

Judgement Without Trial

Interlocutory Application

- Pre-trial application about conduct of a pending proceeding not determining the final substantive relief
 - May attend before a judge, master or registrar
 - *Hardel Pty Ltd v Burrell & Family Pty Ltd* (2009) 103 SASR 408
 - Evidence is given by affidavit and may contain statements of information and belief: O 37 r 6
 - Application should be served on any party who would be affected by the relief sought: O 59 r 5
-

Default Judgement

- Fail to comply with the rules or file documents in required time: O 13 r 2-7; O 22 r 2-5
 - P is entitled to file a default judgement at the registry before appearance or document filed
 - Where claim is liquidated the default judgement is final and is processed at registry
 - This includes claim for interest pursuant to agreement or statutory rate of interest
 - Where claim is non-liquidated the damages are assessed by court upon which judgement is final
 - D must be given notice of hearing and both parties able to attend
 - P must prove a causal link between the P's damage and the P's conduct through affidavit
 - Default judgement constitutes a final judgement but may be set aside
-

Setting Aside Default Judgement

- Default judgement can be set aside or amended on application to court: O 13 r 10 (default of appearance), O 22 r 10 (default of defence)
 - Applicant must explain the delay and present a credible prima facie defence
-

Summary Judgement

- Failure to present a cause of action or credible defence
- Available in any action commenced by writ: O 14 r 1
- Application should be served on anyone who may be affected by the relief sought: O 59 r 5
- Applicant bears onus in establishing that it is proper for court to give a summary judgement
- Affidavit must verify all elements of the claim and P's belief that there is no defence
- If D applies for summary judgement, must establish that there is good defence on merits or claim is vexatious or frivolous/without foundation
 - Court must be persuaded that the trial is pointless - no serious question to be tried and no defence

Available Interlocutory Applications

- Freezing (mareva) orders: O 52A
- Security for costs
- Further and better discovery
- Injunctions: O 52
- Appointment of receiver: O 51 r 5-8
 - Courts have inherent power to order detention, preservation and inspection of subject-matter

Interlocutory Injunctions

- Form of preservation order which maintains the status quo pending final litigation
- P should have a prima facie case, that if the evidence stays the same there is a probability that P would succeed at trial and inconvenience of injury to P if injunction is refused outweighs the injury the D would suffer if injunction granted
- Must show substantial issue to be tried and irreparable damage will be caused

Anton Pillar Orders

- Search order in an existing or anticipated proceeding authorising search of premises to secure or preserve evidence that might otherwise be destroyed or withheld from court at trial: O 52B r 2
- Application made through ex parte mandatory injunction
- P must show a strong prima facie case, stands to suffer considerable damage and D has property and is likely to destroy it
 - *Anton Pillar KG v Manufacturing Processes Ltd* [1976] Ch 55

Mareva Order

- P needs to establish an arguable case against the D and risk/danger that the prospective judgement will be unsatisfied by the D removing, disposing of or dealings with the assets
- Can restrain third-party