 2d at 1148.

332. *Id.* at 1149.

333. *Id.* at 1153.

334. *Id.* at 1152.

335. *Id.*

Justice Carlson attributed special importance to the fact that the litigation involved rights created in a trust.³³⁶ The equity jurisdiction in chancery court has long been construed by reference to the historical practice in chancery, and trusts were recognized only in chancery, not common law courts.³³⁷ To the extent the plaintiffs attempted to frame their case as one at law, Justice Carlson wrote, “[A]s we have already noted, numerous cases . . . have clearly directed our trial courts to look to the substance of the claim rather than the form of the case.”³³⁸

The holding appears to be appropriate for two reasons. First, to prevent plaintiffs from shifting trust litigation to circuit court by artful pleading, the supreme court was obligated to look at the real issues. Just as the court held that common law cases masquerading as equity claims must be litigated in circuit court, *Trustmark National Bank* stands for the proposition that litigation of traditional equity matters may not be brought in circuit court by camouflaging them as common law claims. Second, litigation in chancery court may have been required to avoid unnecessary, duplicative, and potentially inconsistent adjudications, because the trust was administered under the authority of the chancery court, and the periodic settlement of accounts would presumably affect related breach of trust claims.

Justice Carlson also supported the conclusion in *Trustmark* by applying the standard adopted in *Rogers v. Eaves*.³³⁹ He reasoned the chancery court was in a better position to decide the case because the trust was under its jurisdiction from its inception.³⁴⁰ Although this conclusion was supported by the unique facts of the case, it lies in tension with the court’s approach in other cases where the court opined that when in doubt, circuit court is the preferable forum for cases of mixed jurisdiction: “it is more appropriate for a circuit court to hear equity claims than it is for a chancery court to hear actions at law.”³⁴¹

iii. Efficiency and the Risk of Multiple Inconsistent Judgments

Germany v. Germany is a rare case in which the Mississippi Supreme Court required part of an action commenced in circuit court to be transferred to chancery court.³⁴² While the unusual facts make the outcome reasonable, the resulting elimination of the plaintiff’s right to a jury trial in her chosen forum provoked a spirited dissent.

336. *Id.* at 1153.

337. See generally *Poole v. Mississippi Publishers Corp.*, 44 So. 2d 467 (Miss. 1950); *Smith v. Everett*, 50 Miss. 575 (Miss. 1874). Trust interests were recognized by the chancellor, not common law courts. See THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 599 (5th ed. 1956).

338. *Trustmark Nat’l Bank*, 865 So. 2d at 1152 (citing cases).

339. *Id.* at 1153 (citing *Rogers v. Eaves*, 812 So. 2d 208 (Miss. 2002)). See also *supra* text accompanying notes 313-30.

340. The meaning of this criterion remains uncertain. On the one hand, it is unlikely that a chancellor would have any special familiarity with a trust just because it was established in the chancery court’s district. On the other hand, claims for breach of trust against trustees of trusts that were established elsewhere would be no less equitable and no more appropriate for circuit court litigation.

341. *Tyson Breeders, Inc. v. Harrison*, 940 So. 2d 230, 233 (Miss. 2006) (quoting *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1182 (Miss. 2004)).

342. 123 So. 3d 423, 423 (Miss. 2013).

After a husband informed his wife that he intended to file for divorce, but before he did so, the wife sued him and his alleged paramour in circuit court, seeking money damages, an accounting, and injunctive relief.³⁴³ Four days later the husband filed for divorce in chancery court.³⁴⁴ The wife's claims in circuit court were based on theories of breach of contract, fraud, conversion, and other intentional and negligent torts,³⁴⁵ but the husband moved to dismiss or to transfer the wife's claims to chancery court where the divorce action was pending.³⁴⁶ The circuit court denied the motion.³⁴⁷ On interlocutory appeal, the Mississippi Supreme Court reversed.³⁴⁸ It ordered the claims arising out of the financial relationship between the parties to be transferred to chancery court.³⁴⁹ But it concluded that the claims against the husband for intentional and negligent infliction of emotional distress were "purely legal and are properly before the circuit court."³⁵⁰

