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Introduction- Topic 1

THE NATURE OF EQUITY- 1873 Judicature Act

- Prevention of **UNCONSCIONABLE CONDUCT**
 - Legione v Harteley (1983)- penalties and forfeitures in a contract
- Categories of **Unconscionable Conduct**
 - –The exploitation of vulnerability or weakness: unconscionable dealing, undue influence
 - –The abuse of positions of trust and confidence: law of trusts, fiduciary obligations
 - –The insistence upon rights in circumstances which make such insistence harsh or oppressive: relief from penalties and forfeiture, equitable set off, specific performance, on the discretionary ground of hardship
 - –The inequitable denial of obligations, doctrine of part performance, principle of equitable estoppel
 - –The unjust retention of property, constructive trusts, principles of subrogation

Maxims of Equity

- *"An established principle or proposition. A principle of law universally admitted as being just and consonant with reason."*
 1. Some so-called maxims are not maxims at all, but being concise and skilfully formulated phrases have gained popular recognition and have come mistakenly to be so regarded;
 2. Others are of definite value and if properly used serve a beneficial purpose;
 3. Even those, which are useful, are dangerous and should not as a rule be employed as the vertebrae of an argument or judicial determination, but rather as an aid or support for other legal reasoning.

Riggs v. Palmer 115 N. Y. 506, 22 N. E. 188 (1889)

- **Facts:** a grandson, knowing that he was a beneficiary under his grandfather's will, murdered him. The statutes regulating the making, proof and effect of wills, and the devolution of property under them, made no exception in the case of a beneficiary who killed the testator to gain the bequest.
 - Law was clear and unambiguous in entitling benefit

- To avoid incongruous result the courts said that statutory interpretation should “best answer the intention which the makers had in view, for *qui hoeret in litera, hoeret in cortice*.”
- **MAXIMS:** “in equity, good guys should win and bad guys should lose”
 1. **Equity does not suffer a wrong without a remedy / Where there is a right there is a remedy** - *Ubi jus, ibi remedium*
 2. **Equity regards substance rather than form**- inherent nature of the matter
 3. **Equity regards as done that which ought to be done**- Joseph Story, *Commentaries on Equity Jurisprudence*, Para 64(g) (13th ed. 1886)
 - a. **Equitable estoppel:** e.g. constructive trust on property given by mother to daughter for disabled son but claimed by daughter
 - b. **Equitable conversion:** money paid for the purchase of land is treated as realty for purposes of descent; land to have been transferred for money is treated as money
 - c. **Equitable lien:** mortgagor agrees to insure property for mortgagee but names himself as beneficiary under policy
 4. **Equality is equity.** - Equity delights in equality- Pro rata distribution
 5. **Where the equities are equal, the first in time will prevail**- *Qui prior est tempore potior est jure*- ‘Tie-breaker rule’
 - a. Simply, as between two equally innocent persons acting in good faith the remedy goes to the first in time
 - i. Trumped by next maxim ...
 6. **Where the equities are equal, the law will prevail**
 - a. Negative and impartial principle
 7. ***Equity follows the law:** *aequitas sequitur legem*
 - a. Significant barrier to equitable relief
 - i. Eg equity cannot impose a new contract or supply deliberate omissions
 8. **One who comes into equity must come with clean hands**
 - a. The **primary factor** is whether the plaintiff sought to mislead or deceive the other party not whether the defendant relied on the misrepresentation.
 - b. Clean hands maxim **not triggered** by mere **negligence**
 - c. Courts may apply it on their own motion
 - d. Act or omission of a person bars them from receiving equity’s assistance

- i. Carmen v Fox Film Corp 269 Fed 928 (2d Cir., 1920)
- ii. *Held: "The conduct of the plaintiff has been such as entitles her to no relief ... as a minor she misled ... and her hands are not clean."*

9. One who seeks equity must do equity

- a. As a condition of receiving equity a party must do or refrain from doing some act which otherwise he could not be constrained to do or omit, to assure fair and just treatment to the other party
 - i. I.e. to return the defendant to the **status quo ante**
- b. Prevents unjust enrichment or unfair advantage
 - i. –A tenant seeking to avoid eviction for non-payment of rent must pay back rent before equity will aid him
 - ii. –Plaintiff delayed seeking rescission for mineral leases until after land proved to have no oil, and could not therefore restore to the defendants leases of the same value

10. Equity aids the vigilant not those who sleep on their rights- Vigilantibus et non dormientibus aequitas subvenit

- a. **Doctrine of Laches** – not 'limitations': the effect of delay (prejudice), not the fact of delay
- b. Although equity will generally follow statutory limitation periods unless real equitable laches occurs
- c. Limitations becomes laches if the delay changes the situations such that the enforcement of right is unfair
 - i. –Witness have died or memories have faded
 - ii. –Market fluctuations cause changes in price or market value especially if plaintiff is able to benefit by the delay

11. Equity acts in personam, not in rem

- a. **Interpleader** –Court to determine which of several parties is rightly the recipient of one party's obligation or property
- b. **Bill of Peace** –To settle an issue common to several suits
- c. **Writ of assistance** –Gives plaintiff actual possession of land
- d. **Writ of sequestration** –Sequestrator (e.g. sheriff) can seize chattels, rents, profits etc
- e. **Writ of prohibition** –Superior court orders inferior court to desist from prosecution of a suit, matter not belonging in that jurisdiction

12. Equity imputes an intention to fulfil an obligation

- a. Doing an act which can be considered the intention to perform an obligation may be deemed performance of the obligation
 - i. Eg Person contracted to obtain property for another but obtains for their own use property is deemed fulfilment of contract

13. Equity acts specifically

- a. Not (usually) compensation or damages but specific relief
- b. Restorative
 - i. Examples:
 - 1. –Specific performance
 - 2. –Injunction: mandatory and propitiatory
 - 3. –Receiverships
 - 4. –Interpleader

MINOR MAXIMS

- **Equity does not stoop to pick up pins**
 - –Disproportionate
- **Equity will not decree a vain thing**
 - –I.e. to accomplish nothing in fact e.g. specific performance of contracts requiring supervision
- **Equity will not be ousted because law courts have adopted an equitable remedy**
 - –Concurrent jurisdiction