

LAND INJUNCTIONS

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Chapter 1: Introduction

A Road Map of this Book

1.1 Interests Protected

- 1.1.1 This book is about protecting the use and enjoyment of land.
- 1.1.2 Obviously, many different persons might be interested in the enjoyment of land in many different ways. They may own an estate in that land, or they may have a lesser property right in it (like an easement or a profit). They might not have a property right at all, but a mere contractual right (in the form of a licence) to use it. They may have rights only pursuant to statute.
- 1.1.3 The nature of the interest interfered with will dictate the appropriate remedial response from the courts. It is therefore important that the interest that is to be protected is identified properly. This is considered in Chapter 2.

1.2 The Types of Interference

- 1.2.1 Land can be interfered with in a number of ways. There can be interferences from off-site, such as blocking access or interfering with highways. There can be direct interference on the land itself, through trespass or nuisance. This can happen through civil wrongs, at common law and under statute, or by criminal conduct. The range of possible civil wrongs that are engaged when land is interfered with is also considered in Chapter 2.

- 1.2.2 The range of criminal offences that might arise when land is unlawfully interfered with is considered in Chapter 4. The fact that conduct actionable at civil law may also be criminal is relevant in a number of respects. First, criminality may furnish the unlawfulness element of some of the torts identified in Chapter 2. Secondly, the availability of criminal sanction sometimes assists in obtaining injunctions to secure the cessation of that conduct. This is particularly so where the criminalisation of that conduct has proven to be an ineffective deterrent. On the other hand, in the case of some conduct – such as public nuisances caused by the obstruction of a highway by protesters – the court may take the view on the facts that the matter is best left to the police to regulate on the ground under its powers.

1.3 The Remedies

- 1.3.1 This book is concerned mainly with civil remedies. There are three remedies that matter: injunctions, possession actions, and damages claims.
- 1.3.2 Possession claims can be brought by anyone with a right to possession within CPR Part 55, as that is now understood. This is no longer confined to those with an estate in land, and the modern law recognises that those with statutory rights, or with contractual rights, might be able to bring a possession claim. This is also considered in Chapter 2, but with detailed consideration of trespass claims against persons unknown in Chapter 3. It is to be noted that the courts have come to recognise the jurisdiction to make possession orders covering not just the land on which the trespass occurs, but also the land which it is feared a trespass will move to next.
- 1.3.3 Most of the recent cases concern injunctions either to deter off-site interferences, or to prevent ongoing conduct on, and feared future incursions into, the land in question. The law relating to injunctions applicable to land in general, and the

recent and important developments in relation to injunctions regulating protest (usually environmental, political or related to animal welfare issues) are covered in Chapters 7 to 10. Procedural rules are considered in Chapter 11. Consequential issues – enforcement and costs – appear in Chapters 12 and 13.

- 1.3.4 Damages are dealt with in the context of those two principal remedies. A detailed analysis of the rules relating to damages is not within the scope of this book, and other specialist works should be consulted on that question.
- 1.3.5 Although the above remedies are distinct, it will often be advisable to consider seeking them together. A possession order may be too blunt a tool on its own, with practical limits on their enforceability, in some or even many cases. It may be that the conduct goes beyond mere trespass, so that a bespoke injunction prohibiting certain acts is also needed – with the added threat of enforcement by way of contempt proceedings.

1.4 Parties

- 1.4.1 Although treated in earlier Chapters – 5 and 6 – in practice an investigation into the interests of the parties affected by the conduct forming the subject matter of the intended proceedings, and the nature of the conduct complained of, will dictate the appropriate claimant(s) and defendant(s) in each case.
- 1.4.2 Although in many conventional injunction cases, the identity of the defendants may be well-known, injunctions (and possession claims, albeit more rarely) now arise in the context of cases of larger protests by groups with no legal personality of their own.
- 1.4.3 In such a case, the weight of modern authority suggests strongly that it will be necessary to identify classes of defendants as Persons Unknown with the additional need to identify them by reference to the conduct – past and feared future – in which they have been engaged.

1.4.4 Examples of such formulations can be given as follows:

1.4.4.1 *Sheffield Environmental Services v Persons Unknown* [2025] EWHC 2141 (KB):

PERSONS UNKNOWN WHO, IN CONNECTION WITH STRIKES ORGANISED BY UNITE THE UNION AND WITHOUT THE CLAIMANTS' CONSENT, ENTER OCCUPY OR REMAIN ON, OR PREVENT SLOW DOWN OR OTHERWISE INTEREFERE [sic] WITH THE ACCESS OR EGRESS OF ANY OTHER INDIVIDUAL OR VEHICLE TO OR FROM, THE FOLLOWING SITES [...]

