



## The 12 Principles of *Equity*<sup>1</sup>

In the last fifty years American Jurisprudence has lost much of its “prudence” as it has wandered away from its traditional nature of *Balancing Law & Equity*. The preponderance of justice is now placed on *Law*, often neglecting *Equity*, causing jurisprudence to be more and more *adversarial*. The Principles of Equity – sometimes referred to as the “law’s conscience” are almost forgotten and seldom employed as a basis of court-room advocacy and judicial decision-making.

This is especially important today in long-term contracts, as people and circumstances may have changed dramatically since the inception of the “deal.” The 12 Principles of Equity aims to bring Law and *Equity* into a better equilibrium. We suggest referencing these (in an contract’s appendix) to enable future adjustment terms and conditions and to reduce the chance of litigation in the future.

### Summary of the 12 Principles of Equity

- 1) **Equity directs: “Do What Should Have Been Done”**
- 2) **Equity Favors the Trustworthy**
- 3) **Equity Supports Fiduciary Responsibility**
- 4) **Equity Abhors a Forfeiture**
- 5) **The Wronged Shall Not Suffer In Equity Without Remedy**
- 6) **Equity Delights in Doing Justice, Aiming for Fairness, but Not Just by Halves**
- 7) **One Who Seeks Equity Must Do Equity**
- 8) **He Who Comes Into Equity Must Come With Clean Hands**
- 9) **Equity Aids the Honest & Vigilant, Not the Shrewd & Indolent**
- 10) **Equity Does Not Tolerate Frivolity, Malice, Abuse of Law or the Cloak of Fraud**
- 11) **Equity Follows the Law**
- 12) **Equity Honors Time**

### 1. **Equity Directs: “Do What Should Have Been Done”**

In Latin: *Verum quid sit iniuria*

This maxim means that if a contract, agreement, or relationship was unclear, ambiguous, contradictory, or misconstrued at the outset, in *Equity*, the arrangement can be righted to correct the wrongs. If some act of legal significance is required to be performed, *Equity* will regard that act as having been done *as it ought to have been done*, even before it has actually happened.

For example, 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).

If a contract was ambiguous, verbal, or became inequitable over time, in *Equity*, a judge can redraw the contract after the fact to reflect the intention of the parties based on the manner in which they intended or actually conducted their business.

## 2. Equity Favors the Trustworthy

In Latin: *Fiunt certae divinationum aequitas favet*

In deciding a case based on *Equity*, the decision on equitable distribution should discount those who have been untrustworthy and give weight to those who acted in an honest manner.

This principle of *trustworthiness* can be tested by eight criteria (FARTHEST):<sup>2</sup>

**F**airness – who has acted fairly throughout the transaction?

**A**ccountability – who has fulfilled their obligations most completely?

**R**espect – who has respected the other party's interests?

**T**ruth – who has told the truth consistently and completely?

**H**onorable Purpose – who has acted regularly with integrity for the greater good?

**E**thics – who has been ethical in all their statements and actions?

**S**ecurity – who has acted most prudently to reduce risks and chances of failure?

**T**ransparency – who has been open and unguarded in their sharing of intent and information?

## 3. Equity Supports Fiduciary Responsibility

This can be considered a corollary to Trustworthiness (#2). In arrangements such as long-term contracts, partnerships and joint tenancies, the parties have a Fiduciary Responsibility to each other.

*Fiduciary* (from Latin *fiduciaries*) means we have a “trusted relationship” with each other, going far beyond just financial obligations.

For example, in real estate partnerships or condominiums (which are small communities), there is a Mutual Fiduciary Responsibility that all members have to each other to work and act for the mutual benefit of the whole. The Directors or Partners, as fiduciaries, have a duty to ensure a trustworthy mode of cooperation, to function with the highest standards of ethics, to manage their funds prudently, to ensure equitable treatment of all, to protect and preserve the Association's or Partnership's property, and to carefully and prudently manage their joint assets.

