

INJUNCTIONS: AN EXPANDING UNIVERSE?¹

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It is with great pleasure that I accepted the invitation of the University of Hong Kong and Temple Chambers to give this lecture, and I am honoured to do so.

It is particularly fitting that I should give it today, because it is exactly 26 years since I first came to Hong Kong.

Not only that, but I was here to appear in a case in the High Court with Ronny Tong SC and Eugene Fung (not then SC)³ of Temple Chambers. They and the other members of Temple Chambers could not have been more welcoming. So, I am particularly pleased to be giving this lecture sponsored by them.

The topic I have chosen to speak about is the court's power to grant injunctions.

In the recent decision of the United States Supreme Court in *Trump v CASA Inc*⁴, the majority in their Opinion asked whether the injunction there in issue was sufficiently like any relief available in the Court of Chancery in England in 1789.⁵ That was when Congress enacted the Judiciary Act. It conferred on the federal courts' jurisdiction over "all suits...in equity".⁶

Holding that no such relief was available in equity in England in 1789, the US Supreme Court held that US federal courts had no power to grant the "universal injunction" under appeal.⁷ A universal injunction is one which prohibits action not only against the plaintiff but against any similarly placed person.⁸

As we shall see, the Justices of the Supreme Court of the United Kingdom, sitting both in the Supreme Court and in the Judicial Committee of the Privy Council, have not regarded

¹ This is the expanded text of a lecture given at the University of Hong Kong on 2 September 2025. I would like to thank Chloe McQuillan and Raphael Marshall, my Judicial Assistant at the Supreme Court, for all their assistance in research for the lecture and this expanded text.

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³ Eugene Fung SC was appointed as a Justice of the Court of First Instance of the High Court of Hong Kong with effect from 12 September 2025.

⁴ 145 S.Ct. 2540

⁵ *Ibid*, p.2551 (Justice Barrett). See also the dissenting opinion of Sotomayor J at pp.2582ff for the contrary view; 'Adaptability has always been a hallmark of equity, especially with regard to the scope of its remedies' (p.2582).

⁶ Judiciary Act 1789 (1 Stat. 78), s.11.

⁷ *Ibid*, p.2560, Justice Barrett stated that 'nothing like a universal injunction was available at the founding, or for that matter, for more than a century thereafter. Thus, under the Judiciary Act, federal courts lack authority to issue them'.

⁸ *Ibid*, p.2548.

the courts in the UK or in the jurisdictions from which appeals lie to the Privy Council as restricted in any similar way.

Quite the contrary. They have developed injunctive relief, not by way of limited analogy with the practice of the past but on the premise of the historical flexibility of equity to do right.

Looking back on the 50 years since I started in practice, there have been very significant developments in many areas of the law, and indeed the creation of whole new areas.

The development of injunctions and similar orders over that period has not of course involved the creation of new areas of law but it has involved remarkable changes and expansion, the like of which is unlikely to be found over any other period of 50 years.

Before going any further, I should define my terms.

In one sense, an injunction is any order that a court makes that a party must not do something, or alternatively must positively do something, apart from an award of damages or judgment on a debt. I do not intend to use “injunction” in so wide a sense. I will use it in its conventional sense of, most commonly, an order restraining a person from doing something but including also the less common mandatory injunction requiring a person positively to do something.

I should first say something about the source in English law of the court’s power to grant injunctions. The history is important. The power to grant injunctions was created and exercised by what was the Court of Chancery.⁹ It was indeed the foundation of the Chancery jurisdiction. While the common law courts made orders for possession of property and for damages with the right to enforce payment by execution against the defendant’s property, the Court of Chancery made orders binding on the defendant *in personam*, enforceable by imprisonment or sequestration.

Injunctions were granted to enforce equitable duties either directly in proceedings in the Court of Chancery or indirectly by the grant of a “common injunction”, restraining parties to actions in the common law courts from pursuing, enforcing or defending claims in breach of their equitable duties. Injunctions and other orders which the common law courts had no power to make were also made in support of common law proceedings, such as injunctions to protect common law rights and orders for discovery.

Injunctions to protect the jurisdiction of both the Court of Chancery and the common law courts were also granted by the Court of Chancery, including anti-suit injunctions as regards proceedings both within and outside the jurisdiction of the English courts. Anti-suit injunctions restraining a person from pursuing claims in a foreign court may be

⁹ Capper, *Injunctions in Private Law* (Edward Elgar Publishing, 2024), paras 1.11-1.14, pp. 6-8; Maitland, *Equity: A course of Lectures* 2nd ed. (Cambridge University Press, 1936), pp. 318-321; Baker, *Introduction to English Legal History* 5th ed. (Oxford University Press, 2019), pp. 105-124.

considered a good example of the breadth of the Court of Chancery's power to grant injunctions, but such injunctions, which were rare, had as their purpose the protection of the jurisdiction of the English courts.¹⁰

Exercise of the power was guided by principles of equity developed over several centuries by the Lord Chancellor and his deputies as the judges of that court. As it was an equitable remedy, it was always discretionary.

The common law courts did not have power to grant injunctions until 1854 when they were given the power by statute.¹¹

The Supreme Court of Judicature Act 1873 created the High Court.¹² All the existing superior courts of record, including the Court of Chancery, were united and consolidated into that single court.

