

**Law of Equity & Specific Relief Act  
Supplementary Online Examination  
LLB 03 years Degree Program (Part – I)**

**QUESTION NO: 1**

**Define equity and discuss its origin and development?**

**DEFINITION:**

Equity is a Latin word which means fairness, justice. It is a system of law originating in the English chancery and comprising a settled and formal body of substantive and procedural rules and doctrines that supplement, aid, or override common and statutory law.

*Equity* is based on a judicial assessment of fairness as opposed to the strict and rigid rule of common law. For centuries, the common law was referred to as the law, in contrast with *equity*. As to the most common criticism of *equity*, these words of the English jurist, John Selden (1584-1654)

**THE DEVELOPMENT OF EQUITY**

**Meaning**

The word “equity” means fair or just in its wider sense, but its legal meaning is the rules developed to mitigate the severity of the common law.

**Petitioning the King**

Disappointed litigants began to petition the King as the “Fountain of Justice”, the procedure being to present a petition (or bill) asking him to do justice in respect of some complaint. For a time the King in Council determined these petitions himself, but as the work increased he passed them to the Chancellor as the “Keeper of the King’s Conscience”.

The Chancellor was usually a clergyman, generally a bishop, and learned in the civil and canon law. The King, through his Chancellor, eventually set up a special court, the Court of Chancery, to deal with these petitions. The Chancellor supervised the Chancery where clerks (who originally worked behind a wooden screen – *chancelleries* – hence Chancery) issued writs, commissions and other legal documents. The Chancellor dealt with these petitions on the basis of what was morally right. The Chancellor would give or withhold relief, not according to any precedent, but according to the effect produced upon his own individual sense of right and wrong by the merits of the particular case before him. In 1474 the Chancellor issued the first decree in his own name, which began the independence of the Court of Chancery from the King’s Council.

## **New Procedures**

Equity was not bound by the writ system and cases were heard in English instead of Latin. The Chancellor did not use juries and he concerned himself with questions of fact. He could order a party to disclose documents. The Chancellor issued subpoenas compelling the attendance of the defendant or witnesses whom he could examine on oath.

## **New Rights**

Equity created new rights by recognizing trusts and giving beneficiaries rights against trustees. (A trust arises if one party gives property to trustees to hold for the use of beneficiaries.) The common law did not recognize such a device and regarded the trustees as owners. Equity also developed the equity of redemption. At common law, under a mortgage, if the mortgagor had not repaid the loan once the legal redemption date had passed, he would lose the property but remain liable to repay the loan. Equity allowed him to keep the property if he repaid the loan with interest. This right to redeem the property is known as the equity of redemption.

## **New Remedies**

Equity created new remedies:

- (a) Specific performance, which is an order telling a party to perform their part of a contract. This was useful where damages were not adequate, e.g., in the sale of land. Thus if the seller refused to sell after signing a contract, the buyer could obtain an order of specific performance making the seller sell the house.
- (b) Rectification, which allowed a written document to be changed if it did not represent the actual agreement made by the parties.
- (c) Rescission, which allowed parties to a contract to be put back in their original position in the case of a contract induced by a misrepresentation.
- (d) Injunctions, usually an order to stop a person doing a particular act, like acting in breach of contract (a prohibitory injunction).

## **Nature of Equity**

The nature and scope of equity says that equity must preliminary mean right doing, or justice in the purely ethical meaning of that word. In England equity has acquired an entirely specialized meaning. It includes technically only certain rules which were developed in the court of chancery. The basis for its creation may have been the desire to do right thing between men according to the moral law of time, but it was always limited and has now become a fix body of principles of the common law.

It is no longer possible to claim redress simply upon moral grounds; it is necessary to show some principles recognized by the system of Equity before a remedy can be granted.

Firstly equity has enforced rights which the common law Courts failed to enforce; Secondly, equity has developed additional remedies to the common law for the enforcement of common law rights. Lastly, the procedure in the Common law Courts was defected, especially is not compelling or even allowing a defendant to give evidence and in limiting the enquiry to the action.

So, we can say that-

- The general rule is that equity follows the law and the equitable interests have in general the same incidents and attributes as have corresponding legal interests. They devolve and can be settled, mortgaged and disposed of precisely in the same way as legal interests.
- Equity follows the law and as such a legal estate or interest takes procedure over the equitable estate or interests. That is, in case of conflict between equity and law, the law prevails.
- An equitable right arises when a right vested in one person by the law should, in the view of equity, be, a matter of conscience, vested in another.
- Where equities are equal, that which is first in time will prevail.

