1968

Equity (1959-1967)

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5. Since 1957 Southside Leather Corporation has maintained a substantial deposit with Danville Bank & Trust Co. Until June 26, 1959, the Bank recognized without objection that Arthur Summit was President of the Corporation, that Thomas Crump was its Vice-President, and that each was authorized to independently draw on the Corporation's deposit in the Bank without limit. At 9:30 a.m. on June 26th, Summit went to the Cashier of the Bank, stated that Crump had ceased to be an officer of the Corporation on June 23rd, that Crump's authority to check on Corporation funds had ended on that date, and demanded that the Bank honor no outstanding checks which had been signed only by Crump. Also on June 26th, but at 11:00 a.m., Crump came to the Bank and stated to the Cashier that Summit had ceased to be an officer of the Corporation on June 23rd, that his authority to check on the Corporation's funds had ended on that date, and demanded that the Bank honor no outstanding checks which had been signed only by Summit. Shortly thereafter several checks were presented to the Bank for payment, some of which had been drawn by Summit, and some of which had been drawn by Crump. The Bank at once informs you of what has occurred and inquires whether there is any means by which it may determine which demand it should recognize.

Assuming there is no statutory remedy available in Virginia, what should you advise? (EQUITY) Assuming that the question means what legal remedy has the Bank, it could file a bill of interpleader in a court of equity, pay the amount of the disputed checks into court, and make all interested parties defendants. It would ordinarily be easier to procure a properly authenticated formal resolution from the Board of Directors of the Corporation.

6. Great Eastern Insurance Co. desiring to construct a large office building of modern design in the City of Norfolk, entered into a contract with Frank Boyd White, a designer and architect of wide acclaim, by the terms of which the Insurance Co. agreed to pay White $60,000 for designing and supervising the construction of the building. The contract further provided that White should be paid $20,000 upon the commencement of construction, $20,000 when the building was half completed, and the balance when the building was ready for occupancy. White designed the building and construction was commenced on May 29, 1959. At that time the Insurance Co. paid White $20,000. On June 10th and wholly without justification, White began an argument with the general contractor, flew into a rage, and walked off the project stating that he would have nothing more to do with it. No persuasion by officials of the Insurance Co. could cause White to change his position. On June 15th the Insurance Company brought a suit for specific performance against White in the Circuit Court of the City of Norfolk. In its bill the Insurance Company recited the foregoing facts and further alleged that it was ready, willing and able to perform its obligations under the contract, and that it was impossible to procure the services of another designer and architect who could adequately perform the obligations of White. White filed a demurrer to the bill. How should the court rule on the demurrer? (EQUITY) The demurrer should be sustained. A court of equity will not compel specific performance of a contract for personal services. It is not practical for it to supervise the services and results in involuntary servitude not as punishment for a crime which is prohibited by the 13th amendment to the federal Constitution. See Restatement of Contract #379.
Landowner filed a suit in the Circuit Court of Fauquier County, Virginia, against Prospector. The bill of complaint averred the existence of a written contract by the terms of which Landowner agreed to sell and Prospector to buy for the sum of $60,000 four tracts of land, designated as White Acre, Black Acre, Wild Acre and Green Acre. The bill contained a further averment that the parties did not intend the sale and purchase of Green Acre, and that the draftsman of the written contract had mistakenly included that tract of land in the contract. The bill concluded with the prayer that the contract be reformed and that the court grant specific performance of the reformed contract. Prospector filed a plea of the statute of frauds, to which plea Landowner demurred. Upon due consideration the court overruled the demurrer. Whereupon, the court heard evidence ore tenus and, over the objection of counsel for Prospector, Landowner was permitted to introduce evidence tending to prove that the parties did not intend to include Green Acre in the written contract of sale and that it was included by mistake. The chancellor entered a decree reforming the contract and granting specific performance as prayed in the bill of complaint.

Did the court commit error:
(1) In overruling the demurrer to the plea of the statute of frauds, and
(2) In admitting parol evidence to prove the intention of the parties and the mistake of the draftsman of the contract?

(EQUITY) (1) Answering this according to substantive law (since, technically, a demurrer does not lie to a defensive plea in equity) the statute of frauds is no defense because the effect of the reformation is to nullify so much of the contract as it relates to, and hence there is no enforcement of an oral contract to buy or sell land. Besides the statute of frauds applies only to contracts made by the parties and not to those imposed by some rule of law. (2) Nor did the Court commit any error in admitting the parol evidence, as the parol evidence rule does not apply to equity cases for reformation. To hold otherwise would result in great injustice and enable one party to be unjustly enriched at the expense of another. See Lile's Notes on Equity Jurisprudence pp.129-130.

By his last will and testament dated Jan.18,1943, William Richards provided, among other things, as follows:
"I direct my executor to sell and convey my farm 'Richardswood' as soon as practicable after my death and for a consideration deemed to be fair, and after paying the expenses incident to the sale, to pay the entire proceeds therefrom to my son, John Richards."

William Richards died on Jan.3,1969, and his will containing the above language was duly admitted to probate. Shortly after William's death but before his executor could find a sale for "Richardswood," John Richards also died.

After the sale of "Richardswood," John's administrator demanded that the proceeds be paid to him, John's heirs-at-law also demanded the proceeds; and John's widow contended that the sale of "Richardswood" was subject to her dower.

The executor under William Richards' will instituted a chancery proceeding in the proper court, seeking the guidance of the court in the distribution of the proceeds of the farm.

