

was induced by conduct on the part of the defendant.¹² Furthermore, the rule is stated by some authorities that where one has been induced to act by fraudulent misrepresentation or wilful concealment, the defendant cannot avoid responsibility for the result of the action because the actor might, except for his own neglect, have discovered the wrong and prevented its accomplishment.¹³

Where the complainant can show that the defendant was in a better position than was he to foresee and avert the prejudicial situation, relief will generally be granted.¹⁴ A court of equity, it is said, will not visit on an innocent party the consequences of inequitable conduct on the part of the other party to the transaction.¹⁵ Accordingly, where it appears that the owner of property knowingly allowed another to deal therewith in ignorance of the state of the title, equity will not permit him to assert his ownership of the property to the injury of such other person.¹⁶ Furthermore, while equity will not aid a party who through negligence has failed to make a proper defense at law, relief may be granted if by fraud he has been prevented from so doing.¹⁷

In determining the issue as to the knowledge of the one party and the ability of the other to foresee the prejudicial situation, importance attaches to the complainant's mental strength or weakness,¹⁸ his intelligence,¹⁹ and his information and experience.²⁰ Accordingly, it is held that equity has jurisdiction of a suit by heirs to set aside a conveyance which has been obtained by imposition or undue influence from their ancestor who is shown to have been infirm of mind because of advanced age and other circumstances.¹ Moreover, while weakness of mind, standing alone, does not establish a case for equitable relief, yet if there is any unfairness in the transaction, the mental imbecility of the party may be taken into account to show such imposition or fraud as will annul the transaction.²

§ 23. Injustice or unfairness; ungenerous behavior.

It is a generally recognized principle that equity will exert its authority and grant its remedies to prevent injustice where other courts are helpless,³

12. If a complainant had a right to rely on false representations of the defendant, he is entitled to claim relief. *Lufkin v Republic Bldg. & L. Asso.* (Tex Civ App) 80 SW2d 1110.

13. *Jones v Stearns*, 97 Vt 37, 122 A 116, 31 ALR 653.

14. §§ 34, 43, 45, *infra*.

15. *Miltenberger v Logansport, C. & S. W. R. Co.* 106 US 286, 305, 27 L ed 117, 125, 1 S Ct 140.

16. *Morgan v Chicago & A. R. Co.* 96 US 716, 24 L ed 743.

17. *Hungerford v Sigerson*, 20 How (US) 156, 15 L ed 869; *Lufkin v Republic Bldg. & L. Asso.* (Tex Civ App) 80 SW2d 1110.

18. *Allore v Jewell*, 94 US 506, 24 L ed 260.

Age and ignorance are to be considered. *McGhee v Bell*, 170 Mo 121, 70 SW 493.

19. *Thackrah v Haas*, 119 US 499, 30 L ed 486, 7 S Ct 311; *Swan v Talbot*, 152 Cal 142, 94 P 238; *Shevlin v Shevlin*, 96 Minn 398, 105 NW 257.

20. *New York L. Ins. Co. v McMaster* (CA8 Iowa) 87 F 63; *Kimmell v Skelly*, 130 Cal 555, 62 P 1067; *Taylor v Glens Falls Ins. Co.* 44 Fla 273, 32 So 887; *Marshall v Westrope*, 98 Iowa 324, 67 NW 257.

1. *Harding v Handy*, 11 Wheat (US) 103, 6 L ed 429.

2. *Owings' Case*, 1 Bland Ch (Md) 370; *Tracey v Sacket*, 1 Ohio St 54; *Thomas v Sheppard*, 7 SC Eq (2 M'Cord) 36.

