





Maxims of Equity

Maxims were originally quoted in Latin and based on some fundamental/basic principles of law. The maxims were not written down in an organized code or enacted by legislatures, but they have been handed down through generations of judges. As a result, the wording of a maxim may vary from case to case.

For example, it is a general rule that “Equity does not aid a party at fault”, this maxim has been variously expressed:

1. No one is entitled to the aid of a court of equity when that aid has become necessary through his or her own fault.
2. Equity does not relieve a person of the consequences of his or her own carelessness.
3. A court of equity will not assist a person in extricating himself or herself from the circumstances that he or she has created.
4. Equity will not grant relief from a self-created hardship.

The principles of equity and justice are universal in the common-law courts of the world. They are flexible principles aimed at achieving justice for both sides in each case. No maxim is ever absolute, but all of the principles must be weighed and fitted to the facts of an individual controversy. A rule does not apply when it would produce an unfair result.

Maxim: 1



*Equity will not
suffer a wrong to be
without a remedy*

Meaning

Where there is a right there is a remedy. This idea is expressed in the Latin Maxim “ubi jus ibi remedium”. It means that no wrong should go unredressed if it is capable of being remedied by courts. This maxim imports that where the common law confers a right, it gives also a remedy or right of action for interference with or infringement of that right.

The basic of this maxim is that, when legal right of a person is infringed he is entitled to equitable remedy under the law. The maxim also states that, a person, whose right has been infringed, is entitled to enforce the infringed right through any actions before a court.

Calculation of damage

Remedy should be given according to the damages. Damages can be classified into 4 parts:

1. Damnum sine injuria (damage without injury)

Where there is an actual damage but no violation of legal rights, it can't be remedied.

Gloucester Grammar school case, 1410

Defendant was school teacher in plaintiff's school. Because of some dispute Defendant left plaintiff's school and started his own school. As defendant was very famous amongst students or his teaching, boys from plaintiff's school left and joined to Defendants School. Plaintiff sued Defendant for monetary loss caused.

Defendant was not held liable. Compensation is no ground of action even though monetary loss is caused if no legal right is violated of anybody.

2. Injury sine damno (injury without damage)

Where there is no actual damage but a violation of legal rights exist, there is remedy.

Ashby v White (1703)

Mr. Ashby was wrongfully prevented from exercising his vote at an election by a constable, Mr. White. Interestingly, the candidate for whom Ashby wanted to give his vote had come out successful in the election. Still he brought an action claiming damages because his legal right of voting was infringed. In this case, court allowed the damages.

3. Damnum cum injuria (both injury and damage)

Legal remedies allowed by the court.

4. Neither damnum nor injuria (neither injury nor damage) No legal remedies.

In *Kali Kishen Tagore vs. Jadoo Laal Mullick*, the plaintiff and defendant were land owners of opposite banks of a water channel. The plaintiff sued defendant for the demolition of a wall which the defendant had built for the protection of his own land, but which resulted to the extent of about 6 feet on the bed of the channel.

In the Calcutta High Court the plaintiff succeeded but the Privy council reversed the judgment as there was neither damnum nor injuria.

Application

1.Violation of right:

Where plaintiff's legal right violates but he suffers from no loss. If A trespasses in B's property but no damage is occurred and A brings the tort case in Court, since no loss is happened, so Court will award nominal damages because legal right of A is violated.

2. Where defendant holds evidence:

Any document which was lying with defendant and plaintiff was in need of it to present as evidence in Court but common law Court were unable to get it discovered. Equity Court was in such a position to help plaintiff in providing remedy.

3. Interest of mortgagor:

In a mortgage transaction the mortgagor agreed to pay the mortgage debt at a certain date and the mortgagee to re-convey the mortgage property to the mortgagor if his claim was paid by the due date. If the debt was not paid on or by the due date the property was forfeited to the mortgagee and the mortgagor was forever deprived of it although the value of property was much more than the debt in lieu of which it become absolutely vested in the mortgagee.