1.4.4.2 *Trinity College, Cambridge v Persons Unknown* [2025] EWHC 1577 (Ch):

PERSONS UNKNOWN WHO, IN CONNECTION WITH DIVESTMENT PROTESTS BY CAMBRIDGE FOR PALESTINE, ENTER OR REMAIN WITHOUT THE CONSENT OF THE CLAIMANT UPON ANY PART OF THE SITE OR LAND (DEFINED BELOW)

1.4.4.3 *ESSO Petroleum Co Ltd v Persons Unknown* [2025] EWHC 1768 (KB):

PERSONS UNKNOWN who, in connection with the Extinction Rebellion campaign or the Just Stop Oil campaign, enter or remain (without the Consent of the First Claimant) upon any of the Sites.

1.5 The Enhanced Test for Persons Unknown, and for Persons Unknown Engaged in Protest

1.5.1 The conventional test for interim and final injunctions is discussed in Chapters 7 and 10 of this book.

1.5.2 It is important to note, however, that a new form of injunction has been developed in relation to Persons Unknown. The applicable procedure is subject to an enhanced test before it is imposed. It is, in essence, the standard test for interim injunctions with superadded conditions. Further, if those Persons Unknown are also protesting, further conditions

must be met to safeguard their rights under the European Convention on Human Rights. This section seeks to set out the basic framework for obtaining such injunctions.

Nature and Effect of These Injunctions

- 1.5.3 In respect of Persons Unknown, the Court’s jurisdiction to grant so-called “newcomer” injunctions has been recently considered, and clarified, by the Supreme Court in *Wolverhampton CC v London Gypsies and Travellers and others* [2024] 2 WLR 45.
- 1.5.4 The question for the Supreme Court was this: does the Court have power to grant injunctions (whether interim or final) which **bind** persons who, at the time the order is made, are not identifiable and have neither committed nor threatened to commit the prohibited acts, but may do so subsequently (i.e., “newcomers”)?
- 1.5.5 The Supreme Court recognised (at [167]) that there is ‘*no immovable obstacle*’, whether in terms of jurisdiction or principle, in the way of granting injunctions against “newcomers” on an essentially without notice basis, whether in form interim or final.
- 1.5.6 However, the Supreme Court emphasised (at [144]) that an injunction against newcomers is ‘*a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring*’.
- 1.5.7 The Supreme Court rejected the “*Gammell* approach” (a reference to *South Cambridgeshire DC v Gammell* [2005] EWCA Civ 1429) – namely, that persons only become parties to the action when they breach the injunction (and hence fall within the definition of defendant). Instead, “newcomer” injunctions are made against the public at large and potentially embrace the whole of humanity (i.e., they are analogous to other injunctions and orders that operate “*contra mundum*”, like reporting restrictions).

- 1.5.8 In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), Ritchie J at [58] explained that, following *Wolverhampton*, the guidance previously promulgated by the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (at [82]) remains good law, albeit that some further guiding principles have been added.
- 1.5.9 Although this guidance was expressed to apply to the ‘*summary judgment applications for a final injunction against unknown persons*’ (at [57]), subsequently, in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J explained (at [35]) that precautionary injunctions against Persons Unknown, relating to private land owned or possessed by a claimant, are ‘*different beasts from old fashioned injunctions against known defendants which need to be taken to trial*’. As the Supreme Court explained in *Wolverhampton*, injunctions against newcomers are typically neither interim nor final ‘*at least in substance*’; they do not fit neatly into either category.

The Test in Summary

- 1.5.10 In *High Speed Two*, Ritchie J described (at [40]) ‘*the requirements for granting and, where necessary, continuing an interim injunction*’.
- 1.5.11 These requirements have since been applied in other cases: see, for example, *University of Cambridge v Persons Unknown* [2025] EWHC 2330 (KB), [2025] EWHC 724 (KB), and [2025] EWHC 454 (KB); *Trinity College v Persons Unknown* [2025] EWHC 1577 (Ch); *University of London v Harvie-Clark* [2024] EWHC 2895 (Ch); and *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB).
- 1.5.12 For the avoidance of doubt, these requirements are **of general application**, falling to be applied **whenever** injunctive relief is sought against Persons Unknown. So:
- 1.5.13 They are **not** limited to protest context; indeed, the *Wolverhampton* case was not a protestor case. Much of the

caselaw has focused on protestors because the problem of “newcomers” is especially acute in that context – both the number and identity of the individuals involved in a protest is necessarily liable to constantly fluctuate.

