Any legal idea may be treated “positively”. That is, we can go into its func-
tions, its historical evolution, how it is reflected in comparative law, and the
rest. Nevertheless, it can also be dealt with “negatively”, once a certain con-
sensus has been established as to what we mean by the term. This “nega-
tive” treatment consists in differentiating the notion from those similar ideas
which are often related to it. In this way, we might mark out the field for any
concept, so, why not for equity? We therefore here undertake a positive out-
line, to show what equity is, and a negative one, pointing out what it is not.
We thus hope to arrive at a sharper and more precise profile.

In the task of delimiting what equity is not, we intend to maintain the
three-dimensional scheme, the division into planes, distinguishing between
the factual, the normative, and the values, planes. In truth, our comparative
analysis really focuses on those zones where other ideas interact with equity,
the “limit” or “boundary” regions. There we find analogous concepts, in part
like, in part unlike, equity. All these, we treat of three-dimensionally.

1. Factual Plane

On the factual plane, we have separated equity from concepts related to the
interpretation of law, those concerned with its application, and, finally, an
assorted miscellany of various other related ideas.

1.1. Equity and Concepts Related to “Interpretation”

We have already spoken of equity and interpretation when referring to the
(interpretive) function of equity. We would ask you to take another look at
that. Here, we limit ourselves to pointing up a series of ideas found in the
semantic field connected with interpretation whose conceptual precision
plays an important part in the question of equity. Such concepts are those of
“ratio”—spirit—over against the “corpus”—the letter—of the law; “voluntas
legislatoris”; as opposed to “voluntas legis”; and “animus”; in contradistinction to the “anima” of the legal norm.¹

1.1.1. Equity and the “Spirit”—“Ratio”—of the Law, as opposed to the “Letter”—“Corpus”

Equity finds its most comfortable setting within the terms of “ratio”, in contradiction to the letter of the law, or the “corpus”. With the latter, we move upon a formal, more than an essential plane. It is when the spirit transcends the letter that we find we must adjust the parameters of each. Equity, insofar as it is justice in the specific case, plays an important role here.

The term “ratio” is deeply-rooted in Jurisprudence. Nevertheless, scholars have used it in a great variety of senses. Historically, in Greece, it was used as an equivalent expression for “logos”. Even in Classical Rome, in spite of the word’s Latin origin, it was seldom used in a legal sense. In Late Roman law, it took on greater importance, though still with meanings at odds with those of the present. It had a patrimonial rather than a legal sense. It is with the Glossators and Commentarists of the Middle Ages that we find the expression acquiring its modern meaning, linked to the law and to “reason”—“rationabilitas”. At first, it was used by the Glossators as a synonym for “causa legis”, but, later, with the Commentarists, this “causa” came to be tied into legal business and “ratio” remained strictly reserved for the law.

“Ratio” thus conceived, as “ratio legis”, in an ample sense, may have the following meanings:

a) The sense of finality—“animus”; either in the subjective sense of the legislator’s goal—“voluntas legislatoris”; or in the objective sense of the end at which the law aims—“voluntas legis”. Here, we are dealing with the “what for” of things.

b) The meaning of the principle which serves as foundation for the law, that is, the “anima legis” or “medulla legis”, in contrast to the “occasio legis”. Then, we are treating of the “because” of things.

c) In a third sense, “ratio legis” is conceived of as the content of the law. This is neither the “what-for” nor is it the “because”; it is rather the “what” of law. One seeks out protected, legal interests, taking into consideration, besides the logical construction of the norm, the surrounding environment wherein it is destined to operate.

We further develop meaning a) and b) in later sections. Both have to do with teleological interpretation. As regards the third meaning—protected legal