The mortgagor in such cases had no remedy at law to recover his property, as common law did not recognize any right in favour of the mortgagor in the property after the date of payment. Equity took different view. Equity Court held that intention of the mortgage was not to forfeit the property but it was just security of debt given. If the mortgagor paid his debt even after the fixed date, he was entitled to recover the property.

Therefore this maxim created the very important right known as the right of redemption or equity of redemption in favour of mortgagor.

4. Protection of the right of creditor:

This maxim applies in the cases where documentary evidence loses. Creditor holds the receipt of debt which debtor gives to creditor. Creditor keeps the receipt in his safe custody. But there may be a case where such receipt misplaces or destroys. Common law does not provide remedy in such a situation. Here equity provides remedy to aggrieved party such as creditor who has right of repayment. Since equity Court is Court of conscience therefore equity regards and keeps in view of facts rather than documents.

5. Enjoyment of Easement right:

Every person has a right to enjoy his rights within the limits which law prescribes. Owner of a certain land may construct home on his land, which may include window towards adjacent land. He enjoys air, light and right to way which is called Easement right. Other person may build his own home which may cause prevention in the enjoyment of such right which is remedied by equity.

Limitations:

1. Legal rights:

Only violation of legal right is subject of equity. Principles of this maxim applies where breach of legal right is committed there equity provides sufficient remedy. Equity cannot provide remedy mere on breach of moral right.

2. Negligence of party:

Law helps those who help themselves. Law aids the vigilant and not the indolent. Plaintiff is as responsible to protect his right as courts are. Neither plaintiff has to destroy his evidence nor he has to allow others to destroy evidence. Where his negligence destroys evidence or he waives off his right, equity shall not provide remedy. Equity courts become unable where party destroys or let other party to be destroyed evidence in his own favor due to negligence.

Recognition:

(i) The Trust Act.

(ii) Section 9 of The Code of Civil Procedure, 1908 (Courts to try all civil suits unless barred) entitles a civil court to entertain all kinds of suits unless they are prohibited.

(iii) The Specific Relief Act, 1877- provides for equitable remedies like specific performance of contracts, injunction, and declaratory suits.

A wooden gavel with a rounded head and a handle, resting on a circular wooden block. The gavel is positioned in front of a row of books with gold-colored spines. The scene is set on a wooden surface.

Maxim: 2

***Equity Follows the
Law.***

or

***Equity had come not
to destroy the Law.***

Equity doesn't violate the existing law but follows, fulfill, supplement and explain the law with respect. Equity has no clash with law neither it overrides the provisions of law and follows the basic rules of law. Maitland said, "Thus equity came not to destroy the law but to fulfill it, to supplement it, to explain it."

The goal of equity and law is the same, but due to their nature and due to historic accident they chose different paths. Equity respected every word of law and every right at law but where the law was defective, in those instances, these Common Law rights were controlled by recognition of equitable Rights. Snell therefore explained this maxim in slightly different way: "Equity follows the law, but not slavishly, nor always."

Stickland v. Aldridge

Facts: where a person died intestate who owned an estate in fee-simple, leaving sons and daughters, the eldest son was entitled to the whole of the land to the exclusion of his younger brothers and sisters.

Issue: The issue of this case is whether younger brothers and sister may recover the possession of properties.

Judgment:

This was unfair, yet no relief was granted by Equity Courts. If the son had induced his father not to make a will by agreeing to divide the estate with his brothers and sisters, equity would have interfered and compelled him to carry out his promise, because it would have been against conscience to allow the son to keep the benefit of a legal estate which he obtained by reason of his promise. Equity follows the law and even if by analogy law can be followed, it should be followed. It was held therefore that the younger son must hold the property as a trustee for himself and his elder brothers and sisters.

Point to be noted:

where a court of law missed an important point, equity corrected the law and follows it on the simple principle of conscience.

Application:

1.Registration Act, 1908:

Section 17 governs the rules of compulsory registration of document, while section 18 of the same Act governs the rules of optional registration of document, and section 50 deals with the priority rights of certain registered deed over unregistered deed. In case where registration is compulsory and document is not got registered, that document is invalid in the eyes of law...

