D6 Interdicts

1 Nature of remedy

(a) **Definition.** An interdict is a judicial process whereby a person is ordered to refrain from doing a particular act, or is ordered to perform a particular act. It is a remedy of a summary and extraordinary nature, allowed in cases where a person requires protection against an unlawful interference, or threatened interference, with his rights. [1] It is essentially a practical remedy and if it appears that, in the form which it is cast, it will not afford the applicant the protection he seeks, the court will hesitate to come to his assistance. [2] An interdict is not a remedy for past invasion of rights, but is concerned with present or future infringements. [3]

The remedy is available for the prohibition of illegitimate activities: the principle that a court will be slow to restrain a person from exercising his rights and carrying on his activities applies only in respect of legitimate activities. [4] It is not, in general, permissible to seek an interdict against future administrative action which has not yet materialized and might well be a model of administrative fairness if and when it does. [5] The court is empowered to grant the remedy (whether mandatory or prohibitory) *in personam* if the respondent is an *incola*, no matter that the act in question was to be performed or restrained outside the court's area of jurisdiction. [6]

(b) **Sources.** The prerequisites in South African law for the granting of an interdict are founded upon Roman-Dutch law, [7] in particular the works of Van der Linden. [8] The South African

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law and practice relating to interdicts has also undoubtedly been influenced by English judgments dealing with injunctions. [9] Though the English law relating to injunctions is similar to South African law, there are important differences. [10]

Prior to 1975 the two systems had developed, from divergent sources, a very similar approach to the grant of interlocutory injunctions. In both systems the applicant had to satisfy a 'threshold test' before he would be granted relief, viz proof of at least a prima facie right on his part. In *American Cyanamid Co v Ethicon Co* [11] the House of Lords, deprecating 'strength of case' as a threshold test, laid down a new rule of practice whereby an applicant need no longer demonstrate a strong prima facie case; it is sufficient if the applicant satisfies the court that the claim is not frivolous or vexatious; in other words that there is 'a serious question to be tried'. Once this hurdle is past, the 'balance of convenience' as between the parties becomes the core test. The most important effect of the new approach is that in the interlocutory stage of the proceedings, on evidence presented to it on affidavit, and often (usually) under the pressure of urgency, the court is not obliged to assess the strength of the applicant's case. The new approach caused considerable stir. It was subjected to trenchant criticism by Lord Denning MR in *Fellowes & Son v Fisher*. [12] It also gave rise to a vast, world wide body of academic literature in which the basis of injuctive relief is considered anew. [13] In the end it was adopted by the highest courts in most countries where the English procedural model is used, in particular in Canada, Australia and New Zealand. The new rule of practice laid down by the House of Lords has been held not to be 'in accordance with our law in South Africa and should not be followed'. [14] The practice of our courts has nevertheless been rather ambivalent. [15] The impact of the new approach on South African practice in recent years is considered in the notes to paragraph 8 s v 'Requisites for an interlocutory interdict' below.

2 Classification of interdicts

There are two systems of classification of interdicts: the first is the division into prohibitory and mandatory interdicts; the second is the division into final and interlocutory interdicts. The *mandament van spolie* is sometimes regarded as a further species of interdict (restitutionary interdict). [16] It has further been held that for the purposes of s 35 of the General Law

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Amendment Act 62 of 1955 an Anton Piller order is not 'a rule *nisi* operating as an interim interdict'. [17] The first distinction, that between prohibitory and mandatory interdicts, has little practical value except that a court when exercising its discretion whether or not to grant an interdict will have regard to the fact that it is more difficult to enforce a mandatory interdict. [18] The second is the division into final and interlocutory interdicts. [19]

This distinction, which has (in the context of appealability) been described as 'intrinsically difficult', [20] is important because the requisites of final interdicts are different from those of interlocutory interdicts. The two categories overlap in so far as both the prohibitory and the mandatory interdict may be either final or interlocutory. [21]

(a) **Prohibitory interdict.** This is an interdict in the more restricted sense and may be described as an order requiring a person to abstain from committing a threatened wrong or from continuing an existing one (e g tresspass, taking water from a river, undermining foundations or carrying on operations which constitute a nuisance). [22]

(b) **Mandatory interdict.** [23] This is an order requiring a person to do some positive act to remedy a wrongful state of affairs for which he is responsible, or to do something which he ought to do if the complainant is to have his rights (e g to demolish a building encroaching on the complainant's land). It has been said that a mandatory interdict can serve 'to compel the performance of a specific statutory duty, and to remedy the effects of unlawful action already taken'. [24] If the act to be performed must be carried out not by a private person but by a public official, the order is known as a *mandamus* (e g an order on the Registrar of Deeds to pass transfer of land). [25]

(c) **Final interdict.** A final interdict is one which is granted without (as a rule) any limitation as to time. [26] It is granted in order to secure a permanent cessation of an unlawful course of conduct or state of affairs. It has been held that regard should be had to the substance rather than the form of the relief sought. [27] Thus, in an application to enforce a restraint of trade for the full unexpired time of the restraint the relief sought is final, though the form of the order is interim relief. [28] This approach was, however, rejected in *Radio Islam v Chairperson, Council of the Independent Broadcasting Authority*. [29] The question as to what the correct position is, was left open in *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation*. [30] In *Andalusite Resources (Pty) Ltd v Investec Bank Ltd* [31] the applicant sought an interlocutory interdict to secure the release of monies in its bank account held with Investec Bank Ltd. The bank argued that, although the interdict was cast in the form of an interlocutory interdict, it was in effect an application for a final interdict under circumstances where the interdict, if granted, would restrain the bank from preventing the applicant from accessing its bank account and from enforcing a cession *in securitatem debiti* held by the bank. The interdict would, therefore, finally and irreversibly deprive the bank of the security it held over the money in the account. It was held [32] that courts have to distinguish between the effect of the interdict on the disputed right itself and its effect on the object of that right. Although the interdict would not have a final effect on the bank's underlying right to enforce its cession over the bank account (an issue which had to be decided in the main

application), it would nevertheless have a final effect on the object of that right, namely the money in the account, for if the interdict was granted and the bank vindicated in the main application, then its rights of cession would be exercised over a different object, namely the money then in the account. The application, therefore, was for an interlocutory interdict.