3. *Peugh v Davis*, 96 US 332, 24 L ed 775; *McClure v Leaycraft*, 183 NY 36, 75 NE 961; *Dorman v Crooks State Bank*, 55 SD

but will withhold its remedies if the result would be unjust.⁴ The court will never interfere in opposition to conscience,⁵ or aid in the assertion of a legal right contrary to the equity or justice of the case,⁶ and where the conduct of parties does not commend them to the favor of the court, every doubt will be resolved against them.⁷ Similarly, it is a familiar equitable principle that a party having a legal right shall not be permitted to avail himself of it for the purposes of injustice, injury, or oppression.⁸ This principle is the basis of the rule that equity will exercise its power in a proper case to relieve a party from a forfeiture or penalty.⁹

A degree of unfairness may induce a court of equity to withhold its aid, even though such unfairness would not be sufficient to induce the court to interfere actively to set aside a contract.¹⁰ The equity court will not give effect to a bargain or agreement which is unconscionable¹¹ or illegal.¹² If a contract appears to be destitute of equity, the court will leave the parties to their remedy at law,¹³ and if this remedy has been lost, they must abide by the consequences of their conduct.¹⁴ Relief may be denied because of gross

209, 225 NW 661, 64 ALR 614; Hoffman v Tooele City, 42 Utah 353, 130 P 61.

Equity will exert its authority in proper cases to prevent injustice without any dependency on the merely legal rights of the parties. Cotton v Cresse, 80 NJ Eq 540, 85 A 600.

4. McClure v Leaycraft, 183 NY 36, 75 NE 961.

The court should not be made the instrument by which an injustice is continued. People's Nat. Bank v Marye, 191 US 272, 48 L ed 180, 24 S Ct 68.

Equity will not marshal securities where it will work injustice to an innocent third person. Hite v Reynolds, 163 Ky 502, 173 SW 1108.

Equity will not permit a person to derive any benefit from a fraud perpetrated by him, and this principle applies to inequitable defenses as well as to the maintenance of an action. Callner v Greenberg, 376 Ill 212, 33 NE2d 437, 134 ALR 1485.

5. § 24, *infra*.

6. Jones v New York Guaranty & I. Co. 101 US 622, 25 L ed 1030.

One who makes a homestead entry of land, knowing that it has been selected and certified and has been transferred to purchasers for value, will not be aided by a court of equity in attacking the title under such grant. Dewese v Reinhard, 165 US 386, 41 L ed 757, 17 S Ct 340.

Where a surveyor, while employed to make a survey of a plantation, thought he discovered an error by which it would appear that the lands were not in fact situated as officially surveyed, and induced a third party to obtain a patent for the land, which the surveyor then purchased from him, knowing that it had been possessed and cultivated for a

long period of years, a court of equity will not readily enforce an advantage thus obtained. Cragin v Powell, 128 US 691, 32 L ed 566, 9 S Ct 203.

An exclusive privilege to deceive the public by means of a trademark containing misrepresentations is not one that a court of equity will aid or sanction. Manhattan Medicine Co. v Wood, 108 US 218, 27 L ed 706, 2 S Ct 436.

7. Providence Rubber Co. v Goodyear, 9 Wall (US) 788, 19 L ed 566.

8. Humphrey v Humphrey, 254 Ala 395, 48 So 2d 424, 31 ALR2d 315; Noyes v Anderson, 124 NY 175, 26 NE 316.

9. §§ 77 et seq., *infra*.

10. Cathcart v Robinson, 5 Pet (US) 264, 8 L ed 120.

Whatever is unfair or even illiberal will be repelled by a court of equity. Creath v Sims, 5 How (US) 192, 12 L ed 111.

11. § 24, *infra*.

12. De Wolf v Johnson, 10 Wheat (US) 367, 6 L ed 343.

13. Mississippi & M. R. Co. v Cromwell, 91 US 643, 23 L ed 367.

Although equity cannot set aside a binding contract where the effect would be inequitable owing to facts arising after the date of the agreement and not within the contemplation of the parties at the time it was made, it will refuse to enforce the contract, and remand the party complaining to his remedy at law. McClure v Leaycraft, 183 NY 36, 75 NE 961.

