

Equitable Remedies

Injunctive Relief

Equity Courts: Developed as alternative to Courts of Law and known variously as the Courts of Chancery or the Courts of Common Pleas. A complement to the Law Courts' focus on static rules and rights, with rigid procedure, the Equity Courts focused on the individual and her actions. Equity did not decide legal rights according to legal rules, but made adjustments to existing agreements and ordered specific people to do specific things. Equity was not concerned with precedent, but with basic principles of fairness, and decisions were made by weighing interests according to standards, rather than by rule. And equity traditionally served those unsatisfied plaintiffs who could find no adequate remedy at law, and so had to "throw themselves upon the conscience of the king," or the king's confessor, the Chancellor.

Equitable Jurisdiction: The power of the equity courts to hear disputes depended on their having jurisdiction over those supplemental areas that the courts of law did not address. This included (and includes) two major categories: (1) areas of concern which had traditionally been heard in equity and in which equity was understood to have primary jurisdiction (cases dealing with fiduciaries and "uses": fraud, mistake, bankruptcy, etc.); and (2) any case in which equitable jurisdiction could be established, primarily because the remedy at law was inadequate to resolve the dispute.

Establishing Equitable Jurisdiction

Irreparable Injury: An equitable remedy will only be granted to prevent an otherwise irreparable injury. Usually the injury is irreparable because the only available remedy at law is inadequate. However, in the context of preliminary injunctions and temporary restraining orders, the irreparable injury is the injury that will be caused by the delay in issuing a permanent injunction.

Inadequacy of Remedy at Law: If the irreparable injury requirement is that the remedy at law is inadequate, this is generally because legal damages will not be awarded (because they are too speculative), or because legal damages, even if awarded, will not fully compensate the victim (in the case of unique property, such as land or family heirlooms). Injunctive relief may also be granted to enjoin a prospective tort, damages not being awardable until the tort is committed. In the case of a repetitive tort, damages are inadequate because they could only be won by a multiplicity of suits. Finally, replevin and ejectment may be inadequate legal remedies when they would be difficult to enforce.

Feasibility of Enforcement: Equity will not issue decrees that would be difficult to supervise. Injunctions are enforced by contempt orders, which imprison the defendant, or impose fines, until he complies. Prohibitive or negative injunctions are easily enforceable by this method, but mandatory or affirmative injunctions are not. Often, the act to be performed cannot be performed while the defendant is imprisoned for contempt. Also, court may not imprison a defendant for disobeying an equity decree for payment of money, because of the general prohibition of imprisonment for debt. Further, mandatory injunctions for specific performance of a contract for personal services will not be granted because of the Thirteenth Amendment prohibition on involuntary servitude. Finally, because injunctions bind the person, not her property, they may be difficult to enforce if the defendant is out of state.

"Property Right" Requirement: Traditionally, equity protected only property rights. Modernly, this requirement is overcome by expanding the concept of property to include things that are not property, or abandoning the requirement. However, it is still the case that equity will not enjoin a crime, and will not enjoin torts that are fundamentally personal, such as defamation. Regarding defamation, there is also the problem of prior restraint of speech.

Balance of Hardships: In deciding whether to grant injunctive relief, the court will balance the hardships to the defendant if the injunction is granted, and to the plaintiff (and in the case of public nuisance, to the public) if it is denied, and will grant relief only if the balance tilts in the plaintiff's favor. In the case of TROs, the hardship to the defendant is the lack of prior notice & hearing, and hardships are not balanced further.

Injunctions: Permanent, Preliminary, and TRO

The requirements of equitable jurisdiction apply differently to different types of relief.

Permanent: A permanent injunction is simply a form of equitable relief, and does not require further analysis once equitable jurisdiction is established.

Preliminary: A preliminary injunction maintains the status quo pending trial. Here, the irreparable injury is not the inadequacy of the legal remedy, but the injury that plaintiff will suffer during the time pending trial, if the preliminary injunction is not granted. Preliminary injunctions often come after the issuance of a TRO, with defendant now having notice and an opportunity to be heard as to why the TRO should not remain in place until trial, thus becoming a preliminary injunction.

Temporary Restraining Orders: These orders are granted for a short period of time, usually 10-20 days, can be issued ex parte, without notice or hearing, and are almost always prohibitive or negative injunctions rather than mandatory. The irreparable injury is that which might occur if the defendant were given notice, between the time of notice and the time of the hearing for a preliminary injunction. Hardship to the defendant is not balance beyond the consideration of lack of notice or hearing.

