



Fraud Related Definitions

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Actions of arrest

The action of arrest is a unique Manx remedy available to creditors whose debtors are resident and/or retain property on the Island. The aim of the action of arrest is to ensure that debtors submit to the Manx courts to answer for their debts.

The arrest action gives a creditor with good grounds for supposing that their debtor is about to leave the island without settling the debt, the right to arrest his debtor (“a personal arrest”) and/or the debtor’s property to the value of the debt (“proprietary arrest”). In addition, there are further requirements for the two forms of arrest. For a personal arrest the creditor must have good grounds for supposing that the debtor will remain absent without settling the debt whilst for a proprietary arrest there must be good grounds for supposing that the debtor intends to remove a substantial part of his debt from the island.

An arrest application is made “ex parte” with supporting affidavit. In his affidavit the creditor must swear his belief that arrest “is just and reasonable” and that the “absence of the defendant from the Isle of Man will materially prejudice the plaintiff in the prosecution of his action”. The Deemster will grant arrest if satisfied that the creditor has a good cause of action over the debtor for the debt and sufficient evidence of the creditor’s beliefs regarding the creditor’s intentions as set out above.

If the Deemster authorises a personal arrest, the arrest is affected by a Police Constable who detains the arrestee in custody until he appears in court in respect of his debt. This must take place at the next available sitting of the court. Once the debtor has agreed to submit to the jurisdiction he must be released.

Affidavit

An affidavit is a formal sworn statement of fact, signed by the author and witnessed as to the authenticity of the author’s signature by a notary public or commissioner of oaths. Advocates can apply to the First Deemster to be commissioned as notary publics. The staff of the High Courts of Justice on Deemster’s Walk will perform the service of a Commissioner of Oaths for a nominal fee.

An affidavit is a form of evidence in contrast to the pleadings which are only a statement of the respective parties’ case. Accordingly, many forms of action, particularly the more draconian ones, make the provision of an affidavit the minimum evidential requirement.

Anton Piller (Search/Seizure Order)

Anton Piller orders are also known as Search/Seizure orders. The Anton Pillar is a court order which orders a defendant to give a plaintiff permission to search premises and/or seize certain evidence/documentation without prior warning. It is used to prevent destruction of incriminating evidence, particularly in cases of alleged trademark, copyright or patent infringements.

It is considered to be a highly draconian remedy since the right to apply for the order arises on an ex parte basis. Because such an order is essentially unfair to the accused

party, Anton Piller orders are only issued when onerous conditions are met by the party applying for the order.

In order to successfully obtain an Anton Pillar order there must be an extremely strong [prima facie](#) case against the respondent. That case must prove that the potential consequences of not obtaining the order must be very serious, and the court must be presented with a clear evidence that the respondents have in their possession incriminating documents or things and that there is a real possibility that they may destroy such material before an [inter partes](#) application are can be made.

It is important to stress, that the Manx [civil](#) court has the power to issue a search warrant giving a party the power to enter another's premises. The order does not authorise advocates or anyone else to enter the defendants' premises against their will. The plaintiffs must get the defendants' permission. However, what the Anton Piller does is it actually orders a defendant to give permission to enter. It is not a criminal search warrant, and is not a tool utilised by the Police.

Claimant, Defendant, Noticed Party

The Isle of Man will shortly be changing its High Court Rules of procedure. These new rules will introduce many changes including changes to titles and descriptions. Accordingly, in claims issued before 1 September 2009 parties will continue to be referred to by their names under the old Rules. Under the old Manx rules, the party bringing the claim is known as the plaintiff. The party defending the claim is known as the defendant. Those names will change in respect of litigation commencing after the 1 September 2009. The party formerly known as the plaintiff will subsequently be known as the claimant. Further, the defendant will continue to be referred to as the defendant. In petitions, the party bringing the petition is the petitioner and the party responding to it is the respondent. A noticed party is a party which the court considers should be served because of its potential involvement in the action.

Contempt of Court

Contempt of court is a court order which, in the context of a court trial or hearing deems an individual as having been disrespectful of the court. It has often been said that the phrase contempt of court is unfortunate and misleading since it implies a form of insult to the judiciary. [Precedents](#) make it clear that contempt of court is the protection of the court process itself. It is the court which punishes for contempt.

Contempt of Court can be classified in one of two ways. Firstly, criminal contempt which consists of words or acts obstructing, or tending to obstruct or interfere with the administration of justice. Secondly, civil contempt (otherwise known as contempt in procedure), which consists in disobedience to the judgments, orders, or other process of the court, and involving a private injury.

