

CIVIL PROCEDURE

MODULES 7-10

Topic List:

1. Module 7: Interlocutory orders
2. Module 8: Ending proceedings early and trial
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4. Module 10: Federal issues and procedure

Revision Note Module 7 – Interlocutory Orders

INTERLOCUTORY ORDERS

An order made “along the way”/ in the course of a proceeding but which does not finally determine the rights of the parties.

They preserve the status quo in a matter pending trial.

INJUNCTIONS

An equitable remedy.

A court order restraining the person to whom it is directed from performing a specified act or requiring a person to perform a positive act.

For example, in tracing funds, the D can be prevented from operating bank accounts and mixing the funds in dispute with other money.

Types of injunctions: interlocutory injunctions, perpetual or final injunctions, and interim injunctions.

Interlocutory injunctions:

- temporary order to maintain the status quo until the main hearing when the court has an opportunity to hear and weigh fully the evidence of both sides.
- An interlocutory injunction does not involve the full presentation of both parties evidence.
- Interlocutory injunctions often sought as a matter of urgency.
- Supreme court of Queensland has an inherent jurisdiction to grant interlocutory injunctions.
- District Court: injunction must relate to one of the subject matters set out in s68 District Court of Queensland Act 1967. S69 – district court may grant 2 types of interlocutory injunctions – Mareva injunction (search order) and Anton Piller (freezing) order.
- S9 Civil Proceedings Act 2011: If a court has jurisdiction to hear an application for an injunction, the court may, at any stage of a proceeding, by injunction,

restrain a threatened or apprehended breach of contract or other wrongful conduct.

- Magistrates Courts not conferred with the jurisdiction to grant injunctions.

Plaintiff must establish:

1. There is a serious question to be tried (and a *prima facie* case - ABC v O'Neill)
2. The balance of convenience favours the granting of an interlocutory injunction.

ABC v O'Neill --- if the evidence remains as it is there is a probability that at the trial of the action the applicant will be held entitled to relief. The general requirements are that the applicant must establish 'a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial'. The consequences likely to flow from the interlocutory injunction.

- appeal against the injunction preventing the broadcast of the film which alleged the respondent was involved in a high profile missing children's case from the 1960s. – practical consequences likely to flow. But public interest most persuasive factor so refused application for interlocutory injunction. O'Neill would only be entitled to nominal damages.

Beecham Group v Bristol Laboratories Pty Ltd --- claimed the imported drug violated patents held by the applicant in Australia for a similar drug. Injunction sought. The material before the court the plaintiff has shown, is so substantial a probability of succeeding in the action that it is entitled to have the status quo preserved.

Balance of convenience: favours the granting of interlocutory injunctions. The inconvenience or injury which the plaintiff would be likely to suffer if the injunction were not granted is outweighed by injury which the defendant would suffer which the D would suffer if the injunction granted (Beecham Group v Bristol Laboratories).

Various considerations on balance of convenience may be relevant:

1. a threat of damage is insufficient; the applicant must establish a respondent intention is to carry out a threat
2. the court will balance relative damage to both parties if the injunction were granted.
3. The possibility the applicant may suffer irreparable damage if the injunction is not granted is considered
4. An injunction is unlikely to be granted where other forms of relief such as damages, are an adequate remedy
5. An applicant's failure to make a prompt application or acquiescence may result in the court refusing to grant the injunction
6. The impact on any 3rd parties not before the court.

Undertaking: Before granting an interlocutory injunction, court will require "usual undertakings as to damages" – pay any damages caused if unsuccessful at trial for loss suffered.

Castlemaine Tooheys Ltd v South Australia --- amendments to the Beverage Container Act 1975. Amendments aimed to protect environment from non-refillable bottles. Tooheys claimed the measures in the act amounted to a levy on interstate brewers. Applied for injunction to halt the act. Weighing the interests of the plaintiff against the public interest in the need to protect the environment. The High Court Considered that the 1986 legislation which increases the amount of the mandatory deposit per bottle sold was excessive in the sense that it exceeded the amount necessary to conservation the environment and, as result, could be considered to be some form of hidden discrimination in order to benefit the local brewers.