## **QUESTION NO: 2**

**Discuss in detail the doctrine of “Laches”?**

### Doctrine of Laches

#### MEANING:

The Doctrine of Laches emanates from the principle that the Courts will not help people who sleep over their rights and helps only those who are aware and vigilant about their rights. A party is said to be guilty of laches when they come to the Court to assert their rights after a considerable delay in that respect.

- With respect to constitutional law, laches refers to the filing of a writ petition, however, unlike the law on limitations there is no specific time period after which a writ petition is barred.
- The underlying principle is that the Court should not examine stale cases, because the Court is to help an individual or party that is vigilant and not indolent.
- The reasons for delay if valid and reasonable are generally accepted because the Court doesn't dismiss petitions only due to delay but only if it is accompanied by other reasons.

#### **ELEMENT OF LACHES:**

The Doctrine of Laches consists of the following elements

1. The plaintiff delayed filing suit for an unreasonable and inexcusable length of time from the time the plaintiff knew or reasonably should have known of its claim against the defendant, and
2. The delay operated to the prejudice or injury of the defendant.

## **Statute of limitations & doctrine of laches**

- The law encourages a speedy resolution for every dispute.
- Cases in law are governed by statutes of limitations, which are laws that determine how long a person has to file a lawsuit before the right to sue expires.
- Different types of injuries (e.g., tort and contract) have different time periods in which to file a lawsuit.
- Laches is the equitable equivalent of statutes of limitations. However, unlike statutes of limitations, laches leaves it up to the court to determine, based on the unique facts of the case, whether a plaintiff has waited too long to seek relief.

### **Doctrine of Laches:**

- The doctrine is placed on the principle that every person taking equitable relief must not sleep over his right, if he does so, delay will defeat him. It is based on well-known doctrine of equity, "delay defeats equity". It pre-supposes that the person bound is fully cognizant of the right and being so he neglected to enforce it. The law of limitation is not dissimilar to the doctrine of laches, however, in the first case, the suit, is liable to be dismissed if not brought within a stipulated time but in the other case, there is no fixed period of time and it is the Court to see:
  1. whether there was' an unreasonable delay on the party of litigant, and
  2. whether the delay has resulted in loss or destruction of evidence; and
- by this delay or omission the other party has earned a vested right.

### **Difference between Limitation and Laches**

The rigors of law of limitation and doctrine of laches are distinct in scope and application.

- The former extinguishes the remedy by force of the Statute and a valuable right accrues in favor of opposite side When the matter becomes barred under the Limitation Act or limitation prescribed by special statute, but principles of laches are invoked where statutory limitation is not prescribed but the Court takes into account the conduct of a party involving indolence and excessive inaction equivalent to acquiescence or waiver of the remedy and which resulted in causing prejudice to the opposite side.
- The rigors of law of limitation are rigid and Courts insist upon explanation of each day's delay beyond the period prescribed and sufficient cause must be established for extension of time whereas the decision of question of laches would depend on facts and circumstances of each case and the delay can be explained to the satisfaction of the Court. [1984 CLC 3270]
- Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

### QUESTION NO :3

**What do you know about the Specific Relief Act? Also explain what kinds of reliefs can be granted under this Act?**

#### **History of Specific Relief Act, 1963:**

In India, the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the —Specific Relief Act was passed by the Parliament of India following the recommendation of the Law Commission of India in its ninth report on the act, the specific relief bill 1962 was introduced in Lok Sabha in June 1962 and repealing the earlier —Specific Relief Act of 1877.

- Originally drafted upon the lines of the draft New York Civil Code, 1862
- passed in 1877
- Amended by Acts of 1882, 1891, 1899, 1929, 1940, 1951, and was repealed in 1963
- Embodies the doctrines evolved by the English Equity Courts
- Principles of Equity, Justice & Good Conscience
- Required to be pleaded specifically to be enforced
- In the event of situation not covered under the 1963 Act, the Indian Courts can exercise their inherent powers in term of Sec. 151 of C.P.C.
- Meaning of specific performance

Laws fall into three categories.:

- Those which define Rights.
- Those which define Remedies.
- Those which define Procedure.

The Law of Specific Relief belongs to the second category. It is a law which deals with Remedies‘.

The expression Specific Relief means a relief in specie. It is a remedy which aims at exact fulfillment of an obligation. The suit under Specific Relief Act may be brought to compel the performance of the contract by the person in default. Such relief may be either positive or negative. It is positive when a claim to the performance of it and negative when it is desired to prevent the doing of thing enjoined or undertaken as not to be done.

