

# Advanced Issues With Temporary Injunctive Relief

By

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# Introduction

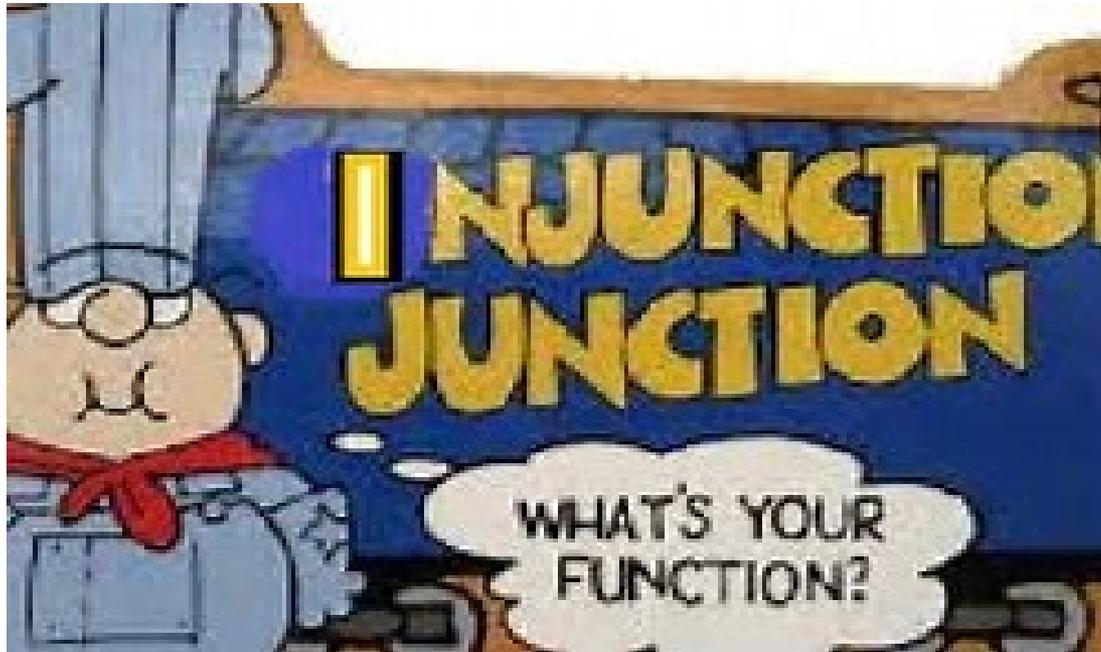
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# Introduction

- Without immediate injunctive relief, valuable rights can be lost forever.
- On the other hand, defendants generally have a right to act as they choose, and injunctive relief should not be granted absent extraordinary circumstances.
- Granting or denying injunctive relief is so important that there is a right to an interlocutory appeal of a trial court's decision.
- A party must follow procedure: this is a highly technical area of the law.

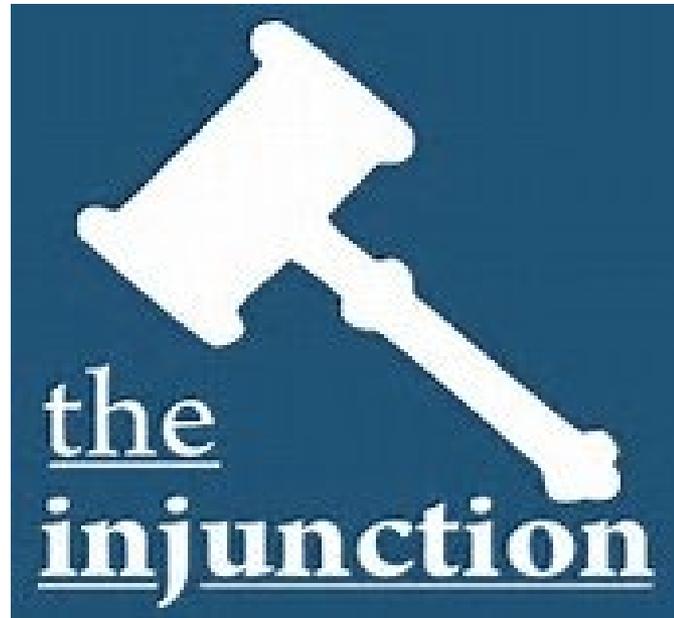
# Purpose of Injunctive Relief



# Purpose of Injunctive Relief

- The purpose is to preserve the status quo.
- It is the last actual peaceable, noncontested status that preceded the controversy.
- When one party takes action altering the relationship between the parties and the other party contests it, the status quo is the relationship that existed prior to that action.
- Status quo may be a state of action.
- The status quo, however, cannot be a violation of the law.

