



BIHAR

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CIVIL JUDGE

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BIHAR JUDICIAL SERVICES

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Law of Equity

LAW OF EQUITY

Definition of equity by various jurists

1. **Maitland:** "Equity now is that body of rules administered by English Courts of Justice which were if not for the operation of the judicature Acts, would be administered only by those courts which would be known as Courts of Equity."
2. **Henry Levey Ulman:** "Equity is a body of rules, the primary source of which was neither custom nor written law but the imperative details of conscience and which had been set forth and developed in the Court of Chancery."
3. **Snell:** "Equity... In its technical sense, may be defined as a portion of natural justice, which, though of such a nature as properly to admit of being judicially enforced, was, from circumstances hereafter to be noticed, omitted to be enforced by common law Courts - an omission which was supplied by the Court of Chancery."

Origin and nature of Equity

Two distinct systems of law were administered by different tribunals at the same time in England till the year 1875. The older system was the common law and it was administered by the King's Benches. The more modern body of legal doctrine developed and administered by the chancellor in the Court of Chancery as supplementary to and coercive of the old law was the law of Equity.

The two systems of law, as mentioned above, were by and large identical and in harmony leading to the maxim that 'equity follows the law'. In other words, the rules already established in the old Courts were adopted by the Chancellor and incorporated into the system of equity, unless there was some sufficient reason for their rejection or modification. In case of conflict, the rule of Chancery prevailed, because if a common law action was brought in defiance of a rule of equity, the defendant could apply to the Court of Chancery for an order called a common injunction, directed to the plaintiff and ordering him not to continue his action.

Growth of the law of equity: A dual system of rights and interests, namely-legal and equitable, came to the fore due to the double system of the administration of justice in England before the Judicature Act, 1873-1875.

Nature

- (1) The general rule is that equity follows the law and the equitable interests have in general the same incidents and attributes as have corresponding legal interests. They devolve and can be settled, mortgaged and disposed of precisely in the same way as legal interests.
- (2) Equity follows the law and as such a legal estate or interest takes procedure over the equitable estate or interest. That is, in case of conflict between equity and law, the law prevails.
- (3) An equitable right arises when a right vested in one be, a matter of conscience, vested in another.
- (4) Where equities are equal, that which is first in time will prevail. Two principles of equity form the basics of doctrine of subrogation; Economic Transport Organisation v. Charan Spinning Mills Pvt. Ltd., (2010) 4 SCC 114.

Equity in the Indian context

Most of the equitable principles and rules have, in India, been embodied in the statute made applicable to the extent of the provisions made therein. That, the provisions of equity in Indian statute books might have their source in common law or in equity or in an adjustment between the two is immaterial.

Statutory recognitions of the principles of equity is found in the Indian Contract Act, 1872, the Specific Relief Act, 1877, the Indian Trust Act, 1882, the Transfer of Property Act, 1882, and in the Indian Succession Act, 1925

The equitable doctrines featuring in the Indian Contract Act are mainly, the doctrines of penalties and forfeiture, stipulations as to time in a contract, equitable relief on ground of misrepresentation, fraud and undue influence.

The statutory recognition of the principles of equity in the Specific Relief Act are regarding injunction, specific performance, cancellation, and rescission etc.

The rules administered by the English Courts of equity under the head of 'justice, equity and good conscience' are contained in the Indian Trust Act.

Many doctrines of equity are contained in the Transfer of Property Act. The English doctrine of part performance has been drawn in section 53A of the Act Sections 48 and 51 are also based on the equity principles.

It is important to bring to the notice of the readers that though the English rules of equity have been substantially incorporated by the Indian legislature, yet, there are many other rules of English Equity which are either not followed in India or are adopted only in a modified form, keeping in view the different ground realities of the country.

General Principles of Equity

The subject matter of the equity can be grouped around some legal maxims which embody the general flows on which the court of chancery exercised its jurisdiction. Some of such important maxims are as follows:

(1) Aequitas est correctio legis generalities late, qua parte deficit: i.e, Equity is a correction of the general law in the part where it is defective. - For a long time, the English Courts were guided by the doctrine *ubi remedium ibi jus* (where there is a remedy, there is a right) but with the development of the Court of Chancery in England, this doctrine gave way to a more pragmatic and just doctrine called '*ubi jus ibi remedium*' (where there is a right, there is a remedy).

A right is a right only when it can be enforced by the Court. A remediless right is of no consequence. Thus, in order to give effect to a right which is suitable for judicial enforcement but which could not be enforced at common law due to some technical defect, the Court of Chancery developed the maxim equity will not suffer a wrong to be without a remedy.

The Court of Chancery applied the maxim in these cases where there was a failure of justice due to the deficiencies in law, and to help the litigants in obtaining legal reliefs for the violation of legal rights by offering facilities in evidence and procedure which the common law courts did not secure. The maxim is to give an adequate relief where the one available in common law court was inadequate.

