INJUNCTIONS



EXCLUSIVE OR AUXILLIARY JURISDICTION?

Exclusive Jurisdiction	**Requires Purely Equitable Right or Cause of Action** • Includes breaches of trust, FD, confidence, unconscionable conduct (***Wylde v AG NSW***). • May also be issued against third parties re: trust property (***Ackerley v Palmer***). • **Confidential information**: D receives confidential information and threatens to disclose it. The right to confidentiality can be legal or equitable (legal includes contractual or statutory obligations prohibiting disclosure and will be in auxiliary jurisdiction, **exclusive equitable jurisd recognised. even though it may not be directly linked to another equitable cause of action**) →A breach of contract may be in equity's jurisdiction if the information is confidential. • **Right to work**: Recognised in exclusive jurisdiction **where there is an absence of a contract of employment to protect it** (Nagle v Feilden affirmed in ***Buckley v Tutty***) → Where there is a contract of employment, may be a common law action instead. • **NO REQUIREMENT TO PROVE THAT DAMAGES ARE INADEQUATE**.
Auxiliary Jurisdiction	• Injunctions in aux jurisdiction **protect both common law and statutory rights**. • Available for common law actions, such as torticus conduct and breaches of contract, or for statutory breaches (provided for by Acts – statutory injunctions), but **only if damages are an inadequate remedy**. **1) Cause of Action** a. There must be a pre-existing legal right or cause of action (***ABC v Lenah Game Meats***) i. Must be common law right (such as tort or contract) or statutory right (statutory injunctions). E.g., breach of contract, proprietary rights, defamation, malicious falsehood, negligence, nuisance, passing off, conversion, detinue and trespass, breach of intellectual property and assault. **2) Must Prove Inadequacy of Damages** a. Onus on P to prove damages are inadequate (***Irving v Emi***) b. Must show that D's **wrong or threatened wrong would cause irreparable harm or injury to P** or a third person (**Irreparable [illegible] cannot be repaired with money**). i. Example: if seeking an injunction to prevent trespass to or conversion of goods, P may be able to demonstrate the inadequacy of damages by showing the goods are unique or have a peculiar value to P (***Aristoc Industries v Wenhman***).

DISCRETIONARY BARS/DEFENCES

Discretionary Matters in Contract Case	Mutuality, hardship, and futility discussed for SP relevant for injunction to restrain breach of contract. Courts **reluctant to grant injunctions where constant court supervision is required**; though no longer an absolute restriction, but a question of degree (Stevedores)
Unclean hands	***Kettles and Gas Appliances v Anthony Hordern & Sons*** (injunction refused where D innocently passed off its kettles of those of P because P had misrepresented to the public that its kettles were protected by a patent).
Personal Service/Enjoyment Contracts	Traditional reluctance to compel performance but not absolute restriction. Court **has granted short-term injunctions of < 12 months restraining breaches of negative, restraint of trade stipulations** in personal 'special service' contracts, but have highlighted these do not compel SP of the contract (***Lumley v Wagner; Curro v Beyond Productions; Seven Network v Warburton (No2)***). + **Laches, Acquiescence, Delay (same as SP).**