# Elements For Injunctive Relief



# Elements For Injunctive Relief

- Equitable elements: cause of action, probable right to recover; probable, imminent, and irreparable harm; and no adequate remedy at law.
- “The principles governing courts of equity govern injunction proceedings unless superseded by specific statutory mandate. In balancing the equities, the trial court must weigh the harm or injury to the applicant if the injunctive relief is withheld against the harm or injury to the respondent if the relief is granted.”

# Elements for Injunctive Relief

- Texas Civil Practice And Remedies Code Section 65.011 has five bases for injunctions.
- Subsections (1) and (2) do not expressly require a finding of irreparable injury and Subsections (4) and (5) expressly state that relief can be granted “irrespective of any remedy at law.”
- Courts have held that even though the statute does not require a finding of irreparable injury, that such a finding is still required.

# Preliminary Issues



**PRELIMINARY**

# Preliminary Issues

- Subject matter jurisdiction
- Waiver of objection to personal jurisdiction: participation in hearing, agree to extend TRO/TI.
- Impact of lack of personal jurisdiction.
- Waiver of objection to venue
- Necessary parties
- Geographic limits to injunctions

# Pleading Requirements



# Pleading Requirements

- Because an injunction is a remedy, a party must state a claim.
- Must be verified or supported with affidavit or unsworn declaration.
- Waiver of objection to failure to verify.
- Attorney verification.
- Texas Rule of Civil Procedure 682 requires it contain: *“a plain and intelligible statement of grounds for such relief.”*
- Some courts of appeals have been lenient.
- However, some courts hold: “Texas courts have uniformly held that in obtaining injunctive relief, ‘[an] applicant must specify the precise relief sought and that a court is without jurisdiction to grant relief beyond and in addition to that particularly specified.’”
- Plead broadly because a narrower TI is better than a broader TI.

# Defendant's Affirmative Defenses



# Defendant's Affirmative Defenses

- The El Paso court has determined that a trial court does not have jurisdiction to consider merits-based affirmative defenses in determining whether a temporary injunction should be granted.
- The Dallas court held that it is “within the trial court’s discretion to reserve matters of a purely defensive nature to the plenary hearing” and the trial court “does not abuse its discretion” in granting the injunction and reserving those matters to be determined along with the ultimate rights of the parties.
- The Dallas court has also held that a trial court can consider affirmative defenses.

# Extending TROs



# Extending TROs

- A temporary restraining order may be extended by written order, on a showing good cause, for an additional fourteen days. This can be done once.
- An oral extension is not effective.
- For example, a trial court may not orally extend a temporary restraining order at the end of a temporary injunction hearing for any period of time.

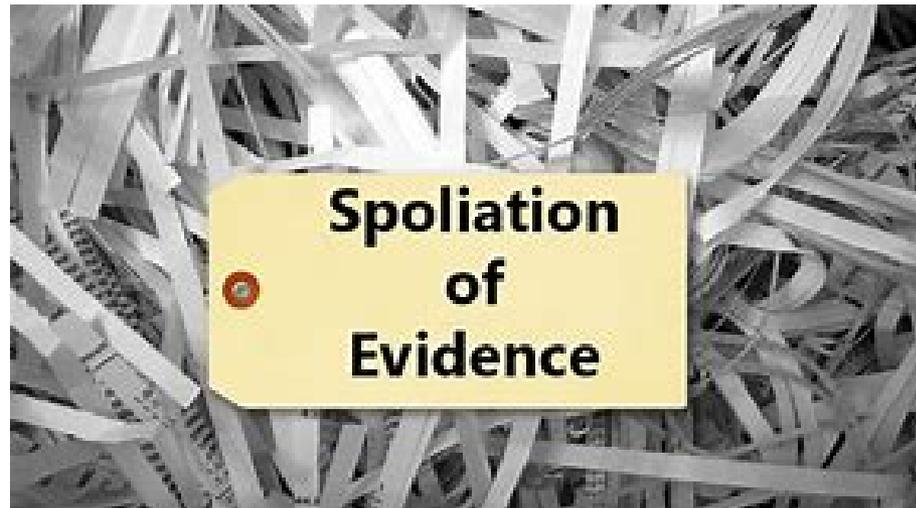
# Service of Writ of Injunction



# Service of Writ of Injunction

- There is some authority that if the injunction is not properly issued or served, then it is improper and not enforceable.
- But other courts would imply the opposite – that service of the writ is not a condition precedent to enforcement where the defendant has notice of the injunction.
- If a party has notice of an injunction it should not disobey the injunction; instead, if service is erroneous, it should take steps to have the order or return of service set aside.

