Maxims of Equity: Everything you need to KnowÂ

Posted on November 23, 2020November 23, 2020 Written By Boluwatife Ehimony Posted in Equity and TrustTagged Common Law and Equity, Equity, maxims of equity

Equity developed in reaction to the excesses of common law. As a result of this, itâ€™s principles are quite ad-hoc. Meaning that they were made as circumstances dictated. The closest thing to guiding principles for equity are the maxims of equity.

The maxims of equity are originally latin phrases that embody equitable principles. There are a lot of these maxims and they could be quite inexhaustible.

However, according to *Snellâ€™s Equity,* it is possible to summarise them under two maxims: *Equity will not suffer a wrong to be without a remedy* and *equity acts in personam.*

This work would go on to address some of these maxims below. Hopefully, at the end of this work, youâ€™ll have a grounded understanding of that the maxims of equity are.

List of Maxims of Equity

The following are some of the maxims of equity:Â

- Equity is equality
- He who comes to equity must come with clean hand
- Equity will not suffer wrong to be without remedy
- Delay defeats equity
- Equity abhors forfeiture
- Equity follows the law
- Equity regards as done what ought to be done
- Equity looks to intent rather than form
- Equity acts *in personam*

Note that the above list is not exhaustive, as there are numerous maxims of equity. They might require hundreds of pages to completely analyse. So, we have to highlight some of the important ones.Â

Equity Is Equality

This maxim of equity stems from the notion of impartiality and equality. It simply means that the parties would be treated equally. Equity has been able to apply this maxim in numerous ways.Â

Some of them are:Â

1. Presumption of Tenancy in Common

Under common law, whenever two or more people acquire a property together, it would be taken that their title in the property would be covered by joint tenancy.Â

The implication of this is that under joint tenancy, if any of the joint owners of the property dies, the surviving owners would acquire the interest of the deceased in the property.Â

For instance, if Tolu and Ade both buy a piece of land. if Ade dies, under common law, Tolu would acquire Adeâ€™s interest. Meaning that he becomes the full owner of the land.Â

This is called the principle of survivorship â€” *jus accrescendi* in latin. Itâ€™s quite obvious that this is very unfair.Â

Fortunately, equity introduced the concept of tenancy in common. The concept of tenancy in common means that when one of the joint owners dies, in equity, the surviving owner holds the property in trust for the beneficiary of the deceased owner.Â Â

So, letâ€™s imagine that Tolu and Ade both contribute towards acquiring a piece of land. If Ade dies, Adeâ€™s representative, this could be his wife, or whoever inherits his estate, would have a right to Adeâ€™s interest in the property. As a result of the tenancy in common, Tolu would be presumed to hold Adeâ€™s interest in the property in trust for Adeâ€™s representative.Â

Equity presumes tenancy in common in three broad circumstances:Â

Purchase in Unequal Shares

Where joint owners of a property purchase the property in unequal shares, equity would take it to mean that the parties intend for it to be a tenancy in common. As such, when one of them dies, the surviving partner would hold the property as trustee for the deceasedâ€™s beneficiary.Â

It should however be noted that in the case of ***Lake vs Craddock,*** the court decided that if the parties contributed to the purchase/acquisition of the property in equal shares, it means that they intend for it to be a joint tenancy. What this

means is that if any of the parties die, the surviving party would acquire the existing interest in the property.Â Â

Loan on Mortgage

When there is a loan for a mortgage acquired by two or more people, the courts of equity will automatically presume that it is tenancy in common. This occurs whether or not the contributions towards the mortgage is split equally or unequally.Â Â

Partnership

If two or more people come together to run a business as partners, any property they acquire would be presumed to be affected by Tenancy in common.Â Â

2. Severance of Joint Tenancy

In a situation where the parties purchase the property in equal shares, it would be regarded as a tenancy in common under law. However, where one of the parties alienates his own portion/interest in the property the courts would take it to mean that the joint tenancy has been severed. **Â**

In the case of ***Ipaye vs Aribisala (1930) 10 NLR. 10*** Â the plaintiffâ€™s mother left her property to him and his brother in equal shares. As a result, the common law doctrine of joint tenancy applied to the shared property in question.Â

However, the brother of the plaintiff died intestate and the plaintiff discovered that his brother had already used his own portion of the property as security for a loan.Â

The court held that by mortgaging his portion of the property, his brother has alienated his right in his own portion of the property. As such, the plaintiff could not control the entire property by virtue of joint tenancy.

