

Contents

<i>Preface</i>	<i>page xi</i>
<i>Acknowledgments</i>	<i>xiii</i>
1 Introduction	1
1.1 Overview of the Book	5
1.2 Summary of Chapters	9
2 Announcing the Clean Hands Doctrine	12
2.1 Introduction	12
2.2 Overview	15
2.3 Philosophy of Equity and Unclean Hands	15
2.4 Origins of the Unclean Hands Defense	23
2.5 Development of the Defense in American Decisions	23
2.6 Discussion of the Defense in American Literature	26
2.7 Definition of the Defense	31
2.7.1 Unclean Conduct Component	31
2.7.2 Connection Component	38
2.7.3 Sliding Scale	50
2.8 Role of Discretion	51
2.9 Conclusion	57
3 Examining the Cases	59
3.1 Introduction	59
3.2 Overview	60
3.3 The Past: Unclean Hands Exclusive to Equity	61
3.4 The Present: Legal Development of Unclean Hands	66
3.4.1 State Court Adoption of Unclean Hands	66
3.4.2 Federal Court Adoption of Unclean Hands	79

3.5	<i>The Future: From Pedigree to Policy</i>	88
3.6	<i>Conclusion</i>	101
4	Interpreting the Merger	104
4.1	<i>Introduction</i>	104
4.2	<i>Overview</i>	106
4.3	<i>Premerger Pleading of Unclean Hands</i>	106
4.4	<i>Postmerger Status of Unclean Hands</i>	108
4.4.1	<i>Procedural Union: Automatic Denial of Unclean Hands at Law</i>	109
4.4.2	<i>Substantive Adjustment: Automatic Adoption of Unclean Hands at Law</i>	110
4.5	<i>Meaning of the Merger</i>	113
4.6	<i>Conclusion</i>	114
5	Framing the Fusion Debate	116
5.1	<i>Introduction</i>	116
5.2	<i>Overview</i>	117
5.3	<i>Debating Fusion</i>	117
5.3.1	<i>Arriving at a Working Definition of Equity</i>	118
5.3.2	<i>Pro-Fusion School of Thought</i>	126
5.3.3	<i>No-Fusion School of Thought</i>	148
5.4	<i>Appraising Unclean Hands</i>	152
5.4.1	<i>Introduction</i>	152
5.4.2	<i>Clarity and Consistency</i>	153
5.4.3	<i>Separation of Powers</i>	164
5.4.4	<i>Good Judgment</i>	170
5.5	<i>Conclusion</i>	176
6	Thinking Procedurally	177
6.1	<i>Introduction</i>	177
6.2	<i>Overview</i>	179
6.3	<i>Process-Based Theory of Unclean Hands</i>	180
6.3.1	<i>Introduction</i>	180
6.3.2	<i>Overview</i>	182
6.3.3	<i>The Approach: Form and Function</i>	182
6.3.4	<i>Unclean Hands as Protector of the Process</i>	185
6.3.5	<i>Four Phases of Unclean Hands</i>	195
6.3.6	<i>Relation to Elements</i>	206

6.4 Implications	210
6.4.1 Universal Use	210
6.4.2 Parallel Theories	212
6.5 Conclusion	216
7 Conclusion	218
<i>Index</i>	219