... In other case where registration was optional and one of two persons had got registered that document while other one had not got it registered. Here equity would follows the laws and provides the remedy to the person who had got registered the document, despite it was optional. Here section 50 of Registration Act applies.

2. Against inequity or biasness:

In Quran owner of property is obliged to make Will in his life as he wants, but keeping in view of justice. If he dies by making Will, which is based on inequality or bias-ness, can be rebutted in Court.

Limitation:

It has two exceptions as follows:

1. Where specific and clear law is not applied.
2. Where analogy is not applied. Equity formulates and applies its own rules, on the reason that injustice must be remedied.



Maxim: 3

**He who seeks
equity must do
equity**

The maxim means that to obtain an equitable relief the plaintiff must himself be prepared to do 'equity', that is, a plaintiff must recognize and submit to the right of his adversary.

A person, who seeks relief under the principles of equity, must do whichever is equitable. One who violates the rights of other cannot claim his right until he fulfills his obligation toward others. At first plaintiff has to discharge his duty toward others then he may pray for remedy or relief.

The principle involved in this maxim is that any one seeking assistance of a Court of Equity must as a condition to obtaining relief do justice as to the matter regarding which the interference of the Court is prayed for. While giving relief Court looks upon the corresponding rights of defendant and duties of plaintiff.

In the case of *Deeks vs Strutt (1974)*, it was pointed out that: “This is a rule of unquestionable justice, which, however decides nothing in itself, for you must first inquire what are the equities which the defendant must do, and what the plaintiff ought to have”.

Application:

1. Illegal Loans:

It was first propounded in *Lodge v. National Union Investment Co. Ltd (1907)*, facts of which are as follows:

B borrowed money from M by mortgaging certain securities to him. M was unregistered moneylender. Under the Moneylenders Act, the contract was illegal and therefore void. B sued M for the return of securities. The Court refused to make an order except upon the terms that B should repay the money, which had been advanced to him. This decision was based on the principle of this maxim.

2. Doctrine of Election:

A donor A gives his own property to B and in the same instrument purports (intention, claim) to give B's property to C. B will be put to an election. He either to retain his own property and reject the benefit under the instrument or to accept the benefit granted to him by the donor, and allow the gift of his own property made by A to C to take effect. But in no case can B choose to keep the benefit granted to him and at the same time retain his property referred to in the instrument.

3. Equitable estoppel:

The rule of evidence or doctrine of law, which precludes (prevent, exclude) a person from denying the truth of same statement formerly, made by him.

Rahima obtains a judgment of paternity in family court, showing that Karim is the father of her baby. Later, Rahima seeks an order for Karim to pay child support. Because the issue of paternity has already been established by the court, Karim is collaterally estopped from claiming he is not the father in an attempt to avoid his child support obligations.

4. Wife's equity to a settlement:

There was time when in England at Common Law the wife could not hold independently any property. This was the effect of marriage. Woman's property was merged with that of her husband. She had no property of her own. Equity court imposed on the husband that he must make a reasonable provision for his wife and her children.

5. Set off (conflicting claims in one proceeding):

A judgment-debtor is entitled to set off a decree which he has against his decree-holder and this right of set off he can also exercise against the transferee of the decree-holder.

A holds a decree against B for Taka. 5000/-. B has decree against A for Taka. 3000/-. C is a transferee from A of his decree. C cannot execute the decree against B for more than Taka. 2000/-.

6. Restitution of benefits on cancellation of transaction:

It is proper justice to return the benefits of a contract which was voidable, and, equity enforced this principle in cases where it granted relief of rescission of a contract. A party can not be allowed to take advantage of his own wrong.

Limitation:

1. Where there it seems inequitable.
2. Also it cannot be applied to Acts of Parliament
3. No one can go against the statute.
4. Where liability is imposed by the statute.
5. Where there is statutory prohibition.
8. Where there is fraud.
9. Where public interest suffers.

