

## **MAXIMS OF EQUITY.**

A short, pithy statement expressing a general truth or rule of conduct Or

An established principle or proposition.

The concept of equity is contained in twelve principles of equity (equitable principles) known as maxims of equity. The principles of equity came into being through the liberal application of principles of justice with the objective of remedying the defects of common law, and in the process equitable maxims have been developed.

It is learnt that the series of statutes passed, after the fusion of equitable principles in to common law system through the judicature act of 1873 and 1875.

## **Maxim 1**

### **UBI JUS IBI REMEDIUM**

Where there is a right there is a remedy

Or

There is no wrong without a remedy

- The basic principle contemplated in the maxim is that, when a person's right is violated the victim will have an equitable remedy under law.
- The maxim also states that the person whose right is being infringed has a right to enforce the infringed right through any action before a court. All law courts are also guided with the same principle of **UBI JUS IBI REMEDIUM**.

- The maxim is based on the principle of reciprocity, as the rights and remedy co-exist.
- "If a man has a right, he must, it has been observed, have a means to vindicate and maintain it and a remedy if he is injured in the exercise and enjoyment of it, and, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal."
- It is an elementary maxim of equity jurisprudence as it is the basis of legal system.
- The right and remedy referred in the maxim is used in narrow sense as such rights and remedies that are recognized by law and are enforceable at the just discretion of the court. In this regard rights are termed no other but "legal right" and the remedy as "legal remedy"
- Rights backed up by no enforcement mechanism are only inspirations that may or may not be followed but they are essentially useless since their owners lack the ability to deploy the coercive force of the state to protect them.
- Legal rights are, in this regard, quite a different thing. They have actual content, which can be gathered from texts of law. They import correlative obligations: that is, they contain or imply commandments addressed to identifiable individuals to refrain from conduct that would violate those rights.
- The strength of the maxim does not rest on the grave violation of right or on the heavy nature of remedy that may or may not proceed from the violation of the right. It rests rather on the recognition of right and the remedy that may proceed as the result of the violation of it how nominal the remedy may be.

### **ASHBY V/S WHITE**

"The case refers to the fact that Mr. Ashby wanted to cast vote in favor of his desired candidate but was somehow unjustly refrained by Mr. White to cast vote. Later once the result of the election were declared it was found out that the candidate in whose favor Mr. Ashby wanted to cast vote, had actually won the election. Nevertheless Mr. Ashby filed suit against Mr. White.

The defense council took the plea that since no damage has been caused to Mr. Ashby, the suit may very kindly be dismissed.

The court held that the right of Mr. Ashby does not depend on the measure of damage but on the violation of legal right and since the right to vote has been violated the court would not hesitate to award remedy how nominal it may be”

In this respect the maxim could be referred to another established maxim

### **INJURIA SINE DAMNUM**

The principle contained in the maxim reinforces the point of UBI JUS IBI REMEDIUM that it is the legal injury which becomes the basis of action at the court of law and not the measure or amount of damage

While it can be completely opposite to another maxim

### **DAMNUM SINE INJURIA**

Though the principle contained in the maxim is completely opposite to UBI JUS IBI REMEDIUM but nevertheless it reasserts the principle that unless the violation does not result in the legal right, the wronged person does not have the entitlement to file his claim before the court of law

- The scope of the maxim refers to the fundamental of equity, whose object of creation was to supplement to the defects of common law in three respect which in turn are also the basis of a legal system
  1. Rights
  2. Remedies
  3. Procedure
- The importance of the maxim can also be related to the command of the king which in spirit talked about the principle of rights and remedies.

### **The legal system of Pakistan and the principle of UBI JUS IBI REMEDIUM**

1. Article 199 of the constitution of Pakistan for the enforcement of fundamental rights by the high court through its writ jurisdiction when no ordinary remedy provided by law is adequate for the case.

2. Article 184(3) of the constitution of Pakistan incorporates the same principle as that of 199 for high court with the distinction that any member of the community not necessarily aggrieved person may file writ for the enforcement of fundamental rights which is of public importance.
3. Article 187 of the constitution of Pakistan which empowers the court to pass any order for the purpose of doing complete justice in a case.
4. Section 151 of the civil procedure code which relates to the inherent powers of the civil court to pass any order for the purpose of the ends of justice.
5. Section 9 of the civil procedure code which gives jurisdiction to civil courts to try all suits of civil nature.

