

Although the maxim that he who seeks equity must do equity generally applies to what a party does or is required to do with respect to the subject matter of the suit after he gets into court, it has also been applied to what he has done with respect thereto before coming into court; in other words, he must not only do equity, but he must have done equity, to the other party with respect to the subject matter of the suit.<sup>18</sup>

### § 134. Conditions to relief.

As a corollary of the maxim that he who seeks equity must do equity, courts of equity have for a long time granted relief upon such conditions as are just and proper and demanded by the exigencies of the circumstances.<sup>19</sup> It is fundamental that anyone going into equity and asking its aid submits himself to the imposition of such terms as well-established equitable principles require.<sup>20</sup> Undoubtedly, a court of equity has power to make its granting of relief dependent upon the performance of conditions by a party litigant,<sup>1</sup> if the conditions are such as are imposed in the exercise of a sound discretion<sup>2</sup> and of a character calculated to satisfy the dictates of conscience.<sup>3</sup> The court may

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

19. *Milanko v Austin*, 362 Mo 357, 241 SW2d 881, cert den 342 US 906, 96 L ed 678, 72 S Ct 298.

Where equitable rules and principles demand it, a court may condition the grant of relief to a complainant in order to place the defendant in the position that he should equitably occupy in view of the relief granted. *Nicosia v Sher* (CA10 Okla) 239 F2d 456.

20. *Marietta Realty & Development Co. v Reynolds*, 189 Ga 147, 5 SE2d 347; *Lindsey v Clark*, 193 Va 522, 69 SE2d 342.

The court's own terms may be imposed on a party to whom it grants relief. *Marine Ins. Co. v Hodgson*, 7 Cranch (US) 332, 3 L ed 362.

1. *Central Kentucky Natural Gas Co. v Railroad Commission*, 290 US 264, 78 L ed 307, 54 S Ct 154; *Nicosia v Sher* (CA10 Okla) 239 F2d 456; *Mason v Ellison*, 63 Ariz 196, 160 P2d 326 (stating that when an equity court renders a conditional decree, it is not making a contract between the parties, but is simply adjusting the equities and granting to one or the other certain relief provided that one or the other complies with certain directions by the court, in order to properly administer equity and effect justice); *State ex rel. Peevy v Cate*, 236 Ark 836, 371 SW2d 541; *Seeger v Odell*, 18 Cal 2d 409, 115 P2d 977, 136 ALR 1291; *Pure Oil Co. v Byrnes*, 388 Ill 26, 57 NE2d 356; *Cantwell v Cantwell*, 237 Ind 168, 143 NE 2d 275, cert dismd and app den 356 US 225, 2 L ed 2d 712, 78 S Ct 700, reh den 356 US 954, 2 L ed 2d 847, 78 S Ct 913 (stating that the rule requiring a meritorious defense to be shown before a judgment will be set aside is a reasonable condition interposed

by equity courts); *Givens v Turner*, 272 Ky 211, 113 SW2d 1166; *Mississippi State Highway Com. v Spencer*, 233 Miss 155, 101 So 2d 499; *Milanko v Austin*, 362 Mo 357, 241 SW2d 881; *Hall v Lommasson*, 113 Mont 272, 124 P2d 694; *Winthrop v Huntington*, 3 Ohio 327; *Henderson v Arkansas*, 71 Okla 253, 176 P 751.

2. *Central Kentucky Natural Gas Co. v Railroad Commission*, 290 US 264, 78 L ed 307, 54 S Ct 154; *State ex rel. Peevy v Cate*, 236 Ark 836, 371 SW2d 541; *Pure Oil Co. v Byrnes*, 388 Ill 26, 57 NE2d 356.

A court of equity has discretion, in the exercise of the jurisdiction committed to it, to grant or deny relief upon the performance of conditions which will safeguard the public interests. *Securities & Exch. Commission v United States Realty & Improv. Co.* 310 US 434, 84 L ed 1293, 60 S Ct 1044.

3. *Cantwell v Cantwell*, 237 Ind 168, 143 NE2d 275, cert dismd and app den 356 US 225, 2 L ed 2d 712, 78 S Ct 700, reh den 356 US 954, 2 L ed 2d 847, 78 S Ct 913; *Givens v Turner*, 272 Ky 211, 113 SW2d 1166.

In accordance with the maxim that "he who asks equity must do equity," it is within the province of a court of equity, as a condition to granting relief, to make it conditional upon the complainant's observing the requirements of conscience and of righteous conduct, even though this is not demanded by a cross bill. *White v Massee*, 202 Iowa 1304, 211 NW 839, 66 ALR 1434.

