

DOCUMENTARY EVIDENCE

Eighth Edition

CHARLES HOLLANDER Q.C.

THOMSON



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DOCUMENTARY EVIDENCE

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Preface to the Eighth Edition

It is less than three years since the publication of the Seventh Edition. The arrival of the CPR meant that for the first time ever the Seventh Edition involved a complete rewrite of the book. Yet the Eighth Edition has involved changes almost to the same extent.

There are two principal reasons for this. The first is that when the Seventh Edition went to press, a little over a year after the introduction of the CPR, the CPR remained something of a fog to almost all practitioners. Lack of confidence in what the rules were driving at, how they were to be interpreted, and indeed what they were (every time one looked at the rules they seemed to have changed) together with new rules for instant payment of costs to the opposing party if the application proved unsuccessful, made practitioners reluctant to chance their arm advising interlocutory applications, and the rules remained almost entirely untested. Now, four years or so after their implementation, it is possible to have a rather better understanding of the directions whither the courts have been taking the rules (albeit not always those one might have imagined). In consequence there has been a mass of important decisions.

The second reason is the Human Rights Act. This came into force just as the Seventh Edition was being published. Few had any idea how important Article 6 and 8 would be for disclosure and privilege. There remain many areas ripe for debate which are at present wholly untouched by the courts.

Meanwhile, the *Three Rivers* litigation arising from the BCCI collapse over a decade ago is proving to be the *Derby v Weldon* of its generation, spawning numerous important decisions on disclosure and privilege. Other important new decisions include *Morgan Grenfell*, *Metcalf v Mardell*, *Ashworth v MGN*, *Interbrew v Financial Times*, *Black v Sumitomo*, *Douglas v Hello!* and *B v Auckland District Law Society*. Careful readers may be able to spot from the trenchant nature of the comment which of the cases referred to in this paragraph involved the author. If that leads to more-than-usually trenchant comment, readers will have to bear with it.

This edition has dispensed with appendices. Most practitioners now take the rules and statutes from the Whitebook, where any changes can be updated at least twice a year.

For the first time, this edition has no co-author. To lose one co-author might be bad luck, but to lose two in consecutive editions smacks of

carelessness. Alas, in consequence there is no one to blame for errors. Tom Adam, although he proved too busy to co-author this edition, has nevertheless contributed cases and ideas.

As always, this book seeks to be topical, practical, up-to-date and robust. If every summary assessment of costs falls on the head of your opponent, it will have achieved much of its overriding objective.

*Charles Hollander QC
Brick Court Chambers*

Foreword to the First edition

This is a most timely and welcome book. It is well known that the sophisticated nature of modern business, allied to the ease with which documents are created and copied, has dramatically increased the complexity of civil litigation. This poses a challenge to the effectiveness of our procedures. In no area is this challenge greater than in the use of documentary evidence and the skilful conduct of discovery. Efficiency with documents is essential to ensure proper advice before litigation is brought, to mould the shape of proceedings, and to ensure that after discovery advisers can sensibly assess prospects of success and the potential for settlement. Once a case gets to court the availability, preparation and handling of the documentary evidence is crucial. The larger and potentially more unmanageable cases become, the more this is true. So the problems of discovery and use of documentary evidence have moved on since the days of *Bray*.

This book contains a comprehensive guide to the legal obligations of discovery, and also covers overlapping topics of presentation of evidence and application for interlocutory remedies such as Mareva injunctions and Anton Piller orders. Just as valuably, it contains thoroughly sensible, practice advice as to considerations to which documents give rise at various stages of the litigation. It is logically presented and lucidly written. So far as I know, the topic of documentary evidence is nowhere else considered in such depth or with such acute tactical understanding.

One of the strengths of this book is that its authors write from the vantage points of both halves of our profession. Charles Hollander, barrister, and Christopher Style, of Linklaters & Paines, are practitioners of already proven experience in the field and of much future promise. They have combined excellently. They have also had the considerable benefit of the wise and experienced advice of William Park, the senior litigation partner of Linklaters & Paines. Between them they have given us a book which should be of considerable value to litigators, and is a service to the cause of the efficient conduct of litigation.

September 6, 1984

Robert Alexander Q.C.

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