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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BAL 506**

**NAME OF FACULTY: DR. ANKUR SRIVASTAVA**

# Lecture-11





## **LECTURE-11**

In the last module, we considered the history of equity, how the doctrines of equity were introduced into India, the relation between Equity and Common Law and the nature of equitable rights.

In this unit, we will consider the maxims of equity. These are guidelines of the jurisdiction of Equity which have been developed throughout its history. They should not be regarded as rigid formulae for the application of equitable rules, but rather as a collection of general principles which can be molded or adapted to suit the circumstances of the individual case.

The maxims have two main purposes:

- (i) To show the historical development of equitable rules and procedure;
- (ii) To guide the application of those rules at the present and in the future.

Furthermore, as far as the study of equity is concerned, they are a convenient and meaningful way of classifying equitable principles and the many varied areas in which they are to be found. Since many of the maxims overlap, each should not be considered in isolation from the others.

**Maxim:**

**Equity will not suffer a wrong to be without a remedy:**

This maxim is at the root of all equitable jurisdiction. It should not be interpreted as meaning that every moral wrong was remedied by Equity. It means that, in certain circumstances, where the Common Law failed to recognise a right or to provide a remedy for a

wrong, Equity would not stand by and see a party suffer an injustice, but would grant a remedy, provided it was suitable for judicial enforcement. The operation of the maxim may be seen in relation to the three types of **equitable jurisdiction; original, concurrent and auxiliary.**

### **Original jurisdiction:**

Trusts at Common Law, the trustee was the absolute owner of the trust property and could deal with it as he pleased; the rights of the beneficiaries were not recognised. Equity, however, conceiving this to be a wrong, compelled the trustee to hold the property for the benefit of the beneficiaries, whose rights Equity enforced not only against the trustee but also against any transferee from him with notice of the trust.

### **Concurrent jurisdiction:**

Equitable Remedies At Common Law, the only remedy for a breach of contract was damages. Where

this remedy would be insufficient for the plaintiff (e.g. in the case of breach of a contract for the sale of land), Equity would grant specific performance. Thus compelling the defendant to perform the contract. Similarly, where damages would be insufficient redress for a tort (e.g. nuisance), Equity would grant an injunction to restrain further invasion of the plaintiff's rights.

### **Auxiliary jurisdiction:**

#### **Equitable Procedure**

The Common Law courts had no power to order discovery of documents in the possession of a party to an action; the Court of Chancery did make such orders, without which many wrongs would have been remediless. Another example of the maxim is equitable execution. At Common Law, a judgment creditor could not levy execution on any property of the judgment debtor in which the latter had only an equitable interest.

Thus, for instance, an equity of redemption or a beneficial interest in a trust could not be touched at Common Law. The Court of Chancery thus evolved a procedure whereby equitable execution could be levied on the equitable interest. This was done by the appointment of a receiver of the equitable interest, supplemented in appropriate cases by an injunction restraining the judgement debtor from disposing of the interest.

### **Limits to the maxim:**

The maxim must not be taken too widely. First, there are many wrongs which cannot be remedied in Equity any more than at Common Law. Thus, for instance, 'unfair' trade competition which does not come within the definition of any Tort cannot be remedied either at law or in Equity. Secondly, even where Equity does provide a remedy, it may stop short of applying it in certain defined situations. For instance,

although specific performance is a general remedy for breach of contract where damages would be inadequate, there are some instances where damages would not be adequate and yet specific performance will not be granted.

Thus, contracts for personal services and contracts requiring the constant supervision of the court cannot be specifically enforced. It may thus be said that the application of the maxim is limited by what is realistic, practicable and convenient for the court.

### **MCQs**

- 1. Maxims are guidelines of the jurisdiction of Equity which have been developed throughout its history.**
  - i. True**
  - ii. False**
  - iii. Cannot say**
  - iv. None of these**
  
- 2. 'Unfair' trade competition which does not come within the definition of any Tort cannot be remedied either at**

**law or in Equity.**

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

**3. An equity of redemption or a beneficial interest in a trust could not be touched at Common Law.**

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

**4. An individual aggrieved by a failure of the common law to remedy a gross injustice would apply to the court of equity.**

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

**5. Every moral wrong was remedied by Equity.**

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

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