

## 20 Equity Maxims

### Role of maxims

Maxims of equity are not a rigid set of rules, but are, rather, general principles which can be deviated from in specific cases.<sup>[2]</sup> Snell's *Equity*, an English treatise, takes the view that the "Maxims do not cover the whole ground, and moreover they overlap, one maxim contains by implication what belongs to another. Indeed it would not be difficult to reduce all under two: '[Equity will not suffer a wrong to be without a remedy](#)' and '[Equity acts on the person](#)'".<sup>[3]</sup>

- 1 Equity sees that as done what ought to be done
- 2 Equity will not suffer a wrong to be without a remedy
- 3 Equity delights in equality
- 4 One who seeks equity must do equity
- 5 Equity aids the vigilant, not those who slumber on their rights
- 6 Equity imputes an intent to fulfill an obligation
- 7 Equity acts *in personam* or persons
- 8 Equity abhors a forfeiture
- 9 Equity does not require an idle gesture
- 10 He who comes into equity must come with clean hands
- 11 Equity delights to do justice and not by halves
- 12 Equity will take jurisdiction to avoid a multiplicity of suits
- 13 Equity follows the law
- 14 Equity will not aid a volunteer
- 15 Where equities are equal, the law will prevail
- 16 Between equal equities the first in order of time shall prevail
- 17 Equity will not complete an imperfect gift
- 18 Equity will not allow a statute to be used as a cloak for fraud
- 19 Equity will not allow a trust to fail for want of a trustee
- 20 Equity regards the beneficiary as the true owner

### 1. Equity sees that as done what ought to be done

- This maxim means that when individuals are required, by their agreements or by law, to perform some act of legal significance, equity will regard that act as having been done as it ought to have been done, even before it has actually happened. This makes possible the legal phenomenon of [equitable conversion](#). Sometimes this is phrased as "equity regards as done what should have been done".
- The consequences of this maxim, and of equitable conversion, are significant in their bearing on the [risk of loss](#) in transactions. When parties enter a contract for a sale of [real property](#), the buyer is deemed to have obtained an equitable right that becomes a legal right only after the deal is completed.
- Due to his [equitable interest](#) in the outcome of the transaction, the buyer who suffers a breach may be entitled to the [equitable remedy](#) of [specific performance](#) (although not always, see

below). If he is successful in seeking a remedy at law, he is entitled to the value of the property at the time of breach regardless of whether it has appreciated or depreciated.

- The fact that the buyer may be forced to suffer a depreciation in the value of the property means that he bears the risk of loss if, for example, the improvements on the property he bought burn down while he is still in [escrow](#).
- Problems may sometimes arise because, through some lapse or omission, insurance coverage is not in force at the time a claim is made. If the policyholder has clearly been at fault in this connection, because, for example, he has not paid premiums when he should have, then it will normally be quite reasonable for an insurer to decline to meet the claim. However, it gets more difficult if the policyholder is no more at fault than the insurer. The fair solution in the circumstances may be arrived at by applying the principle that [equity regards that as done that ought to be done](#). In other words, what would the position have been if what should have been done had been done?

## 2. Equity will not suffer a wrong to be without a remedy

When seeking an equitable relief, the one that has been wronged has the stronger hand. The stronger hand is the one that has the capacity to ask for a [legal remedy](#) (judicial relief). In equity, this form of remedy is usually one of [specific performance](#) or an [injunction](#) (injunctive relief). These are superior remedies to those administered at common law such as [damages](#). The [Latin legal maxim](#) is *ubi jus ibi remedium* (“where there is a right, there must be a remedy”), sometimes cited as *ubi jus ibi remedium*.

The maxim is necessarily subordinate to positive principles and cannot be applied either to subvert established rules of law or to give the courts a [jurisdiction](#) hitherto unknown, and it is only in a general not in a literal sense that the maxim has force.

[Case law](#) dealing with principle of this maxim at law include [Ashby v White](#)<sup>[4]</sup> and [Bivens v. Six Unknown Named Agents](#).<sup>[5]</sup> The application of this principle at law was key in the decision of [Marbury v. Madison](#),<sup>[6]</sup> wherein it was necessary to establish that [Marbury](#) had a right to his commission in the first place in order for [Chief Justice Marshall](#) to make his more wide-ranging decision.

## 3. Equity delights in equality

Where two persons have an equal right, the property will be divided equally. Thus equity will presume joint owners to be [tenants in common](#) unless the parties have expressly agreed otherwise. Equity also favours [partition](#), if requested, of jointly held property.