## Maxim 2

### Where the Equities are Equal Law shall Prevail

The principle contained in the maxim states that when the rival claimants are on equal equitable footings, and one of the claimants has also the support of law, in such case the latter shall have precedence over the other.

It means that after satisfying the test of conscience before the court of equity the claimant has in addition also complied with the formalities of law, than his right shall prevail over the other rival claimant. The combination of legal equitable right prevails over a right which is purely equitable.

This maxim supersedes over the maxim and the principle of Priority of time on the basis of equitable title alone

*“Where the equities are equal first in time shall prevail”*

This maxim is complementary to the maxim

*“Equity follows the law”*

By stating that equitable rights and interests are subject to legal principles.

In order to claim a right the person may not be prior in time over the other but he must satisfy the court on the following two counts

1. He has come to the court with clean hands, or his character is clean relevant to the transaction in question
2. He is not only claiming a right on equitable grounds but has also fulfilled the conditions of law for the acquisition of right in accordance with law.

The maxim is the fusion of legal and equitable principles which means that the application of legal principles is made conditioned with the equitable principles and the vice versa. Which means that, neither the legal nor equitable principles are absolutely independent in their operation, and both instead of contradicting, compliments each other.

## Maxim 3

### WHERE THE EQUITIES ARE EQUAL FIRST IN TIME PREVAILS

This maxim enshrines the universal principal on claims of competing interest that it is the first claimant in time whose right shall prevail. We can define it by another popular maxim

*“First in time is first in right”*

The principal contained in maxim states that when there are competing interests between the rival claimants, the determining factor for the resolution would be to determine whose claim is prior to other in the order of the timing of the acquisition of right.

Since the application of the universal principal of “priority in time” has been brought into force through the courts of equity” courts of conscience” the principle is conditioned with honesty of character of the claimants, which suggests that for a person to claim a right prior to the other in order of time, he must, according to equitable principles must be of good character i.e. must have not been guilty of fraud or other sharp practices under the transaction in question. If he satisfies the test of equity of being honest in the transaction only than the courts of equity would apply the principle of

*“First in Time is First in Right”*

This maxim is an extension of the principle contained in another maxim

*“He who seeks equity must come to the court with clean hands”*

The only difference between the two maxims is that here the equitable principles are applied here in order to settle the clash of rival claimants; while in the previous it was the plaintiff alone who must satisfy the test of clean hands in order to obtain relief from the courts of equity.

Two things must be satisfied for the application of this maxim

1. The rival claimants are equitable in their conduct relevant to the transaction in question.

Which means, that if any of the rival claimants fails to satisfy the court of his good conscience, the other will automatically be entitled to the claim and of the decree of the court.

2. Once equitable test is conducted, and the court is of the opinion that both the parties are equitable, one of the rival claimants must satisfy the court that his acquisition of right was prior to the other claimant.



## Maxim 4

### HE WHO SEEKS EQUITY MUST DO EQUITY

This maxim incorporates one of the fundamental principles of equity that the one, who seeks the assistance of the courts of equity in compelling the opponent to perform his duty, must himself be willing/ready to perform his part of the duty in respect of that opponent.

The right is not like privilege of a person, it corresponds with duty from the other. Rights and duties are reciprocal, and the right of one person may be the duty of the other and vice versa.

In this context equitable principles states that if a person wants the other to perform his duty for the completion of his right, he must in return be ready and willing to perform duty which he owes to that other. And the court of equity will not give him relief until he is ready and willing to perform his part of the obligation.

The principle contained in the maxim relates to the performance of the outstanding obligation by the plaintiff, before the court could pass a decree against the defendant. This maxim is different from the maxim

*“He who seeks Equity must come to the court with clean hands”*

Because it dealt with the past conduct of the plaintiff, and the awarding of the relief is conditional with that of equitable conduct of the plaintiff, hence the character of the plaintiff relevant to the transaction in question is of essential importance.

The current maxim does not deal with the past conduct of the plaintiff nor it deals with the character of the plaintiff, it rather compels the plaintiff to perform his part of the obligation, which only then will entitle him to get relief from the court of equity against the defendant.

