Equitable Remedies

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The whole of the development of equitable jurisdiction has hinged on the production of remedies. These remedies, which were unavailable or inadequate at Common law were the hallmarks of the jurisdiction of Courts of Chancery and are what gave them an ascendancy over the Common law courts.

By virtue of these remedies, and in consequence of the exclusive, concurrent and auxiliary jurisdiction of the courts of Chancery, Equity was able to operate against the unfairness, arbitrariness, harshness, inequality and injustice of the Common law.

Before the fusion of the jurisdictions of Courts of Equity and Common law by the Judicature Acts 1873-75, these remedies were only available in the courts of Chancery. Now, they can be obtained in any court as the two jurisdictions are exercisable through the same court. The remedies provided by Equity include the following:

- Injunction
- Specific performance
- Delivery up and cancellation of documents
- Rectification
- Rescission
- Order for an account

These remedies will be discussed seriatim. Before they are discussed though, it is important to recognize that they are essentially in personam. They operate primarily against the conscience of the parties and as such, may be said to have a wider reach than pure Common law damages.

Another thing of note is the fact that these remedies are purely discretionary. No applicant has a right to demand these remedies from the court and whenever the court does award them, it is simply in exercise of the jurisdiction of the court which must be judicious.

In a lot of cases, a primary consideration of the court in granting them is the unavailability or undesirability of other remedies at Common law.

Injunction

An injunction is an order of the court directed to a party to a suit, and either ordering that he do some thing or refrain from doing a particular thing. This was one of the earliest remedies provided by Courts of Chancery. It was their signature remedy before they began to expand their jurisdiction. It was initially called the Common Injunction.

Injunctions may be mandatory or prohibitory; interim, interlocutory or perpetual; Mareva; Anton Piller; or Quia Timet.

Mandatory and Prohibitory Injunction

A mandatory injunction is an order of the court to a named party in a suit before it, compelling that person to do some particular thing, as ordered by the court. Its essence is to compel the defendant to restore things to the condition in which they were before he did the act complained of. It usually mandates the doing of some positive act.

An example of a mandatory injunction is as follows:

> â€œAn Orderâ€¦ of this Honourable Court, mandating and compelling the defendant/respondent to return the goods taken from the Plaintiffâ€™s house by force on the 21st of September 1999, pendingâ€¦â€

A prohibitory injunction on the other hand is an order of the court to a named party in a suit before it, restraining the person from doing some particular thing or disturbing the status quo. Evidently, it is best for restricting the defendant from breaching the plaintiffâ€™s right.

An example of a prohibitory injunction is as follows:

> â€œAn Orderâ€¦ of this Honourable Court, prohibiting and restraining the defendant/respondent from committing trespass or further acts of trespass on the large expanse of land, lying, situate and being at No. 1 Tanke Iledu Street, Kwara, pendingâ€¦â€

Historically, the courts have tended to favour prohibitory injunctions over mandatory injunctions.Â This is because it is a lot easier to restrain a party from doing an act than it is to compel them to do anything. This is especially since the courts were reluctant to grant a remedy that would require their supervision.

Besides, the balance of convenience often favours a prohibitory order. It is a lot easier to order that a right should not be breached than it is to order that it should be unbreached. This distinction is not so prominent in modern times though.

Interim, Interlocutory and Perpetual Injunction

A perpetual injunction is usually given in consequence of final determination of the case between parties before the court. Its effect is to finally settle the existing dispute between the parties and permanently prevent the infringement of

a right or compel the giving of a benefit.

A perpetual injunction may be mandatory or prohibitory. Once granted, it is a final judgment of the court and can only be overturned on appeal. Its effect is to prevent multiplicity of suits and it brings an end to the litigation.

Where an injunction is perpetual, it would end as follows:

> â€œAn Order of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ in perpetuityâ€

Interlocutory injunctions are usually made to secure a right of the applicant, the violation of which he seeks to prevent, and in order to ensure that the subject matter of the dispute/right is maintained under the status quo. It is granted to nullify an actual or anticipated alteration of the status quo or prevent the taking of some step or doing of some act that would be impossible to reverse.

