# Maxims of Equity

UNIT-I

## Equity

- The term Equity is a derivation from the Roman term 'Acquitas' which means equalization or leveling. Etymologically ,therefore equity is that which levels down any arbitrary preferences or denial of justice.
- The idea of Equity is synonymous with 'fairness' and 'justice'. Equity is the means whereby the law and its administration are made to approximate as closely as possible to the idea of justice. There have been three manifestations of it. Firstly there is justice and reasonable interpretation of law. Secondly there is a need to temper the law in its applications to the individual case.

• A characteristic of law, save in the rarest cases, is the generality and yet this may produce in the special case a result which conflicts with man's idea of justice which law should endeavour to fulfill. Thirdly there is a need to supplement the shortcomings of the law. No system of law can boast of being able to provide for all possible situations. Gap in law often result in the gravest injustice.

• Now a days one seeks a remedy in legislation ,but it must be remembered that legislation is comparatively modern instrument of legal development. In earlier times it was resorted very sparingly and accordingly some other method had to be found for filling in these gaps. Doctrines so created may be described as equitable in the sense that they fill in these unjust lacunae.

- Equity is a separate system of law from the Common-Law. It has different rules, principles, and remedies. Thus, to understand the principles on which the Law of Equity is based, we must understand its origin and the reasons for its requirement despite the presence of a system of law, i.e. the Common Law.
- Common Law is the body of customary law which originated in the *Curia Regis* (King's Court), London. English Common Law was primarily developed by judges and was based on judicial decisions and precedents. The country saw the need for the Law of Equity because of the following two main reasons:

 Under Common Law, there was only one remedy available, i.e., damages. Thus, a just and fair remedy couldn't always be given through Common Law where monetary compensation was not suitable. This remedy did not always have a significant concluding impact within cases. • A civil action under Common Law could only be started by the means of a writ which was a legal document where it was written why and on what legal basis a person was being sued. Problems arose when a matter was not covered by any writ. Making of the writs with every new case was stopped in the 13th century and this meant that if a case was not already covered by the writs, it was not carried forward.

 This generated a huge amount of dissatisfaction among the public because many times they had to settle with the inappropriate remedies or their cases were not even carried to the court as the writs were too narrow or rigid. Subsequently, the Court of Chancery was directed to take up the case which was referred to the king by petition and the Chancery Court developed the Law of Equity. Equity was mainly thought of as fairness and it was a very powerful law as it overcame the conflicts with the Common Law.

 The Chancellor decided the cases of which the King had taken note, he did so by largely relying on his sense of fairness and justice and thus developed a large body of principles which became the Law of Equity. It was very important to solve the conflict between the Law of Equity and the Common Law, this was achieved in the 1615 Earl of Oxford's Case. In this case, the King decided that between the conflict of Common Law and Equity, Equity should prevail.

- A broad statement of principle, the truth and reasonableness of which are se lfevident. A rule of Equity, the system of justice that complements the Common Law.
- Maxims were originally quoted in Latin, and many of the Latin phrases cont inue to be familiar to lawyers in the early 2000s. The maxims were not writt en 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 *equit* y does not aid a party at fault. This maxim has been variously expressed:
- No one is entitled to the aid of a court of equity when that aid has become n ecessary through his or her own fault.
- Equity does not relieve a person of the consequences of his or her own carel essness.

- A court of equity will not assist a person in extricating himself or h erself from the circumstances that he or she has created.
- Equity will not grant relief from a self-created hardship.
- The principles of equity and justice are universal in the commonla w 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 a case

A party cannot insist that a strict technicality be enforced in his or her favor when it would create an injustice because equity will inst ead balance the interests of the different parties and the convenienc e of the public. • Maxims of equity are <u>legal maxims</u> that serve as a set of general principles or rules which are said to govern the way in which equity operates. They tend to illustrate the qualities of equity, in contrast to the common law, as a more flexible, responsive approach to the needs of the individual, inclined to take account the parties' conduct and worthiness. They were developed by the English Court of Chancery and other courts that administer equity jurisdiction. Like other kinds of legal maxims or principles , they were originally, and sometimes still are, expressed in Latin.

### maxims

- Maxims
- Equity follows the law.
- Where equities are equal the law shall prevail.
- He who seeks equity must do equity.
- He who comes to equity must come with clean hands.
- Delay defeats equity.
- Equality is equity.
- Equity looks to the intent rather than to the form.
- Equity acts in personam.

#### Equity follows the law

- This maxim is also expressed as "aequitas sequitur legem", which means that equity will not allow a remedy that is contrary to the law.
- This maxims lays down that equity supplements law and does not supersede it. The discretion of the court is governed by law and equity which are subservient to one another. Wherever the law can be followed, it must be followed. In the cases where the law does not apply specifically, this maxim suffers limitations. Equity does not replace or violate the law, but it backs up and s upplements it.

- Where equities are equal the law shall prevail.
- In case neither of the parties has been wronged and both stand at an equitable position, the legal remedy will be prioritized. Equity shall not provide any specific remedy in case both the parties have equal causes. Thus, in such cases, the parties must bring a legal action rather than an equitable action.