TYPES OF INJUNCTIONS

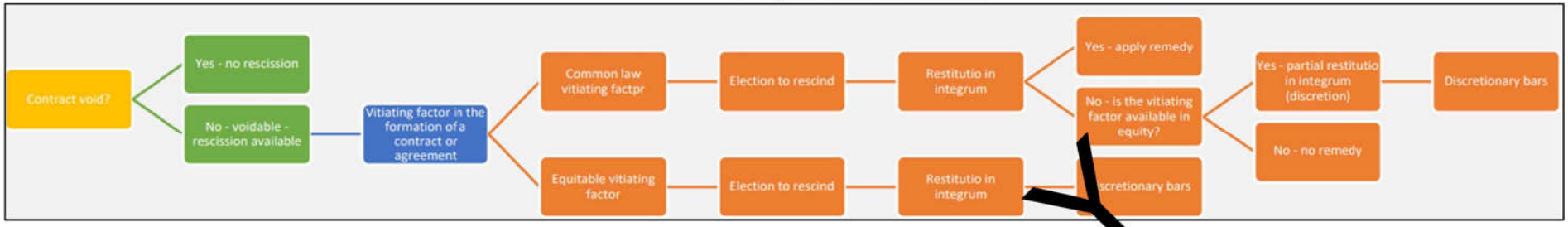
Mandatory Injunction	Positive injunction → compel someone to do something, e.g., SP. Statutory remedy under s 65(1) *SCA* (NSW). **Restorative mandatory injunctions** – P must show that had the wrongful act not occurred but was merely threatened, they would have gotten a prohibitive injunction to prevent the wrong (Redlands Bricks v Morris).
Prohibitory Injunction	Prohibits someone, or a company, from doing something.
Quia timet injunction **s 66(1) *SCA***	Restrains threated or apprehended legal wrongs. Statutory force through s 66(1) ***Supreme Court Act 1970*** **Not necessary to prove common law or statutory cause of action provided there is a threat of imminent substantial damage** (***Associated Newspapers v Insert Media***; ***Minister for Env. v Sharma***). Courts are cautious in granting as will inconvenience D. Required to do justice between parties (***Edenham v Premier Holdings***).
Interlocutory Injunction **s 66(1) *SCA***	Preserves status quo pending full determination of P's rights at trial or hearing if D's wrong or threatened wrong will cause irreversible damages (***ABC v Lenah Game Meats***). In extremely urgent cases can be heard ex parte, but then P has obligation to disclose all material facts relevant to the grant of the injunction (***Edison Linen Bullock***). **4 STAGE TEST** 1) legal or equitable cause of action (***Cardille v LED Builders***); and 2) must have a prima facie case, with the probability that they will be entitled to relief at trial (***Beecham Group v Bristol Laboratories***); and 3) **P must make an undertaking as to damages** that P will compensate D and other third parties should the injunction later be refused/dissolved (***Beecham***); and 4) balance of convenience – inconvenience or injury P would suffer if injunction refused must be > than the inconvenience or injury D would suffer if the injunction were granted (***Beecham***).
Super Anonymised Injunction	Injunction to an anonymous party whose name is secret. **Carries additional obligation of privacy and confidentiality on the parties**. E.g., if search order is issued against D enabling P to search D's property, will also impose gag order on D and their agents not to disclose the execution of the search order except to a legal practitioner to receive legal advice to protect the court's procedures and processes. (E.g., see ***X v Twitter***).
Freezing Order	Court's inherent power to prevent abuse of process (S 23 SCA
ACL Statutory Injunction	S 232 ACL
Framing the Injunction	• The court will clearly state what D is required to do and what D must refrain from doing (***Curro v Beyond Productions***). • Clarity and precision are important as D risks contempt and serious penalties if the injunction is breached.

EQUITABLE DAMAGES

Discretion	Discretionary in nature (not awarded as of right). May be reduced or denied because of equitable bars or defences. **S 68 SCA**: 'Where court has power: (a) to grant injunction; or (b) to order SP, Court may award damages to the party injured either in addition to or in substitution for the injunction/SP Three outcomes s 68: 1) Neither damages nor specific relief may be awarded; 2) Damages may be awarded in addition to specific relief; 3) Damages may be awarded in substitution for specific relief: happens when injury to the P's legal rights is small, can be estimated in money and can be adequately compensated by a small monetary payment & would be oppressive to the D to grant an injunction (***Shelfer v London***)
Assessment	CL assessment (auxiliary jurisdiction) applies. Opposite of equitable comp. in exc jurisdic. **CL causation/remoteness standards damage** apply (***Dillon v Nash***). No difference because both remedies governed by comp principle (***Johnson v Agnew***) **EQ Damages assessed as at the date of judgment** → substitute for specific relief (***Mills v Ruthol***) **Exception**: Actions where damages not available at CL. EQ damages may be awarded when no damages can be awarded at common law → Can compensate for anticipated future injuries where injunction would have prevented before injury occurred (***Lee v Slack***) **Key advantage over common law damages** (***AG v Blake***). • Consequently, should court decide to award statutory damages for a purely equitable cause of action → rules for assessing damages at common law will not apply.