## 4. Equity Abhors a Forfeiture

*Odit damno aequitatis* – Foreclosure, Forfeiture, or Loss is a condition where at least one party loses their *Equity* rights in a property or asset.

When the often long and drawn-out process of foreclosure or litigation occurs, the contestants often create a lose-lose condition where the erosion of value due to time, neglect, penalties, or excessive legal fees threatens the rights of one or more of the interested parties. *Equity* can intervene to make an unreasonable condition fair, just, and reasonable.

## 5. The Wronged Shall Not Suffer In Equity Without Remedy

The Latin legal maxim is *ubi jus ibi remedium* ("where there is a right there must be a remedy") which means, in essence, that no injustice should be left untreated. When seeking an equitable relief, the one that has been wronged has the stronger hand in the application of judicial relief.

In *Equity*, this form of remedy is usually one of specific performance or an injunction (injunctive relief).

This maxim cannot be applied either to subvert established rules of law or to give the courts a jurisdiction hitherto unknown, and is a general principle, not a direct solution to every problem facing the court.

## 6. Equity Delights in Doing Justice, Aiming for Fairness, but Not Just by Halves

*In Latin: Aequitas est quasi aequalitas* -- Where two persons have an equal right, the property will be divided equally.

This maxim flows from the fundamental notion of equality or impartiality due to the conception of *Equity* and is the source of many equitable doctrines. The rule of ordinary law may give one party an advantage over the other. But *Equity* puts the litigating parties on a footing of equality. *Equity* proceeds in the principle that a right or liability/risk should as far as possible be equalized among all interested. In other words, if two parties have equal right in any property, so it is to be distributed equally as per the concerned law.

However, not every situation holds the parties in equal balance. Thus the "Aim of *Equity*" is Fairness, Justice, and Proportionate Balance. For example if one party bears the preponderance of risk, their "fair share" of rewards may be substantially more than half.

*Equity* does not stop at granting equitable relief, but goes on to render a full and complete collection of remedies.<sup>3</sup>

## 7. One Who Seeks Equity Must Do Equity

*Qui quaerit aequitas non est aequitas* --To receive Equitable Relief, the petitioning party must be willing to complete all of its own obligations as well.

The Plaintiff seeking Equitable Relief 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 next maxim)

## 8. 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). One interpretation of this principle is that *Equity Does Not Support Greed* – unreasonable demands are considered greedy.

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 have not 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." 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.

## 9. Equity Aids the Honest & Vigilant, Not the Shrewd & Indolent

In Latin: *Vigilantibus non dormientibus aequitas subvenit* -- the law comes to the assistance of those who are vigilant with their rights, and not those who sleep on their rights.

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

When one party intentionally deceives another, delays can occur. That is why the statute of limitations only begins when the fraud is discovered, which can be years later.

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.

Where a claimant is under an obligation to do one thing but does another which he believes are in the best interests of both parties, his action may be treated as close enough approximation of the required act. A claimant who has undertaken an obligation, will, through his later conduct be interpreted as fulfilment of that obligation.

## 10. Equity Does Not Tolerate Frivolity, Malice, Abuse of Law nor Cloak of Fraud

Equitable relief enables a party to prevent abuses by another, thus preventing a party from relying upon an absence of a law which would allow unjust, unfair, or unconscionable behavior.

*Equity* will not compel a court to cause retribution, or to cause a party to do a vain, frivolous, insulting, or useless thing.

However, *Equity* can be used to overturn malice or negligence, whether it be malicious intent or malicious prosecution, or unethical or vengeful behavior.

## 11. Equity Follows the Law

In Latin: This maxim is also expressed as *Aequitas sequitur legem*, which means more fully that "*Equity* will not allow a remedy that is contrary to law."

It is only when there is some important circumstance disregarded by the law, ambiguous in the law, or not adequately addressed by law that necessitates that *Equity* intervene.

*Equity* works as a supplement for law and does not supersede the prevailing law.

