

LAW GAT PREPARATION NOTES

Topic: “Maxim of Equity”

Maxim of Equity is included in Civil Law under Law GAT Course Curriculum

Past Law GAT or SEE Law papers Maxims of Equity questions are included



AKRAM LAW ACADEMY

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INSTRUCTOR LAW GAT SCORE:	88
ABOUT INSTRUCTOR:	A LAW GRADUATE FROM INTERNATIONAL ISLAMIC UNIVERSITY AND A PRACTICING LAWYER. PROVIDES GUIDANCE AND LECTURES IN LAW GAT OR SEE LAW TEST PREPARATION.
SOURCE OF LECTURE:	MAIN LAW BOOKS ESPECIALLY BARE ACTS
MODE OF EVALUATION:	OBJECTIVE PAPER

How to prepare Law GAT: Study law subjects according to HEC Law Gat Curriculum. Law GAT MCQs books available in markets are bulky containing irrelevant material and also contained errors, so the most authentic source of test preparation is the main law books called Bare Acts, which are freely available here [“Akram Law Academy”](http://Akram Law Academy).

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Maxims of Equity

1. Equity follows the law [*aequitas sequitur legem*]

Equity, the maxim states, will not permit a remedy that is contrary to the law. The maxim indicates the discipline which the Equity Court (also called Chancery Courts) observed while administering justice according to conscience. 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 and remedies. This maxim indicates that, where possible, equity will ensure that its own rules are in line with the common law ones.

2. Equity will not suffer a wrong to be without a remedy **[*aequitas injuriam non esse permittet sine remedio*]**

Or

Where there is a right, there is a remedy [*ubi jus ibi remedium*]

Where there is a right there is a remedy. This idea is expressed in the Latin Maxim *ubi jus ibi remedium*. It means that no wrong should go un-redressed if it is capable of being remedied by courts. This maxim indicates the width of the scope and the basis of on which the structure of equity rests. This maxim imports that where the common law confers a right, it gives also a remedy or right of action for interference with or infringement of that right.

This maxim indicates that equity will not allow the technical defects of the common law to prevent worthy plaintiffs from obtaining redress. It could be seen, therefore, as the opposite of the maxim that equity follows the law.

3. He who seeks Equity must do Equity [qui aequitatem quaereret, aequitatem agendum est]

In order to receive an equitable relief, the plaintiff must be willing to complete all of his own obligations towards the defendant.

So the person who seeks an equitable remedy must be prepared to act equitably, and the court may oblige him to do so.

In the field of contract, the court will not grant an injunction to prevent breach for the benefit of a party who is not prepared to perform his side of the bargain (Chappell v Times Newspapers [1975] 2 All ER 233). Where a contract is rescinded the party seeking rescission must be prepared to return all benefits received under it.

4. He who comes to equity must come with clean hands

[qui ad aequitatem venit, puris manibus veniendum est]

This maxim means that a party seeking an equitable remedy must not himself be guilty of misconduct. The court may therefore consider the past conduct of the claimant/plaintiff (illegal or fraudulent behaviour on the part of the claimant/plaintiff). It appears, however, that the 'uncleanness' must relate directly to the matter in hand.

In **Highwaymen case**, two robbers were partners in their own way. Due to a disagreement in shares one of them filed a suit against another for accounts of the profits of robbery. Courts of equity refused to grant relief as claimant cause of action arose from an illegal occupation. The working of this maxim

could be seen while giving the relief of specific performance, injunction, rescission or cancellation.

5. Delay defeats equity

A Latin term in this regard is “Vigilantibus, non dormientibus, jura subvenient” which means “Equity aids the vigilant and not the indolent (lazy)”.

Two matters must be noted here. First, the time in which an action for equitable relief may be sought may be governed by the Limitation Act 1908 and, second, even where there is no statutory limitation, it will be governed by the equitable principle of laches. So, if one sleeps on his rights, his rights will slip away from him.

6. Equality is equity [aequitas est quasi equalita]

This maxim means that as far as possible equity would put the litigating parties on an equal level so far as their rights and responsibilities are concerned.

- i) Equal distribution of joint funds and joint purchases
- ii) Contribution between co-trustees, co-sureties and co-contractors

7. Equity will not assist a volunteer [aequitas voluntario non subvenit]

Basically, the person who is involved in an action usually has an important interest in the issue under litigation. *Equity* will not assist if the Common Law requirements for a gift are not met. The exception is if the doctrine of estoppel applies. Similarly, if a donor has made an imperfect gift, that is, lacking the formalities required at the Common Law, *Equity* will not assist

the intended donee. Thus, the maxim is synonymous to “Equity will not complete an imperfect gift”.

Unless consideration is given, an undertaking to give something is unenforceable, being a mere gratuitous promise. Therefore, unless property in the thing promised has been transferred, the intended donee can do nothing to enforce. Likewise, where there is a gratuitous promise to create a trust the property must have been vested in the trustees for the trust to be enforceable.

