

DISTRICT OF COLUMBIA SCHOOL OF LAW
REMEDIES SPRING 1992

OUTLINE

- I. DAMAGES: Nominal, Compensatory, Punitive.
- a) Damages are primarily a substitutionary remedy, available in actions at law, awarding a judgment in dollar amounts to compensate for plaintiff's loss.
 - b) Damages and a dollar amount judgment are not synonymous. Equitable remedies may include dollar amounts; unjust enrichment dollar amount judgments are not damages.
 - c) The two issues re damages are existence and measure. Plaintiff must prove that defendant's wrong caused damage and must provide evidence permitting the finder of fact to measure the amount of damage.
 - d) CERTAINTY. The fact of damages must, as a general rule, be proved by a preponderance of the evidence, i.e., enough evidence to permit the finder of fact to reasonably infer that, more likely than not, the wrong complained of did in fact cause damage to the plaintiff.
 - 1. SOME: A few jurisdictions have held that damage can be proved with less than a preponderance of the evidence. Where defendant's wrong has caused chances of survival to be lessened, or removed a chance of competing and winning, a few decisions have determined that injury to one's chances is damage, even though the chance amounted to less than 51% probability, e.g., medical malpractice causing a 39% chance of survival to be reduced to a 25% chance of survival.

- e) AMOUNT. Once fact of injury is proved, many courts are more liberal about the sufficiency of proof as to amount. If the amount is purely speculative, no damages can be awarded. If however, some evidence is presented which permits a rational though imprecise estimate of amount, damages can be awarded.
- f) An inability to obtain damages because of uncertainty as to existence or amount is often considered sufficient in equity to establish inadequate remedy at law.

II. GENERAL AND SPECIAL DAMAGES

A. GENERAL. Those damages arising naturally from the wrong. Those which usually flow from breach. Those a reasonable person would recognize as probable:

1. Pain and Suffering from physical injury.
2. Difference between contract price and market price.

B. SPECIAL DAMAGES (Consequential Damages).

Those damages which do not arise naturally, or which are not so likely that defendant would recognize breach or wrong would cause them:

1. Lost income because of physical injury.
2. Lost profits because of property damage, e.g. damage to a chair.

C. DIFFERENCE.
1. Pleading. Must specifically set forth special damages in pleadings. Since they are not so likely that defendant would know they have occurred, defendant is entitled to notice.
2. Limitation. In contract law, general damages will be awarded,

if proved. But special
(consequential) damages will not
be awarded unless Hadley rule is
met.

III. CONTRACT DAMAGE LIMITATIONS:

Hadley v. Baxendale. Defendant is not liable for consequential damages unless plaintiff can show such damages were in the contemplation of the parties at the time of contracting.

Plaintiff must prove that, under the circumstances at the time of contracting, the defendant must have recognized the likelihood of the consequential damages occurring if defendant breached. Courts vary on how much likelihood must be contemplated at the time of contracting. Some seem to require that parties must contemplate that damages are probable upon breach, others merely that parties contemplate such damages as being a "real danger," "not unlikely," "a serious possibility."

1. Defendant breaches agreement to repair and return mill shaft in one day. Plaintiff seeks damages for time mill was closed during multi-day delay. Mill closing damages are consequential damages not in the contemplation of parties at the time of contracting, and therefore no recovery.
2. ADP v. Burroughs. Parties agree no liability for "consequential damages" in the event of breach. Burroughs sells defective computer breaching contract. Cost of moving computer out, re-running reports, and idled workers held to be general damages and therefore recoverable. Cost of switching to particularly expensive software for new IBM computer held to be special damages and therefore not recoverable.