14. Dade v Irwin, 2 How (US) 383, 11 L ed 308.

inadequacy of consideration¹⁵ or other great inequality.¹⁶ Where the case presented is that of an effort on the part of the defendant to avoid or delay the payment of a just debt, a court of equity will not strain a point to assist him.¹⁷ However, it seems that where a party has been compelled against his will to come into a court of equity, relief may not be denied upon considerations of injustice or unreasonableness.¹⁸

It has been held that something more must be shown than ungenerous behavior as a ground for invoking equitable relief,¹⁹ but that, conversely, the fact that a plaintiff is ungenerous in his demands will not cause an equity court to deny him rights, for generosity is a voluntary attribute and cannot be enforced even by equity.²⁰

§ 24. — Unconscionable conduct, advantage, contract, or bargain.

Undoubtedly, equity may take jurisdiction of a case on the ground of unconscionable conduct provided the conduct is serious enough to justify the court's interference.¹ While a court of equity will not relieve a party from a bargain merely because of hardship,² yet he may claim the interposition of the court if an unconscionable advantage has been taken of his necessity or weakness.³ In general, it may be said that wherever advantage is taken of a party under circumstances which mislead, confuse, or disturb the just result of his judgment, and thus expose him to be the victim of the artful, the importunate, and the cunning, where proper time is not allowed to the party and he acts improvidently, or if he is importunately pressed, if those

15. § 26, *infra*.

16. *Sun Printing & Pub. Asso. v Moore*, 183 US 642, 46 L ed 366, 22 S Ct 240.

17. *Sheffield Furnace Co. v Witherow*, 149 US 574, 37 L ed 853, 13 S Ct 936.

18. The fact that a party is obliged to go into a federal court of equity to enforce an essentially legal right arising upon a contract valid and unassailable under the controlling state law does not authorize that court to modify or ignore the terms of the legal obligation upon the claim, or to refuse to enforce the same because the court thinks that these terms are harsh or oppressive or unreasonable. *Manufacturers' Finance Co. v McKey*, 294 US 442, 79 L ed 982, 55 S Ct 444.

19. *Golde Clothes Shop v Loew's Buffalo Theaters*, 236 NY 465, 141 NE 917, 30 ALR 931.

20. *Graf v Hope Bldg. Corp.* 254 NY 1, 171 NE 884, 70 ALR 984, holding that equity will not relieve an owner of mortgaged property who, through a miscalculation, has failed to pay the full amount of interest due on a certain date, from the operation of a provision accelerating maturity of the mortgage debt upon default in the payment of any interest instalment, on the ground that the mortgagee's demand for enforcement of the provision is ungenerous.

1. *Weirfield Holding Corp. v Pless & Seeman, Inc.* 257 NY 536, 178 NE 784; *Graf v Hope Bldg. Corp.* 254 NY 1, 171 NE 884, 70 ALR 984.

A court of equity is a court of conscience, and nothing unconscionable will be permitted within its jurisdiction. *Humphrey v Humphrey*, 254 Ala 395, 48 So 2d 424, 31 ALR2d 315.

2. § 25, *infra*.

3. *Howard v Howard*, 122 Vt 27, 163 A2d 861, 84 ALR2d 585.

Where a person is illiterate or ignorant of the nature and extent of his rights, or ignorant of the nature of the transaction in which he is engaging, and acts without professional or other advice, and advantage is taken of his condition by unfairness, equity will give him relief. *Isaacson v Isaacson (Sup)* 28 NYS2d 517.

It seems that equity will intervene where advantage has been taken of the inexperience of youth, particularly in the case of infants; indeed, the jurisdiction of equity is broad, comprehensive, and plenary over the persons and property of infants, and in all suits or legal proceedings in which the personal or property rights of a minor are involved, the protective powers of equity may be invoked whenever it becomes necessary to protect such rights against unconscionable advantage or conduct. See *INFANTS* (1st ed §§ 101 et seq.).

in whom he places confidence make use of strong persuasions, if he is not fully aware of the consequences, but is suddenly drawn in to act, if he is not permitted to consult disinterested friends or counsel before he is called on to act in circumstances of sudden emergency or unexpected right or acquisition—in these and many similar cases, if there has been great inequality in the bargain, courts of equity will assist the party on the ground of fraud, imposition, or unconscionable advantage.⁴ Unconscionable bargains include most of those transactions, frequently found in English reports, which are known as "catching bargains" with heirs, reversioners, etc.⁵

On the other hand, it is fundamental that equity will never interfere in opposition to conscience,⁶ and will not give effect to an unconscionable agreement or bargain.⁷

§ 25. Hardship; hard or unprofitable bargains or agreements.