***(d)* Interlocutory interdict.** An interlocutory interdict is one which is granted *pendente lite*. [33] It is a provisional order designed to protect the rights of the complainant party pending an action or application to be brought by him to establish the respective rights of the parties. [34] It does not involve a final determination of the rights of the parties and does not affect such determination. [35] Its effect is to 'freeze' the position until the court decides where the right

lies, [36] at which point it ceases to operate. [37] It is aimed at ensuring, as far as it is reasonably possible, that the party who is ultimately successful will receive adequate and effective relief. [38] In our law there is no recognized cause of action for an 'interim-interim' interdict based on requirements other than those recognized at common law for an interlocutory interdict. [39]

3 Jurisdiction

A court may assume jurisdiction to grant an interdict (whether mandatory or prohibitory) *in personam* against an *incola* of its area of jurisdiction no matter if the act in question is to be performed or restrained outside that area of jurisdiction. [40] In *Zokufa v Compuscan (Credit Bureau)* [41] it was held that a court will have jurisdiction over interdict proceedings only if the requirements for an interdict are satisfied by facts within the territorial area of that court. If all the delicts complained of against a peregrine respondent were committed outside the Republic, a South African court cannot entertain an application for an interdict against such respondent. [42] See further, in general, the notes to s 21 of the Superior Courts Act 10 of 2013 in Volume 1 third edition, Part D.

4 Who may interdict

The general rule is that the applicant must be a person having *locus standi* to apply in that he has an interest in the subject matter of the interdict. [43] The interest may be financial, as it usually is, or any other 'legal interest'. A party which cannot demonstrate an extant right in property could nonetheless apply for an interdict to preserve the property concerned if it could make out a prima facie case that it would receive relief in the future from which a right in the property would flow. [44] A mere moral interest is insufficient to ground the interdict. [45] The *actio popularis*, [46] which has been obsolete in Roman-Dutch law since 1578, [47] was

not revived by s 38*(d)* [48] of the Constitution of the Republic of South Africa, 1996. [49] The notes that follow reflect the position prior to the coming into operation of s 38*(d)* and should, accordingly, be read subject to the provisions thereof, and be applied *mutatis mutandis.*

If the applicant seeks to interdict the doing or carrying on of an act which has been prohibited by the legislature, he must show that the prohibition has been enacted either *(a)* in the interest of any person or class of persons of which he (the applicant) is a member, and in which case he need not show that he has actually suffered patrimonial loss, or *(b)* that he has suffered loss or damage by reason of the breach of the prohibition by the respondent. [50]

Thus, a trader who sustains damage through the illegal trading of another, which is prohibited by statute, suffers an infringement of his rights which entitles him to obtain an order interdicting the continuance of such illegal trading. [51] A member of the public may interdict an alleged breach of a right enjoyed by the public generally (e g he can sue for the abatement of a nuisance), but must show injury to himself personally, failing which he cannot maintain the proceedings. [52] He can interdict the municipal council within whose area he owns or occupies rated property from dealing with its revenue in a manner not authorized by its

governing statute. [53] It was held that a member of the public cannot interdict the State from doing the same thing. [54]

A municipality has *locus standi* 'as representative and guardian of the inhabitants' to restrain by interdict future or continuing infringement of its by-laws even if there is a special penalty, contained in the by-law itself, for such an infringement. [55]

The fact that a person is an insolvent does not prohibit him from applying for an interdict in protection of his own personal interests as distinct from the interests of the insolvent estate. [56]

A fugitive from justice has no *locus standi* to apply for an interdict. [57]

5 Who may be interdicted

The person against whom an interdict is sought must be the person responsible, [58] either as principal or as agent, [59] for the wrong committed or threatened; and in appropriate circumstances third parties may have to be cited. For example, if application is made to restrain a municipal council from issuing a certificate for a licence, the grantee of the certificate must be made a party to the application. [60] On the other hand, where money in a bank is sought to be interdicted, the bank need not be cited (notice being served on the bank after the order is obtained, whether it be obtained *ex parte* or on motion); but if the property

which it is desired to safeguard is in the hands of a third person and there is reasonable apprehension that he and the owner or someone else, acting in collusion, will make away with it, it is clear that both should be cited: that is, where the order is sought on motion.

If there is no third party who has a right contrary to that of the applicant which may be affected, it is necessary to cite only the wrongdoer. [61]

If an interested third party has not been cited, the normal course is to postpone the application in order to allow him to be joined; but if the need for the interdict will have disappeared by the time the matter can come before the court again, the court will make no order upon the application for postponement. [62]

In *Johannesburg City v K2016498847 (Pty) Ltd* [63] the Johannesburg Metropolitan Municipality ('the City') sought an order for an interdict restraining the respondent company from using a certain property as an 'accommodation establishment', such use being contrary to the way the property was zoned under the applicable Land Use Scheme ('the Scheme'), i e 'Residential 1', and to forthwith use the property in a zone-compliant manner. The City sought further relief: that, should the respondent not

comply, the sheriff be authorized to take all necessary steps to give effect to the interdict, including taking into possession 'all that [was] found at the property' and to keep such items that the company was using to conduct an accommodation establishment, pending payment of the City's 'reasonable fees and disbursements' incurred in the execution of the order. The High Court held [64] that the effect of the order whereby the City sought to enforce the Scheme was the eviction of the occupiers of the property. Where the enforcement of the Scheme affected the rights of people living on property to which the Scheme applied, they were obviously necessary parties to any enforcement application and had to be joined. [65] The City had failed to meet that requirement, and on such ground alone the application could not succeed. [66]

