

in an appellate court for the first time except on a showing of very strong grounds.³⁰

The clean hands maxim is subject to reasonable limitations.¹ Generally, it may be invoked only to prevent affirmative equitable relief.² The maxim is not one of absolutes and should be applied in the court's discretion, so as to accomplish its purpose of promoting public policy and the integrity of the courts.³ It may not be invoked if the consequence of its application would be to produce a result which is denounced by statute or which is contrary to public policy.⁴ It has been held that the maxim may not be invoked against a litigant who seeks, not the relief which is accorded by an equity court, but the enforcement of a legal right by means of a proceeding in equity, the reason therefor being the inability to proceed in the court of law without subjecting himself to a charge of contempt.⁵ A party who is insane may be relieved from the consequences of his conduct.⁶

The validity and enforceability of contracts, as against the contention that they are illegal, immoral, or against public policy, are considered in another article.⁷

§ 137. Basis, rationale, and purpose of maxim.

"Clean hands" is a legal euphemism which refers to the acceptability, clean-

refusing relief. *Munn v Americana Co.* 83 NJ Eq 309, 91 A 87.

A court will of its own motion apply the maxim at any stage in the proceedings. *General Electric Co. v Hygrade Sylvania Corp.* (DC NY) 45 F Supp 714.

20. *Mosley v Magnolia Petroleum Co.* 45 NM 230, 114 P2d 740, saying that if there was a dismissal by the appellate court under the clean hands maxim, there would be no shadow of doubt of the inequity of the party so charged, where the maxim had not been invoked in the trial court.

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

2. *Sisson v Janssen*, 244 Iowa 123, 56 NW 2d 30.

The "clean hands" doctrine does not preclude defendant, in a suit to set aside a deed of conveyance and attacking a transfer of funds to her by her father, alleged to have been obtained by undue influence, from setting up a defense that, by reason of the provisions of the father's will forfeiting the shares of other beneficiaries to her in event of a contest, complainants had no interest in their father's estate. *Alper v Alper*, 2 NJ 105, 65 A2d 737, 7 ALR2d 1350.

3. *Walsh v Atlantic Research Associates*, 321 Mass 57, 71 NE2d 580.

60 Harvard L Rev 980.

The application of the doctrine of clean hands is purely discretionary and it should not be applied where it will produce a result contrary to the firm public policy of the state

in a matter of such fundamental importance as the preservation of the dignity of the marital relationship. *Staedler v Staedler*, 6 NJ 380, 78 A2d 896, 28 ALR2d 1291.

4. *Johnson v Yellow Cab Transit Co.* 321 US 383, 88 L ed 814, 64 S Ct 622; *Simmons v Simmons*, 57 App DC 216, 19 F2d 690, 54 ALR 75; *Heflinger v Heflinger*, 136 Va 289, 118 SE 316, 32 ALR 1088; *Gardner v Gardner*, 144 W Va 630, 110 SE2d 495.

The reimbursement of public funds is not to be defeated by the private defense of the want of clean hands on account of any official delinquencies or mismanagement of that fund, and as to which there have been no injurious consequences, beyond those that are fanciful or illusory, to those raising that defense. *Love v Robinson*, 161 Miss 585, 137 So 499, 78 ALR 608.

Equity will not refuse to annul an incestuous marriage on account of the fact that the complainant was guilty of an offense in contracting the marriage. *Arado v Arado*, 281 Ill 123, 117 NE 816, 4 ALR 28.

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

6. *Hier v Farmers Mut. F. Ins. Co.* 104 Mont 471, 67 P2d 831, 110 ALR 1051, holding that the equitable maxim that he who comes into equity must come with clean hands will not preclude recovery on a fire insurance policy covering property set on fire by the assured while insane.