In his opinion for the majority, Chief Justice Waller carefully considered the factual allegations that supported the claims. The wife was seeking a half share of the \$12 million the husband was scheduled to receive as settlement of tobacco litigation.³⁵¹ While she supported her right to this share based on claims of a premarital oral agreement to share expenses and income, Chief Justice Waller emphasized that these rights arose less from contract than from the marital relationship, and the parties commingled other property in ways that were in dispute.³⁵² While the contract claims might be distinct in theory, they were not separable from all the other claims involving the marital property or from the equitable claims of the spouses to individual property—all of which were necessarily subject to distribution in the divorce proceedings.³⁵³

Chief Justice Waller identified how the division of marital assets in the chancery court overlapped with the claimed right to the proceeds of the tobacco settlement.³⁵⁴ In addition, he noted that a spouse's right might include a claim to individual assets if necessary to avoid a deficit.³⁵⁵ For these reasons, the court found "the substance of the breach-of-contract claim is related to divorce and alimony and, thus, should be transferred to the chancery court proceeding."³⁵⁶ The court likewise held that the fraud, unjust enrichment, and conversion claims should also be transferred to chancery court because they were seeking to

343. *Id.* at 426.

344. *Id.*

345. *Id.* The intentional tort claims against the alleged paramour for which the wife sought actual and punitive damages remained in circuit court and were not in issue. *Id.* at 434.

346. *Id.* at 426.

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.* at 434.

351. *Id.* at 428.

352. *Id.* at 428-29.

353. *Id.*

354. *Id.* at 429-30.

355. *Id.* at 430.

356. *Id.*

recover marital assets that were before the chancery court.³⁵⁷ Because of the complexity of the issues and the fact that the parties' finances were before the chancery court, Chief Justice Waller reasoned the chancery court was also "in the best position to address [the wife's] claim for accounting."³⁵⁸

In contrast, Chief Justice Waller found that the intentional and negligent infliction of emotional distress claims relating to the husband's infidelity lay beyond the scope of a divorce proceeding and thus would not be proper in chancery court.³⁵⁹ He did not venture an opinion as to how the two sets of claims could be coordinated to avoid inconsistent fact-finding, to preserve the right to a jury, and to promote the expeditious and equitable termination of the parties' marital relationship.

Three justices dissented from the decision requiring the transfer of any of the wife's claims in circuit court to chancery court.³⁶⁰ In his dissenting opinion, Justice Coleman offered a powerful argument for the need to preserve the right to a civil jury trial in the context of transfer motions. Mere convenience, he insisted, should never result in a transfer that deprives a party of the right to trial by jury in a properly chosen court:

Judicial economy is indeed served by having [the wife's] claims adjudicated in the same forum as [the husband's], and it is a noble goal. However, if the bill comes due and shows the price to be [her] constitutional right to a jury trial, I believe we must decline the bargain.³⁶¹

The dissent also pointed out the difficulty of making a jurisdictional decision that required an evaluation of the substantial basis of a party's claims.³⁶² The dissent insisted that in a facial attack on jurisdiction, the appellate court should accept the allegations as true.³⁶³ According to the dissent, the majority had improperly looked beyond the pleadings when it rejected the breach of contract claim as an adequate basis for circuit court jurisdiction, on the ground that it was not an independently viable claim.³⁶⁴ Finally, the dissent

357. *Id.* at 431-32.

358. *Id.* at 433.

359. *Id.* at 434. The intentional and negligent infliction claims were analogous to alienation of affection claims but were asserted against the husband based on a failure to warn of an affair or provide notice of a desire for divorce. *Id.* The Mississippi courts had not recognized such claims. *Id.* at 433.

The husband argued that the merits of the claims were closely bound up with issues that were necessary to determine in the chancery court's award of maintenance and in its division of assets. *Id.* Indeed, the husband's intentional or negligent mistreatment of his wife seems directly relevant to two factors Chief Justice Waller articulated earlier in his opinion that guide equitable division of assets: "[c]ontribution to the stability and harmony of the marital and family relationships as measured by the quality, quantity of time spent on family duties and duration of the marriage . . . [and] [a]ny other factor which in equity should be considered." *Id.* at 429 (quoting *Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss. 1994)).

