

1. If a court would not have granted an injunction before the Judicature Act, it has no power to grant such today. To what extent does this statement reflect the current thinking and case law on the remedy of injunction?

### **Suggested Answer**

Generally define injunction as discussed in 18.1 of this chapter. You may wish to state briefly the various classifications of injunctions and the principles applicable to injunctions in general, rather than specific types (18.2). Then consider the way in which courts originally granted injunctions, that is when it was only the Court of Chancery that could grant injunctions as discussed in 18.2.2. The fusion of equity and common law means that any court can now grant injunctions and that then raises the question whether the areas over which a court can now assert its equitable jurisdiction has changed, by virtue of that amalgamation. State the two types of views: the narrow and the broad. The narrow states that the court could not grant an injunction today over matters where they previously could not have granted it. *Cummins v Perkins* (1899) 1 Ch 16, *North London Rly Co v Great Northern Western Rly Co* (1883) 11 QB 30 and *Gouriet v Union of Post Office Workers* all supported this classical view. But see *Chief Constable of Kent v V* [1983] QB 34, *Bayer AG v Winter* [1986] 1 WLR 497, *Parker v Camden London Borough Council* [1985] 2 All ER 141, *South Carolina Insurance v Assurantie Maatschappij* [1986] 3 All ER 487 where the courts all supported the broad view. It might be worthwhile to think about whether it is really important to endorse one or the other view and whether it is not advisable to leave to courts to consider whether the grant of injunction in any given case is or is not appropriate, rather than whether such power existed before or not.

2. The requirement of mutuality is indispensable in a consideration of specific performance. Do you agree?

### **Suggested Answer**

See 18.7 and 18.8

A definition of specific performance will be the appropriate place to start attempting this question. For a general description of specific performance, see *Wilson v Northampton and Banbury Junctions Rly Co* (1874) 9 Ch App 279 (see 18.7). Mention that it is an action in personam: *Penn v Lord Baltimore* (1750) 1 Ves Sen 444. However, the court may refuse the grant of specific performance on several grounds such as contracts relating to personal property, rather than land, contracts requiring constant supervision by the court, contracts for personal services and contracts lacking in mutuality. Explain what a contract lacking in mutuality means as stated in *Flight v Bolland* [1824–34] All ER Rep 372, which lays down the general principle concerning mutuality and specific performance. But the rule of mutuality does not apply to certain instances, e.g. in the sale and purchase of land: *Price v Strange* [1977] 3 All ER 371. Certainly, given the exceptions to the rule, it is not true that mutuality cannot be dispensed with, only that the instances in which it can be exempted are quite few.

3. The court would not normally grant an equitable remedy that will require its continuous supervision. Discuss.

### **Suggested Answer**

#### See 18.3 and 18.8.2

Equitable remedies are granted by the court for a variety of reasons. It depends on what type of action one is taking. So, an action for equitable remedy could be for an injunction, an order for specific performance and so on. Regardless of what type of remedy is sought, there are certain principles governing them. For injunction, refer to the principles stated in 18.3. An important principle is that the court will not grant an equitable remedy where such remedy will require continuous supervision. This caveat relates more to specific performance than other types of remedies, although it also applies to injunctions. For an application, see *Ryan v Mutual Tontine Westminster Chambers Association* [1893] 1 Ch 116 (see 18.8.2). However, it does not mean that the court will automatically refuse an application for remedy because it cannot supervise it. See *Tito v Waddell (No 2)* [1977] Ch 106 and *Posner v Scott-Lewis* [1987] Ch 25.

4. Once a claimant can prove that damages are not enough to remedy a breach of wrong committed against him, the court will automatically grant an injunction. Evaluate this statement in the light of the case.

### **Suggested Answer**

See 18.3 and 18.4.

Discuss the various grounds that will be considered by the court before granting injunctions. One of the conditions is if damages will not suffice. So, where damages will be enough to remedy the wrong, the court will not grant an injunction (*London and Blackwell Rly Co v Cross* (1886) 31 Ch D 354), *AG v Sheffield Gas Consumers Co* (1853) 3 De G M & G 304. (See 18.3, 18.3.1. But note that appropriate damages does not mean that the defendant will have the ability to purchase the right to keep doing wrong. See *Slack v Leeds Industrial Co-Op* [1924] 2 Ch 475. Hence, even where damages will be adequate, the court might still award an injunction if that will be more appropriate.

See *Beswick v Beswick* [1968] AC 58 where a nephew purchased the business from a coal merchant, Peter Beswick for £5 a week. He had promised to pay that sum to Peter's widow when Peter died and the court ordered him to continue paying.

5. What do we mean when we speak of discretionary power of the courts to award equitable remedies?

### **Suggested Answer**

See 18.1.1

Equitable reliefs are said to be discretionary remedies because they are mostly not granted as of right but according to how courts weigh the circumstances; hence, to a large extent, they are not predictable. Note, however, that the extent of the court's discretion is limited because the court cannot grant injunctions, for instance, indiscriminately.

The court must have reference to precedents, common sense and justice: *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] 1 Ch 149. Nor can an injunction be granted as a matter of caprice of the court. There must be a legal reason to do so. See *Medow v Medow* (1878) 9 Ch D 89. Thus, the duty of the court to have regard to legal principles and precedence, for instance, means that realistically speaking the discretion of the court in granting equitable relief is not as wide or great as it is sometimes made out to be.