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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BBALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BBL 506**

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# Lecture-24





## **LECTURE-24**

**Maxim:**

**Equity looks to the Intent rather than to the Form:**

At Common Law, observance of the correct forms or proceedings in relation to any transaction was all-important. Failure to do so often rendered a transaction invalid or led to a total loss of the legal rights of a party. Conversely, if the due forms were employed in a transaction there was often no possibility of challenging its validity or tempering its rigours. Equity, however, looking to the intent rather than the form of words, considered it unfair for one party to insist on strict observance of form and thereby defeat the substance of a

transaction and the true intention of the parties. This may be seen in the following examples.

### **(i) Time Clauses**

If a party to a contract for the sale of land fails to complete on the date stipulated in the agreement, at Common Law he is in breach of contract, and the other party may repudiate the transaction. But, in Equity, time is generally not of the essence of a contract, and breach of a time clause will not be ground for repudiation by the other party, provided the party in default is ready and able to complete within a reasonable time.

### **(ii) Covenants**

Equity may regard a covenant as negative in substance (though positive in form) so as to enable an injunction to be granted to restrain its breach; as where an injunction was granted to enforce a “tied-house” covenant, whereby the owner of a public house agreed that a certain brewery should

have the exclusive right of supplying beer to him. See *Catt v. Tourle* (1869) 4 Ch. App. 654.

### **(iii) Mortgages**

In determining whether a transaction is a mortgage or not, Equity looks at the substance and not merely the form. Thus, e.g. parol evidence is admissible to show that what appears on its face to be an absolute conveyance was in fact intended to be by way of security only

The maxim is also exemplified by Equity's attitude to redemption of mortgages. At Common Law, if the mortgagor failed to repay the loan on the date fixed by the mortgage, he lost forever his right to redeem the property. Equity, however, always considered a mortgage to be a mere security, and regarded the provision for repayment on the day stated in the mortgage covenant to be a mere formality. Equity thus allowed a mortgagor to redeem his property after the redemption date had passed.

#### **(iv) Penalties and Forfeitures**

In determining whether a clause in a contract is a penalty or liquidated damages, Equity looks to the intent of the parties rather than to the form of words used. Thus, the fact that the expression “liquidated damages” as used will not be conclusive of the effect of the clause, and it will be treated as a penalty if it is found that it was not a genuine pre-estimate of the loss likely to be suffered in the event of a breach, but merely a stipulation *in terrorem* to induce performance of the contract. If the clause is found to be a penalty, Equity will grant relief to the promisor by reducing the amount to be paid by him to the actual loss suffered by the promisee as a result of the promisor’s default.

On the same principle, Equity granted to a tenant relief against forfeiture of his lease for nonpayment of rent. This is now a statutory right. See Section 210, Common Law Procedure Act 1852.

## **(v) Equitable Assignment**

For an assignment of a chose in action to be valid at law it must comply with the provisions of the Judicature Act 1873, section 25(6), which require it to be in writing, to be absolute, and notice to be given to the debtor or trustee. But an assignment which is not in the form required by the statute is quite valid in Equity. The classic dictum on this point is that of Lord MacNaghten in **Brandt's Sons and Co. v. Dunlop Rubber Co.** (1905) A.C. 454 at p. 462, "the language is immaterial if the meaning is plain. All that is necessary is that the debtor be given to understand that the debt has been made over by the creditor to some third person."

## **(vi) Deeds**

At Common Law a promise under seal is enforceable even though unsupported by consideration. Equity however, will normally refuse to grant specific performance of a purely voluntary agreement even though it is made by deed. See

**Jefferys v. Jefferys** (1841) Cr. & Ph. 138. This is expressed in the sub-maxim, “Equity will not aid a volunteer.”

### MCQs

1. At Common Law a promise under seal is enforceable even though unsupported by consideration. Equity however, will normally refuse to grant specific performance of a purely voluntary agreement even though it is made by deed.
  - i. True
  - ii. False
  - iii. Cannot say
  - iv. None of these
  
2. For an assignment of a chose in action to be valid at law it must comply with the provisions of the Judicature Act 1873, section 25(6), which require it to be in writing, to be absolute, and notice to be given to the debtor or trustee. But an assignment which is not in the form required by the statute is quite valid in Equity.



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

**3. In determining whether a transaction is a mortgage or not, Equity looks at the substance and not merely the form.**

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

**4. Equity granted to a tenant relief against forfeiture of his lease for nonpayment of rent. This is now a statutory right.**

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

**5. In determining whether a transaction is a mortgage or not, Equity looks at the substance and not merely the form.**

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

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