



**House of Peace - Society for Life**

**Mutual Benefit Society  
Private Contract Association**

## **20 Maxims of Equity**

<http://www.youarelaw.org/20-maxims-of-equity-the-heart-of-winning/>

By: [MJT](#) · May 20, 2016

**20 Maxims of Equity - from [Wikipedia \(LINK\)](#)**

### **The Role of Maxims**

Maxims of equity are not a rigid set of rules, but are, rather, general principles which can be deviated from in specific cases.[2] Snell's *Equity*, an English treatise, takes the view that the "Maxims do not cover the whole ground, and moreover they overlap, one maxim contains by implication what belongs to another. Indeed it would not be difficult to reduce all under two: 'Equity will not suffer a wrong to be without a remedy' and 'Equity acts on the person'.[3]

### **List of Maxims**

- 1 Equity sees that as done what ought to be done
- 2 Equity will not suffer a wrong to be without a remedy
- 3 Equity delights in equality
- 4 One who seeks equity must do equity

Thoughts  
Page 1 of 14

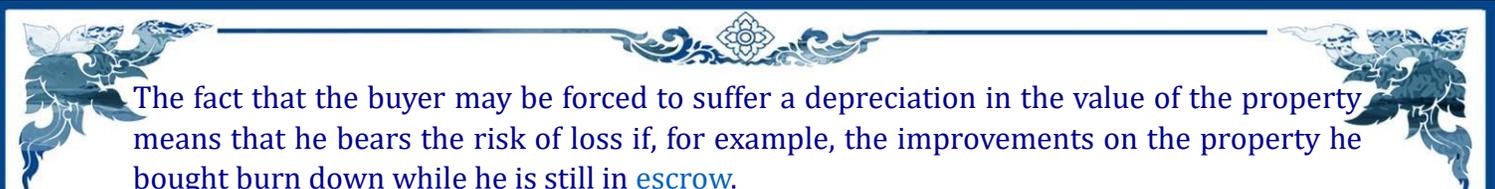
- 
- 
- 
- 5 Equity aids the vigilant, not those who slumber on their rights
  - 6 Equity imputes an intent to fulfill an obligation
  - 7 Equity acts *in personam* or persons
  - 8 Equity abhors a forfeiture
  - 9 Equity does not require an idle gesture
  - 10 He who comes into equity must come with clean hands
  - 11 Equity delights to do justice and not by halves
  - 12 Equity will take jurisdiction to avoid a multiplicity of suits
  - 13 Equity follows the law
  - 14 Equity will not aid a volunteer
  - 15 Where equities are equal, the law will prevail
  - 16 Between equal equities the first in order of time shall prevail
  - 17 Equity will not complete an imperfect gift
  - 18 Equity will not allow a statute to be used as a cloak for fraud
  - 19 Equity will not allow a trust to fail for want of a trustee
  - 20 Equity regards the beneficiary as the true owner

## **1. Equity sees that as done what ought to be done**

This maxim means that when individuals are required, by their agreements or by law, to perform some act of legal significance, equity will regard that act as having been done as it ought to have been done, even before it has actually happened. This makes possible the legal phenomenon of equitable conversion. Sometimes this is phrased as “equity regards as done what should have been done”.

The consequences of this maxim, and of equitable conversion, are significant in their bearing on the risk of loss in transactions. When parties enter a contract for a sale of real property, the buyer is deemed to have obtained an equitable right that becomes a legal right only after the deal is completed.

Due to his equitable interest in the outcome of the transaction, the buyer who suffers a breach may be entitled to the equitable remedy of specific performance (although not always, see below). If he is successful in seeking a remedy at law, he is entitled to the value of the property at the time of breach regardless of whether it has appreciated or depreciated.



The fact that the buyer may be forced to suffer a depreciation in the value of the property means that he bears the risk of loss if, for example, the improvements on the property he bought burn down while he is still in [escrow](#).