It is usually granted pending the full commencement of trial and the determination of the case between the parties before the court. It may also be mandatory or prohibitory. Where an injunction is interlocutory, it would usually end as follows:

> â€œAn Order of Interlocutory Injunction of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ pending the determination of the substantive suit before this court.â€

An interim injunction is granted as a matter of urgency. Often, an applicant for this injunction would have to convince the court of the urgency of his application and this is usually done by swearing to an affidavit of urgency. It is otherwise called an ex parte injunction and it is usually granted to preserve the subject matter of the suit and maintain the status quo, pending the hearing of a motion on notice.

Due to the fact that it is heard and granted without notice to or arguments from the other party (because of urgency), it is usually granted only for a short period of time, normally 14 days. It can also be mandatory or prohibitory. Where an injunction is interim, it would usually end as follows:

> â€œAn Order of Interim Injunction of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ pending the hearing of the motion on notice filed contemporaneously before this court.â€

Differences between Interlocutory and Interim Injunctions

- An interlocutory injunction is usually related to a motion on notice while interim injunction is related to motion ex parte
- Interlocutory requires notice to the defendant, interim does not require notice
- Interlocutory is usually granted during the pendency of the case. Interim is mostly granted at the outset of the proceedings.
- Interlocutory lasts till the final determination of the suit while interim only lasts for a short period, usually 14 days
- The grant of an interlocutory injunction is usually the death of an interim injunction. This is because the interim injunction ceases to exist on that day even if it is before 14 days.
- Interlocutory is used to maintain the status quo pending the determination of the substantive case. Interim maintains the status quo until hearing of motion on notice.
- Interim is used for urgent situations. Interlocutory is not used for urgent situations.

Differences between Motion on Notice and Motion Ex Parte

- A motion on notice is linked to interlocutory injunction while a motion ex parte is linked to interim injunction
- Motion on notice must be with notice to the defendant. Motion ex parte requires no such thing. It is usually granted on the argument of one party, with neither notice nor arguments by the other.
- A motion ex parte is usually made and argued in the absence of the other party. Motion on notice requires the presence of the other party.
- The address of the other party or his counsel must be stated at the bottom left corner of the motion on notice. There is no need for this address on a motion ex parte.
- Motion ex parte is usually used for urgent situations. Motion on notice is not applicable for urgent situations.

Mareva Injunction

This is a sort of injunction that operates to restrain a party to a suit before the court from either leaving the jurisdiction of the court or removing his assets therefrom. It is granted, usually on an application by the claimant, where it is clear that the defendant is taking preparatory measures to protect himself in the event that he loses the case, with such measures intended to frustrate the execution of the likely judgment against him. The injunction is usually prohibitory.

In AIC LTD. v NNPC (2005) LPELR 6 (SC), the Supreme Court per Edozie JSC held that mareva injunction operates to stop a defendant against whom a plaintiff has a good, arguable claim, from disposing of or dissipating his assets, pending the determination of the case or pending the payment of the plaintiff (where judgment has been given but before enforcement).

The injunction would also operate in situations where the property of the plaintiff is in the possession of any other person. It can be granted against that person.

Rhodes-Vivour JCA (as he then was), in INTERNATIONAL FINANCE CORPORATION v DSNL OFFSHORE LTD. & ORS (2007) LPELR 5140 (CA), held that the following principles would govern the grant of a mareva injunction:

- There must be a justifiable cause of action against the defendant
- There must be a real and imminent risk of the defendant removing his assets from the courtâ€™s jurisdiction and thereby rendering nugatory, any judgment which the applicant may obtain
- The applicant must make a full disclosure of all material facts relevant to the application
- The applicant must give full particulars of the assets within the jurisdiction of the court
- The balance of convenience must be on the side of the applicant
- The applicant must be prepared to give an undertaking as to damages.