Three provisions of the 1873 Act are of particular importance:

- i) s.16 provided that the jurisdiction of each of the old courts was transferred to and vested in the High Court. Although not expressly stated, that included the power to grant injunctions.
- ii) s.23 provided that, subject to any rules of court to the contrary, the transferred jurisdiction was to be exercised (as far as regards procedure and practice) "as nearly as may be in the same manner as it might have been exercised" by the old courts.
- iii) S.25(8) provided that "a mandamus or injunction may be granted...by an interlocutory order in all cases in which it shall appear to the Court to be just or convenient that such Order should be made".

The particular power to grant injunctions contained in s.25(8) has been re-enacted over the years and is now contained in s.37 of the Senior Courts Act 1981, in similar terms except that it is not limited to interlocutory (or interim) injunctions.

This history is of great importance, because it explains that the court's power to grant injunctions remains an equitable power, which was confirmed rather than created by these provisions of the 1873 Act. It is not a new, statutory power. As we shall see, this has had a profound effect on the development of the injunction in recent years.

¹⁰ See *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provinciën" NV* [1987] 1 AC 24, pp.45-46 (Lord Goff), and *Bank of Tokyo Ltd v Karoon (Note)* [1987] 1 AC 45, in which the leading decisions of the Court of Chancery were cited.

¹¹ Common Law Procedure Act 1854, s.79. See also *Maitland*, p. 322.

¹² Ss. 3-4. See also *Quartz Hill Consolidated Gold Mining Company v Beall* [1882] 20 Ch. D. 501, p. 507 (Jessel MR).

I will later refer to the decision of the UK Supreme Court in 2023 in *Wolverhampton CC v London Gypsies and Travellers*¹³ but at this stage, to make good what I have just said, I will cherry-pick three short passages from the joint judgment of Lord Reed and Lord Briggs:

- i) “The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited.”¹⁴
- ii) Section 37 of the 1981 Act “like its statutory predecessors, merely confirms and restates the power of the courts to grant injunctions which existed before the 1873 Act and still exists”.¹⁵
- iii) “Like any judicial power, the power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court.... Nevertheless, the principles and practice governing the exercise of the power to grant injunctions need to and do evolve over time as circumstances change.... practice has not stood still and is unrecognisable from the practice which existed before the 1873 Act.”¹⁶

I might add to that what Lord Nicholls said in a case I will come to later:

“These are highly persuasive voices that the jurisdiction to grant an injunction, unfettered by statute, should not be rigidly confined to exclusive categories by judicial decision. The court may grant an injunction against a party properly before it where this is required to avoid injustice, just as the statute provides and just as the Court of Chancery did before 1875”.¹⁷

And in the same paragraph:

“As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice. Injustice is to be viewed and decided in the light of today's conditions and standards, not those of yester-year.”

Likewise, in Hong Kong, when the Supreme Court (now the High Court) was first created in 1844, the Ordinance provided that it was to be a court of equity with the same jurisdiction and powers as the Court of Chancery.¹⁸ The same provision appeared in later Ordinances. The courts of Hong Kong have not followed the US model in saying that there

¹³ [2023] UKSC 47, [2024] AC 983.

¹⁴ Ibid, para 17.

¹⁵ Ibid, para 17.

¹⁶ Ibid, para 19.

¹⁷ *Mercedes Benz A.G. v Leiduck* [1996] A.C. 284, p. 308.

¹⁸ Ordinance No. 15 of 1844, s.14.

can be no radical development of equity, including the power to grant injunctions, beyond that which existed in 1844.¹⁹

When I started in practice as a barrister 50 years ago, judges, practitioners and academics had few doubts as to the proper province of an injunction. A final or permanent injunction could be obtained at trial (or on a summary judgment application) if the claimant established an enforceable right against the defendant (whether at common law, in equity or under statute) which required an injunction for its protection and vindication.

An interlocutory or interim injunction could be obtained pending judgment, if it was necessary to protect the claimant's position in the meantime. It was often a question of holding the ring.

Fundamental to this was the proposition that the injunction (whether final or interim) was granted in proceedings brought by the claimant in the English court based on a cause of action justiciable in the court. In an urgent case, an injunction could be granted in advance of the commencement of proceedings, but the claimant was required to undertake to issue and serve a writ as soon as practicable.

It is this principle, among others, that has undergone profound analysis and change over the last 40 years or so, much of it in the context of *Mareva* injunctions (or freezing orders).

As it happens, 1975, the year in which I started in practice, was the year in which the *Mareva* injunction was born. It was established by the Court of Appeal first in *Nippon v Karageorgis*²⁰ and confirmed by the Court of Appeal in *The Mareva*.²¹ Both were *ex parte* applications, so the court heard argument only from the plaintiffs. Its novelty lay in restraining the defendant from dealing with his own assets before trial on a claim for a debt.

However, although it was a radical departure from the previous practice of the court, it so clearly met a real need to prevent injustice that it was never as a matter of principle seriously called into question.

Instead, it was developed from its modest beginnings of restraining the defendant from transferring assets from the UK to other countries to cases (i) where disposal within the jurisdiction could be restrained, (ii) where any monetary relief was claimed, including unliquidated damages and compensation in equity, and (iii) – the big step – where the defendant was restrained from disposing of assets that he held abroad.

¹⁹ See *Sir Elly Kadoorie & Sons Ltd v Bradley* [2026] HKCFA 2.,

²⁰ *Nippon-Yusen-Kaisha v Karageorgis* [1975] 1 W.L.R. 1093.

²¹ *Mareva Compania Naviera SA v International Bulk Carriers SA ('The Mareva')* [1975] 2 Lloyd's Rep. 509.