Problems may sometimes arise because, through some lapse or omission, insurance coverage is not in force at the time a claim is made. If the policyholder has clearly been at fault in this connection, because, for example, he has not paid premiums when he should have, then it will normally be quite reasonable for an insurer to decline to meet the claim. However, it gets more difficult if the policyholder is no more at fault than the insurer. The fair solution in the circumstances may be arrived at by applying the principle that [equity regards that as done that ought to be done](#). In other words, what would the position have been if what should have been done had been done?

Thus, in one case, premiums on a [life insurance](#) policy were overdue. The insurer's letter to the policyholder warning him of this fact was never received by the policyholder, who died shortly after the policy consequently lapsed. It was clear that if the notice had been received by the policyholder, he or his wife would have taken steps to ensure the policy continued in force, because the policyholder was terminally ill at the time and the coverage provided by the policy was something his wife was plainly going to require in the foreseeable future. Since the policyholder would have been fully entitled to pay the outstanding premium at that stage, regardless of his physical condition, the insurer (with some persuasion from the Bureau) agreed that the matter should be dealt with as if the policyholder had done so. In other words, his widow was entitled to the sum assured less the outstanding premium. In other similar cases, however, it has not been possible to follow the same principle because there has not been sufficiently clear evidence that the policy would have been renewed.

Another illustration of the application of this equitable principle was in connection with [motor vehicle insurance](#). A policyholder was provided with coverage on the basis that she was entitled to a "no claims" discount from her previous insurer. Confirmation to this effect from the previous insurer was required. When that was not forthcoming, her coverage was cancelled by the brokers who had issued the initial coverage note. This was done without reference to the insurer concerned whose normal practice in such circumstances would have been to maintain coverage and to require payment of the full premium until proof of the no claims discount was forthcoming. Such proof was eventually obtained by the policyholder, but only after she had been involved in an accident after the cancellation by the brokers of the policy. Here again, the fair outcome was to look at what would have happened if the insurer's normal practice had been followed. In such circumstances, the policyholder would plainly have still had a policy at the time of the accident. The insurer itself had not acted incorrectly at any stage. However, in the circumstances, it was equitable for it to meet the claim.

## 2. Equity will not suffer a wrong to be without a remedy

When seeking an equitable relief, the one that has been wronged has the stronger hand. The stronger hand is the one that has the capacity to ask for a [legal remedy](#) (judicial relief). In equity, this form of remedy is usually one of [specific performance](#) or an [injunction](#) (injunctive relief). These are superior remedies to those administered at common law such as [damages](#). The [Latin legal maxim](#) is *ubi jus ibi remedium* ("where there is a right, there must be a remedy"), sometimes cited as *ubi jus ibi remedium*.

The maxim is necessarily subordinate to positive principles and cannot be applied either to subvert established rules of law or to give the courts a [jurisdiction](#) hitherto unknown, and it is only in a general not in a literal sense that the maxim has force.

[Case law](#) dealing with principle of this maxim at law include [Ashby v White](#)[4] and [Bivens v. Six Unknown Named Agents](#). [5] The application of this principle at law was key in the decision of [Marbury v. Madison](#), [6] wherein it was necessary to establish that [Marbury](#) had a right to his commission in the first place in order for [Chief Justice Marshall](#) to make his more wide-ranging decision.

## 3. Equity delights in equality

Where two persons have an equal right, the property will be divided equally. Thus equity will presume joint owners to be [tenants in common](#) unless the parties have expressly agreed otherwise. Equity also favours [partition](#), if requested, of jointly held property.

## 4. One who seeks equity must do equity

To receive [equitable relief](#), the petitioning party must be willing to complete all of its own obligations as well. The applicant to a court of equity is just as much subject to the power of that court as the defendant. This maxim may also overlap with the [clean hands maxim](#) (see below).