- 1.5.14 Likewise, the same “matrix” or “framework” promulgated by Ritchie J will be adopted where there are **both** Persons Unknown and named defendants (as in the *Harvie-Clark* case) against whom injunctive relief is sought.
- 1.5.15 Further, it appears that the same approach also applies whether or not the injunctive relief is sought on a “pure” precautionary basis (viz. where no wrongdoing has occurred) or to restrain future wrongdoing in cases where some wrong(s) has already been committed.
- 1.5.16 The substantive requirements are as follows:

Cause of action

- 1.5.17 There must be a civil cause of action identified in the Claim Form and Particulars of Claim.
- 1.5.18 In protestor cases, this will generally be trespass and/or nuisance, but it may also be (for example) conspiracy, harassment etc.

Full and frank disclosure by the Claimant

- 1.5.19 This duty is of the ‘*greatest importance*’ (see [219] of *Wolverhampton*). The Supreme Court explained that:
 - ‘We consider that [the Claimant] must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain’.

This is because, against newcomers, such injunctions are **always** without notice.

- 1.5.20 This obligation is a **continuing** one, and it is one which must be fulfilled having regard to the one-sided nature of the application and the substance of the relief sought.
- 1.5.21 So, if relevant information is discovered after the injunction has been made, then the Claimant may have to put the matter back before the Court on a further application.

Sufficient evidence to prove the claim

- 1.5.22 It must be shown that there is a realistic prospect of success.
- 1.5.23 So, for example, in relation to trespass, the Claimant must be able to show that they have a better right to possession than the Defendants: *Manchester Airport plc v Dutton* [2000] QB 133.
- 1.5.24 Where the injunction is sought on a precautionary basis, then it must be shown that there is a “real and imminent” risk of the harm eventuating. The claim to precautionary relief must not be “premature”. In a case involving protestors, evidence may well include (for example) evidence of threats made on social media platforms.

No realistic defence

- 1.5.25 The duty of full and frank disclosure means that, even if the Defendants do not turn up to the hearing, the Claimant will still have to address the Court on what they might have been expected to say.
- 1.5.26 Where the cause of action is trespass, then it is hard to see what the Defendants might say as a matter of private law. Any defence is likely to be based on human rights. The relevance of human rights considerations will depend on the factual matrix, including the nature of the land to which the claim relates (viz. public versus private).

- 1.5.27 Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the ECHR.
- 1.5.28 These rights are not absolute, however; they are qualified. Interferences with these rights *can* be justified, but *only* if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims prescribed by Articles 10(2) and 11(2) (including the protection of the rights and freedoms of others).
- 1.5.29 On that point, the right to peaceful enjoyment of one's property is also a Convention right, protected by Article 1 of the First Protocol ("A1P1"). So, in a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Articles 10 and 11.
- 1.5.30 Like Articles 10 and 11, A1P1 is a qualified right. The Convention does not give priority to any of these rights.
- 1.5.31 Further, Articles 10 and 11 do not bestow any "freedom of forum". This was established by the Strasbourg Court in *Appleby v UK* [2003] 37 EHRR 38.
- 1.5.32 *Appleby* has been applied more recently in *DPP v Cuciurean* [2022] 3 WLR 446, in which the Divisional Court drew 'much assistance' from *Appleby*.
- 1.5.33 In a democratic society, Articles 10 and 11 cannot normally justify a person trespassing on land of which another has a right to possession, just because the defendant wishes to do so for the purposes of protest. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to protest: see *Cuciurean v Secretary of State for Transport* [2021] EWCA 357 (per Warby LJ at [9(2)]).
- 1.5.34 As Lord Hughes put it at [3] of *Richardson v DPP* [2014] AC 635: '[p]ut shortly, article 10 does not confer a licence to trespass on other people's property in order to give voice to one's views'.

- 1.5.35 At [45], the Divisional Court in *Cuciurean* held that there was ‘*no basis*’ in the Strasbourg jurisprudence to support the respondent’s proposition that the freedom of expression, linked to the freedom of assembly and association, ‘*includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded*’.
- 1.5.36 In ‘*rather unusual or even extreme circumstances*’, it *might* be possible to show that the protection of a landowner’s property rights has the effect of preventing any effective exercise of the freedoms of expression and assembly. An example of this (employed by the Strasbourg Court itself in *Appleby*) would be a corporate town where the entire municipality is controlled by a private body.
- 1.5.37 So, a protestor’s rights under Articles 10 and 11 of the ECHR – to the extent that they are even engaged – will not justify continued trespass onto private land or public land to which the public generally does not have a right of access: see *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB) (at [81]).
- 1.5.38 Different considerations arise, therefore, where one is seeking to restrain assembly and protest on the assembly and/or public land.