How should the court rule with respect to the demands of (a) John's administrator, (b) John's heirs-at-law, and (c) John's widow?
(EQUITY) Since testator directed the land to be sold in any event, and since equity regards that as done which ought to be done, the farm, under the doctrine of equitable conversion, will be treated as if personality. Hence the entire proceeds will go to John's administrator free from any dower claims by John's widow to be disposed of by him in accordance with law.
7. Enterprise, Inc., owned valuable real and personal property but also owed a great many debts, some of which were secured by deeds of trust, and some judgments had been obtained and executions levied. The corporation instituted a chancery suit, making all of its creditors parties defendant. The bill alleged the property owned by the corporation and the liens thereon, that some of its creditors had obtained judgments and others would do so, that it owned a large amount of valuable property, and while not insolvent, that it was "largely indebted" and was unwilling or incompetent to manage its own business so as to pay off its debts. The bill concluded with a prayer that a receiver be appointed to take charge of its affairs.

The bill was taken for confessed as to all the defendants except one creditor, who demurred, assigning lack of equity as the ground. How should the court hold?

(EQUITY) The demurrer should be sustained. There is no controversy before the court. One cannot simply say to a court of equity, "Things are not going too well with me so please appoint a receiver to run my affairs." See 145 Va.568.

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(Continued from previous page)

By deed dated Jan.12,1945, V-C Land Bank conveyed to Gracie Brown a 50 acre farm situated in Henry County, Va. By deed dated Jan.25,1945, Gracie Brown conveyed this property to her brother, George Brown, who did not record his deed since there were several judgments of record against him. On Jan.15,1948, Gracie Brown executed a deed of trust on the property to Will Williams, Trustee, to secure a note of $4,000 made by George Brown and Gracie Brown, both of whom were unmarried. By deed dated April 3,1958, and recorded on the same date, Gracie Brown executed a deed for the land to her mother, Maggie Brown. On November 7, 1958, Will Williams, Trustee, sold the property at public auction under the terms of his deed of trust and it was bid in by George Brown for the sum of $12,000. After the payment of the expenses of the sale, the debt secured, and some small liens on the property, there remained in the hands of the Trustee approximately $6,000. Both George Brown and Maggie Brown claim this surplus. Will Williams, Trustee, filed a bill of interpleader asking the Court for a determination of their respective rights.

In the proceeding which followed, it appeared that Maggie Brown, prior to April 3, 1958, had knowledge of the unrecorded deed from Gracie Brown to George Brown. Maggie Brown insisted that George Brown was not entitled to equitable relief because he did not come into Court with clean hands as his failure to record his deed constituted a fraud on his creditors. How should the Court hold?

(EQUITY) The Court should hold that George Brown is entitled to the proceeds in a contest not involving George Brown's creditors. George has clean hands so far as Maggie Brown is concerned. The fact that one commits a fraud against X does not deprive the perpetrator of the fraud of his rights so far as the rest of the world is concerned. Since George was prior in time and Maggie knew of this earlier unrecorded conveyance to him, she takes subject to it.

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2. Proctor, a building contractor, was indebted to Craft Supply Co. in the sum of $5,000 for materials purchased by Proctor on credit. When Craft pressed Proctor for payment, Proctor asked for an extension of time to pay the debt, and Craft agreed to take Proctor's 60-day note with surety approved by Craft. Accordingly, Proctor presented his non-negotiable note to Craft, which was endorsed by Wise as surety. Craft accepted the note.

Unknown to Craft, Proctor had induced Wise to become surety by executing a bond to Wise, which stated that its purpose was to indemnify Wise against possible loss because of his status as surety. The bond was secured by a deed of trust on Proctor's home to Trustee, executed by Proctor and his wife and properly recorded.

When Craft's note became due, Proctor failed to pay it, and he then disclosed to Craft his indemnity agreement with Wise. Craft consulted you and asks whether he has any legal standing to compel Trustee to foreclose the deed of trust and to apply the proceeds therefrom to the debt owed to Craft. How should you advise Craft?

(EQUITY --SURETYSHIP) "A creditor has the right to be substituted to any securities given by the principal debtor to his sureties." 18 M.J., Subrogation #28, notes 17 and 18 citing 10 Leigh 206 and 16th Va.491, 180 S.E.281. This right is not founded on contract but upon a principle of natural justice. Id.
Midnight Trucking Co. is a common carrier engaged in transporting property in intrastate commerce under certificate of public convenience and necessity issued by the State Corporation Commission. Midnight operates chiefly in southside Virginia between Richmond and Emporia, at rates in accord with tariffs approved by the Commission.

Black Jack Transport Corporation is a contract hauler operating intrastate in Virginia under a permit issued by the State Corporation Commission and under license issued by the Commissioner of Motor Vehicles. Midnight and Black Jack are competing carriers.

Midnight has brought a suit in equity in the Law and Equity Court of the City of Richmond to enjoin Black Jack from transporting property at a lower freight rate than that fixed by the State Corporation Commission for common carriers in the area serviced by the two companies. Midnight, in its bill, alleged that such action on the part of Black Jack is causing and has caused great and irreparable harm to Midnight and is in violation of the statutes of the Commonwealth. In support of its position, Midnight cites a section of the Code of Virginia which reads as follows:

"It shall be unlawful for any person, firm or corporation, after receiving a license from the Commissioner (of Motor Vehicles) as herein provided to transport any commodity in any territory at a less freight rate or charge than that fixed by the State Corporation Commission for a common carrier for the same commodity in the same territory."

Black Jack demurred to the bill contending that Midnight is not entitled to injunctive relief since an adequate remedy at law is available in that the violation is punishable by fine or imprisonment as provided by the Code. How should the Court rule?