3. Plaintiff credit rating damaged because of liens filed on Pf's. property when contractor doing work for pf. Failed to pay subcontractor. Damages arising from credit rating problems held to be special, not contemplated at time of contracting.
4. Harvesting company breaches agreement to harvest crop by certain date. Flooding during delay ruins crop. Pf. must show from circumstance that such flooding is the natural and necessary result of delay in harvesting, and recoverable. If therefore damages are general and flooding is not the natural ordinary consequence of delay in harvesting, then such damage is consequential, and plaintiff must prove from circumstances, statement, etc., that such flooding was contemplated by the parties at the time of contracting as likely if crops were not harvested by agreed time.

IV. TORT DAMAGE LIMITATIONS.

There are two general limitations on damages applicable in many tort actions, particularly negligence actions.

1. Foreseeability {Proximate cause}.
 2. Economic Loss.
1. Foreseeability. Torts liability is more expansive than contract. In general, if harmful consequences are foreseeable, they can be recovered, even if extent or amount are not foreseeable:
 - a} If personal injury is foreseeable and occurs, unforeseeable extent or amount is still recoverable. {"thin skull" rule}
 - b} If injury other than personal is foreseeable, generally recover unforeseeable quantity of the foreseeable injury, e.g., lost wages foreseeable,

rock star recovers unforeseeably large lost wages.

2. ECONOMIC LOSS LIMITATIONS.

- a} Generally, there is no negligence cause of action where only damage is economic loss, e.g., increased cost of shipping wheat when river traffic shut down because of defendant's negligence.
 - 1. Injury to hockey goalie causes owner loss of revenues.
 - 2. Negligent destruction of goods Pf. had contracted to buy.
- b) Economic loss is recoverable if it results from negligently caused damage to physical property or personal injury. (Parasitic)
- c) A few jurisdictions have permitted recovery in negligence where only economic loss has occurred, on the basis of foreseeability. These decisions seem limited to cases where the economic loss is particularly and readily foreseeable or cases where the tort cause of action arises from contractual undertakings. These decisions appear to be applying Hadley in a negligence context. Evra v. Swiss Bank, (Lost profits from late bank deposit) Jaire v. Gregory. (delay in airport restaurant renovation)
- d) A few decisions allow negligence action for economic loss where public nuisance has occurred causing plaintiff special damage, substantially greater than harm caused to general public, e.g. water pollution harms fishermen whose business depends on water being unpolluted.

V. REMEDIAL CONSEQUENCES IN CHOOSING TORT OR CONTRACT

- A. The Statute of Limitations for contract is generally longer.
- B. Mental distress and punitive damages are damages available only in tort actions, not contract.
- C. Hadley limitation is more narrow than foreseeability limitation.
- D. Government immune to some tort actions but generally not immune to contract actions.
- E. Statute of Frauds may prevent contract action but not tort or unjust enrichment action.

VI. LIQUIDATED DAMAGES: The amount of liability, or the upper limit of liability, is agreed in contract.

- A. A liquidated damages clause will be enforced unless held to be penal in nature.
- B. To prove such clause is not to function as a penalty for nonperformance, must show:
 - 1. Actual damages are difficult to calculate at the time of contracting.
 - 2. Agreed amount is reasonable estimate, not disproportionate to anticipated loss from breach.
- C. Enforceable liquidated damages clause removes option of an actual damages remedy, e.g. agree to \$10,000 but actual damages are \$100,000. However, clause does not affect other available remedies, e.g. specific performance.
- D. Where agreed amount is intended to cover number of possible breaches, some important and some not, most courts will not enforce because amount is not proportionate to all possible breaches. Some courts will sustain if damages from actual breach is proportionate to agreed amount:

1. Commercial tenant to pay rent, insurance, and to shovel snow. In event of breach, agrees to \$7,000 in liquidated damages. Fails to shovel snow.
2. Party agrees to refinance four different loans. Agreed amount proportionate to estimated damage from not refinancing any, but disproportionate to actual breach of failing to refinance only one.