7. See 17 Am Jur 2d, CONTRACTS §§ 155 et seq.

liness, and decency of the claim put forth. It means that a claim tainted with deceit and impurity of motive, which, if of decent character, would perhaps receive approval, will unhesitatingly be ignored. It means that whenever a party who seeks to set the judicial machinery in motion and obtain some equitable remedy has violated conscience or good faith, or other equitable principle in his prior conduct with reference to the subject in issue, the doors of equity will be shut against him notwithstanding the defendant's conduct has been such that in the absence of circumstances supporting the application of the maxim, equity might have awarded relief.⁸ The foundation of the "clean hands" maxim is said to be the same as that upon which rest related maxims,⁹ such as "he who seeks equity must do equity"¹⁰ and "ex turpi causa non oritur actio" (from an unrighteous inducement, no cause of action arises).¹¹ The underlying theory is that equity has for its purpose the dispensing of unalloyed justice and that "no polluted hand shall touch the pure fountain of justice."¹² It has been said that the maxim is most applicable when a party seeks to take advantage of an act or omission which he has himself induced, and that it may be invoked because of the very nature of the wrong, either for the benefit of the court and society, or for the benefit of the defendant, when to do so otherwise would be to allow plaintiff to take an unfair advantage of the defendant.¹³ The maxim is said to govern the discretionary powers of courts of equity in the exercise of their remedial functions and to furnish a universal rule affecting their administration as to remedies and remedial rights.¹⁴

8. *Hoehn v Crews* (CA10 Okla) 144 F2d 665, *affd* *Garber v Crews*, 324 US 200, 89 L ed 870, 65 S Ct 600; *Ohio Oil Co. v Sharp* (CA10 Okla) 135 F2d 303; *Katz v Karlsson*, 84 Cal App 2d 469, 191 P2d 541; *Shrader v Shrader* (Clark v Shrader) 228 Ky 374, 15 SW2d 246, 66 ALR 139; *Wolfenstein v Fashion Originators Guild*, 244 App Div 656, 280 NYS 361; *Schultz v Morgan Sash & Door Co.* (Okla) 344 P2d 253, 74 ALR2d 967.

Annotation: 4 ALR 45.

The doctrine that he who comes into equity must come with clean hands is a self-imposed ordinance that closes the door of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant; and is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith, which presupposes a refusal on its part to be an abettor of inequity. *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.

While equity does not purport to enforce moral as distinguished from legal obligations, it can and should, as a matter of public policy involving the standing and integrity of the court, refuse aid to a litigant who has been guilty of such reprehensible conduct in reference to the subject matter of the litigation

that good conscience must revolt against granting him relief. See §§ 138 et seq., *infra*.

9. *Harris v Harris*, 208 Ala 20, 93 So 841.

10. *Kinner v Lake Shore & M. S. R. Co.* 69 Ohio St 339, 69 NE 614.

Annotation: 4 ALR 45.

11. *Langley v Devlin*, 95 Wash 171, 163 P 395, 4 ALR 32.

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

Lord Chief Justice Wilmut observed: "No polluted hand shall touch the pure fountain of justice; and those so entering the temple will be expelled with the anathema 'Procul, O procul este, profani!'" See *Rock v Matthews*, 35 W Va 531, 14 SE 137.

The purpose of the maxim is to secure justice and equity, and not to aid one in an effort to acquire property to which he has no right. *Batesville Truck Line, Inc. v Martin*, 219 Ark 603, 243 SW2d 729.

13. *Stewart v Stewart*, 158 Fla 326, 29 So 2d 247, 170 ALR 1073.

The principle underlying the maxim is that equity will not aid an applicant in securing or protecting gains from his wrongdoing or in escaping the consequences thereof. *Niner v Hanson*, 217 Md 298, 142 A2d 798.

14. *Rust v Gillespie*, 90 Okla 59, 216 P 480.

The maxim is not used, however, merely as a means of punishing a complainant for wrongful, immoral, or illegal acts. It is applied in the interest of the public and to protect the court and the defendant, but not to favor him.¹⁵

§ 138. Kinds of acts or conduct within maxim.¹⁶

The maxim that he who comes into equity must come with clean hands necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant; and accordingly, one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character, but any wilful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim.¹⁷ In discussing the significance of the words "clean hands," the courts use numerous expressions,¹⁸ those commonly employed being "inequitable,"¹⁹ "unconscionable,"²⁰

15. Republic Molding Corp. v B. W. Photo Utilities (CA9 Cal) 319 F2d 347.

48 W Va LQ 172.

The maxim is not employed for the punishment of wrongdoers, but to protect the equity court and the defendant from having the court's powers used in bringing about an inequitable result in the particular litigation before it. Ford v Buffalo Eagle Colliery Co. (CA4 W Va) 122 F2d 555.

The clean hands maxim does not operate punitively. Eristavi-Tchitcherine v Lasser (CA5 Fla) 164 F2d 144.

The courts apply the maxim "not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice." Keystone Driller Co. v General Excavator Co. 290 US 240, 78 L ed 293, 54 S Ct 146.

