

general principles of equity, must be of an equitable character<sup>7</sup> or be based upon some recognized ground of interposition by the court of equity.<sup>8</sup>

Under the modern practice in most jurisdictions defenses pleaded in an action may be either legal or equitable. Therefore, the grounds for invoking equitable jurisdiction are sometimes stated by way of an affirmative defense. Generally, under the head of equitable defenses all matters are included which would have authorized an application to a court of equity for relief against a legal liability, but which at law would not have been pleaded in bar. An equitable defense is good as a defense whenever it is good as a bar—that is, where the equities when established are destructive of the plaintiff's right—even though if the defendant had chosen, he might have used it as a counterclaim. Thus, for example, in ejectment, where the defendant claims that the property in dispute was by mistake omitted from his deed, he may set up the mistake as an equitable defense.<sup>9</sup> Likewise, in an action on a contract, an answer in effect that enforcement would be inequitable because fraud or mistake has brought about the result that the writing is not a true expression of the parties is good.<sup>10</sup>

The invalidity or unconstitutionality of a statute or ordinance is not of itself a ground of equity jurisdiction.<sup>11</sup>

#### § 20. Fraud, misrepresentation, or concealment; bad faith or breach of fiduciary duty.

One of the most important grounds for equitable intervention is fraud or fraudulent misrepresentation or concealment. Indeed, there is probably no other ground on which jurisdiction in equity is so readily entertained and freely exercised. Thus, there is no question as to the jurisdiction of equity to relieve against fraud, especially where there is no adequate remedy at law.<sup>12</sup> While false representations which are made with knowledge of their falsity and with a fraudulent intent are of course grounds for relief in equity, such relief is also granted where statements are made recklessly and without regard to truth or falsity. It is the prevailing rule that equity will grant appropriate relief in cases involving transactions arising from misstatements, even though no fraudulent intent on the part of the person making the representation is shown, and although he made them innocently, as the result of misapprehension or mistake; all that need be shown under such circumstances is that the representations are false and actually mislead the person to whom they are made.<sup>13</sup>

A suppression or concealment of the truth may constitute a means of committing fraud as well as may a suggestion of falsehood, and therefore conceal-

7. § 6, *supra*.

8. *Cates v Allen*, 149 US 451, 37 L ed 804, 13 S Ct 883, 977.

9. *Susquehanna S. S. Co. v A. O. Andersen & Co.* 239 NY 285, 146 NE 381.

Generally as to equitable defenses in an action of ejectment, see 25 Am Jur 2d, EJECTMENT §§ 58-60.

10. *Susquehanna S. S. Co. v A. O. Andersen & Co.*, *supra*.

11. *Asplund v Hannett*, 31 NM 641, 249 P 1074, 58 ALR 573; *Thompson v Smith*, 155 Va 367, 154 SE 579, 71 ALR 604.

The unconstitutionality of a state law is not, of itself, ground for equitable relief in the courts of the United States. *Terrace v Thompson*, 263 US 197, 68 L ed 255, 44 S Ct 15.

12. See FRAUD AND DECEIT (1st ed §§ 133 et seq., 189 et seq.).

13. See FRAUD AND DECEIT (1st ed § 133).

ment of facts constitutes a ground of equitable jurisdiction no less than misrepresentation openly made. However, a suppression of the truth is not at all times such fraud as will be relieved against in equity. It is generally necessary to prove that the person charged had knowledge of the fact which he is said to have suppressed. Moreover, it must be a suppression of the facts which the party is under a legal or equitable obligation to communicate, and in respect of which he could not be innocently silent.<sup>14</sup>

While misrepresentation constitutes a ground upon which courts of equity commonly grant relief, the misrepresentation must generally relate to something material or important to the interests of the other party; it must not be vague and inconclusive in its nature, or a mere matter of opinion, and it must actually mislead the other party.<sup>15</sup>

