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MAREVA INJUNCTION :
HISTORY DEVELOPMENTS AND APPLICATION

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ABSTRACT

The importance and the effectiveness of Mareva injunction was put to test in Malaysia in 1984 and 1985 subsequent to its emergence in 1982. This arose from the BMF scandal; the biggest financial scandal in the country to date. The Mareva injunction was granted to freeze all the movable and immovable assets alike of the parties involved. To quote "The Star" dated Saturday, March 28, 1987 entitle "Hashim agrees to return more than \$120 million";

"It was ordered that the Mareva injunction which the court granted on Jan, 16, 1985, freezing Datuk Hashim's assets continue to remain in force until full realisation of the money involved"

The aim of this paper has three folds:

1. to study the history of the law prior to and subsequent to Mareva injunction;
2. to evaluate the development of Mareva injunction through decided cases; and
3. to lay out the various factors that the parties concerned must comply with before the Mareva injunction can be granted and the parameter of the Court's jurisdiction.

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CHAPTER I

INTRODUCTION

"Nowadays defaulting on debts has been made easier for the foreign debtor by the use of corporations, many of which hide the identities of those who control them, and of so-called flags of convenience, together with the development of world-wide banking and swift communications. By a few words spoken into a radio telephone or tapped out on a telex machine bank balances can be transferred from one country to another and within seconds can come to rest in a bank which is untraceable or, even if known, such balances cannot be reached by any effective legal process."

Per Lawton L.J.M the Third Chandris Shipping Case

The order known as the "Mareva"¹ injunction is one which restrains a defendant by himself or by his agents or servants or otherwise from removing from the jurisdiction or disposing of or dealing with those of his assets that will or may be necessary to meet a plaintiff's pending claim. The object of Mareva injunction is to prevent a defendant from removing his assets within the jurisdiction so as to deny the plaintiff the fruits of judgement which may be entered in his favour.

Described as a "creative"² "procedural innovation"³ in the House of Lords, and by Lord Denning as the "greatest piece of judicial reform of his time,"⁴ the Mareva finds its origin in the English Court of Appeal decisions of 1975.⁵ By early 1979 the Mareva injunction had become a common place⁶ rather than an exceptional⁷ remedy, with applications being made in the Commercial Court at the rate of about 20 per month, most of them being granted ex parte and remaining unchallenged by the foreign defendants against whom they were awarded.

By 1982 it has received statutory approval⁸ and it is employed generally against foreign and domestic alike⁹ and in respect of matrimonial, personal injuries and Fatal Injuries Act cases" as well as in commercial matters like the shipping cases where it originated. In the words of Lord Justice Kerr, it has "pervaded the whole of our law". In Malaysia, in the Federal Court's case of Zainal Abidin Bin Haji Abdul Rahman V. Century Hotel Sdn. Bhd., Raja Azlan Shah (as he was then) ruled that the High Court has jurisdiction to grant Mareva injunction pursuant to paragraph 6 of the Schedule to the Courts of Judicature Act, 1964

A. Justification for Study

The general rule establish in the late 19th century in England is that a planitiff cannot obtain an order for security over the assets of a defendant to satisfy a cause of action in