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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

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Lecture-26





LECTURE-26

EQUITABLE REMEDIES: INJUNCTIONS

Now, we will consider the remedy of injunction. Under the English legal system the award of a decree of injunction was, for centuries, exclusive to the Chancery Court. The reason for this exclusive jurisdiction of Chancery is to be found in the peculiar history of the English legal system whereby law and equity were, for a considerable length of time, administered in separate courts administering separate jurisdictions. The unpleasant situation resulting from the dual administration of justice led to the merging

(by series of enactments in the 19th century) of both jurisdictions into the Supreme Court of Judicature.

Types of Injunction:

An injunction is an equitable remedy granted by the court compelling a party to do or to refrain from doing an act. The order is mandatory or positive where it compels a party to do an act; it is prohibitory or restrictive where it prohibits the doing of an act. The various types of injunction are:

1. Mandatory and Prohibitory Injunction
2. Perpetual Injunction
3. Interlocutory Injunction
4. *Quia Timet* Injunction
5. *Ex parte* Injunction

Mandatory and Prohibitory Injunction:

The essence of a mandatory injunction is to compel a party to restore things to the condition in which they were at the time the plaintiff's complaint was made or before the defendant committed the act complained of. See **Isenberg v. East India House Co.** (1863) 3 D.J. & S 263 at 272. 32 and **Smith v. Smith** (1875) L.R 20 Eq. 500. For reasons of history and convenience, judicial attitude tends to favour the grant of prohibitory rather than mandatory injunction. For a long period, most injunctions were (and still are) prohibitory both in form and substance. The reason being that the remedy of injunction is essentially restrictive.

Secondly it was much easier to restrain a party from doing an act than to compel him to perform a positive act, since the Court of Equity will not grant a

remedy, the enforcement of which will require the supervision of the court. Thus, the general restrictive character of injunction and the drastic effect of mandatory injunction in particular favoured the disinclination of the court to grant mandatory injunction. If and when it is granted, greater caution is exercised, and for a long period of time a mandatory injunction was always granted in negative terms when it was obvious that its effect was positive.

There is no longer any distinction in principle between granting a prohibitory injunction restraining a party from interfering with a right and granting a mandatory injunction in a positive term, compelling a party to grant a right. See *Davies v. Gas Light and Coke Co.* (1909) 1 Ch. 708. The merits of an injunction are the overriding consideration; whether an injunction is mandatory or prohibitory in form or substance is of

little significance provided the effect of the order does not impose an impossible or unenforceable or unlawful obligation. See *Pride of Derby v. British Celanese* (1953) 1 Ch. 149, 181.

Buckley J. in *Charington v. Simons & Co. Ltd.* (1970) 1 W.L.R 725 at 730, stated the principles governing the issue of a mandatory injunction. He said: 'the court must, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be deprived of relief to which he is justly entitled merely because it will be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will be materially detrimental to the defendant.'

Interim injunctions:

Interim injunctions were formerly known as interlocutory injunctions and are awarded on an interim basis during litigation. The award is based on a balance of convenience between the potential harm suffered by the applicant if no injunction were awarded and the potential inconvenience caused to the respondent if the injunction were to be awarded.

Interim injunction is one granted during the litigation and is binding on the parties until the decision so as to prevent the harm that can be caused in the mean time and wait until the final decision is made.

***Quia Timet* Injunction(He who fears):**

This is a kind of injunction sought by a person to restrain the doing of an apprehended mischief. Unlike

perpetual and interlocutory injunctions which are sought to restrain infringement or alleged infringement of rights, a *quia timet* injunction is sought before the mischief is done. Thus the exercise of the equitable jurisdiction is predicated on the fact that a person is entitled to take action *quia timet* before he is actually injured.

Because of the drastic effect of injunction in general, and the fact that *quia timet* injunction is in particular, meant to restrain an act that has not been done, courts are always wary and reluctant to grant *quia timet* injunction.

To succeed in an action for a *quia timet* injunction, the plaintiff must establish a clear and convincing evidence of probability of irreparable injury; or that injury must necessarily and inevitably follow if the

apprehended or the threatened act is not restrained.

Ex parte orders:

Ex parte orders are essentially remedies which can be sought in the absence of the defendant; raises issues in regard to Article 6 of the ECHR regarding a right to a fair trial as the defendant is not there to present their case. Nevertheless, despite the absence of the defendant the circumstances may be such whereby for the parties interests to be upheld an ex parte application would be permitted Search orders:

Formerly called “Anton Piller” orders

In the case of **Anton Piller KG Ormrod LJ** said that this remedy was one of “last resort”

- Sometimes a party may be required to disclose documents of relevance to the trial however where it is

felt that the other party will not do so then a search order would be asked for; they are granted without notice to the defendant and they require the defendant to allow a search of their premises to locate the documents

- For an order to be granted:
 - o Must have a very strong Prima Facie case
 - o Must be able to show actual or potential damage of serious nature
 - o Evidence that documents etc do indeed exist and that there is a risk of their destruction

- Court conducts a balancing exercise so as to protect the interests of both parties.

In **Lock International v Beswick** it was shown how the defendant can make an application to as to have the order removed or varied

- o Section 7 of the Civil Procedure Act 1997 set out procedural safeguards such as a supervising solicitor, the search taking place in office hours, the defendant or a responsible employee

must be present and only the subject matter of the order can be taken.

Freezing orders:

Formerly known as “**Mareva**” injunctions

In the case of **Mareva International Bulkcarriers** it was shown that an effective use of the order will freeze the assets of the defendant up to the value of the claim and will prevent a defendant from removing their assets from the court’s jurisdiction before trial

- These are essentially mandatory orders which freeze the assets of the defendant; should a claimant win at trial then they want to ensure that the damages they are entitled to are able to be paid. This so as to reinforce the idea that equity doesn’t act in vain

- Lord Denning said in **Z v AZ and AALL** that this remedy was proprietary in nature. In *Derby v Weldon* it

was shown how there must be a good and solid case for such an order to be granted and it was also said how in order for a freezing order to be utilised it must be shown that there is:

- Good arguable case
- Real risk that judgment will go unsatisfied: without the order assets will be removed
- It is just and convenient in all the circumstances

MCQs

1. An injunction is an equitable remedy granted by the court compelling a party to do or to refrain from doing an act.

- i.** True
- ii.** False
- iii.** Cannot say
- iv.** None of these

2. In the case of Anton Piller KG Ormrod LJ said that this remedy was one of “last resort”.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

3. Ex parte orders are essentially remedies which can be sought in the absence of the defendant.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

4. Interim injunctions were formerly known as interlocutory injunctions and are awarded on an interim basis during litigation.

- i. True**
- ii. False**

- iii. Cannot say
- iv. None of these

5. For reasons of history and convenience, judicial attitude tends to favour the grant of prohibitory rather than mandatory injunction.

- i. True
- ii. False
- iii. Cannot say
- iv. None of these