(EQUITY) The Court should grant the injunctive relief. The fact that the Commonwealth might institute criminal proceedings over which Midnight would have no voice is not an adequate remedy. Midnight is being hurt directly and it is difficult for him to prove just how much. Hence it should be allowed to institute proceedings on its own to protect itself from this unfair competition. See 196 Va. 747 in the Equity cases in these Notes.

John Weedrow, by contract in writing, agreed to sell to Upton Littlejohn his farm "Hoedown" situated in Brunswick County, Va. By the terms of the contract Littlejohn agreed to pay the purchase price of $60,000 ninety days from the date of the contract, at which time he was to receive a general warranty deed. At the time the contract was entered into Littlejohn had explained to Weedrow that he had to obtain a loan of $40,000 from Allstate Land Bank to enable him to make full payment of the purchase price and that he had, as of the date of the contract, made application for the loan. As Littlejohn did not tender payment of the purchase price within the time provided by the contract, Weedrow addressed a letter to him stating that he was treating the contract terminated for his failure to pay the purchase price on the date it was due. A few days after receiving the letter Littlejohn consulted you, advising that he has just received a notice from the Allstate Land Bank that his loan had been approved and that he would receive the money within ten days. He also stated that he was very anxious to acquire the farm. What are the rights and remedies of Littlejohn, if any, and how should you advise him?

(EQUITY) I would advise him that he could successfully sue in equity for specific performance of the contract. He must tender the $60,000 plus interest to date of tender of the full amount. Time is not ordinarily of the essence in contracts to sell land and the delay was not due to Littlejohn's fault. See 150 Va. 636.
John Seldon, a widower, was a resident of Richmond and was employed by a corporation which required his moving to Roanoke on November 1, 1961. On October 6, 1961, Seldon entered into a written contract with Arthur Brown by the terms of which Brown agreed to purchase from Seldon the latter's residence in the City of Richmond for $30,000. The contract was signed by both Seldon and Brown, and provided that the deed should be delivered and the purchase price paid on November 1st.

On October 12th the house on the property was totally destroyed by a fire of unknown origin. At the time of its destruction, the house was not covered by fire insurance, a new policy for which Brown had applied several days before not having yet been issued. Notwithstanding this, on November 1st Seldon tendered to Brown a duly executed deed of general warranty and demanded payment of the $30,000. Brown refused to make the payment.

On November 8th Seldon instituted a suit against Brown in the Law and Equity Court of the City of Richmond asking specific performance of the contract to sell. In his bill Seldon alleged the foregoing facts. On November 25th Brown filed a demurrer to Seldon's bill, which demurrer recited as its grounds (a) that Seldon had an adequate remedy at law, and (b) that the destruction of the house excused Brown's performance of the contract.

How should the court rule on each ground of the demurrer? (EQUITY) (a) Seldon has no adequate remedy at law. There is a presumption that the value of the realty and the price to be paid are the same, and hence Seldon could only recover nominal damages, if any. It is also arguable that there is a partial failure of consideration which would excuse the buyer as far as a court of law is concerned. (b) This contention is correct. In spite of the general doctrine of equitable conversion that doctrine is a fiction that will never be employed to do injustice. The remedy of specific performance is discretionary and will be withheld in cases of great hardship. "Courts of equity will not exercise jurisdiction in specific performance where it would impose hardship on people not censurable in conduct and where the circumstances and conditions have been so changed as to work loss and hardship to them." 167 Va. 169 en p. 1306 of the Equity Cases in these notes. Note: The above case was one in which the zoning laws were changed after the contract had been made. Many authorities state that the risk of loss in cases of contracts to sell realty is on the buyer as soon as the contract is effective. Since he is entitled to any gain he should be subject to any loss not due to the fault of the seller. Hence the buyer has an insurable interest before he gets a deed. There is no Virginia case in point where there was a loss by fire, and there is a conflict of authority elsewhere.

Turner, a widower, died intestate in 1961, leaving surviving him an adult son, Silas, and an adult daughter, Rachel. He owned at his death an office building in Danville, Va., the fair market value of which was $120,000, according to an appraisal made for Silas and Rachel.

Rachel and Silas were advised by their grocer that in Virginia on the death of the father a two-thirds interest in the realty passed by intestate succession to Silas as a son, and that a one-third interest therein passed to Rachel as a daughter. Believing this to be the law, Silas and Rachel entered into a written contract whereby she agreed to sell to Silas all her "right, title and interest" in the building for $40,000. Neither party knew that they had been misinformed as to their interests.

Upon discovering the mistake, Rachel sued Silas for rescission of the contract. Silas' defense was that Rachel's mistake as to the law was not ground for a rescission, and he prayed affirmatively for specific performance. How should the court rule? (EQUITY) The Court should rule in favor of Rachel. This is regarded as a mistake of fact as to what the parties owned, and since it was mutual, rescission for mutual mistake of fact should be allowed. "The general rule(i.e. that equity will not rescind because of mistake of law) has no application to the mistakes of persons as to their own private, legal rights and interests. The latter stand on the footing of mistakes of fact ***". See 13 M.J., Mistake and Accident, Last paragraph of #6 and 108 Va.51.
On June 10, 1961, Machines, Inc., entered into a contract with Richmond Publishing Company by the terms of which the latter leased from Machines, Inc., for a term of 3 years four printing machines at an annual rental of $12,000. The machines were placed in operation by Richmond Publishing Company at the time the lease agreement was executed. On November 15, 1961 Machines, Inc., received the following letter from Richmond Publishing Company:

"November 15, 1961

"Machines, Inc.
12 Main Street
Richmond, Virginia

"Gentlemen:

"This is to advise that we have been testing printing machines manufactured by Ajax Equipment Company, and have found them quite superior to the machines which we have on lease from you. Also, Ajax Equipment Company has proposed to lease us four of their machines at an annual rental of but $6,000. This will inform you that we hereby terminate our lease agreement with you effective December 1, 1961, at which time we will enter into a new agreement with Ajax Equipment Company. You are directed to cause your machines to be removed from our premises on that date.