The Specific Relief Act explains and enunciates the various reliefs which can be granted under its provisions, provides the law with respect to them. It provides for the exact fulfilment of the obligation or the specific performance of contract. It is directed to the obtaining of the very thing which a person is deprived of and ought to be entitled to ask for. It is a remedy by which party to a contract is compelled to do or omits the very acts which he has undertaken to do or omit. The remedies which has been administered by Civil Courts of Justice against any wrong or injury fall broadly into two classes,

- (i) those by which the suitor obtains the very thing to which he is entitled, and
  - (ii) those by which he obtains not that very thing, but compensation for the loss of it.
- The former is the specific relief. Thus specific relief is a remedy which aims at the exact fulfilment of an obligation. It is remedial when the court directs the specific performance of contract and protective when the court makes a declaration or grants an injunction.

### **Analysing the Law of Specific Relief**

The law of “specific relief” as administered in Pakistan is primarily contained in the **Specific Relief Act, 1877**. It was promulgated on the 7<sup>th</sup> of February, 1877 in British-India, prior to Partition in 1947. Even before the codification of **Specific Relief Act**, specific relief had been administered in British-India based on the principles of fairness, equity, justice and good conscience.

With the passage of time, courts have been recognizing remedies such as retribution, restoration and compensation. In other words, a wrongdoer can make up for the wrong committed, by either suffering in person or by restoring the deed. Specific relief is about this last form of expiation and has been defined as relief *in specie* which means relief in exact form instead of compensation.

When it comes to civil law or the enforcement of civil rights arising out of a breach of duty or non-performance, remedies available are either compensatory or specific. Compensatory remedy includes damages, while specific remedy is enforced by directing a person to do or forbear the very thing which he or she is under an obligation to do or forbear. The remedy of specific relief may also be awarded in the shape of a declaration when no person is at fault. Compensatory remedies are sometimes either useless or inadequate; useless where a person decreed against has become insolvent, thereby making damages ineffectual; and inadequate where a contract is for the transfer of a particular house or piece of land or any movable property or good to which any special interest is attached.

Specific remedies generally enforced in Pakistani courts include the following:

- i. Taking possession of certain property,
- ii. Directing parties to perform the very act which they are under an obligation to perform,
- iii. Preventing parties from doing something which they are not under an obligation to do,
- iv. Rectifying instruments,
- v. Rescinding contracts in writing,
- vi. Cancelling instruments,
- vii. Determining and declaring the rights of parties to a status or property,
- viii. Appointing a receiver,
- ix. Taking an account of the property of a deceased person and administering the same,
- x. Taking accounts of a trust and administering trust property,

- xi. Foreclosing the right to redeem or sell mortgaged property,
- xii. Redemption of property, and
- xiii. Dissolving a partnership, rendition and realization of accounts, and compelling partners to pay balance due.

The specific remedies from *ix* to *xiii* are governed by the **Code of Civil Procedure 1908, Succession Act 1925, Trust Act 1882, Transfer of Property Act 1882** and **Partnership Act 1932**, while the remaining specific remedies are governed by the **Specific Relief Act 1877**. Compensatory remedies are to some extent governed by the **Contract Act 1872**. The **Specific Relief Act 1877** deals with compensatory relief as a supplement or alternative.

The **Specific Relief Act** deals with both paramount as well as consensual obligations. Having a paramount obligation, a law abiding citizen of Pakistan is bound to respect the rights of other citizens and fellow Pakistanis who have vested in property. Consensual obligation is when a person agrees to act lawfully and comes under an obligation to carry it out.

#### **QUESTION NO:4**

**Define declaration and explain under what circumstances declaratory decree is obtained from the court?**

#### **DECLARATION**

A **declaration** is a written statement submitted to a court in which the writer swears 'under penalty of perjury' that the contents are true. That is, the writer acknowledges that if he is lying, he may be prosecuted for perjury. Declarations are normally used in place of live testimony when the court is asked to rule on a motion.

A typical declaration sets forth the **factual assertions** of the person signing it (called the declarant) and ends with a statement worded like this one: 'I declare under penalty of perjury that the foregoing is true and correct, and would be my testimony if I were in a court of law.' The date and place of signing are usually included.

Some states allow declarations to be used in the place of **affidavits**, thus avoiding a trip to the **notary public**.

