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Types of Injunctions in Malaysia
(Comprehensive Overview of All Types of Injunctions)





1. Introduction

An injunction is one of the equitable remedies whereby Court by its discretion may grant an order to restrain or prohibit defendant from committing an act. Injunctions are typically sought when there is a threat of irreparable harm where monetary compensation is an inadequate remedy. In this situation, an injunction may be ordered as they are used to maintain the status quo or prevent further harm until the case can be resolved. Historically, injunctions have been granted in many areas of laws including contractual disputes¹, copyright infringement², and among others restraining orders in domestic violence cases³. While injunctions can be a powerful tool to protect rights and prevent harm, they are not automatically granted. Courts will carefully consider the facts and points of law presented by parties before deciding whether to issue an injunction. If the party subject to the injunction fails to comply with the court's order, they may face legal consequences, including contempt of court.

In Malaysia, the Specific Relief Act 1950 ("SRA") recognizes two main types of injunctions: Firstly, the temporary and perpetual injunctions, and secondly the mandatory injunctions. This article aims to provide a comprehensive overview of all types of injunctions and their applications.

2. Temporary and Perpetual Injunctions

Temporary injunctions are designed to preserve the rights of the parties until a final judgment can be reached. They are often requested when there is a pressing need to prevent immediate harm or potential damage while the case is being tried. Based on Section 51(1) of SRA, temporary injunction is issued during the course of a legal proceeding and is to continue until a specified time, or until the further order of the court. This can be supported by Order 29 Rule 1 of the Rules of Court 2012 which states that an application for an injunction can be made at any point of time and can be made independently without the necessity for it to be part of the claim. Section 51(2) of SRA further states that a perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit and accordingly, section 52(1) of SRA later provides that it may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The circumstances under which the Court may grant a perpetual injunction are set out in paragraphs (a) to (e) of the subsection to section 52(3) of SRA. When a perpetual injunction is granted, it effectively bars the defendant from ever asserting a specific right or engaging in an act that would be contrary to the rights of the plaintiff. In other words, it permanently prohibits the defendant from taking actions that could adversely affect the plaintiff's interests. However, the Court of Appeal in *Keet Gerald Francis Noel John v. Mohd Noor @ Harun*

¹ *Gumusut-Kakap Semi-Floating Production System (L) Ltd v Sabah Shell Petroleum Co Ltd* [2017] MLJU 877

² *Onestop Software Solutions (M) Sdn Bhd & Anor v Masteritec Sdn Bhd & Ors* [2009] 8 MLJ 528

³ *CCKY v CCT* [2021] 9 MLJ 518



*bin Abdullah & 2 Ors*⁴ held that a temporary injunction will not be granted in cases where a permanent injunction is not available to the plaintiff under section 52 or 54 of the SRA. Gopal Sri Ram JCA (as he then was) on delivering the judgment explained the principle as follows:

“Jurisdiction to grant a temporary injunction is always a matter of discretion which is to be exercised in accordance with well-known principles. An order for a temporary injunction can be sought only in aid of a prospective order for a perpetual injunction. If, therefore, in the event of the plaintiff’s success, he cannot obtain a decree for perpetual injunction, it is not competent for him to ask for a temporary injunction (see Bishun Prashad v. Sashi Bhusan AIR 1923 Pat.133). In other words, a temporary injunction will not be granted in cases where a permanent injunction is not available under ss. 52 to 54 of the Specific Relief (Malay States) Ordinance, 1950.”

Interlocutory injunctions are temporary injunctions granted prior to a final judgment. This principle was established by Lord Diplock in the case of *American Cyanamid v Ethicon Ltd*⁵ where it was held that:-

“So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.”

Hence, to obtain an interlocutory injunction, it is crucial for the plaintiff to demonstrate a genuine likelihood of success in their claim for a permanent injunction during the trial.

