

RIGHTS AND REMEDIES POST *eBAY V. MERCExchange* - DEEP WATERS STIRRED

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ABSTRACT

eBay confirms the adage that good things often come in small packages. The court concisely focused on the inherent requirements of discretionary equitable relief in the use of injunctive remedies. The opinion informed that categorical presumptions based on presumed incidents of property rights did not satisfy the requirements of appropriate discretionary consideration. The four prongs of the requisite test “restated” for issuance of an injunction imposed the burden of proof on the plaintiff and all four factors which follow be deliberated by the court: (1) a finding of irreparable injury, (2) a finding of inadequate remedy at law for compensation, (3) a balancing of relative hardships between the parties, and (4) a finding that a permanent injunction not “disserve” the public interest.

These threshold questions appear simple and direct. What specific incidents of “rights” constitute irreparable harm to justify an injunction? What is an “adequate remedy at law?” How does one measure “value” and adequacy of compensation? What are appropriate valuation methodologies? What factors will be considered in determination of “relative harms” to the parties? What is the meaning of “disserve” the public? Is this an antonym to public benefit? Who bears the burden of alleging and proving detriment? Should it be left to the parties or the court? Should third parties representing the “public interest” have standing on these limited matters?

Distinct from the immediacy of these questions, but permeating all sections of this paper are issues focusing on the mystique of that simple “why.” Why did the court make the distinction between rights and

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