The *Mareva*-style freezing order was a step too far for the US Supreme Court. It ruled in *Grupo Mexicano de Desarrollo v Alliance Bond Fund Inc*²² that no such injunction or anything like it was granted by the English Court of Chancery in 1789, and so the US federal courts could not exercise their equitable jurisdiction to grant one – unless expressly authorised by Congress. It was a split 5-4 decision, with Justice Scalia giving the majority opinion and Justice Ginsburg giving the minority opinion.²³ Both are well worth reading.

For many years it was accepted that Lord Diplock had laid down in *The Siskina*²⁴ the necessary condition for the grant of any injunction, including a *Mareva* injunction. He stated it in these terms: “the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment”, having earlier said that the “right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action”.²⁵

This had not prevented the courts from granting *Mareva* injunctions against a party whose only connection was that it held assets which, arguably, were beneficially owned by the principal defendant and which might therefore be available for enforcement of any judgment against the principal defendant.²⁶ Subsequently, this was expanded to include freezing the assets of persons against which the principal defendant had an arguable claim, without the need to show that arguably its assets were beneficially owned by the principal defendant.²⁷

This can be seen as a significant extension of the power to grant *Mareva* injunctions. While the need for a cause of action was retained, the cause of action need not lie against a party made subject to the *Mareva* order.

The requirement for an existing cause of action was closely examined by the House of Lords in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd*.²⁸ This was not a case concerning a freezing order. It was an application for an interim injunction to restrain the contractors from ceasing work on the construction of the Channel Tunnel in reliance on what they argued was a breach of the construction contract entitling them to cease work. It was argued for the contractors that, applying Lord Diplock’s approach, the injunction could be granted only if the substantive dispute was being, or was to be, litigated in the English court. This condition was not satisfied because the English proceedings had been stayed in favour of arbitration under the terms of the contract.

²² 527 U. S. 308 (1999).

²³ Justice Scalia’s core reasoning is at pp. 318-320, and Justice Ginsburg’s is at pp. 335-340.

²⁴ [1979] A.C. 210.

²⁵ *Ibid*, p. 256.

²⁶ *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231.

²⁷ See *Revenue and Customs Comrs v Egleton* [2006] EWHC 2313, [2007] Bus LR 44.

²⁸ [1993] AC 334.

The House of Lords rejected this reading of Lord Diplock's condition. Lord Mustill, who gave the leading speech, said that at its highest the condition was that an interlocutory injunction was "always incidental to and dependent on the enforcement of a substantive right, which usually although not invariably takes the shape of a cause of action" and then, importantly: "If the underlying right itself is *not subject to the jurisdiction of the English court*, then that court should never exercise its power under section 37(1) by way of interim relief" (emphasis added).²⁹ It was not necessary that the underlying dispute should be subject to proceedings in the English court; the existence of jurisdiction over the dispute was sufficient. Lord Browne-Wilkinson was equally clear: "the relevant question is whether the English court has power to grant the substantive relief not whether it will in fact do so".³⁰

It was sufficient if the defendant *could* be served with English proceedings raising a claim that the English court *could* hear. This requirement would be satisfied even if, for example, the claim was based on a contract with an exclusive foreign jurisdiction clause, because the defendant could choose not to enforce that clause.³¹

Both Lord Browne-Wilkinson and Lord Mustill noted that, stated in absolute terms, Lord Diplock's condition for the grant of interlocutory relief had been modified, as regards anti-suit injunctions which could be granted "where it is appropriate to avoid injustice".³² More significantly, they expressed reservations about the restriction of the power to grant injunctions to certain exclusive categories³³, as had Lord Goff of Chieveley (with Lord Mackay's agreement) in *South Carolina*.³⁴

It therefore remained the case that a freezing order could not be granted save in support of a claim capable of being heard by the court granting the injunction

With the worldwide freezing injunction firmly established, which itself answered a need for effective relief in a world where assets could be transferred between different countries easily and speedily, it was inevitable that the question would arise whether a court in country A could grant a freezing order in aid of proceedings in country B where the proceedings could not be brought in the courts of country A.

²⁹ Ibid, p. 362.

³⁰ Ibid, p. 342.

³¹ Ibid, p. 343.

³² *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, p. 573 (Lord Scarman); see also *British Airways Board v Laker Airways Ltd* [1985] AC 58, p. 81 (Lord Diplock).

³³ *Channel Tunnel*, p. 343 and p. 362.

³⁴ [1987] AC 24, pp. 44-45.

In the UK, legislation expressly enabled the court to grant freezing orders in aid of foreign proceedings³⁵. The same has occurred in other jurisdictions, such as section 21M of the Hong Kong High Court Ordinance.³⁶

But, for the purposes of this lecture, the important point is to analyse the position where there are no such statutory provisions.

The issue arose in an appeal in 1995 to the Privy Council from Hong Kong, which did not then have any applicable statutory provision - *Mercedes Benz v Leiduck*.³⁷

The defendant Leiduck was a German citizen living in Monaco who had received substantial loans from Mercedes Benz for commercial transactions but which he did not repay. Mercedes brought proceedings against him in Monaco, alleging that he had fraudulently misappropriated the funds and transferred some of them to a company which he owned in Hong Kong.

Mercedes applied in Hong Kong for a worldwide freezing order against Leiduck, in aid of the Monaco proceedings. The courts in Hong Kong held that the injunction could not be granted unless it was part of a claim for substantive relief which could properly be tried in Hong Kong. The main claim against Leiduck could not be brought in Hong Kong because it fell outside the jurisdiction of the Hong Kong courts unless he was personally present in Hong Kong – which he was not, not least because he was in detention in Monaco.