"Very truly yours,
RICHMOND PUBLISHING COMPANY
By R. E. Butler, President."

On November 20, 1961, Machines, Inc., brought a suit against Richmond Publishing Company in Chancery Court of the City of Richmond, seeking an injunction to restrain Richmond Publishing Company from breaching its contract with the plaintiff. The bill for an injunction recited the foregoing facts. On December 2, 1961 the defendant filed its demurrer to the bill.

How should the court rule on the demurrer? (EQUITY) The demurrer should be sustained. Machines, Inc. has an adequate remedy at law, namely an action for damages for breach of contract. See 115 Va. 797.

On March 1, 1958, Thomas Feather borrowed $5,000 from the Eastside Building and Loan Association and secured the payment of the note evidencing the debt by a deed of trust on his house in Bowling Green, Virginia. This trust constituted a first lien on the property. On Aug. 10, 1958, Feather borrowed $3,000 from his friend Joe Pluck and secured the note evidencing that debt by a mortgage on the same property, which constituted a second lien. A third lien on the property was created by a deed of trust dated April 7, 1959, securing a note in the amount of $4,000 payable to Feather's friend, Sam Comb. On Feb. 10, 1962, Eastside Building and Loan Association advised Feather that they would advertise his property for sale under the first deed of trust unless he paid his obligation within five days. To prevent the sale of his home Feather persuaded his mother Rosie, who was then 80 years of age and who had had no previous business experience, to lend him $5,000 to pay the debt. As Rosie was living in her son's house she let him have the money upon his assurance that he would discharge it to no one except the Loan Company, and that the deed of trust would protect her. Feather paid the debt due the Loan Company with the money received from his mother. The Loan Company note was not delivered to Rosie, nor was the deed of trust released. In May, 1962, Joe Pluck commenced a suit to foreclose the mortgage securing his debt and made Sam Comb a party thereto. Rosie Feather learned of this suit and upon advice of counsel she intervened in the cause, proved her debt and claimed priority of payment. The foregoing facts were established by proof and the evidence also showed that the property had a fair market value of $8,000.

May Rosie Feather succeed in her claim that she is entitled to priority of payment from the proceeds of the sale of the property? (EQUITY) Yes. Headnote 12 to 179 Va. 394 on p. 395 reads, "A party advancing money to discharge a prior lien who does not search the records to discover other liens, but who relies on the borrower's assurance that there are no other liens, is not barred from his right of subrogation as against a junior encumbrancer who is not prejudiced." And Headnote 2 reads, "The doctrine of subrogation is not dependent upon contract, nor upon privity between the parties; it is the creature of equity, and is founded upon principles of natural justice," so Rosie succeeds in her claim to priority.
5. The City of Norfolk enacted an ordinance requiring its residents to secure a permit to drive a motor vehicle in the City and authorizing and directing the City's Chief of Police to revoke the driving permit "of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the City." Any person whose permit was so revoked was given the right to apply to the Corporation Court of the City for its reinstatement.

Holt, a resident of Norfolk, secured the proper permit but was involved in several accidents, and also was convicted of speeding on one occasion. The Chief of Police, upon learning these facts, notified Holt that his City permit would be revoked.

Holt instituted a suit, seeking to enjoin the Chief of Police from revoking the permit. The bill alleged that the ordinance was void and that Holt would suffer irreparable damage if his permit was revoked. A demurrer was filed on the grounds:
(a) That Holt had an adequate remedy at law; and
(b) That the court had no jurisdiction to enjoin the enforcement of the ordinance.

How should the court rule on each ground of the demurrer?

(EQUITY) (a) The ordinance is void because no criteria are laid down to guide the chief of police and because it illegally confers legislative and judicial powers on him. Holt has no adequate remedy at law. He should not be subject to the unlawful revocation of his license and the trouble and expense of an appeal.

(b) Court headnote 2 of 62 W.Va.665, 59 S.E.623 reads, "Where property rights will be destroyed or their lawful enjoyment be taken away by criminal proceedings under an unlawful law or ordinance, equity has jurisdiction to enjoin them." Hence the demurrer in each case should be overruled. See 155 Va.367.

6. Shopping Center, Inc., secured a written option from Wyndham to purchase land with a dwelling thereon at the agreed price of $10,000. During the option period, but before its exercise, the dwelling was destroyed by fire. Wyndham collected fire insurance for the loss in the sum of $5,000.

Can Shopping Center, Inc. now exercise the option and demand performance with abatement in the purchase price for the loss of the dwelling?

(EQUITY) No. There was no contract, and hence no equitable conversion. Wyndham never agreed to sell for $5,000, and Shopping Center was never under any duty to buy at any price. See 11 ALR 2d 436.

