asserted.[9] The doctrine of estoppel,[10] as applied to this situation, is in a practical view the equivalent of the maxim in question. The principle under discussion is given effect in innumerable fact settings.[11] Equity will not take rights acquired by one who has been vigilant and give their benefit to one who has lost them through nonaction.[12]

The maxim discussed above also expresses the notion which is fundamental to the doctrine of laches,[13] and it signifies, according to the authorities, that relief will be denied to one whose prejudicial situation is attributable to his own "negligence,"[14] "carelessness,"[15] "want of diligence,"[16] "folly,"[17] or "inat-

9. Wisconsin-Alabama Lumber Co. v Sewell, 222 Ala 696, 134 So 9.

Courts of equity do not sit to restore opportunities or renew possibilities which have been permitted to pass by reason of the neglect, ignorance, or even the want of means of those to whom they were once presented. Leavenworth County v Chicago, R. I. & P. R. Co. 134 US 688, 33 L ed 1064, 10 S Ct 708; Aldridge & Stroud, Inc. v American-Canadian Oil & Drilling Corp. 235 Ark 8, 357 SW2d 8.

10. See ETOPPEL AND WAIVER.

11. It may be invoked, for example, where the evidence shows that a landowner erected a building which encroached upon the adjoining property and that the owner of the land which was thus encroached on had knowledge of the facts and yet took no measures to protect his rights. See 1 Am Jur 2d, ADJOINING LANDOWNERS, § 125.

Where the owner of a building has projected a portion of it over the street line, an adjoining owner may be denied relief on proof that with knowledge of the plans, he took no measures to prevent the encroachment until the building had been completed. Lewis v Pingree Nat. Bank, 47 Utah 35, 151 P 558.

Similarly, where one takes an assignment of a contract after sundry breaches of which he might have known if he had used ordinary diligence, seeks compensation therefor or pays certain notes forming the consideration of the assigned contract with full knowledge or means of knowledge that they were drawn for too much, and then seeks repayment of the overplus, his want of vigilance will be a bar to relief in equity. Marshall v Means, 12 Ga 61.

12. Welch v Montgomery, 201 Okla 289, 205 P2d 288, 9 ALR2d 294.

13. Graham v Boston, H. & E. R. Co. 118 US 161, 30 L ed 196, 6 S Ct 1009; Wisconsin-Alabama Lumber Co. v Sewell, 222 Ala 696, 134 So 9.

The time at which a party appeals to a court of equity for relief affects largely the character of the relief; if one, aware of the situation, believes that he has certain legal rights and desires to insist upon them, he should do so promptly; if by his declarations or conduct he leads the other party to believe that he does not propose to rest upon such rights but is willing to waive them for a just compensation, and the other party proceeds to great expense in the expectation that payment of a fair compensation will be accepted and the right waived, especially if it is in respect to a matter which will largely affect the public convenience and welfare, a court of equity may properly refuse to enforce those rights, and in the absence of an agreement for compensation, compel him to submit the determination of the amount thereof to an impartial tribunal. New York v Pine, 185 US 93, 46 L ed 820, 22 S Ct 592.

Generally, as to laches, see §§ 152 et seq., infra.

14. Hungerford v Sigerson, 20 How (US) 156, 15 L ed 869; Sample v Varnes, 14 How (US) 70, 14 L ed 330; Creath v Sims, 5 How (US) 192, 12 L ed 111; Wisconsin-Alabama Lumber Co. v Sewell, 222 Ala 696, 134 So 9; Roberts v Hughes, 81 Ill 130; Bibber v Carville, 101 Me 59, 63 A 303; Follingstad v Syverson, 160 Minn 307, 200 NW 90; Federal Land Bank v Gallatin County, 84 Mont 98, 274 P 288.

Courts of equity do not relieve parties from the consequences of their own negligence or folly. Dunphy v Ryan, 116 US 491, 29 L ed 703, 6 S Ct 486.

15. Slaughter v Gerson, 13 Wall (US) 379, 20 L ed 627.

16. Creath v Sims, 5 How (US) 192, 12 L ed 111; Bend v Hoyt, 13 Pet (US) 263, 10 L ed 154.

Equity will not assist one whose condition is attributable only to a want of that diligence which may be fairly expected from a reasonable person. Upton v Tribilcock, 91 US 45, 23 L ed 203.