8. Equity acts in personam [aequitas in personam facit]

Equity here acts against the person (personam) and not his property (in rem). It asserts jurisdiction over the person of the defendant and enforces its orders against him/her by contempt or other means. This is the tenet in the early days of the Court of Chancery whose decrees were directed in personam. The maxim also meant that in property matters, Equity would act against the person of the defendant by committing him to prison for contempt if he failed to obey a decree rather than in rem i.e. against the property involved in the dispute. Another feature of this principle is that equitable rights were not enforceable against everybody.

The judgment at law in effect was binding on the whole world and equity intervened only against the individual defendant, who was prevented from enforcing his legal rights.

9. Equity regards as done that which ought to be done **[aequitas factum habet quod fieri oportuit]**

If someone undertakes an obligation for the other, equity courts look on it as done and as producing the same results as if the obligation had been actually

performed. This relates most obviously to specific performance. If vendor and purchaser have entered into a specifically enforceable contract (for example, for the sale of land), in equity the purchaser acquires a beneficial interest and the vendor holds the land on constructive trust for the purchaser. However, it should be noted that the duty of the constructive trustee is simply to convey the land to the purchaser in accordance with the terms of the contract.

10. Equity looks to the intent, not the form [*aequitas spectat interioram non formam*]

Or

Equity looks to the substance rather than the form

Generally, at Common Law, observance of the correct forms or procedures in relation to the execution of any transaction or contract was all important. Failure to do so often rendered a contract or transaction invalid or led to a total loss of the legal rights of a party. However, *Equity*, looking to the intents or motives of an action rather than the forms, considered it unfair for a party to insist on strict observance of form and thereby defeat the substance of the transaction or contract and the true intention of the parties. Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it finds that by insisting on the form, the substance will be defeated, it holds it inequitable to allow a person to insist on such form, and thereby defeat the substance.

11. Where the equities are equal, the law prevails [*in aequitatis paribus, lex superat*]

This maxim simply means that Equity will provide no specific remedies where the parties are equal or where neither has been wronged. In other

words, the maxim relates to where there are competing interests in property, one of which is a legal interest and the other equitable. Thus, when the claims of both parties are meritoriously equal, precedence is given to the legal interest.

**12. Where the equities are equal, the first in time prevails
[in aequitatis paribus, prior in tempore superat]**

The maxim is similar to the one above and concerns also the priority between two competing equitable interests in property. The general rule is that equitable interests rank according to the order of their creation. The maxim was developed in connection with interests in lands. When a purchaser acquires property bona fide without notice of a defect in the vendor's title, the equities are equal and the legal estate will prevail. If the purchaser takes title with notice of the defect, the earlier title, if valid, will prevail.

**13. Equity, like nature, does nothing in vain [aequitas,
sicut natura, nil frustra facit]**

Since the rules of *Equity* is established on good sense, reason, pity and fairness as, often, those of the Common Law, it is only proper to understand that law, especially as it relates to *Equity*, will not direct that vain or impossible things be done. Rather, *Equity* has regard for the order of nature as suggested by the maxim – *lex spectat naturae ordinem*. Indeed, “Equity does not require an idle gesture”.

14. Equity will not permit a statute to be used as an instrument of fraud

This principle, which may be taken as a more specific example of the previous maxim regarding formality. It should be stressed that equity will not ignore statutory requirements normally, but only, as the maxim implies, where it would be unconscionable to allow a party to rely on a statutory requirement to another's detriment. This problem has commonly arisen in situations where contracts are only enforceable if in writing, as required by the Law of Property Act 1925 s 53(1)(b).

Bannister v Bannister [1948] 2 All ER 133 In this case, A conveyed a house to B and B orally agreed to allow A to live in it rent free as long as she wished. This agreement was unenforceable as it was not in writing and B attempted to evict A. The Court of Appeal held that the agreement was enforceable, notwithstanding the requirement of writing and accordingly A was tenant for life.

Notes in Law GAT or SEE Law Preparation

For preparation of Law GAT or SEE Law notes are prepared according to test pattern. Anyone who needs these notes may contact at 03245971547 or email asifakram35@hotmail.com.

Sr. No	Topic	Price
1.	Public International law	400
	Private International law	100
	English Jurisprudence	400
	Islamic Jurisprudence	400
	Amendments to Constitution of Pakistan 1973	200
	English Legal Language	Free
	Maxims of Equity	Free
	Canons of Professional	Free

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Lecturers in Law GAT or SEE Law Preparation

Lecturers are provided to students in preparation of Law GAT or SEE Law test. Bare Acts are recommended for preparation of Law GAT or SEE Law test. Anyone wants to prepare law papers (law GAT, SEE Law, Judicial or prosecutor) may contact.

Sr. No	Topic
9.	Qanoon-e-Shadhat 1984
10.	Pakistan Penal Code 1860
11.	Criminal Procedure Code 1898
12.	Pakistan Penal Code 1860
13.	Civil Procedure Code 1908
14.	Specific Relief Act 1877
15.	Limitation Act 1908
16.	Maxims of Equity
17.	Law of Tort
18.	English Legal Language
19.	Canons of Professional
20.	International law
21.	Contract Act 1872
22.	Constitution of Pakistan 1973
23.	Constitutional History of Pakistan
24.	World Constitution
25.	English Jurisprudence
26.	Islamic Jurisprudence

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