

# EXHIBIT V

# Black's Law Dictionary®

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**equitable-parent doctrine.** *Family law.* The principle that a spouse who is not the biological parent of a child born or conceived during the marriage may, in a divorce action, be considered the child's natural father or mother if (1) the other spouse and the child both acknowledge a parent-child relationship, esp. when that other spouse has cooperated in the development of this relationship before the divorce action, (2) the nonbiologically related spouse wants parental rights, and (3) he or she is willing to take on the responsibility of paying support. • The doctrine sometimes applies to nonspousal partners as well. Very few jurisdictions apply the doctrine. See Carolee Kvorlak Lezuch, *Michigan's Doctrine of Equitable Parenthood*, 45 Wayne L. Rev. 1529 (1999). — Also termed *equitable-parenthood doctrine*.

**equitable recoupment.** **1. Tax.** A doctrine allowing a taxpayer to offset previously overpaid taxes against current taxes due, even though the taxpayer is time-barred from claiming a refund on the previous taxes. [Cases: Internal Revenue ¶4829.10. C.J.S. *Internal Revenue* §§ 728, 738.] **2. Tax.** A doctrine allowing the government to offset taxes previously uncollected from a taxpayer against the taxpayer's current claim for a refund, even though the government is time-barred from collecting the previous taxes. • In both senses, this type of recoupment can be asserted only if the statute of limitations has created an inequitable result. See RECOUPMENT (2). [Cases: Internal Revenue ¶4845. C.J.S. *Internal Revenue* § 738.] **3.** A principle that diminishes a party's right to recover a debt to the extent that the party holds money or property of the debtor to which the party has no right. • This doctrine is ordinarily a defensive remedy going only to mitigation of damages. The doctrine is sometimes applied so that a claim for a tax refund that is barred by limitations may nonetheless be recouped against a tax claim of the government. — Also termed *equitable-recoupment doctrine*. See SETOFF (2); RECOUPMENT (3). [Cases: Set-off and Counterclaim ¶6. C.J.S. *Set-off and Counterclaim* §§ 2, 11.]

**equitable relief.** See *equitable remedy* under REMEDY.

**equitable remedy.** See REMEDY.

**equitable remuneration.** See *compulsory license* (1) under LICENSE.

**equitable rescission.** See RESCISSION.

**equitable-restraint doctrine.** See *Younger abstention* (1) under ABSTENTION.

**equitable reversion.** See REVERSION.

**equitable right.** See RIGHT.

**equitable right to setoff.** The right to cancel cross-demands, usu. used by a bank to take from a customer's deposit accounts the amount equal to the customer's debts that have matured and that are owed to that bank. See SETOFF. [Cases: Banks and Banking ¶134; Set-off and Counterclaim ¶8. C.J.S. *Banks and Banking* §§ 301-305, 312-313, 316; *Set-off and Counterclaim* §§ 3, 6.]

**equitable seisin.** See SEISIN.

**equitable servitude.** See *restrictive covenant* under COVENANT (4).

**equitable subrogation.** See *legal subrogation* under SUBROGATION.

**equitable title.** See TITLE (2).

**equitable tolling.** **1.** The doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired. • Equitable tolling does not require misconduct by the defendant. [Cases: Limitation of Actions ¶104.5. C.J.S. *Limitations of Actions* §§ 85-86, 121.] **2.** The doctrine that if a plaintiff files a suit first in one court and then refiles in another, the statute of limitations does not run while the litigation is pending in the first court if various requirements are met. • Among those requirements are (1) timely notice to the defendant; (2) no prejudice to the defendant; and (3) reasonable and good-faith conduct on the part of the plaintiff.

**equitable waste.** See WASTE (1).

**equity, n.** **1.** Fairness; impartiality; evenhanded dealing <the company's policies require managers to use equity in dealing with subordinate employees>. **2.** The body of principles constituting what is fair and right; natural law <the concept of "inalienable rights" reflects the influence of equity on the Declaration of Independence>.

"In its popular sense it [equity] is practically equivalent to natural justice. But it would be a mistake to suppose that equity, as administered by the Courts, embraces a jurisdiction as wide and extensive as that which would result from carrying into operation all the principles of natural justice. There are many matters of natural justice wholly unprovided for, from the difficulty of framing any general rules to meet them, and from the doubtful wisdom of a policy of attempting to give a legal sanction to duties of imperfect obligation, such as charity, gratitude and kindness. A large proportion of natural justice in its widest sense is thus not judicially enforced, but is left to the conscience of each individual." R.E. Megarry, *Snell's Principles of Equity* 1 (23d ed. 1947).

**3.** The recourse to principles of justice to correct or supplement the law as applied to particular circumstances <the judge decided the case by equity because the statute did not fully address the issue>. — Also termed *natural equity*. [Cases: Equity ¶1. C.J.S. *Equity* §§ 2-5, 7-8, 10.] **4.** The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called "law" in the narrower sense) when the two conflict <in appealing to the equity of the court, she was appealing to the "king's conscience">; CHANCERY (2).

"Equity is that system of justice which was developed in and administered by the High Court of Chancery in England in the exercise of its extraordinary jurisdiction. This definition is rather suggestive than precise; and invites inquiry rather than answers it. This must necessarily be so. Equity, in its technical and scientific legal sense, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has, when employed in the language of English law, a precise, definite and limited signification, and is used to denote a system of justice which was administered in a particular court — the nature and extent of which system cannot be defined in a single sentence, but can be understood and explained only by studying the history of that court, and the principles upon which it acts. In order to begin to understand what equity is, it is necessary to understand what the English High Court of Chancery was, and how it came to exercise what is known as its extraordinary jurisdiction. Every true definition of equity must, therefore, be, to a greater or less

party a new or different remedy when the existing remedy, if any, is inadequate. [Cases: Statutes § 236; C.J.S. *Statutes* § 377.]

