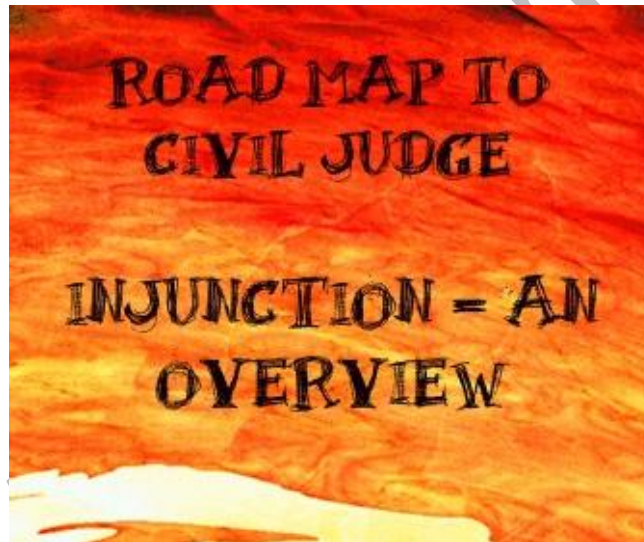


# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.



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## INJUNCTION- AN OVERVIEW

**Injunction** – new to hear ! let's make it familiar .

Injunction is court order- granted either to refrain from doing an illegal act or to do a legal act<sup>1</sup>. **Origin-** from Equity Courts of England thus – injunction- **equitable remedy-** the party , who seeks relief, must come with clean hands + **discretionary equitable relief** - cannot be granted when equally efficacious relief is obtainable.

### RELEVANT PROVISIONS OF LAW :

- Section 36 to 42 of the Specific relief Act
- Section 94(c) and Order XXXIX of the Civil Procedure Code
- Section 151 of the Civil Procedure Code-( 'Manmohanlal Vrs. Seth Hiralal' (A.I.R.1962 Supreme Court 527)by observing- Court has powers U/s.151 of Civil Procedure Code to issue an injunction in cases not falling within Order XXXIX Rule 1 and 2; however that discretion should be exercised judiciously)

**Temporary Injunction** - Section 37<sup>2</sup> of Specific Relief Act, 1963 – *when it can be granted ?* - at any stage of suit- ***Lifetime of temporary injunction*** - alive until specified time or further order of court- ***procedure for seeking temporary injunction*** - Order XXXIX of the Code of Civil Procedure, 1908.

Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 provides for **ex-parte temporary injunction** in the cases of *extreme urgency*.

For guidelines refer- Morgan Stanley Case<sup>3</sup>

<sup>1</sup> Injunction is a judicial process by which one who has invaded or is threatening to invade the rights, legal or equitable, of another, is ordered to refrain from doing, or to do a particular act or thing.

<sup>2</sup> "temporary Injunction are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit."

<sup>3</sup> Morgan Stanley Mutual Fund Vs. Kartick Das – (1994) 4 SCC 225

**TEMPORARY INJUNCTION**

CAUSE TITLE	RATIO DECIDENDI
<i>Agricultural Produce Market Committee Case</i>	temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction
<i>Gujarat Bottling Co. Ltd. Case</i>	For temporary injunction must establish prima facie case ( show infringement of legal right ), balance of convenience ( order if passed will not affect the defendant but the plaintiff) and irreparable injury ( injury likely to be caused cannot be qualified in monetary terms )

**Permanent injunction** - Section 38 – Specific Relief Act – also called permanent injunction ( injunction forever ) – **Circumstances for granting permanent injunction** - mainly granted to prevent multiplicity of proceedings- when damage irreparable or monetary compensation unaffordable or in case of breach of obligation.

( Brain tickle ! *whether relief of permanent injunction is special right or pre-existing right ?* Ans- No doubt its pre-existing right ! We can claim injunction for any threat against such pre-existing right only )

***Sin qua non for granting perpetual injunction-*** a pre- existing legal right and a breach .

**Conditional injunction** - a relief of injunction + condition precedent.

**Mandatory injunction** - section 39 of the Specific Relief Act- it is an order Compelling to perform certain acts.

( *Brain tickle!* *whether a relief of damages can be given along with injunction ?* certainly yes - Section 40 - damages in lieu of or in addition to injunction.- ie., damage for loss caused + injunction to restrain future damage )

**Injunction in immovable property** (*frequently asked*)

- *Who may seek ?*– Anybody in possession of the property!
- *Now! Can a trespasser seek temporary injunction ?* Astonishingly yes! Even a trespasser must be evicted lawfully. But a trespasser cannot seek injunction against owner.
- *Will possession alone will make way for remedy ?* Nope the possession must be lawful and actual possession.
- *So what is the proof of possession ?* Kist receipt, Water tax, property tax, Electricity Bill.
- *Can patta be proof of possession?* Patta is only a piece of title it cannot be proof of possession.
- *Sin qua non for seeking injunction in immovable property –* lawful and possession at the time of filing the suit and actual disturbance by the defendant to the peaceful possession of plaintiff.

- **OMG! What is the proof of actual disturbance?** A complaint to Police, FIR, CSR etc.

### **JUDGMENTS ! for experts**

- Injunction personal right under sec: 41 Specific relief Act – plaintiff must have personal interest in the matter – *Laxmikanth V. Patel vs Chetanbhat (SC)*
- Flexibility of three basic principles of injunction ( prima facie case, balance of convenience and irreparable injury ) – *Daplat Kumar vs Prahlad Singh ?(SC)*
- physical possession – proof – prerequisite for injunction in immovable property- *Suryanaryanan vs Unknown 2011( Madras Hc)*
- Issue of title in declaration suit well explained in – *Anathula Sudhakar vs Buchi Reddy.*

### **IMPORTANCE OF THIS AREA!**

- 1) Suit for mandatory injunction ( judgment writing – 12 marks- 1997)
- 2) Suit for declaration and permanent injunction ( 1997)
- 3) Suit for mandatory injunction (1997)
- 4) Suit for declaration and permanent injunction ( 1999)
- 5) Declaration suit with injunction (2002)

**NOTE : Injunction is most important area in CJ examination, the above materials are only primer , for detail explanation kindly wait for our notes !**