

SCHOOL OF COMPUTING AND ENGINEERING SCIENCES

BACHELOR OF BUSINESS INFORMATION TECHNOLOGY (BBIT)



BBT 4201: IT Business Law

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1. **Discuss Common law as a source of law**
2. **Discuss Maxim's of equity as a source of law**

IntroductionCommon Law Overview

Common law is the general rulebook for how things should work legally.

In Kenya, common law of equity is a separate system of law that developed alongside common law in England. It was created to provide remedies for injustices that common law couldn't address. These remedies were often based on principles of fairness, justice, and conscience.

Definition of Case Law

Case law are specific examples of how that rulebook has been applied in different situations.

In Kenya, case law is derived from court decisions that interpret and apply existing laws. These decisions can set precedents that guide future cases, shaping the development of Kenyan law.

Introduction to Maxims of Equity

Maxims of equity are general principles or rules that guide the decision-making of equity courts. They are derived from centuries of legal practice and are used to ensure fairness and justice in cases where common law rules might be inadequate.

In Kenya, equity courts no longer exist as a separate system, the principles of equity continue to influence legal decision-making, particularly in areas such as land law, trusts, and specific performance.

Purpose: To provide fairness and justice in cases where common law rules might be inadequate.

Examples of Legal Principles

Case using Case Law and Common Law

Below is a legal case that can be used to explain case law and common law better. The solution offered is described in both scenarios after the case.

Case: Ombati v. Standard Chartered Bank Ltd. (2004)

Situation: Ombati, a customer of Standard Chartered Bank, needs a copy of his bank statements for a loan application. The bank refuses to provide them.

Problem: There is no specific law in Kenya that says banks must give customers their statements.

Using Case Law on the example

The court's decision in this case became case law. This means that future courts can use this decision as a guide when they face similar cases.

Using Common Law on the example

The court used a principle from common law called "Equity will not suffer a wrong to be without a remedy." This means that even if there's no specific law, the court can still find a way to help someone who has been wronged.

Example of Equity Maxim

Given a hypothetical scenario, imagine you agree to buy a car from your neighbour. You pay a deposit. But then they change their mind and refuse to sell.

There might not be a specific law for this situation. However, the Maxim of Equity "Equity will not suffer a wrong to be without a remedy" could help.

A judge might order the neighbour to sell the car or return your money. This is because it's unfair to break a promise and keep someone's money.

Principles of Maxims of Equity (Equity Maxims)

During the early development of equity, the early chancellors acted at their own discretion, but at long last, they did follow the decisions of early chancellors.

In the 8th century, some firm rules of equity were established which guided the later chancellor in deciding disputes. These rules are known as equitable maxims which are propositions or statements of equitable rules.

Equity Maxims and examples of cases in Kenya

1. Equity Follows the Law

Meaning: Equity courts will generally follow the rules of common law, but they may depart from them if necessary to achieve justice.

Example: Kenya Power and Light Company Ltd. v. Njoroge (2007) - The court granted an injunction to prevent Kenya Power from disconnecting the plaintiff's electricity supply, even though the plaintiff owed the company money.

2. Clean Hands Doctrine

Under the maxim 'He Who Comes to Equity Must Come with Clean Hands'.

Meaning: A person seeking equitable relief must have acted fairly and honestly in the matter.

Example: Mbugua v. Kiambu County Council (2010) - The court denied the plaintiff's claim for specific performance of a contract because he had breached his own obligations.

3. Delay defeats Equity

Meaning: A person who delays in seeking equitable relief may lose their right to it.

Example: Kenya Commercial Bank Ltd. v. Githiru (2003) -The court dismissed the plaintiff's claim for specific performance because he had delayed in bringing the action.

4. Where the equities are equal, the law prevails

Parties: Njoroge and Kamau

Dispute: Ownership of a piece of land

Claims

Njoroge: Valid title deed issued by the government

Kamau: Long-term possession, cultivating crops, and building a home

Equitable Claims:

Njoroge: Equitable claim based on legal title

Kamau: Equitable claim based on long-term possession

Application of the Maxim

Maxim: "Where the equities are equal, the law prevails"

Analysis: Both parties have acted fairly and honestly, so the legal title (Njoroge) takes precedence.

5. Equity will not suffer a wrong without a remedy.

Case: A landowner in Nairobi discovers that a neighbouring property owner has encroached on their land. The landowner seeks an injunction to prevent further encroachment and to have the encroaching structure removed.

Maxim Application: The court will likely grant the injunction, as the landowner has a clear legal right to the property and has suffered a wrong.

6. He who seeks equity must do equity.

Case: A tenant in Nairobi fails to pay rent for several months. The landlord threatens eviction. The tenant claims that the landlord has not repaired the roof, causing water damage to the tenant's belongings.

Maxim Application: The court may order the landlord to repair the roof before proceeding with the eviction, as the tenant is also seeking equitable relief.

7. Equity assists the diligent not the tardy.

Case: A property owner in Mombasa fails to register their land title for many years. A third-party claims ownership based on adverse possession.

Maxim Application: The court may rule in favour of the third party if the property owner has been unduly negligent in registering their title.

8. Equality is equity.

Case: Two siblings inherit a piece of land in equal shares. One sibling develops the land, while the other does nothing. The sibling who developed the land claims the entire property.

Maxim Application: The court will likely rule that the siblings are entitled to equal shares, regardless of the development efforts.

9. Equity looks to the intent rather than the form.

Case: A father in Nairobi promises to transfer a piece of land to his daughter as a gift. He drafts a document but fails to sign it. The father dies before transferring the land.

Maxim Application: The court may find that the father intended to transfer the land to his daughter, even though the transfer was not formally completed.

10. Equity looks on that as done which ought to be done.

Case: A couple in Nairobi agrees to purchase a property together. They sign a contract but fail to transfer the title. The couple separates, and one partner claims ownership of the property.

Maxim Application: The court may treat the contract as if the property had been transferred, especially if both parties have acted as if they were joint owners.

11. Equity imputes an intention to fulfil an obligation.

Case: A borrower in Nairobi fails to repay a loan. The lender claims that the borrower intended to repay the loan but was unable to do so due to financial difficulties.

Maxim Application: The court may impute an intention to repay the loan, even if the borrower has not explicitly stated their intention.

12. Equity will not aid a volunteer

Case: A person in Nairobi offers to help a friend move, but the friend does not agree to pay for the help. During the move, the volunteer damages their own property.

Maxim Application: The volunteer will likely not be able to recover damages from the friend, as they were acting as a volunteer.

13. Equity will not perfect an imperfect gift

Case: A person in Nairobi writes a check to a friend as a gift but forgets to sign it. The friend tries to cash the check.

Maxim Application: The check is invalid because it was not signed, and equity will not be used to perfect the gift.

14. Equity acts in personam.

Case: A property in Nairobi is subject to a court order that restricts its use. A new owner purchases the property, unaware of the court order.

Maxim Application: The court order remains in effect, even though the new owner was not involved in the original legal proceedings.