360. *Id.* at 434 (Coleman, J., dissenting).

361. *Id.* at 435. Justice Coleman distinguished cases where the law fixed the amount of damages and thus made the right to jury decision-making insignificant. *Id.* at 435-36.

362. *Id.* at 436.

363. *Id.*

364. *Id.* This was the role of Rule 12.

noted that requiring transfer conflicted with the court's adherence to the principle of priority jurisdiction.³⁶⁵

IV. PROPOSED FRAMEWORK FOR APPROACHING MIXED JURISDICTION CASES

A. Patterns in the Case Law

A review of the cases indicates clear patterns that make it possible to suggest principles to guide future decisions.

1. Transfer of Cases Where the Filing Court Clearly Lacks Jurisdiction

The Mississippi Supreme Court has made clear that a case must be transferred to the proper court if the court in which it is filed lacks subject matter jurisdiction. These types of cases fall into two categories. In the first category, claims that are obviously purely legal are filed in chancery court, or claims that are obviously purely equitable are filed in circuit court.³⁶⁶ In the second category, a plaintiff presents a legal claim camouflaged as an equitable claim in chancery court³⁶⁷ or an equitable claim camouflaged as a legal claim in circuit court.³⁶⁸

To prevent parties from bringing cases wherever they want, the Mississippi Supreme Court has refused to give controlling effect to parties' own labels for their claims. It sees that a request for a court order for a sum of money is really a demand for damages that belongs in circuit court, not a suit for an injunction.³⁶⁹ A similar reluctance to give parties unlimited choice of court likewise supports the court's refusal to give jurisdictional weight to requests for declaratory relief because a request for such relief could be raised in almost every dispute.³⁷⁰

2. Transfer of Mixed Cases from Chancery to Circuit Court

In the majority of cases where plaintiffs have presented genuine, good faith, mixed questions of law and equity in chancery court, the Mississippi Supreme Court has required transfer to circuit court.³⁷¹ The court's decisions have tended to acknowledge the possibility of concurrent jurisdiction in chancery and circuit court, but they have also manifested a policy requiring litigation of mixed cases in circuit court. Moreover, the court's decisions reveal an unmistakable policy in

365. *Id.*

366. *See supra* text accompanying notes 106-12 (discussing *Robertson v. Evans*, 400 So. 2d 1214 (Miss. 1981)).

367. *See supra* text accompanying notes 113-18 (discussing *Tillotson v. Anders*, 551 So. 2d 212 (Miss. 1989)); *supra* text accompanying notes 143-48 (discussing *Briggs & Stratton Corp. v. Smith*, 854 So. 2d 1045 (Miss. 2003)); *supra* text accompanying notes 101-05 (discussing *Dixie Nat'l Life Ins. Co. v. Allison*, 372 So. 2d 1081 (Miss. 1979)).

368. *See supra* text accompanying notes 331-41 (discussing *Trustmark Nat'l Bank v. Johnson*, 865 So. 2d 1148 (Miss. 2004)).

369. *See supra* text accompanying notes 101-05 (discussing *Dixie Nat'l Life Ins. Co. v. Allison*, 372 So. 2d 1081 (Miss. 1979)).

370. *See supra* text accompanying notes 134-42 (discussing *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948 (Miss. 2000)). *See also supra* note 141.

371. *See supra* Section III.A.2-4.

favor of litigating related claims between the same parties in a single forum, only on rare occasions splitting claims for simultaneous proceedings in circuit and chancery court.

The opinions demonstrate a certain inconsistency that becomes understandable in light of the constitutional history. On the one hand, a few opinions speak directly of the concurrent jurisdiction of circuit and chancery court over mixed cases of law and equity,³⁷² and Justice Chandler comes very close to acknowledging overlapping jurisdiction in mixed cases, though he avoids using the term “concurrent jurisdiction.”³⁷³ On the other hand, a number of opinions refer to the exclusive jurisdiction of circuit court over mixed claims while opining, perhaps inconsistently, that litigating in circuit court is better or more appropriate.