Anton Piller Injunction

An anton piller injunction is also interlocutory in nature. It was laid down in the case of ANTON-PILLER KG v MANUFACTURING PROCESSES LTD. (1976) 1 Ch. 55 CA. In that case, the action was for infringement of certain registered trademarks by the defendants. The plaintiffs were however unable to prove their claim sufficiently with the documents they possessed. They thus sought an order ex parte, to compel the defendants to allow the plaintiffâ€™s counsel to inspect the matters in issue and show them on oath. Their argument was that if the defendants were given notice of the application, relevant evidence would miraculously disappear. The court heard the application ex parte and in camera.

Evidently, the anton piller injunction is a procedural remedy that allows the delivery up and inspection of documents during trial. It is quite similar to Discovery and operates on the auxiliary jurisdiction of Equity. The injunction is largely mandatory in nature as it compels the doing of a thing. In the ANTON-PILLER case, Omrad LJ held that the injunction can only be granted where it would be in the interest of justice. He further laid down the conditions for its grant thus:

- There must be an extremely strong prima facie case
- The damage, potential or actual, for the applicant must be serious
- There must be clear evidence that the defendants have, in their possession, incriminating documents or things
- That there is a real probability that they may destroy such material before the application inter partes can be made or heard.

Quia Timet Injunction

This injunction is usually sought by a person for the purpose of restraining the doing of an apprehended mischief. It is granted contrary to the general rule that injunctions are not granted when a breach of a right is only a prospect. The grant of this injunction is predicated on the recognition of the right of a person to take action before he is actually injured.

The court is slow to grant such injunctions though. This is especially due to the drastic effect of the injunction on the respondent. The applicant must establish clear and convincing evidence that irreparable injury is probable or that injury will surely follow if the apprehended act is not restrained.

The quia timet injunction may be mandatory or prohibitory, interim or interlocutory.

Conditions for the grant of an injunction

In the case of ADELEKE & ORS. v LAWAL & ORS. (2013) LPELR 20090 (SC), the Supreme Court laid down the conditions that must be satisfied by an applicant that seeks the grant of an injunction. They are:

- There must be a subsisting right
- The subsisting action must clearly donate a legal right which the applicant must protect
- The applicant must show that there is a serious question or substantial issue to be tried
- The applicant must show that because of (3) above, the status quo should be maintained, pending the determination of the substantive action or motion on notice
- The applicant must show that the balance of convenience in granting the application is in his favour
- The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect him from
- The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the courtâ€™s discretion in granting the application.

Specific Performance

This remedy is particularly important in the realm of contracts. It is one of the signature remedies that show the remedial justice sought to be provided by Equity. While there is no recognition of a partyâ€™s right, either in Common law or Equity, to break his contractual obligations, the law generally does not deny that a party can.

This is because contracts are regarded as personal covenants and the law was slow to dabble into the obligation voluntarily undertaken by a party. As such, the best the Common law courts could do was award damages when such breach occurs.

However, Courts of Equity, in their mission to do substantial justice, refused to let well enough alone. They considered such an abstention by the court to be inadequate for the purposes of justice and on the basis that such repudiation would constitute a violation of moral and equitable duties, the court would, in certain circumstances, bind a party to the strict performance of his obligations under the contract. This, in essence, is the remedy of specific performance.

It is an order of the court, calling for the rendering, as nearly as practicable, a promised performance under a contract. The performance may be in respect of a legal or contractual duty and the order is usually granted where monetary damages would be inappropriate or inadequate.

This would especially be the case where the contract concerns real estate or some rare article or where the situation is such that irreparable loss would occur from the repudiation. In essence, specific performance is an order of the court that compels a party to specifically fulfill his obligations in accordance with the terms of the contract.

The order is pretty much a mandatory injunction. While it may be granted to restrain a party from repudiating his obligations under the contract, its effect would still be essentially mandatory. There are conditions that guide the grant of specific performance. These are:

- Common law remedies must be inadequate i.e. damages ï¸· The grant of the remedy is discretionary.
- The court will only grant where it is satisfied that it will not be acting in vain, especially in instances of contracts that would require the supervision of the court.