#### **What is Included in a Declaration?**

A declaration is a specification, in a methodical and logical form, of the circumstances which constitute the **plaintiff's cause of action**. In real actions, it is most properly called the count; in a personal one, the declaration. The latter, however, is now the general term; being that commonly used when referring to real and personal actions without distinction.

The declaration in an **action at law** answers to the bill in chancery, the libel of the civilians, and the allegation of the ecclesiastical courts.

It may be considered with reference:

1. To those general requisites or qualities which govern the whole declaration;
2. To its form, particular parts, and requisites.

### **Qualities of a Declaration**

The **general requisites** or qualities of a declaration are first, that it correspond with the process. But, according to the present practice of the courts, error of the writ cannot be pleaded; and a variance between the writ and declaration cannot be pleaded in abatement.

Secondly. The second general requisite of a declaration is, that it contain a statement of all the facts necessary in point of law, to sustain the action, and no more.

1. Thirdly. These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is, to a certain intent in general, which should pervade the whole declaration, and is particularly required in setting forth: The parties; it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against 'C D and Company,' not being a corporation, is insufficient.
2. The time; in personal actions the declaration must, in general, state a time when every **material or traversable** fact happened; and when a venue is necessary, time must also, be mentioned. The precise time, however, is not material unless it constitutes a material part of the contract declared upon, or where the date, etc., of a written contract or record, is averred.
3. Other circumstances necessary to maintain the action.

### **Parts of a Declaration**

The parts and particular requisites of a declaration are:

First. The **Title** of the court and term.

Second. The **Venue**. Immediately after the title of the declaration follows the statement in the margin of the venue, or county in which the facts are alleged to have occurred, and in which the cause is tried. See Venue.

Third. The **Commencement**. What is termed the commencement of the declaration follows the venue in the margin, and precedes the more circumstantial statement of the cause of action. It contains a statement:

1. Of the names of the parties to the suit, and if they sue or be sued in another right, or in a political capacity, (as executors, assignees, qui lam, etc.) of the character or right in respect of which they are parties to the suit.
2. Of the mode in which the defendant has been brought into court; and,

3. A brief recital of the form of action to be proceeded in.

**Discretion of court as to declaration of status or right :**

**According to 34 of Specific Relief Act 1963 -**

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

**Explanation:** A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

**Examples -**

1) A is lawfully in possession of that certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for declaration that they are not entitled to the right so claimed.

2) A alienates to B property in which A had merely a life interest. The alienation is invalid as against C, who is the revisioner. The Court may in a suit by C against A and B declares that C is so entitled.

**When suit for declaration does not lie -**

A suit for declaration will not lie in the following cases-

(1) For a declaration that the plaintiff did not infringe the defendant's Trademark. Negative declaration will not be allowed.

(2) For the declaration that the plaintiff is a purchaser under an unregistered deed of sale.

(3) For a declaration, during the lifetime of testator, that the Will is invalid. The reason is that the Will is revocable and no property is transferred during the lifetime of the testator.

**4) Effect of declaration :**

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees.

## **QUESTION NO:5**

### **1. Define Temporary and Permanent Injunction? Explain their salient features?**

#### **INTRODUCTION:**

An injunction is a prohibitive letter issued by an equity judge, in the suit of a plaintiff, addressed to a defendant in the case, or to a party making a defendant for that matter, barring the latter from taking any action, or allowing his servants or associates to take any action that he is threatening or intending to commit, or preventing him in the continuity of the litigation, which is unjustified.

#### **INJUNCTIONS:**

An injunction is a court order, which mandates a person to do or abstain from performing an act that is appropriate in terms of justice, and whose omission will be contrary to good faith and good conscience. The issuance of an injunction is essentially meant to recover a party's breached rights, whereas punitive or compensatory penalties are insufficient. This follows the ideals of equity and equal justice.

The definition of injunction is very plain, and a preventive one is a relief given. Historically, in English jurisprudence, the law of injunction originates from the French word 'injure,' which translates into 'enter.' In Indian law, it has its roots through many Indian Laws. To clarify, the substantive provisions for injunctions are included in CrPC (for criminal cases), CPC, and the Relevant Relief Act (for civil matters) according to the appropriate laws. Any of these laws, depending on the situation and the event, allow for some sort of injunction.

An injunction never persists as being an individual legal body. It comes as an alternative to yet another solution in certain situations.

Of example, if 'A' leases an apartment to 'B' who is a tenant, and 'B' refuses to pay the rent, 'A' can petition the court to issue an injunction against the tenants continuing to use the house.

