1. It is not always easy to distinguish between one maxim and another in some cases. With the aid of decided cases, select two such maxims and discuss the similarities and differences between them.

**Suggested Answer:**
There are several possible definitions/descriptions of maxims of equity as can be seen at 2.1. It is clear from this chapter that a single acceptable definition is difficult to lay down. A good definition/description must however be able to capture the real essence of maxims. Whatever maxims students choose to discuss, it is important to note the specific nature and the use of such maxims and, where possible, to discuss how they compare with each other. For instance, 'he who comes to equity must come with clean hands' and 'he who seeks equity must do equity' can be compared and contrasted in relation to the time in which the act in respect of which equity is sought is done. Cases such as *Dering v Earl of Winchelsea* (1787) 1 Cox 318, and *Argyll v Argyll* (1967) Ch 32, on the one hand, and *Re Berkeley Applegate (Investment Consultants) Ltd (in Liquidation) v Harris v Conway and Others* (1989) Ch 32 on the other, explain the relevance of time to the two maxims and also the importance of the applicant’s disposition.

2. Is a court sitting in England able to grant injunctive relief against a defendant at all times, provided the defendant lives within the English jurisdiction?

**Suggested Answer:**
See 2.4
It does not matter in which country the property in dispute is situated, but whether the defendant is within the English jurisdiction and therefore subject to the enforcement powers of the court: *Penn v Lord Baltimore* [1750] 1 Ves Sen 444 and *Richard West v Dick* [1969] 2 Ch 424.
The history of equity in this chapter shows clearly that equity acts in personam rather than in rem, that it acts against the conscience of the defendant and not specifically against the object of litigation. But the rule used to be that you cannot grant an injunction against a person not party to a dispute: *Iveson v Harris* (1802) 7 Ves 251.
However, as seen in Chapter 19, English courts can now grant injunctions against the world: *Publishing Group plc v News Group Newspaper*. But there are limitations. First, note that the defendant must be within an English jurisdiction. Also, as stated in 19.3.3, the court will not generally grant an equitable relief (including injunctions) if such an order will be futile. Futility can occur for several reasons (see *Evans v Manchester, Sheffield and Lincolnshire Rly Co* (1887) Ch D 626).

3. Delay will always defeat equity no matter what happens. Discuss this assertion and indicate if there are any limitations to this maxim.

**Suggested Answer:**
See 2.7
Contrary to the assertion that equity acts contrary to the law, this maxim shows that equity does not protect anyone who has not complied with legal obligations or who
violates legal rules for no just cause. For instance, equity is rigorously guided by common law rules concerning time specifications for which an act ought to be done. Where delay occurs and as such is unreasonable, there will be no claim in equity. Delay, it is often said, defeats equity. Statutory limitations, such as section 21(3) of the Limitation Act 1980, can affect an equitable claim. The way a court will apply the maxim is shown in *Allcard v Skinner* (1880–90) All ER Rep 90.

However, delay can sometimes be excused in certain circumstances provided it does not amount to acquiescence, i.e. the tacit acceptance of the existence of a state of facts. Thus a delay may be reasonable and not constitute acquiescence, in which case delay may not defeat equity (see *Duke of Leeds v Earl of Amherst; Lindsay Petroleum v Hurd* (1874) LR 5 PC 221. Thus, the focus of your answer should be to explain what kinds of delays can defeat equity and under what circumstances would that general rule be excluded from operation.

There is some more information about limitation of actions and how equity deals with it at 15.7.

4. No-one who has witnessed the rigidity of the common law rules should have sympathy for it whenever equitable maxims are used to exclude the application of common rules in certain cases. In your understanding of the relationship between equity and common law, do you think this is a correct view?

**Suggested Answer:**

Equity was developed as a reaction to the rigidity of the common law system (see 1.2). Hence, in its early years, equity was construed as being against common law and that it had come to abrogate the common law systems. The tension between the two systems boiled over in the *Earl of Oxford* case (1615) 1 Rep Ch 1. Common law rules are rigid and very formal, whereas equitable principles are more amenable to changes. Yet, after this case, As John Selden said (see 1.3) equity itself became a roguish thing. For [common law] we have a measure...equity is according to the conscience of him that is Chancellor, and as that is longer or narrower so is equity. Tis all one as if they should make the standard for the measure a Chancellor's foot’. The relationship between equity and common law is today one of complementarity rather than contradiction. The Judicature Acts (1873–75) merged the rules or the administration of equity and common law. But it is not in doubt that the same court now applies the two sets of rules. Modern development of equity is that it has not come to abrogate the law but to strengthen it. ‘Equity will not aid the indolent’ is one of the important principles of equity. The courts have also consistently held that the court of equity is no longer a court of conscience (in the sense of applying moral rules only) but a court of law too, as Buckley J said in *Re Telescriptor Syndicate Ltd.*[1903] 2 Ch 174. Pay particular attention to the fact that before the unification of equity and common law, common law provided some stability for the English legal system, despite its rigidity, whereas equity, due to its original loose and unprincipled application, caused serious inconsistency and instability. The relationship between the two today is that they balance each other out without one being treated with less importance than the other.