In *Kwadukuza Municipality v Mahomedy* [67] the municipality obtained a number of declaratory orders, including an order that it was unlawful for the respondents or any other person to conduct the repairing, servicing, etc of motor vehicles on their property in contravention of various statutory provisions, as well as an interdict restraining the respondents from further conducting the unlawful activities on the property. [68]

6 Purposes for which interdicts may be granted

An interdict, whether final or interlocutory, may be granted for a variety of reasons and in respect of a variety of things. An interdict may be granted to prohibit the commission of a delict, [69]

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and a crime; [70] to restrain infringements of an owner's rights of enjoyment of his property; [71]

to restrain a breach of a statutory provision; [72] to restrain an infringement of copyright; [73] to restrain an infringement of a patent; [74] to restrain an employee (or ex-employee) from passing his employer's trade secrets to a business rival; [75] to restrain a person from passing off his business (or merchandise) as that of another; [76] to restrain a bank from parting with money; [77] to restrain publication of defamatory material; [78] to restrain a person from publication of

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defamatory matter on such person's Facebook page; [79] to restrain a commercial bank from impugning its client's creditworthiness by listing the client as a defaulter with a credit bureau; [80] to restrain a respondent from transferring immovable property to a third party in anticipatory breach of the applicant's exercise of his right of pre-emption; [81] to restrain an attorney, once the attorney-client relationship with his client has come to an end, from using or disclosing information received from his former client in confidence otherwise than as permitted by law or contract; [82] to restore access to servers, emails and records on an accounting system; [83] to prohibit a daycare centre offering supervision and care for a number of dogs during certain hours in the week from operating illegally and causing distraction to the peace and serenity of a neighbour; [84] to restrain people from unlawfully invading and occupying a landowner's property and violating a restitution process underway in terms of the Restitution of Land Rights Act 22 of 1994; [85] to restrain persons from acting as or representing directors of a homeowners association pending an appeal in terms of s 57 of the

Community Schemes Ombud Service Act 9 of 2011; [86] to prohibit unlawful mining activities in the prospecting area of a holder of a mining right; [87] to prohibit seismic surveying pending determination of an application for a final interdict prohibiting an exploration company from proceeding with seismic surveying unless and until an environmental authorization has been granted under the National Environmental Management Act 107 of 1998; [88] to restrain Eskom from implementing its unilateral decisions to reduce its bulk electricity supply to municipalities to historic, outdated and inadequate contractually agreed supply levels without prior compliance with the constitutional and statutory imperatives relating to intergovernmental dispute-resolution mechanisms; [89] to prevent the development of a cultural and heritage site pending consultation with affected indigenous groups and the determination of a final review application; [90] to prevent a respondent from taking any further steps to give effect to a *nolle prosequi* certificate and/or a summons issued by the registrar of the High Court and/or to pursue a private prosecution against the applicant in any way pending a decision in a hearing on the main controversy (which, in this instance, is about whether the first respondent, Mr Zuma, the ex-president of the Republic, has title to bring a criminal prosecution against the applicant, Mr Ramaphosa, who is the incumbent President of the Republic); [91] to restrain a municipality from implementing any credit control measures, which include the termination of electricity supply to residential premises, pending the furnishing of detailed and accurate accounts of municipal services to the owners of the premises and the reconciliation of such accounts as against payments that had already been made by the owners; [92] to prevent an applicant from being listed on the National Treasury's list of tender defaulters or from blacklisting the applicant from conducting business with the public sector pending the final determination of action proceedings to be instituted against the respondent for a final interdict and a declaratory order that the cancellation of a lease agreement between the parties is unlawful; [93] to restrain a respondent from establishing an illegal township on agricultural land; [94] to compel a municipality to take steps to abate and/or reasonably remediate the nuisance on property which is interfering with the use and enjoyment of another property in compliance with its by-laws; [95] to compel the removal of an encroachment on immovable property; [96] to direct a sheriff to effect service and to execute

court process without unreasonable delay; [97] to restrain a municipality from implementing its debt-collecting and credit-control measures, including the termination of electricity to business premises, pending the determination of a dispute lodged in terms of s 95*(f)* read with s 102(2) of the Local Government: Municipal Systems Act 32 of 2000; [98] and generally to preserve property in the interest of a creditor, either permanently or merely *pro tempore* pending an action to be brought to determine the respective rights of the parties. The latter is in substance an interdict *in securitatem debiti*, or an 'anti-dissipation interdict', [99] aimed at restraining a respondent from dissipating or concealing his assets pending the outcome of an action. [100] An interdict of this nature can have a devastating effect on the affairs of the

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respondent; it also has a huge potential for abuse. [101] It is, accordingly, considered that the courts should exercise care and circumspection in granting such interdicts, i e the balance of convenience should be carefully weighed. The Appellate Division has held that this type of interdict is *sui generis*. [102] The question of the availability of an alternative remedy does not arise — the interdict is either available or it is not. [103] An applicant must, except possibly in exceptional cases, show a particular state of mind on the part of the respondent, viz that he is getting rid of his funds (or that he is wasting or secreting assets), or is likely to do so, with the intention of defeating the claims of his creditors. [104]

The Appellate Division has left open the question whether, in principle and on authority, such an interdict should be granted in cases where the respondent is in good faith disposing of his assets, or threatening to do so, and has no intent to render the applicant's claim nugatory. [105] The court did, however, remark that there would not normally be any justification to compel a respondent to regulate his bona fide expenditure so as to retain funds in his patrimony for the payment of claims against him. [106] The Supreme Court of Appeal has emphasized that the order does not create a preference for the applicant to the property interdicted. [107]

It has been held [108] that an interdict restraining publication of future defamatory material sought to improve what would be drastic constraints on the respondent's freedom to publish matters. If such order is granted, the rd6ight to freedom of expression as included in s 16 of the Constitution of the Republic of South Africa, 1996, would be grossly curtailed. There was also no basis at common law for such order if the material was not yet known, and it could not be determined whether, if published, it would be defamatory. In such case the court would have regard to whether the applicant had available to it an alternative remedy. [109]