The source of the Mississippi Supreme Court’s tendency to classify mixed cases as falling either within the exclusive jurisdiction of circuit court or within the exclusive jurisdiction of chancery court is procedural. In 1890, such cases could be brought in either court and a final judgment could not be reversed solely due to a claimed lack of jurisdiction as to law or equity.³⁷⁴ But after the court began to review transfer issues by interlocutory appeal, it found itself responding to arguments directed at constitutional provisions that mandate transfer of matters lying within the “exclusive” jurisdiction of the other court. The Mississippi Constitution nowhere defines what “exclusive” cases must be transferred.³⁷⁵ It left that interpretation up to trial judges. After the supreme court began to review the decisions on interlocutory appeal, it offered authoritative holdings. While some opinions, like *Burnette*, based the requirement to transfer on a complete lack of chancery court jurisdiction,³⁷⁶ most cases began to identify the real source of the need to transfer as the policy of preserving the right to trial by jury.

Perhaps it would be desirable for the legislature explicitly to authorize both circuit and chancery courts to exercise jurisdiction over mixed cases; to provide a statute authorizing transfer of cases (including those that are not within the “exclusive” jurisdiction of the other court); and to direct chancery courts to transfer mixed cases to circuit court when necessary to preserve the right to trial by jury. This would avoid the problem the Mississippi Supreme Court has struggled with: how to recognize concurrent jurisdiction in mixed cases when the constitutional authority to transfer is phrased in terms of “exclusive jurisdiction.”

Barring such legislation, however, the Mississippi Supreme Court’s current approach is workable. It is open to objection on theoretical grounds only in that

372. See *supra* text accompanying notes 209-21 & 244-53.

373. See *Derr Plantation v. Swarek*, 14 So. 3d 711, 716 (Miss. 2006); *supra* note 300 and accompanying text.

374. See *supra* text accompanying notes 85-86.

375. In contrast, for the narrow range of concurrent jurisdiction specifically granted to circuit and chancery courts on suits on bonds of fiduciaries and public officers, the Mississippi Constitution provides that the circuit court “may” transfer accounts that are mutual and complicated upon motion by the defendant. MISS. CONST. art. VI, § 161.

376. *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 952 (Miss. 2000); *supra* note 135 and accompanying text.

it seems to deny the broad reach of equity cleanup or supplemental jurisdiction. But in preferring litigation of mixed cases in circuit court in order to preserve the right to trial by jury,³⁷⁷ the law is clear: such cases must be transferred either because circuit court has exclusive jurisdiction or because the supreme court compels their transfer to preserve the right to trial by jury.

3. Denial of Transfer of Mixed Cases from Chancery to Circuit Court: Timeliness of Transfers, Waiver, and Estoppel

The mixed cases in which the Mississippi Supreme Court has concluded that transfer from chancery to circuit court is not appropriate each present unique facts and circumstances and are, therefore, distinguishable from those in which the court has required (or preferred) litigation in circuit court. First, in *Issaquena Warren Counties Land Co. v. Warren County*, the amount of damages was fixed as a matter of law and could easily be determined by the chancellor.³⁷⁸ Thus, a jury trial was unnecessary. Second, in both *City of Starkville v. 4-County Electric Power Association* and *Derr Plantation, Inc. v. Swarek*, the plaintiffs, who originally chose to litigate in chancery court, moved to transfer and did so after a period of litigation had occurred in the chancery court.³⁷⁹

In *Burnette v. Hartford Underwriters Ins. Co.*, however, when a plaintiff brought either a legal or mixed case in chancery court and then months later moved to transfer it to circuit court, the court held that the delay did not prevent transfer.³⁸⁰ In explaining the result, Justice Mills relied specifically on the fact that the Mississippi Rules of Civil Procedure do not require the right to trial by jury to be raised in the pleadings and that the rules permit challenges to subject matter jurisdiction to be raised by any party or by the court at any time (prior to final judgment).³⁸¹ But he also observed, “[T]he litigant has the duty to move the court to transfer [the case].”³⁸² In another case, *Dixie National Insurance Co. v. Allison*, the Mississippi Supreme Court raised the jurisdictional issue on its own and sent the case back to the right court.³⁸³