## 5. Equity aids the vigilant, not those who slumber on their rights

*Vigilantibus non dormientibus aequitas subvenit.*

A person who has been wronged must act relatively swiftly to preserve their rights. Otherwise, they are guilty of [laches](#), an untoward delay in litigation with the presumed intent of denying claims. This differs from a [statute of limitations](#), in that a delay is particularized to individual situations, rather than a general prescribed legal amount of time. In addition, even where a limitation period has not yet run, laches may still occur. The equitable rule of laches and acquiescence was first introduced in [Chief Young Dede v. African Association Ltd](#)[7]

Alternatives:

- Delay defeats equity

- Equity aids the vigilant, not those who sleep on their rights

### **6. Equity imputes an intent to fulfill an obligation**

Generally speaking, near performance of a general [obligation](#) will be treated as sufficient unless the law requires perfect performance, such as in the exercise of an option. Text writers give an example of a [debtor](#) leaving a [legacy](#) to his [creditor](#) equal to or greater than his obligation. Equity regards such a [gift](#) as performance of the obligation so the creditor cannot claim both the legacy and payment of the [debt](#).

### **7. Equity acts in personam or persons**

In England, there was a distinction drawn between the jurisdiction of the law courts and that of the chancery court. Courts of law had jurisdiction over [property](#) as well as [persons](#) and their coercive power arose out of their ability to adjust ownership rights. Courts of equity had power over [persons](#). Their coercive power arose from the ability, on authority of the crown, to hold a violator in [contempt](#), and take away his or her freedom (or money) until he or she purged himself or herself of his or her contumacious behavior. This distinction helped preserve a separation of powers between the two courts.

Nevertheless, courts of equity also developed a doctrine that an applicant must assert a “property interest”. This was a limitation on their own power to issue relief. This does not mean that the courts of equity had taken jurisdiction over property. Rather, it means that they came to require that the applicant assert a right of some significant substance as opposed to a claim for relief based on an injury to mere emotional or dignitary interests.

### **8. Equity abhors a forfeiture**

Today, a mortgagor refers to his interest in the property as his “equity”. The origin of the concept, however, was actually a mirror-image of the current practice.

At [common law](#), a [mortgage](#) was a [conveyance](#) of the [property](#), with a [condition subsequent](#), that if the grantor paid the secured indebtedness to the grantee on or before a date certain (the “law” day) then the conveyance would be void, otherwise to remain in full force and effect. As was inevitable, debtors would be unable to pay on the law day, and if they tendered the debt after the time had passed, the creditor owed no duty to give the land back. So then the debtor would run to the court of equity, plead that there was an unconscionable forfeiture about to occur, and beg the court to grant an equitable decree requiring the lender to surrender the property upon payment of the [secured debt](#) with interest to date. And the equity courts granted these petitions quite regularly and often without regard for the amount of time that had lapsed since the law day had passed. The lender could interpose a defense of [laches](#), saying that so much time had gone by (and so much improvement and betterment had taken place) that it would be inequitable to require undoing the finality of the mortgage conveyance. Other defenses, including [equitable estoppel](#), were used to bar redemption as well.



This unsettling system had a negative impact on the willingness of lenders to accept real estate as collateral security for loans. Since a lender could not re-sell the property until it had been in uncontested possession for years, or unless it could show changed circumstances, the value of real estate collateral was significantly impaired. Impaired, that is, until lawyers concocted the bill of foreclosure, whereby a mortgagee could request a decree that unless the mortgagor paid the debt by a date certain (and after the law date set in the mortgage), the mortgagor would thereafter be barred and foreclosed of all right, [title](#) and [equity of redemption](#) in and to the mortgaged premises.