The majority judgment was given by Lord Mustill. The majority decided the issue solely on the basis of the proper construction of the Hong Kong rules governing the service of proceedings abroad, holding that they did not cover the claim for an injunction where the Hong Kong court had no jurisdiction to hear the substantive dispute, just as the House of Lords had construed the equivalent English rules in *The Siskina*.³⁸ They expressly did not address whether Lord Diplock's general statement in that case had been correct.

Lord Nicholls, however, addressed that point directly in a judgment which has proved to be of enduring importance.

He stated the central point in characteristically clear terms:

“The first defendant's argument comes to this: his assets are in Hong Kong, so the Monaco court cannot reach them; he is in Monaco, so the Hong Kong court cannot reach him. That cannot be right. That is not acceptable today. A person operating

³⁵ Civil Jurisdiction and Judgments Act 1982, s.25 (as amended).

³⁶ Law n. 50 of 1976 as amended by, *inter alia*, law n. 3 of 2008, s. 10.

³⁷ [1996] A.C. 284.

³⁸ *Ibid*, p. 304.

internationally cannot so easily defeat the judicial process. There is not a black hole into which a defendant can escape out of sight and become unreachable.”³⁹

Lord Nicholls identified that a freezing order in these circumstances is not granted in aid of a foreign cause of action or foreign proceedings but is “relief granted to facilitate the process of enforcement which will arise in that court [Hong Kong in that case] when, but only when, the judgment for the payment of an amount of money has been obtained”.⁴⁰ In other words, the injunction would further the Hong Kong court’s own process. Lord Nicholls added that a defendant cannot be allowed to thwart or to steal a march on the court’s enforcement process.⁴¹

The rationale of a freezing order as an aid to the enforcement of a future judgment of the court granting the order was adopted as the correct analysis by the majority in a further decision of the Privy Council in a case with a strong Hong Kong connection, *Convoy Collateral v Broad Idea International* (2021).⁴² Lord Leggatt, giving the majority judgment, described it as the enforcement principle.⁴³

The claimant was a Hong Kong company with a claim against a former director, Dr Cho, who was a Hong Kong resident. It was planning to sue him in Hong Kong. Before doing so, it issued proceedings in the British Virgin Islands against a company incorporated there, in which Dr Cho had a majority shareholding. The claimant sought a freezing order to prevent the BVI company from dissipating its assets.

No substantive claim was asserted against the BVI company. What was said was that Mr Cho might cause it to transfer its assets. That would devalue his shares in the company and provide a means of frustrating enforcement of any judgment given against him.

The BVI company was of course subject to the jurisdiction of the BVI court but there were at least three features of this case which in earlier times would likely have been bars to the grant of a freezing order. First, the substantive proceedings would not be brought in BVI, as its courts had no jurisdiction over Dr Cho. Secondly, the judgment would not be made against the BVI company. The claimant had no substantive cause of action against it. The only purpose of the freezing order was to preserve the value of Dr Cho’s shares in the BVI company by restraining the company from disposing of its own assets. Third, no proceedings had yet been issued against Dr Cho in Hong Kong or anywhere else, although the court could be satisfied that proceedings would be issued.

³⁹ Ibid, p.305.

⁴⁰ Ibid, p.306.

⁴¹ Ibid, p.306

⁴² [2021] UKPC 24, [2023] A.C. 389.

⁴³ Ibid paras 84-89. Lord Leggatt drew this principle from *JSC BTA Bank v Ablyazov (No 10)* [2015] UKSC 64, [2015] 1 WLR 4754, para 13 (Lord Clarke) and the Court of Appeal’s judgment in that case ([2013] EWCA Civ 928, [2014] 1 WLR 1414), para 34 (Beatson LJ).

It was held that none of these features was a bar to the grant of a freezing order.⁴⁴ There was an accrued cause of action, but it was not against the BVI company. The injunction was justified on a quite different basis to that expounded by Lord Diplock in *The Siskina*. It was justified by the enforcement principle espoused by Lord Nicholls in *Mercedes Benz v Leiduck*.

What in particular matters about this case for the purposes of this lecture is that the Privy Council decided that the principle stated in *The Siskina* was wrong.⁴⁵ Provided the court has personal jurisdiction over a defendant, the court may make a freezing order against it without the court having jurisdiction to hear the substantive dispute and without the claimant having any substantive claim against the defendant. Lord Nicholls' dissent in the *Mercedes* case was vindicated.

The kernel of Lord Leggatt's reasoning is stated in para 92 of his judgment:

“In applying for a freezing injunction, the relevance of a cause of action, where there is one, is evidential: in showing that there is a sufficient basis for anticipating that a judgment will be obtained to justify the exercise of the court's power to freeze assets against which such a judgment, when obtained, can be enforced. That is the rationale for requiring the applicant to show a good arguable case; but there is no reason why the good arguable case need be that the applicant is entitled to substantive relief from the court which is asked to grant a freezing injunction. What in principle matters is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought.”

As we shall see, Lord Leggatt's judgment in the *Convoy Collateral* case has in turn been influential in wider developments of the law as regards the power to grant injunctions.

It is, however, at this stage worth noting that the enforcement principle makes clear that, although a court may grant a freezing order at a time when there exists no cause of action over which it then has jurisdiction (thereby casting aside Lord Diplock's principle in *The Siskina*), it is directly connected with anticipated further proceedings in that court and is designed to prevent the frustration of those future proceedings.