The provisions of, marshaling, election, consolidation set off, notice for redemption etc. are the examples of the application of the maxims under the laws of Pakistan.

## Maxim 5

### HE WHO SEEKS EQUITY MUST COME TO THE COURT WITH CLEAN HANDS

Equitable rights are based on the principles of justice/honesty and morality so the person demanding equitable right must himself be fair and honest so as to avail an equitable remedy.

**“He who has committed inequity, shall have no equity”**

The character of the person is one of the important ingredients for the grant of equitable remedies

But the question rises as the character of the person is too wider to define?

For example article 62 and 63 of the Constitution of Pakistan in-respect of “SADIQ” and “AMEEN”

The character if defined in the affirmative sense, it would then be difficult for any person to avail an equitable remedy, since there would be no person left who could pass through the character test of law with clean hands( SADIQ , AMEEN)

So it is important that the character/ clean conscience must be defined in such a sense that is possible for judicial enforcement.

The character referred in the principle is not in generic nor positive sense rather it is mentioned in the narrow and negative sense

The character relevant to a transaction that has been the subject of controversy between the parties

The principle does not mean for the clean society, so the principle does not mean that the person must be of good character so as to avail an equitable remedy, but the person must not be dishonest/ immoral relating to the transaction which is the subject of controversy

The principle of “DELAY DEFEATS EQUITY” is also based on the principles of conscience as to “unjustifiable delay in asserting claim becomes a ground of refusal of equitable remedy upon the basis of equitable period of limitation”

# Maxim 6

Maxim 2

**“Equity looks to the intent and not the form”**

## Meaning of the terms

- Equity “principles of fairness”
  - Intent “purpose /object”
  - Form “rigid observance of a rule, or a thing done simply to comply rules”
- 
- a. The principle contained in the maxim purports to settle clash between formalities and the purpose of a particular thing
  - b. The maxim can be applied only in case where the formalities cause hindrance in achieving the objective of a particular thing
  - c. By looking in to the intent and ignoring the formalities equity recognized certain rights which the common law failed to do so because its defects.
  - d. The right of beneficiary was recognized by looking into the purpose of the transaction and created equitable right of the beneficiary to enforce trust in their favor.
  - e. Extension of time for mortgagor to redeem mortgage property after the lapse of stated time under the transaction has also been made possible by looking into the intent/purpose of the transaction of mortgage.
  - f. It can safely be sated that this maxim has helped in achieving the objectives of UBI JUS IBI REMEDIUM and in eradicating the defects of common law.

## **WHAT MAY BE FORMALITIES?**

### **1. Time and date**

#### **The completion of transaction**

Where the terms of the transaction requires the completion of it with in a specific period of time, else the transaction would fail

Section 60 of the transfer

#### **The filing of suit**

The law of limitation requires that civil suits if , be required to be instituted within a fixed period of time, failing which the right to claim will be barred.

Section 6 of the limitation act

### **2. Terms and conditions**

#### **Nonperformance of the terms/conditions**

- Sometimes the terms of the contract requires that the violation of it may result in the cancelation of the transaction or
- It may be stated that the violation may result in the payment of prefixed damages by the violator

Section 114 of the transfer of property act

Section 20 of the specific relief act

### **3. Registration**

The law requires that certain transaction to be valid must conform through the process of registration else the transaction would have no effect at law

Section 53 A transfer of property act

Section 27A of the specific relief act

# Maxim 7

## **EQUITY FOLLOWS THE LAW**

Maxim contemplates the policy of equity and its principles that in all cases where the principles of law are clear on the subject, the court of chancery has no jurisdiction to apply the principles of equity. It will, in such situation will simply follow the common law.

This maxim explicitly indicates that the principles of equity shall have no application, in case where the common law is devoid of defects even if the common law is found to be unjust or unreasonable.

The objective to be achieved by the present maxim is to retain the system of common law, and to change common law only to the extent of defects.

Even on logical plane , the judges are allowed to interpret the provisions of law only where the provisions are found ambiguous or unclear, but if the text of law is explicit and clear , the courts must not in the guise of interpretation supply their own opinion.

The maxim “equity follows the law “can be categorized in the following three stages.

1. Equity will follow the common law where the common law is explicit and clear on the subject

For instance the period of limitation for filing suits for breach of contracts is three years, and in such situation equity will simply follow the common law.