Although there is some difference of opinion as to the effect of an adequate remedy at law upon the jurisdiction of equity in case of fraud, the prevailing view in this country is that equity will not take jurisdiction where there is such an adequate legal remedy. In a large number of cases, however, equity jurisdiction may be said to be practically exclusive of that of the law courts where fraud is involved. This is principally for the reason that the remedies of a plaintiff at law for fraud are few indeed, and those that do exist are seldom adequate. Even though the jurisdiction of law and equity is almost equal in the right to try and determine questions of fraud, the means of proving the fraud are not equal, and the modes of granting relief are widely different. In exercising jurisdiction to correct the defects of fraud, the equity court is not confined to the rules acted upon by the courts of law, but may act upon rules which go far beyond the rules of law. The law relieves against fraud negatively by preventing either a recovery or a defense founded on fraud, while equity frequently affirms the transaction and compels the party who has fraudulently obtained an apparent right to transfer it to the person equitably entitled to it. Moreover, although whatever amounts to fraud according to the legal conception is also fraud in the equitable conception, the converse of this statement is not true. The equitable theory of fraud is much more comprehensive than that of the law, and contains elements entirely different from any which enter into the legal notion. Indeed, equity may construct a fraud from the circumstances, whereas the law must find it as a fact.<sup>16</sup> For example, courts of equity may grant affirmative relief by way of reformation or cancellation of instruments on the ground of constructive as well as actual fraud.<sup>17</sup>

Bad faith is held to be a ground for equitable relief or to constitute a foundation therefor. It is said that the good faith of the defendant is a proper and fundamental subject to be adjudged, and that good faith or bad faith or intent when constituent and essential in a cause of action or defense is a fact and may be alleged and proved as such.<sup>18</sup>

14. See FRAUD AND DECEIT (1st ed §§ 76 et seq.).

15. See FRAUD AND DECEIT (1st ed §§ 23 et seq.).

16. See FRAUD AND DECEIT (1st ed §§ 189 et seq.).

17. See 13 Am Jur 2d, CANCELLATION OF INSTRUMENTS §§ 16 et seq.; REFORMATION OF INSTRUMENTS (1st ed §§ 57 et seq.).

18. City Bank Farmers' Trust Co. v Hewitt Realty Co. 257 NY 62, 177 NE 309, 76 ALR 881; Kavanaugh v Kavanaugh Knitting Co. 226 NY 185, 123 NE 148.

A breach of fiduciary duty is ground for the exercise of equity jurisdiction in the absence of an adequate and complete remedy at law.<sup>19</sup>

### § 21. Irreparable injury.

As a general rule, an equity court may assume jurisdiction of a cause on the ground of irreparable injury,<sup>20</sup> such an injury being one for which a court of law furnishes no redress<sup>1</sup> that is fair or reasonable.<sup>2</sup> The power of the court to act in this situation is said to be one of the most valuable characteristics of equity jurisdiction.<sup>3</sup> Accordingly, equity will act to prevent irreparable injury to a freehold.<sup>4</sup> Threatened irreparable injury is one of the grounds for issuance of the writ of injunction.<sup>5</sup>

Because of the inadequacy of the legal remedy, the equity court may properly hear and determine a case where it appears that the injury complained of is of a destructive or continuous character,<sup>6</sup> where the dispute involves loss of health or trade, where the means of subsistence is threatened, or where ruin of property must ensue.<sup>7</sup> Where a continued use or threatened danger is such as to cause reasonable fear of irreparable injury, it is not essential that there be actual damage, or even a completed violation of the plaintiff's rights, in order to entitle him to the protection of equity.<sup>8</sup> It has been held,

19. *Kocon v Cordeiro* (RI) 200 A2d 708.

As to particular fiduciaries, see the specific articles dealing therewith.