Any kind of property, movable [110] and immovable, may be the subject of an interdict, whether in the possession of the respondent or in the hands of a third party. Among the kinds of property interdicted have been dividends due to a debtor from an insolvent estate; [111] money due to a debtor from a third party; [112] the proceeds of a fire insurance policy; [113] partnership funds or assets in the hands of a partner about to default; [114] cheques; [115] bail money; [116] exhibits in a criminal case bought with stolen money [117] and pledged property. [118]

If money is sought to be interdicted pending an action for its recovery, it must be shown that the money sought to be interdicted is identifiable with or earmarked as a particular fund to which the applicant claims to be entitled. [119] Money remains earmarked where the property of the applicant has been realized and the respondent is in possession of the proceeds,

provided the proceeds are clearly identifiable. [120] If misappropriated monies went to swell the respondent's banking account, the respondent may be interdicted from dealing with or alienating the fixed deposit into which the monies were deposited pending an action for the recovery of the monies. [121]

In terms of s 83 of the Financial Markets Act 19 of 2012 a court may, in relation to any matter referred to in Chapter X of that Act, on application by the Financial Services Board, grant an interdict.

In *MultiChoice Support Services (Pty) Ltd v Calvin Electronics t/a Batavia Trading* [122] the Supreme Court of Appeal held that a decision of a contracting party to cancel a contract was not judicially reviewable. Consequently, an interdict to stop the cancellation pending judicial review was legally unsustainable. [123]

7 Requisites for a final interdict

There are three requisities [124] for the grant of a final interdict, all of which must be present:

(a) A clear right on the part of the applicant.

(b) An injury actually committed or reasonably apprehended.

(c) The absence of any other satisfactory remedy available to the applicant.

***(a)* Clear right.** The phrase 'clear right' has been in use for so long that it has become accepted in legal terminology. Its meaning is, however, not clear, and this has led to confusion of thought and looseness of language. [125] The original words used were 'een liquide recht'. [126] These have consistently been translated as a 'clear right', [127] but a more correct rendering would be a 'definite right'. [128] It is submitted that what is meant by the phrase is 'a right clearly established'. [129] Whether the applicant has a right is a matter of substantive law; whether that right is clearly established is a matter of evidence. [130] In order to establish a clear right the applicant has to prove on a balance of probability the right which he seeks to protect. [131] Factual disputes must be resolved, if the parties do not request such issues to be referred for trial or evidence in terms of rule 6(5)*(g)*, by applying the test enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*, [132]

namely that the interdict sought can be granted only if the facts as stated by the respondents, together with the admitted facts in the applicant's affidavits, justify the granting thereof. [133]

***(b)* Injury committed or reasonably apprehended.** The second requisite for obtaining a final interdict is proof of an injury actually committed or reasonably apprehended; [134] in other words, proof of some act actually done showing interference with the applicant's rights, or of a well-grounded apprehension that acts of the kind will be committed by the respondent.

The word 'injury' is not an exact or appropriate equivalent for 'een gepleegde feitelijkheid', and the authorities clearly use the word as meaning an act of interference with, [135] or an invasion of, [136] the applicant's right, and resultant prejudice. [137] The absence of any possible prejudice to the applicant will result in the refusal of the interdict. [138] In fact, unless he shows that he is suffering or will suffer some injury, prejudice, or damage or invasion of right peculiar to himself and over and above that sustained by members of the public in general, the applicant has no *locus standi* in interdict proceedings. [139] Prejudice does not mean actual damage and it is sufficient to establish potential prejudice. [140] If an applicant relies on a threat by the respondent to breach an agreement, it is necessary in order to prove 'injury', to demonstrate that a right had been invaded. In that sense, a threatened invasion of the rights under the agreement would constitute proof of injury reasonably apprehended. [141]

The injury must be a continuing one: the court will not grant an interdict restraining an act already committed. [142]

Van der Linden speaks of 'een gegronde vrees . . . dat 'er eene zoodanige feitelijkheid . . . gepleegd zal worden'. [143] This is

usually rendered by the phrase 'reasonable apprehension of injury' to the applicant's right. [144] A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with certain facts. [145] The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow: he is only to show that it is reasonable to apprehend that injury will result. [146] The test for apprehension is an objective one. [147] The applicant must therefore show objectively that his apprehensions are well grounded. Mere assertions of his fears are insufficient. The facts grounding his apprehension must be set out in the application to enable the court to judge for itself whether the fears are indeed well grounded. [148]

The apprehension must be induced by some action performed by the respondent or authorized to be performed by his agent; unauthorized action by an agent or servant will not justify an interdict against the principal. [149]

***(c)* No other remedy.** The third requisite for the grant of a final interdict is proof that there is no other satisfactory remedy available to the applicant. [150] Being a drastic remedy from the respondent's point of view and (probably largely for that reason) in the court's discretion, the court will not, in general, grant an interdict when the applicant can obtain adequate redress in some other form of ordinary relief. [151] An applicant for a permanent interdict must allege and establish, on a balance of probability, that he has no alternative legal [152] remedy. [153]

The courts will not, in general, grant an interdict when the applicant can obtain adequate redress by an award of damages. [154] The test of the adequacy of damages is, however, not conclusive. Even where an injury may be capable of pecuniary evaluation and compensation, the court will generally grant an interdict if —

(i) the respondent is a man of straw; [155]

(ii) the injury is a continuing violation of the applicant's rights. [156] This rule is subject to certain limitations in that the court has the discretion to award damages in lieu of an interdict in certain circumstances. These are, *inter alia*, where the injuries are trivial and occasional, where the applicant has shown that he only wants money, in vexatious and oppressive cases, and in cases where the applicant has so conducted himself to render it unjust to give him more than pecuniary relief; [157]

