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Update Summary

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UPDATE 42

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**INJUNCTIONS:
Law and Practice**

S Jacobs

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UPDATED COMMENTARY

Sydney Jacobs has reviewed and added extensive new commentary to the work, the most significant referred to below.

District Court of NSW

The jurisdiction of the NSW District Court to grant injunctions is set out in s 46 of the *District Court Act 1973* (NSW), however, the author points to *Pelechowski v Registrar, Court of Appeal (NSW)* (1999) 198 CLR 435; 73 ALJR 687; [1999] HCA 19, as a starting point “to sound a warning bell as regards the jurisdiction”. See also the question provoked by s 46 as to whether “ancillary” includes final orders: *Martin v Najem* [2022] NSWDC 479. See [1.20].

Noncompliance with undertakings

Reference is made to *Cohen v Double Bay Bowling Club* [2019] NSWSC 1625, where Henry J listed the matters to be proved beyond reasonable doubt by a plaintiff to prove a case of civil contempt in relation to breach of an undertaking given to the court. See [1.662].

Delay as a defence

Reference is made to Redlich J (as his Honour then was) in *Imac Security Services Pty Ltd v Tyco Australia Pty Ltd* [2002] VSC 592, where delay was discussed as one factor to have regard to in a court refusing injunctive relief. See [2.370].

Evidentiary, Procedural and Ethical Issues

The author has included a list of the usual steps to take in an application for interlocutory relief. See [3.215].

Applications made ex parte; and extending such orders

Injunctions may be sought either upon giving notice to the opposing party (often after an application for the abridgement of time for service) or *ex parte*. Recent authority regarding both processes is collected at [3.220].

Restraining a Mortgagee's Power of Sale

New commentary addresses s 138C(2) of the *Transfer of Land Act 1893* (WA) which empowers the court to extend a caveat if it is satisfied that the claim has or may have substance. See the discussion of Edelman J in *Bride v Registrar of Titles* [2015] WASC 11. See [6.156].

Remaining term of the lease

If there were only a few months remaining of the term of the lease, this would weigh in

the scales of the balance of convenience against interim relief: *Murray Robson Wines Pty Ltd v Oakdale Wineries Pty Ltd* (1990) NSW Conv R 55-508. *Murray Robson Wines* was followed in a recent case involving an alleged premature revocation of a licence (not a lease) in *Rial v Gray* [2023] VSC 302. See [8.715].

Conduct that may be restrained

As at late 2023, the leading judgment in Anglo-Australian law as to whether watching one's neighbours can be an actionable nuisance, is *Fearn v The Trustees of the Tate Gallery* [2023] UKSC 4, which concerned the Tate's viewing platform which provided splendid views over London—including directly into the glass walls of neighbors. See [10.720] and CH 29.

Restraining trespasser's use of photos / videos obtained during trespass

The author has further expanded the commentary addressing the availability of an injunction to restrain publication of film or photographs taken by a trespasser, even though no breach of confidence was involved. See [28.170].

