

4th Edition

Injunctions

David Bean

Injunctions

Fourth edition

David Bean, MA (Cantab)
of the Middle Temple, Barrister



Preface

It is remarkable that when the first edition of this work appeared in 1979 no book on the subject of injunctions had been published in England for over fifty years. The topic is, of course, mentioned under the appropriate headings in general works such as the *Supreme Court Practice*. But no other practitioners' handbook, large or small, seems to have appeared since the sixth edition of the classic work, *Kerr on Injunctions*, in 1927. The gap needed urgently to be filled.

During the summer of 1987 the law of injunctions became headline news with an apparently endless series of applications and appeals concerning the book *Spycatcher*. An injunction against the *Guardian* and *Observer* newspapers, prohibiting the publication of allegations from the book, was upheld and indeed made more stringent by a 3-2 majority decision of the House of Lords (*A-G v Guardian Newspapers Ltd* [1987] 1 WLR 1248); and this despite the fact that the book was by then heading the New York bestseller lists. More significantly still for the general law, it was held by the Court of Appeal (*The Times*, 18 July 1987) that any other newspaper or indeed anyone else who published the allegations within the jurisdiction was liable to committal for criminal contempt of court. It is trite law that (except in Admiralty and to some extent in wardship cases) injunctions take effect *in personam*, that is to say against the defendants, their servants or agents; and only they can commit civil contempt by being in breach of the injunction. The result of the *Spycatcher* contempt decision, if that too is upheld in the House of Lords, is that an injunction against publication will effectively operate *in rem*, since anyone who (knowing of the injunction) publishes the information in question will be liable either for civil or for criminal contempt. This may prove to be the most important injunction case for many years.

Since the last edition of this book there has been a flow of case law on other subjects too. In *Anton Piller* and *Mareva* cases the period could be given the title 'The Defendant Strikes Back': in particular *Columbia Pictures v Robinson* contained some object lessons for

plaintiffs and their solicitors on ex parte applications (see 8.2). The Court of Appeal and Hoffmann J have adopted different approaches to the grant of interlocutory mandatory injunctions (see 3.5). There have been several important decisions of the Court of Appeal (apart from *Spycatcher*) disposing of technicalities in the tricky field of committal for contempt (see 6.3). Perhaps most surprising of all, the writ *ne exeat regno*, which most practitioners and writers, including myself, had thought safely buried, has risen from the grave (see 7.8).

This book is intended as a practical guide, with particular emphasis on procedure. I have resisted the temptation to write at length on the law of contract, the law of trespass and the like: the injunction is a remedy, the book is concerned with the scope and limits of the remedy and how to obtain it, and to embark on detailed treatment of many aspects of substantive law would make the book intolerably long and diffuse.

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In addition to those to whom I expressed my gratitude in previous prefaces, I wish to thank Michael Silverleaf, for advice on *Anton Piller* orders; and Mr C F Jones, Chief Clerk to the Queen's Bench Judge in Chambers, for the helpful technical assistance given to users of 'Room 98'. My colleagues in Chambers and others at the Bar have again contributed the fruits of their experience in factual or anecdotal form. Any errors or omissions are of course my sole responsibility. The law is stated as at 1 September 1987.

1 September 1987

David Bean
Middle Temple

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