In essence, the alienation of the property by his deceased brother had severed the joint tenancy in operation between him and the plaintiff.Â

3. Equal Division

This occurs in a situation where a property is to be divided and there is no clear-cut legal basis for the division. In this instance, the courts in applying the maxim of â€œequality is equityâ€ would divide the property evenly.Â

In the case of ***Maynard vs Jones (1951) Ch. 572***, a husband and wife both jointly operated a bank account. They regularly deposited different sums of money into the account. When the couple divorced, the court had to decide how the sums in the bank account would be divided.Â

The court applied this maxim and as such, the property was divided evenly between the husband and the wife.Â

He Who Comes to Equity Must Come With Clean Hands

This maxim of equity provides there is no remedy for a person who is himself guilty of some misdoing in the particular case for which he wants to claim rights. This simply means you must not have acted in a way inconsistent with the law in a particular matter for which you seek redress.

For example a tenant owing his landlord rent, cannot bring a claim against him for â€˜forceful evictionâ€™.

Likewise, in situations where the plaintiff had in that instance broken the law, equity will decline to provide a remedy since this would tarnish the image of the court.

This can be seen in the case of ***Everett v Williams (1893) 9 LQR 197*** where both parties were highway robbers. The plaintiff sued the defendant for not properly accounting for goods gained in the course of their joint â€œbusiness dealingâ€.Â

When the real nature of things was discovered, the case was not only dismissed, the courts awarded costs to be paid by the plaintiffâ€™s lawyer who had the audacity to bring such a case to court.Â

The two highway robbers were apprehended, prosecuted and finally executed.Â

Also in the case of ***D&C builders ltd v Rees***; The plaintiff, a building company, constructed a house for the defendants for the total sum of Â£732. The defendant (Rees) had already paid Â£250 and when time came for a balance of Â£482, the defendant claimed the work was defective and were only willing to pay Â£300.Â

The plaintiff was in dire need of money at that point in time. So, it accepted it, but later made a claim in court.Â

The defendant attempted to rely on the doctrine of â€˜promissory estoppelâ€™. Lord Denning refused the application of this principle on the grounds that they had taken advantage of the plaintiffâ€™s financial difficulties and as such had not acted with â€˜clean handsâ€™.

Equity Regards as Done What Ought to Be Done

This maxim of equity usually applies to cases involving specific performance. That is to say, if two parties had a contract to perform a particular obligation, equity puts them in the position they would have been in if the obligation had been performed.Â

In a situation where one of the parties was expected to fulfill a particular obligation but only made part performance, equity regards it as though he has fully performed his obligation.Â

In doing so, it focuses more on the consequences that would normally follow from the fulfillment of that obligation.Â

The courts applied this maxim in the case of ***Dr N.A Iragunima vs Rivers State Housing and Property Development Authority & Ors (2003) SCNJ 207.*** In this case, the government of Eastern Nigeria leased a plot of land to Nwosu for seven years. Nwosu subsequently assigned the lease to Okoro. In 1973, Okoro applied for a renewal of the lease for sixty years.Â

The government granted his application and he paid all the necessary fees required for this. However, the government did not draw up a formal feed for execution of the lease. Okoro built a house on the land which he subsequently sold to the plaintiff.Â

He executed a deed of assignment in favour of the plaintiff, applied to the government to formally assign it and paid the consent fees required by the government.Â

The plaintiff paid the ground rents and all the required fees on the land till 1986 when she discovered that the government resold the land to a third party as an abandoned property.Â Â

The plaintiff sued the government and the third party, requesting the court to declare that the sale to this third party was null and void and that the property rightly belongs to her. She also requested damages for trespass and sought an injunction preventing this third party and others from trespassing on the land.Â

The defendants relied on the fact that no proper deed of assignment was drawn up between Okoro (who sold the land to the plaintiff) and the state government. As such, they interpreted this to mean that the land didnâ€™t legally transfer to the plaintiff.Â

The trial court ruled in the plaintiffâ€™s favour. Aggrieved, the 2nd defendant (third party) appealed to the Court of Appeal. The Court of Appeal ruled in favour of the plaintiff. The appellant then appealed to the Supreme Court.Â

The Supreme Court held that the fact that there was no formal deed of assignment drawn up between the State Government and Okoro doesnâ€™t mean that the whole transaction is invalid.Â

