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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: LLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: LL.B. 502

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Lecture-23





LECTURE-23

Maxim:

Delay defeats equities

Or

Equity aids the vigilant and not the indolent:

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.”

Equality is Equity:

The application of this maxim may be considered under the following heads –

- (i) presumption of tenancy in common;
- (ii) severance of joint tenancy;
- (iii) equal division by the court; and
- (iv) the doctrine of satisfaction.

i. Presumption of Tenancy in Common:

“Equity leans against joint tenancies.” Equity dislikes the

joint tenancy, for in it the right of survivorship (the *jus accrescendi*) operates – *i.e.* the survivor of two joint tenants is entitled to the whole property, and the estate of the deceased tenant takes nothing. Where there are more than one joint tenants, on the death of one, the whole property vests in the survivors. This process continues until there is only one survivor, who then holds the land as a sole tenant.

In a tenancy in common, on the other hand, the share of a deceased tenant passes not to the survivor but to those entitled under the deceased's will or intestacy, for a tenant in common has a distinct share in the property which is his to dispose of as he wishes. In three instances Equity treats joint tenants at law as tenants in common of the beneficial interest, so that although at law the survivor is entitled to the whole property, in Equity he will be regarded as trustee of the deceased's share for the benefit of those entitled under the latter's will or intestacy. These instances are:

- (a) Where property is purchase in unequal shares.
- (b) Loan on Mortgage
- (c) Partnerships

ii. severance of joint tenancy:

The term 'severance' is here used to describe the process whereby a joint tenancy is converted into a tenancy in common. A joint tenant may convert a joint tenancy into a tenancy in common by severance. Where there is a joint tenancy both at law and in Equity (e.g. where two joint purchasers advance equal amounts), Equity will readily treat the joint tenancy as severed and thus converted into a tenancy in common, thereby excluding the right of survivorship.

Any alienation of his interest by a joint tenant will bring about severance. Even an agreement to alienate suffices, provided it is made for value.

Equal Division:

Whenever there is no other fair and practicable basis upon which property may be distributed amongst two or more rival claimants, the court will apply the maxim and divide the property equally between them. This may be seen in the following examples:

- (i) Where trustees fail to exercise a trust power, the court will divide the trust property equally amongst all the members of the class of beneficiaries, even though the trustees might have given unequal shares.
- (ii) Where there is a settlement including a direction (a) that the fund shall be held on trust for certain persons in unequal shares and (b) that any share which fails to vest shall accrue to the other shares by way of addition, the accrue will be in equal shares and not in the proportions laid down for the

original shares. See *Re Bower's Settlement Trusts* (1942) Ch. 197.

- (iii) Where a husband and wife divorce or separate, both having contributed to the purchase of the matrimonial home, or having operated a joint bank account, the court will not, in the absence of any contrary arrangement between the parties, inquire into what was contributed by each, but will divide the property equally between the two. See *Jones v. Maynard* (1951) 1 Ch. 572. The rule is applicable even where husband and wife both contribute to the running of a business. (See ***Landsman v. Landsman*** (1961) 105 S.J. 988.

The Doctrine of Satisfaction:

Equity considers that if a father has more than one child, it is unlikely that he would wish to provide for one child twice over to the detriment of the others, hence the sub-maxim

“Equity leans against double portions” founded on the present maxim.

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. Such delay is known as “laches”.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
2. “Equity leans against joint tenancies.” Equity dislikes the joint tenancy, for in it the right of survivorship:
 - i. True
 - ii. False
 - iii. Cannot say

iv. None of these

3. The principles governing the doctrine of laches were stated in the well-known dictum of Lord Selborne in Lindsay Petroleum Co. v. Hurd

i. True

ii. False

iii. Cannot say

iv. None of these

4. Equity considers that if a father has more than one child, it is unlikely that he would wish to provide for one child twice over to the detriment of the others, hence the sub-maxim “Equity leans against double portions” founded on the present maxim.

i. True

ii. False

iii. Cannot say

iv. None of these

5. Whenever there is no other fair and practicable basis

upon which property may be distributed amongst two or more rival claimants, the court will apply the maxim and divide the property equally between them.

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