7. Ready Wash contracted to buy from Joe Long a lot in the City of Staunton. At the time of the contract it was known by both parties that the purchaser proposed to use the lot for the purpose of erecting a self-service laundry, which purpose was not prohibited by the zoning ordinances of the City of Staunton. Subsequent to the time the contract was executed and before the time for the delivery of the deed, the City Council of Staunton, by ordinance, rezoned the lot so that it could be used for residential purposes only. At the time for the delivery of the deed, Ready Wash refused to pay the purchase price and a suit for specific performance was filed against it by Long. The above facts constituted all the evidence presented when the hearing was held, and no question of fraud, misrepresentation or unfair dealings on the part of either the complainant or the defendant was alleged.

How should the Court rule?

(EQUITY) Long cannot recover. The entire purpose of the contract has been frustrated. Long still has the lot, so he is not injured. To compel Ready Wash to buy it when it has no use for it and needs its funds for other purposes would work an unconscionable hardship on it with no corresponding benefit to Long. 187 Va.169 on P.1306 of the Equity Cases in these Notes.
4. Stuart Cannon and Herbert Jones each owned 30% of the capital stock of Hopewell Tractor Corporation. The remaining 40% of the stock was owned by John Flagg, who had constantly been in disagreement with Jones concerning business policies, and who had customarily found it possible to control the Corporation's affairs with the assistance of Cannon. Being a person of advanced years and wishing to retire from the business, on June 15, 1964, Cannon contracted to sell all his stock to Jones at a price of $30,000. On learning of this, Flagg offered Cannon $40,000 for the stock. Cannon then told Jones of Flagg's offer and stated that he considered his arrangement with Jones terminated, but that he (Cannon) would retain his stock until July 1st for sale to Jones if Jones would match Flagg's offer of $40,000. On June 21st Jones instituted a suit in the Circuit Court of the City of Hopewell for the specific performance of his contract with Cannon, and alleged his own readiness to pay Cannon the $30,000 purchase price. Cannon now consults you and inquires whether he has a good defense to this suit in equity. What should you advise him? (EQUITY) I would advise that Cannon did not have a good defense. Equity will give specific performance of his contract. Since this stock represents a controlling interest in the corporation it is unique and money damages for breach of contract would not be an adequate remedy.

5. On May 29, 1959 Joseph Hill borrowed $2500 from Afton Trust Company and executed a deed of trust on his residence to secure a promissory note then given by him under the terms of which he promised to repay on May 29, 1964, the borrowed sum of $2500 together with interest then accrued at 6% per annum. Afton Trust Company promptly placed the note in safekeeping and had the deed of trust recorded. Hill now comes to see you and advises that he was unable to pay the loan when due. He also tells you that during the past few years he has obtained from his uncle, Harry Hill, a sum of money sufficient to pay the $2500, plus interest and attendant costs, that he has tendered this money to Afton Trust Co., but the Company has informed him that it fully intends to enforce its deed of trust by selling the property at public auction on July 31st. Hill further informs you that he cannot raise sufficient funds to enable him to bid in the property successfully at the foreclosure sale and inquires what nature of court proceeding, if any, he may pursue to prevent the sale and clear the property of the encumbrance of the deed of trust. What should you advise him? (EQUITY) Hill should institute a suit in equity to redeem the residence and enjoin Trust Company from foreclosing. He should also offer to pay all sums due to date of a valid tender for he who seeks equity must do equity. See 29 Gratt. 27.

8. Sam Benson owned contiguous lots of land (Nos. 50 and 51) in Highland Subdivision, in Augusta County, VA. In 1963 a dwelling house was constructed on Lot No. 50. On March 1, 1964, by general warranty deed, Benson conveyed Lot 50 in the Subdivision to E. Z. Carter. On March 10, 1964, by a general warranty deed, Benson conveyed Lot No. 51 to Horace Peyton. On March 12, 1964, Peyton learned, for the first time, that the dwelling house on Lot 50 encroached for a distance of 4 feet upon Lot 51 which he had purchased. He promptly wrote a letter to Carter demanding that he remove his house from his, Peyton's, lot. Carter replied by letter, admitting that his house encroached 4 feet upon Peyton's lot but refused to remove it, claiming that Peyton should have known of the encroachment before he purchased. After consulting counsel Peyton commenced a suit in equity in the Circuit Court of Augusta County, VA., against Carter and in his bill of complaint he averred the foregoing facts, and concluded with the prayer that the trespass be abated by the removal of the encroachment, and that he be decreed the quiet possession of his land. Carter demurred to the bill of complaint upon the ground that Peyton had a complete and adequate remedy at law either by an action in ejectment or by an action of unlawful detainer. How should the court rule on the demurrer? (EQUITY) The demurrer should be overruled. The legal remedies suggested are inadequate since the encroachment would still be there. Even if equity would balance the hardships and give damages instead it is still a case for equity.
6. Flimsy, Inc., a Virginia corporation with its principal place of business in Richmond, obtained a loan from Finance Corporation, a Virginia corporation, in the sum of $45,000 by executing a note therefor payable to Finance Corporation with Allen, Baker, Coker, Dozier, and Eley, all residents of Richmond, as accommodation makers. Flimsy, Inc., failed in its operations and became insolvent. At maturity, Finance Corporation made demand upon Allen for immediate payment, and to avoid threatened litigation, Allen made payment of the entire $45,000. Allen thereafter consults Lawyer and advises that Baker is hopelessly insolvent, that Coker has left the State and his whereabouts is unknown, that Dozier and Eley are solvent and still live in Richmond but have refused to make any payment of the indebtedness, and that he, Allen, wants to effect a maximum recovery. What should Lawyer advise as to:
1. The nature of Allen's right, if any, against the other accommodation makers.
2. Whether Allen should proceed by an action at law or suit in equity.
3. The maximum amount, if any, Allen could expect to recover and from whom, if anyone.