In applying the principle of â€œequity takes as done, that which ought to be doneâ€ the court held that Okoro had a valid equitable interest in the property and could validity transfer the property to the plaintiff.Â

Equity Will Not Suffer a Wrong to Be Without a Remedy (Ubi Jus Ibi Remedium)

This maxim of equity is similar to the much broader legal principle â€˜*ubi jus,ibi remedium*â€™ (where there is a wrong, there is a remedy). It simply provides that wherever there is a right conferred, should an injury occur, there should be a co-existing remedy provided to sooth that injury by equity.Â

In the case of ***Ashby v White*** Â a qualified voter was not allowed to vote. Despite this, the candidate he wanted to vote for still won the election. Regardless of this, Ahby sued the officer who prevented him from voting.Â

In his defence, the officer contended that since his candidate went on to win the election, no damage was done to the plaintiff and as such, no remedy should be afforded to him.Â

The courts held that in spite of no direct damage being done to him, he had a right to vote and was denied that right. As such, where a right has been breached, the law has to provide a remedy to resolve this breach of right. Thus birthing the maxim *ubi jus, ibi remedium.*Â

Delay Defeats Equity

This maxim of equity talks about the fact that equity would not assist a â€˜stale claimâ€™.Â This simply means the failure of the plaintiff to present his case at a reasonable time may translate to an implied foregoing of such rights.

Statutes of Limitation

This principle of equity has its roots in the statutes of limitation. Initially, the statutes of limitation only applied to courts of common law. Subsequently, they also became applicable in the Court of Chancery.Â

For instance, **S. 24** of the **English Real Property Limitation Act of 1833** provides that an action to recover rent or land in equity would be subject to the same period of limitation that applied in common law cases. Also, **S. 8 of the English trustee Act of 1888** limited the period within which to bring actions for breach of Trust.Â

In Nigeria, the Limitation Act of 1966 (which has now been localised to the Limitation Law of each state) provided the timeframe within which actions should be brought in Nigeria.Â

For instance, it provides in **S. 31** that actions to recover money or property related to breach of trust must be brought before the court within a period of 6 years.

However, this limitation doesnâ€™t apply in situations where the trustee is fraudulent. It also doesnâ€™t apply to the recovery of property that a trustee has wrongfully converted to his own use.Â

In determining whether or not an action is statute barred, itâ€™s important to understand when the time starts counting. The courts aptly made this clear in the case of ***Board of Trade vs Cayner, Irvine and Co Ltd*** where it stated that:Â

> â€œTime therefore begins to run when there is in existence a person who can sue and another who will be sued and when all facts have happened which are material to be proved to entitle the plaintiff to succeed.â€

The Doctrine of LachesÂ

Whenever a subject matter doesnâ€™t fall under the statute of limitations, the courts would apply the doctrine of laches. This doctrine was well elucidated by the Lord Selbourne in the case of ***Lindsay Petroleum vs Hurd*** where he stated:Â

> â€œNow the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted; in either of these cases lapse of time and delay are most material.â€Â

What this essentially means is that if a person has acted in a way which can be interpreted to mean that he has waived his right, he cannot come back later to try to enforce that right.Â

An exception however, would be in a situation where the plaintiff previously did not have any awareness of the existence of such rights, there was undue influence, or he suffers a disability preventing him from enforcing the right.Â

Note that in the case of ***Nwakobi vs Nzekwu (1964) 1 All ER 1019*** the court held that unlike estoppel, laches would not bind successors in title since it is a personal disqualification.Â

Under normal parlance however, it is not expected that an individual should delay in exercising his rights as the court would not take such an individual seriously.

Take for instance the case of ***Elebanjo v Chief Mrs Ganiyat Daudu*** where the case was instituted originally in 1984 and appealed virtually a decade later in 1996.Â

This same notion is expressed in other equitable maxims such as â€˜*Equity aids the vigilant*â€™ *and â€˜Equity does not favor the indolent.â€™*

Equity Follows the Law

The primary aim of equity is not obstruction of law or contradiction of it. Rather it aims at perfecting defects, mitigating harshness and clarifying inconsistencies.Â

Thus since the initial origin of equity, the Courts of Chancery never intended or claimed to override the common law. As such when a rule is direct, clear and applicable to a certain case, the Courts of Chancery cannot deviate from the ruling of common law courts.Â