(iii) the damages will be difficult of assessment. [158] In a proper case, even though the damages are incapable of exact computation, the courts will grant damages in lieu of an interdict if loss is proved; [159]

(iv) the action for damages will be needlessly expensive and time-consuming. [160]

If there is an existing remedy 'with the same result' for the protection of the applicant, an interdict will not be granted. [161] The range and nature of such existing remedies is, of course, infinite and varied, and a few examples only can be given. Thus, an interdict has been refused

on the ground that the applicant could sequestrate the respondent's estate; [162] and on the ground that the applicant's own wide powers constituted 'an equally effective, if not more effective remedy' than an interdict. [163] It has been held that where a criminal prosecution would constitute an adequate alternative remedy, an interdict should not be granted in circumstances where the applicant failed to place any evidence before the court as to why a criminal prosecution would be an inadequate remedy. [164]

In *Hotz v University of Cape Town* [165] Wallis J, for the sake of clarity, stated the following about this requirement: [166]

> '[36] Firstly, the purpose of an interdict is to put an end to conduct in breach of the applicant's rights. The applicant invokes the aid of the court to order the respondent to desist from such conduct and, if the respondent does not comply, to enforce its order by way of the sanctions for contempt of court. Secondly, the existence of another remedy will only preclude the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. That is why in many cases a court will weigh up whether an award of damages will be adequate to compensate the injured party for any harm they may suffer. There may also be instances where, in the case of a statutory breach, a criminal prosecution, in appropriate circumstances, will provide an adequate remedy, but there are likely to be few instances where that will be the case. Thirdly, the alternative remedy must be a legal remedy, that is, a remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court. The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict.
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> [39] This understanding of the nature and purpose of an interdict is rooted in constitutional principles. Section 34 of the Constitution guarantees access to courts, or, where appropriate, some other independent or impartial tribunal, for the resolution of all disputes capable of being resolved by the application of law. The Constitutional Court has described the right as being of cardinal importance and "foundational to the stability of an orderly society" as it "ensures the peaceful, regulated and institutionalised mechanisms

> to resolve disputes without resorting to self-help". It is "a bulwark against vigilantism, and . . . chaos and anarchy". Not only is the Constitution the source of the university's right to approach the court for assistance, in doing so it is exercising a right that the Constitution guarantees. In granting an interdict the court is enforcing the principle of legality that obliges courts to give effect to legally recognised rights. In the same way the principle of legality precludes a court from granting legal recognition and enforcement to unlawful conduct. To do so is "the very antithesis of the rule of law".'

8 Requisites for an interlocutory interdict

The requirements which an applicant for an interlocutory interdict has to satisfy are the following: [167]

(a) a prima facie right;

(b) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;

(c) a balance of convenience in favour of the granting of the interim relief; and

(d) the absence of any other satisfactory remedy.

The application of these requisites has through the years given rise to considerable difficulty, and indeed a measure of uncertainty and ambivalence. [168] In cases such as *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* [169] the 'sliding-scale' test as propounded in *Olympic Passenger Service (Pty) Ltd v Ramlagan* [170] is applied: the stronger the prospects of success (i e the strength of the applicant's case), the less need for the balance of convenience to favour the applicant; the weaker the prospects of success, the greater the need for the balance of convenience to favour him. [171] In *Tshabalala v*

Minister of Health [172] the application was by reason of a dispute of fact referred to oral evidence, but an interlocutory interdict granted on the ground that the balance of convenience was heavily on the side of the applicant. This is nothing but an application of the approach of the House of Lords in *American Cyanamid Co v Ethicon Co*, [173] though in the judgment reference is made to neither the English nor South African cases. In other recent cases the 'strength of case' threshold test is still strictly applied. [174]

In *Ferreira v Levin NO; Vryenhoek v Powell NO* [175] it was held that the test enunciated in *American Cyanamid* [176] should be recognized as of equal validity with the '*prima facie* case though open to some doubt' test when deciding whether interim relief should be granted in constitutional cases. The *American Cyanamid* approach has been adopted in the Land Claims Court. [177]

The different requisites should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of the interim relief sought. [178]

***(a)* Prima facie right.** An interdict will be granted if the court is satisfied that the applicant has a right established upon a balance of probabilities and that the respondent has invaded it or threatens to do so. [179] In the majority of cases, however, an applicant for an interlocutory interdict cannot establish his right clearly upon affidavits, his allegations being more often than not met by counter-allegations or denials. Therefore, since the application is merely interlocutory and the effect of the granting thereof is only temporary and not finally decisive of either party's rights, the court will grant an interdict upon a degree of proof less exacting than that required for the grant of a final interdict. It is in attempting to define this degree of proof — an almost impossible task, it has been held [180] —that the courts have used such varied expressions as 'a clear right', 'a *prima facie* right', '*prima facie* proof of a clear right', 'a *prima facie* case for an interdict' and '*prima facie* grounds for an interdict'.

There were few effective attempts to clarify the phraseology used until 1948, when the judgments in *Webster v Mitchell* [181] and *Ndauti v Kgami* [182] were delivered. These cases make it clear that in order to decide whether an applicant for an interlocutory interdict has prima facie established his right the court must look at the respondent's affidavits as well. The approach laid down by Clayden J in *Webster v Mitchell* [183] is as follows:

> '[T]he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "*prima facie* established though open to some doubt" that is enough. . . .
>
> The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, [184] the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.'

In *Gool v Minister of Justice* [185] Ogilvie Thompson J commented as follows on the above passage:

> 'With the greatest respect, I am of opinion that the criterion prescribed in this statement for the first branch of the inquiry thus outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on an applicant's own averred or admitted facts is: *should (not could) the applicant on those facts obtain final relief at the trial*. [186] Subject to that qualification, I respectfully agree that the approach outlined in *Webster v Mitchell*. . . is the correct approach for ordinary interdict applications.'