Circumstances when the court will grant Specific Performance

There are circumstances in which the court has granted the remedy of specific performance. If it is faced with these instances, it is more than likely to grant them again, all things being equal.

- Contracts that involve building or construction, specifically where the work to be done is clearly defined, the plaintiff has an interest in the execution and damages would be inadequate.
- Contracts of sale of land. The court would still grant even if payment was agreed to be in instalments. This is in view of the scarcity and unique nature of land.
- An award of an arbitrator. This is especially where it made for the doing of a certain thing. The order will not be granted where the award is monetary.
- Separation deeds. This would be in respect of unfulfilled terms in the deed and would be granted especially where the deed is futuristic. See WILSON v WILSON (1848) 1 HLC 538 where it was held that an agreement which regulates the rights of parties to a marriage whose separation is pending or inevitable, is not contrary to public policy and can be specifically enforced.
- Contracts for the transfer of chattel, especially where damages would be insufficient. This would certainly be the case where the chattel is quite unique or has special value to the purchaser. See s. 52 SOGA which particularly provides for this remedy.

Circumstances when the court will not grant Specific Performance

The court would be reluctant to grant the remedy of specific performance in the following circumstances:

- Entirely oral contracts (absence of writing). See s. 4 Statute of Frauds.
- Where the transaction is incomplete. The contract must be complete as regards all the elements of a valid contract.
- Where the doctrine of mutuality is involved. This doctrine simply states that if the contract is unenforceable against one party by virtue of some legal incapacity or other reason, it should be unenforceable by that party against the other i.e. where it involves an infant. The court would be wary of granting specific performance against or for an infant.
- Where such grant would involve supervision of the court. This is undesirable as the court is loath to command continuance of a relationship that is against the will of the parties.
- Where consideration for the contract on the part of the applicant is nonexistent or where the contract is fraught with illegality or fraud
- Where misrepresentation is occasioned in the transaction especially on the part of the applicant
- Where performance would be impossible
- Where the defendant would suffer hardship
- Where there is defective title i.e. nemo dat quod non habet. The purchaser may be entitled to repudiate instead.
- Where the transaction lacks transparency or fairness i.e. he who seeks equity must do equity
- Where the applicant is culpable for delay or laches

Delivery Up & CancellationÂ

This remedy is in respect of documents which are avoidable that have been avoided by the applicant. The remedy is meant to prevent an improper or injurious use of a document which, on the face of it, is valid but is latently void or voidable. The delivery up and cancellation of the documents is used to forestall a situation where the documents, should they remain in the possession of the defendant, may be used to found claims and deceive third parties.

The document that is subject of the remedy must be void or voidable. However, the defect must not be apparent on the face of the document. If it is so, there would be no need for the remedy and as such, it would not be granted. The applicant would be entitled to the relief where he can prove fraud, actual or constructive, or misrepresentation or if he can show that it would be inequitable to let the document/transaction stand.

Where the document is not void or voidable or if there is a good argument that may be made in favour of the document, the relief will not be granted. In the same vein, no relief will be granted where the defect is apparent as the inherent danger sought to be avoided would have become otiose.

The proposition that documents purporting to alienate family property can be delivered up and cancelled was given judicial blessing in the cases of ADAGUN v FAGBOLA and EJILEMELE v OPARA. In ADAGUN v FAGBOLA, the court had no trouble with cancelling a document that purported to mortgage allotted family land to the defendant.

Rescission

This remedy occurs in relation to contracts that are voidable. The effect of such contracts is that they are valid until set aside. Such contract may be set aside via rescission. It is a right and corresponding remedy accruing to the party that is entitled to set aside the contract.Â

The right is exercised where a party to a contract expresses by word or act in an unequivocal manner, that he is no longer willing or that he refuses to be bound by the contract. That course of conduct or action, if justified by the circumstances or by the facts of the case, puts an end to the contract and restores the parties as between them, to the position in which they were before the contract was entered into. The full effect of rescission, therefore, is to treat the contract as though it had never been entered into.

The full effect of a rescission is to treat the contract as if it was never entered into. As such, a decision to utilize the remedy impairs the right of the applicant to require damages for any wrong occasioned to him under the contract.