Criminal contempt occurs where the conduct of a party is designed to disrupt court proceedings, or is an attack upon the judge or an officer of the court in the execution of his duties. By contrast, civil contempt is for instance breach of a court order or an undertaking given to the court. The court initiates proceedings in cases of criminal contempt. Applications for civil contempt can be made by either party although the court may instigate proceedings in exceptional circumstances.

Cross Examination

In law, cross-examination is the interrogation of a witness called by the opposing Advocate. Once a witness is called the opponent's lawyer can ask any questions relevant to the issues in the trial.

Damages

Damages are a type of legal remedy and refer to the money paid or awarded to a person following a successful claim by that person in a civil action. The method by which damages are calculated varies between the different types of civil action, particularly between negligence and contract. This may result in different levels of damage and accordingly.

Damages in negligence are awarded to place the claimant in the position in which he would have been had the tort not taken place. Damages for breach of contract are generally awarded to place the claimant in the position in which he would have been had the contract not been breached. This can often result in a different measure of damages. Further, damages will be reduced where a claimant has failed to mitigate the effect of his losses or was responsible for contributing to them.

“Special” damages compensate the claimant for the quantifiable monetary losses suffered by him. For example, extra costs, repair or replacement of damaged property, lost earnings (both historically and in the future), loss of irreplaceable items, additional domestic costs, etc. Special damages can include direct losses (such as amounts the claimant had to spend to try to mitigate problems) and consequential or economic losses resulting from lost profits in a business.

“General” damages are more common to personal actions and compensate the claimant for the non-monetary aspects of the specific harm suffered. This is usually termed 'pain, suffering and loss of amenity'. Examples of this include physical or emotional pain and suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, loss of enjoyment of life, etc.

Disclosure Order

Disclosure orders are made either as part of a standard step in the litigation process or on a specific application where one party believes that another party has certain evidence i.e. a document that it has failed to disclose.

Under the new High Court Rules, an order which refers to disclosure is an order to give standard disclosure unless the court directs otherwise although parties can agree to dispense with such disclosure. Standard disclosure requires a party to disclose only documents on which he relies, adversely affect his own case or another party's case or support another party's case with respect to the claim.

After the introduction of the new High Court Rules, on application, the court will have a new power to order disclosure before the commencement of proceedings where it considers it to be desirable in order to dispose fairly of the anticipated proceedings, assist the dispute to be resolved without proceedings or to save costs.

Applications for disclosure can also be made against third parties, being parties who are not parties to the original action.

Discovery

Discovery is the process by which parties exchange documents which are relevant to the issues in dispute as revealed by the pleadings. The general procedure is that the parties must exchange lists of documents within 14 days of the close of pleadings. If that is not done, either party may apply to the court for an order that the list be produced.

Where a party believes that a specific document is in the custody, power or possession of the other party and that it has not been disclosed in the list of documents, he can apply to court for a verifying affidavit confirming the completeness of the list of documents prior to applying for an affidavit stating whether or not any specified document is, or has at any time been, in his possession, custody or power, and if not when he parted with it and what has become of it.

Equity

Equity is the name given to the set of principles of fair justice which underpin a number of legal remedies. A common approach to equitable remedies is the balancing of the interests of the party seeking the remedy against the interests of those potentially affected by it. Accordingly, it will not be possible to obtain an equitable remedy where, after performing a balancing test, the court considers it is unjust to grant it. The most common equitable remedies are the injunction and the receivership.

Estoppel

This is a legal doctrine whereby a party is barred from claiming or denying an argument on an equitable ground. The main forms of estoppel are as follows:- res judicata, estoppel by deed and estoppel by representation.

In litigation, res judicata (meaning "the fact has been decided") is frequently relied upon as a defence to claims. In a Manx context res judicata refers to a decision which has been decided once and for all by the Manx courts so that it can only be challenged by a higher court in the judicial hierarchy. For example, a decision made by the High Court can only be challenged by appealing to the Staff of Government and then with Special Leave to the Judicial Committee of the Privy Council. However, Manx litigation would not estop a party from pursuing a claim in the European Court of Human Rights or European Court of Justice although it would be relevant to such litigation. Other than by progressing through the court hierarchy, the subject matter of the decision may not be re-litigated by the parties at a later date.

The principle prevents the same claim from being raised again between the parties to the litigation (for example, the claimant raising the same claim for recovery or damages or other relief) or calling into question the correctness of the earlier decision (for example, where the defendant argues that a damages award is excessive). The principle applies to matters of fact and estoppel can also arise where a party makes a decision about how to pursue his claim. One cannot argue that a contract exists in one set of litigation and that the same contract does not exist in a separate claim.