3. Prohibitory and Mandatory Injunction

Prohibitory injunctions prohibit certain actions or behaviours, whereas mandatory injunctions compel the performance of specific required actions. Section 53 of SRA provides that the court has the power to issue an injunction that not only prevents a breach from occurring but also compels the party to fulfil their obligations and perform specific actions necessary to meet those obligations. The landmark case of *Morris v Redland Bricks Ltd*⁶ established that a mandatory injunction will only be granted if the plaintiff can prove a high likelihood of significant harm that cannot be adequately compensated by damages. This requirement has been relied on in *Tam Kam Cheong v.*

⁴ [1995] 1 CLJ 293A

⁵ [1975] 2 WLR 316

⁶ [1970] AC 653



Stephen Leong Kan Sing & Anor⁷ where Salleh Abbas FCJ in deciding whether to grant a mandatory injunction or not has cautiously stated as follows:

“The grant of this injunction is entirely discretionary and it is certainly not issued as a matter of course. (Morris v. Redland Bricks Ltd.) In exercise of its jurisdiction on the issue of mandatory injunction, the court has to be extremely cautious and must act with moderation as the jurisdiction has to be exercised sparingly. (Wrotham Park Estate v. Parkside Home). It can be issued only in cases where the injury done for the prevention or rectification of which injunction is sought cannot be adequately compensated by pecuniary damages. Every case has to depend upon its own circumstances, and it is a generally accepted view that the court will not interfere by way of mandatory injunction except in cases in which extreme, or at all events very serious, damage will ensue from its interference being withheld. (Durell v. Pritchard).”

We can see the application for a mandatory injunction was sought in ***Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd***⁸. In this case, the respondent sued the appellant for trespass and applied for mandatory and prohibitory injunctions to stop the appellant's actions. The appellant claimed among other things that, they had given notice of their intention to use the area of land. The trial judge ruled in favor of the respondent, granting them a declaration that the appellant could not build the pylon and ordering a mandatory and prohibitory injunction. The appellant appealed, but it was later dismissed. Regardless, the mandatory and prohibitory injunctions were set aside. This proves that it is indeed challenging and only in extremely rare cases will the court grant a mandatory injunction.

4. Injunctions Arising from Legal Cases

There are other types of injunctions which have specially created from law cases.

4.1 Mareva Injunctions

It is a type of injunction that prevents a party from disposing of or dissipating their assets during the course of legal proceedings. The purpose is to preserve the defendant's assets to ensure that they will be available to satisfy any potential judgment in favor of the plaintiff. Usually, Mareva injunctions are sought in cases where there is a concern that the defendant may attempt to move or hide their assets to avoid paying a potential judgment or to frustrate the legal process. These injunctions are particularly relevant in situations involving fraud, breach of contract, or other types of civil litigation where a substantial financial claim is at stake. The case of ***Zschimmer & Schwarz GmbH & Co KG Chemische Fabriken v Persons Unknown & Anor***⁹ has listed the grounds for Mareva

⁷ [1980] 1 MLJ 36

⁸ [2000] 2 MLJ 133

⁹[2021] 7 MLJ 178



injunction namely (a) it must be a good arguable case, (b) assets must be within the jurisdiction, and (c) risk of dissipation of assets and lack of probity. When these three grounds are fulfilled, the Mareva injunction can be granted.

4.2 Erinford Injunctions

This injunction arises out of the English case of *Erinford Properties Ltd v Cheshire County Council*¹⁰. It is an interim injunction to restrain the other party from dealing with the subject matter of the action pending the appeal. As a result, parties are restrained from dealing with the matter until the appeal is disposed of. While the principle was enunciated in the Chancery Division, Malaysia has adopted it in numerous reported cases. In the case of *Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd*¹¹, the High Court affirmed that Section 43 of the Courts of Judicature Act 1964 ("CJA") acknowledges the inherent authority of the High Court to consider an application for an Erinford so that the appeal will not become nugatory.

5. Conclusion

Injunctions are powerful legal remedies that courts use to protect rights, prevent harm, and maintain the status quo during legal proceedings. They can be prohibitory, mandatory, interlocutory, Mareva, or Erinford injunctions, each serving specific purposes in different contexts. Obtaining an injunction requires a strong case, and courts carefully consider the balance of convenience to ensure a fair resolution. While injunctions can be essential in preserving rights and assets, they are not automatically granted, and their application depends on the unique circumstances of each case. To summarize, the equitable principle "He who comes to equity must come with clean hands" serves as a moral guideline for the court's decision-making process when considering injunctions. It reminds us that the court should not support or protect those who have acted improperly and that equitable relief should be granted to parties who have conducted themselves with honesty and fairness.

¹⁰[1974] 2 All ER 448

¹¹[2004] 6 MLJ 1

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