# Spoliation and Contempt



# Spoliation and Contempt

- One court of appeals denied an attempt to use a spoliation presumption to support a temporary injunction where the trial court did not make an express finding on spoliation.
- Another reviewed evidence of spoliation and considered that in conjunction with the trial court's ability to weigh the credibility of the witnesses.
- Whether defendants violated a temporary restraining order is not relevant to whether a trial court properly enters a temporary injunction.
- Trial court should exclude evidence of contempt for the purposes of establishing a right to a temporary injunction.

# Form of Order



# Form of Order

- A valid order for a temporary injunction must: (1) state the reasons for the injunction's issuance by defining the injury and describing why it is irreparable; (2) define the acts sought to be enjoined in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him; and (3) set the cause for trial on the merits and fix the amount of the bond.
- The most common reason for the reversal of injunctions is an omitted statement on a trial setting and bond amount.
- Texas Supreme Court held that a trial court need not explain its reasons for a probable right of recovery conclusion, but must give the specific reasons for an irreparable injury conclusion.
- Can a party waive error regarding the lack of findings?

# Amended Orders

- Historically, trial courts could not amend injunction orders that were on appeal.
- Now, TRAP 29 allows courts to do so.
- An amended order is a completely new injunction order that supersedes an original order.
- An appellant should file a new notice of appeal because appeal of the original order is now moot.
- In fighting an attempt to amend an order, a party should point out that the movant seeks to dissolve the original order and/or seeks a successive injunction, both of which require a showing of changed circumstances and should not be done to cure form defects in the original order (missing trial date, bond amount, or statement of irreparable harm)..

# Appealing Temporary Injunctions



# Temporary Injunction

- Section 51.014(a)(4) provides that an appeal from an interlocutory order granting or refusing a temporary injunction or granting or overruling a motion to dissolve a temporary injunction is permitted.
- Some Texas courts have allowed interlocutory review of an amended order making a substantive modification to a temporary injunction.

# Temporary Restraining Order

- Section 51.014(a)(4) of the Civil Practice And Remedies Code does not provide for interlocutory appeal of a temporary restraining order, and it is therefore not appealable.
- But is it really a TRO?
- Whether an order is a non-appealable temporary restraining order or an appealable temporary injunction depends on the order's characteristics and function, not its title.
- Potentially, a party can seek mandamus relief regarding TROs.

# Permanent Injunction

- A party can appeal a permanent injunction if such relief is in an otherwise final judgment that resolves all parties and all claims.
- However, parties have no right to an interlocutory appeal of a permanent injunction that is not otherwise in a final judgment.
- Once again, is it really a permanent injunction or a temporary injunction?

# Findings of Fact



# Findings of Fact

- A party challenging a trial court's order on a temporary injunction should request findings of fact and conclusions of law.
- As the appeal will be an interlocutory appeal, Texas Rule of Appellate Procedure 28.1 provides that a trial court may file findings of fact and conclusions of law within thirty days after an interlocutory order is signed.
- Therefore, whether a court issues findings and conclusions after a temporary injunction is discretionary.

# Findings of Fact

- Some courts hold that in the context of interlocutory orders, where no findings are made, a court should presume that the trial court made all findings necessary to support the order and use traditional legal and factual sufficiency standards to evaluate the findings.
- Other courts hold that findings and conclusions may be “helpful” in determining if the trial court exercised its discretion in a reasonable and principled fashion, but do not carry the same weight on appeal as findings made under Rule 296 and are not binding when a court of appeals reviews a trial court’s exercise of discretion.

# Findings of Fact

- A party may make a request for additional findings.
- Where a trial court's injunctive order adequately states the specific reasons for its issuance, the party opposing it cannot complain about additional findings if it did not request them.
- A trial court is not prohibited from reviewing the record after entering an order and then amending, vacating, or otherwise altering the first order while the trial court still enjoys plenary power.
- A reviewing court should resolve any conflicts between additional findings and original findings in favor of the additional findings.

# Findings of Fact

- In the context of a temporary injunction, under Rule 683, the trial court must make certain minimal findings in the order.
- At least one court has held that separately filed findings of fact and conclusions of law do not satisfy the mandatory requirement of Rule 683.
- So, even if a finding as to irreparable harm is included in separate findings, that will not suffice to support an injunction order that does not have any such a finding.

