



COMMODITIES

# INNOVATION AND THE LAW

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## INNOVATION AND THE LAW THE USE OF CONTEMPT AS A METHOD OF ENFORCEMENT

Contempt of court is sometimes grouped together into the following two main categories:

- **Contempt by disobedience.** For example, disobeying or breaching a court order or judgment, or breaking an undertaking given to the court.
  
  - **Contempt by interference.** For example, disrupting court proceedings or the court process itself (known as "contempt in the face of the court") and interference with the due administration of justice.
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**CPR 1998 81.4**

(1) If a person—

(a) required by a judgment or order **to do an act** does not do it within the time fixed by the judgment or order; or

(b) **disobeys** a judgment or order not to do an act,

then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an **order for committal**.

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## INNOVATIVE LAW & ENFORCEMENT CRIMINALISING DEFAULT

The principles which apply to an application for contempt in **CPR 81.4** were outlined by Rose J in **JSC Mezhdunarodniy Promyshlenniy Bank v. Sergei Viktorovich Pugachev [2016]**:

1. The burden of proving the **contempt lies on the applicant**;
2. The applicant's case must be **proved beyond reasonable doubt**; and
3. The court needs to **exercise care** when it is asked to draw inferences in order to prove contempt.

Deploying disclosure and/or freezing orders in cases of default: **Bunge SA v Huaya Maritime Corp [2017]**

The defendants “...is clearly in contempt. He has been notified of the disclosure orders. Bunge has sent a variety of communications, in addition to the orders, attempting to persuade the company and Mr Hua (the defendants) to comply with them. They could have fallen into a void. No excuse, indeed no response, has been forthcoming.”

*MR JUSTICE CRANSTON*

**Outcome:** Second respondent (Mr Hua) sentenced to 18 months’ imprisonment for his contempt as a director of Huaya. In due course Mr Hua purged his contempt.

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Outcome in **Bunge SA v Huaya Maritime Corp [2017]:**

- The defendant “has deliberately defied the court’s authority by refusing to comply with the disclosure provisions. Failure to comply is an attack on the administration of justice...His breaches have been deliberate...Given his position in the company he could ensure that it disclosed the details of its assets...Huaya and Mr Hua have avoided the freezing order and been able to conceal their assets. There seems to be no mitigation.” < Mr Justice Cranston
- **In summary:** Disclosure/freezing orders should contain a [penal notice](#).

## PENAL NOTICE

**IF YOU COMPANY X DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**IF YOU...CHIEF EXECUTIVE OFFICER OF COMPANY X OR ANY OTHER DIRECTOR, OFFICER OR SENIOR MANAGER OF COMPANY X DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**





## INNOVATIVE LAW & ENFORCEMENT CONTEMPT SENTENCING

❖ When you have a contempt order, it is a **'campaign of reckoning'**.

### CPR 81.30

(1) If a committal order is made, the order will be for the issue of a **warrant of committal**.

(2) Unless the court orders otherwise—

(a) a copy of the committal order must be served on the respondent **either before or at the time** of the execution of the warrant of committal; or

(b) where the warrant of committal has been signed by the judge, the committal order may be served on the respondent at any time **within 36 hours** after the execution of the warrant.

(3) Without further order of the court, a warrant of committal must not be enforced more than **2 years** after the date on which the warrant is issued.





## INNOVATIVE LAW & ENFORCEMENT LMAA AWARDS BREXIT PROOF?

*“There are and remain good reasons for choosing English law, English jurisdiction and English arbitration. Brexit will not impact on the essential reasons for so doing and you should **ignore the mythmakers**”.*

LJ Hamblen

*“Brexit, whatever form it eventually takes, will have no impact on the way London arbitration is conducted nor on the international enforceability of London arbitration awards. **International enforcement depends on the New York Convention, not on any E.U. legislation or Conventions.**”*

Ian Gaunt, President at The London Maritime Arbitrators Association (LMAA).

New York Convention contracting states **TOTAL: 159** state parties.





## Appealing under the Arbitration Act 1996...

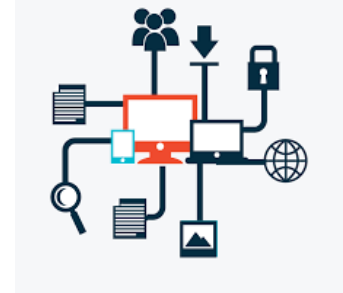
- Need to ensure you get arbitral 'gift-wrap'.
  - Ask tribunal to issue new award to reflect new judgement.
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# HFW



## INNOVATION OF THE LAW



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