*Equity comes not to destroy the law, but to fulfil it and ensure justice.*

Law must be obeyed, but when all this had been done, yet something else might be needful, *Equity* fills that void.

*Equity* respects every word of law and every right at law, but where the law is defective, inadequate, not designed for the situation or convoluted/contradictory, or could result in a gross injustice, *Equity* provides equitable rights and remedies.

## 12. Equity Honors Time

*Aequitas honores tempus* -- *Equity* wastes not time. Time is valuable. Time is precious. Time is costly. Time is inequitable in that it favors the rich and the frivolous. Thus *Equity* is an intercession to prevent wasting time, resources, and unnecessary costs. In this way, *Equity* helps provide equal treatment under the law. Additionally, because time is always moving, things change; what is right, fair, and true at one point in time may be very different in the future. *Equity* recognizes when time changes things, the other Principles of *Equity* come to bear.

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<sup>1</sup> The 12 Principles of Equity find their roots in classical law going back to Solomon, Greek and Roman Law. They are applicable not only to law, but to all Equitable Decision-Making, including mediators, business executives, government leaders, and heads of families.

Going back to the Middle Ages and English Common Law, the idea of Equity was so powerful that the English established a separate, parallel judicial Chancery Court of Equity. Most of these 12 Principles of Equity evolved from that system. When the U.S. judicial system was formalized, the courts of Law and Equity were merged to ensure more uniform justice. The same court that may fashion a legal remedy has the power to prescribe an equitable one.

Since the Second World War, law schools in America have virtually dropped Equity from the curriculum, leaving a horrible vacuum in jurisprudence, which has caused the law to become more and more adversarial. Litigation has surged, contracts have become more complex, and wisdom has succumbed to argumentation.

Because judges are typically chosen from the ranks of litigators, Principles of Equity now reside in a dusty corner of jurisprudence. It's now up to business professionals to remind their legal counsel to dust off these principles. Courts are sometimes hesitant to impose equitable relief, particularly involving specific performance. This is because equitable remedies often require the courts to monitor the remedies to make sure that the Defendant complies with the Court Order. However, the Supreme Court has been willing to encourage the use of equitable remedies in certain areas of law.

As with all "principle-based decision-making," no one principle necessarily overrides another – these are to be taken holistically and applied with discretion to ensure the main object – fair and reasonable justice – is achieved. Maxims do not cover the whole ground, and moreover they often purposely overlap, one maxim likely contains, by implication, or leads to what belongs to another.

<sup>2</sup> Source, Robert Porter Lynch, International Collaborative Leadership Institute, 2015

<sup>3</sup> The classic story of Solomon offering to split the baby demonstrates how wisdom, not just mathematical calculation, is an integral part of this principle.

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References: Wikipedia: *12 Maxims of Equity*; West's *Encyclopedia of American Law*, 2<sup>nd</sup> Edition, 2008; Hoffer, Peter Charles; *The Law's Conscience: Equitable Constitutionalism in America*. Chapel Hill: Univ. of North Carolina Press, 1990; Kraut, Jayson, et al. *American Jurisprudence*. Rochester, N.Y.: Lawyers Cooperative 1983; Pomeroy, John Norton; *A Treatise on Equity Jurisprudence: As Administered in the United States of America: Adapted for All the States and to the Union of Legal and Equitable Remedies Under the Reformed Procedure*; Snell, Edmund Henry Turner; Megarry, R.E.; Baker, P.V.; *Snell's Principles of Equity* (25th ed.). London: Sweet & Maxwell. 1960; Maitland, Frederic William; *Equity; Also the Forms of Action at Common Law: Two Courses of Lectures*, Cornell Law, 1932; Edwards, Richard & Stockwell, Nigel; *Trusts and Equity*, Pearson, 2015, Chapter 2; SueWrongoers.com: *20 Maxims of Equity*; Lynch, Robert Porter; *Eight Principles of Trust*, International Collaborative Leadership Institute, 2016