

Maxims of equity

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The **maxims of equity** evolved, in [Latin](#) and eventually translated into [English](#), as the principles applied by [courts of equity](#) in deciding cases before them.^[1]

Among the traditional maxims are:

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[\[edit\]](#) Equity regards as done that which ought to be done.

This maxim means that when individuals are required, by their agreements or by law to have done some act of legal significance, Equity will regard it as having been done as it ought to have, even before it has actually happened. This makes possible the legal phenomenon of [Equitable conversion](#).

The consequences of this maxim, and of equitable conversion, are significant in their bearing on the risk of loss in transactions. When parties enter a contract for a sale of [real property](#), the buyer is deemed to have obtained an equitable right that becomes a legal right only after the deal is completed.

Due to his equitable interest in the outcome of the transaction, the buyer who suffers a breach may then be entitled to the equitable remedy of specific performance(although not always, see below). It also is reflected in how his damages are measured if he pursues a legal, substitutionary remedy instead of an equitable remedy. At law, he is entitled to the value at the time of breach, whether it has appreciated, or depreciated.

The fact that the buyer may be forced to suffer the depreciation means that he bears the risk of loss if, for example, the improvements on the property he bought burn down while he is still in escrow.

Additional Examples: Problems may sometimes arise because, through some lapse or omission, cover is not in force at the time a claim is made. If the policyholder has clearly been at fault in this connection, because, for example, he has not paid premiums when he should have, then it will normally be quite reasonable for an insurer to decline to meet the claim. However, it gets more difficult if the policyholder is no more at fault than the insurer. The fair solution in the circumstances may be arrived at by applying the principle that equity regards that as done which ought to be done [See para 1, above]. In other words, what would the position have been if what should have been done had been done?

Thus, in one case, premiums on a life policy were overdue. The insurer's letter to the policyholder warning him of this fact was never received by the policyholder, who died shortly after the policy consequently lapsed. It was clear that if the notice had been received by the policyholder, he or his wife would have taken steps to ensure the policy continued in force, because the policyholder was terminally ill at the time and the cover provided by the policy was something his wife was plainly going to require in the foreseeable future. Since the policyholder would have been fully entitled to pay the outstanding premium at that stage, regardless of his physical condition, the insurer (with some persuasion from the Bureau) agreed that the matter should be dealt with as if the policyholder had done so. In other words, his widow was entitled to the sum assured less the outstanding premium. In other similar cases, however, it has not been possible to follow the same principle because there has not been sufficiently clear evidence that the policy would have been renewed.

Another illustration of the application of this equitable principle was in connection with motor insurance. A policyholder was provided with cover on the basis that she was entitled to a 'no claims' discount from her previous insurer. Confirmation to this effect from the previous insurer was required. When that was not forthcoming, her cover was cancelled by the brokers who had issued the initial cover note. This was done without reference to the insurer concerned, whose normal practice in such circumstances would have been to maintain cover, but to require payment of the full premium until proof of the no claims discount was forthcoming. Such proof was eventually obtained by the policyholder, but only after she had been involved in an accident after the cancellation by the brokers of the policy. Here again, the fair outcome was to look at

what would have happened if the insurer's normal practice had been followed. In such circumstances, the policyholder would plainly have still had a policy at the time of the accident. The insurer itself had not acted incorrectly at any stage. However, in the circumstances, it was equitable for it to meet the claim.

[edit] Equity will not suffer a wrong to be without a remedy

When seeking an equitable relief, the stronger hand is that which has been wronged. The stronger hand is that hand which has the capacity to ask for a remedy. In equity, this form of remedy is usually one of Specific Performance or an Injunction. These are superior remedies to those which are administered at common law such as damages. In Latin, this is stated as "Ubi Jus Ibi Remedium", meaning "where there is a right, there must be a remedy"

- [*Ashby v. White*](#)

The maxim is necessarily subordinate to positive principles and cannot be applied either to subvert established rules of law or to give the courts a jurisdiction hitherto unknown, and it is only in a general not in a literal sense that maxim has force.

