Equity

Maxims of Equity

1. EQUITY WILL NOT SUFFER A WRONG TO BE WITHOUT A REMEDY

Meaning

Where there is a right there is a remedy. This idea is expressed in the Latin Maxim *ubi jus ibi remedium*. It means that no wrong should go unredressed if it is capable of being remedied by courts. This maxim indicates the width of the scope and the basis of on which the structure of equity rests. This maxim imports that where the common law confers a right, it gives also a remedy or right of action for interference with or infringement of that right.

Application and cases

In *Ashby v. White*, wherein a qualified voter was not allowed to vote and who therefore sued the returning officer, it was held that if the law gives a man a right, he must have a means to maintain it, and a remedy, if he is injured in the enjoyment of it.

In cases where some document was with the defendant and it was necessary for the plaintiff to obtain its discovery or production, a recourse to the Chancery Courts had to be made for the Common Law becoming 'wrongs without remedies'.

Limitation

a) If there is a breach of a moral right only.

b) If the right and remedy both were in within the jurisdiction of the Common Law Courts.

c) Where due to his own negligence a party either destroyed or allowed to be destroyed, the evidence in his own favour or waived his right to an equitable remedy.

Recognition

i) The Trust Act

ii) Section 9 of CPC- entitles a civil court to entertain all kinds of suits unless they are prohibited.

iii) The Specific Relief Act- provides for equitable remedies like specific performance of contracts, injunction, declaratory suits.

2. EQUITY FOLLOWS THE LAW

Meaning

The maxim indicates the discipline which the Chancery Courts observed while administering justice according to conscience. As has been observed by Jekyll. M.R: 'The discretion of the court is governed by the rules of law and equity, which are not to oppose, but each, in turn, to be subservient to the other." Maitland said, *"Thus equity came not to destroy the law but to fulfill it, to supplement it, to explain it*." The goal of equity and law is the same, but due to their nature and due to historic accident they chose different paths. Equity respected every word of law and every right at law but where the law was defective, in those instances, these Common Law rights were controlled by recognition of equitable Rights. Snell therefore explained this maxim in slightly different way: *"Equity follows the law, but not slavishly, nor always*."

Application and cases

At common law, where a person died intestate who owned an estate in fee-simple, leaving sons and daughters, the eldest son was entitled to the whole of the land to the exclusion of his younger brothers and sisters. This was unfair, yet no relief was granted by Equity Courts. But in this case it was held that if the son had induced his father not to make a will by agreeing to divide the estate with his brothers and sisters, equity would have interfered and compelled him to carry out hi promise, because it would have been against conscience to allow the son to keep the benefit of a legal estate which he obtained by reason of his promise. This decision was held in *Stickland v. Aldridge*.

Equity follows the law and even if by analogy law can be followed, it should be followed.

Limitation

i) Where a rule of law did not specifically and clearly apply

ii) Where even by analogy the rule of law did not apply

Recognition

Bangladesh has not recognized the well-known distinction between legal and equitable interests. Equity rules in Bangladesh, therefore, cannot override the specific provisions of law. As for example, every suit in Bangladesh has to be brought within the limitation period and no judge can create an exception to this or can prolong the time-limit or stop the rule from taking effect on principles of equity. Such a decision was held in Indian *Appa Narsappa Magdum* case.

3. HE WHO SEEKS EQUITY MUST DO EQUITY

Meaning

The maxim means that to obtain an equitable relief the plaintiff must himself be prepared to do 'equity', that is, a plaintiff must recognize and submit to the right of his adversary. Scriptures of Islam also inform us to be conscientious:

"Woe to those who stint the measure:
Who when they take by measure from others, exact the full;
But when they mete to them or weigh to them, minish..."

Application and cases

This maxim has application in the following doctrines-

i) Illegal loans

ii) Doctrine of Election

iii) Consolidation of mortgages

iv) Notice to redeem mortgage

v) Wife's equity to settlement

vi) Equitable estoppel

vii) Restitution of benefits on cancellation of transaction

viii) Set-off

i) **Illegal loans:** In *Lodge v. National Union Investment Co. Ltd.,* the facts were as follows. One B borrowed money from M by mortgaging certain securities to him. M was a unregistered money-lender. Under the Money-lenders' Act, 1900, the contract was illegal and therefore void. B sued M for return of the securities. The court refused to make an order except upon the terms that B should repay the money which had been advanced to him.

ii) **Doctrine of election:** Where a donor A gives his own property to B and in the same instrument purports to give B's property to C, B will be put to an election, either accept the benefit granted to him by the donor and give away his own property to C or retain his own property and refuse to accept the property of A on condition. But B can not retain his property and at the same time take the property of A.

