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absence of any specific law or usage in matters placed before the court.

- The English laws also contributed to the development of Equity jurisdiction in India. The Regulation of 1827 laid down a provision which required the East India company courts to act according to the principles of justice, Equity & good conscience in the absence of any specific law or usage.
- The principal of Equity has been laid down / codified in various laws. such as Specific Relief Act 1877, the Indian Trust Act 1882, the Indian Succession Act, The Gaurdian & Wards Act, the Indian Contract Act, 1872 & the Transfer of Property Act 1882.

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MODULE 2

MAXIMS & PRINCIPLES OF EQUITY.

1. Equity will not suffer a wrong without a remedy

- It basically means that where there is a right there is a remedy.
- It is expressed by "ubi jus ibi remedium"
- This maxim indicates the scope & the basis on which the structure of Equity rests.
- In equity, this form of remedy is usually one of specific performance or an injunction these are superior remedies to those administered at common law such as damage.
- This 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.
- This can be applied where:
  - (a) Infringement of Legal Right where the Plaintiff sustains no damage. (Injuria Sine Damnum)
  - (b) Where the defendant holds Evidence.
  - (c) In cases of Trust
  - (d) Specific Performance of contract

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- In Ashby v. White, wherein a qualified voter was not allowed to vote and who therefore sued the returning officer it was held that if the law gives a man right, he must have a means to maintain it, and a remedy, if he is injured in the enjoyment of it.

2. <u>Equity follows the law.</u>

- Also expressed as Aequitas sequitur Legem meaning "equity will not allow a remedy that is contrary to law".
- This maxim demonstrated largely and illustrated by the many instances in which equity has adopted the same position as law.
- The maxim indicates the discipline which the chancery courts observed while administering justice according to conscience.
- Maitland said "Thus Equity came not to destroy the law but to fullfill it, supplement it, to explain it".
- The Goal of Equity & law are the same but due to their nature and due to historic accident they chose different paths.
- This maxim is basically applied under the Registration of Documents i.e S.17 of the Registration Acts which governs the rules of optional registration of document. And is applied under the Promissory Estoppel.

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3. 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 found on his or her own misconduct towards the other party.

↳ To obtain equitable relief the plaintiff must himself be prepared to do equity, that is, a plaintiff must recognize and submit to the right of his adversary.

↳ This maxim can be applied for:

(a) illegal loans.

(b) Benefit taken under voidable contract

(c) Doctrine of Election

↳ Retention of Benefit & getting a new Benefit.

(d) Set-off.

4. He who seeks Equity must come with clean hands.

↳ Equity demands fairness not only from the defendant but also from the plaintiff. It is therefore said that "he that had committed an inequity, shall not have equity."

- This maxim bars relief for anyone guilty of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for a person with "unclean hands", no matter how unfairly the person's adversary has treated him or her.
- The Clean hand doctrine.
  - there a court will ask whether the bad conduct of the person 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.
- In the case of Everet v. William also known as the Highwayman case: two robbers were partners in their own way. Due to a disagreement in shares one of them filed a bill against another for accounts of the profits of robbery. Courts of equity do grant relief in case of partnership but here was a case where the cause of action arose from an illegal occupation so the court refused to help them.
- Application of Maxim:
  (a) Specific performance of contract.
  (b). illegal agreement
  (c) Person against whom fraud was committed.
  (d) misrepresentation of a minor's age.