

Clean hands doctrine

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It is important to note that in general, the law doesn't ignore a victim's right to be heard, even if they have a troubled past. It allows victims of recognized wrongs to access legal options regardless of their previous moral or legal issues. Legal cases are usually judged based on their own merits, not on the past actions of the person bringing the claim, unless those actions affect things like witness credibility or the key facts of the case. When addressing wrongdoing, the law typically focuses on assigning responsibility (like in tort cases), obligations (as in contract law), or punishment (in criminal cases). That is why this doctrine is of great interest, as it states that a person who comes into the court with unclean hands will be denied legal remedy. The idea is that a court shouldn't help someone who has acted unfairly, even if their legal case is otherwise strong.

The unclean hands doctrine is often defined as *«he-she who comes into equity must come with clean hands»* [1]. The principle is also sometimes expressed in a number of Latin maxims, including «an unlawful act cannot serve as the basis of an action at law» and «an action cannot arise from a dishonorable cause».

In common law the idea that law could be too general and cause injustice led to the development of equity law. Equity courts, like the Court of Chancery, introduced principles like the "clean hands". English barrister Richard Francis first coined a conception of the clean hands doctrine in his book "Maxims of Equity" published in 1728. [3]. The "clean hands" doctrine was applied in many types of cases handled by the Court of Chancery, including those related to trusts, land ownership disputes, breaches of fiduciary duties, and specific performance of contracts. For example, if a party in a property dispute came to the court seeking an injunction to prevent someone from using land, but it was shown that the petitioner had themselves acted fraudulently in acquiring the land, the court would likely refuse to issue the injunction, invoking the clean hands principle.

Any willful conduct that is unfair, dishonest, fraudulent, unconscionable, or performed in bad faith may constitute the grounds for clean hands defense [4]. It is important to note that the plaintiff's wrongful conduct—grounding the rejection of his or her complaint or petition—must somehow connect or relate to the conduct, interaction, or transaction underlying the plaintiff's cause of action. The doctrine tries to avoid wrongdoers taking an unfair advantage from any legal system.

If the Court finds it useful to apply this doctrine it will refuse to interfere on the claimant's behalf, to acknowledge his right, or to award him any remedy.

The application of unclean hands pursuant to the court protection purpose defends the judicial process in two ways. First, it protects judicial integrity, “because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system” [2]. Second, the doctrine of unclean hands is applied to defend against misconduct that actually interferes with the court process in the present case. This kind of unclean conduct has a more tangible relation to court procedure and is exemplified in myriad forms of litigation misconduct.

One of the most significant criticisms of the Clean Hands Doctrine is its uncertain legal status in public international law. Unlike treaty provisions or rules of customary international law, the Clean Hands Doctrine does not have a clear and universally accepted foundation. Another criticism of the Clean Hands Doctrine is its limited applicability in inter-state disputes, as highlighted in the case of *Ukraine v. Russia* (2024, ICJ) [5]. In this case, Russia argued that Ukraine had «unclean hands» and therefore should be barred from making claims under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) [6]. Russia asserted that Ukraine had itself failed to protect certain ethnic groups within its territory and imposed restrictions on the use of the Russian language. However, the International Court of Justice (ICJ) rejected Russia’s argument, stating that the Clean Hands Doctrine does not apply to inter-state disputes where the court’s jurisdiction is already established. The court emphasized that while the doctrine might be applicable in some contexts, it is not a barrier to claims brought under international conventions like CERD. The Clean Hands Doctrine is often criticized for placing an excessive emphasis on the ethical conduct of the claimant, rather than focusing on the actual harm caused by the defendant. Moreover, the Clean Hands Doctrine can be misused as a procedural weapon by states in investor-state arbitration. Since it allows respondents (usually host states) to argue that claimants have engaged in wrongful conduct, it is often used as a tactic to deflect attention away from the state’s own conduct.

References

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