



# The 20 Maxims of Equity

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Equity is an ancient judicial system originating in England by which courts apply principles of general fairness in situations where application of the common law would bring about injustice. Article III of the U.S. Constitution extends the judicial power of courts to both cases in law and in equity. While the Federal Rules of Civil Procedure combined law and equity into a single type of suit—the civil action—in 1938, the distinction between law and equity is still very much alive. Claims in equity afford different remedies, do not permit a right to trial by jury under the Seventh Amendment (indeed, equitable claims *must* be decided by the judge even if a jury is deciding other claims at law), and equitable remedies are generally unavailable when there is an “adequate remedy at law.”

While they do not constitute binding precedent in US courts, equitable claims and the courts that preside over them are traditionally guided by the 20 Maxims of Equity, which are certainly *persuasive precedent*. The 11th Circuit was kind enough to recently gather 13 of these maxims in one place in *Slater v. U.S. Steel Corp.*, 820 F.3d 1193, 1247 (2016), but of course we pride ourselves in creating a more comprehensive list:

1. **One who seeks equity must do equity:** this is “[p]erhaps one of the most basic maxims of equity.” *Anstalt v. Ness Energy Int’l, Inc.*, Case No. 10-1218-D (W.D. Okla. Mar. 28, 2012). Simply put, a party petitioning the court for equitable relief must be willing to fulfill all of its own obligations.

2. **Equity will not suffer a wrong to be without a remedy:** “The equitable power of a court is not bound by cast0iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 126 F. Supp. 3d 611, 642 (D.S.C. 2015) (quoting *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108 (2009)).

- 3. Equity regards as done what ought to be done:** "It is a fiction of equity designed to effectuate the obvious intention of the parties and to promote justice." *Rodeck v. U.S.*, 697 F. Supp. 1508 (D. Minn. 1988).
- 4. Equity is a sort of equality:** "As the FMCRA is silent on the question of priority, and as 'equity is equality,' we find that the proper course here is to distribute the limited funds on a ratable basis, such that each claimant receives 'a share of the fund proportionate to their share of the total judgment figure.'" *Commercial Union Ins. Co. v. U.S.*, 999 F.2d 581 (D.C. Cir. 1993) (citing Dobbs, *The Law of Remedies* § 2.12 at 130).
- 5. Equity aids the vigilant, and not those who slumber on their rights:** This is the basis for the equitable defense of laches. See *Eason v. Whitmer*, Case No. 20-12252 (E.D. Mich. Sep. 9, 2020) (quoting *Hays v. Port of Seattle*, 251 U.S. 233, 239 (1920)).
- 6. Equity imputes an intent to fulfill an obligation:** Near performance of a general obligation is sufficient unless the law requires perfect performance. See *Union Trust Co. of Maryland v. Townsend*, 101 F. 2d 903 (4th Cir. 1939).
- 7. Equity acts *in personam*:** Equity acts on the duties of people, not objects, or "[e]quity acts *in personam*, not *in rem*." *Diallo v. Redwood Invs., LLC*, Case No. 18-cv-1793 (S.D. Cal. Aug. 6, 2019). Today, the term "people" includes legal entities like corporations.
- 8. Equity abhors a forfeiture:** Largely foreclosed (pun intended) today by statute, the original theory was that if one failed to make a payment for property received on time and had that property seized at law, they could pay the debt late and recover the property in equity. Today, it may be more important to understand the "exception to the general rule that 'equity abhors a forfeiture' . . . [which] states that 'forfeiture is favored, when, instead of working a loss or injury contrary to equity, it promotes justice and equity and protects the owner against the indifference, laches, and injurious conduct of the lessee.'" *Bezilla v. Tug Hill Operating, LLC*, Case No. 5:17-cv-123 (N.D.W. Va. Nov. 13, 2017) (internal citations omitted).
- 9. Equity does not require an idle gesture:** "'If the employee desires reinstatement for strategic purposes, that is a valid basis for denial' . . . 'Equity does not engage in idle gestures,' and the Court will not order Plaintiff to work as a material handler at Volvo without it being unambiguously clear that she still wants this job." *Arroyo v. Volvo Grp. N. Am., LLC*, Case No. 12-cv-6859 (N.D. Ill. Jul. 13, 2017) (internal citations omitted).
- 10. He who comes into equity must come with clean hands:** "The equitable defense of unclean hands requires that '[h]e who comes into equity must come with clean hands.'" *E.O.H.C. ex rel. M.S.H.S. v. Barr*, Case No. 5:19-cv-06144-JDW (E.D. Pa. Jan. 22, 2020) (citing *Keystone Driller Co. v. Genn. Excavator Co.*, 290 U.S. 240, 241 (1933)).
- 11. Equity delights to do justice, and not by halves:** "At the remedy stage – a violation having been established – it may be appropriate to resolve marginal doubts against the wrongdoers. Courts should not be grudging in remedying injustice. 'Equity delights to do justice, and not by halves.'" *Jeffers v. Clinton*, 756 F. Supp. 1195 (E.D. Ark. 1990).