[edit] Equity delights in equality

Where two persons have an equal right, the property will be divided equally. Thus Equity will presume joint owners to be tenants in common unless the parties have expressly agreed otherwise. Equity also favours partition, if requested, of jointly-held property.

[edit] One who seeks equity must do equity

In order to receive some equitable relief, the party must be willing to complete all of their own obligations as well. The applicant to a court of equity is as subject to the power of that court as the defendant. This may also overlap with the clean hands maxim (see below).

[edit] Equity aids the vigilant, not those who slumber on their rights

Vigilantibus non dormientibus aequitas subvenit.

Once the party knows they have been wronged, they must act relatively swiftly to preserve their rights. Otherwise, they are guilty of [*laches*](#) (not "latches!"). Laches is a defense to an action in equity. The reason for this rule is that equity favours the vigilant, and those who "sleep on their rights" may be deprived of equitable remedies. This maxim is often displaced by statutory limitations, but even where a limitation period has not yet run, equity may apply the doctrine of "laches", an equitable term used to describe delay sufficient to defeat an equitable claim. chief young dede v.african association ltd the equitable rule of laches and acquiescence was introduced.

Alternatives:

- Delay defeats equity
- Equity Aids the Vigilant, Not Those Who Sleep on Their Rights

[edit] Equity imputes an intent to fulfill an obligation

Generally speaking, near performance of a general obligation will be treated as sufficient unless the law requires perfect performance, such as in the exercise of an option. Text writers give an example of a debtor leaving a legacy to his creditor equal or greater to his obligation. Equity regards such a gift as performance of the obligation so the creditor cannot claim both the legacy and payment of the debt.

[edit] Equity acts in personam.

In England, there was a distinction in the type of adjudicatory jurisdiction of the courts and the chancery. Courts of law had jurisdiction over property, and their coercive power arose out of their ability to adjust ownership rights. Courts of equity had power over individuals. Their coercive power was the ability, on authority of the crown, to hold a violator in contempt, and take away his or her freedom (or money) until he obeyed. This distinction helped preserve a separation of powers between the two courts.

Nevertheless, courts of equity also developed a doctrine that an applicant must assert a "property interest." This was a limitation on their own power to issue relief. It does not mean that the courts of equity had taken jurisdiction over property. Rather, it required that the applicant be asserting a right of some significance, as opposed to emotional and dignitary interests.

[edit] Equity abhors a forfeiture

Today, a mortgagor refers to his interest in the property as his "equity." The origin of the concept, however, was actually a mirror-image of the current practice. At common law, a mortgage was a conveyance of the property, with a condition subsequent, that if the grantor paid the secured indebtedness to the grantee on or before a date certain (the "law" day) then the conveyance would be void, otherwise to remain in full force and effect. As was inevitable, debtors would be unable to pay on the law day, and if they tendered the debt after the time had passed, the creditor owed no duty to give the land back. So then the debtor would run to the court of equity, plead that there was an unconscionable forfeiture about to occur, and beg the court to grant an equitable decree requiring the lender to surrender the property upon payment of the secured debt with interest to date. And the equity courts granted these petitions quite regularly and often without regard for the amount of time that had lapsed since the law day had passed. The lender could interpose a defense of laches, saying that so much time had gone by (and so much improvement and betterment had taken place) that it would be inequitable to require undoing the finality of the mortgage conveyance. Other defenses, including equitable estoppel, were used to bar redemption as well. This unsettling system had a negative impact on the willingness of lenders to accept real estate as collateral security for loans. Since a lender could