iii) **Consolidation of mortgages:** Where a person has become entitled to two mortgages from the same mortgagor, he may consolidate these mortgages and refuse to permit the mortgagee to exercise his equitable right to redeem one mortgage unless the other is redeemed. The right of consolidation now exists in England but after the enactment of the Law of Property Act, 1925, it can exist only by express reservation in one of the mortgage deeds.

iv) **Notice to redeem mortgage:** Notice to a mortgagor to redeem one's mortgage is an equitable right of the mortgagor.

v) **Wife's equity to a settlement:** There was a time when woman's property was merged with that of her husband. She had no property of her own. Equity court imposed on the husband that he must make a reasonable provision for his wife and her children. But, now, Under the *Law Reform (Married Women and Tortfeasors) Act, 1935,* married women has full right on her property and it is not consolidated with her husband's property.

vi) **Equitable estoppel:** A promissory estoppel arises where a party has expressly or impliedly, by conduct or by negligence, made a statement of fact, or so conducted himself, that another would reasonably understand that he made a promise thereon, then the party who made such promise has to carry out his promise.

vii) **Restitution of benefits on cancellation of transaction:** It is proper justice to return the benefits of a contract which was voidable, and, equity enforced this principles in cases where it granted relief of rescission of a contract. A party can not be allowed to take advantage of his own wrong.

viii) **Set-off:** Where there have been mutual credits, mutual debts or other natural dealings between the debtor and any creditor, the sum due from one party is to be set-off against any sum due from the other party, and only the balance of the account is to be claimed or paid on either side respectively.

Limitation

i) The demand for an equitable relief must arise from a suit that is pending.

ii) This maxim is applicable to a party who seeks an equitable relief.

Recognition

i) Under sec 19-A of the Contract Act, 1872 if a contract becomes voidable and the party who entered into the contract voids the contract, he has return the benefit of the contract.

ii) sec 35 of the Transfer of Property Act embodies the principle of election.

iii) Sec 51 and 54 of the Transfer of Property Act.

iv) In Order 8, Rule 6 of the CPC, the doctrine of Set-off is recognized.

4. HE WHO COMES INTO EQUITY MUST COME WITH CLEAN HANDS

Meaning

Equity demands fairness not only from the defendant but also from the plaintiff. It is therefore said that *"he that hath committed an inequity, shall not have equity."* While applying this maxim the court believed that the behavior of the plaintiff was not against conscience before he came to the court.

Application and cases

In *Highwaymen case*, two robbers were partners in their own way. Due to a disagreement in shares one of them filed a bill against another for accounts of the profits of robbery. Courts of equity do grant relief in case of partnership but here was a case where the cause of action arose from an illegal occupation. So, the court refused to help them.

The working of this maxim could be seen while giving the relief of specific performance, injunction, rescission or cancellation.

Limitation

General or total conduct of the plaintiff is not to be considered. It will be seen whether he was of clean hands in the same suit he brought or not. Brandies J. in *Loughran v. Loughran* said that *"Equity does not demand that its suitors shall have led blameless lives."*

Exception

i) If the transaction is a against public policy

ii) if the party repents for his conduct before his unjust plans are carried out.

Recognition

i) *Section 23 of the Indian Trust Act-* An infant can not setup a defence of the invalidity of the receipt given by him.

ii) *Section 17, 18 and 20 of the Specific Relief Act, 1877-* Plaintiff's unfair conduct will disentitle him to an equitable relief of specific performance of the contract.

Distinction between maxim no. 3 and 4-

He who seeks equity must do equity	He who comes into equity must come with clean hands
i) It is applicable when both the plaintiff and the defendant have claims of equitable relief against each other.	i) It is applicable when the defendant has no separate claim to relief and the plaintiff's conduct is unfair.
ii) It exposes the condition subsequent to the relief sought.	ii) It is a condition precedent to seeking equitable relief.
iii) It refers to the plaintiff's conduct as the court thinks it ought to be, after he comes to the court.	iii) It refers to the plaitiff's conduct before he approaches the court.

iv) The plaintiff has to mould his behavior according to the impositions by the court.	iv) If the plaintiff's conduct is unfair, it would not entitle him to the relief sought.
v) The plaintiff has an option or a choice before him either to submit to the conditions put by the court, or to get out of the court.	v) The conduct of the plaintiff snatched his choice from him. His equitable right therefore neither be recognized nor enforced.
vi) This maxim looks to the future.	vi) This maxim looks at the past.

5. DELAY DEFEATS EQUITIES

Meaning

A Latin term in this regard is "Vigilantibus, non dormentibus, jura subvenient." which means "Equity aids the vigilant and not the indolent". So, if one sleeps on his rights, his rights will slip away from him. Legal claims are barred by statutes of limitation and equitable claims may be barred not only by limitation law but also by unreasonable delay, called laches.