Equity will not give relief to a party who has acted in ignorance of facts which he could have ascertained by the exercise of due diligence and inquiry. Farm Bureau Mut. Auto Ins. Co. v Houle, 118 Vt 154, 102 A2d 326.

17. Dunphy v Ryan, 116 US 491, 29 L ed 703, 6 S Ct 486.

tention."[18] In equity a party is not permitted to sleep on his rights to the prejudice of the party on whom he makes a claim and who by the delay may be deprived of the evidence and means of effectually defending himself. Therefore, a demand must be made within a reasonable time; otherwise, the claim is considered stale, and a court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept on his rights and acquiesced for a great length of time.[19]

Generally, equity refuses its aid to a party who has slept on his rights and acquiesced in certain conduct for a great length of time even though the period which has elapsed without suit or other action is less than that which is prescribed by the appropriate statute of limitations. In other words, equity, independently of positive legislative limitations, will not ordinarily entertain stale demands, although it may in its discretion apply a statute of limitations, where there is such a statute, as a guide to the decision which it is to make with regard to its own doctrine of laches.[20] It has been held, however, that mere delay, however long, without the necessary elements to create an equitable estoppel, does not, in the absence of statute, preclude the granting of equitable relief.[1] Delay alone is not ordinarily enough to constitute laches.[2]

2. He Who Seeks Equity Must Do Equity

§ 131. Generally.

It is a fundamental principle that one who seeks equity may be required to do equity with respect to the subject matter involved before relief will be awarded.[3] Indeed, one of the most frequently invoked maxims of equity declares that he who seeks equity must do equity.[4] This is statutory in some

18. Slaughter v Gerson, 13 Wall (US) 379, 20 L ed 627.

19. Urquhart v McDonald, 252 **Ala** 505, 42 So 2d 9; Sampson v Cottongim, 249 **Ky** 670, 61 SW2d 309; Burns v Dillon, 226 **Ky** 82, 9 SW2d 1095; Pendleton v Galloway, 9 **Ohio** 178; Neppach v Jones, 20 **Or** 491, 26 P 569, 849; Silver v Korr, 392 **Pa** 26, 139 A2d 552; Frost v Wolf, 77 **Tex** 455, 14 SW 440; Larscheid v Kittell, 142 **Wis** 172, 125 NW 442.

20. §§ 157 et seq., infra.

1. Weiss v Mayflower Doughnut Corp. 1 NY2d 310, 152 NYS2d 471, 135 NE2d 208.

2. §§ 152 et seq., 163, infra.

3. Collester v Oftedahl, 48 **Cal** App 2d 756, 120 P2d 710; Ward v Lovell, 21 **Tenn** App 560, 113 SW2d 759.

Annotation: 164 ALR 1393 (necessity of payment of, or offer to pay, debt in proceeding for cancellation or removal of mortgage or deed of trust as cloud on title).

4. Manufacturers' Finance Co. v McKey, 294 US 442, 79 L ed 982, 55 S Ct 444; Pan American Petroleum & Transport Co. v United States, 273 US 456, 71 L ed 734, 47 S Ct 416; Myers v Hurley Motor Co. 273 US 18, 71 L ed 515, 47 S Ct 277, 50 ALR 1181; Drennen & Co. v Mercantile Trust & D. Co. 115 **Ala** 592, 23 So 164; Bank of Fayetteville v Lorwein, 76 **Ark** 245, 88 SW 919; Weyant v Murphy, 78 **Cal** 278, 20 P 568; Chamberlain v Thompson, 10 **Conn** 243; Evans v Tucker, 101 **Fla** 688, 135 So 305, 85 ALR 170; Taylor v Rawlins, 86 **Fla** 279, 97 So 714, 35 ALR 271; Atlanta Bkg. & Sav. Co. v Johnson, 179 **Ga** 313, 175 SE 904, 95 ALR 1436; Kelley v Clark, 23 **Idaho** 1, 129 P 921; Springfield & N. E. Traction Co. v Warrick, 249 **Ill** 470, 94 NE 933; Sjulin v Clifton Furniture Co. 241 **Iowa** 761, 41 NW2d 721; Louisville Asphalt Co. v Cobb, 310 **Ky** 126, 220 SW2d 110, 8 ALR2d 981; Jefferson County v McGrath, 205 **Ky** 484, 266 SW 29, 41 ALR 586; Wood v Goodwin, 49 **Me** 260; Cityco Realty Co. v Slaysman, 160 **Md** 357, 153 A 278, 76 ALR 296; Williams v Williams, 167 **Miss** 115, 148 So 358, 88 ALR 197; Adler v Interstate Trust & Bkg. Co. 166 **Miss** 215, 146 So 107, 87 ALR 347; Griggs v Miller (**Mo**) 374 SW2d 119; Jones v McGonigle, 327 **Mo** 457, 37 SW2d 892, 74 ALR 550; Hall v Lommasson, 113 **Mont** 272, 124 P2d 694; Ames v New Jersey Franklinite Co. 12 **NJ Eq** 66; Brown v Robinson, 224 **NY**