16. As to relation to subject matter of, or parties to, suit, see §§ 142-144, infra.

17. New York Football Giants, Inc. v Los Angeles Chargers Football Club, Inc. (CA5 Miss) 291 F2d 471; Katz v Karlsson, 84 Cal App 2d 469, 191 P2d 541; Otte v Pierce, 118 Colo 123, 194 P2d 331, 4 ALR2d 536 (suit in equity for annulment of marriage); Dunscombe v Amfot Oil Co. 201 Ky 290, 256 SW 427; McClanahan v McClanahan, 79 Ohio App 231, 34 Ohio Ops 549, 72 NE2d 798; McKee v Fields, 187 Or 323, 210 P2d 115.

Equity will not ordinarily aid a complainant who has been guilty of any reprehensible conduct, relating to the matter in controversy, which violates the fundamental conception of equity jurisprudence. Jones v Bodley, 28 Del Ch 191, 39 A2d 413.

Equity will deny relief to one guilty of unlawful or inequitable conduct in the matter in issue. Camp v Camp. 196 Okla 199, 163 P2d 970.

"Equity will not lend its aid in any manner to one who has been guilty of unlawful

or inequitable conduct in a transaction from which he seeks relief, nor to one who has been a participant in a transaction the purpose of which was to defraud a third person, to defraud creditors, to defraud the government, nor to a party to a transaction whose purpose is violative of public policy." Rust v Gillespie, 90 Okla 59, 216 P 480.

One who, though not in possession of sufficient positive and conclusive evidence to establish the fact, became convinced that an application for a patent upon which the Patent Office had declared an interference with another application of which he was the owner, was perjured but failed to bring the facts in his possession to the attention of the Patent Office and instead procured an outside settlement of the interference proceedings by which he acquired the fraudulent application, turned it into a patent, and barred the other parties from ever questioning its validity, is barred by the doctrine of clean hands in equity from relief in a suit against the other parties to the settlement for alleged infringements of his patents and violation of the settlement agreement. 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.

18. Bishop v Bishop (CA3 Virgin Islands) 257 F2d 495, cert den 359 US 914, 3 L ed 2d 576, 79 S Ct 578 (unfair and dishonest conduct).

A court of equity will not tolerate unfairness, inequitable conduct, or corruption in a complainant, however strong and clear his equitable right against the other party may be. Craft v McConoughy, 79 Ill 346; Funck v Farmers' Elevator Co. 142 Iowa 621, 121 NW 53; Kentucky Wagon Mfg. Co. v Ohio & M. R. Co. 98 Ky 152, 32 SW 595; McVey v Brendel, 144 Pa 235, 22 A 912; Hale v Hale, 62 W Va 609, 59 SE 1056.

and "bad motive."¹ Within the purview of the maxim, the hands of the litigant are rendered unclean by conduct which is "condemned and pronounced wrongful by honest and fair-minded men."² "Oppressive bargainers," it is said, "are outcasts in a court of equity."³ The maxim is applicable whenever the complainant's claim is tainted by his own fraud or misrepresentation, although his conduct need not be fraudulent to bar him.⁴ Indeed, equitable relief will be refused although the complainant's conduct may not have been such as to preclude him from recovering damages.⁵

Relief will be denied where it appears that the right upon which the complainant relies has grown out of a wrong,⁶ a breach of duty,⁷ or a violation

19. *Barnes v Barnes*, 282 Ill 593, 118 NE 1004, 4 ALR 4.

Annotation: 4 ALR 70 et seq.

20. *National F. Ins. Co. v Thompson*, 281 US 331, 74 L ed 881, 50 S Ct 288.

"Unclean hands" is descriptive of a class of suitors to whom a court of equity as a court of conscience will not even listen, because the conduct of such suitors is itself unconscionable—that is, morally reprehensible as to known facts. *Clinton E. Worden & Co. v California Fig Syrup Co.* 187 US 516, 47 L ed 282, 23 S Ct 161; *Manhattan Medicine Co. v Wood*, 108 US 218, 27 L ed 706, 2 S Ct 436; *Stevens-Davis Co. v Mather*, 230 Ill App 45; *Vulcan Detinning Co. v American Can Co.* 72 NJ Eq 387, 67 A 339.

A court of equity acts only when and as conscience commands; and if the conduct of the complainant is offensive to the dictates of natural justice, then whatever may be the rights he possesses and whatever use he may make of them in a court of law he will be held remediless in a court of equity. *Deweese v Reinhard*, 165 US 386, 41 L ed 757, 17 S Ct 340.