Recognition:

(i) Under Section (19-A) of the Contract Act, 1872 if a contract becomes voidable and the party who entered into the contract voids the contract, he has return the benefit of the contract.

(ii) Section 35 (Election when necessary) of the Transfer of Property Act,1882, embodies the principle of election.

(iii) Sec 51 and 54 of the Transfer of Property Act, 1882, prescribed restitution of benefits.

(iv) In Order 8, Rule 6 of the Code of the Civil Procedure, 1898, the doctrine of Set-off is recognized

Maxim: 4



**He, who comes to
equity, must
come with clean
hands**

Equity demands fairness not only from the defendant but also from the plaintiff. It is therefore said that “He who had committed an inequity, shall not have equity.”

Before granting equitable remedy , the court will pay special attention to the applicant’s own conduct. For a court of competent jurisdiction to grant an equitable remedy, the applicant must show in his prayer of good intention and proper conduct. The plaintiff must not abuse the court process and comply with the required legal formalities.

Under this maxim the court of equity will refuse to grant any relief to anyone who has been guilty of any unlawful or inequitable conduct related to the matter for which he seeks relief.

Example: A tenant entered into a lease of 21 years with the landlords. He failed to pay rent and the defendant threw him out. The plaintiff moved to the court seeking specific performance but was denied by the court as he failed to fulfill the legal requirement.

The plaintiff didn't come to equity with clean hands.

Everet v Williams [1725] (also known as the “Highwayman's Case”)

Two robbers were partners in their way. Due to a disagreement of shares, one of them filed a suit against another for account of the profit of robbery.

Courts of equity do grant relief in case of partnership but in this particular case the cause of action arose from an illegal occupation and that’s why the court refused to help them.

The robbers obtained money from an illegal source and then filed a suit to divide the money equally among them. The previous illegal act has made the later legal act remedy less. Plaintiff's hand was not clean.

Chasemore vs Richards (1859)

&

Gloucester vs Grammar school case (1410)

A legal act does not become illegal merely because of the improper motives of its doer.

When a person does something exercising his legal right for commercial purpose without infringing another's right, no remedy is available even if any body suffers any loss from such legal action.

Exception:

There are two exceptions to the maxim such as:

- 1. If the transaction is against public policy.**
- 2. Where party admits his wrongdoing before his unjust plans are carried out, the Court will not stick to the letter of the maxim and will extend its assistance for doing justice.**

Recognition

(i) Section 23 of the Trust Act- An infant can not setup a defense of the invalidity of the receipt given by him.

(ii) Section 17, 18 and 20 of the Specific Relief Act, 1877- Plaintiff's unfair conduct will exclude him from an equitable relief of specific performance of the contract.

Distinction between maxim no. 3 and 4

He who seeks equity must do equity

1. This maxim looks to the present & future.

2. It is applicable when both the plaintiff and the defendant have claims of equitable relief against each other.

He who comes into equity must come with clean hands

1. This maxim looks at the past.

2. It is applicable when the defendant has no separate claim to relief and the plaintiff's conduct is unfair.

**He who seeks equity
must do equity**

**He who comes into
equity must come with
clean hands**

3. Present conduct :
If you want to acquire property, must give the right of others first then you may demand your right.

3. Past conduct:
The maxim refers before the plaintiff approaching to the Court. Plaintiff must be clean hand before he goes to Court to have equity.

**He who seeks equity
must do equity**

4. It exposes the condition subsequent to the relief sought. Conditions subsequent refers to conditions which occur after the formation of a contract.

**He who comes into
equity must come with
clean hands**

4. It is a condition precedent to seeking equitable relief. Parties often enter into contracts which are subject to the satisfaction of certain outstanding conditions, known as conditions precedent.