By an active exertion of its powers, a court of equity is not positively bound to interfere so as to permit a suitor to redeem lands which he had conveyed; the court has a discretion on the subject and may prescribe the terms of its interference and demand that its conscience be satisfied by the doing of

thus protect and give effect to the rights of one party while awarding relief to the other,<sup>4</sup> and in doing so, the court is not restrained by strict legal rights.<sup>5</sup> In the exercise of its power, the court may require the performance of conditions which are designed to protect the rights of the parties pending appeal or to safeguard temporarily the public interest while the decree is being carried into effect.<sup>6</sup> Furthermore, where a judgment debtor comes into court asking protection on the ground that he has satisfied the judgment, the door is fully open for the court to modify or grant the prayer upon such conditions as justice demands.<sup>7</sup>

In some situations, however, the court's power in this respect should be exercised with caution.<sup>8</sup> Moreover, in some cases, and in accordance with the indication above that the court's power in this respect is not absolute, the imposition of conditions upon the granting of relief has been held to be reversible error.<sup>9</sup>

Where a final decree is to be enforced on certain conditions, the court should see that the conditions are complied with; it has been held to be erroneous to leave that question to the determination of the clerk.<sup>10</sup> It has been held, however, that conditions of relief do not constitute an affirmative decree against a plaintiff. He may perform them or not at his option, but if he fails and refuses to perform them, the court may deny him all relief and dismiss his action.<sup>11</sup>

One seeking in equity to be relieved from the performance of a condition precedent to obtaining relief, on the ground that it is impossible to perform such condition, must also show that the granting of the relief will not jeopardize the legitimate interest of the persons entitled to performance of the condition.<sup>12</sup>

#### § 135. — What may be required of complainant; restoration of status quo.

While a determination of the question as to what a complainant must do as a condition to securing relief is primarily the function of the court or chancellor, the latter, in arriving at a decision, is not vested with unlimited or arbitrary power. He may not impose a condition which in his individual opinion will work substantial justice between the parties. On the contrary, the complainant may be required to do only that which fixed principles

equity on the part of him who asks it. *Holden Land & Live Stock Co. v Inter-State Trading Co.* 233 US 536, 58 L ed 1083, 34 S Ct 661.

4. *Kinney-Coastal Oil Co. v Kieffer*, 277 US 488, 72 L ed 961, 48 S Ct 580; *Mississippi State Highway Com. v Spencer*, 233 Miss 155, 101 So 2d 499.

5. *White v Masee*, 202 Iowa 1304, 211 NW 839, 66 ALR 1434.

6. *Central Kentucky Natural Gas Co. v Railroad Commission*, 290 US 264, 78 L ed 307, 54 S Ct 154; *Mississippi State Highway Com. v Spencer*, 233 Miss 155, 101 So 2d 499.

7. *Mechanics Bank v Lynn*, 1 Pet (US) 376, 7 L ed 185.

8. The power of federal equity courts to attach conditions to decrees enjoining state rates should be cautiously exercised. *Central*

*Kentucky Natural Gas Co. v Railroad Commission*, 290 US 264, 78 L ed 307, 54 S Ct 154.

9. *State ex rel. State Highway Com. v Gilham*, 188 Okla 10, 105 P2d 773, the court saying, however, that it is not holding that equity cannot in any case impose conditions upon the granting of relief if and when special conditions are appropriate and accomplish the ends of justice.

10. *Farmer v Samuel*, 4 Litt (Ky) 187; *Griffith v Depew*, 3 AK Marsh (Ky) 177.

11. *Nicosia v Sher* (CA10 Okla) 239 F2d 456.

12. *Martin v New York L. Ins. Co.* (CA7 Ill) 104 F2d 573, 124 ALR 1163, cert den 308 US 594, 84 L ed 497, 60 S Ct 123, 124.

obligate him to do.<sup>13</sup> But if there is a distinctly equitable right to which the defendant is entitled, even though not at common law, the court will make it a condition precedent to the plaintiff's relief that he shall grant such equitable right to the defendant.<sup>14</sup>

As to whether the complainant must offer to discharge the obligation which is owed by him depends, it seems, upon the showing whether the obligation is definite and certain in all respects. If he simply owes to the defendant a sum of money, he must, so it has been held, offer to pay the amount; and if he has failed to make payment, the court may properly deny the relief for which he has prayed and dismiss the bill.<sup>15</sup> In some situations the complaint or petition must incorporate allegations offering to do equity to the defendant.<sup>16</sup> An offer on the part of the complainant is appropriate, apparently, although not always a requisite of good pleading.<sup>17</sup> On the other hand, the complainant need not make an offer to do equity if there is doubt or uncertainty as to what he is obligated to do.<sup>18</sup>