In this important sense, the enforcement principle is serving a similar purpose to many other types of injunctions and order which the courts have developed to protect or advance present or future claims, whether in the court granting the injunction or in other courts.

The perceived need to protect or advance present or future claims has led to other striking developments in the range of orders which the court may make, occurring

⁴⁴ Ibid, para 102.

⁴⁵ Ibid, paras 114-121.

alongside the development of the *Mareva* jurisdiction, but more obviously having their origins in equity and in the jurisdiction of the Court of Chancery.

Two in particular should be mentioned.

The first are third party disclosure orders, established by the House of Lords in *Norwich Pharmacal v Customs and Excise Commissioners* in 1972.⁴⁶ A person who has innocently become involved in or facilitated a wrong committed by another person can be ordered to disclose information which will enable the victim to bring proceedings against the wrongdoer or obtain other redress. This was applied again in 1980 by the House of Lords in *British Steel Corporation v Granada Television*, to require a media outlet to disclose the name of an employee of the claimant who had disclosed information in breach of a duty of confidence.⁴⁷

The second is a ‘*Bankers Trust* order’, so named because it was made in the 1980 case of *Bankers Trust v Shapira*.⁴⁸ It is an order against a person (typically, a bank) to disclose documents or information to assist the claimant in locating assets to which the claimant has a proprietary claim. In his judgment, Lord Denning MR said: “In order to enable justice to be done – in order to enable these funds to be traced – it is a very important part of the court’s armoury to be able to order discovery” and specifically relied on the *Norwich Pharmacal* case.⁴⁹

These, it will be noted, are orders against persons who have committed no wrong against the claimant. The claimant has no substantive cause of action against them.

I would pause here to say that these orders can be seen as developments of equity’s power to make discovery orders. In *British Steel Corporation v Granada Television*, Lord Wilberforce described the claim in that case and in *Norwich Pharmacal* as “based upon the ancient bill of discovery in equity”.⁵⁰ In *Mercedes Benz*, Lord Nicholls instanced *Norwich Pharmacal* to show that a claimant may bring an action for discovery against a person “in respect of whom he has otherwise no cause of action in aid of other proceedings not yet commenced”.⁵¹

A bill of discovery was a well-established procedure in the Court of Chancery before the creation of the unified High Court in 1873.⁵² The common law courts had no power to order discovery, so in its traditional role of remedying shortcomings in the common law

⁴⁶ *Norwich Pharmacal v Customs and Excise Commissioners* [1974] A.C. 133, pp.173-176 (Lord Reid).

⁴⁷ *British Steel Corporation v Granada Television* [1981] A.C. 1096, pp.1174-5 (Lord Wilberforce), p.1182 (Viscount Dilhorne), p.1197 (Lord Fraser).

⁴⁸ [1980] 1 W.L.R. 1274, p.1282 (Lord Denning MR). See also Baker, *Introduction to English Legal History*, p. 112.

⁴⁹ *Bankers Trust*, p.1281.

⁵⁰ [1981] AC 1096, p.1171.

⁵¹ [1996] 1 AC 284, pp.110-111.

⁵² Baker, *Introduction to English Legal History*, pp.112-113. See for example *Sanders v King* (1821) 6 Madd 61, 56 E.R. 1013 and *Mendizabel v Machado* (1826) 2 Sim & St 483, 57 E.R. 504.

and its procedures, the Court of Chancery would order discovery by parties to a claim in the common law courts and would grant an injunction restraining the plaintiff from continuing with the action until discovery had been given. With a view to enabling proceedings to be brought, the court might also order disclosure of the identities of wrongdoers to be provided by a person who was also liable to be sued by the plaintiff even though the plaintiff did not intend to do so. An order would not, however, be made against a person if the plaintiff had no other claim against him.

In *Norwich Pharmacal*, the House of Lords analysed in some detail the law relating to bills of discovery but acknowledged that the order made against the Commissioners went beyond anything justified by the practice of the Court of Chancery.⁵³ There is some divergence in the reasoning in the speeches but a majority concluded that, by virtue of their involvement in the commission of infringing acts (albeit entirely innocently and not such as to give rise to a claim against them for infringement), the Commissioners came under a duty to provide the information, which was enforced by the disclosure order made by the court. The order was made in support of the plaintiffs' right to require such disclosure.⁵⁴ The novelty in the case might be said to lie in the recognition of this new duty, rather than in the making of an order to enforce it. But see below as to what has since been said about this duty.

Neither in *Norwich Pharmacal* nor in *Bankers Trust v Shapira* is the claim discussed in terms of an exercise of the equitable jurisdiction to grant injunctions, no doubt because it was seen as an extension of the power to order discovery. The importance of these decisions lies in a willingness to use and to expand the scope of equitable remedies.

More recently, a new type of order has emerged: the internet blocking order.

In what I would suggest was a significant development, the English Court of Appeal affirmed in 2017 an order against the UK's five largest internet service providers requiring them to block access to certain websites.⁵⁵ The claimants were Cartier and other holders of trademarks for luxury goods. They said that the websites were offering counterfeit goods.

The claimants relied on a European Directive but there was no specific legislation in the UK giving effect to it.⁵⁶ The claimants therefore relied on the general power to grant injunctions in s.37.

⁵³ *Norwich Pharmacal*, pp.184-188 (Lord Dilhorne), p.179 (Lord Morris of Borth-y-Guest), p.191 (Lord Cross of Chelsea), p.204 (Lord Kilbrandon).