**remedial liability.** See LIABILITY.

**remedial promise.** See PROMISE.

**remedial right.** See RIGHT.

**remedial statute.** See STATUTE.

**remedial trust.** See *constructive trust* under TRUST.

**remediation.** *Environmental law.* The restoration of polluted land, water, or air to its former state, or as nearly so as is practical.

**remedies, n.** The field of law dealing with the means of enforcing rights and redressing wrongs.

**remediis praetoriis** (ri-mee-dee-is pti-tor-ee-is). [Latin] *Hist.* By praetorian remedies.

**remedium extraordinarium** (ri-mee-dee-əm ek-stror-dinair-ee-əm or ek-strə-or-). [Latin] *Hist.* An extraordinary remedy.

**remedy, n.** 1. The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief. — Also termed *civil remedy*. 2. REMEDIAL ACTION. Cf. RELIEF. — Also termed (in both senses) *law of remedy*. — **remedy, vb.**

"A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders to defendants to refrain from their wrongful conduct or to undo its consequences. The court decides whether the litigant has been wronged under the substantive law; it conducts its inquiry in accordance with the procedural law. The law of remedies falls somewhere between substance and procedure, distinct from both but overlapping with both." Douglas Laycock, *Modern American Remedies* 1 (3d ed. 2002).

**adequate remedy at law.** A legal remedy (such as an award of damages) that provides sufficient relief to the petitioning party, thus preventing the party from obtaining equitable relief. See IRREPARABLE INJURY RULE. [Cases: Specific Performance § 5; C.J.S. *Specific Performance* § 8.]

**administrative remedy.** A nonjudicial remedy provided by an administrative agency. • Ordinarily, if an administrative remedy is available, it must be exhausted before a court will hear the case. See EXHAUSTION OF REMEDIES. [Cases: Administrative Law and Procedure § 229; C.J.S. *Public Administrative Law and Procedure* §§ 38–42.]

**civil remedy.** See REMEDY (1).

**concurrent remedy.** One of two or more legal or equitable actions available to redress a wrong.

**cumulative remedy.** A remedy available to a party in addition to another remedy that still remains in force.

**equitable remedy.** A remedy, usu. a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu. monetary damages, cannot adequately redress the injury. • Historically, an equitable remedy was available only from a court of equity. — Also termed *equitable relief*. See IRREPARABLE-INJURY RULE. [Cases: Injunction § 17; Specific Performance § 1; C.J.S. *Injunctions* § 31; *Specific Performance* §§ 2, 5–6.]

**extrajudicial remedy.** A remedy not obtained from a court, such as repossession. — Also termed *self-help remedy*.

**extraordinary remedy.** A remedy — such as a writ of mandamus or habeas corpus — not available to a party unless necessary to preserve a right that cannot be protected by a standard legal or equitable remedy. • Because there is no agreed list of extraordinary remedies, some standard remedies — such as preliminary and permanent injunctions — are sometimes described as extraordinary. [Cases: Mandamus § 3(1)–3(2.1); C.J.S. *Mandamus* §§ 18–19, 21–23, 31.]

**judicial remedy.** A remedy granted by a court.

**legal remedy.** A remedy historically available in a court of law, as distinguished from a remedy historically available only in equity. • After the merger of law and equity, this distinction remained relevant in some ways, such as in determining the right to jury trial and the choice between alternate remedies. [Cases: Action § 21; C.J.S. *Actions* § 124.]

**provisional remedy.** A temporary remedy awarded before judgment and pending the action's disposition, such as a temporary restraining order, a preliminary injunction, a prejudgment receivership, or an attachment. • Such a remedy is intended to maintain the status quo by protecting a person's safety or preserving property. [Cases: Attachment § 1; Indemnity § 20; C.J.S. *Attachment* §§ 2–4, 7; *Subrogation* §§ 2–15, 19, 91.]

**remedy over.** A remedy that arises from a right of indemnification or subrogation. • For example, if a city is liable for injuries caused by a defect in a street, the city has a "remedy over" against the person whose act or negligence caused the defect. [Cases: Injunction § 1; C.J.S. *Injunctions* §§ 2–4, 12, 14, 22, 24, 166.]

**self-help remedy.** See *extrajudicial remedy*.

**specific remedy.** A remedy whereby the injured party is awarded the very performance that was contractually promised or whereby the injury threatened or caused by a tort is prevented or repaired. • A court awards a specific remedy by ordering a defaulting seller of goods to deliver the specified goods to the buyer (as opposed to paying damages). [Cases: Specific Performance § 126; C.J.S. *Specific Performance* §§ 189–193.]

**speedy remedy.** A remedy that, under the circumstances, can be pursued expeditiously before the aggrieved party has incurred substantial detriment. • "Speedy remedy" is an informal expression with no fixed meaning — that is, what is considered speedy in one context may not be considered speedy in other contexts. For example the Federal Tax Injunction Act requires a "plain speedy, and efficient remedy" in state courts. But the Act does not require preliminary or injunctive relief — or even interest for delay. [Cases: Injunction § 1; C.J.S. *Injunctions* §§ 2–4, 12, 14, 22, 24, 166.]

"Speedy" is perforce a relative concept, and we must assess the 2-year delay against the usual time for similar