Application and cases

To cases which are governed by statutes of limitation either expressly or by analogy the maxim will not apply. Such cases fall into three categories-

i) Those equitable claims to which the statute applies expressly.

ii) to which the statute applies by analogy.

iii) Equitable claims which are covered by ordinary rules of laches.

Doctrine of laches- Plaintiff's unreasonable delay is a weapon of defence by the defendant against the plaintiff.

In a *Bombay case*, the plaintiff allowed his land to be occupied by the defendant and this was acquiesced by him even beyond the period of limitation. On a suit of the land it was decided that as the period of limitation to recover possession had expired, no relief could be granted. Also the case of *Allcard v. Skinner* is worth mentioning here.

Limitation

This maxim does not apply when-

i) where the law of limitation expressly applies

ii) where it applies by analogy, and

iii) where the law of limitation does not apply but the cases are governed by ordinary rules of laches.

Recognition

The English doctrine of delay and laches showing negligence in seeking relief in a court of equity can not be imported into the Bangladeshi law in view of Article 113 of the Limitation Act, 1908, which fixes a period of one year (previously three years) within which a suit for specific performance should be brought.

Section 51 of the Transfer of Property Act embodies this doctrine but with a difference.

6. EQUALITY IS EQUITY

Meaning

Plato defined that "*If you cannot find any other, equality is the proper basis.*" This maxim is also explained as "*equity delighteth in equality*", which means that as far as possible equity would put the litigating parties on an equal level so far as their rights and responsibilities are concerned.

Justice Fry said, "When I say equality, I do not mean equality in its simplest form, but which has been sometimes called *proportionate equity*."

Application and cases

Application of this maxim can be understood from the following:

i) Equity's dislike for joint tenancy and presumption of tenancy-in-common
ii) Equal distribution of joint funds and joint purchases
iii) Contribution between co-trustees, co-sureties and co-contractors
iv) Ratable distribution of legacies
v) Marshalling of assets

7. EQUITY LOOKS TO THE INTENT RATHER THAN THE FORM

Meaning

Common law was very rigid and inflexible. It could not respond favourably to the demand of time. It regarded the form of a transaction to be more important than its substance. It looked to the very letter of the agreement and not the intention behind it. On the other hand, Equity looks to the spirit not to the letter, it looks to the intention of parties and not to the words.

Application and cases

In case of sale of land, if a party fails to complete it within the fixed for it, he is at Common Law, in breach of the contract, but equity does not take this rigid attitude. It allows a reasonable time to the party to complete it.

The application can be seen in the following instances-

i) Relief against penalties and forfeitures
ii) Relief in regard to precatory trust
iii) Relief in regard to mortgages, the doctrine of equity of redemption and the doctrine of clogs on redemptions
iv) Attitude in regard to statute of frauds.

i) Relief against penalties and forfeitures- Common Law courts insisted on the literal form of the contract that if the contract is breached, certain amount must be given as compensation, though the actual loss is not that much. Equity interpret the purpose and intent of the contract itself. The principal object of the contract is to perform it and not the compensation. The compensation is a subsidiary matter.

ii) Precatory trust- A trust is created with- (1) an intention on his part to create a trust thereby, (2) the purpose of the trust, (3) the beneficiary, and (4) the trust property. Where an author uses words such as 'I hope', 'I request' or 'I recommend' the first condition is missing. In cases where subsequent ingredients are found, in early days, it was held by the equity courts that he had the intention. This view is in use now but not as liberally as before.

iii) Relief in regard to mortgages- The mortgagor has a right to obtain his property back by payment of the debt and that is his *right of redemption*. The mortgagor's right of redemption is guarded by courts and this has been expressed in a well-known legal maxim, "*Once a mortgage, always a mortgage, and nothing but a mortgage*".

iv) Attitude in regard to statute of frauds-

Recognition

i) Sec 55 of the Contract Act- If time is the essence of the contract, and it is not performed within the stipulated time, the contract or part of it which is unperformed would be voidable. If time is not the essence, the contract will not be voidable but entitles the promisee to damages.

ii) Section 74 of the Contract Act- only a reasonable compensation can be claimed.

iii) Sec 114-A of the Transfer of Property Act- Forfeiture clauses in a lease.

8. EQUITY LOOKS ON THAT AS DONE WHICH OUGHT TO BE DONE

Meaning

If someone undertakes an obligation for the other, equity courts look on it as done and as producing the same results as if the obligation had been actually performed. Equity courts therefore look to the acts of the person bound by his conscience and interpret and construe them in such a way that they amount to what ought to be done.

