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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BBL 506

NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-14





LECTURE-14

Maxim:

Delay defeats equities

or

Equity aids the vigilant and not the indolent

or

Equity aids the vigilant, not those who slumber on their rights:

It is a general principle of Equity that a person will not be granted an equitable remedy if he has been guilty of undue delay in bringing his action. Such delay is known as “laches”. A court of Equity “has always refused its aid to stale demands, where a party has slept upon his right and

acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing.” Per Lord Camden LC in **Smith v. Clay** (1767) 3 Bro.C.C 639 n. at 640 n.

The doctrine of laches does not apply to cases governed by the Statutes of Limitation such as claims to redeem or to foreclose mortgages of land, or a claim by a beneficiary against a trustee for a non-fraudulent breach of trust. Wherever the Statutes apply, no delay short of the limitation period will bar the claim.

Application of the doctrine:

The principles governing the doctrine of laches were stated in the well-known dictum of Lord Selborne in **Lindsay Petroleum Co. v. Hurd** (1874) L.R. 5 P.C. 221 at 239, cited with approval by the Privy Council in **Nwakobi v. Nzekwu** (1964) 1 WLR 1019. The doctrine applies-

“where it would be practically unjust to grant a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted.”

Maxim:

Equity looks on that as done which ought to be done:

Maxim states that equity regards as done that which ought to be done. This means that where a party was required to perform an obligation such as in contract law, equity would apply to consider the parties to be in the relative positions they would have been in if the obligation had been performed. As such, this maxim applies in favour of the party who was entitled to performance of a contract.

For example, where pursuant to a contract, John Doe was required to do something for Jane Smith but failed to do so, or completed only part performance of the contract, then equity would apply to place the parties in the positions they would have been in relative to each other if John Doe had actually completed his obligations. Thus, this maxim applies where the defendant was bound in equity to perform an obligation for the plaintiff and focuses on the effect or consequences that would have flowed from completion of the original contract.

MCQs

- 1. It is a general principle of Equity that a person will not be granted an equitable remedy if he has been guilty of undue delay in bringing his action.**
 - i.** True
 - ii.** False
 - iii.** Cannot say
 - iv.** None of these

2. This maxim..... applies where the defendant was bound in equity to perform an obligation for the plaintiff and focuses on the effect or consequences that would have flowed from completion of the original contract.

- i. Equity looks on that as done which ought to be done
- ii. False
- iii. Cannot say
- iv. None of these

3. **slumber** means:

- i. Sleep
- ii. Rest
- iii. Cannot say
- iv. None of these

4. Where a party was required to perform an obligation such as in contract law, equity would apply to consider the parties to be in the relative positions they would have been in if the obligation had been performed.

- i. True
- ii. False
- iii. Cannot say
- iv. None of these

5. .The principles governing the doctrine of laches were stated in the well-known dictum of.....

- i. Lord Selborne
- ii. Lord Halper
- iii. Cannot say
- iv. None of these