⁵⁴ *Ibid*, p.175 (Lord Reid), pp.197 (Lord Cross of Chelsea), p.204 (Lord Kilbrandon).

⁵⁵ *Cartier International AG v British Sky Broadcasting Ltd* [2016] EWCA Civ 658, [2017] Bus. L.R. 1.

⁵⁶ *Ibid*, para 33; Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights.

It is of central importance to appreciate that the ISPs had committed no tort or other actionable wrong. The claimants had no cause of action in *The Siskina* sense against them.

The Court of Appeal held that the court had power to grant the injunction, notwithstanding that it did not fit within any recognised category.

After reviewing *The Siskina* and the cases which followed and modified it – which did not at that time include *Convoy Collateral v Broad Idea* - Kitchen LJ (later Lord Kitchen) said:

“It is clear, however, that matters have moved on since 1986 and the courts have shown themselves ready to adapt to new circumstances by developing their practice in relation to the grant of injunctions where it is necessary and appropriate to do so to avoid injustice...”⁵⁷

He also said that to restrict the court’s power to those situations described in the earlier cases would “impose a straitjacket on the court and its ability to exercise its equitable powers which is not warranted in principle”.⁵⁸

A website blocking order was a principled use of the power to grant an injunction, despite the absence of any substantive cause of action against the ISPs, because of the combination of two factors:

- i) “The operators of the target websites need the services of the ISPs in order to offer for sale and sell their counterfeit goods to consumers in the United Kingdom, and the ISPs are therefore inevitable and essential actors in those infringing activities.”⁵⁹
- ii) The obligations on member states under the EU Directive meant “that the court must now recognise pursuant to general equitable principles that this is one of those new categories of case in which the court may grant an injunction when it is satisfied that it is just and convenient to do so.”⁶⁰

The case went to the Supreme Court on the limited issue of who was to pay the costs of compliance with the order.⁶¹ No doubt was cast on the Court of Appeal’s analysis. Lord Sumption (with whom the other members of the Court agreed) made clear that the order could be made quite apart from the EU Directive. He said that an injunction could be granted against a third party “to prevent the use of his facilities to commit or facilitate a wrong”⁶² and that the “true basis of the court’s intervention is that once the intermediary has been given notice of the infringement of the plaintiff’s rights, his duty is to stop

⁵⁷ Ibid, para 46.

⁵⁸ Ibid, para 54.

⁵⁹ Ibid, para 56.

⁶⁰ Ibid, para 65.

⁶¹ *Cartier International AG v British Telecommunications Plc* [2018] UKSC 28, [2018] 1 W.L.R. 3259.

⁶² Ibid, para 15.

placing his facilities at the disposal of the wrongdoer”⁶³ Lord Sumption expressed the view that the duty to assist identified by Lord Reid in *Norwich Pharmacal* was not a legal duty in the ordinary sense of the term but was an instance of the court exercising an equitable jurisdiction to intervene.⁶⁴

Although *Norwich Pharmacal* was important in establishing the court’s power to intervene, a website blocking order is not a *Norwich Pharmacal* order, but a new application of the power to grant an injunction.

So also is the grant of an injunction to restrain interference in the performance by a public body of its statutory responsibilities, first applied by the English Court of Appeal in *Broadmoor Special Hospital Authority v Robinson*⁶⁵ and affirmed by the Supreme Court in *Abbasi v Newcastle upon Tyne NHS Hospital Trust*.⁶⁶

This basis for the grant of an injunction was examined in depth by the Court of Final Appeal in *Sir Elly Kadoorie & Sons Ltd v Bradley*.⁶⁷ In an important decision, the CFA held that such an injunction was not confined to interference with the performance of statutory responsibilities by a public authority but could be made to restrain interference with the performance of any legal duty, including common law duties, by a private body.⁶⁸ The legal duty in question was the common law duty to provide a safe working environment for its employees. Further, the CFA held that an injunction could lie to restrain interference with the claimant’s constitutional right to obtain legal advice.⁶⁹

The cases so far discussed have demonstrated a willingness on the part of the court to set aside restrictions on the grant of injunctions or other orders against identified defendants, culminating in setting aside what remained of the requirement for a cause of action, as conventionally understood, laid down in *The Siskina*.

There has been a parallel but more dramatic development in the power of the court to grant injunctions against unidentified persons.

By way of introduction, I should mention the longstanding power of the court to grant injunctions to protect children and people without mental capacity.

In England, this is a prerogative power of the Crown, in its capacity as *parens patriae* (parent of the country).⁷⁰ Many centuries ago, its exercise was devolved by the sovereign to the Lord Chancellor and from him to the Court of Chancery.

⁶³ Ibid, para 10.

⁶⁴ Ibid, para 11.

⁶⁵ [1999] EWCA Civ 3039, [2000] QB 775

⁶⁶ [2025] UKSC 15, [2026] AC 63, paras 67-78

⁶⁷ [2026] HKCFA 2, paras 47-62.

⁶⁸ Ibid, paras 63-91.

⁶⁹ Ibid, paras 103-06.

⁷⁰ See *In the matter of X and Y (Children: Adoption Order: Setting Aside)* [2026] UKSC 13, para 52.