(EQUITY)

1. The nature of Allen's right is a right of contribution—that since he has paid more than his share others equally liable should equally contribute to the end that Allen be re-imbursed to the extent he has paid more than his part.
2. Allen should proceed in equity. At law he could only recover one fifth, but equity will take into consideration the facts that one co-surety is totally insolvent and the other cannot be found.
3. Hence Allen may recover $15,000 from Dozier and $15,000 from Eley.

See Restatement of Security #154 and 191 Va. 495.

7. Speedy Carriers, Inc., a Virginia corporation, brought a suit in equity against Eager Truck Lines, Inc., a Virginia corporation, seeking to enjoin it from soliciting customers in and around Danville, Va., and from carrying goods on a regularly scheduled route and at a rate less than the tariffs applicable to common carriers. The bill alleged that both parties were controlled by statute and that Speedy was a licensed common carrier subject to regulation as to soliciting and rates, but that Eager was a licensed contract carrier and accordingly was not subject to the same rates but was prohibited from soliciting customers in the Danville territory for regularly scheduled routes. The bill also alleged that Eager's unlawful actions were causing irreparable damage to Speedy. Eager filed a demurrer on the grounds that the various statutory provisions controlling the two carriers specifically provided for a fine or imprisonment or both for any violation, and therefore, Speedy had no right to proceed with his suit in equity, there being an adequate remedy at law provided for by statute if, in fact, there was any violation by Eager. Assuming that the statutory provisions were accurately set forth in the demurrer:

How should the trial court rule on the demurrer?

(EQUITY) The demurrer should be over-ruled. While equity will not usually enjoin one from committing a crime, here Speedy Carriers is suffering a special injury for which there is no adequate remedy at law. A fine on the offending carrier does not compensate Speedy nor prevent further violations by Eager. See 196 Va. 747.
8. The Trustees of the unincorporated Lodge of "Sons of Loyalty" held title to a lodge building in Richmond. A considerable debt, incurred in erecting the building, was outstanding and the building was in disrepair in July, 1951. At that time the Trustees, without authority, undertook to convey the building to the Trustees of another unincorporated lodge known as "Daughters of Liberty", in consideration of the latter's agreement to pay off the debt, repair the building and permit the "Sons" to use it for their meetings.

The Trustees of the "Sons", at a regular meeting of the Lodge, reported their action, and pursuant to the agreement the building was used on alternate Saturday nights by the "Sons" and the "Daughters"; and the "Daughters" paid off the debt, repaired the building and kept it in good condition, spending a substantial sum of money in so doing. This arrangement continued until December, 1964, at which time a dispute arose as to which Lodge should use the building on Christmas Eve. One misunderstanding and argument led to another, feeling ran high and epithets flew fast, until one of the "Sons" examined the record and decided that the "Daughters" had no title to the building. Thereupon suit was instituted by the "Sons" against the "Daughters" to remove the deed as a cloud on their title and to enjoin the "Daughters" from any further use of the building.

Assuming the above facts, what defense or defenses, if any, may the "Daughters" assert successfully?

(EQUITY) The "Daughters" may rely on the defenses of laches and estoppel. All the "Sons" knew about the sale and acquiesced therein for a long period of time knowing that the "Daughters" were making a substantial change of position, while they (the "Sons") reaped a substantial share of the benefits from what the "Daughters" did. Equity aids the vigilant and not the slothful. He who seeks equity must do equity. See 195 Va.919.

4. A owned a farm on the south side of a non-navigable river and B owned one on the north side. B decided to erect a large building on his tract which would extend 10 feet into the channel of the river, thereby diverting the flow of water and narrowing the channel from 60 feet to 50 feet at this point. When B started the foundation for the wall A told him that the wall would unduly narrow the channel and would result in damage to A's land by flooding and severe washing of the bank. B replied that he did not believe it would cause any such damage and he continued the construction of the wall. It was completed within 3 weeks.

Immediately upon the completion of the wall, A consults you and requests your advice as to what court proceedings, if any, he may pursue to obtain relief.

What ought you to advise him?

(EQUITY) A may seek an injunction without awaiting damage, but must establish that an irreparable injury will be realized unless immediate relief is granted. The dam, if it would cause the injury alleged in this case, would be a private nuisance. 176 Va.201.

5. Johnson subscribed for 1000 shares of common stock of XYZ Corporation at $100 per share. He failed to pay the subscription price and hence the certificate for his shares was not delivered to him. The Corporation instituted an action at law against Johnson for the subscription price, but it was denied recovery because of Johnson's plea of the statute of limitations. Thereafter Johnson filed a bill in equity against the XYZ Corporation to compel it to issue and deliver to him a certificate for his shares of stock.

The Corporation by its answer and cross bill asserted that Johnson should be required to pay it what he owed the Corporation even though its claim was barred by the statute of limitations.

If the evidence substantiated these allegations of the parties, how ought the chancellor to decide the cause?

(EQUITY) Johnson not entitled to stock certificate as he who seeks equity must do equity; and Corporation cannot require payment barred by the statute of limitations. Lyles, Notes on Equity Jurisprudence, p. 26; 119 Va.613.
In January of 1963 Caligula Caesar, a widower residing on his farm in Ablomar County, died intestate leaving as his sole heirs his adult sons Nero and Augustus. After the father's death, Nero continued to live on the farm, but Augustus moved permanently to Columbus, Ohio. Only about one-half of the farm was devoted to agricultural purposes, the balance being partly wooded and partly used for limestone quarrying.