1. The court refuses aid equally where the party's conduct has been unconscionable by reason of a bad motive and where the result in any degree induced by his conduct will be unconscionable either in the benefit to himself or the injury to others. *Keystone Driller Co. v General Excavator Co.* 290 US 240, 78 L ed 293, 54 S Ct 146; *National F. Ins. Co. v Thompson*, 281 US 331, 74 L ed 881, 50 S Ct 288; *Duncombe v Amfot Oil Co.* 201 Ky 290, 256 SW 427; *Russell Petroleum Co. v Walker*, 162 Okla 216, 19 P2d 582; *Larscheid v Kittell*, 142 Wis 172, 125 NW 442.

2. *New York Football Giants, Inc. v Los Angeles Chargers Football Club, Inc.* (CA5 Miss) 291 F2d 471; *Katz v Karlsson*, 84 Cal App 2d 469, 191 P2d 541.

As a general principle, any wilful act in respect to the matter in suit which would be regarded as wrongful by fair-minded men is sufficient to bring a party within the ambit of the clean hands maxim. *Boretz v Segar*, 124 Conn 320, 199 A 548.

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3. *Kraemer Hosiery Co. v American Federation*, F. F. H. W. 305 Pa 206, 157 A 588.

4. *New York Football Giants, Inc. v Los Angeles Chargers Football Club, Inc.* (CA5 Miss) 291 F2d 471 (stating that maxim applies where complainant's conduct is fraudulent and deceitful as to controversy in issue); *Schaeffer v Sterling*, 176 Md 553, 6 A2d 254.

The court will leave a party where his fraudulent undertaking has placed him. *O'Gasapian v Danielson*, 284 Mass 27, 187 NE 107, 89 ALR 1159.

If the complainant's conduct is shown to have been "fraudulent, illegal, or unconscionable," he will be dismissed and the doors of the court will be closed to him. *Duncombe v Amfot Oil Co.* 201 Ky 290, 256 SW 427.

Equity will not come to the aid of a party who has induced another to act to his detriment, even though the misrepresentations were innocently made. *Kackley v Webber*, 310 Ky 285, 220 SW2d 587, 9 ALR2d 500.

It has been held that under the "unclean hands" doctrine, misconduct which will bar an action in equity does not necessarily need to be fraudulent; it is enough that the party seeking relief has been guilty of inequitable conduct in the very matter about which affirmative relief is sought. *Godwin v Gerling*, 362 Mo 19, 239 SW2d 352, 40 ALR2d 1250.

5. *Shikes v Gabelnick*, 273 Mass 201, 173 NE 495, 87 ALR 1339, holding that a court of equity does not lend its aid to parties who themselves resort to unjust and unfair conduct.

6. *Bein v Heath (US)* 6 How 228, 12 L ed 416; *Re Estate of Ives*, 248 NC 176, 102 SE2d 807, 72 ALR2d 278; *Rust v Gillespie*, 90 Okla 59, 216 P 480.

Annotation: 4 ALR 44.

7. *Carpenter v Providence Washington Ins. Co.* (US) 4 How 185, 11 L ed 931.

Annotation: 4 ALR 83 et seq.

Relief will not be accorded to one who has not only failed to perform conditions upon which he obtained the execution of a contract,

of law.⁸ A court of equity will not adjust differences between wrongdoers,⁹ at least where the parties are in *pari delicto*,¹⁰ nor will it assist in the enforcement or abrogation of an illegal or immoral contract or transaction,¹¹ lend its aid to the division of profits or property which have been derived from an illegal agreement,¹² or afford relief against the evil consequences thereof.¹³ A complainant will not be permitted to take advantage of his own wrong¹⁴

but plainly never intended to or had the means to perform them. *Higgins v Daley* (CA4 W Va) 99 F 606.

8. *Chippas v Valltos*, 74 App DC 338, 123 F2d 153; *Strand Amusement Co. v Owensboro*, 242 Ky 772, 47 SW2d 710.

Annotation: 4 ALR 80.

One who was a participant in an unlawful transaction by which he lost his money will not be accorded relief by injunction to impound money or by recognition of a lien. *Baxter v Deneen*, 98 Md 181, 57 A 601.

9. *Ohio Oil Co. v Sharp* (CA10 Okla) 135 F2d 303; *Batesville Truck Line, Inc. v Martin*, 219 Ark 603, 243 SW2d 729; *Humphreys-Mexia Co. v Arseneaux*, 116 Tex 603, 297 SW 225, 53 ALR 1147; *Kennedy v Lonabaugh*, 19 Wyo 352, 117 P 1079.