**He who seeks equity
must do equity**

**He who comes into
equity must come with
clean hands**

**5. It refers to the
plaintiff's conduct as the
court thinks it ought to
be, after he comes to the
court.**

**5. It refers to the
plaintiff's conduct before
he approaches the
court.**

**He who seeks equity
must do equity**

**6. The plaintiff has to
shape his behavior
according to the
impositions by the court.**

**He who comes into
equity must come with
clean hands**

**6. If the plaintiff's
conduct is unfair, it
would not entitle him to
the relief sought.**

A wooden gavel with a rounded head and a handle, resting on a wooden block. The gavel is positioned in front of a row of books with gold-colored spines. The text "Maxim: 5" is overlaid in white with a black outline.

Maxim: 5

**Delay defeats
equities**

This maxim means “Equity aids the vigilant and not the indolent.” If one sleeps upon his rights, his rights will slip away from him and therefore this maxim is expressed. If someone has any right, he must come to Court for remedy within stipulated time period as laid down in the law. If he comes within fixed time period, then his right would be recognized and enforced. Delay in claim defeats right.

There are two types of delays. One is explainable and other one is not explainable. If the case is referred toward the concerned authority and they have retained the case, which caused delay, it is explainable and does not defeat the right.

The Limitation Act , 1908

Section 3: (Dismissal of suits instituted after period of limitation)

Every suit instituted, appeal preferred, and application made, after the period of limitation (prescribed therefor by the first schedule) shall be dismissed, although limitation has not been set up as a defense.

Name of Suit	Period of limitation
1. Recover possession of immoveable property	Within 6 months from the dispossession
2. For the wage of laborer	Within 1 years from the due date
3. For compensation for false imprisonment	Within 1 year from when the imprisonment ends
4. Appeal against death penalty	Within 7 days from the date of the sentence
5. Appeal (Under the CPC) to the Court of District Judge	Within 30 days from the date of the decree or order
6. Appeal (Under the CPC) to the High Court Division	Within 90 days from the date of the decree or order

Section: 5 (Extension of period in certain cases)

Any appeal or application for a revision or a review of judgment or for leave to appeal may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

1. Doctrine of Laches:

Delay which is sufficient to prevent a party from obtaining an equitable remedy is technically called “Laches”. Thus legal claims are controlled by statutes of limitation and equitable claims may be controlled not only by limitation law but also by unreasonable delay/laches.

Where a long time has elapsed, even beyond the statutes of limitation, and the plaintiff has never insisted upon his rights and therefore doctrine of laches applied.

Allcard v Skinner [1887]

Facts

The Plaintiff (Miss Allcard) joined a religious sisterhood, and subsequently transferred all of her assets to the sisterhood for social welfare under a will.

When Miss Allcard left the Sisterhood about eight years later she immediately revoked her will but waited a further 6 years before commencing an action to recover what was left of the money given to the Sisterhood.

Issue:

Whether the plaintiff is entitled to set aside the will and recover the property?

Decision:

The appeal was heard by a bench of 3 Justices:

1. Justice Colton (He was on the opinion that in regards to the property which was still in the hands of the donee, the plaintiff could recover the Property)

2. Justice Lindley (He was of the opinion that the plaintiff's inaction for 6 years after she left the Sisterhood indicated her intention to confirm the gift. Doctrine of laches thus disentitled her from claiming the property)

3. Justice Bowen (He agreed with Justice Lindley)

It was held that if the plaintiff had sued to recover the amount of her gifts which had not been expended on the fulfillment of the purpose of the Sisterhood at an earlier date she would have succeeded on the ground of undue influence, but it was her inactions that barred her claim by laches.

The transaction was unusually large as to be accounted for, the lapse of time barred the claim from succeeding.

2. Doctrine of Acquiescence

In Ramsden vs Dyson (1866), Lord Cranworth explained the doctrine as “If a stranger begins to build a on my land supposing it to be his own, and I, perceiving his mistake, abstain from claiming my right and leave him to persevere his error, a court of equity will not allow me afterwards to asserts my title to the land on which he has expended money on the supposition that the land was his own.”

Limitation

This maxim does not apply when:

(i) where the law of limitation expressly applies

(ii) where it applies by analogy, and

(iii) where the law of limitation does not apply but the cases are governed by ordinary rules of laches.



THANK

YOU