#### **KINDS OF INJUNCTION:**

##### **TEMPORARY INJUNCTION**

Temporary injunctions, as the name implies, are the injunctions granted for a limited amount of time or before the court gives a direction about the matter in question. They can be accessed at any point of the court, and are governed by the 1908 Civil Procedure Code (CPC).

A temporary injunction is a temporary remedy directed at securing the subject matter in the current situation, without the intervention or intimidation by the defendant. It seeks to shield the plaintiff from loss, or damage or harm to his properties (subject matter), or another injury to the plaintiff. The main justification behind a provisional injunction is to safeguard a person or entity's rights before it passes the final judgment. When issued, a temporary injunction lasts for a specified period, or until the court finds necessary.

**Objective:**

The purpose of the interim or temporary order is to protect the plaintiff from injury by claiming his right which he could not adequately compensate in damages recoverable in the action if the uncertainty is resolved in his favor at the hearing.

**Ingredients:**

The granting of interim injunction is based on three factors, which are prima facie case, irreparable loss and balance of convenience. The court explained these as;

- There is a serious disputed question raised in the court and that there is an act on the facts before the court probability that he is entitled to the relief the plaintiff / defendant.
- The court's interference is necessary to protect the people from some of the types of injury. In other words, irreparable injury or danger would arise before the legal right set at trial.
- That comparative hardship at malice or inconvenience that is likely to occur due to the withholding of the command will be greater than it probably would be granted.

**PERMANENT INJUNCTION**

A permanent injunction (also known as a perpetual injunction) is one that is issued at the time of the final judgment and is thus more often than not, for a longer duration. In this case, the Defendant is indefinitely barred from commissioning an act, or prohibition from commissioning an act that will harm the Plaintiff's interests.

**When can a permanent injunction be issued?**

Section 38 of the Special Relief Act, 1963 sets out the cases in which Perpetual Injunctions may be granted and states that:-

- (1) According to the other provisions found in or referred to in this Subsection, a perpetual injunction may be granted to the complainant to prohibit, explicitly or indirectly, the breach of an obligation in his favor.
- (2) Whenever such a contractual obligation exists, the court shall be directed by the laws and regulations set down in Chapter II.
- (3) If the defendant invades or attempts to invade the claimant's right to or possess the land, the court may issue a permanent injunction in the following cases:
  - (a) where the defendant is the owner of the claimant's land;

(b) where there is no requirement to assess the real harm done or likely to result from the invasion;

(c) where the invasion occurs;

## MAJOR DIFFERENCES BETWEEN PERMANENT AND TEMPORARY INJUNCTIONS

A temporary injunction is granted for a specified period of time, or as adjudged by the court. It may be granted at any point during the suit.

A permanent injunction, on the other hand, is granted by the decree of the court, and upon the examination of the facts and merits of the case.

Order 39 (Rules 1 to 5) of the Civil Procedure Code, 1908, governs temporary injunctions.

Whereas, permanent injunctions are governed by sections 38 to 42 of The Specific Relief Act, 1963.

A temporary injunction is non-conclusive. Basically, it is a temporary order, rather than a permanent solution.

A permanent injunction, on the other hand, deals with the finality of a judgement, thereby providing a conclusive and long term solution to the dispute at hand.

A temporary injunction may only focus on the Plaintiff's side of the case and therefore may be one-sided. However, it is important to understand, that this is not always so.

A permanent injunction, on the other hand, focuses on the Plaintiff as well as the Defendant. It hears both parties, and then provides a solution.

A temporary injunction, being temporary in nature, may be revoked by the court that passes the injunction order.

However, a permanent injunction is non-revocable by the court that decides to pass such order. However, it may be revoked by an appellate or higher court.

A lack of immediate response or request by the Plaintiff may lead to a dis-approval of the grant of an injunction order.

On the other hand, a permanent injunction order allows the parties to explain, elaborate and provide for details at a later and more relaxed pace, provided there are sufficient and valid grounds for the same.

A temporary injunction is simply an order by the court.

A permanent injunction is a decree (i.e., an official order by a court of law).

## CONCLUSION

An injunction is a preventive relief that tries to look into the interests of both the parties. It tries to create a situation, where one party does not harm or interfere into the rights and authorities of the other party. Though an injunction is not a self-dependent relief, it is often very important for the protection of rights. Both permanent and temporary injunctions have their own perks and privileges, that are unique to every situation. It is essential to understand one's situation and then move forward with the relief that suits them best. While doing the same, it must always be kept in mind that an injunction order is not a right in itself, however, its denial is in the sole discretion of the courts.