This power has long been recognised as including a power to grant injunctions applicable to everyone, for example forbidding a child from being named in the press or elsewhere.⁷¹ Again, Latin is used. They are injunctions *contra mundum* (against the world). The *parens patriae* jurisdiction was recently examined by the Supreme Court in *Abbasi v Newcastle upon Tyne NHS Hospital Trust*.⁷² *Contra mundum* injunctions have also been used to protect a person's rights under the European Convention on Human Rights, where no other measure will suffice.⁷³ However, in *Abbassi*, the Supreme Court emphasised that such rights will generally be protected on the basis of existing causes of action in domestic law.⁷⁴ The concept of a *contra mundum* injunction is therefore well-established but recent developments have gone well beyond the circumstances in which such injunctions have traditionally been granted.

These developments concern orders which have come to be known as “persons unknown” injunctions or “newcomer” injunctions.

These are injunctions to restrain actions in breach of the claimant's rights either (i) by persons who are currently acting or threatening to act in breach of those rights but whose identity is unknown to the claimant or (ii) where the claimant can show that those rights may well be invaded in the future by people but cannot know who those people may be; indeed those people may not themselves yet have formed any intention of invading the claimant's rights.

The first “persons unknown” injunction was granted in 2003, and it belonged to the first of the categories which I have just mentioned.⁷⁵

In that case, an unknown person or persons had stolen a pre-publication copy of a new Harry Potter book and tried to sell it to newspapers. There was no doubt that the wrongdoer existed but his or her identity was unknown. It was held that it was permissible to join a defendant by description, rather than by name, and to grant an injunction against them provided their description in the order was sufficiently certain to identify who was included and who was not.⁷⁶

This is a far cry from the way in which “persons unknown” injunctions falling in the second category have since developed.

⁷¹ *In re X (A Minor) (Wardship: Injunction)* [1984] 1 W.L.R. 1422.

⁷² [2025] UKSC 15, [2026] AC 63.

⁷³ See *Venables v News Group Newspapers Ltd* [2001] Fam 430, *X (Formerly Mary Bell) v O'Brien* [2003] EWHC 1101 (Fam) and *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB).

⁷⁴ [2025] UKSC 15, [2026] AC 63, paras 83-99.

⁷⁵ The injunction was initially granted by Laddie J in *Bloomsbury Publishing Plc, JK Rowling v Newsgroup Newspapers Limited* [2003] EWHC 1087 (Ch) and continued by Rimer J in [2003] EWHC 1150 (Ch) and Morritt VC in [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633.

⁷⁶ [2003] 1 WLR 1633, para 21.

The paradigm case in the second category is an anticipated mass trespass on the claimant's land. The claimant knows that there is a real and present risk of trespass, but it is impossible to know who might commit it.

Another example is where the anticipated occupation of land will be in breach of planning controls imposed by the local authority. Local authorities have by statute power to apply for injunctions to prevent breaches of planning rules. These were the circumstances of the seminal decision of the UK Supreme Court in *Wolverhampton CC v London Gypsies and Travellers* in 2023.⁷⁷

Travellers had occupied land in breach of planning rules and the local authority anticipated that they or other Traveller groups would occupy a nearby piece of land. The injunction which the local authority sought would restrain persons unknown from occupying a specified area of land.

The whole world potentially fell within the terms of the injunction. It was therefore clear that there were no defendants (even by description) at the time that the proceedings were issued or the order was made.

The case raised a range of basic conceptual issues, such as:⁷⁸

- i) Can proceedings be issued against unknown and unknowable defendants?
- ii) Can the court grant an injunction which is not against any particular persons (even by description) but in effect against the whole world?
- iii) Is it even the business of the civil courts to make orders not as between the parties (however identified) but, on the application of one claimant, to regulate what everyone can or cannot do?
- iv) Can such injunctions be permanent, ie final?
- v) Given that the application for an injunction cannot be served (because there is no defendant), is it right to grant an injunction without those affected by it being given notice, except by advertisement or notice attached to the property?⁷⁹

All those issues were raised by the facts of *Wolverhampton*.

The solution to these issues which the Supreme Court adopted was not to try to fit the order into an existing category of injunction. The Court of Appeal in a number of earlier

⁷⁷ [2023] UKSC 47, [2024] A.C. 983.

⁷⁸ Ibid, paras 13 and 14.

⁷⁹ See Lord Eldon LC's comment in *Iveson v Harris* (1802) 7 Ves Jr 251 that 'the Court has adhered very closely to the principle, that you cannot have an injunction except against a party to the suit' (p. 257). Lord Eldon's comment was approved by Barrett J in *Trump v CASA Inc* at p. 837.

cases (as well as in *Wolverhampton* itself) had tried to do that, with unsatisfactory results.

The Supreme Court held:

- i) The injunction cannot be categorised as either interim or final. It has features of both, but it is essentially and necessarily an injunction granted without notice to those who may be affected by it. Once granted, it remains in place unless and until challenged by a person who is affected by it.⁸⁰ This is subject to a requirement for review of whether the injunction should remain in force.⁸¹
- ii) The grant of the injunction complies with the accepted standards of procedural and substantive fairness and justice because the law-abiding person can apply for a variation or discharge of the injunction.⁸²
- iii) The injunction is essentially a *contra mundum* injunction, rather than an injunction against a defined group of persons.⁸³
- iv) Most importantly for the purposes of this lecture, these injunctions are “a wholly new type of injunction”.⁸⁴

These conclusions say nothing about whether in any particular case an injunction should be granted. An injunction, being an equitable remedy, is discretionary. Discussion of factors applicable to the court’s decision whether to grant an injunction, and the safeguards which should accompany an injunction if granted, lie outside the scope of this lecture. But they are matters of the greatest importance and they are discussed by the Supreme Court at paras 167 and 187ff.