SAMPLE ONLY

RECISSION (*Maguire v Makaronis*)



Recission in Equity vs. Common Law

	Approach	Available Vitiating Factors
Common Law (Strict)	• **Must be complete and precise, limited grounds** (fraudulent misrepresentation and duress), **MAINLY CONTRACTS ONLY.**	• Misrepresentation (fraudulent ONLY) • Duress
Equity (Flexible)	• More flexible, parties **do not need to be restored exactly to original positions** – courts can impose conditions, terms, adjustments, allowances, or additional amount of money to be paid to achieve practical justice. • Wider grounds. Extends to gifts and other transactions more broadly, not just contracts (e.g., ***Alati v Kruger***).	• Misrepresentation (innocent and fraudulent) • Mistake • Duress • Undue influence • Unconscionable dealing • Breach of fiduciary duty (exclusive jurisdiction)

FOR EXAM: COMMON LAW RECISSION AVAILABLE FOR ONLY FRAUDULENT MISREP & DURESS.

Step 1: Find Valid Equitable/CL Vitiating Factor

Definition: Circumstances that have undermined the validity of a contract.

Misrepresentation (General)

• **Contract voidable for misrepresentation if representor has**:
1) made representation of fact;
2) that was false when acted upon and;
3) that induced the representee to enter the contract.
• A continuing representation that has become false to knowledge of repres[illegible] → duty arises on representor to inform the representee of the changed circumstances before the representation is acted upon.
• **There must be representation of fact, not mere puffery** (***Mitchell v Ves[illegible]***, where "Perfect Presentation" in sales brochure was puffery, not fact about the structural integrity of a house).
• **May be express or implied** (can be inferred from a s[illegible]nd, nod, look, or even shake of a hand. Mere silence not actionable at common law (unless there's a duty to disclose all relevant matters or the silence is in the form of a partial truth). **Must be false when acted upon**.
• **Opinions** (***Bisset v Wilkinson***): if honestly held do not ground rescission. Exceptions – opinion implied knowledge of facts that make it true, or opinion holder has special expertise or knowledge.
• **Misrepresentation of law**: general rule that statements of opinion about the law. Must be fraudulent for the courts to get around the presumption.
• **Inducement** (***Gould v Vaggelas***): Representee must rely on misrepresentation. If material representation is calculated to induce one to enter a contract and they do, an inference of fact arises that the representation induced them into the contract.
The inference may be rebutted (e.g., by showing that the representee, before they entered the contract, possessed actual knowledge of the true facts and knew them to be true). **The representation need not be the sole inducement. It is sufficient so long as it plays some part even if only minor in contributing to the formation of the contract**.

Vitiating Factors (Continued)

Definition: Circumstances that have undermined the validity of a contract.

Misrepresentation (Fraud → CL or Equity

• Fraud: common law **rescission and damages in tort for deceit** are the principal common law remedies for fraudulent misrepresentation.

TEST (***Derry v Peak***): fraud is proved when shown that the false representation had been made

1) knowingly, or
2) without belief in its truth, or
3) recklessly, careless whether it be true or false.

→ Known or ought to have known in that person's position (subjective test).
→ To prevent a false statement being fraudulent, **there must always be an honest belief in its truth**.

Misrepresentation (Innocent, Equity Only)

Innocent misrepresentation (equity): **All misrepresentations that are not fraudulent under common law** (dealt with in auxiliary jurisdiction).

Mistake (Equity Only)

• Depending on what type of mistake has occurred, a successful plaintiff can:
1) prevent formation of contract, or
2) render contract void at common law (in which case no question of rescission can arise), or
3) render contract voidable in equity.

Types of Mistakes | Recission under Common Law v. Equity

1) **Common mistake - both parties share same mistake**
   a. Example: error in the terms of the contract, how it is written, the value of something, the existence of something).
   b. **Common law** – contract void at law (***Bell v Lever*** authority → doubted in Aus after ***McRae v Cth Disposals Commission***)
   c. **Equity** –Not the normal remedy. Usually rectification preferred if within the intention of the parties.

2) **Mutual Mistake -** both parties mistaken but about different things.
   a. **Common law** – contract can't be formed because offer and acceptance do not meet → no rescission available (note ***Raffles v Wichelhaus***).
   b. **Equity** – no rescission because no contract (same common law reasons).

3) **Unilateral mistake**: only one party is mistaken.
   a. **Common law** – contract not void but rescission generally not available as contract meant to express intention of the parties so neither party can rely on mistake to say it was voidable from the start. (***Solle v Butcher***)
      i. Possible exceptions include informal contracts, mistake as to identity of the other party, mistake as to the nature of the contract (***Taylor v Johnson***)).
   b. **Equity** – rescission available, particularly where court believes unconscionable for one to take advantage of the mistake (equitable fraud – ***Taylor v Johnson***).

SAMPLE ONLY