

How Time Matters in Sri Lanka and England

Vigilantibus Non Dormientibus Jura Subveniunt

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As Lord Camden LC said in *Smith vs. Clay* ((1767) 3 Bro CC 639 at page 640) Equity will not assist a plaintiff who has failed to assert his right within a reasonable time. The maxim "Delay Defeats Equity" is identified as the foundation of the equitable defense of laches. Delay which is sufficient to prevent a party obtaining an equitable remedy is technically called laches (Snell, 1982). Statutory provisions may supply time limit for the commencement of legal proceedings. But not all equitable relief is governed by such legislation. Therefore the doctrine of laches applies in such situations. This maxim states that equity will not protect the claimant's rights if the court concludes that claimant has allowed too much time to lapse between wrongdoing and the commencement of legal proceedings. It can be identified as a defence against the plaintiff.

Applicability of the maxim in Sri Lanka and England will be discussed in this Article under following topics:

- i) Statutory Application of the maxim
- ii) Application of "Laches" when statutes are silent

i) Statutory application of the maxim

Applicability of the maxim under English Law can be identified in statutory provisions of Limitation Act of 1980. Statute of Limitation 1980 expressly covers the time limits for claims by cestuis que trust to recover trust property or in respect of any breach of trust, claims by any breach of trust, claims to the personal estate of a deceased person and claims by mortgagees and mortgagors of land. Also for claims which the statute is covered analogically, the court may refuse to grant equitable remedy when it is delayed. In *Ronex Properties v John Laing Construction* ((1983) QB 393) it was stated that 'It is trite law that the English Limitation Acts bar the remedy and not the right, and furthermore, that they do not even have this effect unless and until pleaded'. It is noteworthy that if a plaintiff didn't plead the relief between given time under Limitation Act, the court can uphold the maxim Delay defeats equity as the plaintiff was late to commence legal proceedings and the court may ignore to declare relief.

Correspond to Limitation Act of 1980, Sri Lankan application of the maxim covers partly by Prescription Ordinance No 2 of 1889 (as amended in 2008) which provides time limits to commence legal proceedings in some areas of law. Term limits can be indicated as of prescription for lands or immovable property (Section 3), time limit for possessory action (Section 4), claims for mortgage/debt or bond (Section 5), claims for breach of partnership (Section 6) etc.

It is evident that when compared to English jurisdiction regarding the applicability of maxim "Delay defeats equity" with Sri Lankan jurisdiction in statutes, they cover many similar areas. For instance both statutes cover prescribed period for claims of mortgages. Similarly both statutes do not cover some areas i.e. statutes do not impose a time limit to some selected areas. Rights in conversion are extinguished by lapse of time (section 3 of Limitation Act 1980) and rights under the Consumer Protection Act 1987 are barred by the ten-year long stop (section 11A (3) of Limitation Act 1980) and section 15 of Prescription Ordinance has expressed that the ordinance shall not affect state or causes matrimonial. Such similarities can be pointed out with regard to the similar application of the maxim in two jurisdictions.



ii) Application of the principle of “Laches” when statutes are silent

As mentioned above delay which is sufficient to prevent a party obtaining an equitable remedy is technically called laches. Apart from Limitation act this maxim of “Delay defeats equity” may apply a claim to redeem a mortgage of pure personal which was stated in Weld vs. Petre [1929] 1 Ch 33, Claims for equitable remedies such as specific performance, rescission (For instance Butlin Saunders vs. Butlin (1984) 15 Fam. Law 126) which indicates the application of laches under English jurisdiction. But delay will be ignored by the court as immaterial in ignorance or disability or in undue influence under English jurisdiction where there is a similar application under Sri Lankan law as well.

In Peiris vs. Perera (2002) 2 SLR 128, Justice Udalagama stated that Interim relief is equitable relief therefore delay would defeat equity. Also it was said that in a case “a party who is against an order entered ex-parte must apply in the first instance” (Hotel Galaxy (Pvt) Ltd vs. Mercantile Hotel Management Ltd (1987) 1 SLR 5) which indicated the applicability of the maxim which states Delay defeats equity under doctrine of laches in Sri Lanka. In Finnagan vs. Galadari Hotels Lanka Ltd (1989) 2 SLR 272, the court stated that Injunction may be granted only after petition of application with accompanying affidavit testifying to the truth of the averments is served on the opposite party. An exception is made only where the object of granting the injunction would be defeated by delay. It indicates out that laches in delay defeats equity maxim can be taken as a defence to declaration of an injunction in Sri Lanka (Injunction is an equitable remedy which a person is ordered to refrain from doing or to do a particular act or thing)

Similarly in an English case Castonguay v. Plourde 46 Conn. App. 251 it was stated that “The defendants assert that the plaintiffs’ action for injunctive relief is barred by the doctrine of laches”. It proves the similar application of laches in some areas of both jurisdictions.

In contrast, the applicability of the maxim “Delay defeats equity” in Sri Lankan jurisdiction and English law has some slight differences.

Although the coverage of the maxim under a statute can be taken as a similarity, situations are different where time limits are imposed by two statutes in two jurisdictions sometimes. For instance Limitation Act covers wider area of legal proceedings from which it had imposed time limits than Prescription Ordinance in Sri Lanka and also prescribed time limits regarding same matters are different in two jurisdictions sometimes. For Instance land recovery time limit.

Considering the application of laches principle it is noteworthy to elaborate differences in two jurisdictions. Although English Law of equity recognized laches principle under “Delay defeats Equity” as a direct defence to legal proceedings (Nelson vs. Rye (1996) 2 ALL ER) Sri Lankan Law did not recognize the same position of applicability of laches. By the coverage of time limits in statutes it seems that court had followed prescribed time limits under statutes not the laches principle which applies when the statutes are silent in Sri Lankan Jurisdiction (Kanapathipillai vs. Subramaniam (1959) 62 NLR). In the case of Punchi Hamine vs. Ukku Menike (1926) 28 NLR 97 court refused to consider laches as a direct defence. Although recent judgments such as Peiris vs. Perera took the view of Delay would defeat equity under laches it cannot be pointed out any reported case which was defeated by direct defence of laches.