Balance of convenience – compelling justification and the balancing exercise

- 1.5.39 In the context of a “newcomer” injunction which is sought against protestors, the usual “balance of convenience” test (from *American Cyanamid Co v Ethicon Ltd* [1975] AC 396) is replaced with one of “compelling justification”.
- 1.5.40 The Court must begin by asking itself the following questions (*DPP v Ziegler* [2022] AC 408 at [16]):
- (a) Is what the Defendant(s) did (or threatens to do) in exercise of one of the rights in Articles 10 or 11?

- (b) If so, is there an interference by a public authority with that right?
- (c) If there is an interference, is it ‘prescribed by law’?
- (d) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11, for example the protection of the rights of others?
- (e) If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?

1.5.41 The final question sub-divides into four questions and is known as the “balancing exercise”:

- (a) Is the aim sufficiently important to justify interference with a fundamental right?
- (b) Is there a rational connection between the means chosen and the aim in view?
- (c) Are there less restrictive alternative means available to achieve that aim?
- (d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

This is an ‘*inherently*’ fact-specific enquiry¹.

1 Although, in this regard, see the discussion in *Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32. At [30], the Supreme Court explained that the balancing exercise is ‘*not an exercise in fact-finding*’, but rather involves the application, in a factual context (often not in material dispute), of a series of legal tests, together with ‘*a sophisticated body of case law*’, and may also involve the application of statutory provisions (such as ss.3 and 6 of the HRA 1998). Further, at [34], the Supreme Court explained that this dictum in *Ziegler* – namely, that the determination of proportionality is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case – cannot be taken as a ‘*universal rule*’. This is because it is possible for a general legislative measure in itself to ensure that its application in individual circumstances will meet the requirements of proportionality under the ECHR, without any need for the evaluation of the circumstances in the individual case. These comments are likely to be relevant in the context of (say) criminal offences: see *Hicks v DPP* [2023] EWHC 1089 (Admin) at [28].

- 1.5.42 Some guidance was given by the Court of Appeal in *City of London Corp v Samede* [2012] EWCA Civ 160, which has been cited on numerous occasions since.
- 1.5.43 *Samede* involved a claim for possession and an injunction in relation to an anti-capitalist protest camp (consisting of between 150 and 200 tents at the time of the hearing) known as the “Occupy Movement” which had been set up in the churchyard of St Paul’s Cathedral. The proceedings raised the question whether the limits on the rights of assembly and protest ‘*extend to the indefinite occupation of highway land by an encampment of protestors who say this form of protest is essential to the exercise of their rights under Articles 10 and 11 of the [ECHR]...*’. The Defendants were in occupation of areas of land owned by the City of London Corp (“the City”) and had no defence, in domestic law, to the City’s possession claim. Further, Lindblom J had, at first instance, concluded that the camp was, undoubtedly, an ‘*unreasonable*’ obstruction of the highway and a breach of planning law, both of which the City had a duty to enforce and which applied to the land. So, in those circumstances, the only basis upon which the defendants could hope to succeed in resisting the relief sought by the City was by reference to human rights. At first instance, Lindblom J granted orders for possession in respect of the churchyard and injunctions requiring the protestors to, inter alia, remove the tents. The Court of Appeal refused permission to appeal against that decision. At [37], the Court of Appeal summarised the human rights ground of appeal thus:

“The broadest argument in support of the contention that the orders made by Lindblom J should simply be set aside is rather more fundamental. That argument is that, assuming the correctness of all the findings of fact made, and the relevant factors identified, by the Judge in his judgment, it was an unjustified interference with the defendants’ Convention rights to make any order which closed down the Camp. This argument amounts to saying that Articles 10 and 11 effectively mandated the Judge to hold that the Camp

should be allowed to continue in its current form, presumably for the foreseeable future. The basis of this argument is that, on the facts of this case, there was an insufficiently ‘pressing social need in a democratic society to justify the orders which the Judge made, bearing in mind the defendants’ Article 10 and 11 rights”.