The grounds for rescission include unilateral and common mistake, fraudulent and innocent misrepresentation, non-disclosure of material facts (where there is a contractual and moral duty as in contracts uberrimae fidei), constructive fraud (undue influence for instance), misdescription of material facts and a contractual agreement to rescind.

The right to rescind may be lost where the applicant affirms the contract or is culpable of acquiescence, restitution in integrum is impossible, the contract has been completed and where rights under the contract have been acquired by third parties.

Rectification

This remedy often arises in cases of variance between the agreed intention of the parties to a transaction and the document or instrument that is intended to give expression to the agreed intention. The remedy would be ordered in order to bring the document or instrument in conformity with the true and agreed intention of the parties to the transaction.

Thus rectification is an equitable remedy that helps correct an error in a written instrument so as to make it conform with the previously agreed intention of the parties. The remedy is essentially granted in the event of a common mistake between the parties.

For a remedy of rectification to be granted, there must be a finally concluded contract between the parties, common mistake, continuing intention of the parties up to the point of execution when the mistake was discovered, the mistake must not be of law.

The remedy will be refused where the contract is no more capable of performance. This is because equity does not act in vain. It may also be refused if there is another means of giving effect to the intention of the parties. Finally, it will be refused where the contract is fully and wholly performed such that nothing remains to be done under the contract.

The whole of the development of equitable jurisdiction has hinged on the production of remedies. These remedies, which were unavailable or inadequate at Common law were the hallmarks of the jurisdiction of Courts of Chancery and are what gave them an ascendancy over the Common law courts.

By virtue of these remedies, and in consequence of the exclusive, concurrent and auxiliary jurisdiction of the courts of Chancery, Equity was able to operate against the unfairness, arbitrariness, harshness, inequality and injustice of the Common law.

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- Specific performance
- Delivery up and cancellation of documents
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Another thing of note is the fact that these remedies are purely discretionary. No applicant has a right to demand these remedies from the court and whenever the court does award them, it is simply in exercise of the jurisdiction of the court which must be judicious.

In a lot of cases, a primary consideration of the court in granting them is the unavailability or undesirability of other remedies at Common law.

Injunction

An injunction is an order of the court directed to a party to a suit, and either ordering that he do some thing or refrain

from doing a particular thing. This was one of the earliest remedies provided by Courts of Chancery. It was their signature remedy before they began to expand their jurisdiction. It was initially called the Common Injunction.

Injunctions may be mandatory or prohibitory; interim, interlocutory or perpetual; Mareva; Anton Piller; or Quia Timet.

Mandatory and Prohibitory Injunction

A mandatory injunction is an order of the court to a named party in a suit before it, compelling that person to do some particular thing, as ordered by the court. Its essence is to compel the defendant to restore things to the condition in which they were before he did the act complained of. It usually mandates the doing of some positive act.

An example of a mandatory injunction is as follows:

> â€œAn Orderâ€¦ of this Honourable Court, mandating and compelling the defendant/respondent to return the goods taken from the Plaintiffâ€™s house by force on the 21st of September 1999, pendingâ€¦â€

A prohibitory injunction on the other hand is an order of the court to a named party in a suit before it, restraining the person from doing some particular thing or disturbing the status quo. Evidently, it is best for restricting the defendant from breaching the plaintiffâ€™s right.

An example of a prohibitory injunction is as follows:

> â€œAn Orderâ€¦ of this Honourable Court, prohibiting and restraining the defendant/respondent from committing trespass or further acts of trespass on the large expanse of land, lying, situate and being at No. 1 Tanke Iledu Street, Kwara, pendingâ€¦â€

Historically, the courts have tended to favour prohibitory injunctions over mandatory injunctions.Â This is because it is a lot easier to restrain a party from doing an act than it is to compel them to do anything. This is especially since the courts were reluctant to grant a remedy that would require their supervision.

Besides, the balance of convenience often favours a prohibitory order. It is a lot easier to order that a right should not be breached than it is to order that it should be unbreached. This distinction is not so prominent in modern times though.