Annotation: 4 ALR 80; 120 ALR 475 (illicit sexual relations as precluding right of either party to recover money paid or property transferred to the other).

Equity will not as a general rule hear a complainant stultify himself by complaining against acts in which he participated or of which he has shown his approval by sharing in the benefits. *Trounstone v Remington Rand*, 22 Del Ch 122, 194 A 95.

The court will determine the question as to whether the complainant is free from taint before considering the question as to whether he has been wronged. *Humphreys-Mexia Co. v Arseneaux*, 116 Tex 603, 297 SW 225, 53 ALR 1147.

10. § 141, *infra*.

11. *Flack v Warner*, 278 Ill 368, 116 NE 202; *Miller v Miller* (Ky) 296 SW2d 684, 65 ALR2d 589; *Berman v Coakley*, 243 Mass 348, 137 NE 667, 26 ALR 92; *Cameron v International Alliance, T. S. E.* 118 NJ Eq 11, 176 A 692, 97 ALR 594; *Rock v Mathews*, 35 W Va 531, 14 SE 137.

A court of equity will leave parties asserting rights founded upon an illegal and void contract in the situation in which they have thereby placed themselves and deny relief from or under the contract. *Smith v Smith*, 255 Wis 96, 38 NW2d 12, 14 ALR2d 914.

The court will not assist either party to an illegal transaction, but will leave them where they have chosen to place themselves. *International Coal & Min. Co. v Industrial Commission*, 293 Ill 524, 127 NE 703, 10 ALR 1010.

An agreement which has been made in consideration of the suppression of a criminal prosecution will be neither enforced nor abrogated by a court of equity. *Berman v Coakley*, 243 Mass 348, 137 NE 667, 26 ALR 92.

12. *Kennedy v Lonabaugh*, 19 Wyo 352, 117 P 1079.

Annotation: 4 ALR 80.

The Highwayman's Case is the classic example. See *Langley v Devlin*, 95 Wash 171, 163 P 395, 4 ALR 32.

A party to an illegal common-law marriage may not maintain an action for equitable division of property acquired by the other party thereto through their joint efforts and expenditures during the illicit relationship, notwithstanding the parties' belief in the validity of the marriage, where no partnership or other joint venture antedated the illegal marriage relationship and there was no other legal basis for the claim. *Smith v Smith*, 255 Wis 96, 38 NW2d 12, 14 ALR2d 914.

13. *Berman v Coakley*, 243 Mass 348, 137 NE 667, 26 ALR 92.

14. *Deweese v Reinhard*, 165 US 386, 41 L ed 757, 17 S Ct 340; *Pope Mfg. Co. v Gormully*, 144 US 224, 36 L ed 414, 12 S Ct 632; *Carrington v The Ann C. Pratt* (US) 18 How 63, 15 L ed 267; *Bishop v Bishop* (CA3 Virgin Islands) 257 F2d 495, cert den 359 US 914, 3 L ed 2d 576, 79 S Ct 578; *Ohio Oil Co. v Sharp* (CA10 Okla) 135 F 2d 303; *Batesville Truck Line, Inc. v Martin*, 219 Ark 603, 243 SW2d 729; *Commercial Nat. Bank v Burch*, 141 Ill 519, 31 NE 420; *Duncombe v Amfot Oil Co.* 201 Ky 290, 256 SW 427; *Burton v Marshall* (Md) 4 Gill 487; *Cedar Springs v Schlich*, 81 Mich 405, 45 NW 994; *Holland v Duluth Iron Min. & Development Co.* 65 Minn 324, 68 NW 50; *Redmond v Dickerson*, 9 NJ Eq 507; *International Land Co. v Marshall*, 22 Okla 693, 98 P 951; *Scranton Electric Light & Heat Co. v Scranton Illuminating Heat & P. Co.* 122 Pa 154, 15 A 446; *Montgomery v Kerr*, 46 Tenn (6 Coldw) 199; *Clay v Williams*, 16 Va (2 Munf) 105.

Equity will not permit one to rely on his own wrongful act as against those affected by it, but who have not participated in it, to support his own asserted legal title or to defeat a remedy which, except for his misconduct, would not be available. *Deitrick v Greaney*, 309 US 190, 84 L ed 694, 60 S Ct