For example, a bank is misled into making a £20 million pound loan for a ship purchase. It conspires that the ship is only worth £1 million. This presents the potential claimants with a dilemma. A contract induced by fraud is voidable not void and therefore remain valid until it is set aside. Therefore, no claim in unjust enrichment/restitution can take place whilst the contract exists. The claimant can either (i) rescind the contract and pursue an equitable claim for the full sum or (ii) rely on the contract and make a proprietary claim against the ship. If the plaintiff seeks to assert the contract for a proprietary claim he will be estopped from pursuing the equitable claim.

Evidence-in-Chief

Examination-in-Chief is one stage in the process of adducing evidence from witnesses in a court of law. Direct examination is the questioning of a witness by the party who called him or her, in a trial. Direct examination is usually performed to elicit evidence in support of facts which will satisfy a required element of a party's claim or defence.

Ex parte

Ex parte ("for one party only") refers to those legal proceedings which the law permits to be brought by one party in the absence of and without representation or notification to the other parties.

Forum Conveniens

The correct jurisdiction for the hearing of claim may not be clear. A contract dispute may involve a Manx party and say French or German parties, concerning the production of building materials in Thailand to be delivered to Spain. If the contract between all the parties does not expressly set out which country's courts should deal with all disputes, an issue can arise as to which jurisdiction is the most appropriate to hear those disputes.

When jurisdiction is in issue this will lead to a hearing into the "forum conveniens", or the "correct forum". Forum conveniens is a legal term for the jurisdiction that is the convenient forum for a claim to proceed in. The law has developed a two stage test. In simple terms, the first stage of the test states that the forum with the closest and most real and substantial connection with the matter will be deemed to be the natural forum. The second stage of the test is that if it is impossible to obtain substantial justice in one country, the trial can be held elsewhere.

Freezing Order (Mareva)

A freezing order is a form of prohibitory injunction. A freezing order is also referred to as a "Mareva injunction".

The freezing order allows a claimant to freeze the assets of a defendant, either locally or even worldwide if appropriate. There is a high burden on the claimant to show that he has a good arguable case on the merits and there exists a real risk that absent any injunctive relief the defendant may dissipate his assets, rendering any injunction meaningless.

The freezing order may prevent, for example, the defendant withdrawing money from his bank accounts, except in most cases to allow him reasonable living expenses or legal expenses.

Freezing orders are orders which generally prevent a defendant from having access to his bank account completely, occasionally allowing the defendant to allow funds for the purposes of sustenance. The order usually lasts for a fixed amount of time, usually until a future court date. The client has the opportunity to apply for the court to remove the injunction.

Gagging Order

A gagging order is an order which is used to supplement other pre-action orders particularly where a Mareva injunction is in place. These orders seek to prevent the respondent from informing his client of the existence of the orders. e.g. a bank is served with a freezing injunction but is gagged from informing their account holder about the reasons his account has been frozen. Gagging orders will usually only be granted for limited periods usually between 24 hours and 5 days.

Injunction

An injunction is a form of court order which compels the recipient either to do something (what is known as a mandatory injunction) or to refrain from doing something (what is known as a prohibitory injunction).

Injunctions may be further classified according to the period of time for which the order is to remain in force. A perpetual injunction will only be granted after a full trial on the merits. In contrast, an interim (or “interlocutory”) injunction is a provisional measure taken at an earlier stage in the proceedings, before the court has had the opportunity to fully consider in detail the full evidence of both parties.

In order to obtain an injunction, a claimant must have a cause of action against the party he wishes to injunct. Furthermore, an application for an interim injunction must be ancillary to a substantive claim.

The grant of an injunction is at the discretion of the court- what it considers “just and convenient”. That said, the guide principle of the law of injunctions is that the court will not permit a party to obtain injunctions to restrain actionable wrongs, for which damages are the proper remedy

A party seeking an injunction will invariably be asked to provide a cross undertaking in damages. That is, undertake to compensate a defendant for obtaining an injunction in the event that the court finds that there was no merit in its being obtained.

Inter partes

A hearing *inter partes* ("between the parties") is a hearing in which all interested parties have been served with adequate notices and are given a reasonable opportunity to attend and to be heard. Compare this with an “ex parte” hearing (see earlier).

Interlocutory

Any order, sentence, decree, or judgment, given in an intermediate stage between the commencement and termination of a cause, is referred to as interlocutory. That term is used by the Manx rules of court to describe interim actions which are not final or definitive.

The most common form of interim relief is the interim injunction which has developed its own broad body of case law.