To complete the circle, one needs to understand that when a mortgagor fails to pay an installment when due, and the mortgagee accelerates the mortgage, requiring immediate repayment of the entire mortgage indebtedness, the mortgagor does not have a right to pay the past-due installment(s) and have the mortgage reinstated. In [Graf v. Hope Building Corp.](#),<sup>[8]</sup> the [New York Court of Appeals](#) observed that in such a case, there was no forfeiture, only the operation of a clause fair on its face, to which the mortgagor had freely assented. In the latter 20th Century, New York's lower courts eroded the *Graf* doctrine to such a degree that it appears that it is no longer the law, and that a court of conscience has the power to mandate that a default be excused if it is equitable to do so. Of course, now that the pendulum is swinging in the opposite direction, we can expect courts to explain where the limits on the newly expanded equity of redemption lie...and it is probably not a coincidence that the cases that have eroded [Graf v. Hope Building Corp.](#) have been accompanied by the rise of [arbitration](#) as a means for enforcing mortgages.<sup>[9]</sup>

### **9. Equity does not require an idle gesture**

Also: Equity will not compel a court to do a vain and useless thing. It would be an idle gesture for the court to grant [reformation of a contract](#) and then to deny to the prevailing party an opportunity to perform it as modified.

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

It is often stated that one who comes into equity must come with [clean hands](#) (or alternatively, equity will not permit a party to profit by his own wrong). In other words, if you ask for help about the actions of someone else but have acted wrongly, then you do not have clean hands and you may not receive the help you seek. For example, if you desire your tenant to vacate, you must not have violated the tenant's rights.

However, the requirement of clean hands does not mean that a "bad person" cannot obtain the aid of equity. "Equity does not demand that its suitors shall have led blameless lives."<sup>[10]</sup> The defense of unclean hands only applies if there is a nexus between the applicant's wrongful act and the rights he wishes to enforce.

For instance, in [Riggs v. Palmer](#),<sup>[11]</sup> a man who had killed his grandfather to receive his inheritance more quickly (and for fear that his grandfather may change his will) lost all right to the inheritance.

In *D & C Builders Ltd v Rees*,<sup>[12]</sup> a small building firm did some work on the house of a couple named Rees. The bill came to £732, of which the Rees had already paid £250. When the builders asked for the balance of £482, the Rees announced that the work was defective, and they were only prepared to pay £300. As the builders were in serious financial difficulties (as the Rees knew), they reluctantly accepted the £300 “in completion of the account”. The decision to accept the money would not normally be binding in contract law, and afterwards the builders sued the Rees for the outstanding amount. The Rees claimed that the court should apply the doctrine of equitable estoppel, which can make promises binding when they would normally not be. However, Lord Denning refused to apply the doctrine, on the grounds that the Rees had taken unfair advantage of the builders’ financial difficulties, and therefore had not come “with clean hands”.

### **11. Equity delights to do justice and not by halves**

When a court of equity is presented with a good claim to equitable relief, and it is clear that the plaintiff *also* sustained monetary damages, the court of equity has jurisdiction to render legal relief, e.g., monetary damages. Hence equity does not stop at granting equitable relief, but goes on to render a full and complete collection of remedies.

### **12. Equity will take jurisdiction to avoid a multiplicity of suits**

Thus, “where a court of equity has all the parties before it, it will adjudicate upon all of the rights of the parties connected with the subject matter of the action, so as to avoid a multiplicity of suits.”<sup>[13]</sup> This is the basis for the procedures of interpleader, class action, and the more rarely used Bill of Peace.

### **13. Equity follows the law**

This maxim, also expressed as *Aequitas sequitur legem* means more fully that “equity will not allow a remedy that is contrary to law.

The Court of Chancery never claimed to override the courts of common law. Story states “where a rule, either of the common or the statute law is direct, and governs the case with all its circumstances, or the particular point, a court of equity is as much bound by it as a court of law, and can as little justify a departure from it.”<sup>[14]</sup> According to Edmund Henry Turner Snell, “It is only when there is some important circumstance disregarded by the common law rules that equity interferes.”<sup>[15]</sup> Cardozo wrote in his dissent in *Graf v. Hope Building Corporation*, 254 N.Y 1 at 9 (1930), “Equity works as a supplement for law and does not supersede the prevailing law.”