## 4. One who seeks equity must do equity

To receive [equitable relief](#), the petitioning party must be willing to complete all of its own obligations as well. The applicant to a court of equity is just as much subject to the power of that court as the defendant. This maxim may also overlap with the [clean hands maxim](#) (see below).

## 5. Equity aids the vigilant, not those who slumber on their rights

*Vigilantibus non dormientibus aequitas subvenit.*

A person who has been wronged must act relatively swiftly to preserve their rights. Otherwise, they are guilty of [laches](#), an untoward delay in litigation with the presumed intent of denying claims. This differs from a [statute of limitations](#), in that a delay is particularized to individual situations, rather than a general prescribed legal amount of time. In addition, even where a limitation period has not yet run, laches may still occur. The equitable rule of laches and acquiescence was first introduced in [Chief Young Dede v. African Association Ltd](#)<sup>[7]</sup>

Alternatives:

- Delay defeats equity
- Equity aids the vigilant, not those who sleep on their rights

## 6. Equity imputes an intent to fulfill an obligation

Generally speaking, near performance of a general [obligation](#) will be treated as sufficient unless the law requires perfect performance, such as in the exercise of an option. Text writers give an example of a [debtor](#) leaving a [legacy](#) to his [creditor](#) equal to or greater than his obligation. Equity regards such a [gift](#) as performance of the obligation so the creditor cannot claim both the legacy and payment of the [debt](#).

## 7. Equity acts *in personam* or persons

In England, there was a distinction drawn between the jurisdiction of the law courts and that of the chancery court. Courts of law had jurisdiction over [property](#) as well as [persons](#) and their coercive power arose out of their ability to adjust ownership rights. Courts of equity had power over [persons](#). Their coercive power arose from the ability, on authority of the crown, to hold a violator in [contempt](#), and take away his or her freedom (or money) until he or she purged himself or herself of his or her contumacious behavior. This distinction helped preserve a separation of powers between the two courts.

Nevertheless, courts of equity also developed a doctrine that an applicant must assert a “property interest”. This was a limitation on their own power to issue relief. This does not mean that the courts of equity had taken jurisdiction over property. Rather, it means that they came to require that the applicant assert a right of some significant substance as opposed to a claim for relief based on an injury to mere emotional or dignitary interests.

## 8. Equity abhors a forfeiture

Today, a mortgagor refers to his interest in the property as his “equity”. The origin of the concept, however, was actually a mirror-image of the current practice.

At [common law](#), a [mortgage](#) was a [conveyance](#) of the [property](#), with a [condition subsequent](#), that if the grantor paid the secured indebtedness to the grantee on or before a date certain (the “law” day) then the conveyance would be void, otherwise to remain in full force and effect. As was

inevitable, debtors would be unable to pay on the law day, and if they tendered the debt after the time had passed, the creditor owed no duty to give the land back. So then the debtor would run to the court of equity, plead that there was an unconscionable forfeiture about to occur, and beg the court to grant an equitable decree requiring the lender to surrender the property upon payment of the [secured debt](#) with interest to date. And the equity courts granted these petitions quite regularly and often without regard for the amount of time that had lapsed since the law day had passed. The lender could interpose a defense of [laches](#), saying that so much time had gone by (and so much improvement and betterment had taken place) that it would be inequitable to require undoing the finality of the mortgage conveyance. Other defenses, including [equitable estoppel](#), were used to bar redemption as well.

This unsettling system had a negative impact on the willingness of lenders to accept real estate as collateral security for loans. Since a lender could not re-sell the property until it had been in uncontested possession for years, or unless it could show changed circumstances, the value of real estate collateral was significantly impaired. Impaired, that is, until lawyers concocted the bill of foreclosure, whereby a mortgagee could request a decree that unless the mortgagor paid the debt by a date certain (and after the law date set in the mortgage), the mortgagor would thereafter be barred and foreclosed of all right, [title](#) and [equity of redemption](#) in and to the mortgaged premises.

To complete the circle, one needs to understand that when a mortgagor fails to pay an installment when due, and the mortgagee accelerates the mortgage, requiring immediate repayment of the entire mortgage indebtedness, the mortgagor does not have a right to pay the past-due installment(s) and have the mortgage reinstated. In [Graf v. Hope Building Corp.](#),<sup>[8]</sup> the [New York Court of Appeals](#) observed that in such a case, there was no forfeiture, only the operation of a clause fair on its face, to which the mortgagor had freely assented. In the latter 20th Century, New York's lower courts eroded the *Graf* doctrine to such a degree that it appears that it is no longer the law, and that a court of conscience has the power to mandate that a default be excused if it is equitable to do so. Of course, now that the pendulum is swinging in the opposite direction, we can expect courts to explain where the limits on the newly expanded equity of redemption lie...and it is probably not a coincidence that the cases that have eroded [Graf v. Hope Building Corp.](#) have been accompanied by the rise of [arbitration](#) as a means for enforcing mortgages.<sup>[9]</sup>

## **8. Equity does not require an idle gesture**

Also: Equity will not compel a court to do a vain and useless thing. It would be an idle gesture for the court to grant [reformation of a contract](#) and then to deny to the prevailing party an opportunity to perform it as modified.

