

Equity is a branch of law based on the idea of fairness developed to counter or supplement the shortcomings and rigid nature of the common law. This article discusses some of these remedies, and when and how they are granted.



A. CHARACTERISTICS OF EQUITABLE REMEDIES

Equitable remedies are available in many areas of law, for instance, breach of contract cases, property matters, tort /negligence cases, wills and estate cases to name a few. Equitable remedies are ordered at the court's discretion, that is, even when the plaintiff has proven the case, the remedy may not be granted. In achieving the goal of fairness, the court will consider the position of parties and the effect of the remedy on the other parties and many other factors.

Whereas legal remedies aim to restore the wronged party financially, most commonly through recovering monetary damages, equitable remedies on the other hand are used when there is no financial remedy available. Equitable remedies are more likely to be actions that the court orders which serve to resolve the wrongdoing or dispute. This is in line with one of the maxims of equity, where *equity will not suffer a wrong to be without a remedy*, that is, no wrong should go un-redressed if it is capable of being remedied by the court. In most cases, however, it may be a requirement or criteria to show that legal damages are unavailable or inadequate before the court will grant equitable relief.

The maxims of equity are basic principles upon which the rules of equity have been established. Another maxim of specific relevance to equitable remedies is *one who seeks equity must do equity*. That is, before seeking an equitable remedy, the plaintiff must fulfil their legal and equitable obligations. For example, a plaintiff who seeks specific performance, must be ready, willing and able to perform the contract as well, if the relief is to be granted.

Another maxim of relevance is *one who comes to equity must come with clean hands*. This maxim requires the plaintiff not to be guilty of some improper conduct in the related matter, or else the remedy will not be granted.

It is also important to remember that *equity follows the law*. That is, equity will not act in opposition to the law but will aim to supplement it. The ultimate goal of equity and law is the same.

Some common equitable remedies include:

- Specific performance;
- Injunction;
- Account of profits; and
- Equitable compensation and damages.

These common equitable remedies are explored in more detail below.

B. SPECIFIC PERFORMANCE

As the name suggests, specific performance occurs where the court orders the wrongdoer to completely perform what was promised. This remedy is limited to contract law where a party is ordered to perform their contractual obligations according to the terms of the contract.

In granting specific performance, the court will consider whether the order will be fair to both parties and that the court can reasonably supervise the order of specific performance, where the court is able to monitor compliance relatively easily and practically and is able to determine whether its order has been breached.

Again, specific performance will not be ordered unless damages are inadequate. Specific performance will also not be ordered if valuable consideration has not already been provided in return for the performance or if the contract is invalid at law or liable to be rescinded by the plaintiff such as in circumstances of fraud or duress. In these cases, a rescission of the contract and damages may be more appropriate.



C. INJUNCTION

Injunctions are ordered by the court to either compel a party to do or refrain from doing specific acts.

Injunctions generally apply to individual acts, rather than the whole contract (when compared with specific performance).

- For the injunction to be granted, the plaintiff must show that:
- the defendant committed a legal, equitable or statutory wrong;
- the wrong is likely to continue or be repeated or a wrong causing imminent and substantial damage is likely to occur; and
- if it is a common law wrong, damages are inadequate.

The evidentiary standard for granting an injunction is generally high. For further information, click [here](#) for the Comasters article on Injunctions.

D. ACCOUNT OF PROFITS

Equity requires the wrongdoer who has made a profit from the breach of an equitable obligation to account the profit to the plaintiff. This is one form of the disgorgement remedy that is most likely ordered in response to breach of trust, fiduciary obligation or the obligation of confidence where there has been an unjust enrichment. In these areas of law, equity has exclusive jurisdiction to issue remedies and as such only equitable remedies are available. Other disgorgement remedies include the award of a constructive trust, or the imposition of an equitable lien.

In granting an account of profits, it is irrelevant whether:

- The plaintiff has or has not suffered any loss;
- The plaintiff could never have made the profit itself;
- The plaintiff was unwilling to make the profit itself; or
- The defendant's motives or state of mind was or was not dishonest.

E. EQUITABLE COMPENSATION AND DAMAGES

In equity, there are two possible bases for an order for payment of money to an aggrieved party.

Equity compensation is awarded as remedy for a purely equitable wrong such as breach of trust, fiduciary obligation and the obligation of confidence. Equitable compensation aims to put the plaintiff back in the same position it would have been in at the time of the hearing as if no breach had been committed.

Unlike damages under common law, equitable compensation is not intended to be punitive, but to effect justice and fairness. Also unlike damages, equitable compensation is assessed as at the date of the hearing rather than as at the date of the breach. Generally, there must also be some causal relationship between the breach and the loss.

Equitable damages on the other hand may be awarded in addition to, or in place of a specific order of specific performance or injunction where those remedies have been sought in relation to contracts, torts or any other wrongful act. Equitable damages enables the court to address the issue of any losses caused to the plaintiff by the wrongdoing that cannot properly be addressed by the order of equitable relief. Further, the fact that an equitable relief is denied on discretionary grounds does not preclude the court from ordering equitable damages, allowing the court to grant equitable damages in lieu or in place of specific performance or injunction.

However, the court must first have jurisdiction to order specific performance or injunction before equitable damages can be awarded, that is, where specific performance or injunction have been refused on the basis that damages at common law are adequate, the court will not be able to grant equitable damages.

F. CONCLUSION

Overall, it is evident that equitable remedies are an alternative option where legal remedies under common law cannot rectify or provide sufficient resolution to a wrongdoing or dispute.

Comasters is able to assist the client in a wide range of litigation matters and specifically advise whether equitable remedies are available.

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