EQUITABLE REMEDIES

I. MERGER

- A. Although there were at one time separate courts for actions at law and actions in equity, such courts are now generally merged. In one civil action, one may make several claims for legal & equitable relief.
- B. An equitable remedy is discretionary, not a matter of right. A legal remedy is a matter of entitlement.
 1. If the court denies an equitable remedy, Appellate Court limits review to whether discretion was abused.
 2. If a court denies a legal remedy, Appellate Court decides whether right or wrong. e.g. Though injunction proper, a denial thereof may be upheld on appeal.

II. Issues of Equitable Jurisdiction are not jurisdictional issues.

A. Juris Issues:

1. Power over person-Sufficient contact in state to validly subject individual to the court's power.
2. Power over Subject Matter
 - a. Has this court under Constitution & State been given power over this matter?

1. Magistrate's Court, try a murder case.
 2. Court of Claims hear Petition for Injunction.
 3. Federal Court Decree a divorce.
- B. "Equity Jurisdiction" presents issue whether Court's Exercise of Equity powers, e.g. injunction, is appropriate or if inappropriate, will it be reversed as abuse of discretion.

III. Principles of Equitable Jurisdiction

- A. Remedy at law must be inadequate
1. Must show a damages-judgment, or other remedy at law, alone will not prevent threatened harm or adequately compensate for its occurrence.
- B. Equity will not interfere with the Political or Religious Questions.
1. Courts still use this principle, primarily to avoid suits on foreign policy but many other political questions are subject to equity jurisdiction. E.G. voting rights, election districts.
 2. Courts still assert lack of equitable jurisdiction to decide religious issues, e.g. Challenge to Episcopal election. But it will decide religious questions where issues turn on neutral legal principles applicable without regard to statutes or parties, e.g., Title to Church Building.
- C. Equity will not interfere with the Criminal Justice System.
1. State enjoining state prosecutions.
 - a. Courts are reluctant to enjoin an ongoing prosecution. Innocence or

unconstitutionality are not a basis for injunction. Reason: Adequate remedy at law can raise these defenses in course of prosecution proceedings.

- b. May enjoin upon clear showing of great and irrep. harm. Multiple prosecutions. Where plaintiff already shown innocence on same facts, e.g., Jehovah Witness cases where bail exhausted & 1st Amend. rights to assemble threatened and stat. unconstitutional.
- c. Where there is no state/fed. issue, an injunction against prosecution is really decided on traditional principles. Usually no irreparable harm because can defend. But where show irreparable harm because remedy at law is somehow inadequate, will get injunct. Look for facts evidencing harassment or hindrance of fundamental right to speech, assembly, for repeated or multiple persecutions.
- d. Where prosecution *is* threatened rather than ongoing, court will more readily enjoin.
 - a. No adequate remedy-can't resolve by defending against.
 - b. Less vital states interest against interference.
 - c. e.g. Employment agency not required to violate anti-fee statute & risk prosecution where statute is inapplicable.

2. Federal Court enjoining state prosecution

- a. Strong policy against federal interference with functions left by the Constitution to the states.
 - b. Earlier cases would enjoin even absent harassment, e.g., where it could be shown that the prosecution was based on an uncon. stat. & had a chilling effect on 1st Amend. rights.
 - c. Modern federal law requires that petitioner also show bad faith or a pattern of harassment on the part of state officials, or "extraordinary circumstances." Younger v. Harris.
3. State court enjoining Federal prosecution.
 - a. A state court has no such power to enjoin threatened or pending, crim. or civil.
 4. Federal court enjoining noncriminal state court proceedings.
 - a. Must be based on violation of some federal or const. right. Usually §1983, which authorizes equitable relief against state officials denying const. rights.
 - b. Younger v. Harris has been applied to public nuisance abatement proceedings, child custody proceedings, certain attachment proceedings in welfare/fraud cases. Federal court refused injunc. because state proceedings were found to have vital interests similar to crim. enforcement therefore, absent proof of harassment, no injunction.
 - c. Other Civil Proceedings:

1. Analyze: a) fed. Right needing protection
b) traditional analysis of irreparable harm
c) whether a vital state interest is present, analogous to state's interest in criminal proceedings.
5. 11th Amend. Issues
- a. 11th prevents suits against state without its consent.
 - b. Suit against state officials held not to be a suit against the state.
 - c. However, suite against officials compelling release of welfare payments held suit against state, because required depletion of the state's treasury.
 - d. Issue whether suits against subparts of state are suits against states. Suit against municipality is not.
- D. Equity will not enjoin Crim. conduct.
1. Policy: Would cut off defendant's const. rights, right to a jury trial and crim. Prosecution safeguards, subject to double punishment.
 2. Exception: Public Nuisance, any activity affecting substantial segment of community & injurious to health, morals, safety, or property of community. A public nuisance cause of action seeking to enjoin criminal conduct amounting to a public nuisance is often successful.
 - a. Only public official can seek to enjoin public nuisance. Private citizen has no standing.

- b. Must show legal remedy of crim. enforcement is inadequate, e.g., if legal remedy of prosecution will only get a \$500 fine for sidewalk sales, and defendant will repeatedly pay fine.
- c. Trend-expand equitable relief at request of state in a public nuisance cause of action directed against criminal activity.

IV. Declaratory Relief in lieu of Enjoining Crim. Prosecution.

- A. Use to test validity of crim. stat. or its application without interfering with prosecution.
 - 1. e.g. Determine legal sale of book claimed to be obscene.
 - 2. e.g. Determine validity of business reg. harming business.
- B. Some courts deny declaratory relief as being equally disruptive as an injunction. If no ongoing prosecution, problem is standing, whether a genuine case or controversy, e.g., equitable relief against Rizzo & police denied because insuff. stake on part of community groups to be a case or controversy.

v. Effect of Statutes on Equitable Relief.

- A. Where statute authorizes certain equitable relief, but not all.
 - 1. Some: Limited to the specific relief authorized; e.g., FDA authorized to enjoin future violations, but has no authority to seek restitutionary injunction against the violators.
 - 2. Modern view: To allow non-statutory equitable remedies.
 - a. SEC, authorized to enjoin violation, awarded restitutionary injunctions.

- b. Encyclopedia sales: Statute authorized only cease and ??? orders, court ordered rescission offers and mandatory injunctions.
 - 3. If stat. Which authorizes Govt. also creates implied private right of action, issue whether Govt. can show inadequate remedy at law in seeking restitution.
 - B. Where statute Authorizes legal remedy (damages) is plaintiff also entitled to equitable remedies?
 - 1. Issue is whether have sufficient underlying claim. Statute creates cause of action for damages, no substantive basis for any relief without statute.
 - 2. Some: Where new right is created, remedy created with it is exclusive. e.g. Amusement Park refuses admittance, maximum liability is \$500. EXCLUSIVE. Modern: Where right is created & statutory remedy is inadequate, equity available to make right meaningful. Admitted to racetrack.
 - C. Where statute permits or mandates an injunction, no need to meet traditional equitable jurisdictional requirements.
 - 1. Stat. Authorizes injunction against tariff violations "upon proper showing"
 - 2. UCC authorizes where "goods unique or other proper circumstances."
 - 3. Both cases "proper" held to refer to statutory context not to meeting equity requirements.
 - 4. Thus, clean hands & other equitable requirements & defenses are irrelevant. If meet statutory requirement for injunction, entitled to it.
 - 5. However, where statute authorizes public official to obtain injunction, but private party seeks

under implied private right of action, private party must meet traditional equitable standards.

a. Rondeau v. Mosinee Paper - SEC authorized to seek ban on voting stock where buyer violates disclosure regs. Corporation, intended to be protected by statute has private right of action. But here corporation was not damaged by violation. Held: No irreparable harm therefore injunction against voting denied. Traditional equitable principles.