## **9. He who comes into equity must come with clean hands**

It is often stated that one who comes into equity must come with [clean hands](#) (or alternatively, equity will not permit a party to profit by his own wrong). In other words, if you ask for help about the actions of someone else but have acted wrongly, then you do not have clean hands and you may not receive the help you seek. For example, if you desire your tenant to vacate, you must have not violated the tenant's rights.

However, the requirement of clean hands does not mean that a “bad person” cannot obtain the aid of equity. “Equity does not demand that its suitors shall have led blameless lives.”<sup>[10]</sup> The defense of unclean hands only applies if there is a nexus between the applicant’s wrongful act and the rights he wishes to enforce.

For instance, in [Riggs v. Palmer](#),<sup>[11]</sup> a man who had killed his grandfather to receive his inheritance more quickly (and for fear that his grandfather may change his will) lost all right to the inheritance.

In [D & C Builders Ltd v Rees](#),<sup>[12]</sup> a small building firm did some work on the house of a couple named Rees. The bill came to £732, of which the Rees had already paid £250. When the builders asked for the balance of £482, the Rees announced that the work was defective, and they were only prepared to pay £300. As the builders were in serious financial difficulties (as the Rees knew), they reluctantly accepted the £300 “in completion of the account”. The decision to accept the money would not normally be binding in contract law, and afterwards the builders sued the Rees for the outstanding amount. The Rees claimed that the court should apply the doctrine of [equitable estoppel](#), which can make promises binding when they would normally not be. However, [Lord Denning](#) refused to apply the doctrine, on the grounds that the Rees had taken unfair advantage of the builders’ financial difficulties, and therefore had not come “with clean hands”.

## 10. Equity delights to do justice and not by halves

When a court of equity is presented with a good claim to equitable relief, and it is clear that the plaintiff *also* sustained monetary damages, the court of equity has jurisdiction to render legal relief, e.g., monetary damages. Hence equity does not stop at granting equitable relief, but goes on to render a full and complete collection of remedies.

## 11. Equity will take jurisdiction to avoid a multiplicity of suits

Thus, “where a court of equity has all the parties before it, it will adjudicate upon all of the rights of the parties connected with the subject matter of the action, so as to avoid a multiplicity of suits.”<sup>[13]</sup> This is the basis for the procedures of [interpleader](#), [class action](#), and the more rarely used [Bill of Peace](#).

## 12. Equity follows the law

This maxim, also expressed as *Aequitas sequitur legem* means more fully that “equity will not allow a remedy that is contrary to law.

The [Court of Chancery](#) never claimed to override the courts of common law. [Story](#) states “where a rule, either of the common or the statute law is direct, and governs the case with all its circumstances, or the particular point, a court of equity is as much bound by it as a court of law, and can as little justify a departure from it.”<sup>[14]</sup> According to [Edmund Henry Turner Snell](#), “It is only when there is some important circumstance disregarded by the common law rules that equity interferes.”<sup>[15]</sup> [Cardozo](#) wrote in his dissent in [Graf v. Hope Building Corporation](#), 254

N.Y 1 at 9 (1930), “Equity works as a supplement for law and does not supersede the prevailing law.”

[Maitland](#) says, “We ought not to think of common law and equity as of two rival systems.”<sup>[16]</sup> “Equity had come not to destroy the law, but to fulfil it. Every jot and every title of law was to be obeyed, but when all this had been done yet something might be needful, something that equity would require.”<sup>[17][full citation needed]</sup> The goal of law and equity was the same but due to historical reason they chose a different path. Equity respected every word of law and every right at law but where the law was defective, in those cases, equity provides equitable right and remedies.

### **13. Equity will not aid a volunteer**

Equity cannot be used to take back a benefit that was voluntarily but mistakenly conferred without consultation of the receiver. This maxim protects the doctrine of choice.

This maxim is very important in restitution. [Restitution](#) developed as a series of writs called special [assumpsit](#), which were later additions in the courts of law, and were more flexible tools of recovery, based on equity. Restitution could provide means of recovery when people bestowed benefits on one another (such as giving money or providing services) according to contracts that would have been legally unenforceable.