The basic principle upon which restoration of the status quo is required in order to avoid a contract is that one who seeks equity must do equity.<sup>19</sup> An offer in the bill to make restitution when an accounting shall be had may be held to be insufficient; and the complainant may be required, before the court proceeds with the case, to pay to the defendant sums which have been wrongfully withheld, the bill to be dismissed at the complainant's costs in the event restitution is not made within a specified time.<sup>20</sup> So also, where a person in possession of property under claim of title has in good faith made improvements and incurred expense in other respects, the true owner, seeking the aid of equity to establish his title, will be compelled to reimburse the occupant for his expenditures, upon the principle that he who seeks equity must do equity.<sup>1</sup>

### 3. "CLEAN HANDS" MAXIM

#### § 136. Generally.

The frequently stated maxim that "he who comes into equity must come with clean hands"<sup>2</sup> is an ancient and favorite precept of the equity court.<sup>3</sup>

13. *Marietta Realty & Development Co. v Reynolds*, 189 Ga 147, 5 SE2d 347; *Manternach v Studt*, 240 Ill 464, 88 NE 1000; *Lindell v Lindell*, 150 Minn 295, 185 NW 929.

14. *Anderson v Purvis*, 211 SC 255, 44 SE 2d 611.

15. *King v Eldora*, 220 Iowa 568, 261 NW 602.

A proceeding for the collection of a debt will not be set aside unless the complainant tenders the amount due. *McQuiddy v Ware* (US) 20 Wall 14, 22 L ed 311.

16. *Florida East Coast Fruit Land Co. v Mitchell*, 80 Fla 291, 85 So 661.

17. *United States v Beebe*, 180 US 343, 45 L ed 563, 21 S Ct 371; *Miller v Louisville & N. R. Co.* 83 Ala 274, 4 So 842; *Jones v*

*McGonigle*, 327 Mo 457, 37 SW2d 892, 74 ALR 550.

18. A deed to real estate need not be tendered if there is uncertainty as to who should be named as the grantee. *Jones v McGonigle*, *supra*.

19. *Kam Chin Chun Ming v Kam Hee Ho*, 45 Hawaii 521, 371 P2d 379, reh den 46 Hawaii 13, 373 P2d 141; *Sjulin v Clifton Furniture Co.* 241 Iowa 761, 41 NW2d 721; *York v Cole*, 254 NC 224, 118 SE2d 419.

See also 13 Am Jur 2d, CANCELLATION OF INSTRUMENTS §§ 37 et seq.; 17 Am Jur 2d, CONTRACTS §§ 512 et seq.

20. *Comstock v Thompson*, 286 Pa 457, 133 A 638.

1. See IMPROVEMENTS (1st ed § 26).

2. *Manufacturers' Finance Co. v McKey*,

The principle announced thereby is recognized as being a fundamental of equity jurisprudence,<sup>4</sup> and the same principle is expressed in the language that he who has done inequity shall not have equity.<sup>5</sup> The maxim and principle for which it stands signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable,<sup>6</sup> unfair and dishonest, or fraudulent and deceitful<sup>7</sup> as to the controversy in issue.<sup>8</sup> It is held that equity denies affirmative relief because of such conduct even though it thereby leaves undisturbed, and in ostensibly full legal effect, acts or proceedings which it would otherwise set aside.<sup>9</sup>

It has been pronounced that where a plaintiff comes into equity for relief, he and those in privity with him must be free of any inequitable conduct relative to the controversy.<sup>10</sup> It has been held that although all members of a group suing as plaintiffs are not guilty of unconscionable conduct, they