This test laid down by Clayden J, as modified by Ogilvie Thompson J, has been followed in numerous subsequent cases. [187]

It has been held that the approach outlined in the *Webster* case above is to be adopted when, in proceedings for an interdict *pendente lite*, the dispute is one of fact. [188] On the other hand, it has been held that the approach is not confined to evidentiary matter and that the openness of a right to some doubt could be applied to legal questions also. [189] The cases are, however, not harmonious as to the approach to be adopted when, in proceedings for an interdict *pendente lite*, the dispute is one of law. It has been held, on the one hand, that when the dispute is one of law, a final decision can be reached and the court will grant a final interdict. [190] On the other hand, it has been held that if the court has had sufficient time and assistance to arrive at a final view on the disputed legal point, it will be entitled to grant a final interdict. [191] In *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* [192] the majority of the Constitutional Court, having considered the different views, adopted the following view:

> '[250] I take the view that it does not help to be categorical one way or the other on this. The approach to be adopted must be dictated by the circumstances of each case. Sight should not be lost of the fact that a substantial number of applications for interim relief are brought by way of urgency. There is much to be said for the view that a judge sitting in a busy urgent court does not have as much time as does a judge who hears trials or decides non-urgent opposed matters. Although each judge must strive for the attainment of the best possible outcome in the circumstances, this reality cannot be ignored. Of course, this is not an invitation to judges considering urgent interim interdicts to avoid deciding legal questions which — with the necessary diligence — are capable of definitive decision.
>
> [251] There are legal questions that are capable of easy resolution to any judge worth their salt. Those must be decided definitively. If, as a matter of law, the right asserted by the applicant for interim relief is held not to exist at all, that will be the end of the matter. And that will result in a saving in costs as there will be no subsequent litigation. On the other hand, the legal right may definitively be held to exist as a matter of law and all that may remain for determination at the later proceedings may be whether, on the facts, the applicant has made out a case. There may also be those circumstances where — either because of a combination of factors that include the complexity of the legal question, its novelty, little or no assistance from the litigants' argument, the speed with which the outcome is required and lack of sufficient time for the judge to consider the matter as best they can — the judge may not be in a position to reach a definitive decision on a legal question. In *Johannesburg Municipal Pension Fund* [193] Malan J held: [194]
>
> > "Impressive and erudite arguments were addressed to me on all these grounds. I cannot do justice to all the considerations referred to. All the issues referred to involve difficult questions of law and none of them can be described as ordinary. Nor is it desirable to rule at this interim stage that there is no prospect of success on any of these bases of review. The issues are simply too involved (a serious question to be tried) and of such gravity that they cannot be, and should not be, disposed of in these interim proceedings. The city has disavowed reliance on the notices purporting to amend Notice 6766 and I do not intend dealing with their validity, but accept for the purposes of this judgment the applicants' contentions."
>
> I see no legal impediment to a judge in such circumstances reaching a conclusion that says prima facie there is enough pointing to the determination of the legal question in the applicant's favour in the envisaged later proceedings.'

The court will adopt the approach outlined in the *Webster* case above when considering an ordinary application for an interdict. When the court is concerned with an extraordinary application for an interdict, other factors demand to be taken

into account. For example, the court does not readily grant an interdict restraining the exercise of statutory powers in the absence of any allegation of *mala fides*. [195] The court will exercise its discretion to grant such an interdict only in exceptional circumstances and when a good and strong case has been made out. [196]

In *National Treasury v Opposition to Urban Tolling Alliance* [197] the Constitutional Court held: [198]

> '[45] It seems to me that it is unnecessary to fashion a new test for the grant of an interim interdict. The *Setlogelo* test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts in busy magistrates' courts and high courts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.
>
> [46] Two ready examples come to mind. If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.'

There exists no prima facie right where the initial action upon which the application for an interlocutory interdict was based, had been settled. [199]

Where an applicant sought interlocutory relief to protect his right pending the resolution of the dispute in the main action, he was required to prove not a clear right but a prima facie right to payment for the work he had done. [200]

Although the onus of establishing a prima facie right remains upon the applicant, less evidence will suffice to establish a prima facie case where the matter is peculiarly within the knowledge of the respondent than would under other circumstances be required. [201]

***(b)* Irreparable harm.** The second requisite for an interlocutory interdict is a well-grounded apprehension of irreparable harm if the interim relief is not granted. [202] Irreparable harm or loss may be defined as the loss of property (including incorporeal property and money) in circumstances where its recovery is impossible or improbable. The loss need not necessarily be any financial loss: it may consist of an irremediable breach of the applicant's rights. [203] Irreparable loss will occur when a person entitled to a particular thing is forced to take merely its value, [204] or is obliged to expend money which he cannot possibly recover. [205]

The test in regard to this requisite is an objective one, [206] i e on the basis of the facts presented to it, the court must decide whether there is any basis for the entertainment of a

reasonable apprehension of injury by the applicant. [207]

If the applicant can establish a clear right his apprehension of irreparable harm need not be established. [208]

Despite an undertaking by the respondent that he will refrain from his alleged wrongful conduct, the court is not precluded from granting, in appropriate circumstances, an interlocutory interdict. [209]

If the infringement complained of is one that prima facie appears to have occurred once and for all, and is finished and done with, the applicant should allege facts justifying a reasonable apprehension that the harm is likely to be repeated. [210]

In *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* [211] Cameron J stated: [212]

> 'When the facts are unclear, the interdicting court must weigh prospects, probabilities and harm. But when the respondent, who is sought to be interdicted, has a killer law point, it is just and sensible for the court to decide that point there and then. The court is in effect ruling that, whatever the apprehension of harm and the factual rights and wrongs of the parties' dispute, an interdict can never be granted because the applicant can never found an entitlement to it.'