As these cases demonstrate, where the parties fail to raise the transfer issue in a timely manner or fail to raise it at all, the question of whether transfer of mixed cases is jurisdictional (required to police the limits of lower court authority established by the Mississippi Constitution) or whether it preserves litigants’ individual right to a jury trial makes a difference. Where the court has characterized the issue of transfer as jurisdictional, it has concluded that the issue of transfer need not be raised in a timely manner. Justice Mills and Justice Randolph have supported this conclusion with reference to Rule 12 of the Mississippi Rules of Civil Procedure, permitting lack of subject matter

377. The right to trial by jury could be preserved by requiring jury trial in chancery court, but a majority of justices have not yet embraced that as a solution for mixed cases. See *Tillotson v. Anders*, 551 So. 2d 219, 226-27 (Miss. 1989) (Hawkins, P.J., dissenting).

378. See *supra* text accompanying notes 287-90.

379. See *supra* text accompanying notes 263-66 & 291-93.

380. 770 So. 2d at 951.

381. *Id.* (citing Miss. R. Civ. P. 12(h)(3)); *id.* at 951-52 (citing Miss. R. Civ. P. 38(b)).

382. *Id.* at 950 (citing *Boyett v. Boyett*, 119 So. 299 (Miss. 1928)).

383. 372 So. 2d 1085 (Miss. 1979).

jurisdiction to be raised at any time.³⁸⁴ The rule liberally preserves challenges to subject matter jurisdiction and is copied verbatim from the federal rules.³⁸⁵ Because federal courts have only limited jurisdiction, and because an exercise of jurisdiction beyond those limits threatens an unconstitutional usurpation of power preserved to the state courts, the federal courts have a special duty to police the limits of their authority. For that reason, private parties may not establish federal judicial authority by consent or waiver, and the federal rules carefully exclude matters of subject matter jurisdiction from other defenses that are waived by delay such as personal jurisdiction or venue.³⁸⁶

Unlike federal courts, state courts have general jurisdiction over all cases, except the few areas that are removed from them by operation of federal law. Though the circuit courts are the only courts within the Mississippi state system that have general jurisdiction, a chancery court or county court's exercise of jurisdiction beyond its limits affects only the division of labor within the state system. Such overreaching is a matter of concern to litigants but does not threaten the constitutional order. This important difference from the federal practice explains why, for example, chancery courts enjoy the same presumption of correct jurisdiction that obtains in circuit courts.³⁸⁷

Where the Mississippi Constitution firmly fixes jurisdiction exclusively within one state court, there may be good reasons to permit indefinite challenges to decisions interfering with that exclusive jurisdiction. A circuit court that admits a will to probate or enters a decree of divorce may be acting so far outside its authority that it should be subject to challenge at any time by any party or by the court itself. And the Mississippi Constitution does not protect final judgments or decrees in such situations from reversal. In contrast, permitting indefinite challenges to chancery court jurisdiction over related legal claims is inconsistent with the coordinated jurisdictional scheme created for the circuit and chancery courts under the Mississippi Constitution, which provides that even erroneous final judgments may not be challenged due to errors of law or equity.³⁸⁸

Perhaps nothing is clearer from the long history of contests over legal and equitable jurisdiction than this: the drafters of the 1890 Mississippi Constitution meant for the issue to be resolved promptly by the circuit and chancery court judges. In the days before interlocutory appeal, the trial court's decision on the issue was effectively final, whether right or wrong. The more recent procedural

384. *Derr Planation v. Swarek*, 14 So. 3d 711, 720 (Miss. 2006) (Randolph, J., concurring); see *Burnette*, 770 So. 2d at 951 (citing *Justice Mills*).

385. Fed. R. Civ. P. 12(b)(1) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction . . .").

386. Fed. R. Civ. P. 12(b)(2), (3).

387. Where a party does not challenge the chancery court's jurisdiction at trial, the same heavy burden applies to challenging its jurisdiction on appeal as applies to challenging the subject matter jurisdiction of a court of general jurisdiction. See *Crowe v. Smith*, 603 So. 2d 301, 306 (Miss. 1992) (citing *Majors v. Purnell's Pride, Inc.*, 360 F. Supp. 328, 329 (N.D. Miss. 1973); *Dyer v. Russell*, 38 So. 2d 104, 107 (Miss. 1949)) (dismissing challenge to chancery court jurisdiction raised on appeal and referring to "presumption of correct jurisdiction").

