

ADVOCACY TIPS

INTERIM INJUNCTIONS

1. You have been asked to obtain an interim injunction on short notice to the Defendant;
2. Check CPR 25. 1(1)(a). “The Court may grant ... an interim injunction” on the rules set out in CPR 25
3. Check S.37(1) Supreme Courts Act 1981 “The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the Court to be just and convenient to do so”.
4. Consider the Just & Convenience Test set out in **American Cyanamid** (**American Cyanamid –v- Ethicon [1975] 1 ALL ER 508 HL**) Does the Claimant have:-
 - (a) A good arguable claim to the right which the Claimant seeks to protect?;
 - (b) Is there a serious question to be tried?;
 - (c) Are you likely to persuade the Court to exercise its discretion in favour of the Claimant on the balance of convenience? i.e., in favour of the granting of the injunction. If so, consider the pros and cons of the proposed injunctive relief and settle a draft order.
5. Remember that the court should not attempt to make a decision on the witness statements in the event of a conflict of evidence which can only be resolved at trial:- apply for an expedited trial if appropriate.
6. Remember that the Court needs only to find that the Claimants’ cause of action has substance and reality. In **Mothercare Limited –v- Robson Books Limited** [1979] FSR 466 Megarry VC held “*Odds against*

successes no longer defeat the Plaintiff, unless they are so long that the Plaintiff can have no expectation of success, but only a hope”.

7. Remember that there are special provisions concerning the Right to Freedom of Expression under s.12(3) Human Rights Act 1998. (Restriction on without notice applications - the burden of proof is ostensibly raised).

8. Consider the test in Human Rights cases. The Court must have regard to the principles of proportionality or fair balance and must determine whether the aim of the injunctive relief can be achieved by means which are less restrictive of convention rights. Do any of the following apply to your case?
 - (a) Article 8 – Respect for Private Life;
 - (b) Article 10 - Freedom of Expression;
 - (c) Article 11 – Freedom of Peaceful Assembly and Freedom of Association
 - (d) Protocol 1, Article 1 – Right to peaceful enjoyment of possessions

9. Are you in a position to argue that the Claimant is entitled to restrict the Defendant’s rights on any of the following grounds set out in the Human Rights Act:-
 - (a) necessary in a democratic society;
 - (b) in the interests of public safety;
 - (c) for the prevention of disorder or crime;
 - (d) for the protection of health or morals;
 - (e) for the protection of reputation or rights of others.

NB: all restrictions on Convention rights must be proportionate to the legitimate aim pursued.

10. Do you need to use Representative Proceedings under CPR 19.6

11. Do you need to use John Doe Orders? ie., against an unknown person see Bloomsbury Publishing –v- Newsgroup News Papers (2003) The Times 5 June. (the Harry Potter case)
12. Do you need to obtain an order against Unincorporated Associations? If so, see CPR 19.6
13. **Procedure:** Without notice orders only in exceptional cases. Better to consider obtaining orders on short notice to the Defendant. Two clear days notice normally required unless expressly abridged by the Court. Consider substituted service. In Queens Bench cases apply to Court 37. In Chancery Cases apply to the interim applications Court. In family cases apply to the designated “Judge of the Day”.
14. Note that freezing and search orders can only be made by the High Court. All other orders can be made in the County Court.
15. Prepare a chronology and a short skeleton argument (supported by copies of all authorities relied upon) for the use of the Judge. Serve in reasonable time on the other side.
16. Bon chance