Norwich Pharmacal

The Norwich Pharmacal jurisdiction is a form of a pre-action disclosure which can be used against a third party in order to disclose certain information to the court on the basis that they have unwittingly been mixed up in the wrongdoing of the defendant to litigation. This form of order can also be made in order to determine whether the claimant had in fact been a victim of wrongdoing.

Where the court has no statutory power to order pre-action disclosure and production of documents, because the party in whose control the documents are is not likely to be a party to subsequent proceedings, a potential claimant may commence proceedings for an order for disclosure and production by issuing proceedings against a person who has such documents in certain circumstances. Since the person who has control of the documents is not likely to be a party, the claimant has no cause of action against him as a wrongdoer.

However, if the defendant to such proceedings can be shown to have become involved in the wrongdoing of others, whether voluntarily or not, albeit innocently, to an extent which has facilitated the wrongdoing of those others, he comes under a duty to assist the victim of the wrongdoing by giving full information, by disclosure of documents or otherwise, which will identify the wrongdoers to the victim. A victim of a tort may also obtain such information from such a person innocently involved in the wrong, even though the victim cannot show that the third party had committed a tort against the victim without that information.

Petition of doloance

The petition of doloance is the Manx form of judicial review. In order to be successful, it must be shown that a decision-making body has exercised its power unreasonably/irrationally or failed to take into account relevant consideration or taken into account irrelevant ones. If that can be shown, then the court may order the decision to be quashed, a mandatory injunction compelling the decision maker to do something/take into account certain factors, as well as damages in some limited circumstances.

In the areas of fraud, there are diverse areas in which petitions of doloance may arise. For example, the Courts have confirmed that the exercise of the Attorney's General's discretion in issuing Section 24 and Section 21 orders (see later) can be subject to judicial review by doloance. Moreover, petitions of doloance have successfully compelled the AG to consider the document holders' right to a fair trial (re Section 24 order) and his right to privacy (re Section 21 order).

Pleadings

Pleadings are the formal court documents in which litigants formally set out the facts and legal arguments which support their respective cases. Pleadings are essential to the trial or hearing process as they set out the parameters of what a litigant is asking the Court for. The pleadings must provide the Court with a litigant's case, what they want and why they are entitled to receive it.

Precedent

A precedent is a legal case establishing a principle or rule that a court uses when deciding subsequent cases with similar issues or facts. When a precedent establishes an important legal principle or represents a new or changed law on a particular issue, that precedent is often known as a landmark decision.

Precedents that the courts must apply or follow are known as *binding precedents*. The general rule is that a lower court must honor findings of law made by a higher court. Generally, the decisions of lower courts are not binding on each other. Precedents that are not binding are known as *persuasive authorities*. These include cases decided by lower courts or other jurisdictions which are not binding.

In the Isle of Man, the courts have determined that the decisions of the English Court of Appeal and House of Lords are highly persuasive precedents unless there is a local condition such as a difference in the law which makes the English authority non-applicable.

Prima facie

Prima facie (“on the face of it”) denotes evidence which, unless rebutted, would be sufficient to prove a particular proposition or fact. Most legal proceedings require a *prima facie* case to exist prior to relief being granted.

Proprietary Claim

A proprietary claim as its title suggests, is a claim to have an interest in particular property. Property in this context is a broad term encompassing money held in specific bank accounts as well as physical claims. Under the law of property, when one has good title to property he can assert ownership in the traceable proceeds of that property. This is to be distinguished from a claim for general damages, where money is sought, but not a specific/identified fund.

Quantum

The word comes from the [Latin](#) "quantus", for "how much". In legal terms it is used to describe the sums in dispute between the parties.

Reciprocal Enforcement

The Isle of Man has signed a reciprocal enforcement convention with a very limited number of countries. The other parties to the Convention are the United Kingdom, Israel, Netherlands, Netherlands Antilles, Italy, and Suriname. The effect of the Convention is to create a common procedure for the enforcement of judgments obtained in one Convention country in another Convention country. Accordingly where one has obtained a judgment in one of the non-Manx Convention countries, the process by which it can be registered and enforced is relatively straightforward. Likewise, Manx judgments should be enforced with relative ease in other Convention countries. Recognition of non-Convention country judgments in the Isle of Man is also possible subject to some potentially complex rules.

Receiver

A receiver is an individual appointed by a court order either before or at any time after the commencement of proceedings. The Manx courts have a wide power and discretion with respect to the appointment of receivers. The appointment of a receiver

has the same effect as a Mareva injunction. It prevents a defendant from dealing with his assets.