Place of the maxim in Indian context

The maxim finds its embodiment in many Indian enactments like, the Specific Relief Act, provides for equitable remedies by way of specific performance of contracts, rectification of instruments etc. The Code of Civil Procedure particularly captures the maxim in section 9.

(2) **Aequitas sequitur legem ie. Equity follows the law.** - Equity does not claim to override the law. Equity generally operates by recognizing the legal rule and adding some further rule, remedy or other machinery of its own.

The Court of Chancery, which developed equitable law never wanted to give equity an overriding effect to the common law. The jurisdiction of equity is debarred from overreaching the boundaries established by the prior course of adjudication.

Another maxim which needs a mention in this discussion is *Aequitas nunquam contravenit leges* Le equity never counteracts law. In India, since there is no distinction between a legal interest and equitable interest, therefore, in all matters relating to legal as well as equitable interests, the statutory provisions shall apply if there are any.

(3) **He who seeks equity must do equity-** This maxim put a mandate on the seeker of equity that he must, in his turn, be equitable in recognising and submitting to the right of his adversary as no one can be justified in requiring another to be conscientious without himself being so. A litigant, claiming something by way of equity, must, himself be ready and willing to grant to his opponent, that which the opponent is entitled. Refer *Sturgis v. Champneys*, [(1839) 5 Ny, and CR 97, 1023]

A litigant cannot seek equitable remedies as a matter of right as such remedies are at the discretion of the Court. The Court before granting it, must enquire whether the plaintiff himself would be prepared to act as a man of conscience towards the defendants.

Incorporation of the maxim in Indian laws

Section 38 of the Specific Relief Act provides that on adjudging recession of a contract, the Court may require the party to whom such relief is granted, to make any compensation to the other which justice may require. Sections 30 and 38 also provide that on adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted, to make compensation to the other which justice may require.

An equitable condition is imposed on the beneficiary to repay the trustee, the purchase with interest and other legitimate expenses when he seeks a declaration on trust or retransfer of trust property wrongfully bought by the trustee, by section 62 of the Indian Trust Act, section 86 imposes the equitable

condition of repaying the consideration paid in transfer of property pursuant to a rescindable contract.

According to section 35 of the Transfer of Property Act, that he who takes a benefit under an instrument must accept or reject the instrument as a whole. This section incorporates the Doctrine of Election' dealt in detail under a separate head.

Section 51 of the Transfer of Property Act, provides that he who makes improvement on any immovable property believing in good faith that he is absolutely entitled thereto and is subsequently evicted therefrom by a person having better title, is entitled to compensation for the improvement made by him.

The Indian Contract Act lays that "when consent to an agreement is caused by undue influence, the argument is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or I the party who was entitled to avoid it, has received any benefit thereunder, upon such terms and conditions as the Court may deem first." [Section 19A]

Further sections 64 and 65 of the Indian Contract Act are also based on the doctrine 'he who seeks equity must do equity'.

The maxim, however, does not apply when relief sought by the plaintiff and equitable right or relief secured to or sought by the defendant belongs to or originates from two entirely separate and distinct matters.

(4) Vigilantibus, non dormientibus jura subvenient te, the law helps the vigilant and not the dormant. - While a legal claim is not barred by any lapse of time less than the prescribed statutory period of limitation, an equitable claim, on the other hand, may be barred by delay on the part of the plaintiff seeking relief.

Delay, however, means unreasonable delay in claiming relief and not an ordinary or reasonable delay. A Court of equity has always refused its aid to demands where a party has slept upon his rights and acquiesced for a great length of time.

An unreasonable delay defeats equity. But such legal or equitable claims to which the statutes of limitation apply expressly or by analogy the maxim 'delay defeats

equity does not apply. In such cases, delay so far as it is within the statutory period will not defeat a claim.

(5) Equity delights in equality. The English Court of Chancery, incorporated into the Equity Jurisprudence of English law, the concept of *acquititas* t.e. the notion of equality and impartiality as conceived by the Roman jurists. The equity, thus, so far as possible, puts the parties to a transaction on an equal footing, although the strict rules of law may give one party an advantage over the other. Equality have does not mean literal equality, but it means 'proportional equality'.

The maxim has wide application. Following are some illustrations

- (1) In case of the assets of insolvent debtor, equity insists on a rateable distribution by abolishing preferential treatment of certain creditors.
- (2) A creditor having a single claim against several debtors, can, realise the debt from any of such debtors. But the debtor who had thus been compelled to pay the debt in full, though without any remedy against his co-debtors, could in equity, claim contribution from them in order that the burden passes equally.
- (3) In a case where there are two creditors of the same debtors, and one creditor has a right to resort to two funds of the debtors; the other creditor has a right to only one of them. The Court on basis of the maxim, shall as "marshall the funds that both the creditors are paid as much and as far as possible.