Interim, Interlocutory and Perpetual Injunction

A perpetual injunction is usually given in consequence of final determination of the case between parties before the court. Its effect is to finally settle the existing dispute between the parties and permanently prevent the infringement of a right or compel the giving of a benefit.

A perpetual injunction may be mandatory or prohibitory. Once granted, it is a final judgment of the court and can only be overturned on appeal. Its effect is to prevent multiplicity of suits and it brings an end to the litigation.

Where an injunction is perpetual, it would end as follows:

> â€œAn Order of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ in perpetuityâ€

Interlocutory injunctions are usually made to secure a right of the applicant, the violation of which he seeks to prevent, and in order to ensure that the subject matter of the dispute/right is maintained under the status quo. It is granted to nullify an actual or anticipated alteration of the status quo or prevent the taking of some step or doing of some act that would be impossible to reverse.

It is usually granted pending the full commencement of trial and the determination of the case between the parties before the court. It may also be mandatory or prohibitory. Where an injunction is interlocutory, it would usually end as follows:

> â€œAn Order of Interlocutory Injunction of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ pending the determination of the substantive suit before this court.â€

An interim injunction is granted as a matter of urgency. Often, an applicant for this injunction would have to convince the court of the urgency of his application and this is usually done by swearing to an affidavit of urgency. It is otherwise called an ex parte injunction and it is usually granted to preserve the subject matter of the suit and maintain the status quo, pending the hearing of a motion on notice.

Due to the fact that it is heard and granted without notice to or arguments from the other party (because of urgency), it is usually granted only for a short period of time, normally 14 days. It can also be mandatory or prohibitory. Where an injunction is interim, it would usually end as follows:

> â€œAn Order of Interim Injunction of this Honourable Court, mandating and compelling/prohibiting and restraining the defendant/respondentâ€¦ pending the hearing of the motion on notice filed contemporaneously before this court.â€

Differences between Interlocutory and Interim Injunctions

- An interlocutory injunction is usually related to a motion on notice while interim injunction is related to motion ex parte
- Interlocutory requires notice to the defendant, interim does not require notice
- Interlocutory is usually granted during the pendency of the case. Interim is mostly granted at the outset of the proceedings.
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- Interim is used for urgent situations. Interlocutory is not used for urgent situations.

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- A motion on notice is linked to interlocutory injunction while a motion ex parte is linked to interim injunction
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This is a sort of injunction that operates to restrain a party to a suit before the court from either leaving the jurisdiction of the court or removing his assets therefrom. It is granted, usually on an application by the claimant, where it is clear that the defendant is taking preparatory measures to protect himself in the event that he loses the case, with such measures intended to frustrate the execution of the likely judgment against him. The injunction is usually prohibitory.

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- There must be a justifiable cause of action against the defendant
- There must be a real and imminent risk of the defendant removing his assets from the courtâ€™s jurisdiction and thereby rendering nugatory, any judgment which the applicant may obtain
- The applicant must make a full disclosure of all material facts relevant to the application
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An anton piller injunction is also interlocutory in nature. It was laid down in the case of ANTON-PILLER KG v MANUFACTURING PROCESSES LTD. (1976) 1 Ch. 55 CA. In that case, the action was for infringement of certain registered trademarks by the defendants. The plaintiffs were however unable to prove their claim sufficiently with the documents they possessed. They thus sought an order ex parte, to compel the defendants to allow the plaintiffâ€™s counsel to inspect the matters in issue and show them on oath. Their argument was that if the defendants were given notice of the application, relevant evidence would miraculously disappear. The court heard the application ex parte and in camera.

Evidently, the anton piller injunction is a procedural remedy that allows the delivery up and inspection of documents during trial. It is quite similar to Discovery and operates on the auxiliary jurisdiction of Equity. The injunction is largely mandatory in nature as it compels the doing of a thing. In the ANTON-PILLER case, Omrad LJ held that the injunction can only be granted where it would be in the interest of justice. He further laid down the conditions for its grant thus:

- There must be an extremely strong prima facie case
- The damage, potential or actual, for the applicant must be serious
- There must be clear evidence that the defendants have, in their possession, incriminating documents or things
- That there is a real probability that they may destroy such material before the application inter partes can be made or heard.