By November of 1966 Nero became tired of living on the farm and wished to move into Charlottsville to accept a job offered him by a local department store. Feeling himself in need of money, Nero obtained an appraisal which valued the farm at $60,000. Nero thereafter wrote Augustus telling him of the appraisal and urging that he join with Nero in effecting a sale of the farm. Augustus promptly replied stating that he had such affection for the "old homestead" that he would not be willing to sell his interest at any price, and that he had no intention of returning to Virginia to discuss the matter further. Nero now consults you and asks by what means, if any, he might successfully compel a sale of the farm while Augustus is absent in Ohio and over his objection.

What should you advise Nero? (equity)

You should advise Nero that he may file a bill in equity for partition of the farm. Although Augustus is a necessary party to the partition suit, he may be served as a non-resident by order of publication. The state rightly has and exercises jurisdiction over all property within its territorial limits. A suit to partition land is in the nature of a proceeding in rem, and when the parties interested have been proceeded against in the methods prescribed by law, the decree of partition is conclusive even as to non-residents.

By a written contract signed by the parties on October 6, 1966, Alfred Johns agreed to sell to Ralph Amos at their then market price 150 shares of the common stock of American Telephone and Telegraph Company, 63 shares of the common stock of Safeway Stores, Incorporated, and 1000 shares of the common stock of Chrysler Corporation, delivery of the shares and payment of the purchase price to be made on November 1, 1966. By November 1st, the market price of these stocks had risen by an average of $12.00 per share, because of that Johns refused to make delivery. Amos has now brought in the Circuit Court of Honrico County, a suit against Johns seeking specific performance of the contract.

By his bill Amos has alleged the foregoing facts, filed his copy of the written contract as an exhibit to his bill, and has paid into court the agreed purchase price. Johns has demurred to the bill. How should the Court rule on the demurrer?

The Court should sustain this demurrer. Virginia courts of equity will not entertain a suit or interfere with the interests of the parties where an adequate remedy at law is available. Here, Amos can bring an action at law for damages arising from John's breach of the written contract. Amos could then apply the proceeds from the judgment to the original purchase price and buy the equivalent amount of stock on the open market. Equity will grant specific performance on contracts for sale of personal property only where the subject matter of the contract is unique. Shares of stock are identical.
7. Barbara Bee instituted a suit in equity against Stingby Bee in the Circuit Court of Lee County, Va. The Bill of Complaint charged: that her father, Bumble Bee, died intestate seized of a large parcel of land upon which he had constructed a shopping center, all of which had a value of $300,000; that her father was survived by his only child, Barbara Bee, and his brother, Stingby Bee; that within thirty days after her father's death she and her uncle, Stingby Bee, conferred respecting the ownership of the land and shopping center, and that they decided, based upon the advice of a mutual friend, a Notary Public, that they each had inherited a one-half undivided interest in Bumble Bee's property; that Stingby Bee offered to purchase Barbara Bee's half interest for the sum of $150,000, which she accepted; that Barbara Bee executed and delivered to Stingby Bee a general warranty deed conveying to him all of her right, title and interest in the tract of land with improvements; that Barbara Bee accepted the purchase price and Stingby Bee recorded his deed; and that a few months after this transaction had been closed Barbara Bee learned for the first time that she had actually inherited the entire tract of land with improvements, and that she had sold her interest therein for a grossly inadequate price. The Bill of Complaint concluded with a prayer that the deed for the property be set aside upon the ground of mutual mistake of fact.

(EQUITY) The Court should rule for Barbara Bee. The mistake here is one of fact and not of law. The maxim, ignorance of the law is no excuse, is confined to mistakes of the general rules of law and has no application to the mistakes of persons as to their own private legal rights and interests. Here there was a mutual mistake of fact in which Equity should grant relief. 108 Va.51.

8. Sallie Humble and Jimmy Bragg entered into a written contract by the terms of which Sallie Humble agreed to convey to Jimmy Bragg her 125 acre apple orchard for the agreed purchase price of $200 per acre, or a total of $25,000. Upon tender of the purchase price, Sallie refused to deliver a deed because she had been advised that the property was worth $500 an acre. Bragg promptly instituted a suit in equity for specific performance of the contract. The Court heard evidence ore tenus and the following facts were established: Sallie Humble had acquired the property from her late husband by devise just three months before the date of the contract; Sallie Humble knew nothing of orchard values at the time she entered into the contract and she relied upon Bragg's advice, honestly given, that it had a market value of only $200 an acre; and the orchard was in excellent condition and had an actual market value of $500 an acre. During the course of the hearing the Court inquired of Bragg whether he would be willing to pay $500 an acre for the orchard. He answered he would not, stating that Sallie had contracted to sell him the orchard for $200 an acre. The Court refused to grant specific performance and entered a decree denying the relief prayed by Bragg. On appeal to the Supreme Court of Appeals of Virginia Bragg contended that the Trial Court had erred in refusing to enforce his contract and to decree specific performance. How should the appellate court rule?

(EQUITY) The appellate court should deny Specific Performance. He who asks equity must do equity. Here the defendant entered into the contract under the misrepresentation of the plaintiff, the completion of such contract being inequitable and unfair to the defendant. Thus the court should not grant relief unless the granting can be accomplished with conditions which will obviate that evil result. Thus Bragg's failure to pay a fair price denies his relief.

