

You Need Clean Hands to Sue and Win

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Recently I wrote about the law of equity and the concept of clean hands, explaining how, to be successful in equity, you had to have clean hands.

I said that this meant that you basically had to be seen as a victim.

I admit that this may be seen by some as slightly cynical, but I guess I just wanted to cut to the chase and explain it through my older cynical eyes.

It did cause some consternation among my workmates - one in particular, who asked me to explain what I meant by the victim analogy.

I told her that as an example, Gerard Baden-Clay would not have been entitled to equitable relief. I hoped this might end the enquiry, but my colleague swiftly retorted with the fact the Baden-Clay case was tried in a criminal court, not an equitable court. She was right of course.

I decided that I would have to carry out some research. No, I didn't turn to Google. Rather than relying upon the disgraceful speed of the regional NBN, I walked out of my office and picked up a book.

My days at law school came flooding back to me as I read once more about how clean hands is applied in the form of a defence and how it is one of the 20 "maxims of equity".

So, imagine the following as an example. You have signed a contract to buy a truck. Before you are due to hand over the money, you find out the truck has some major mechanical problems that were not disclosed to you. The seller had assured you everything about this truck was spot-on.

You refuse to pay the money to buy the truck. The truck owner sues you to perform the contract - in other words, pay the money. You have a defence because the owner does not have clean hands. In my words, he is not a victim. He has misrepresented the condition of the truck and cannot succeed. You win.

This is of course a simplified example. In the world of law I don't think I have ever seen a case that is an open and shut one. But I hope that it further explains the clean hands concept.

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