not re-sell the property until it had been in uncontested possession for years, or unless it could show changed circumstances, the value of real estate collateral was significantly impaired. Impaired, that is, until lawyers concocted the bill of foreclosure, whereby a mortgagee could request a decree that unless the mortgagor paid the debt by a date certain (and after the law date set in the mortgage), the mortgagor would thereafter be barred and foreclosed of all right, title and equity of redemption in and to the mortgaged premises. To complete the circle, one needs to understand that when a mortgagor fails to pay an installment when due, and the mortgagee accelerates the mortgage, requiring immediate repayment of the entire mortgage indebtedness, the mortgagor does not have a right to pay the past-due installment(s) and have the mortgage reinstated. In *Graf v. Hope Building Corp.*, 254 NY 1 (1930), the New York Court of Appeals observed that in such a case, there was no forfeiture, only the operation of a clause fair on its face, to which the mortgagor had freely assented. In the latter 20th Century, New York's lower courts eroded the Graf doctrine to such a degree that it appears that it is no longer the law, and that a court of conscience has the power to mandate that a default be excused if it is equitable to do so. Of course, now that the pendulum is swinging in the opposite direction, we can expect courts to explain where the limits on the newly-expanded equity of redemption lie...and it is probably not a coincidence that the cases that have eroded *Graf v. Hope Building Corp.* have been accompanied by the rise of arbitration as a means for enforcing mortgages. See, generally, Osborne, *Real Estate Finance Law* (West, 1979), Chapter 7.

[\[edit\]](#) Equity does not require an idle gesture

Also: Equity will not compel a court to do a vain and useless thing. It would be an idle gesture for the court to grant reformation of a contract and then to deny to the prevailing party an opportunity to perform it as modified.

[\[edit\]](#) One who comes into equity must come with clean hands

It is often stated that One who comes into equity must come with [clean hands](#). In other words, if you ask for help about the actions of someone else but have acted wrongly, then you do not have clean hands and you may not receive the help you seek. For example, if you desire your tenant to vacate, you must have not violated the tenant's rights.

However, the requirement of clean hands does not mean that a "bad person" cannot obtain the aid of Equity. "Equity does not demand that its suitors shall have led blameless lives." *Loughran v. Loughran*, 292 U.S. 215, 229 (1934) (Brandeis, J.). The defense of unclean hands only applies if there is a nexus between the applicant's wrongful act and the rights he wishes to enforce. Even Scrooge could obtain equitable relief provided he was not suing to enforce a right he acquired through trickery or fraud.

Alternatives:

- Equity will not permit a party to profit by his own wrong

For instance, in [Riggs v. Palmer](#) (1889) 115 N.Y. 506, a man who had killed his grandfather to receive his inheritance more quickly (and for fear that his grandfather may change his will) lost all right(s) to the inheritance.

In *D&C Builders v. Rees* (1966) a small building firm did some work on the house of a couple named Rees. The bill came to 732 pounds, of which the Rees had already paid 250 pounds. When the builders asked for the balance of 482 pounds, the Rees announced that the work was defective, and they were only prepared to pay 300 pounds. As the builders were in serious financial difficulties (as the Rees knew), they reluctantly accepted the 300 pounds 'in completion of the account'. The decision to accept the money would not normally be binding in contract law, and afterwards the builders sued the Rees for the outstanding amount. The Rees claimed that the court should apply the doctrine of [equitable estoppel](#), which can make promises binding when they would normally not be. However, [Lord Denning](#) refused to apply the doctrine, on the grounds that the Rees had taken unfair advantage of the builders' financial difficulties, and therefore had not come 'with clean hands'.

- Further reading: [The 'Lectric Law Library's Lexicon On Clean Hands Doctrine](#)

[\[edit\]](#) Equity delights to do justice and not by halves

When a court of equity is presented with a good claim to equitable relief, and it is clear that the plaintiff *also* sustained monetary damages, the court of equity has jurisdiction to render legal relief, e.g., monetary damages. Hence equity does not stop at granting equitable relief, but goes on to render a full and complete collection of remedies.

[\[edit\]](#) Equity will take jurisdiction to avoid a multiplicity of suits

Thus, "where a court of equity has all the parties before it, it will adjudicate upon all of the rights of the parties connected with the subject matter of the action, so as to avoid a multiplicity of suits." [Burnworth v. Hughes](#), 670 P.2d 917, 922 (Kan. 1983). This is the basis for the procedures of [interpleader](#) and the more rarely used *bill of peace*.