states.[5] The principle thus expressed governs the court in administering any kind of equitable relief in any controversy where its application may be necessary to work out complete justice.[6] Having come into court seeking equitable relief, a complainant must offer to do equity,[7] and will be required by the court to do equity as a condition to the granting of the remedy or relief sought.[8] By appealing to the equitable jurisdiction, the complainant is deemed to have submitted himself to the court's decision as to what is necessary to do justice to the defendant[9] as determined in the light of equitable principles.[10]

The principle under discussion is as applicable to a party defendant who seeks the aid of equity as it is to a party complainant.[11] Such maxim is applicable to complainants seeking relief from judgments against them,[12] or seeking to complete or effectuate a judgment in their favor.[13] It applies in proceedings for an injunction,[14] specific performance,[15] and the quieting of title,[16] and is said to be the basis of the right to accept a benefit under a deed[17] or will,[18] in return for which the recipient is bound to give effect to all the provisions of the instrument and perform the burdens imposed on him therein,

301, 120 NE 694, 21 ALR 777; Owens v Wright, 161 NC 127, 76 SE 735; Winthrop v Huntington, 3 Ohio 327; Dickerson v Murfield, 173 Or 662, 147 P2d 194; Workman v Guthrie, 29 Pa 495; Jorgensen-Bennett Mfg. Co. v Knight, 156 Tenn 579, 3 SW2d 668, 60 ALR 393, app dismd 278 US 583, 73 L ed 519, 49 S Ct 186; Julian v American Nat. Bank, 21 Tenn App 137, 106 SW2d 871; United Cigarette Mach. Co. v Brown, 119 Va 813, 89 SE 850; Peters v Case, 62 W Va 33, 57 SE 733; Helbig v Bonsness, 227 Wis 52, 277 NW 634, 115 ALR 373.

5. Marietta Realty & Development Co. v Reynolds, 189 Ga 147, 5 SE2d 347.

6. Lindell v Lindell, 150 Minn 295, 185 NW 929; Lindsey v Clark, 193 Va 522, 69 SE2d 342.

7. High Knob, Inc. v Allen, 205 Va 503, 138 SE2d 49.

The maxim applies to one who affirmatively seeks equitable relief. Columbus v Mercantile Trust & D. Co. 218 US 645, 54 L ed 1193, 31 S Ct 105.

8. Nicosia v Sher (CA10 Okla) 239 F2d 456; Griggs v Miller (Mo) 374 SW2d 119; Fidelity Union Trust Co. v Multiple Realty & Constr. Co. 131 NJ Eq 527, 26 A2d 155; Edwards v Tobin, 132 Or 38, 28 P 562, 68 ALR 152; High Knob, Inc. v Allen, 205 Va 503, 138 SE2d 49.

A plaintiff is equitably bound to do equity as a condition precedent to obtaining equitable relief. Duggan v Platz, 263 NY 505, 189 NE 566; Grosch v Kessler, 256 NY 477, 177 NE 10.

9. Fidelity Union Trust Co. v Multiple Realty & Constr. Co. 131 NJ Eq 527, 26 A2d 155; Lindsey v Clark, 193 Va 522, 69 SE2d 342.

One who institutes a suit for specific performance necessarily submits himself to the judgment of the court to do what it shall adjudge to be equitable to the defendant. Willard v Tayloe, 8 Wall (US) 557, 19 L ed 501.

10. Lindsey v Clark, 193 Va 522, 69 SE2d 342.

Anyone asking the aid of the court whether that aid is such as could be obtained in a court of law or whether it is of a character obtainable only in a court of equity, submits himself to the jurisdiction of the court, and in asking its aid, subjects himself to the imposition of such terms as well-established equitable principles would require. Charleston & W. C. R. Co. v Hughes, 105 Ga 1, 30 SE 972; Russell Petroleum Co. v Walker, 162 Okla 216, 19 P2d 582; Comstock v Thompson, 286 Pa 457, 133 A 638.

