

# Equitable Defenses: Everything You Need to Know

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Equitable defenses are usually brought to court as an affirmative defense. The court is asked to excuse an act of the party bringing the cause of action due to their actions that are considered inequitable.

## Information About Equitable Defenses

At one time, equitable defenses were only applied in a court of equity, but the defense is now used in a court of law. In the U.S., equitable defenses are available when the remedy sought is "at law".

In its broadest sense, equity is fairness. Examples of equitable defenses to address fairness include:

- Mistake
- Fraud
- Estoppel
- Laches
- Forum non conveniens
- Illegality
- Failure of consideration
- Unclean hands

### Mistakes

There are situations where mistakes in the terms of the contract can prevent recovery/remedy for a party. Recovery may be limited depending on if the mistake was mutual or only one party was mistaken.

### Laches

This is when the non-breaching party intentionally delays bringing forth a lawsuit for breach of contract resulting in prejudice to the breaching party.

### Illegal Contract

This type of contract cannot be enforced under legal or equitable principles. This would include contracts for drug distribution, prostitution, gambling, or other illegal acts.

### Unclean Hands

The non-breaching party and the breaching party have both committed the same type of breach. Under the principles of equitable defense, the party claiming relief cannot be in violation of the terms of the contract.

#### Hardship

Equitable remedies will not be issued if doing so results in an undue hardship to the breaching party.

#### Unconscionable Contract

A remedy is not possible if the contract is deemed unconscionable, which means the agreement is one-sided and unfair for one of the parties.

#### Misrepresentation

If a contract is made and fraud, lying, or deceit were involved, the contract may not be enforceable due to conditions of misrepresentation.

#### Undue Influence

If there is any evidence that undue influence was used in creating a contract, equitable relief may not be possible. One party using their position of authority to take advantage of the other party is considered undue influence.

#### Duress

Duress is similar to undue influence in that someone feels pressured into doing something. Duress takes it a step further and involves threats or physical harm to one's self or to loved ones.

The two most common equitable defenses are unclean hands and laches.

An important point is that a party who is considering seeking equitable remedy must make sure they have a clean record and have not violated the law.

Another point to consider is that the area of equitable defenses is a complex. An example would be that the defenses used in regard to the performance of a contract may be different from the defenses used for contract rescission. For this reason, it is recommended that a lawyer is consulted to determine if an equitable defense is possible.

In the event a breach of contract is brought, it is best to contact a lawyer as soon as possible to advise you of both legal and equitable remedies that may be available.

An attorney experienced in contract law will explain how equitable defenses work and if they will apply to your situation.

(Law French: "remissness", "slackness", from Old French laschesse) is an "unreasonable delay pursuing a right or claim... in a way that prejudices the [opposing] party". Laches is an equitable doctrine invoked when, through an unreasonable delay, plaintiff fails to act in a timely fashion in asserting its rights. But while laches properly focuses on plaintiff's blame in sitting on its rights, ultimately it is the harm to defendant from plaintiff's inaction that forms the basis for the defense. As an affirmative defense, defendant bears



the burden of proof in establishing both unreasonable delay and harm therefrom: mere delay or passage of time is insufficient

Put another way, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Laches is associated with one of the maxims of equity. The doctrine of laches applies only to equitable claims; it is a defence advanced by a defendant against a plaintiff who, though barred by no statutory bar, nevertheless ought not to succeed by reason of his apathy. But it can never be pleaded against a plaintiff who has a legal claim.

The essential element of laches is that there has been an unreasonable delay by the plaintiff in bringing the claim. Because laches is an equitable defense, it is ordinarily applied only to claims for equitable relief (such as injunctions), and not to claims for legal relief (such as damages). Sometimes courts will also require that the party invoking the doctrine has changed its position as a result of the delay, but that requirement is more typical of the related (but more stringent) defense of estoppel.

A defense lawyer raising the defense of laches against a motion for injunctive relief (a form of equitable relief) might argue that the plaintiff comes "waltzing in at the eleventh hour" when it is now too late to grant the relief sought, at least not without causing great harm that the plaintiff could have avoided. If a court does accept the laches defense, it can decide either to deny the request for equitable relief or to narrow the equitable relief that it would otherwise give. Even if the court denies equitable relief to a plaintiff because of laches, the plaintiff may still have a claim for legal relief if the statute of limitations has not run out.

It is worth noting that equity does not fix a specific time limit after which claims may be said to be barred or stale, but considers all the circumstances of each and every case. However, in determining the existence or otherwise of such inordinate delay as to amount to *laches*, two main issues may be considered. These are:-

Acquiescence on the part of the plaintiff which, in this sense, does not mean standing by while violation of a right is in progress, but assent after the violation had been completed and the plaintiff has become aware of it. This is because it is clearly unjust to give a plaintiff a remedy where, by his conduct, he has done that which might not unreasonably be regarded as amounting to a waiver of it.

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(2) Any change of position that has occurred on the defendant's part.

### **Distinction between Laches and Acquiescence**

While it is true that there is overlap between *laches* and acquiescence and there is a high degree of similarity between the two in pleadings, there is indeed a subtle, but crucial distinction. It is instructive in this vein, to refer to two cases, to throw light on the nature of the equitable defences.

Firstly, in consideration of laches, Sir Barnes Peacock in *Lindsay Petroleum Co. v. Hurd* provides an excellent description of *laches*;

The doctrine of laches 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, where by his conduct and neglect he has, though not 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. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

Acquiescence on the other hand however, can occur without delay; Fry. J. in *Wilmott v. Barber* laid out the law when he said: "It has been said that acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights".

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