***(c)* Balance of convenience.** The third requisite for an interlocutory interdict is a balance of convenience in favour of the granting of the interim relief. The court must weigh the prejudice to the applicant if the interlocutory interdict is refused against the prejudice to the respondent if it is granted. [213] Usually this will resolve itself into a consideration of the prospects of success in

the main action and the balance of convenience — the stronger the prospects of success, the less need for the balance of convenience to favour the applicant; the weaker the prospects of success, the greater the need for the balance of convenience to favour him. [214]

The upholding of existing legislation, until repealed or declared unconstitutional, must be taken into account in assessing where the balance of convenience lies. [215]

In *National Treasury v Opposition to Urban Tolling Alliance* [216] the Constitutional Court held that when considering the balance of convenience, consideration had to be given to the separation of harm:

> '[46] . . . Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.
>
> [47] The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm. It is neither prudent nor necessary to define "clearest of cases". However, one important consideration would be whether the harm apprehended by the claimant amounts to a breach of one or more fundamental rights warranted by the Bill of Rights.'

***(d)* No other satisfactory remedy.** The fourth requisite for the granting of an interlocutory interdict is the absence of another adequate ordinary remedy. [217] Within the context of interlocutory interdicts this requisite is closely linked with that of 'irreparable harm' discussed above, [218] for if the injury envisaged will be irreparable if allowed to continue, an interdict will be the only remedy. On the other hand, if there is some other satisfactory remedy it follows that the injury cannot be described as irreparable.

There are two *exceptions* to the rule that an applicant for an interlocutory interdict must show the requisites outlined above. [219] These are applications for interdicts pending (i) vindicatory, and (ii) possessory (usually, but loosely, described as quasi-vindicatory) actions. A vindicatory action is one in which the plaintiff claims delivery of specific property as owner or

lawful possessor. An action is said to be quasi-vindicatory when delivery of specific property is claimed under some legal right to obtain possession. [220] The most familiar example of the latter is an action for delivery or transfer of property under a contract of sale, which in certain circumstances supports a claim to an interdict restraining the seller from dealing with the property pending the action. [221]

An applicant for an interdict pending a vindicatory action to recover what he alleges is his own property need not show that he will suffer irreparable loss if the interdict is not granted. [222] There is a presumption, which may be rebutted by the respondent, that the injury is irreparable. [223] Nor need the applicant show that he has no other satisfactory remedy: a person who is entitled to vindicate property in the hands of another cannot be forced by the action of that person to accept merely the value of the property. [224]

The practice of granting an interlocutory interdict without proof of irreparable loss is not confined to vindicatory actions properly so called but may also be applied in any case in which the applicant has established a prima facie right to delivery of a particular thing, since in all such cases the court is entitled to ensure that the thing shall be preserved until the dispute is finally decided. [225] The interdict may be granted even if the probabilities of success in the action are against the applicant, and should ordinarily be granted if no harm would thereby be occasioned to the respondent. [226]

Apart from the presumption which relieves the applicant of the necessity of proving irreparable loss, the requirements for applications for interdicts pending vindicatory or possessory actions are the same as in any other. The same considerations of convenience and other discretionary factors enter into the matter, [227] and the rights of third parties who have bona fide acquired rights adverse to the applicant may have to be considered.

9 Discretion

The court has a discretion whether or not to grant an interdict. [228] No comprehensive rule can be laid down for the exercise of judicial discretion in granting or refusing interdicts, [229] but the court must decide on the circumstances of each case. [230]

***(a)* Final interdicts.** There is no general discretion to refuse a final interdict. [231] The discretion of a court to refuse a final interdict is limited and is bound up with the question whether the rights of the party complaining can be protected by any other ordinary remedy. [232]

Mere delay in applying for an interdict in defence of a right is no ground for refusing the interdict. [233] Before delay can be a valid obstacle to the claim for an interdict, it must be shown that in the circumstances of the particular case the grant of the interdict would cause some great inequity and would amount to unconscionable conduct on the part of the applicant. [234] If acquiescence can be proved by some act, conduct or circumstances on the part of the applicant, the enforcement of a right would cause real inequity and the applicant's conduct would amount to unconscionable conduct. [235]

***(b)* Interlocutory interdicts.** The court possesses a general and overriding discretion whether to grant or refuse an application for interlocutory relief. [236] This means that an applicant who

establishes the requisites for an interlocutory interdict is not necessarily entitled to that relief. [237]

The discretion which the court has must be exercised judicially [238] upon a consideration of all the facts. Factors which should be taken into consideration in the exercise of the discretion are the applicant's prospects of success in the main action, the availability or not of an adequate ordinary remedy, the balance of convenience and the respective prejudice which would be suffered by each party as a result of the grant or refusal of an interlocutory interdict. These various elements should not be considered separately or in isolation. [239]

An interlocutory interdict may be refused if the applicant has delayed long before applying. An application for an interdict *pendente lite* from its very nature requires the maximum expedition from an applicant, who may forfeit his right to temporary relief if he delays unduly in bringing the interim proceedings to finality. [240] Failure or undue delay on the part of the applicant to press on with the main action after a rule *nisi* has been obtained may lead to dismissal of the rule. [241]

Inasmuch as the grant or refusal of an interlocutory interdict is discretionary the court may impose such terms upon the grant or refusal as it thinks fit, [242] and it has the power to regulate the further proceedings of any application before it. [243] Thus, for example, the operation of an interdict may be suspended, [244] but not in the case of a statutory breach [245] or where the wrong complained of amounts to a crime. [246] In *Braham v Wood* [247] an interlocutory interdict was granted subject to the proviso that, if it was not confirmed in the subsequent action, the granting of the interlocutory interdict would be entirely without prejudice to the respondent's right to claim from the applicant any damages he may suffer as a result of his being stopped by the interdict with the erection of a proposed building. In an appropriate case an applicant may be required, as a condition of the grant of his application, to give security for such damages as

the respondent may have sustained as a consequence of the grant of an interlocutory interdict. [248] A court may, in interdicting and restraining a municipality from evicting persons from, and demolishing, any informal dwelling, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, whether occupied or unoccupied pending a national state of disaster, order the municipality to, within a stipulated period of time of the date of its order, return all building materials and personal possessions seized by it and grant a compensation order to each person who was evicted in lieu of loss of personal belongings. [249]

