

## **Maxim of Equity**

A broad statement of principle, the truth and reasonableness of which are self-evident. A rule of Equity is a system of justice that complements the Common Law.

Maxims were originally quoted in Latin, and many of the Latin phrases continue to be familiar to lawyers in the early 2000s. The maxims were not written down in an organized code or enacted by legislatures, but they have been handed down through generations of judges. As a result, the wording of a maxim may vary from case to case. For example, it is a general rule that equity does not aid a party at fault. This maxim has been variously expressed:

No one is entitled to the aid of a court of equity when that aid has become necessary through his or her own fault.

Equity does not relieve a person of the consequences of his or her own carelessness.

A court of equity will not assist a person in extricating himself or herself from the circumstances that he or she has created.

Equity will not grant relief from a self-created hardship.

The principles of equity and justice are universal in the common-law courts of the world. They are flexible principles aimed at achieving justice for both sides in each case. No maxim is ever absolute, but all of the principles must be weighed and fitted to the facts of an individual controversy. A rule does not apply when it would produce an unfair result. A party cannot insist that a strict technicality be enforced

in his or her favor when it would create an injustice because equity will instead balance the interests of the different parties and the convenience of the public.

### **The Foundations of Equity**

Two maxims form the primary foundations of equity: Equity will not suffer an injustice and equity acts in personam. The first of these explains the whole purpose of equity, and the second highlights the personal nature of equity. Equity looks at the circumstances of the individuals in each case and fashions a remedy that is directed at the person of the defendant who must act accordingly to provide the plaintiff with the specified relief. Unless a statute expands the powers of an equity court, it can make decrees that concern property only indirectly, phrasing them as decrees against persons. It is said that these are the oldest two maxims of equity. All others are consistent with them.

### **"He who seeks equity must do equity."**

This maxim is not a moral persuasion but an enforceable Rule of Law. It does not require every plaintiff to have an unblemished background in order to prevail, but the court will refuse to assist anyone whose Cause of Action is founded on his or her own misconduct toward the other party. If, for example, a wealthy woman tricks her intended spouse into signing a prenuptial agreement giving him a token \$500 should they Divorce and after marriage she engages in a consistent pattern of conduct leading to a divorce, a court could refuse to enforce the agreement. This maxim reflects one aspect of the principle known as the clean hands doctrine.

**"He who comes into equity must come with clean hands."**

This maxim bars relief for anyone guilty of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for the person with "unclean hands," no matter how unfairly the person's adversary has treated him or her. The maxim is the basis of the clean hands doctrine. Its purpose is to protect the integrity of the court. It does not disapprove only of illegal acts but will deny relief for bad conduct that, as a matter of public policy, ought to be discouraged. A court will ask whether the bad conduct was intentional. This rule is not meant to punish carelessness or a mistake. It is possible that the wrongful conduct is not an act but a failure to act. For example, someone who hires an agent to represent him or her and then sits silently while the agent misleads another party in negotiations is as much responsible for the false statements as if he himself or she herself had made them.

The bad conduct that is condemned by the clean hands doctrine must be a part of the transaction that is the subject of the lawsuit. It is not necessary that it actually have hurt the other party. For example, equity will not relieve a plaintiff who was also trying to evade taxes or defraud creditors with a business deal, even if that person was cheated by the other party in the transaction.

Equity will always decline relief in cases in which both parties have schemed to circumvent the law. In one very old case, a robber filed a bill in equity to force his partner to account for a sum of money. When the real nature of the claim was discovered, the bill was dismissed with costs, and the lawyers were held in Contempt of court for bringing such an action. This famous case has come to be called *The Highwayman* (*Everet v. Williams*, Ex. 1725, 9 L.Q. Rev. 197), and

judges have been saying ever since that they will not sit to take an account between two robbers.

### **Difference between the two maxims**

He who seeks equity must do equity.	He who comes into equity must come with clean hands.
i) It is applicable when both the plaintiff and the defendant have claims of equitable relief against each other.	i) it is applicable when the defendant has no separate claim to relief and the plaintiff's conduct is unfair.
ii) It exposes the condition subsequent to the relief sought.	ii) It is a condition rededent to seeking equitable relief.
iii) It refers to the plaintiff's conduct as the court thinks it ought to be after he comes to the court.	iii) It refers to the plaintiff's conduct before he approaches the court.
iv) The plaintiff has to mould his behavior according to the impositions by the court.	iv) If the plaintiff's conduct is unfair, it would not entitle him to the relief sought.
v) The plaintiff has an option or a choice before him either to submit to the conditions put by the court, or to get out of the court.	v) The conduct of the plaintiff snatched his choice from him. His equitable right therefore neither be recognized nor enforced.
vi) this maxim looks to the future,	vi) This maxim looks at the past.