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200757 Equity & Trusts

Week 2: Equitable principles and maxims

The maxims of equity are general statements which encapsulate the basic equitable principles and precepts upon which the doctrines of equity are founded.

- Although maxims provide an insight into the nature of equity and exemplify the approach taken by equity in resolving disputes, the maxims are **not rules of law** and **cannot** give specific answers to specific problems
- In **Corin v Patton (1990)** it was stated (Mason CJ and McHugh J) that in relation to the maxim that *equity will not assist a volunteer*:

Like other maxims of equity, it is not a specific rule or principle of law. It is a summary statement of a broad theme which underlines equitable concepts and principles. Its precise scope is necessarily ill-defined and somewhat uncertain.

- The value of the maxims lies in the fact that they reflect certain fundamental ideas and values of the equitable jurisdiction
- Some of the maxims may also be raised as defences **e.g.** the 'clean hands' maxim
- The list of existing maxims is *not* exhaustive or definitive
- The following list contains the maxims that are most widely accepted and recognised:
 1. Equity will not suffer a wrong without a remedy
 2. Equity follows the law
 3. When the equities are equal, the first in time prevails
 4. He who seeks equity must do equity
 5. He who comes to equity must do so with clean hands
 6. Equity assists the diligent and not the needy
 7. Equity is equality
 8. Equity looks to the intent rather than the form
 9. Equity regards as done that which ought to be done
 10. Equity imputes an intention to fulfil an obligation
 11. Equity will not assist a volunteer
 12. Equity acts *in personam*

Equity will not suffer a wrong without a remedy

- This maxim has **more historical** than current significance
- During the early years of equity, the plaintiff would seek the assistance of Chancery on the grounds that he or she suffered a wrong for which no remedy was available at common law— so equity had to intervene
- This maxim can be slightly misleading in the sense that courts of equity did **not** invent a remedy **solely** because the plaintiff had suffered a wrong for which no remedy was available. Rather, the judges attempted to apply one or more of the existing remedies to each individual situation

- Furthermore, “wrong” probably refers to behaviour which is **contrary to law**, not morals
- The maxim is not as significant today as in the past, due to:
 - a) the development of precedent in equity; and
 - b) the reluctance of courts to create entirely new equitable rights and remedies.
- The decline in the relevance of this maxim does not affect the power of a court exercising equitable jurisdiction to mould remedies to suit the circumstances of individual cases nor does it prevent or stultify the adaptation of equitable principles to deal with novel or changing circumstances

Equity follows the law

- Equity recognizes common law and statutory rights, interests and titles, and will enforce them where necessary
- Equity will not allow the holder of common law or statutory rights or interests to exercise or enforce those rights in an unconscionable manner
 - E.g. where a trustee holds legal title to property, equity recognizes the trustee as the ‘owner’ in the legal sense, but will nevertheless enforce the equitable rights of the beneficiaries over the trust estate
 - Equity, therefore, imposes on the legal owner-trustee certain obligations that require that those legal rights are exercised in a particular way for the benefit of the beneficiaries: **DKLR Holdings Co (No 2) v. Commissioner of Stamp Duties** [1980] 1 NSWLR 510, 519 (Hope JA)
- Many of equity’s remedies are designed to correct defects in the law
 - In **Delehunt v Carmody (1986)**: a man and woman agreed to purchase a property in their two names, but the house was registered in the man’s name only. The High Court **held** that equity presumed they held as tenants in common in equity and not as a joint tenancy as the old common law suggested

He who seeks equity must do equity

- Those seeking equitable relief must do so on the condition that they fulfil the legal and equitable obligations imposed on them in the circumstances of the dispute
 - Essentially, to act in a conscientious, reasonable and fair manner in all matters related to the issue before the court
- Equity looks to the conscience of the applicant when deciding whether to grant relief and whether to apply conditions
- It was **held** in **Inglis v Commonwealth Trading Bank of Australia [1972]** that a mortgagor cannot restrain his/her mortgage from proceeding a wrongful sale unless the mortgagor first repays all moneys then due and payable to the mortgagee or into court
- In **Maguire & Tansey v Makaronis (1997)**, M wished to buy a poultry business but as they could not obtain finances themselves, accepted that S would borrow the money and lend it to M. When the business failed, S sought to recover the money advanced. The court accepted that the mortgage was taken by S in circumstances which there was a conflict of interest in their duties towards M and to protect the money advanced. It was **held** that M was entitled to setting aside the mortgage, but M should repay the moneys borrowed with interest at a lower rate than charged on the original amount

He who comes to equity must do so with clean hands

- This maxim is closely linked with the previous maxim and acts as an equitable defence which may disqualify plaintiff from receiving equitable relief