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## Introduction to INJUNCTIONS & CONTEMPT OF COURT

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## Format of the Talk

1. Injunctions
2. Contempt of Court
3. Q&A/Discussion Session



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## INJUNCTIONS - OVERVIEW

1. Basis, nature and type
  - a. Interim/final
  - b. Persons unknown
2. Test
  - a. American Cyanamid
  - b. Modifications
  - c. Persons unknown
3. Procedure
4. Variation, appeal and discharge
5. Final injunctions



## Injunctions: basis, nature and type

1. Power:
  - Domestic: s.37 Senior Court Act 1981; broad power (*Fourie v Le Roux* [2007] UKHL 1)
  - International: s.25 Civil Jurisdiction and Judgments Act 1982
2. Stage of proceedings
  - Final
  - Interim – *National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Practice Note)* [2009] UKPC 16.
3. Need for underlying cause of action, but see CPR 25.1(4)



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## Injunctions: nature and type

- Two types of injunctions
  - Mandatory
  - Prohibitory
- In response to wrongdoing, or in respect of feared future wrongdoing ('*Quia timet*')
- Against named defendants or against 'persons unknown' who fall into a specified class, e.g. being present on certain land.

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## Typical applications – Examples

- Trespass of land or obstruction of access by protesters
- Gypsies/Travellers arriving on land without permission
- Unauthorised waste, fly-tipping, nuisance
- Journalism – defamation, privacy and confidentiality
- Fraud, Mareva/freezing injunctions
- Search orders
- Restraint of unlawful competition by directors and employees
- Anti-suit injunctions
- Intellectual property

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## Interim injunctions: the test

*American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396

1. **Serious question to be tried** (see: *Cayne v Global Natural Resources plc* [1984] 1 All ER 225)
2. **Adequacy of damages** (see: *R. v Secretary of State for Transport, Ex p. Factortame Ltd (No. 2)* [1991] 1 A.C. 603; *Allen v Jamba Holdings Ltd* [1980] 1 W.L.R. 1252)
3. **Balance of convenience** (see: *N.W.L. Ltd v Woods* [1979] 1 W.L.R. 1294)

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## Interim injunctions: Modified test

- Where interim relief will effectively dispose of the proceedings: higher degree of scrutiny of merits (*Cayne*)
- Freezing orders: Requires “good arguable case”
- Search Orders – Specific conditions
- Public law proceedings
- Human Rights: where injunction affects right to freedom of expression, s.12(3) of HRA 1998 applies

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## Interim injunctions: Persons Unknown

- Often necessary in cases concerning land where identity of wrongdoer(s) (e.g. trespasser) is unknown.
- Canada Goose v Persons Unknown [2020] EWCA Civ 303:
  1. Persons unknown – must be capable of identification, although not when proceedings started; must be served; includes newcomers
  2. Must be defined by reference to alleged unlawful conduct
  3. Must be sufficiently real and imminent risk of a tort being committed
  4. Defendants subject to interim injunction must be individually named if known and identified
  5. Prohibited acts must generally correspond to threatened tort
  6. Terms of injunction must be sufficiently clear and precise
  7. Need for clear geographical and temporal limits
- Difficulties discussed – London Borough of Enfield v Persons Unknown [2020] EWHC 2717 (QB)

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## Interim injunctions: Wide ranging injunctions

- Borough-wide injunctions e.g. in relation to all public open space in an administrative area. Useful for preventing unlawful encampment or fly-tipping.
- Have become popular in recent years for local authorities.
- Court's increasingly anxious about the "feeding frenzy" of borough-wide injunctions, noted to be "inherently problematic": Bromley v Persons Unknown (Rev 3) [2020] EWCA Civ 12; Canterbury City Council v Persons Unknown [2020] EWHC 3153 (QB).
- Serious concern where article 8 issues not being properly dealt with and where injunctions being used effectively to remove gypsies/travellers from the administrative area.

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## Interim injunctions: Procedure

Specific requirements depend on the type of underlying claim: e.g. trespass claim – service governed by CPR 55.6 and PD55A; certificate of appropriateness be filed where claim is made in High Court. Must be clear on this at the outset or it may well preclude the interim relief application.

The procedure for the interim application itself is governed by CPR 23 and 25:

- Application notice – N16A in County Court; N244 in High Court
- Draft order
- Evidence in support
- Skeleton argument
- Service – see alternative service provisions at CPR 6.15, 6.27 and *HS2 v Cuciurean* [2020] EWHC 2614 (Ch)
- Choice of court

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## Interim injunctions: Procedure continued

Notice:

- Application should usually be served at least three clear days before the hearing, unless good reasons not to (CPR 25.3).