D. Where statute prohibits Equitable Remedy, e.g.

1. Anti-Injunction Act

2. IRS Stat: No suit to restrain assessment & collection shall be maintained in any court Bob Jones got preliminary injunction.

a. Rule in IRS case: Can only enjoin where Govt. could not prevail on collection under any circum. under the most liberal reading, based on information available to Govt. at that time.

3. Federal Anti-Injunction Act: Can't enjoin state proceeding unless: 1) Authorized by Congress, 2) Necessary in aid of juris. 3) To protect effect of its judgments. Norris L'Guardia: No court of U.S. shall have juris to issue injunction in labor dispute.

EQUITABLE DEFENSES

I. Unclean Hands

A. Rule - - Cannot obtain affirm relief in equity where guilty of inequitable conduct.

- B. Must show:
 - 1. Wilful, illegal, fraudulent, or other inequitable conduct.
 - 2. Misconduct must be related to specific transaction giving *rise* to suit. (Did plaintiff get hands dirty in process of acquiring rt. asserted in present suit)
- C. Defendant need not show harm or prejudice has resulted from plaintiff's misconduct. Purpose of the doctrine to protect court, not defendant.
 - 1. Specific Performance of land sale contract refused because plaintiff had participated with defendant in fraud against 3rd. party, arising out of some land sale transaction.
 - 2. KKK's previous acts of terrorism held to be conduct related to their suit to protect name from misuse by competing organization.
- D. Where plaintiff clearly has unclean hands, court may still grant plaintiff relief.
 - 1. Defense is discretionary standard is whether abused discretion in granting unclean plaintiff equitable relief.
 - 2. Public Interest can overcome courts reluctance to grant relief.
 - a) Takeover fight to control corporation. Both sides have lied to shareholders prior to upcoming vote. One side seeks injunction to prevent scheduled election.
 - b) Mutinous prisoners seek injunction against conditions which led to muting.

II. Laches

- A. Laches is a defense asserting unreasonable delay on part of plaintiff, to prejudice of defendant.
- B. Statute of Limitation, though inapplicable to equitable remedies, can be used as measure of unreasonable delay and an indication of prejudice.
 - 1. Some: Adopt or not, in discretion of court.
 - 2. Some: Shift burden of proof as to issue of prejudice from defendant to plaintiff if SOL period has expired.
- C. Examples:
 - 1. Mineworkers sue their corrupt union after analogous SOL period has run. Court uses poverty, intimidation and lack of sophistication of plaintiff to excuse delay.
 - 2. Fired federal employee delays two years in seeking court review of firing, held excused because had diligently sought pro bono counsel and could not afford to proceed without free attorney.
 - 3. Sole heir asserting fraud after SOL had run held too late, no prejudice NEED BE SHOWN, since presumed that prejudice exists after SOL has run.
- D. Unclean Hands defense and Laches defense are invalid where remedies sought are not equitable. (e.g., damages, unjust enrichment judgment, replevin)

EQUITY ACTS IN PERSONAM

- A. Historically, equity courts acted only in personam and not in rem.
 - 1. E.G. Equity would order a bond holder to deliver a satisfaction of the bond, but would not order the fraudulently induced bond invalid.

2. E.G. If equity ordered a defendant to convey title and defendant doesn't, there was no inherent equity power to issue order affecting title itself.
- B. However, today in most states, equity court can act in rem or quasi in rem so long as the land or personal property is located within the jurisdiction of the court.
1. As in all in rem actions, constitutionally sufficient notice to defendant must be given.
 2. Cases where land or property is within state, but defendant is outside:
 - a) Equity has power to effect conveyance of property without personal jurisdiction, usually by statutory authorization (vesting or appointive).
 - b) But where order requires personal acts on part of defendant in addition to affecting property, order will be void.

e.g. Otis v. Maier land w/i juris but defendant needed to mail notices, sign lease, clear title, and transfer land. Court could not award relief since without personal actions contract could not be performed.
 3. Case where land is outside the state but person is within:
 - a) Court can order person to convey foreign land. In personam order is proper there is personal jurisdiction.
 - b) But some court have policy against attempting to affect land outside jurisdiction. Courts generally refuse equitable remedies affecting land in another jurisdiction unless the cause of action is "transitory," i.e., based on fraud, contract, trust.