294 US 442, 79 L ed 982, 55 S Ct 444; Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861; Keystone Driller Co. v General Excavator Co. 290 US 240, 78 L ed 293, 54 S Ct 146; Carmen v Fox Film Corp. (CA2 NY) 269 F 928, 15 ALR 1209, cert den 255 US 569, 65 L ed 790, 41 S Ct 323; Memphis Keeley Inst. v Leslie E. Keeley Co. (CA6 Tenn) 155 F 964; Moore v Tarlton, 3 Ala 444; Boretz v Segar, 124 Conn 320, 199 A 548; Stehli v Thompson, 151 Fla 566, 10 So 2d 123; Cutler v Hicks, 268 Ill App 161; Boos v Morgan, 130 Ind 305, 30 NE 141; Proctor v Hansel, 205 Iowa 542, 218 NW 255, 58 ALR 153; Adler v Interstate Trust & Bkg. Co. 166 Miss 215, 146 So 107, 87 ALR 347; Stierlin v Teschemacher, 333 Mo 1208, 64 SW2d 647, 91 ALR 121; Re First Trust & Sav. Bank, 45 Mont 89, 122 P 561; Munn v Americana Co. 83 NJ Eq 309, 91 A 87; Skirvin v Sigler, 183 Okla 523, 83 P2d 530; Teuscher v Gragg, 136 Okla 129, 276 P 753, 66 ALR 143; McKee v Fields, 187 Or 323, 210 P2d 115; Dickerson v Murfield, 173 Or 662, 147 P2d 194; McVey v Brendel, 144 Pa 235, 22 A 912; State ex rel. Daniel v Kizer, 164 SC 383, 162 SE 444, 81 ALR 722; Humphreys-Mexia Co. v Arseneaux, 116 Tex 603, 297 SW 225, 53 ALR 1147; Pittsburgh & W. V. Gas Co. v Nicholson, 87 W Va 540, 105 SE 784, 12 ALR 1392; David Adler & Sons Co. v Maglio, 200 Wis 153, 228 NW 123, 66 ALR 1085; Grether v Nick, 193 Wis 503, 213 NW 304, 215 NW 571, 55 ALR 525.

Sorrell v Smith (Eng) [1925] AC 700 (HL).

**Annotation:** 4 ALR 44.

3. Bishop v Bishop (CA3 Virgin Islands) 257 F2d 495, cert den 359 US 914, 3 L ed 2d 576, 79 S Ct 578; Eristavi-Tchitcherine v Lasser (CA5 Fla) 164 F2d 144; Padgett v Padgett, 199 Cal App 2d 652, 18 Cal Rptr 789; Katz v Karlsson, 84 Cal App 2d 469, 191 P2d 541; State ex rel. Summa v Starke Circuit Court, 238 Ind 204, 149 NE 541;

Duncombe v Amfot Oil Co. 201 Ky 290, 256 SW 427.

**Annotation:** 4 ALR 44.

4. State ex rel. Summa v Starke Circuit Court, 238 Ind 204, 149 NE2d 541; Schaeffer v Sterling, 176 Md 553, 6 A2d 254; Rust v Gillespie, 90 Okla 59, 216 P 480.

The "clean hands" maxim is far more than a mere banality. New York Football Giants, Inc. v Los Angeles Chargers Football Club, Inc. (CA5 Miss) 291 F2d 471.

5. Milwaukee & M. R. Co. v Soutter (US) 13 Wall 517, 20 L ed 543; State ex rel. Summa v Starke Circuit Court, 238 Ind 204, 149 NE2d 541; Duncombe v Amfot Oil Co. 201 Ky 290, 256 SW 427; Cedar Springs v Schlich, 81 Mich 405, 45 NW 994; Rueb v Rehder, 24 NM 534, 174 P 992, 1 ALR 423; Rust v Gillespie, 90 Okla 59, 216 P 480; Palmer v Harris, 60 Pa 156; James v Bird, 35 Va (8 Leigh) 510.

**Annotation:** 4 ALR 46.

6. National F. Ins. Co. v Thompson, 281 US 331, 74 L ed 881, 50 S Ct 288; McKnight v Taylor (US) 1 How 161, 11 L ed 86; Shikes v Gabelnick, 273 Mass 201, 173 NE 495, 87 ALR 1339; Adler v Interstate Trust & Bkg. Co. 166 Miss 215, 146 So 107, 87 ALR 347; Stierlin v Teschemacher, 333 Mo 1208, 64 SW2d 647, 91 ALR 121; King v Antrim Lumber Co. 70 Okla 52, 172 P 958, 4 ALR 21; Humphreys-Mexia Co. v Arseneaux, 116 Tex 603, 297 SW 225, 53 ALR 1147.

**Annotation:** 4 ALR 47 et seq.

7. § 138, infra.

8. §§ 142 et seq., infra.