11. Brown, B. & Co. v Lake Superior Iron Co. 134 US 530, 33 L ed 1021, 10 S Ct 604.

12. See JUDGMENTS (Rev ed § 816).

13. Union Cent. L. Ins. Co. v Drake (CA8 Neb) 214 F 536; Compton v Jesup (CA6 Ohio) 68 F 263, ctfd ques ans 167 US 1, 42 L ed 55, 17 S Ct 795; Terry v McClintock, 41 Mich 492, 2 NW 787.

Annotation: 139 ALR 1507.

14. See INJUNCTIONS (Rev ed § 34).

15. See SPECIFIC PERFORMANCE (1st ed §§ 6, 177).

16. See QUIETING TITLE AND DETERMINATION OF ADVERSE CLAIMS (1st ed §§ 67 et seq.).

17. Peters v Bain, 133 US 670, 33 L ed 696, 10 S Ct 354; Barrier v Kelly, 82 Miss 233, 33 So 974.

18. See WILLS (1st ed § 1526).

including the renunciation of any inconsistent rights or claims. The maxim applies to a state when it seeks the aid of a court of equity.[19]

Although the maxim that he who seeks equity must do equity meets with the universal approval of the courts, the latter are not to determine arbitrarily what the equities between the parties are. This is a question which must be presented by proper pleading, and the issue thus presented determined upon the evidence.[20] It has been said that the maxim requires a plaintiff to proceed in accordance with his own theory.[1] On the other hand, it has been held that a pleading relying upon or invoking the maxim is not essential, for such relief is in the nature of a condition imposed upon the complainant, and is not granted in response to an affirmative pleading by the defendant.[2]

§ 132. Nature of defendant's claim which equity will protect or enforce.

The maxim "he who seeks equity must do equity" has been said to presuppose that equitable claims, as distinguished from legal rights, have arisen out of the subject matter of litigation in favor of each of the parties,[3] and that the maxim is not applicable to a defendant who asserts a pure legal right to defeat the application of a complainant for equitable relief.[4] The equity of the defendant must exist in fact, and it must be that of which the law takes cognizance.[5] However, an equity court will protect a defendant's equitable right arising upon his answer regardless of the nature of relief sought by the plaintiff.[6] The court finds no obstacle in the way of decreeing that which is right and just to the defendant although the latter may be in some particular a wrongdoer.[7] Again, affirmative relief may be accorded notwithstanding that the defendant would be precluded from obtaining it if he were the complainant[8] or if he tried to enforce his claim in any other manner.[9] The fact

19. Daniell v Sherrill (Fla) 48 So 2d 736, 23 ALR2d 1410, holding that a state which invokes the jurisdiction of a court of equity to quiet title to certain property is bound by the maxim "he who seeks equity must do equity" to the same extent as any citizen.

20. Gettins v Boyle, 184 App Div 499, 177 NYS 711, affd on reh 186 App Div 966, 173 NYS 907.

1. Kam Chin Chun Ming v Kam Hee Ho, 45 Hawaii 521, 371 P2d 379, reh den 46 Hawaii 13, 373 P2d 141.

2. Ward v Lovell, 21 Tenn App 560, 113 SW2d 759.

A party may invoke the maxim that one who seeks equity must do equity without pleading it. Dickerson v Murfield, 173 Or 662, 147 P2d 194.

3. Manufacturers' Finance Co. v McKey, 294 US 442, 79 L ed 982, 55 S Ct 444.

4. Garbutt v Mayo, 128 Ga 269, 57 SE 495, wherein the court rejected the contention that the maxim was applicable and said: "While the plaintiffs have resorted to a court of equity to obtain relief against the defendants, the defendants are entitled to defeat the claim for equitable relief by showing that the plaintiffs have no title to the property, but that the title is in the defendants; that is to say, the defendants may assert their legal title as against the plaintiffs' equitable claim. The defendants are not the movants in the matter. They have not appealed to a court of equity for relief. They relied upon their legal title to defeat the plaintiffs; and, in order to secure the benefit resulting from their ownership, it is not incumbent upon them to do anything more than to establish that they are in law the owners of the property. It is not incumbent upon them, in the assertion of their legal title to the property, to do anything more than to establish the fact that the legal title in them exists. So far as their assertion of title is concerned, they are seeking no equitable relief whatever against the plaintiffs."