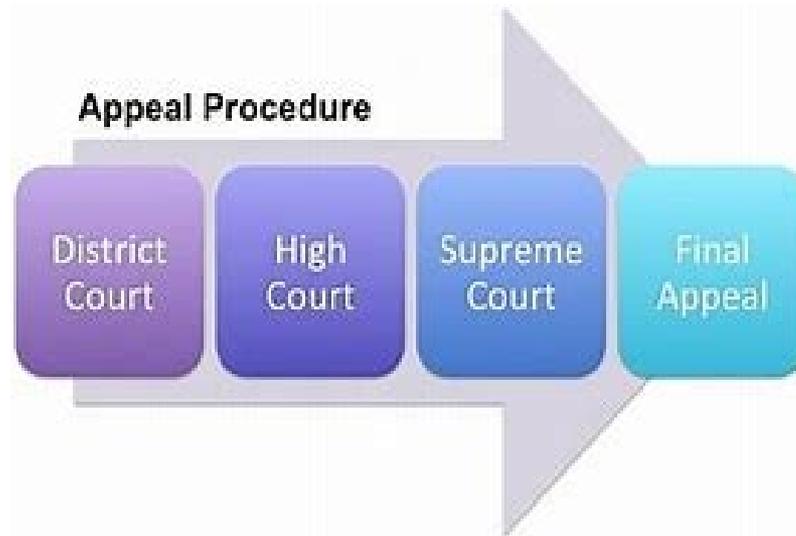
# Limits on Temporary Injunction Appeals



# Limits On Temporary Injunction Appeal

- Because an appeal of an order granting a temporary injunction is an appeal from an interlocutory order, the merits of the applicant's case are not presented for appellate review.
- Courts of appeals cannot consider other subsidiary rulings in conjunction with a temporary injunction appeal.
- Must challenge each ground that could support injunctive relief or face waiver.

# Appellate Procedure



# Procedure

- An appeal of a temporary injunction is an accelerated appeal.
- So, an appellant has twenty days to file notice of appeal and post-order motions will not extend the deadline.
- Although rarely done, an appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers.
- Further, the court of appeals may consider the appeal without appellate briefing.

# Procedure

- Appellant's brief is due twenty days after the record.
- Appellee's brief is due to twenty days after the appellant's brief.
- Appellant's reply brief is due twenty days after the appellee's brief.
- The court of appeals has discretion to extend these deadlines, or in the interests of justice, can also shorten the time for filing briefs and for submission of the case.
- Court can hear oral argument.
- Disposition of the appeal is accelerated and is required to be given priority over other appeals.

# Further Trial Court Action



# Further Trial Court Action

- Appeal does not suspend the injunction order.
- Appeal does not stay trial, and the trial court can issue other orders.
- Appellant can seek a stay of the injunction order from the trial court or court of appeals.
- If the appellate court does stay an injunction, a trial court's further order is void.
- If a trial court renders a final order while an appeal is pending, the appeal becomes moot and should be dismissed.

# Supersedeas



# Supersedeas

- TRAP 29.2 states that the trial court may permit an order granting interlocutory relief to be superseded in accordance with Rule 24.
- If the trial court refuses supersedeas, the appellant may move the appellate court to review that decision for abuse of discretion.
- When an appeal from an interlocutory order is perfected, an appellate court may make any temporary order necessary to preserve the parties' rights until disposition of the appeal "and may require appropriate security."
- But the appellate court may not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas or another order made under Rule 24.
- So, a motion to stay and an appellant's request for supersedeas should be tied together.

# Supersedeas

- TRAP 24.2(a)(3) provides that when the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post.
- The security must adequately protect the judgment creditor against loss or damage that the appeal might cause.
- But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that relief was improper.

# Supersedeas

- Rule 24.4 authorizes appellate courts to engage in supersedeas review, specifically to review (1) the sufficiency or excessiveness of the amount of security, (2) the sureties on a bond, (3) the type of security, (4) the determination whether to permit suspension of enforcement, and (5) the trial court's exercise of discretion in ordering the amount and type of security.

# Standard of Review

What's the  
**STANDARD OF  
REVIEW**  
Got To Do With It?

# Standard of Review

- Whether to grant or deny a temporary injunction is within the trial court's sound discretion.
- A party challenging the trial court's ruling must establish that the trial court reasonably could have reached but one decision regarding factual issues.
- An abuse of discretion does not exist where the trial court based its discretion on conflicting evidence.
- However, a reviewing court will apply a de novo standard of review for pure questions of law.

# Supreme Court Review



# Supreme Court Review

- Effective September 1, 2017, the Texas Legislature's HB 1761 substantially modified the Texas Supreme Court's jurisdiction over final and interlocutory orders.
- This statutory change impacts temporary injunction orders executed on or after September 1, 2017.
- This bill provides that Texas Government Code Section 22.001 is amended to state that the Texas Supreme Court has jurisdiction via one basis: any judgment or order that the Court determines raises an issue of law that is important to the jurisprudence of Texas.

# Impact Of Appeal

- If affirmed, injunction becomes appellate court's injunction as well.
- Law of the case?
- Res judicata or collateral estoppel?
- Stare Decisis?
- Risk vs. Reward



# Conclusion

- Seeking an injunction order raises many different issues.
- The author hopes that the paper and presentation is an assistance.