Maitland says, “We ought not to think of common law and equity as of two rival systems.”<sup>[16]</sup> “Equity had come not to destroy the law, but to fulfil it. Every jot and every title of law was to be obeyed, but when all this had been done yet something might be needful, something that equity would require.”<sup>[17]</sup><sup>[full citation needed]</sup> The goal of law and equity was the same but due to historical reason they chose a different path. Equity

respected every word of law and every right at law but where the law was defective, in those cases, equity provides equitable right and remedies.

#### **14. Equity will not aid a volunteer**

Equity cannot be used to take back a benefit that was voluntarily but mistakenly conferred without consultation of the receiver. This maxim protects the doctrine of choice.

This maxim is very important in restitution. [Restitution](#) developed as a series of writs called special [assumpsit](#), which were later additions in the courts of law, and were more flexible tools of recovery, based on equity. Restitution could provide means of recovery when people bestowed benefits on one another (such as giving money or providing services) according to contracts that would have been legally unenforceable.

However, pursuant to the equitable maxim, restitution does not allow a volunteer or “officious intermeddler” to recover. A volunteer is not merely someone who acts selflessly. In the legal (and equitable) context, it refers to someone who provides a benefit regardless of whether the recipient wants it. For example, when someone mistakenly builds an improvement on a home, neither equity nor restitution will allow the improver to recover from the homeowner.

An exception to this maxim can be seen in cases where the doctrine of [estoppel](#) applies.

#### **15. Where equities are equal, the law will prevail**

Equity will provide no specific remedies where the parties are equal, or where neither has been wronged.

The significance of this maxim is that applicants to the [chancellors](#) often did so because of the formal [pleading](#) of the law courts, and the lack of flexibility they offered to litigants. Law courts and legislature, as lawmakers, through the limits of the substantive law they had created, thus inculcated a certain status quo that affected private conduct, and private ordering of disputes. Equity, in theory, had the power to alter that status quo, ignoring the limits of legal relief, or legal defenses. But courts of equity were hesitant to do so. This maxim reflects the hesitancy to upset the legal status quo. If in such a case, the law created no [cause of action](#), equity would provide no relief; if the law did provide relief, then the applicant would be obligated to bring a legal, rather than equitable action. This maxim overlaps with the previously mentioned “[equity follows the law.](#)”

#### **16. Between equal equities the first in order of time shall prevail**

This maxim operates where there are two or more competing equitable interests; when two equities are equal the original interest (i.e., the first in time) will succeed.

## **17. Equity will not complete an imperfect gift**

If a donor has made an imperfect [gift](#), i.e. lacking the formalities required at [common law](#), equity will not assist the intended [donee](#). This maxim is a subset of [equity will not assist a volunteer](#).

Note the exception in *Strong v Bird* (1874) LR 18 Eq 315. If the donor appoints the intended donee as executor of his/her will, and the donor subsequently dies, equity will perfect the imperfect gift.

## **18. Equity will not allow a statute to be used as a cloak for fraud**

Equity prevents a party from relying upon an absence of a [statutory](#) formality if to do so would be [unconscionable](#) and unfair. This can occur in [secret trusts](#) and also [constructive trusts](#) and so on.

## **19. Equity will not allow a trust to fail for want of a trustee**

If there is no [trustee](#), whoever has legal [title](#) to the [trust property](#) will be considered the trustee. Otherwise, a court may appoint a trustee. In Ireland, the trustee may be any administrator of a [charity](#) to which the trust is related.

## **20. Equity regards the beneficiary as the true owner**

See also

- [English trusts law](#)
- [Brocard \(law\)](#)
- [Legal maxim](#)
- [List of legal Latin terms](#)

---

SOURCE OF BELOW MATERIAL – The Free Dictionary [LINK](#)

maxim

(redirected from “*Equity aids the vigilant, not those who slumber on their rights.*”)  
Also found in: [Dictionary/thesaurus](#), [Medical](#), [Encyclopedia](#), [Wikipedia](#).