I have been concerned in this lecture to explore the conceptual basis on which the court may grant an injunction, through the medium of recent cases.

There can be no doubt that the last 50 years have seen a most remarkable development in judicial thinking on this subject.

The re-assertion of the equitable principles on which the power to grant an injunction is based has enabled the power to be freed of the restrictions that had been placed upon it. The essential flexibility of equity is inconsistent with those restrictions.

If I were to suggest an area for detailed academic study, it would be the approach of the Court of Chancery in the 18th and 19th Centuries to its power to grant injunctive relief and

⁸⁰ [2023] UKSC 47, [2024] A.C. 983, para 139.

⁸¹ Ibid, para 225.

⁸² Ibid, para 141.

⁸³ Ibid, para 238(ii).

⁸⁴ Ibid, para 144.

its understanding of that power. The modern authorities, and some textbooks, are replete with statements of the breadth of that power. I do not mean to doubt those statements, but it would be interesting and helpful to see a detailed examination of the basis for those statements in an analysis of the old cases.

Disregarding those many cases in which the Court of Chancery granted injunctions and other orders in support of equitable or common law rights, most (indeed probably all) the other injunctions and orders, such as orders for discovery and anti-suit injunctions, were made in support of or to prevent abuse of the processes of English courts. The same is true of many of the new types of order developed more recently, such as freezing injunctions, search orders, *Norwich Pharmacal* orders and *Bankers' Trust* orders, as the Supreme Court noted in *Wolverhampton*.⁸⁵ But, other cases have gone well beyond this, as shown by internet blocking orders and persons unknown orders (although the latter might be seen as a development, albeit a very significant development, of the *quia timet* injunction.⁸⁶

But we must acknowledge that with this re-assertion of flexibility comes greater judicial responsibility.

Critically, what are the circumstances in which this flexibility is to be used?

The very general words of s.37 that the court may grant an injunction when it appears to the court to be “just and convenient” to do so do not give licence to judges to indulge their particular inclination in a particular case. While ultimately it is properly said that an injunction will be granted to avoid injustice, it is too general a statement to provide guidance to the judge in an individual case

We must bear in mind the concern graphically expressed by Joseph Story, the great American writer on equity, in a passage quoted by Justice Scalia in the US Supreme Court case of *Grupo Mexicano*:

"If, indeed, a Court of Equity in England did possess the unbounded jurisdiction, which has been thus generally ascribed to it, of correcting, controlling, moderating, and even superseding the law, and of enforcing all the rights, as well as charities, arising from natural law and justice, and of freeing itself from all regard to former rules and precedents, it would be the most gigantic in its sway, and the most formidable instrument of arbitrary power, that could well be devised. It would literally place the whole rights and property of the community under the arbitrary will of the Judge, acting...according to his own notions and conscience; but still acting with a despotic and sovereign authority."⁸⁷

⁸⁵ Ibid, paras 143(viii) and 160.

⁸⁶ See *Sir Elly Kadoorie & Sons Ltd v Bradley* [2026] HKFCA 2 at para 46 (Cheung CJ and Lam PJ).

⁸⁷ Joseph Story, *Commentaries on Equity Jurisprudence*, Vol 1 (Hilliard, Gray & company, 1836), section 19, p. 21, cited by Justice Scalia in *Grupo Mexicano* at p. 332.

But Equity does not act in an arbitrary way but acts according to principles which are established and honed over time. Those principles emerge in the classic common law method of incremental development on a case-by-case basis.

In the context of injunctions, it can be seen from the existing cases that an overall concern is to provide effective protection for the rights of the claimant. Those rights may become enforceable only in the future or, while those rights may be enforceable against A, they need the protection of an injunction against B, a person who is committing no actionable wrong.

This can be seen in the very different circumstances of the cases I have discussed:

- i) A freezing order given by the courts in country A against a defendant in proceedings in country B where the claimant otherwise has no justiciable claim: *Convoy Collateral v Broad Idea*.⁸⁸
- ii) An injunction against a person who has committed an actionable wrong, but whose identity is unknown: *Bloomsbury Publishing v Newsgroup*.⁸⁹
- iii) An injunction to restrain the commission of actionable wrongs in the future in circumstances where there is a real risk, established by evidence, that the wrongs will be committed and where the identity of the likely wrongdoers is not (and cannot be) known: *Wolverhampton CC v London Gypsies and Travellers*.⁹⁰
- iv) An injunction against those who, without themselves committing any actionable wrong, facilitate the commission of actionable wrongs by others: internet blocking orders.⁹¹

In his lecture here last year, my colleague and longtime friend Lord Briggs concluded that equity in the modern world was alive and well.⁹² He supported that conclusion by reference to three main areas, one of which was the development of the remedy of an injunction.

I have chosen to concentrate on that one area, but I believe that the developments in the law relating to injunctions amply supports the view that equity is indeed alive and well.

⁸⁸ [2021] UKPC 24, [2023] AC 389.

⁸⁹ [2003] EWHC 1205 (Ch), [2003] 1 WLR 1633.

⁹⁰ [2023] UKSC 47, [2024] AC 983.

⁹¹ *Cartier International AG v British Sky Broadcasting* [2016] EWCA Civ 658, [2017] Bus LR 1; and [2018] UKSC 28, [2018] 1 WLR 3259.

⁹² Lord Briggs, 'Never say Never: Equity's Reach in the Modern Age' (2024), https://supremecourt.uk/uploads/speech_lord_briggs_06052024_94faac9b27.pdf

