

## Specific Performance

1. Are the jurisdictional factors satisfied?
  - 1.1. Is the contract for valuable consideration?
  - 1.2. Are damages inadequate?
    - 1.2.1. Damages are usually inadequate if the item is rare, or of specific commercial value (*Dougan v Ley*)
    - 1.2.2. Damages often inadequate if contract is for the benefit of a third party (*Coulls v Bagot's*)
2. Are there any discretionary grounds to refuse relief?
  - 2.1. Supervision
    - 2.1.1. Obligations of an ongoing nature are generally not specifically performable (*Co-Operative Inns v Argyll Stores*)
    - 2.1.2. However N.B this is only a discretionary factor (obiter in *Patrick Stevedoring*)
  - 2.2. Personal Services Contracts
    - 2.2.1. Courts tend not to award specific performance for personal service contracts (*GH Giles v Morris*)
  - 2.3. Lack of Mutuality (*Lumley v Ravenscroft*)
  - 2.4. Hardship
    - 2.4.1. Balanced against hardship to plaintiff if no relief is ordered (*Dowsett v Reid*)

## Injunctions

1. Is there a legal or equitable right to protect? (*Cowell v Rosehill Racecourse*)
2. What kind of injunction is being sought?
  - 2.1. Mandatory Restorative (*Redland Bricks*)
    - 2.1.1. Is there a strong probability that grave damage will accrue to the plaintiff in the future?
    - 2.1.2. Are damages inadequate?
    - 2.1.3. Has the defendant acted wantonly or unreasonably?
    - 2.1.4. Balance of convenience to both parties
  - 2.2. Interlocutory
    - 2.2.1. Is there a prima facie case? (*Beecham v Bristol Laboratories*)
    - 2.2.2. Consider balance of convenience (*Beecham v Bristol Laboratories*)
    - 2.2.3. Is there an overriding public interest in not awarding an injunction (*ABC v O'Neill*)
  - 2.3. Quia Timet
    - 2.3.1. Is there an imminent and real infringement of rights?
    - 2.3.2. Is the higher threshold for the balance of convenience met? (*Redland Bricks*)
  - 2.4. Freezing/Mareva (*Glenwood Management v Mayo*)
    - 2.4.1. Is there a strong arguable case?
    - 2.4.2. Is there a risk of dissipation of assets?

- 2.4.3. Look at the balance of convenience, including whether proceedings had been brought expeditiously (*Cardile v LED Builders*)
- 2.5. Search/Anton Pillar (*Anton Pillar*)
  - 2.5.1. Is there a strong potential case?
  - 2.5.2. Is there strong potential damage?
  - 2.5.3. Is there clear evidence both of possession and of risk of destruction?

## Equitable Damages

1. Cases where equitable damages may be available
  - 1.1. In lieu of specific performance (*Johnson v Agnew*)
  - 1.2. In lieu of an injunction (*Shelfer v London Electric Lighting*)
    - 1.2.1. Where injury to plaintiff's rights is small and capable of being assessed in money
    - 1.2.2. Would be oppressive to grant an injunction
  - 1.3. Other cases where common law damages wouldn't be appropriate
  - 1.4. Breaches of purely equitable rights?
    - 1.4.1. Query this. Refer to *Giller v Procopets*, obiter in *Wentworth*
2. Assessment of damages
  - 2.1. Flexibility in approach—may be restorative or may follow the common law (*Wroth v Tyler*)
  - 2.2. Normally restorative when issued in lieu of specific performance (*Wroth v Tyler*)