Quia Timet Injunction

This injunction is usually sought by a person for the purpose of restraining the doing of an apprehended mischief. It is granted contrary to the general rule that injunctions are not granted when a breach of a right is only a prospect. The grant of this injunction is predicated on the recognition of the right of a person to take action before he is actually

injured.

The court is slow to grant such injunctions though. This is especially due to the drastic effect of the injunction on the respondent. The applicant must establish clear and convincing evidence that irreparable injury is probable or that injury will surely follow if the apprehended act is not restrained.

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Conditions for the grant of an injunction

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- There must be a subsisting right
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- The applicant must show that there is a serious question or substantial issue to be tried
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- The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect him from
- The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the courtâ€™s discretion in granting the application.

Specific Performance

This remedy is particularly important in the realm of contracts. It is one of the signature remedies that show the remedial justice sought to be provided by Equity. While there is no recognition of a partyâ€™s right, either in Common law or Equity, to break his contractual obligations, the law generally does not deny that a party can.

This is because contracts are regarded as personal covenants and the law was slow to dabble into the obligation voluntarily undertaken by a party. As such, the best the Common law courts could do was award damages when such breach occurs.

However, Courts of Equity, in their mission to do substantial justice, refused to let well enough alone. They considered such an abstention by the court to be inadequate for the purposes of justice and on the basis that such repudiation would constitute a violation of moral and equitable duties, the court would, in certain circumstances, bind a party to the strict performance of his obligations under the contract. This, in essence, is the remedy of specific performance.

It is an order of the court, calling for the rendering, as nearly as practicable, a promised performance under a contract. The performance may be in respect of a legal or contractual duty and the order is usually granted where monetary damages would be inappropriate or inadequate.

This would especially be the case where the contract concerns real estate or some rare article or where the situation is such that irreparable loss would occur from the repudiation. In essence, specific performance is an order of the court that compels a party to specifically fulfill his obligations in accordance with the terms of the contract.

The order is pretty much a mandatory injunction. While it may be granted to restrain a party from repudiating his obligations under the contract, its effect would still be essentially mandatory. There are conditions that guide the grant of specific performance. These are:

- Common law remedies must be inadequate i.e. damages.
- The grant of the remedy is discretionary.
- The court will only grant where it is satisfied that it will not be acting in vain, especially in instances of contracts that would require the supervision of the court.

Circumstances when the court will grant Specific Performance

There are circumstances in which the court has granted the remedy of specific performance. If it is faced with these instances, it is more than likely to grant them again, all things being equal.

- Contracts that involve building or construction, specifically where the work to be done is clearly defined, the plaintiff has an interest in the execution and damages would be inadequate.
- Contracts of sale of land. The court would still grant even if payment was agreed to be in instalments. This is in view of the scarcity and unique nature of land.
- An award of an arbitrator. This is especially where it made for the doing of a certain thing. The order will not be granted where the award is monetary.
- Separation deeds. This would be in respect of unfulfilled terms in the deed and would be granted especially where the deed is futuristic. See WILSON v WILSON (1848) 1 HLC 538 where it was held that an agreement which regulates the rights of parties to a marriage whose separation is pending or inevitable, is not contrary to public policy and can be specifically enforced.
- Contracts for the transfer of chattel, especially where damages would be insufficient. This would certainly be the case where the chattel is quite unique or has special value to the purchaser. See **s. 52 SOGA** which particularly provides for this remedy.