5. Cityco Realty Co. v Slaysman, 160 Md 357, 153 A 278, 76 ALR 296; City Investing Co. v Davis (Mo) 334 SW2d 63.

6. Fidelity Union Trust Co. v Multiple Realty & Constr. Co. 131 NJ Eq 527, 26 A2d 155.

7. Gaffney v Kent (Tex Civ App) 74 SW2d 176.

8. Walker v Galt (CA5 Fla) 171 F2d 613,

that the defendant's demand is barred by the statute of limitations does not preclude the court from requiring the complainant to satisfy it.[10] Thus, the court may require or authorize the enforcement of a claim or equity which is held by the defendant and which, by reason of the statute of limitations or a former judgment, the defendant could not enforce affirmatively or in any other way.[11]

§ 133. Relation of adverse equity, or obligation of complainant to do equity, to subject matter of and parties to suit.

The general rule that he who seeks equity must do equity will be applied where the adverse equity grows out of the very controversy before the court, or out of such circumstances as the records shows to be a part of its history, or is so connected with the cause and litigation as to be presented in the pleadings and proof, with full opportunity afforded to the complainant to explain or refute the charges.[12] Thus, the obligations which a complainant will be required to perform as a condition to the obtaining of the relief which he prays for are those arising out of the transaction which is the subject matter of litigation.[13] A complainant will not be required to fulfil obligations which are founded on other contracts or transactions between the parties to the suit[14] or between the complainant and a third person.[15] Accordingly, the maxim that he who seeks equity must do equity is held to be limited to conduct in dealings between the parties to the controversy, since to hold otherwise would bar equitable relief to a litigant upon proof that at any time prior to his application therefor, he was guilty of inequitable conduct.[16] On the other hand, a person cannot expect a court of equity to enforce an agreement made with the intent that it shall operate as a fraud on the private rights and interests of third persons or the public generally.[17]

6 ALR2d 808, cert den 336 US 925, 93 L ed 1086, 69 S Ct 656; Evans v Tucker, 101 Fla 688, 135 So 305, 85 ALR 170; Martin v Martin, 164 Ill 640, 45 NE 1007; Lindell v Lindell, 150 Minn 295, 185 NW 929; Williams v Williams, 167 Miss 115, 148 So 358, 88 ALR 197; Anderson v Purvis, 211 SC 255, 44 SE2d 611; Gaffney v Kent (Tex Civ App) 74 SW2d 176.

9. Anderson v Purvis, 211 SC 255, 44 SE 2d 611; Lindsey v Clark, 193 Va 522, 69 SE2d 342.

10. Bank of Alma v Hamilton, 85 Neb 441, 123 NW 458; United Cigarette Mach. Co. v Brown, 119 Va 813, 89 SE 850.

11. United Cigarette Mach. Co. v Brown, supra.

Although a note is set aside on the ground that it was procured through duress, nevertheless, in giving such relief, equity may provide that the relief shall be without prejudice to the right to maintain an action at law upon the original cause of action to settle which the note was given, even though any remedy at law to enforce this cause of action would otherwise be barred by the statute of limitations. Macke v Jungels, 102 Neb 123, 166 NW 191.

12. Lindell v Lindell, 150 Minn 295, 185 NW 929; Comstock v Johnson, 46 NY 615.

13. Collester v Oftedahl, 48 Cal App 2d 756, 120 P2d 710; Anderson v Purvis, 211 SC 255, 44 SE2d 611.

One is bound not only to perform his engagements, but also to repair all the damages which accrue naturally from their breach. Curtis v Innerarity, 6 How (US) 146, 12 L ed 380.

14. Mahoney v Bostwick, 96 Cal 53, 30 P 1020; Kirby v Union P. R. Co. 51 Colo 509, 119 P 1042; Huggins v Johnston (Tex Civ App) 3 SW2d 937, affd 120 Tex 21, 35 SW2d 688; Rosenthyne v Matthews-McCulloch Co. 51 Utah 38, 168 P 957.

One who seeks to avoid a conveyance need only offer to repay the consideration; he need not offer to pay for services rendered by the defendant under an independent contract. Warner v Flack, 278 Ill 303, 116 NE 197, 2 ALR 423.

15. Garland v Rives, 4 Rand (Va) 282.

16. Ranger Steel Products Corp. v Chodak (Sup) 128 NYS2d 607.

17. § 136, infra.