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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-25





LECTURE-25

Maxim:

**Equity Imputes an Intention to Fulfill an
Obligation:**

Where a person is obliged to do an act, whether by law (in the wide sense) or by moral obligation, and he does an act which could be taken as fulfilling that obligation, Equity will put the most favourable construction on his motives, and he will be deemed to have done the act in performance of his duty. This maxim is the foundation of the doctrines of

performance and satisfaction.

Maxim:

Equity Acts “*in Personam*” :

One of the most important characteristics of the jurisdiction of the Court of Chancery was that its decrees were directed in personam, i.e. against the defendant personally. Thus, Lord Ellesmere in the Seventeenth Century could justifiably claim that the controversial common injunction issued by the Chancellor was not an interference with the due processes of the Common Law courts, but merely a direction in personam to the individual that, on equitable grounds, he must not sue at Common Law.

The maxim also meant that in property matters the Court of Chancery would act against the person of the

defendant by committing him to prison for contempt if he failed to obey a decree, rather than *in rem*, i.e. against the property involved in the dispute.

Later Equity developed the alternative method of sequestration of the defendant's property until he obeyed a decree, and today, whilst still retaining the powers of committal and sequestration, the court has numerous more convenient methods of enforcing its decrees.

Thus, if a defendant fails to convey land to the plaintiff as ordered by a decree of specific performance, the court, instead of merely imprisoning him or sequestrating his property, may appoint another person to execute the transfer on his behalf; or it may make a vesting order, which has the effect of transferring the property from one person to another

without the need for a conveyance. Furthermore, since the Judicature Acts 1873 to 1875, equitable decrees are enforceable by any appropriate legal writ; thus, e.g. an order for the repayment of money can be enforced by a writ of *fiery facias*.

The maxim has thus lost some of its earlier importance, but its survival may be seen in the rule that the court may make an equitable decree relating to property situated outside the jurisdiction, as an exception to the general jurisdictional limits of the courts. Thus, the court may enforce a trust relating to land abroad where the trustees are present within the jurisdiction (see **Rochefoucauld v. Boustead** (1897) 1 Ch. 196), or similarly, where the executors are present, administer assets abroad. See **Ewing v. Orr-Ewing** (1883) 9 App. Cas. 34. In the leading case of **Penn v. Lord Baltimore** (1750) 1 Ves. Sen.444, it was held that

the English court could decree specific performance of a contract to sell land in America, since the defendant was within the jurisdiction. This latter case was followed in **Bata Shoe Co. v. Melikian** (1956) 1 FSC 100, where the Supreme Court held that the High Court of Lagos had jurisdiction to order specific performance of a contract to assign a lease of land situated at Aba, in the then Eastern Nigeria, which was outside the jurisdiction of the Lagos Court, on the ground that the defendant resided in Lagos.

Lastly, it is a controversial point whether the beneficiary's right under a trust is a right *in personam*, since the beneficiary may not only sue the trustee personally to recover the trust property or its value, but may also trace the property and recover it or its proceeds from any other person into whose hands it has come.

The right to trace thus resembles a right *in rem*, attaching itself to the property. However, because the beneficiary has no right to trace against a bona fide purchaser of the property without notice of the trust, his interest cannot be said to be a full right *in rem* (unlike a legal interest). It has thus been suggested by many writers that these equitable rights are hybrids, being technically rights *in personam*, but bearing more resemblance to rights *in rem*.

MCQs

- 1. Where a person is obliged to do an act, whether by law (in the wide sense) or by moral obligation, and he does an act which could be taken as fulfilling that obligation, Equity will put the most favourable construction on his motives, and he will be deemed to have done the act in**

performance of his duty.

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

2. One of the most important characteristics of the jurisdiction of the Court of Chancery was that its decrees were directed in personam, i.e. against the defendant personally.

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

3. Equitable rights are hybrids, being technically rights *in personam*, but bearing more resemblance to rights *in rem*.

- i. True**

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

4. The court may enforce a trust relating to land abroad where the trustees are present within the jurisdiction.

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

5. An order for the repayment of money can be enforced by a writ of *fiery facias*.

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