Specific Performance

Specific performance is merely a type of mandatory injunction, ordering the defendant to perform her obligations under the contract. The requirements for establishing equitable jurisdiction are applied, but in special ways.

Existence of a contract: Of course, specific performance is only used when a valid contract exists. Any valid defenses to formation will preclude the use of this remedy. In addition, all conditions precedent to defendant's duty to perform must be satisfied or excused.

Inadequacy of legal remedy: The legal remedy for breach of contract is money damages. This is inadequate when the contract is for sale of unique property, its value being irreducible to a dollar amount. Land is always unique, and personal property may be unique in its value to the plaintiff, or because of its special nature as an antique or work of art.

Feasibility of enforcement: In the context of specific performance, the requirement is analyzed as whether the terms of the contract are sufficiently certain and definite that a court may determine what the defendant should be ordered to do.

"Mutuality of remedy": Traditionally, courts would grant specific performance only when the remedy was mutual, i.e. only if the defendant could also be granted specific performance. Modernly, the requirement has nearly been abandoned, and it is usually addressed by reference to mutuality or security of performance. That is, when the plaintiff has already performed, or the court can secure performance, this mutuality protects the defendant, whether or not she could have been granted the remedy herself if she were the plaintiff.

Reformation

Reformation is also purely a contracts remedy, and applies only when there is a valid contract, but a mistake in reducing it to writing. If the plaintiff is arguing instead that there was a mistake (or fraud) in securing her agreement to the contract, the proper remedy is rescission.

Rescission

Rescission is a restitutionary remedy that may be **LEGAL** or **EQUITABLE**. Sometimes rescission of the contract is the restitution the plaintiff seeks, but more commonly the remedy is rescission and restitution; i.e. the defendant has already received a benefit. There must always be a purported existing contract, but the plaintiff is arguing that the contract is invalid.

Legal rescission: Occurs when the plaintiff takes action to rescind the contract herself, by giving defendant notice and tendering back any benefit she has received, and then seeks restitution from the court for a benefit the defendant received under the contract. Note that the remedy will only be effective if the plaintiff had proper grounds for rescission, i.e. that the contract was based on mistake or fraud.

Equitable rescission: The only difference with equitable rescission is that the plaintiff has taken no action herself to rescind the contract, but applies to the court for the court to declare the contract invalid and award her restitution of the benefit the defendant has received. Restitution will be conditioned on the plaintiff's restoration of any benefit she has received. The grounds of mistake or fraud are the same.

Election of remedy: This defense is unique to rescission. Because rescission is based on disaffirming the contract, the general rule is that a plaintiff may not seek rescission and restitution if she previously sought damages, because damages are based on affirming the contract as valid. However, suing first for rescission and losing does not bar a later suit for damages, and both damages and rescission can be pursued simultaneously, with plaintiff choosing the remedy before judgment. Finally, when plaintiff has previously affirmed the validity of the contract by word or action, rather than by a suit for damages, this is called "choice of substantive rights" rather than election of remedy.

Equitable Defenses

These defenses may apply whenever an equitable remedy is sought. They are all based on the theory that plaintiff is somehow blameworthy and therefore does not merit equitable relief. Often there is a legal defense counterpart, the difference being that the legal defense is rule-based, while the equitable defense involves balancing the equities and judicial discretion. Equitable defenses generally do not apply when the plaintiff is the government.

Laches: The defense is similar to the legal defense of a statute of limitations: it applies when there is unreasonable delay by the plaintiff in bringing suit, causing material prejudice to the defendant. Laches is the strongest equitable defense, as it applies even when the statute of limitations has not run, and plaintiff is therefore not otherwise barred from bringing suit. In addition, the defense has application in the form of "equitable tolling," where the statute has ostensibly run, but the facts suggest that in balancing the equities, the running should be tolled for some period of time.

Unclean hands: Also referred to as "in pari delicto," which was the nearly identical legal defense. Modernly, the merged defense applies when plaintiff is seeking by her suit to accomplish some wrongful purpose. The rationale of the defense is to protect the court, rather than the plaintiff, from having its procedures used for bad ends.

Estoppel: This defense applies whenever the plaintiff has performed some misleading conduct, in words or action, which has the intended effect of inducing the defendant to act or refrain from acting, in reliance on the misleading conduct, resulting in a material change in defendant's circumstances. This is closely related to the legal defense of waiver, which remains distinct in that it refers to conduct of the plaintiff which expressly or impliedly disavows a right.