It should also be noted that just like the Courts of Common Law, the Courts of Chancery are bound by provisions of a statute. If a statute is clear and concise the courts of chancery have to follow the statutory provision.Â

However, equity would not follow the direct provisions of statute if it is used as an instrument of fraud. This especially applies in cases like concealed fraud.Â

For instance, the **Limitations Act of 1966** provides that there is a 6 year period within which to bring actions related to contract or tort. However, it is possible for a person to fraudulently breach a contract and conceal this past the period of limitation. When this occurs, equity will not strictly apply the 6-year provision of statute, but will instead start counting the period of limitation from the date the fraud was discovered.Â

A good case in point is the case of ***Michael Arowolo vs Chief Titus Ifabiyi (2002) 2 SCNJ 65.*** In this case, the plaintiff borrowed a sum of money from the defendant in 1978Â and used his landed property as a mortgage for the loan.Â

After paying back the loan, he demanded for his property, but the defendant didnâ€™t give him back the title document. He continued requesting for it until the defendant confessed in 1987 that he used the title document to get a loan from his own bank.Â

As a result of this, the plaintiff sued to recover his title document. The court found in his favour even though the contract between the plaintiff and defendant was far back as 1978 (9 years before the action).Â

The court reasoned that the statute of limitation didnâ€™t start counting from 1978. Rather, it started counting from

1987 when the plaintiff discovered the fraud.Â

This maxim is further exemplified in the case of ***Edigin v Ezenwa*** where the court stressed that equity is a constituent of the legal system alongside the law for the attainment of justice, and situations wherein equity would prevail would be instances where common law was excessively rigid or archaic.

Equity Looks to the Intent Rather than the Form

This maxim of equity demonstrates how equity looks beyond just the â€˜formâ€™ of a contract to the actual â€˜intentâ€™ behind such agreement. This is in contrast to the more rigid common law which is satisfied with the appearance of a transaction.

Take for instance the sale of a land. If the buyer fails to pay within the fixed period of time, at common law he is in breach of contract. Whereas, equity would allow for a â€˜reasonable timeâ€™ for payment.Â Â

At common law, time is of the essence in a contract. As a result, if a party to a contract does not perform his obligation on time, the aggrieved party can sue for damages or breach of contract.Â

In equity, instead of suing for damages, one can sue for specific performance of the contract. This ensures that the contract is still performed instead of it being totally terminated.Â

It should be noted that in the case of ***Mustapha vs SCOA (1955) 21 NLR 69*** the court stated that in equity, time is of the essence in the following circumstances:Â

- When the parties expressly state that time is of the essenceÂ
- When the property in question is one that requires timeliness.Â
- When time is made of the essence by notice.Â

Equity Acts *in Personam*

This maxim can be traced to the initial jurisdiction of the Courts of law and the Courts of Chancery in that the former had jurisdiction on both persons and property whilst the latter had jurisdiction on persons alone.Â

For instance, when enforcing judgements the Courts of Common Law could forcibly transfer property that is judgement debt to the plaintiff.Â

However, the Courts of Chancery donâ€™t really do this since they act in *personam (against a person)* and not in *rem(against property)*.Â So, instead of forcefully transferring the property, the Courts of Chancery normally acted against the judgement debtor personally.

This meant that he was either thrown in jail or held for contempt of court till he complied with the courtâ€™s order.Â

Subsequently, equity evolved to the point where it created the order of sequestration to deal with parties who refused to comply even when thrown in jail. By an order of sequestration, the court appoints an officer to confiscate the property of the judgement debtor till he either complies or until the debt is recovered.Â

Equity acting in personam is also quite useful when it comes to enforcing judgement in foreign jurisdictions. If the property in question is not within the courtâ€™s jurisdiction, as long as the person is, the courts can order her to implement its judgement.Â

For instance, in the case of ***Ayinule vs Abimbola (1957) LLR 41*** a Nigerian court granted an injunction preventing a person within its jurisdiction from carrying out an act outside its jurisdiction.Â

Nevertheless the courts of equity have developed in such a way as to cover property assets as well but the primary focus remains attaining justice for persons.

Conclusion

Conclusively, it has been stated that the entirety of these maxims can be fused into just two: â€˜*equity will not suffer injusticeâ€™* and *â€˜equity acts in personamâ€™*. Needless to say, these maxims may not necessarily be absolute or all-encompassing, but they convey the intention behind courts of equity which is ultimately the acquisition of justice.Â