

CONTEMPT OF COURT

David H Denton, S.C.

David H Denton, S.C. has a national commercial law practice as a Senior Counsel in all States and in Fiji.

He has a keen interest in commercial arbitration and mediation, and in all aspects of company law, especially insolvency and shareholder disputes; planning and environmental tort matters.

He is a Certified Arbitrator and an experienced nationally accredited Mediator and holds (or has held) the following positions:

- President of the Commercial Bar Association
- Adjunct Professor, Victoria Law School, College of Law & Justice, Victoria University Melbourne
- President of the Australian Institute for Commercial Arbitration
- Chairman of the 'Law Hawks', In-House Legal Coterie, Hawthorn Football Club.

He is a member of chambers in Melbourne at *Chancery Chambers*; in Brisbane at *Sir Harry Gibbs Chambers*; in Cairns at *Macrossan Chambers*; and, in Hobart at *Michael Kirby Chambers*.

1. A judgment may be enforced by committal where a judgment requires a person to do an act and the act is to be done within a time fixed in the judgment or by subsequent order, and the person refuses or neglects to do the act within that time.¹
2. A copy of the judgment shall not be enforced by committal or sequestration unless a copy of the judgment is served personally on the person bound and, if the judgment requires the person bound to do an act within a fixed time, the copy of the judgment is so served a reasonable time before that time expires.²
3. Disobedience to a judgment or order requiring a person to do any act other than the payment of money is regarded as a category of civil contempt.³
4. The elements of civil contempt are as follows:⁴
 - a. That an order was made by the court.
 - b. That the terms of the order are clear, unambiguous and capable of compliance.

¹ SCR 66.05(1)(a).

² SCR 66.10(1).

³ *Morgan v Victoria* (2008) 22 VR 237 at [110].

⁴ *National Australia Bank Ltd v Juric* [2001] VSC 375 at [37].

- c. That the order was served on the alleged contemnor or excused in the circumstances, or service dispensed with pursuant to the Rules of Court.
 - d. That the alleged contemnor has knowledge of the terms of the order.
 - e. That the alleged contemnor has breached the terms of the order.
5. The rules indicate that committal and sequestration under the rules to enforce compliance with a judgment or order is appropriate only if non-compliance is wilful.⁵
 6. Breach of an injunction is contempt. It is no defence that the breach was not contumacious in the sense that there was no intention to disobey.⁶
 7. The applicant must prove, beyond reasonable doubt, that the failure to comply with the court was wilful and not merely '*casual, accidental or unintentional*'.⁷
 8. It will usually need to be established that the contemnor had knowledge of the terms of the order and that he or she deliberately committed an act or omitted to do an act which had the effect of breaching the order.⁸
 9. It is not necessary for the applicant to prove that the contemnor intended to breach an order of the court.⁹
 10. The orders must establish on their face terms clear, unambiguous and capable of compliance. It is required to be complied with '*forthwith*', require immediate compliance with its terms.
 11. An original of the Orders should be served on the defendant as proof of knowledge of the order.
 12. A breach must be proved as wilful and not casual, accidental or unintentional.

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Chancery Chambers

⁵ *Grossi v Rae* (VSC, Eames J, No 5868/90, 10 October 1997, unreported, BC9705178).

⁶ *McNair Anderson Assocs Pty Ltd v Hinch* [1985] VR 309 at 324.

⁷ *Australasian Meat Industries Employees' Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98 at 113.

⁸ *Deputy Commissioner of Taxation v Gashi (No 2)* [2011] VSC 351 at [22].

⁹ *Australasian Meat Industries Employees' Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98 at 111.