Place of the maxim in Indian context

The Code of Civil Procedure, section 48, provides that where assets are held by a Court and persons than one have (before the receipt of such assets) made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets after deducing the costs of realisation will be reliably distributed among all such persons.

Other provisions giving effect to the maxim are, section 42 of the Indian Contract Act that applies the principle of tenancy-in-common, sections 43, 63-70, 146-147 of the Indian Contract Act and section 82 of the Transfer of Property Act, laying provisions relating to 'contribution'.

(6) Where equities are equal, the first in time shall prevail. In the absence of a legal estate in the matter and the contest is among the equitable estate only, the rule is that the person whose equity attached to the property first will be entitled over other or others eg. if A enters into a contract for the sale of his house with B and then with C the interest of B and C both being equitable, B will have priority over C because his equity attached to the property first.

This rule where equities are equal, the first in time shall prevail is applicable in cases only when they are equal. Therefore, if equities are unequal in the sense that equity on the side of the person other entitled to priority is worse, that is, he is guilty of anything unconscionable or unfair, he would lose his priority.

Application of the maxim in India. - Sections 48, 78 and 79 of the Transfer of Property Act, provides the example of this maxim.

Section 48 provides that where a person proposes to create by transfer at different times shall over the same immovable property and such rights cannot all exist together, each later created be subject to the rights previously created. But, the rule applies only when equities are equal.

Section 78 provides that where through the fraud misrepresentation, gross neglect of a prior mortgagee another person has been induced to advance money on the security of the mortgaged property the prior mortgagee shall be postponed to the subsequent mortgagee.

(7) Legal estate prevails over the equitable estate-Where there is a question of selection between equity on one hand over text of law on the other, the Court shall choose the latter. To say it differently. the person in possession of legal estate is entitled to priority over any person having merely an equitable estate in that property.

Where there is equal equity, the law shall prevail' is another version of the maxim. Accordingly, clear text will outweigh the equities written or legal estate prevails over the equitable estate. This doctrine is different from the one discussed earlier (in (6)] in the sense that whereas in the previous one, the controversy is with regard to equitable rights only and the question is of time, whereas, in the present the controversy is between legal and equitable provision.

Applicability of the maxim in India. The Doctrines of Election', 'Marshalling and set off of Indian law are based on this maxim. The principle of the maxim has been incorporated in sections 40 and 78 of the Transfer of Property Act,

1882. According to section 40, where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or an easement thereon, such right or obligation may be enforced against a transferee with notice thereof gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands. This provision in a case of "prior equitable and subsequent equitable estate.

Further, section 78 provides that where through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, to the prior mortgagee is to be postponed to the subsequent mortgagee

Doctrine of Election

In equity the doctrine of election is founded on the rule that a person who takes under an instrument must give effect to every part of it. This if a testator devises his own estate to A, and A's estate 15 A must elect whether he will take 'under or against the Will. If he elects to take under and consequently to conform with all the provisions of the will, there is no difficulty he takes the testator's estate and give up his own to B. If on the other hand, he elects to take against the Will, i.e, retains his own estate and at the same time claims that devised to him by the testator, he is bound to make compensation out of it to B, whom he has disappointed by thus electing: See *Street field v. Stratified* (1735) Cas, temp. Tah 176 W & T.1.C.

Story's Jurisprudence describes the doctrine as the obligation imposed upon a party to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one, that he should not enjoy both."

The purpose of the doctrine of election is merely to carry out the intention expressed by the grantor in the instrument of grant. If one agrees to receive benefit, one must accept the reciprocal obligation also It is choosing between rights when there is a clear intention that both shall not be enjoyed Maitland considers the doctrine of election to be based on the principles of comperisation.

Essentials of the Doctrine of Election

(1) The intention of the grantor or testator to dispose of the property which is not his own should clear.

(2) The grantor or testators must give his own property to the person whose property he has attempted to dispose of by his Will or deed.

Incorporation of the Doctrine of India

Unlike the English law, the doctrine of election in India, aims at or results in the principle or rule of forfeiture or confiscation and not on that of compensation. Sections 180-190 of the Indian Succession Act deals with doctrine of election in cases of wills and section 35 of the Transfer of Property give effect to this doctrine in general.

How is the election made.- Election may be implied by conduct, eg., where a person put to his has long enjoyed the property granted to him knowing of his duty to elect, he will be deemed to have elected in favour of the instrument. Election can definitely be made expressly by an instrument, e.g., a deed or a Will.

An election made is binding on the legal representatives of the donee. However, if a party bound to elect dies without having elected and both, the benefits given to him and the property of his which is given away, devolve upon the same person, then that person can elect. If, however they devolve upon several person in the same proportion then each can elect according to his interest.

Further, the election must be made within the time, if any, stipulated in the instrument or in the absence of such stipulation, within a reasonable time, failing which the election would be deemed to have been made against the instrument.