1. Won't order repairs or enjoin trespass in foreign land because would have to supervise activity outside jurisdiction or determine title to land in other state, under other states law.
2. Won't entertain damages action for injury to land outside state.
3. Court won't act where controversy dependent on determination of foreign easement, held to be a local action, to be decided locally.
4. Court is not deprived of power to act, just strong rule against, unless transitory action.
5. However, some courts enter decrees purporting to directly affect foreign land. These decrees have no effect beyond that which foreign jurisdiction choose to give them. Full faith and credit is not required.

C. Enjoining civil suits in other states.

Rule: Not unless necessary to prevent fraud, gross wrong or oppression.

1. OK to prevent evasion of law in forum state.
2. To avoid harassment in foreign state.
3. FFC need not be given by other state.

ENFORCEMENT BY CONTEMPT PROCEEDINGS

I. Actions at Law: Judgments are enforced by execution, not by contempt proceedings.

II. Actions in Equity:

A. Money decrees. Even where in personam equitable order directs payments of money, enforcement thereof is still generally done by execution, not contempt.

However, alimony, support, and money awards against fiduciaries are exceptions. They may be enforced by contempt proceedings, e.g., orders to attorney to restore fees paid.

B. Equitable Remedies Other than Money Awards.

1. There are two types of contempt proceedings: Civil and Criminal.
2. CIVIL CONTEMPT:
 - a) Proceedings are initiated by the party, not by the court or the state.
 - b) Purpose must be either coercive or compensatory, cannot be punitive.
 1. Jail defendant until she releases documents.
 2. Fine defendant \$100 per day until she releases documents.
 3. Award plaintiff a sum to compensate for damage cause by defendant's violation of order to release documents.
 4. Court awards of \$10,000 where demonstrator blocked clinic in violation of injunction. Violation caused \$4,000 in damages. Civil or Criminal? Can argue either way: civil because "in terrorem" coercion against future violations, or criminal because definite \$6,000 punishment.
 5. If civil contempt only civil standards of proof and procedures need be used.
 6. Where defendant's violation is single and irreversible, a coercive order is impossible.
 1. Enjoin a nuisance threatening plaintiff forest. Defendant's violation destroys the forest.

Compensatory sanctions can be upheld but fines or jail would necessarily be punitive, not coercive.

3. CRIMINAL CONTEMPT

- a) Proceedings are initiated by the court itself or by the state.
- b) Purpose is to punish defendant for violating authority of the court, by fine or imprisonment.
- c) Appropriate criminal procedures and Constitutional safeguards must be used (Reasonable doubt standard, jury, etc.)
- d) NB: Whether contempt proceedings are criminal or civil have nothing to do with whether defendant's conduct is criminal or civil, e.g., defendant beats plaintiff in violation of injunction to stay away from plaintiff. Though defendant's conduct is criminal, contempt proceedings may be either civil or criminal depending on remedy sought.

4. "VOID" INJUNCTIONS.

- a) An injunction issued by a court which is totally without subject matter or personal jurisdiction is void and need not be obeyed. Also, any contempt proceedings based on a void injunction would be equally void. Therefore, one could disobey rather than appeal an injunction, could choose not to appear at the contempt proceedings, and if convicted of criminal contempt, make a

collateral attack on the conviction, by habeas corpus. Similarly, if civil contempt sanctions were ordered, a collateral attack would be available.

- b) There is great difficulty in determining whether a court is totally without jurisdiction. Jurisdiction is granted or taken away by legislatures, presenting a question as to legislative intent.