As a general thing, a court of equity may not assume power to administer justice because of the hardship of a case⁸ or the failure of the party's remedy at law.⁹ Nor does equity relieve parties from bargains merely because they are hard,¹⁰ harsh, unwise, improvident,¹¹ oppressive,¹² or unprofitable,¹³ or

4. Sprenger v Sprenger, 298 Mich 551, 299 NW 711; Bell v Campbell, 123 Mo 1, 25 SW 359; Crane v Conklin, 1 NJ Eq 346; Tracey v Sacket, 1 Ohio St 54; Howard v Howard, 122 Vt 27, 163 A2d 861, 84 ALR2d 585.

5. Butler v Duncan, 47 Mich 94, 10 NW 123; Osgood v Franklin, 2 Johns Ch (NY) 1, affd 14 Johns 527.

Chesterfield v Janssen, 2 Ves Sr 125, 28 Eng Reprint 82, 1 Atk 301, 26 Eng Reprint 191.

6. Creath v Sims, 5 How (US) 192, 12 L ed 111.

A court of equity is never active in relief against conscience. Bowman v Wathen, 1 How (US) 189, 11 L ed 97.

7. Mississippi & M. R. Co. v Cromwell, 91 US 643, 23 L ed 367; Kitchen v Rayburn, 19 Wall (US) 254, 22 L ed 64.

But the bargain must be so unconscionable as to warrant the presumption of fraud, imposition, or undue influence. Sun Printing & Pub. Asso. v Moore, 183 US 642, 46 L ed 366, 22 S Ct 240.

8. Heine v Levee Comrs. 19 Wall (US) 655, 22 L ed 223; Tamko Asphalt Products, Inc. v Fenix (Mo App) 321 SW2d 527.

The fact that holders of interest coupons on corporate bonds are prevented by the existence of war from presenting them for payment when due does not present a case of hardship which will cause a court of equity to give such holders priority over general creditors of the corporation, when it becomes bankrupt, out of a fund deposited in the bank to pay such coupons. Re Interborough Consol. Corp. (CA2 NY) 288 F 334, 32 ALR 932, cert den 262 US 752, 67 L ed 1215, 43 S Ct 700.

Merely because a security in an admiralty suit becomes ineffectual, relief in equity will not be granted if it appears that it became so without fraud, misrepresentation, or accident. United States v Ames, 99 US 35, 25 L ed 295.

9. Heine v Levee Comrs. 19 Wall (US) 655, 22 L ed 223.

10. Columbus R. Power & L. Co. v Columbus, 249 US 399, 63 L ed 669, 39 S Ct 349, 6 ALR 1648; Re Interborough Consol. Corp. (CA2 NY) 288 F 334, 32 ALR 932, cert den 262 US 752, 67 L ed 1215, 43 S Ct 700; Tamko Asphalt Products, Inc. v Fenix (Mo App) 321 SW2d 527.

Because the World War made bargains hard, relief therefrom may not be granted. Lenawee County Gas & E. Co. v Adrian, 209 Mich 52, 176 NW 590, 10 ALR 1328.

11. Crabill v Montgomery Ward & Co. (App) 73 Ohio L Abs 80, 136 NE2d 332; Cox v Freeman, 204 Okla 138, 227 P2d 670, 28 ALR2d 1230 (saying that the general rule is that a court of equity must, when its jurisdiction is properly invoked, give full force and effect to a contract which has been voluntarily, understandingly, and fairly entered into, and which is free from fraud, accident, mistake, or other circumstance recognized as a ground for equitable relief, although the contract is harsh, unwise, or improvident).

A contract will not be disturbed because it is a harsh one. Union Cent. L. Ins. Co. v Audet, 94 Mont 79, 21 P2d 53, 92 ALR 571.

12. The court may not modify or ignore the terms of the contract or refuse to enforce the same because it considers them harsh, oppressive, or unreasonable. Manufacturers'