However, pursuant to the equitable maxim, restitution does not allow a volunteer or “officious intermeddler” to recover. A volunteer is not merely someone who acts selflessly. In the legal (and equitable) context, it refers to someone who provides a benefit regardless of whether the recipient wants it. For example, when someone mistakenly builds an improvement on a home, neither equity nor restitution will allow the improver to recover from the homeowner.

An exception to this maxim can be seen in cases where the doctrine of [estoppel](#) applies.

### **14. Where equities are equal, the law will prevail**

Equity will provide no specific remedies where the parties are equal, or where neither has been wronged.

The significance of this maxim is that applicants to the [chancellors](#) often did so because of the formal [pleading](#) of the law courts, and the lack of flexibility they offered to litigants. Law courts and legislature, as lawmakers, through the limits of the substantive law they had created, thus inculcated a certain status quo that affected private conduct, and private ordering of disputes. Equity, in theory, had the power to alter that status quo, ignoring the limits of legal relief, or legal defenses. But courts of equity were hesitant to do so. This maxim reflects the hesitancy to upset the legal status quo. If in such a case, the law created no [cause of action](#), equity would provide no relief; if the law did provide relief, then the applicant would be obligated to bring a legal, rather than equitable action. This maxim overlaps with the previously mentioned “[equity follows the law](#).”

### **15. Between equal equities the first in order of time shall prevail**

This maxim operates where there are two or more competing equitable interests; when two equities are equal the original interest (i.e., the first in time) will succeed.

### **17. Equity will not complete an imperfect gift**

If a donor has made an imperfect [gift](#), i.e. lacking the formalities required at [common law](#), equity will not assist the intended [donee](#). This maxim is a subset of [equity will not assist a volunteer](#) .

Note the exception in [Strong v Bird](#) (1874) LR 18 Eq 315. If the donor appoints the intended donee as executor of his/her will, and the donor subsequently dies, equity will perfect the imperfect gift.

### **18. Equity will not allow a statute to be used as a cloak for fraud**

Equity prevents a party from relying upon an absence of a [statutory](#) formality if to do so would be [unconscionable](#) and unfair. This can occur in [secret trusts](#) and also [constructive trusts](#) and so on.

### **19. Equity will not allow a trust to fail for want of a trustee**

If there is no [trustee](#), whoever has legal [title](#) to the [trust property](#) will be considered the trustee. Otherwise, a court may appoint a trustee. In Ireland, the trustee may be any administrator of a [charity](#) to which the trust is related.

### **20. Equity regards the beneficiary as the true owner**

- *Edwards, Richard; Stockwell, Nigel (2005). Trusts and Equity (7 ed.). Pearson Education. p. 34. [ISBN 1-4058-1227-3](#).*

- • See J Martin, *Hanbury and Martin's Modern Equity* (19th edn Sweet and Maxwell 2012) 1-024

- • *Snell, Edmund Henry Turner; Megarry, R.E.; Baker, P.V. (1960). Snell's Principles of Equity (25 ed.). London: Sweet & Maxwell. p. 24. [OL 21567635M](#).*

- • [Ashby v White](#) (1703) 92 ER 126

- • [Bivens v. Six Unknown Named Agents](#), 403 [U.S. 388](#) (1971)

- • *Marbury v. Madison*, 5 U.S. (1 [Cranch](#)) [137](#) (1803)
- • *Chief Young Dede v. African Association Ltd* (1910) 1 N.L.R 130 at 133
- • *Graf v. Hope Building Corp.*, 254 NY 1 (1930)
- • See Osborne, *Real Estate Finance Law* (West, 1979), Chapter 7
- • *Loughran v. Loughran*, 292 U.S. 216, 229 (1934), (Brandeis, J.)
- • *D & C Builders Ltd v Rees* [1965] EWCA Civ 3
- • *Burnworth v. Hughes*, 670 P.2d 917, 922 (Kan. 1983)
- • *Story, Joseph; Randell, Alfred Edward* (1920). *Story on Equity* (third English ed.). Sweet & Maxwell. p. 34.
- • *Snell, Edmund Henry Turner* (1929). *Snell's Principles of Equity* (20 ed.). London: Sweet & Maxwell. p. 24. quoted in Williams, James (1932). *The Statute of Frauds*, p. 166.
- • Maitland, Frederic William (1932). *Equity; Also the Forms of Action at Common Law: Two Courses of Lectures*, p. 19.
- Maitland (1932), p. 17.