20. *Philadelphia Co. v Stimson*, 223 US 605, 56 L ed 570, 32 S Ct 340; *Cruickshank v Bidwell*, 176 US 73, 44 L ed 377, 20 S Ct 280; *Walla Walla v Walla Walla Water Co.* 172 US 1, 43 L ed 341, 19 S Ct 77; *Farris v Dudley*, 78 Ala 124; *Ada County v Bullen Bridge Co.* 5 Idaho 188, 47 P 818; *Engel v Walsh*, 258 Ill 98, 101 NE 222; *Inter-Ocean Pub. Co. v Associated Press*, 184 Ill 438, 56 NE 822; *Phillips v Winslow*, 18 B Mon (Ky) 431; *Peabody v Norfolk*, 98 Mass 452; *Coast Co. v Spring Lake*, 58 NJ Eq 586, 47 A 1131; *Thomas v Musical Mut. Protective Union*, 121 NY 45, 24 NE 24; *Venice v Woodruff*, 62 NY 462; *Taliaferro v Reiridon*, 186 Okla 603, 99 P2d 522; *Sullivan v Jones & L. Steel Co.* 208 Pa 540, 57 A 1065; *Hoffman v Tooele City*, 42 Utah 353, 130 P 61; *Bettman v Harness*, 42 W Va 433, 26 SE 271.

An injury is irreparable where there exists no certain pecuniary standard for measuring the damage. *Miller v Lawlor*, 245 Iowa 1144, 66 NW2d 267, 48 ALR2d 1058.

But inadequate damages and irreparable injury are not synonymous terms in determining grounds of equitable relief. *Jador Serv. Co. v Werbel*, 140 NJ Eq 188, 53 A2d 182, 172 ALR 1199.

**Practice Aids.**—Allegation of irreparable injury. 8 AM JUR PL & PR FORMS 8:247.

1. *Foster v Mansfield, C. & L. M. R. Co.* 146 US 88, 36 L ed 899, 13 S Ct 28.

2. *Thompson v Smith*, 155 Va 367, 154 SE 579, 71 ALR 604.

3. *Vicksburg Waterworks Co. v Vicksburg*, 185 US 65, 46 L ed 808, 22 S Ct 585.

4. *Guest v Brooklyn*, 69 NY 506.

5. See INJUNCTIONS (Rev ed §§ 30, 47, 48).

6. *D. M. Osborne & Co. v Missouri P. R. Co.* 147 US 248, 37 L ed 155, 13 S Ct 299.

7. *Parker v Winnipiseogee Lake Cotton & Woolen Co.* 2 Black (US) 545, 17 L ed 333.

A railroad company which has located the best line between its terminals is entitled to resort to a court of equity for relief against the acts of another railway company which, with full knowledge, has threatened and intended to take and occupy, and has crossed and recrossed such location at many points and different grades, making it impracticable for the former railroad company to proceed with the construction of its line. *Denver & R. G. R. Co. v Arizona & C. R. Co.* 233 US 601, 58 L ed 1111, 34 S Ct 691.

Where future infringement of a patent is threatened, it seems that equitable relief may be obtained. *Goshen Mfg. Co. v Hubert A. Myers Mfg. Co.* 242 US 202, 61 L ed 248, 37 S Ct 105.

8. *Texas & P. R. Co. v Marshall*, 136 US 393, 34 L ed 385, 10 S Ct 846; *Parker v Winnipiseogee Lake Cotton & Woolen Co.* 2 Black (US) 545, 17 L ed 333; *Blackman v Mauldin*, 164 Ala 337, 51 So 23; *Dennis v Mobile & M. R. Co.* 137 Ala 649, 35 So 30; *Schmaltz v York Mfg. Co.* 204 Pa 1, 53 A



however, that in stating an equitable cause of action it is essential to show that substantial injury has been done or will occur if equity does not act.<sup>9</sup> Equity does not interfere on the ground of mere apprehensions of injury.<sup>10</sup> It has been observed that the inadequacy of a recovery of damages is not synonymous with irreparable injury in determining grounds of equitable relief.<sup>11</sup> Nor is irreparable injury or inadequacy of legal remedy established by the claim that a jury may not find the determinative fact in one case the same way that they find it in another case.<sup>12</sup>

**§ 22. Lack of volition, understanding, or intent; foreseeableness of, and ability to avert, prejudicial situation.**

A party to a transaction the result or consequence of which has been to place him in a harmful or prejudicial situation may claim relief from a court of equity on a showing that the situation is the consequence of accident,<sup>13</sup> mistake,<sup>14</sup> surprise,<sup>15</sup> duress<sup>16</sup> or undue influence,<sup>17</sup> oppression,<sup>18</sup> imposition,<sup>19</sup> fraud,<sup>20</sup> concealment,<sup>1</sup> overreaching,<sup>2</sup> or conduct which is described by many

522; *Johnson v Swanke*, 128 Wis 68, 107 NW 481; *Lawson v Menasha Wooden-Ware Co.* 59 Wis 393, 18 NW 440.