9. Padgett v Padgett, 199 Cal App 2d 652, 18 Cal Rptr 789.

10. Gables Racing Asso. v Persky, 148 Fla 627, 6 So 2d 257.

cannot claim the benefit of a fraud perpetrated by one or two of their number.<sup>11</sup> If the maxim is applicable to the conduct of the individual, relief will be denied to his heirs or personal representative.<sup>12</sup>

Parties are not only bound to act fairly in their dealings with each other, but they are not to expect the aid of a court of equity to enforce an agreement made with the intent that it shall operate inequitably or as a fraud on the private rights and interests of third persons<sup>13</sup> or on the public generally.<sup>14</sup> Thus, the requirements of public policy will be considered in determining the applicability of the maxim.<sup>15</sup> Indeed, where a suit in equity concerns the public interest as well as the private interests of the litigants, the doctrine that he who comes into equity must come with clean hands assumes a greater significance, since it not only prevents a wrongdoer from enjoying the fruits of his transgression, but also averts an injury to the public.<sup>16</sup>

According to good authority, a party may invoke the maxim without pleading it.<sup>17</sup> Moreover, in order that the suit may be dismissed, the defendant need not have invoked the clean hands maxim;<sup>18</sup> the court will act sua sponte or of its own motion.<sup>19</sup> However, it seems that the maxim may not be raised

11. *Ford v Buffalo Eagle Colliery Co.* (CA4 W Va) 122 F2d 555.  
48 W Va LQ 172.

12. *Stierlin v Teschemacher*, 333 Mo 1208, 64 SW2d 647, 91 ALR 121.

13. *Selz v Unna* (US) 6 Wall 327, 18 L ed 799; *Owens v Owens*, 21 Tenn App 104, 106 SW2d 227.

Inequitable conduct justifying a denial of relief extends not only to parties dealing with each other, but as well to private rights and interests of third persons. *Camp v Camp*, 196 Okla 199, 163 P2d 970.

Where the plaintiff, in order to recover, must overcome upon equitable grounds a wrongful modification of the contract, executed by the plaintiff, and where the plaintiff admits inequitable or immoral conduct in entering into such contract, in that it was executed solely for the purpose of deceiving a third person and inducing him to relinquish certain rights, the relief will be denied the plaintiff. *Skirvin v Sigler*, 183 Okla 523, 83 P2d 530; 23 Minn L Rev 382.

In many cases the refusal of a court to decree a conveyance to the purchaser of property paid for by him and transferred to a third person to defraud creditors is based on the ground that the purchaser does not come into court with clean hands. *Haggerty v Wilmington Trust Co.* 22 Del Ch 152, 194 A 134; *Summers v Morley*, 95 NJ Eq 505, 123 A 377, affd 96 NJ Eq 677, 126 A 925; *Turner v Eford*, 58 NC 106. Annotation: 117 ALR 1466.

14. *New York Football Giants, Inc. v Los Angeles Chargers Football Club, Inc.* (CA5 Miss) 291 F2d 471.

15. *Baue v Embalmers Federal Labor Union* (Mo) 376 SW2d 230.

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16. *Precision Instrument Mfg. Co. v Automotive Maintenance Machinery Co.* 324 US 806, 89 L ed 1381, 65 S Ct 993, reh den 325 US 893, 89 L ed 2005, 65 S Ct 1189; *Republic Molding Corp. v B. W. Photo Utilities* (CA9 Cal) 319 F2d 347; *Bankers Life & Casualty Co. v Alexander*, 242 Iowa 364, 45 NW2d 258.

17. *Dickerson v Murfield*, 173 Or 662, 147 P2d 194.

The doctrine of clean hands need not be pleaded in order to be available where the evidence discloses applicability. *Brenner v Smullian* (Fla) 84 So 2d 44.

18. *Bishop v Bishop* (CA3 Virgin Islands) 257 F2d 495, cert den 359 US 914, 3 L ed 2d 576, 79 S Ct 578; *Frank Adam Electric Co. v Westinghouse Electric & Mfg. Co.* (CA8 Mo) 146 F2d 165; *Bell & H. Co. v Bliss* (CA7 Ill) 262 F 131; *Cody v Landis*, 68 Ohio App 225, 22 Ohio Ops 364, 35 Ohio L Abs 68, 40 NE2d 209.

19. *Bishop v Bishop* (CA3 Virgin Islands) 257 F2d 495, cert den 359 US 914, 3 L ed 2d 576, 79 S Ct 578; *Frank Adam Electric Co. v Westinghouse Electric & Mfg. Co.* (CA8 Mo) 146 F2d 165 (saying that whenever in the course of a proceeding the court is informed in any way that the plaintiff is without clean hands, it should inquire into the facts of its own accord and if it finds the charge to be true, relief should not be granted); *Bell & H. Co. v Bliss* (CA7 Ill) 262 F 131; *Sisson v Janssen*, 244 Iowa 123, 56 NW2d 30.

Annotation: 4 ALR 47.

The fact that the defendant has not in his answer alleged the delinquency of the complainant does not preclude the court from