[\[edit\]](#) Equity follows the law

Equity will not allow a remedy that is contrary to law. The court of Chancery never claimed to override the courts of common law. In story on equity 3rd English ed. 1920 pg.34, "where a rule, either of the common or the statute law is direct, and governs the case with all its circumstances, or the particular point, a court of equity is as much bound by it as a court of law, and can as little justify a departure from it." it is only when there is some important circumstance disregarded by the common law rules that equity interferes. As per Cardozo in *Graf v. Hope Building Corporation*, 254 N.Y 1 at 9 (1930), "Equity works as a supplement for law and does not supersede the prevailing law."

[edit] Equity will not aid a volunteer

Equity cannot be used to take back a benefit that was voluntarily but mistakenly conferred without consultation of the receiver. This maxim protects the doctrine of choice.

This maxim is very important in restitution. Restitution developed as a series of writs called special assumpsit, which were later additions in the courts of law, and were more flexible tools of recovery, based on Equity. Restitution could provide means of recovery when people bestowed benefits on one another (such as giving money or providing services) according to contracts that would have been legally unenforceable.

However, pursuant to the equitable maxim, restitution does not allow a volunteer or "officious intermeddler" to recover. A volunteer is not merely someone who acts selflessly. In the legal (and equitable) context, it refers to someone who provides a benefit regardless of whether the recipient wants it. For example, when someone mistakenly builds an improvement on a home, neither equity nor restitution will allow the improver to recover from the homeowner.

The exception is if the doctrine of [estoppel](#) applies.

[edit] Between equal equities the law will prevail

Equity will provide no specific remedies where the parties are equal, or where neither has been wronged.

The significance of this maxim is that applicants to the chancellors often did so because of the formal pleading of the law courts, and the lack of flexibility they offered to litigants. Law courts and legislature, as lawmakers, through the limits of the substantive law they had created, thus inculcated a certain status quo that affected private conduct, and private ordering of disputes. Equity, in theory, had the power to alter that status quo, ignoring the limits of legal relief, or legal defences. But, they were hesitant to do so. This maxim reflects the hesitancy to upset the legal status quo. If in such a case, the law created no cause of action, equity would provide no relief; if the law did provide relief, then the applicant would be obligated to bring a legal, rather than equitable action. This maxim overlaps with the previously-mentioned "equity follows the law."

[edit] Between equal equities the first in order of time shall prevail

This maxim operates where there are two or more competing interests, one legal and the other equitable. Where the claims of both parties are fair and meritorious, precedence will be given to the legal interest. This maxim was developed in connection with interests in lands. When a purchaser acquires property bona fide without notice of a defect in the vendor's title, the equities are equal and the legal estate will prevail. If the purchaser takes title with notice of the defect, the

earlier title, if valid, will prevail. The force of this maxim has largely been displaced by legislated systems of land title registration.

[[edit](#)] Equity will not complete an imperfect gift

If a donor has made an imperfect gift, ie lacking the formalities required at common law, equity will not assist the intended donee. A subset of equity will not assist a volunteer.

Note the exception in *Strong v Bird* (1874) LR 18 Eq 315. If the donor appoints the intended donee as executor of his/her will, and the donor subsequently dies, equity will perfect the imperfect gift.

[[edit](#)] Equity will not allow a statute to be used as a cloak for fraud

Equity prevents a party from relying upon an absence of a statutory formality if to do so would be unconscionable and unfair.

[[edit](#)] Equity will not allow a trust to fail for want of a trustee

If there is no trustee, whoever has title to the trust property will be considered the trustee. Otherwise, a court may appoint a trustee, or in Ireland the trustee may be any administrator of a charity which the trust is related to.

[[edit](#)] See also

- [Brocard \(legal term\)](#)
- [Legal maxim](#)

[[edit](#)] References

1. [^] Richard Edwards, Nigel Stockwell (2005). *Trusts and Equity*. Pearson Education. pp. 34. [ISBN 1405812273](#).

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