388. See *supra* text accompanying note 86.

opportunities for interlocutory review were designed to shorten, not prolong, litigation, and the Mississippi Supreme Court in granting interlocutory relief can and should avoid encouraging delinquent motions. Indeed, when the court began reviewing such errors on interlocutory appeal, a dissent argued that the review frustrated the limits imposed by the Mississippi Constitution on the supreme court's power to review jurisdictional errors.³⁸⁹

While the right to trial by jury is important enough to require transfer, the constitutional source of that right does not require transfer *forever*. It is true that parties are not required to demand a right to trial by jury,³⁹⁰ but under the Mississippi Constitution, this right is preserved without a demand only in circuit court, because there is no right to a jury trial in chancery court.³⁹¹ Thus, the supreme court's practice of permitting interlocutory reviews should not bind the court to permitting them forever and under all circumstances. Allowing the issue to be raised months or years later rewards parties that invited judicial error, it delays decisions on the merits and multiplies costs to the parties and to the courts—all in opposition to the prime directive to interpret the rules of procedure so as to achieve “the just, speedy, and inexpensive determination of every action.”³⁹² The Mississippi Supreme Court has recognized practical limits on the timing of motions for transfer. For example, it has invoked the principle of priority jurisdiction to require the consolidation of litigation in a court system in which the action was first properly commenced, even when other courts had jurisdiction.³⁹³ And a majority of the court embraced Justice Randolph's theory that the principle of judicial estoppel prevents a plaintiff under some circumstances from bringing a case in chancery court and subsequently transferring it to circuit court.³⁹⁴

Justice Randolph's reasoning is convincing, and we propose that it should apply generally so as to prevent transferring such actions after a reasonable time. The supreme court has the authority to refuse to grant interlocutory relief under circumstances that frustrate the ends of justice. Although Justice Randolph articulated the principle of estoppel in a case where the plaintiffs sought transfer years after filing the action in chancery court and only after suffering adverse rulings, defendants are also prejudiced in a more routine case like *Burnette*. In that case the plaintiff's counsel seems to have made a legal error in bringing the action in chancery court in February. New counsel moved to transfer to circuit court in October, and, when the motion was denied, instead of seeking interlocutory review, moved to reconsider in June, and later appealed the denial of the motion to reconsider.³⁹⁵ As a consequence, the supreme court granted the plaintiff's request to transfer nearly four years after the plaintiff filed in the

389. *Tillotson v. Anders*, 551 So. 2d 212, 219-26 (Miss. 1989) (Hawkins, P.J., dissenting).

390. Miss. R. Civ. P. 38. Cf. Fed. R. Civ. P. 38(d) (requiring that a jury be demanded or it is waived).

391. See *supra* notes 90-92 and accompanying text.

392. See Miss. R. Civ. P. 1.

393. See *supra* text accompanying notes 219-21 and notes 284-86 and accompanying text. See also *Estate of Davis v. Baylock*, 2017 WL 58188, at *3 (Miss. Jan. 5, 2017) (discussing priority jurisdiction).

394. See *supra* note 295; text accompanying notes 309-312.

395. See *supra* text accompanying notes 136-39.

wrong court.³⁹⁶ The result in *Burnette* is difficult to defend, and the supreme court should consider overruling it outright by creating a rule that requires a timely motion to transfer. If unwilling to overrule the decision, it should refrain from following it in future cases where defendants rely on the defense of judicial estoppel.

4. Grant of Transfer to Chancery Court

In the few cases where the Mississippi Supreme Court has concluded that a mixed case should be transferred from circuit court to chancery court, the court has tended to focus on whether equitable relief is required, whether the outcome of related common law claims would depend on the adjudication of equitable ones, and whether litigation in chancery court would avoid a real risk of multiplicitous or inconsistent judgments.