9. *State ex rel. Commissioners of Land Office v Cities Service Oil Co. (Okla)* 317 P2d 722.

10. *Erwin v Mississippi State Highway Com.* 213 Miss 885, 58 So 2d 52.

11. *Jador Serv. Co. v Werbel*, 140 NJ Eq 188, 53 A2d 182, 172 ALR 1199.

12. *Davis v Forrestal*, 124 Minn 10, 144 NW 423.

13. §§ 44, 45, *infra*.

14. §§ 28 et seq., *infra*.

15. The word "surprise" is a word of general signification, so general and so uncertain that it is impossible to fix it. A man is surprised in whatever is not done with so much judgment as it ought to be. But those who use that word often mean such surprise as is accompanied with fraud and circumvention. Such a surprise may be good ground to set aside a deed in equity, and has been so in all times. But any other surprise never was. *McDaniels v Bank of Rutland*, 29 Vt 230.

Relief from a judgment may be had on the ground of surprise. See *JUDGMENTS* (Rev ed § 768).

16. *Kronmeyer v Buck*, 258 Ill 586, 101 NE 935; *Central Bank v Copeland*, 18 Md 305.

17. *Wagg v Herbert*, 215 US 546, 551, 54 L ed 321, 324, 30 S Ct 218; *Harding v Handy*, 11 Wheat (US) 103, 6 L ed 429.

**Annotation:** 14 ALR2d 651, § 2 (undue influence in gift to clergyman, spiritual adviser, or church); 24 ALR2d 1292, § 3 (un-

due influence in gift from client to attorney); 70 ALR2d 591-613, §§ 1-20 (undue influence in gift from patient to physician, nurse, or other medical practitioner).

Generally as to duress and undue influence, see 25 Am Jur 2d, *DURESS AND UNDUE INFLUENCE*.

18. *Wagg v Herbert*, 215 US 546, 551, 54 L ed 321, 324, 30 S Ct 218; *Peugh v Davis*, 96 US 332, 24 L ed 775.

It has been said that equity always stands ready to relieve the oppressed from the oppressor's demand for possession or retention of an iniquitously exacted pound of material or personal flesh. *Spoon-Shacket Co. v Oakland County*, 356 Mich 151, 97 NW2d 25.

19. *St. Louis Smelting & Ref. Co. v Kemp*, 104 US 636, 26 L ed 875; *Harding v Handy*, 11 Wheat (US) 103, 6 L ed 429.

20. See § 20, *supra*; *FRAUD AND DECEIT* (1st ed §§ 23 et seq., 133 et seq., 189 et seq.).

1. *Tyler v Savage*, 143 US 79, 36 L ed 82, 12 S Ct 340.

In a court of conscience, deliberate concealment is equivalent to deliberate falsehood. *Crosby v Buchanan*, 23 Wall (US) 420, 23 L ed 138.

As to fraudulent concealment generally, see *FRAUD AND DECEIT* (1st ed §§ 76 et seq.).