Many courts, including the U.S. Supreme Court, have held that legislatures intend that a court has jurisdiction to determine whether or not it has jurisdiction. And it has the power to issue injunctions pursuant to its determination, even if erroneous. Therefore, a TRO or preliminary injunction issued by such a court which has erroneously determined it had jurisdiction is valid and must be obeyed until reversed.

- c) Thus, a court which is "without jurisdiction" may well have power to issue a binding injunction.

1. Congress eliminated federal court "jurisdiction to issue any restraining order" in any case involving a labor dispute. A federal court erroneously concluded that a dispute between the UMW and the U.S. was not such a dispute and issued a TRO against the union. The union disobeyed the injunction rather than appeal and defended against contempt by arguing in the contempt

proceedings that the court had no subject matter jurisdiction. The Supreme Court upheld contempt sanctions because the federal court had jurisdiction to determine its own jurisdiction, even erroneously.

d) In other cases, it has been held that the legislature never intended a court to have any jurisdiction whatsoever and the injunction is void.

e) Effect of "Void" Injunction.

1. Where a court has found that an injunction is void because subject matter jurisdiction is lacking, both civil and criminal contempt sanctions are void.

2. Where a court holds that the injunction should have been obeyed until a reversal was obtained (because of "jurisdiction to erroneously determine jurisdiction"), Criminal Contempt sanctions will be upheld even though the court issuing the injunction was wrong ("courts must be obeyed until reversed")

But Civil Contempt sanctions will always fail along with the underlying injunction. The other party cannot enforce the civil sanctions it erroneously obtained.

5. "Unconstitutional" Injunctions.

- a) Here, a court has jurisdiction but its equitable decree is unconstitutional, e.g., based on a unconstitutional statute.
- b) The Supreme Court has upheld those states that enforce criminal sanctions for violating injunctions violative of constitutional standards, holding that the state could constitutionally impose criminal sanctions for violating an unconstitutional injunction unless "transparently invalid" or "frivolous" in its pretension to validity, in order to uphold the authority of its courts. Since such injunctions could be immediately appealed, no due process violation exists. (Alabama)
- c) However, some states hold that unconstitutional injunctions are void and can be violated with impunity and need not be appealed before violation. (California)

6. Who Is Bound by Injunction.

- A. Party is bound once placed on notice. Need not be served to be bound.
- B. Nonparties
 - 1. Bound if on notice of injunction and acting in concert or otherwise actively participating with named party. Not bound if acting for own reasons, independent of named party, even though aware of injunction. (Buyer with notice bound by injunction against seller. Held to be acting in concert.)

2. Must have notice sufficient to meet due process requirements, (i.e., actual notice if nonparty).
3. Few: If injunction is against certain use of property and nonparty is aware of injunction, bound even though not acting in concert with named party.
4. Agents of Party: Bound if agent, servant, attorney, etc. (if have appropriate notice)

TEMPORARY INJUNCTIONS

I. TRO:

1. Purpose is primarily to maintain status quo until a hearing can be held.
2. May be issued ex parte, without prior notice to defendant or opportunity to be heard.
3. A TRO issued without notice to defendant when in fact notice was feasible would be subject to constitutional attack.

II. Preliminary Injunction

1. A preliminary injunction is also temporary, but is issued only after notice and hearing.
2. Its purpose is to maintain status quo until full trial and decision on the merits.

III. Showing Required for Temporary Injunction

1. Irreparable harm.
 2. Likelihood of success on the merits.
 3. Balance of Hardship between parties.
 4. Public Interest.
- A. Irreparable Harm.

1. Yellow pages add - denied because liberal damages rule regarded as adequate remedy at law and because status quo would be permanently reversed.
2. Screenwriter not credited on film - denied because could seek damages and publicity of winning lawsuit would preserve reputation.
3. Employee seeking reinstatement - denied because reinstatement and backpay adequate remedy.

B. Status Quo

1. Status Quo is status quo ante, the state of things before the dispute arose.
2. Status Quo is a factor, not a requirement. if case is strong on other factors, court may issue injunction even though changes status quo.