Circumstances when the court will not grant Specific Performance

The court would be reluctant to grant the remedy of specific performance in the following circumstances:

- Entirely oral contracts (absence of writing). See s. 4 Statute of Frauds.
- Where the transaction is incomplete. The contract must be complete as regards all the elements of a valid contract.
- Where the doctrine of mutuality is involved. This doctrine simply states that if the contract is unenforceable against one party by virtue of some legal incapacity or other reason, it should be unenforceable by that party against the other i.e. where it involves an infant. The court would be wary of granting specific performance against or for an infant.
- Where such grant would involve supervision of the court. This is undesirable as the court is loath to command continuance of a relationship that is against the will of the parties.
- Where consideration for the contract on the part of the applicant is nonexistent or where the contract is fraught with illegality or fraud
- Where misrepresentation is occasioned in the transaction especially on the part of the applicant
- Where performance would be impossible
- Where the defendant would suffer hardship
- Where there is defective title i.e. nemo dat quod non habet. The purchaser may be entitled to repudiate instead.
- Where the transaction lacks transparency or fairness i.e. he who seeks equity must do equity
- Where the applicant is culpable for delay or laches

Delivery Up & CancellationÂ

This remedy is in respect of documents which are avoidable that have been avoided by the applicant. The remedy is meant to prevent an improper or injurious use of a document which, on the face of it, is valid but is latently void or voidable. The delivery up and cancellation of the documents is used to forestall a situation where the documents, should they remain in the possession of the defendant, may be used to found claims and deceive third parties.

The document that is subject of the remedy must be void or voidable. However, the defect must not be apparent on the face of the document. If it is so, there would be no need for the remedy and as such, it would not be granted. The applicant would be entitled to the relief where he can prove fraud, actual or constructive, or misrepresentation or if he can show that it would be inequitable to let the document/transaction stand.

Where the document is not void or voidable or if there is a good argument that may be made in favour of the document, the relief will not be granted. In the same vein, no relief will be granted where the defect is apparent as the inherent danger sought to be avoided would have become otiose.

The proposition that documents purporting to alienate family property can be delivered up and cancelled was given judicial blessing in the cases of ADAGUN v FAGBOLA and EJILEMELE v OPARA. In ADAGUN v FAGBOLA, the court had no trouble with canceling a document that purported to mortgage allotted family land to the defendant.

Rescission

This remedy occurs in relation to contracts that are voidable. The effect of such contracts is that they are valid until set aside. Such contract may be set aside via rescission. It is a right and corresponding remedy accruing to the party that is entitled to set aside the contract.Â

The right is exercised where a party to a contract expresses by word or act in an unequivocal manner, that he is no longer willing or that he refuses to be bound by the contract. That course of conduct or action, if justified by the circumstances or by the facts of the case, puts an end to the contract and restores the parties as between them, to the position in which they were before the contract was entered into. The full effect of rescission, therefore, is to treat the contract as though it had never been entered into.

The full effect of a rescission is to treat the contract as if it was never entered into. As such, a decision to utilize the remedy impairs the right of the applicant to require damages for any wrong occasioned to him under the contract.

The grounds for rescission include unilateral and common mistake, fraudulent and innocent misrepresentation, non-disclosure of material facts (where there is a contractual and moral duty as in contracts uberrimae fidei), constructive fraud (undue influence for instance), misdescription of material facts and a contractual agreement to rescind.

The right to rescind may be lost where the applicant affirms the contract or is culpable of acquiescence, restitution in integrum is impossible, the contract has been completed and where rights under the contract have been acquired by third parties.

Rectification

This remedy often arises in cases of variance between the agreed intention of the parties to a transaction and the document or instrument that is intended to give expression to the agreed intention. The remedy would be ordered in order to bring the document or instrument in conformity with the true and agreed intention of the parties to the transaction.

Thus rectification is an equitable remedy that helps correct an error in a written instrument so as to make it conform with the previously agreed intention of the parties. The remedy is essentially granted in the event of a common mistake between the parties.

For a remedy of rectification to be granted, there must be a finally concluded contract between the parties, common mistake, continuing intention of the parties up to the point of execution when the mistake was discovered, the mistake must not be of law.

The remedy will be refused where the contract is no more capable of performance. This is because equity does not act in vain. It may also be refused if there is another means of giving effect to the intention of the parties. Finally, it will be refused where the contract is fully and wholly performed such that nothing remains to be done under the contract.