- He who seeks equity must do equity.
- This maxim states that the plaintiff is also subject to the powers of the court and is thus obligated to perform his duties following the principle of equity. The concern of this maxim is the future conduct of the plaintiff. Thus, this maxim applies to the party who seeks equitable relief as it stipulates that the plaintiff must also recognize and submit to the right of his adversary. This maxim was attracted in the case of <u>Lodge v. National Union Investment Company Limited</u> where Lodge borrowed money from an unregistered moneylender and thus upon an action by him to recover the securities, the court refused to make an order except upon the terms that Lodge should repay the money which had been advanced to him. This maxim is also applicable in the following legal provisions:

- <u>Section 19A</u> of the <u>Indian Contract Act</u> the plaintiff must restore all the benefits arising from the contract which is rescinded by him.
- Section 35 of <u>Transfer of Property Act</u> the doctrine of election says that a benefit under a legal instrument must be adopted with all of the provisions and obligations under such an instrument.
- The Doctrine of Consolidation of Mortgages- where a borrower has mortgaged different properties to secure separate debts, and he defaults on one of those debts, this doctrine allows for the lender to pool the assets which were secured by the borrower and to realise those secured assets against the total sum owing.
- Order 8, Rule 6 of the CPC, the doctrine of set-off in case of mutual debt between two litigating parties, the amount due to one party shall be set-off by the same amount which is due to the other party and only the residuary amount shall be claimed.

- He who comes to equity must come with clean hands
- This doctrine relates to the past conduct of the parties and states that the person who comes to the court seeking equity must not have involved in an inequitable act himself in the past. This maxim is concerned with the past behaviour of the plaintiff. The maxim does not concern the general behaviour of the plaintiff, the defence of unclean hands is only applicable in situations where there is nexus between the applicant's wrongful act and the right that he wishes to enforce.

- This principle was upheld in the case of <u>D & C Builders Ltd v. Rees</u> where the claim of the plaintiff to apply promissory estoppel was rejected because he had taken unfair advantage of the poor financial position of the defendant's builder company and thus had not come with clean hands.
- If the plaintiff is involved in fraud or misrepresentation that concerns the respective case then he cannot demand equity. This principle is also adopted in Section 17, 18, and 20 of the Specific Relief Act, which lay down that a plaintiff's unfair conduct will disentitle him to the equitable relief of specific performance of a contract.

- Delay defeats equity.
- The Latin maxim for this principle is "Vigilantibus non dormientibus aequitas subvenit" which means that Equity assists the vigilant and not those who sleep on their rights. Unreasonable delay in bringing forth a claim is known as *laches*. Laches may also result in dismissal of the claims. Thus, a party must assert an action within a period of reasonable time. There are certain situations where the law of limitation is expressly applied, in such cases, there is a particularized legal situation where a time period, which has been expressly prescribed, has elapsed and the party is barred from bringing a suit of action.

• In case of laches, the defence of acquiescence can be applied by the court and the plaintiff may be disallowed from seeking an equitable remedy as the court would assume that he has acquiesced to the questionable actions of the defendant. The equitable rule of acquiescence and laches was first introduced in the case of *Chief Young Dede v. African Association Ltd.* 

#### Equality is equity.

• This principle is expressed by the Latin maxim *Aequitas* est quasi aequalitas which means equality is equity. This maxim implies that as far as possible, equity strives to put the litigating parties on an equal level and equate their rights and responsibilities. The ordinary law may give one party advantage over the other but the court of equity, wherever possible, puts the parties on an equal footing.

- Equity looks to the intent rather than to the form
- This is the maxim by the means of which an equitable remedy was established which allows for the terms of a contract to be interpreted by taking into account the intention of the parties. The common law was very rigid and could not respond favourably to demand of time, this meant regarding the form of the contract more important than the substance. Equity, on the other hand, looks to the spirit and not the letter of the contract.

• This principle is enshrined in the provision for relief against penalty and forfeitures which states that the object of a contract is to perform it and not the compensation, thus the compensation must be proportionate to the damage and not benefit the receiver (Section 74 of the Indian Contract Act provides for claiming reasonable compensation). In the case of the contract for the sale of land, if the party fails to complete within a fixed period, equity allows reasonable time to the party to complete it ( <u>Parkin</u> v. Thorold).

#### Equity acts in personam

• This maxim states the equity applies to a person rather than a property. In England, the Court of Common law and Chancery Courts were distinguished by the fact that the former had authority over the person as well as property but the latter only acted over people. The Equity court's coercive power arose from their authority to hold the violator in contempt of court and punish accordingly.

Since the law of equity was applicable to the persons and not the property, it could also apply to the property outside a jurisdiction, provided that the person was within the jurisdiction. In the case of *Penn v. Lord Baltimore*, an order of specific performance was made for the plaintiff who brought a boundary dispute case to an English Court, yet the land was situated in Maryland, USA. the jurisdiction of the court was applicable to the parties as they both were English and lived in England.

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