### **(Equity) Maxims**

*A broad statement of principle, the truth and reasonableness of which are self-evident. A rule of [Equity](#), the 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.

**“Equity aids the vigilant, not those who slumber on their rights.”**

This principle recognizes that an adversary can lose evidence, witnesses, and a fair chance to defend himself or herself after the passage of time from the date that the wrong was committed. If the defendant can show disadvantages because for a long time he or she relied on the fact that no lawsuit would be started, then the case should be dismissed in the interests of justice. The law encourages a speedy resolution for every dispute. It does not favor the cause of someone who suddenly wakes up to enforce his or her rights long after discovering that they exist. A long unreasonable delay like this is called Laches, and it is a defense to various forms of equitable relief. “Equity follows the law.”

Equity does not replace or violate the law, but it backs it up and supplements it. Equity follows appropriate rules of law, such as the rules of evidence and pretrial discovery.

**“Equity acts specifically.”**

This maxim means that a party who sues in equity can recover the precise thing that he or she seeks rather than monetary damages as a substitute for it. This maxim is the remedy of [Specific Performance](#).

**“Equity delights to do justice and not by halves.”**

It is the purpose of equity to find a complete answer to the issues that are raised in a lawsuit. It will bring in all the necessary parties, balance their rights, and give a decree that should protect all of them against further litigation on the subject. Whenever necessary, the court will retain jurisdiction in order to supervise enforcement of relief. For example, a lawsuit remains alive as long as an Injunction is in force. Either party may come back into court and



apply for reconsideration of the order if circumstances change. Courts also retain jurisdiction when Child Support payments are ordered. The amount can be changed if the child's needs require an increase or if the supporting parent becomes ill, unemployed, or retired.

**“Equity will not suffer a wrong to be without a remedy.”**

It is the traditional purpose of equity to find solutions in lawsuits. Where money will not pay for the injury, equity has the authority to find another remedy.

This maxim is a restatement of the broad legal principle: Ubi jus, ibi remedium, “Where there is a right, there is a remedy.” The maxim is applied in equity in an orderly way. It does not mean that anything goes. It calls forth recognized remedies for well-established wrongs, wrongs that are invasions of property rights or personal or Civil Rights and that the law considers actionable. A court will not listen to complaints about every petty annoyance or immoral act. “Equity regards substance rather than form.”

Equity will not permit justice to be withheld just because of a technicality. Formalities that frustrate justice will be disregarded and a better approach found for each case. Equity enforces the spirit rather than the letter of the law alone.

**“Equity is equality.”**

This maxim means that equity will not play favorites. For example, a receiver who has been appointed to collect the assets of a business in financial trouble must use the income to pay every creditor an equal share of what is owed to him or her. If a Pension fund loses a large amount of money through poor investment, then everyone who is entitled to benefits must suffer a fair share of the loss. Three adult children of a woman who is killed in an auto accident should share equally in any money that is recovered in a [Wrongful Death](#) action if the children are the woman's only surviving close relatives.

A judge will depart from this principle only under compelling circumstances, but the rule applies only to parties who are on an equal footing. If, for example, the woman in an auto accident died leaving three young children, then the money that is recovered might be distributed in proportion to each child's age. A younger child will have lost his or her mother for more years than an older brother or sister. Also, a receiver would have to prefer a secured creditor over those creditors who had no enforceable interest in a particular asset of the company. Unless there is proof that one person in a group is in a special position, the law will assume that each should share equally in proportion to his or her contribution or loss.

**“Between equal equities the law will prevail.”**

When two parties want the same thing and the court cannot in good conscience say that one has a better right to the item than the other, the court will leave it where it is. For example, a company that had been collecting sales tax and turning it over to the state government found that it had overtaxed and overpaid by 2 percent. It applied for a refund, but the state



refused. The court upheld the state on the ground that the money really belonged to the customers of the company. Since the company had no better right to the money than the state, the court left the money with the state.