Applications for Specific Performance are addressed to the sound discretion of the court. The contract must be reasonable, certain, legal and mutual, and upon a valuable or at least a meritorious consideration. The granting of Specific Performance is discretionary with the lower court. 108 Va.179,108 Va.230,125 Va.546.
Hill filed a bill in equity in the Circuit Court of Rockingham County against his neighbor, Dale, alleging that he, Hill, had good title to a certain farm within described boundaries in the county; that for years, Dale had recognized this title and the boundary lines, but that recently Dale had destroyed portions of Hill's fence and was trespassing repeatedly on the land and was allowing Dale's cattle to go thereon and eat the grass and hayricks; that Dale, whose solvency was questionable, was cutting valuable woodlands; and that all of this was to the irreparable damage of Hill, for which he prayed that the court permanently restrain and enjoin Dale's trespassing and remove any cloud on the title caused thereby.

Dale demurred to the bill on the ground that it stated no cause of action of which equity had jurisdiction, but the Court overruled the same, to which ruling Dale excepted. Dale then filed an answer denying the the Court had jurisdiction over the subject matter, denying all of the allegations of the bill, and asserting that he had title to the disputed area. On a hearing ore tenus, the evidence showed that this boundary had been in dispute for 10 years; Dale had torn out 50 feet of fence and repeatedly had gone on the disputed land and his cattle had eaten two hayricks and grazed one acre of land; and that the cutting of woodlands consisted of Dale's gathering firewood and marking the trees for the new asserted boundary.

On a substantial conflict of the evidence as to the title, the chanceller found that the boundary was as asserted by Hill, and after overruling Dale's motion to dismiss, entered a decree in accordance with the prayer of the bill.

On appeal, Dale conceded that there was a conflict in the evidence as to title but contended that the Court should have (a) sustained the demurrer or (b) sustained his motion to dismiss. How should the appellate court rule on these contentions?

(EQUITY) Hill's bill to enjoin the trespass of land is not demurrable, since it included the essential averment that he owned the land, but even when there is a prima facie title, if it is developed by the pleadings and proof that the real controversy is a disputed boundary of land, the bill, as a rule, will be dismissed for want of jurisdiction. See 98 Va. 790.

Tenant leased from Landlord certain premises to be used as a restaurant. The lease was for a term of four years from October 1, 1963, with Tenant being given an option to renew for a term of an additional two years provided the Tenant gave written notice by August 1, 1967 of the exercise of this right. The lease also provided that Tenant could place improvements on the premises and that Landlord would reimburse Tenant upon vacation of the premises for one-half the reasonable value of the improvements with a maximum reimbursement of $1,500.

Tenant's business became very lucrative, and at the beginning of the third year, Tenant built a $5,000 addition to the building. Landlord was dissatisfied with Tenant as he believed that Tenant catered to undesirable people and advised Tenant of this but took no action. Landlord received no notice from Tenant of the exercise of the option for renewal of the lease, and on August 3, 1967, Landlord wrote Tenant and advised that Tenant must vacate the premises on Oct. 1, 1967. On August 7, 1967, Tenant gave written notice to Landlord that he was exercising the option to extend the lease for the two-year period. On Oct. 2, 1967, Landlord served an eviction notice on Tenant, together with a tender of $1,500. Tenant filed a bill in equity in the proper court to enjoin Landlord from evicting him, alleging that the renewal provision in the lease was ambiguous; that time was not stated to be of the essence of the contract; that he had vastly improved the value of Landlord's property at great expense to himself; that his constructing a $5,000 addition in the third year of the lease evidenced his intention to hold over; that he did not exercise the option before August 1 simply because he had overlooked it due to the press of other business; that he could not relocate his business anywhere within the area where his clientele was located; that Landlord would be unjustly enriched; and that he, Tenant, would suffer irreparable harm and become bankrupt if evicted.

Is tenant entitled to the equitable relief sought?

(EQUITY) No. The provision was clear, and time was of its essence. When a lessee can assign no excuse for his failure to give notice of renewal except his own negligence he is not entitled to be rescued by a court of equity from the consequences of his negligence.
3. Widower, a resident of Richmond, owned real estate valued at One Hundred Thousand Dollars ($100,000) and stocks and bonds and income-producing securities and money in amount of about Four Hundred Thousand Dollars ($400,000). He and Miss Willing, a retired school teacher, became engaged to be married. Miss Willing had no business experience, and her only property consisted of a modest residence in one of the suburbs. Widower told Miss Willing that it would be proper for them to enter into an agreement for the settlement of their property rights. He said in this connection, "You know I own my residence and in addition to that I have just a few securities, about enough to provide a comfortable living for you and me, and that is all of my estate." Widower then produced a contract wherein, in consideration of her release of any interest in his estate, he promised to leave his intended wife the sum of Twenty Thousand Dollars ($20,000) at his death and that she should have dower in any real estate acquired by him after the marriage. In the agreement he agreed to release any rights which he might have in her estate. Relying on the statements made by Widower, Miss Willing executed and acknowledged this agreement the day before the marriage. The parties were married and lived together happily for ten years at which time Widower died, and it was found that his estate was worth in excess of Five Hundred Thousand Dollars ($500,000) of which One Hundred Thousand Dollars ($100,000) was the real estate owned at the time of the marriage and the remainder was in securities and cash, and that he also had life insurance payable to his estate in the sum of One Hundred and Fifty Thousand Dollars ($150,000).

Widower, by his will, directed the payment of the Twenty Thousand Dollars ($20,000) to his wife and gave all of the rest of his property to his kindred.

You are consulted as to whether the agreement is binding on the widow. How should you advise?

(EQUITY) The agreement is not binding on the widow. For an ante-nuptial agreement to be valid, there must be either fair and reasonable disclosure for the wife or full disclosure of her husband's worth. Here there was neither full disclosure nor fair and reasonable provision for the wife. See 199 Va. 156.