Without notice:

- Prior correspondence
- Informal notice
- Applicant's undertakings
- Full and frank disclosure (consequences of material non-disclosure: *PJSC Commercial Bank Privatbank v Kolomoisky and others* [2018] EWHC 3308 (Ch))
- Return date hearing

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## Variation, discharge and appeal

Applications for variation

Terms of Order will be important and may set out the procedure

Discharge

Refusal

Appeals



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## Final injunctions

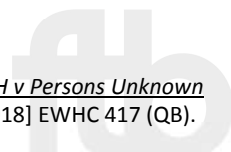
By consent or following trial.

Where claimant establishes legal or equitable right and circumstances make it equitable to grant the order.

Will not be granted where would require constant supervision by the court; or where damages would sufficiently compensate the claimant, although still possible where:

- Negative contractual stipulation being enforced
- Restraint of trespass
- Vindication of other property rights

Final injunctions against persons unknown: fairly exceptional (see *GYH v Persons Unknown* [2018] EWHC 121 (QB); *Clarkson plc v Person or Persons Unknown* [2018] EWHC 417 (QB)).



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## CONTEMPT OF COURT

“A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court”

Per Norris J, *Commissioners for HMRC v Munir* [2015] EWHC 1366 (Ch)



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## Civil Contempt

- Criminal or civil
- Civil contempt: conduct which is not a crime but is punishable by the court
- Quasi-criminal
  - Criminal standard of proof – beyond a reasonable doubt/sure
  - Reference to Sentencing Guidelines for sanction
  - Procedure remains CPR





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## Contempt of Court - Sources

- Statutory: Contempt of Court Act 1981
- **CPR 81: the rules changed on 1 October 2020**
  - “Contempt application”
  - “Claimant” and “Defendant”
- Authorities: the case law remains applicable

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## Contempt of Court - Process

- CPR 81(3)
  - In existing proceedings, application under Part 23
  - Alleged interference with the due administration of justice not in existing proceedings under Part 8
  - Permission required in some cases
  - Court can proceed on its own initiative (CPR 81.6)

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## Contempt of Court – Requirements

- CPR 81.4
  - Written evidence given by affidavit or affirmation
  - **19** procedural requirements set out at CPR 81.4(2)(a) – (s)
- Personal service required unless court directs otherwise (CPR 81.5)

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## Contempt of Court – Establishing Contempt

- The defendant
  - knew of the terms of the order;
  - acted, or failed to act, in a manner which involved a breach of the order; and
  - knew of the facts which made that conduct a breach
- Contempt is in essence strict liability: there is no requirement to show intention to disobey

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## Contempt of Court - Sanctions

- CPR 81.9
  - Imprisonment (“an order of committal) – up to 2 years (s.14(1) CoCA 1981)
    - Immediate or suspended
  - Fine
    - Unlimited in higher courts, £2,500 in inferior courts (s.14(2) CoCA 1981)
  - Confiscation of assets (CPR 81.9)

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## Contempt of Court – Authorities

- *SoS Transport & HS2 v Cuciurean* [2020] EWHC 2614 (Ch)
- *Re Yaxley-Lennon (No 2)* [2019] EWHC 1791 (QB)
- *Cuadrilla Bowland Ltd v. Persons Unknown* [2020] EWCA Civ 9
- *Cuadrilla Bowland v. Ellis* [2019] E30MA313
- *Absolute Living Developments Ltd v. DS7 Ltd* [2018] EWHC 1717 (Ch)

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## Contempt of Court – Advice - Claimants

- New court forms – N600 – N604
- Video and Photographic Evidence – document everything
- The underlying order must be sound
- Expect press interest and coverage – prepare your client



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## Contempt of Court – Advice - Defendants

- A defendant can purge their contempt – CPR 81.4(q): admitting contempt and apologising to the court is likely to reduce the seriousness of any punishment
- Focus on the procedural – service, knowledge, rules
- Attack the underlying injunction – where is there uncertainty?
- Human rights arguments – still available



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## Contempt of Court – Concluding Comments

- Early engagement with counsel.
- It is the underlying injunction which sets the position up for contempt proceedings – a flawed injunction can be toothless.
- Contempt proceedings are a serious matter and cannot be approached half-heartedly.
- **Procedure!**



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## Q&A/Discussion

Thank you for listening!

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