B. The Proposal

Consistent with the large majority of the Mississippi Supreme Court's decisions, this Article proposes that, absent exceptional circumstances, cases presenting mixed common law and equity claims should be brought in or transferred to circuit court.³⁹⁷ But, recognizing there is an underlying foundation of shared jurisdiction in such cases, this Article also proposes that the motion to transfer must be timely raised and should not be entertained when raised by the party who commenced the action. Jurisdictional decisions should be made early in the proceedings and based primarily on the pleadings, and they should not be affected by later changes to the character of the proceedings.³⁹⁸ The burden should be on the party opposing litigation in circuit court to make a compelling argument in favor of the exceptional circumstances that require litigation in chancery court with the attendant loss of trial by jury.

As formulated, the proposed standard would focus judicial attention on what "exceptional circumstances" require litigation in chancery court. The cases demonstrate that exceptional circumstances exist when litigation in circuit court would result in judicial inconvenience coupled with the real risk of multiplicitous litigation or inconsistent judgments. In our opinion, Justice Coleman is correct in asserting that judicial inconvenience alone should not support requiring litigation in chancery court.³⁹⁹ We thus contend *Rogers v. Eaves* should be distinguished or overruled since the court in that case relied on the efficiency that would be gained by transferring the case to chancery court.⁴⁰⁰

396. *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948, 950 (Miss. 2000).

397. This standard is similar to the Missouri approach to preserving jury trial in cases of equitable cleanup jurisdiction "[u]nless circumstances clearly demand otherwise." *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 473 (Mo. 2004).

398. *See Ram-Kabir of Am. LLC v. S.C. Anderson Grp. Int'l*, 199 So. 3d 1240, 1241, 1243 (Miss. 2016) (holding county court jurisdiction was established by good faith claim in complaint, and court did not lose jurisdiction when plaintiff amended complaint to seek fees, even though total relief then exceeded statutory limit on jurisdiction).

399. *Germany v. Germany*, 123 So. 3d 423, 434 (Miss. 2013) (Coleman, J., dissenting); *see supra* text accompanying note 361.

400. *See supra* text accompanying notes 324-30 (discussing *Rogers v. Eaves*, 812 So. 2d 208 (Miss.

Likewise, we contend that *RE/Max Real Estate Partners v. Lindsley* should not be followed because no exceptional circumstances warranting litigation in chancery court were present.⁴⁰¹ In *Lindsley*, a majority of the court overemphasized the plaintiff's right to select the forum and the reasons chancery court was a better forum; in doing so the opinion failed to recognize that jurisdiction in chancery court was doubtful and gave insufficient weight to the defendant's right to a jury trial. Because there was no real risk of multiplicitous litigation, inconsistent judgments, or any other compelling reason for litigation to occur in chancery court the case should have been transferred.

In contrast to the facts in *Rogers* and *RE/Max Real Estate Partners*, exceptional circumstances requiring litigation in chancery court would be present when equitable relief is required and when the outcome of related common law claims would depend on the adjudication of equitable ones. For example, when there is a need for an equitable remedy to establish immediate ownership of or priority to assets that may be dissipated during litigation, a strong case exists for the chancery court to take jurisdiction and to resolve closely related legal claims for damages. In determining whether exceptional circumstances exist in such cases, courts should focus on the concrete need for equitable relief and the extent to which a jury trial would cause delays or create a risk of inconsistent judgments.

The decision to order transfer of circuit court claims in *Germany v. Germany* provides an instructive example of the proposed standard. On one hand, if the only benefit of transfer were judicial efficiency, then the requirements for transfer would not be satisfied. On the other hand, transfer to chancery court was appropriate because additional reasons were present that supported transfer. As the majority explained, the tort and contract theories raised in circuit court were inseparable from the equitable and other claims to marital property being decided in chancery court. Moreover, the chancery court's exclusive jurisdiction over divorce and the need for prompt, permanent division of property upon divorce provide additional circumstances that warranted transfer to chancery court.