A receiver is made by petition with supporting affidavit evidence. The application can be made either by a party to litigation or a non-party. The court will appoint a receiver if it considers it to be just and convenient to do so. The order can either be unconditional or on such terms as the court see fit.

However, before the appointment of a receiver the court will consider whether a hierarchy of less draconian methods have been exhausted. Typically, the court will consider first whether damages are a suitable remedy and if not whether an injunction would be suitable in its place.

Generally, where there is a risk of dissipation of assets from known bank accounts, a Mareva injunction will usually be specific remedy. However, where a defendant has in place a complex scheme, for example, controlling a network of overseas trusts, a receiver may be an appropriate remedy where a simple freezing order would not be.

The aim of the receiver is to receive specified assets and if authorized to manage and deal with them as authorized by the High Court. The receiver has responsibilities to all interested parties to preserve those assets. The court may also appoint the receiver in respect of foreign assets. However, the court will not automatically put him in possession of those assets since the ability to obtain such assets will depend upon the law of the foreign jurisdiction.

The receiver is an officer of the court not an agent of any interested party. That said, he has fiduciary duties to act with good faith and due diligence with respect to the property.

Restitution

The concept of restitution concerns whether a claimant can recover a benefit from a defendant rather than whether the claimant can be compensated for the loss suffered.

Restitution is a remedy that is available where it is proven that a defendant has been unjustly enriched at the expense of the claimant. This is a complex and developing area of the law.

Unjust enrichment requires that a defendant has received a benefit from a claimant which it was unjust for him to retain. Restitution is also available to recover property held by a defendant to which the claimant is claiming a proprietary interest.

Section 21 Order

The phrase “section 21 order” describes an order made under the powers contained in section 21 of the Criminal Justice Act 1991. The 1991 Act gives the Attorney General (AG) of the Isle of Man the power to request evidence from Manx individuals and companies in connection with foreign proceedings or investigations.

A section 21 order derives from a letter of request from a competent foreign court or authority seeking assistance with their investigation. That request must be in relation to criminal proceedings, administrative proceedings or clemency proceedings in the

foreign country. In order to issue a section 21 order the AG must be satisfied that there are reasonable grounds for suspecting that an offence has been committed and is being investigated.

The AG may cause an application to be made to the High Bailiff to receive the evidence required by the foreign organisation or authority. The process for reception of the evidence is set down in the Act. However, the specifics of the procedure are not fully detailed, particularly with regard to the rights of the potential defendant. This has led to a number of recent court cases. In particular, it has been held that the potential defendant's right to privacy must be balanced against the public interest in the prevention of crime.

Section 24 Order

The phrase "section 24 order" describes an order made under the powers contained in section 24 of the Criminal Justice Act 1990. The 1990 Act gives the Attorney General specific powers in relation to allegations of fraud and corruption. Where the AG has reasonable grounds for believing that a complex fraud or complex act of corruption has been committed in any part of the world he may order any person who he believes to hold relevant information to attend at a certain place to answer questions or furnish evidence. In the event that the documents are not provided, the Attorney General may cause a search warrant to be issued.

Service out of the Jurisdiction

As its name suggests "service out of the jurisdiction" is the process by which a party issuing a claim in the Isle of Man looks to serve that claim on parties resident in other jurisdictions. A claimant starting a claim in the Manx courts is in essence declaring that his claim should proceed in the courts of the Isle of Man. Therefore, by making a service out application, the claimant is claiming that the other party which he wishes to serve is subject to the jurisdiction of the Manx courts in respect of his claim.

In order to make an application for service out of the jurisdiction, and affidavit providing full and frank disclosure of the case against the potential party must be attached to the initial application. Furthermore, it must disclose the grounds which fulfil certain criteria specified by law upon which the served party has a connection with the Isle of Man

It is also important to note that the Isle of Man is a party to the Hague convention on service. That convention creates a special procedure by which service can be effected by central authorities designated by the state. Some countries specify that service must be performed exclusively through their Central Authorities.

Tracing

Tracing is the process by which a claimant attempts to prove what has happened to his/her property (usually through bank accounts) and asks the court to award a proprietary remedy or damages against the property or damages.

Witness Statement

A witness statement is a statement summarising the oral evidence that a witness will give at trial. The purpose of the witness statement is to set out the evidence of the

witness. If one signs a witness statement he should make clear whether or not he is able to attend a trial of the matter.

A witness statement is a formal document containing the witness's own account of the facts relating to the issue(s) arising in the dispute. Comments made in the statement should be limited to fact and there should be no comments based upon personal opinions. The purpose of the witness statement is to provide written evidence to support a party's case that will, if necessary, be used as evidence in court.

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