

Maxims for Equity

1. EQUITY FOLLOWS THE LAW

Meaning

The maxim indicates the discipline which the Chancery Courts observed while administering justice according to conscience. As has been observed by Jekyll, M.R: "The discretion of the court is governed by the rules of law and equity, which are not to oppose, but each, in turn, to be subservient to the other." Maitland said, "*Thus equity came not to destroy the law but to fulfill it, to supplement it, to explain it.*" The goal of equity and law is the same, but due to their nature and due to historic accident they chose different paths. Equity respected every word of law and every right at law but where the law was defective, in those instances, these Common Law rights were controlled by recognition of equitable Rights. Snell therefore explained this maxim in slightly different way: "*Equity follows the law, but not slavishly, nor always.*"

Application and cases

At common law, where a person died intestate who owned an estate in fee-simple, leaving sons and daughters, the eldest son was entitled to the whole of the land to the exclusion of his younger brothers and sisters. This was unfair, yet no relief was granted by Equity Courts. But in this case it was held that if the son had induced his father not to make a will by agreeing to divide the estate with his brothers and sisters, equity would have interfered and compelled him to carry out his promise, because it would have been against conscience to allow the son to keep the benefit of a legal estate which he obtained by reason of his promise. This decision was held in *Stickland v. Aldridge*. Equity follows the law and even if by analogy law can be followed, it should be followed.

Limitation

- i) Where a rule of law did not specifically and clearly apply
- ii) Where even by analogy the rule of law did not apply

Recognition

Bangladesh has not recognized the well-known distinction between legal and equitable interests. Equity rules in Bangladesh, therefore, cannot override the specific provisions of law. As for example, every suit in Bangladesh has to be brought within the limitation period and no judge can create an exception to this or can prolong the time-limit or stop the rule from taking effect on principles of equity. Such a decision was held in Indian *Appa Narsappa Magdum* case.

The Maxims Of Equity Pearson Uk

Richard Bailey



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