Similarly, where a party presents a meritorious claim for preliminary injunctive relief but also demands damages, the chancellor should normally proceed to decide all claims, though some chancery courts transfer legal matters to circuit court after deciding equity matters.⁴⁰² Granting a preliminary injunction requires a preliminary evaluation of the merits, and many preliminary injunctions evolve into permanent injunctions that embody decisions on the merits. It would be undesirable to postpone equitable relief pending a jury determination (or pending decision on a motion for summary judgment determining the lack of an issue suitable for jury determination). But it would be

2002)).

401. See *supra* text accompanying notes 244-61 (discussing *Re/Max Real Estate Partners v. Lindsley*, 840 So. 2d 709, 712-13 (Miss. 2003)).

402. See *Tyson Breeders, Inc. v. Harrison*, 940 So. 2d 230 (Miss. 2006) (holding that the chancellor should have transferred the whole case to circuit court at the outset instead of transferring the remaining issue of damages to the circuit court after the equitable matter was resolved); *supra* notes 196-208 and accompanying text.

equally undesirable to preempt parallel proceedings in circuit court by a chancellor's decision on related facts. To avoid duplicative litigation, a single forum is required. Even if they have constitutional authority, the circuit courts are poorly equipped to handle preliminary injunctions,⁴⁰³ so chancery court appears to be the proper forum for deciding mixed cases that commence with a good faith and meritorious claim for preliminary injunctive relief. Where the relief is not granted, a strong case for transfer exists.

As case law also demonstrates, exceptional circumstances requiring litigation in chancery court exist where the plaintiff has chosen to file a mixed case in chancery court and the amount of damages is fixed by law. In such a case, a jury trial is unnecessary, and given the continued existence of cleanup or supplemental jurisdiction in chancery court, this type of case can and should be litigated in chancery court.

The proposed "exceptional circumstances" standard goes far towards explaining what the Mississippi Supreme Court has done in most cases. While it is open ended, we are confident Mississippi courts are capable of developing a coherent body of law to govern its application. The proposed standard alerts parties about where they should file and what they should address in argument. It focuses the attention of litigants, trial judges, and appellate courts on what is important: identifying concrete factors that are of sufficient weight and importance to outweigh the right to jury trial. Although the court's prior decisions requiring litigation in chancery court do not employ the proposed standard, most of them conform to it and thus provide useful examples. With further judicial clarification of exceptional circumstances, the proposed standard should also decrease the frequency of interlocutory appeals, which in turn should reduce trial delays, litigation costs, and the administrative burden on appellate courts.

V. CONCLUSION

The Mississippi Constitution creates separate circuit and chancery courts and assigns exclusive jurisdiction over equitable matters to chancery courts, while circuit courts retain general jurisdiction over all matters not vested in another court. The Mississippi Constitution preserves the right to a jury trial, but only for common law claims in circuit court.

Many cases, however, seek both equitable relief and damages. Because the Mississippi Constitution prohibits jurisdictional errors from being corrected after a final judgment in the trial court, parties routinely seek interlocutory review of transfer decisions in mixed cases, thereby taxing the court system's resources.

The Mississippi Supreme Court has issued conflicting opinions regarding which court should try mixed cases of law and equity. Some decisions recognize concurrent jurisdiction in both courts and respect the plaintiff's choice of forum, while other decisions emphasize the right to a jury trial and require transfer to circuit court. The lack of clarity from the supreme court about which court

403. The docket priority required for temporary restraining orders and preliminary injunctions would interfere with the docket priority accorded to criminal matters in circuit court.

should hear mixed cases encourages forum shopping and leads to uncertainty for litigants and lower court judges. This, in turn, increases the number of interlocutory appeals burdening the judicial system.

This Article explores the forum dilemma presented by mixed jurisdiction cases. It carefully examines the cases and finds a clear preference for the trial of mixed cases in circuit court unless exceptional circumstances warrant litigation in chancery court. Consistent with the cases, this Article proposes that absent exceptional circumstances, mixed jurisdiction cases should be brought in or transferred to circuit court. It considers the types of cases that may qualify as exceptional, and it proposes that motions to transfer actions commenced in the wrong court must be filed in a timely fashion. The proposed standard respects the constitutional division of labor between circuit and chancery courts, accords appropriate weight to the right to a jury trial, and reduces uncertainty about what court should decide cases with mixed common law and equity claims.