1.5.44 Lord Neuberger MR recognised – at [39] – that the answer to this question (viz. the limits of the right to lawful assembly and protest on the highway) is ‘inevitably fact-sensitive and will normally depend on a number of factors’, including:

- (a) The extent to which the continuation of the protest would breach domestic law;
- (b) The importance of the precise location to the protestors;
- (c) The duration of the protest;
- (d) The degree to which the protestors occupy the land; and
- (e) The extent of the actual interference which the protest is causing to the rights of others (including the rights of the landowner and any members of the public).

1.5.45 One particular issue was the extent to which the subject matter of the protest was relevant. In this regard, Lord Neuberger MR endorsed the view of Lindblom J that:

‘...it is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors’ views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command... [T]he court cannot – indeed, must not – attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention...the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous’.

1.5.46 However, at [41], Lord Neuberger MR accepted that:

‘...it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end

of the scale, and pornography and vapid tittle-tattle is towards the bottom’. In this case, the judge accepted that the topics of concern to the Occupy Movement were of very great political importance’.

- 1.5.47 So, this is not “trump card” and is ‘*unlikely to be a particularly weighty factor*’.
- 1.5.48 The offer of the usual cross-undertaking in damages may be relevant to this balancing exercise: see, for example, [52] of Thompson J’s judgment in *University of London v Harvie-Clark*.

Inadequacy of damages

- 1.5.49 The Claimant must be able to show that the harm suffered (or the harm which they are at risk of suffering) would be incapable of remedy by an award of damages.
- 1.5.50 There are many different types of “irreparable” harm which may be suffered, including reputational harm, physical harm (where the nature of the protest poses health and safety risks), the knock-on effects of increased security costs etc.
- 1.5.51 It is likely to be relevant that, where injunctive relief is sought against Persons Unknown, there is little prospect (practically speaking) of recovering compensation.
- 1.5.52 The **procedural** requirements are as follows:

Identifying Persons Unknown

- 1.5.53 As the Supreme Court explained at [221] of *Wolverhampton*, it is only permissible to maintain an order directed at newcomers (or other Persons Unknown) where it is impossible to name or identify them in some other and more precise way.
- 1.5.54 So, if the identity of some of the (potential) Defendants is known, they must be named Defendants.
- 1.5.55 Further, and unlike in a possession claim (under CPR Part 55), it is not permissible to bring proceedings against “Persons Unknown” *simpliciter*.

- 1.5.56 Instead, the Persons Unknown must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form); and (b) clearly defined geographical boundaries, if possible.
- 1.5.57 For an example of a case in which there were both named and PU Defendants, see *University of London v Harvie-Clark*.
- 1.5.58 Where the Claimant seeks to enjoin different forms of conduct, it may be necessary to have multiple “PU Defendants”: see, again, *University of London v Harvie-Clark* and the description of the Fourth to Sixth Defendants.

The terms of the injunction

- 1.5.59 The prohibitions must be set out in clear words and should not be framed in legal technical terms (such as “tortious”). The prohibited acts should not be described in terms of a legal cause of action (such as trespass or nuisance), unless this is unavoidable. The language should be such that the order is capable of being understood by a person served with or given notice of it without recourse to professional legal advisers.
- 1.5.60 The order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.
- 1.5.61 If and insofar as the injunction seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the Claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

- 1.5.62 If possible, the prohibitions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

- 1.5.63 Again, if possible, the prohibitions in the final injunctions must be defined by clear geographic boundaries, ideally by reference to a plan.

Temporal limits – duration

- 1.5.64 The duration of the final injunction should only be such as is proven to be reasonably necessary to protect the Claimant’s legal rights in the light of the evidence of past tortious activity and the future feared (*quia timet*) tortious activity.

Service

- 1.5.65 Given that Persons Unknown are, by their nature not identified, the proceedings, evidence, draft order etc must be served by alternative means which have been considered and sanctioned by the Court.
- 1.5.66 The applicant for an injunction is obliged – by virtue of s.12(2) of the HRA 1988 – to show that it has taken all practicable steps to notify the respondents.
- 1.5.67 In addition to leaving the various claim documents in clear plastic envelopes/crates on and/or near the land, it may be prudent to establish a website where the documents can be uploaded. It may also be possible to erect signs on/around the land with a QR code linking the aforementioned website.
- 1.5.68 In protest cases, the protestors are likely to have a social media presence. It may be prudent to seek to serve them via email or some other direct messaging function on one of those social media sites.

The right to set aside or vary

- 1.5.69 The Persons Unknown must be given the right to apply to set aside or vary the injunction on “short-ish” notice.

Review

- 1.5.70 Even a final injunction involving Persons Unknown is not totally final. This is because provision must be made for reviewing the injunction in the future. The regularity of the reviews will depend on the circumstances.