**“Between equal equities the first in order of time shall prevail.”**

When two parties each have a right to possess something, then the one who acquired an interest first should prevail in equity. For example, a man advertises a small boat for sale in the classified section of the newspaper. The first person to see the ad offers him \$20 less than the asking price, but the man accepts it. That person says he or she will pick up the boat and pay for it on Saturday. Meanwhile another person comes by, offers the man more money, and the man takes it. Who owns the boat? Contract law and equity agree that the first buyer gets the boat, and the second buyer gets his or her money back.

**“Equity abhors a forfeiture.”**

A [Forfeiture](#) is a total loss of a right or a thing because of the failure to do something as required. A total loss is usually a rather stiff penalty. Unless a penalty is reasonable in relation to the seriousness of the fault, it is too harsh. In fairness and good conscience, a court of equity will refuse to permit an unreasonable forfeiture. This maxim has particularly strong application to the ownership of land, an interest for which the law shows great respect. Title to land should never be lost for a trivial reason— for example, a delay of only a few days in closing a deal to purchase a house.

Generally, equity will not interfere with a forfeiture that is required by statute, such as the loss of an airplane illegally used to smuggle drugs into the country. Unless the statute violates the due process requirements of the Constitution, the penalty should be enforced.

“Equity abhors a forfeiture” does not overcome the maxim that “equity follows the law.”

Neither will equity disregard a contract provision that was fairly bargained. Generally, it is assumed that a party who does most of what is required in a business contract and does it in a reasonable way, should not be penalized for the violation of a minor technicality. A contractor who completes work on a bridge one day late, for example, should not be treated as though he or she had breached the entire contract. If the parties, however, include in their agreement an express provision, such as time is of the essence, this means that both parties understand that performance on time is essential. The party who fails to perform on time would forfeit all rights under the contract.

**Further readings**

Hoffer, Peter Charles. 1990. *The Law’s Conscience: Equitable Constitutionalism in America*. Chapel Hill:Univ. of North Carolina Press.

Kraut, Jayson, et al. 1983. *American Jurisprudence*. Rochester, N.Y.: Lawyers Cooperative.



## Cross-references

[Equity](#); [Forfeiture](#); [Laches](#).

West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

### Maxim

*noun* adage, aphorism, aphoristic expression, axiom, byword, canon, established principle, expression, gnomic saying, moralism, pithy saying, postulate, precept, principium, principle, proverb, proverbial saying, regula, rule, sage reflection, saw, saying, sententious saying, sententious utterance, statement of general truth, teaching, truth, wise saying

---

See also: article, belief, catchword, code, comment, constant, constitution, directive, doctrine, dogma, expression, holding, law, ordinance, precedent, precept, prescription, principle, rule Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc.

### Maxim

1. An established principle or proposition. A principle of law universally admitted, as being just and consonant with reason.
2. Maxims in law are somewhat like axioms in geometry. 1 Bl. Com. 68. They are principles and authorities, and part of the general customs or common law of the land; and are of the same strength as acts of parliament, when the judges have determined what is a maxim; which belongs to the judges and not the jury. Terms do Ley; Doct. & Stud. Dial. 1, c. 8. Maxims of the law are holden for law, and all other cases that may be applied to them shall be taken for granted. 1 Inst. 11. 67; 4 Rep. See 1 Com. c. 68; Plowd. 27, b.
3. The application of the maxim to the case before the court, is generally the only difficulty. The true method of making the application is to ascertain how the maxim arose, and to consider whether the case to which it is applied is of the same character, or whether it is an exception to an apparently general rule.
4. The alterations of any of the maxims of the common law are dangerous. 2 Inst. 210.

**A Law Dictionary, Adapted to the Constitution and Laws of the United States.**

**By John Bouvier. Published 1856.**