2. *Howard v Howard*, 122 Vt 27, 163 A2d 861, 84 ALR2d 585, holding that the strictness imposed on transactions of husband and wife has equal application to persons falsely pretending to the marital status, and where there is misrepresentation, concealment, or artifice resulting in undue advantage to one participant over the other, equity will intervene to free the transaction from fraudulent overreaching.



other like terms.<sup>3</sup> Cases identified by such expressions are peculiarly within the jurisdiction of the equity court if the law does not afford an adequate remedy,<sup>4</sup> and ordinarily such cases may be dealt with more competently by that court.<sup>5</sup>

While definitions of the above expressions are infinite, the practical characteristic of the situations thereby described is that the complaining party did not participate in the disputed transaction understandingly, intentionally, or of his own free will. But where the complainant seeks relief from the harmful or prejudicial situation in which he is placed, contending that he did not enter therein intentionally or voluntarily, the action of the court in granting or withholding an appropriate remedy depends primarily on the showing as to whether he could have foreseen and averted the situation of which he complains.<sup>6</sup> If the issue as to knowledge or foreseeableness is determined against him, the conclusion is that he is not entitled to relief.<sup>7</sup> If the evidence shows that the complainant acted innocently or ignorantly, relief will not be accorded where it further appears that he could have ascertained the facts by the exercise of "due diligence."<sup>8</sup> He is barred by his own negligence or carelessness.<sup>9</sup> The court will not grant relief from a verbal contract which is within the purview of the statute of frauds, the complainant being deemed to have known that the law required the agreement to be evidenced by writing.<sup>10</sup> On the other hand, relief will not be denied where it is to be concluded that the complainant was not negligent,<sup>11</sup> or that his failure to make inquiries or investigations or otherwise inform himself as to the facts

3. *Simmons Creek Coal Co. v Doran*, 142 US 417, 425, 35 L ed 1063, 1071, 12 S Ct 239 (inequitable conduct); *Drexel v Berney*, 122 US 241, 30 L ed 1219, 7 S Ct 1200 (conduct giving rise to estoppel); *Thackrah v Haas*, 119 US 499, 30 L ed 486, 7 S Ct 311 (extortion).

A contract procured by threats may be relieved against. *Beindorff v Kaufman*, 41 Neb 824, 60 NW 101; *Delta County Bank v McGranahan*, 37 Wash 307, 79 P 796.

As to naming one a party to an instrument without his consent, see Annotation: 51 ALR 867.

4. *Clements v Macheboeuf*, 92 US 418, 23 L ed 504; *Nelson v Cowling*, 77 Ark 351, 91 SW 773; *Dunlap v Steere*, 92 Cal 344, 28 P 563; *Wells v Bridgeport Hydraulic Co.* 30 Conn 316; *Brooks v Brooke*, 12 Gill & J (Md) 306; *Glass v Hulbert*, 102 Mass 24; *Minnis v Newbro-Gallogly Co.* 174 Mich 635, 140 NW 980; *Ashcom v Smith*, 2 Pen & W (Pa) 211; *McGinnis v Caldwell*, 71 W Va 375, 76 SE 834.

5. *Rees v Watertown*, 19 Wall (US) 121, 22 L ed 72.

6. §§ 34, 43, 45, *infra*.

7. *Liggett v Koivunen*, 227 Minn 114, 34 NW2d 345.

Equity will not relieve a purchaser of land

where equal information touching the nature and condition thereof was possessed by both parties. *McCobb v Richardson*, 24 Me 82.

8. *Hill v Ritchie*, 90 Vt 318, 98 A 497.

Ignorance of the facts is never sufficient to constitute a ground of relief if it appears that the requisite knowledge might have been obtained by reasonable diligence. *United States v Ames*, 99 US 35, 25 L ed 295.

9. *Johnston v Dunavan*, 17 Ill App 59; *Capehart v Mhoon*, 58 NC (5 Jones Eq) 178; *Korne v Korne*, 30 W Va 1, 3 SE 17.

Courts of equity are not established to 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.

A court of equity will not relieve a party from the result of his own carelessness, negligence, or laches. *Bigby v Powell*, 25 Ga 244; *Campbell v Whittingham*, 5 JJ Marsh (Ky) 96; *Parham v Randolph*, 4 How (Miss) 435; *Myler v Fidelity Mut. L. Ins. Co.* 64 Okla 293, 167 P 601; *Crompton v Beedle*, 83 Vt 287, 75 A 331; *Stone v Moody*, 41 Wash 680, 84 P 617, 85 P 346.

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

11. *Myler v Fidelity Mut. L. Ins. Co.* 64 Okla 293, 167 P 601.