12. **Equity will take jurisdiction to avoid a multiplicity of suits:** Good luck today with this one. While the spirit of this maxim may remain alive, it has largely been subsumed by rules concerning MDL, class actions, collective actions, and case law on the topic. "This case does not come within the principle that equity will take jurisdiction to avoid a multiplicity of suits." *Ohio Farmers' Ins. v. Yoas*, 65 F.2d 651 (9th Cir. 1933).

13. **Equity follows the law:** "As Justice Story explained, '[w]here a rule [of] . . . 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.'" *Ibson v. United Healthcare Servs., Inc.*, 877 F.3d 384 (8th Cir. 2017) (quoting Joseph Story, *Commentaries on Equity Jurisprudence* § 64 (12th ed. 1877)).

14. **Equity will not assist a volunteer:** "An unjust enrichment claim will not lie, however, if the benefit is conferred 'by a volunteer or intermeddler.'" *Al-Sabah v. World Bus. Lenders, LLC*, Case No. SAG-18-2958 (D. Md. Jul. 9, 2020). And conversely, in restitution claims, equity will not create a quasi-contract to a promisee if no consideration was provided (a "volunteer" in 18th Century English).

15. **Equity will not complete an imperfect gift:** "Equity will not make [a trust] where none has been clearly declared. A defective or imperfect gift will not be converted into a trust." *Weil v. Commissioner of Internal Revenue*, 82 F.2d 561 (5th Cir. 1936).

16. **Where equities are equal, the law will prevail:** "In any event the equity of the taxpayer is no greater than that of the United States and when equities are equal, the legal title will prevail." *Travel Industries of Kansas v. U.S.*, 425 F.2d 1297 (10th Cir. 1970).

17. **Between equal equities the first in order of time shall prevail:** The general principle with regard to real property is "first in time, first in right." *Bank of Am., N.A. v. Esplanade at Damonte Ranch Homeowners' Ass'n*, 3:16-CV-00116-RCJ-VPC (D. Nev. May 23, 2017). Comparing timing with legal and equitable claims, "[u]nder the common law, an earlier claim had priority over a later claim if both claims were legal claims . . . The same was true if both claims were equitable . . . [order in time] only mattered under the common law where [one party] had a legal claim and a competing earlier claim to the property was purely equitable." *Id.*

18. **Equity will not allow a statute to be used as a cloak for fraud:** "Courts of equity, independently of any statute, will relieve against fraud, if proceedings are seasonably brought after its discovery. Indeed, to use the language of Lord Cottenham, a court of equity will wrest property fraudulently acquired, not only from the perpetrator of the fraud, but 'from his children and his children's children,' or, as was said in another English case, 'from any person to whom he may have parcelled out the fruits of his fraud.'" *Citizens Bank v. Leffler*, 228 Md. 262, 269 (Md. 1962).

19. **Equity will not allow a trust to fail for want of a trustee:** Even if a trustee dies before the creation of a testamentary trust, for example, or if the trustee is incompetent at the time she accepts the position, these failures would not cause the creation of the trust to fail. *See, e.g., Fulk & Needham, Inc. v. U.S.*, 288 F. Supp. 39, 44 (M.D.N.C. 1968).

20. **Equity regards the beneficiary as the true owner:** Another historical maxim that no longer applies—common law once provided no action by the beneficiary of a trust against the trustee, but that has since changed

with the common law claim for breach of fiduciary duty.

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