Application and cases

If A makes T trustee leaving 50,000 Taka to purchase a land for the use of B. T does not purchase the land and by the time, B dies leaving all immovable property to X and all movable property to Y. Now, who should get the 50,000 Taka? Equity in such cases would definitely regard the purchase of land which ought to have been made as made. The money thus goes to X.

The working of this maxim can be seen-

i) the doctrine of conversion

ii) Executory contracts

iii) doctrine of part performance

i) **Doctrine of conversion**- In the case of Lachmere v. Lady Lachmere, money was taken as land. Doctrine of conversion can convert the money into immovable property and immovable property into money.

ii) **Executory contracts**-

(a) *Assignment of future property:* When an assignment of property was made for consideration equity treated it as a contract to assign. When the property came into existence in such a contract it was treated as a complete assignment. As a leading case on this point, *Holroyd v. Marshall* can be cited.

(b) *Agreement for a transfer:* In Walsh v. Lonsdale, it was decided that an agreement for lease could be treated as a lease in equity.

iii) **Doctrine of part performance:** Under the equitable doctrine of part performance contracts pertaining to land were allowed to be formed by oral evidence where one of the parties did acts of pats performance. *Maddison v. Alderson* is a leading case on this point.

Recognition

Many of the doctrines of English equity have taken statutory form in Bangladesh. Insofar as equitable assignments are concerned no equitable estate is recognized in Bangladesh. A transfer of future property for consideration operates as a contract to be performed in future.

i) *The Transfer of Property Act*- A Contracts to sell Sultanpur to B. While the contract is still in force, he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

ii) *The Specific Relief Act*- Section 12 relating to the specific performance of part of a contract also illustrates the application of the maxim.

iii) *The Trust Act*- Where a person acquires property with notice that another person has entered into an existing contract affecting that property, the former must hold the property for the benefit of the latter.

9. EQUITY IMPUTES AN INTENTION TO FULFILL AN OBLIGATION

Meaning

Equity considered and estimated acts of parties. Thus where a person is under an obligation to do a certain act, and he does some other act which is capable of being regarded as an act in fulfillment of his obligation. In other words a person is presumed to do what he is bound to do.

In *Sowden v. Sowden*, a husband covenanted with the trustee of his marriage settlement to pay to them £50,000 to be laid out by them in purchase of land in a particular area D. He, in fact, never paid the sum, but after marriage purchased the land at D in his own name, for £50,000. He died and could not bring the land into settlement. Equity courts construed that he purchased land to fulfill his obligation.

Application and cases

i) Doctrine of performance and satisfaction

ii) Ademption

iii) Doctrine of presumption of advancement

iv) Relief against defective execution of power of appointment.

i) Doctrine of performance and satisfaction- *Sowden v. Sowden* and Lachmere v. Lady Lachmere cases are examples of performance. Satisfaction is the donation of a thing with it is to be taken in extinguishment of some prior claim of donee. This maxim is helpful where the presumed intention of the testator is to be found out; where the intention is express the maxim has no application.

ii) Ademption- Ademption is a transfer of property which operates as a complete or *pro tanto* substitution for a gift previously made by the will of the donor.

e.g. X by his will leaves his daughter Y one-third of his residuary estate. Thereafter on Y's marriage X gives Y 20,000 Taka. X dies. 20,000 Taka is an ademption - complete or proportionately to the gift of one-third share of the residuary estate of X.

iii) Presumption of advancement- When a purchase or transfer of property without consideration is made by a father or a person in *loco parentis*, to or in the name of a child, a presumption arises. And the presumption is that it was for the benefit of the child. Such presumption, is known as 'advancement'. The doctrine applies to cases of parent and child, husband and wife, of mother and child and even to illegitimate child, but not to a man and his mistress.

iv) Relief against defective execution of power of appointment- A power is an authority vested in a person to deal with or dispose of property not his own. A power may be legal or equitable but after 1925 all powers of appointment are necessarily equitable.

e.g. A holds 50,000 Taka upon trust to divide among a certain class of persons. A has no option is this matter He is bound to carry out the trust. On his failing to do so, the court will see that the property is duly divided.

A defective execution will always be aided in equity under the circumstances mentioned, it being the duty of every man to pay his debts, and a husband or a father to provide for child.

Recognition

i) The Succession Act- Presumption against satisfaction is mentioned here. In Hasanali v. Popatal, a testator, who had a sum of Rs 9000 as deposit from his brother, gave to is brother a legacy of Rs 9000 and it was held that the brother was entitled to both, the legacy and his deposit. But as decided in Rajmanuar case where a will contained a clear indication that the legacy was meant as a satisfaction of the debt due to X, X could not claim both as the section explains.

ii) The Trust Act- Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract. Equity thus imputes an intention to fulfill an obligation.

The doctrine of advancement does not apply in Bangladesh.