2. Equity will follow the common law in cases where the common law is unclear on the subject, provided that the analogical deductions can be applied upon the provisions of common law.

For instance the period of limitation for recovery of loan transaction is three years, and if the amount of dower can be equated as to loan to be paid by husband to wife upon the basis of “effective cause” than the period of limitation of three years for loan recovery could be extended to the recovery of dower suit.

3. Equity will not follow the common law only where the common law is neither clear, nor the principles of analogy cannot be deduced from the provisions of common law.

The equitable right of beneficiary to enforce trust in their favor has been recognized by the courts of equity by applying the fundamental principle of “UBI JUS IBI REMEDIUM” since the objective of transaction of trust was not recognized at common law because of the formalities. So the equity, by ignoring formalities of common law has enforced trust in favor of beneficiary by following the intent of the transaction.

Maxim #4

## **Equity follows the law**

The principle underlying this maxim is very simple and enshrines the basic purpose of the creation of the equitable principles

“Equitable principles are created in order to cure the defects of common law”

The object of the creation of separate judicial system was never to abrogate the system of common law.

Equitable principles complement, support and fulfill the purpose of common law; it adds soul, spirit and purpose to the law, which it lacked because of its rigidity and formality. The object of EQUITY was never to substitute/replace the common law system.

The jurisdiction of the courts of chancery was limited to the following three situations only;

1. Where the common law was found missing on the subject.
2. Where the common law was ambiguous or unclear.
3. Where the common law was so primitive in its nature that an adequate relief could not be granted

But if the case does not fall into any of the above categories courts of equity is as much bound to follow the law as the courts of common law itself

For example” even if it is highly unjustifiable claim is brought by the contractual party within the prescribed period of limitation for enforcement of contracts i.e. 3 years the court of equity is not allowed to apply the principles of natural justice and conscience by applying the principle of “DELAY DEFEATS EQUITY”

## OBJECTIVE CONTAINED IN THE MAXIM

The simpleton approach to the maxim reveals to broad objectives

1. The retention/preservation of common law to the core, and only to eradicate its defects through equitable jurisdiction.
2. The second objective is the regulation of discretion of the courts through fixed provisions of law. The job of the courts is to apply the law, though how unreasonable/unjust it may turn out to be. The procedure to alter, amend or even repeal the law rests with the legislative branch of the government and not the judiciary.

The maxim incorporates the principle that how bad an immoral a law may be, it is not the courts to change it by applying its discretion or through interpretation. The job to change/alter the law rests with the representative legislative assembly and not with the courts.

Courts are not allowed to go beyond their mandated function in quest to satisfy public conscience. Courts are to dispense justice, decide cases and disputes in accordance with law and not in accordance with the popular opinion.

To a given situation/case the court of equity is bound to follow the law in the following two ways

1. Where a situation is governed by express provision of common law, the court of equity is bound to follow the law

Where a period of limitation is prescribed, equity cannot come up with its own discretionary period of limitation simply upon the principle that where the common law is clear on the subject, equitable principles have no application and it follows the law

- 2.. To another situation equitable principles is also bound to follow the law where to a new situation provision of law can be extended upon the principles of analogy.

Where the period of limitation prescribed by law can be applied to claims on the principle of analogy, again equitable principles of limitation” DELAY DEFEATS EQUITY” has no application and the principles of equity are bound by the law.



# Maxim 8

## EQUITY ACTS IN PERSONAM

In PERSONAM means against person

In REM means against or involving a thing

The principle contained in the maxim states the principle that equitable principles are principles of conscience, which holds primarily the conscience of a person to comply with the obligation.

Its decrees directed the individual to comply with the obligation. The decisions regarding the rights and properties in dispute were complied through the individual /parties relating the issue at controversy.

The maxim broadly served to purposes.

1. Avoiding clash of jurisdiction with courts of common law and their procedure primarily because the procedure of the courts of common law operated in rem, upon the subject matter/thing in dispute
2. By applying the principles of fair justice and honesty which directs the individual to comply with the promises/undertakings and directions of the courts.

As equity's jurisdiction is primarily over the parties and not the subject matter, , it was than immaterial whether the property in dispute was within or outside the jurisdiction of the courts of equity or may not even be within the reach of courts. But if the defendant was found within jurisdiction, equity courts may order him personally to comply with its orders.

The non-compliance of the orders of the court by the defendant was regarded as disrespect to the court, and contempt proceedings be initiated against him in order to conform to the decision of the court.

## Maxim 9

### EQUALITY IS EQUITY

This maxim states that where there is more than one co-sharer in the same right or interest, and if there is no other way of settling disputes between the co-sharers, then the only principle that can and best settle the disputes between the claimants, is to distribute rights among the claimants on the principle of equality.

The principle contained in the maxim has universal acceptance of treating joint owners upon the basis of equality in terms of distribution of rights and interests.

The principle of “**joint tenancy**” is a well-established principle of common law which suggests that if there is more than one owner in the same right without division, all of them must be considered as joint tenant because

1. There is a unity of title among all of them
2. There is a unity of interests among all of them
3. There is a unity of possession among all of them and
4. There is a unity of time with respect to the acquisition of rights among all of them.

Taking into consideration of the above point's joint tenancy would mean that all of them are considered in common law as sole owner of the same right since there was no division of rights, and creditor or the claimant can hold any one of them responsible in fulfilling the entire obligation without including other joint tenants.

There was one more incidence to the principle of joint tenancy which was the principle of survivor ship. The principle of survivorship meant that since there was no division among co-sharers so in case any of the co-sharer dies, his interests shall not pass onto his legal representative rather it will pass onto survivor, and to the last survivor if all of them died. On the other hand since every co-sharer is considered as an owner of the entire right or obligation, and once that obligation is satisfied by the claimant from one of the joint tenant, h in return did not have any remedy against his co-sharers to compel them to contribute their share of obligation.

The principle established by this main was in response to the defect of common law which applied the principle of survivor ship to joint owners in the same right. The courts of equity contrary to the principle of joint tenancy brought the principle of **“Tenancy in common”**.

By introducing the principle of tenancy in common equity sought to remedy the defects of survivorship, which means under equity the share after the demise of one co-sharer will not remain among the survivor Or the last survivor but will pass onto the legal representative of the deceased, by making equitable division of the shares among joint tenants, furthermore it remedied the defect where one of the joint debtor who has been compelled to pay the entire debt could under equity claim contribution from his co-debtors which under common law was not possible.

## **Maxim 10**

### **DELAY DEFEATS EQUITY**

**OR**

### **EQUITY AIDS THE VIGILANT AND NOT THE INDOLENT**

- The principle contained in the maxim promotes vigilance on the part of suitors in enforcing their claims; otherwise court of equity would not help them in getting equitable remedy.
- In civil administration of justice claims are regulated by the period of limitation, and once the period of limitation is passed, the suitor claimant thereafter is not entitled to enforce his claim in the court of law.
- The enforcement of private rights depends upon the sweet will of the individual wronged, and it is for him to decide to bring an action against the wrongful act or not.

In such a situation the state as a matter of policy or otherwise prescribes a period of time within which a claimant may file his claim, otherwise his right will be barred by the period of limitation.

The object of the law of limitation is not to prohibit the litigants to bring their claim outside the period of limitation; rather the object is to promote vigilance on the part of the suitor to bring their claims within the prescribed period of time

The application of the principle is not absolute and will not be applied in the following circumstances.

1. Where the claims are governed by express provision of common law, the maxim delay defeats equity has no application.

Where a period of limitation is prescribed, equity cannot come up with its own discretionary period of limitation simply upon the principle that where the common law is clear on the subject, equitable principles have no application and it follows the law

2. The maxim shall also not apply where the claim is governed by the provisions of common law on the principles of analogy.

Where the period of limitation can be applied to claims on the principle of analogy, again equitable principles of limitation has no application.

### **The Application of the maxim**

The maxim may be applied to those cases where the claim is not governed by the express provisions of common law, nor can't the provisions of limitations be extended to such cases on the principle of analogy.

In such a situation equitable doctrine of "LACHES" applies.

LACHES "unreasonable delay"

#### **Grounds for the application of the principles of "LACHES"**

1. Whether there was an unreasonable delay on the part of the plaintiff?
2. Whether the delay has resulted in the loss or destruction of evidence?
3. Whether the delay induced the defendant to alter his position?

4. Whether plaintiff had sufficient knowledge of the violation of his right?

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