10 Remedies for breach of interdict

An interdict operates from the moment it is pronounced. There is no need for the order to be served upon persons bound by it in order to make it effective. Any person bound to observe the prohibition contained in the order will be guilty of contempt if he flouts the order while he has information, which he has no reason to disbelieve, to the effect that an order of court has been granted against him. [250] The principle is that when a person receives information, which he has no reasonable ground for disbelieving, that an order of court has been issued against him, he is bound to act as if that order had actually been served upon him, and if he fails to do so, he acts contrary to its tenor at his peril. [251] If it is sought to impute constructive knowledge to a principal because of the knowledge of his agent, the knowledge of his agent must be actual knowledge and not merely constructive knowledge. [252]

The appropriate remedy for breach [253] is committal for contempt of court. Any person in whose favour an interdict has been granted has *locus standi* to enforce it, even though he was not the applicant in the proceedings. [254]

Contempt of court in the present context means the deliberate, intentional (i e wilful), disobedience of an order granted by

a court of competent jurisdiction. [255] In *Wilkinson v Wiggill* [256] it was held that the respondent's conduct must amount to a wilful breach *of the terms of the interdict*:

> '(1) If the injury to the plaintiff's legal rights is small, and (2) is one which is capable of being estimated in money, and (3) is one which can be adequately compensated by a small money payment, and (4) the case is one in which it would be oppressive to the defendant to grant an injunction, then damages in substitution of an injunction may be given.'

11 Appealability of interlocutory interdicts

In *Cronshaw v Coin Security Group (Pty) Ltd* [257] the Supreme Court of Appeal held that an interlocutory interdict was appealable if it was final in effect and not susceptible to alteration by the court of first instance. In determining whether an order is final, it is important to bear in mind that 'not merely the form of the order must be considered but also, and predominantly, its effect'. [258]

In *National Commissioner of Police v Gun Owners South Africa* [259] the Supreme Court of Appeal, with reference to *Philani-Ma-Afrika v Mailula* [260] and *Tshwane City v Afriforum*, [261] pointed out [262] that the traditional requirements that render an order appealable, namely that it is final in effect or dispositive of a substantial part of the case, have now been subsumed under the broader constitutional 'interests of justice' standard and stated:

> 'What the interests of justice require depends on the facts of the particular case. This standard applies both to appealability and the grant of leave to appeal, no matter what pre-Constitution common-law impediments might exist. In *Tshwane City v Afriforum* the Constitutional Court held that where the doctrine of the separation of powers is implicated and forbids the grant of an interim order, the interests of justice demand that an interim interdict is appealable, even if the common-law requirements in relation to appealability are not met.'

In *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* [263] the Constitutional Court dealt with the application of the interests of justice in an appeal relating to interim interdicts. The Supreme Court of Appeal had struck a matter from its roll on the basis that the order, which was an interim interdict, was not appealable under the *Zweni* test. [264] The Constitutional Court upheld an appeal against that judgment. It found that '[o]ver and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate'. [265] It found further that, in deciding whether an order was appealable, the Supreme Court of Appeal did not exercise a discretion but rather made a finding of law. [266] The

Constitutional Court concluded that the interlocutory interdict in question was appealable because it had resulted in the infringement of the right to freedom of expression. [267]

In *Polokwane Municipality v Double Four Properties; Broadlands Home Owners Association NPC v Double Four Properties* [268] the Supreme Court of Appeal held that it was bound to follow the finding of the Constitutional Court in *Lebashe*. [269] So too in *Nedbank Limited v Survé*. [270] Dealing with the question whether the interlocutory interdict in the appeal was appealable, the Supreme Court of Appeal in *Survé* stated (footnote omitted):

> '[18] In a matter where no case was made out for an interim interdict and the order accordingly ought never to have been granted in the first place, along with other relevant considerations, interests of justice might well render an interim interdict appealable despite the *Zweni* requirements not having been met. An analysis of the second issue in this appeal, namely, whether the respondents made out a prima facie case for the interim interdict granted, demonstrates that this appeal is one of those exceptional cases.' [271]

12 Interlocutory interdict pending appeal

Where an interim order is not confirmed, irrespective of the wording used, the application is effectively dismissed. There is, accordingly, no order that can be revived by the noting of the appeal and there is nothing that can be suspended. [272] Thus, the noting of an appeal against the refusal of a final order where interlocutory relief was granted does not revive the interim order unless the parties have specifically agreed to the continued existence of the interdict pending appeal. [273]

The mere fact that an interlocutory interdict is discharged on the return day, when the final interdict is considered, does not preclude the applicant from obtaining an interlocutory

interdict pending an appeal against that decision. [274] If, however, an application for an interdict is refused on the basis that no prima facie right has been established, a court is not entitled to grant an interlocutory interdict pending an appeal against such decision. [275]

Section 18(2) of the Superior Courts Act 10 of 2013 provides that, subject to subsec (3) thereof, the operation and execution of a decision which is an interlocutory order not having the effect of a final judgment, is not suspended pending the decision of an application for leave to appeal or appeal, unless the court under exceptional circumstances orders otherwise. See further, in this regard, Volume 1 third edition, Part D.

1 *Godongwana v Mpisana* 1982 (4) SA 814 (TkSC) at 817C–D.

2 *South Atlantic Islands Development Corporation Ltd v Buchan* 1971 (1) SA 234 (C) at 239G. See also *South African Airways Soc v BDFM Publishers (Pty) Ltd* 2016 (2) SA 561 (GJ) at 574D–576D and the cases there referred to.

3 *Stauffer Chemicals Chemical Products Division of Chesebrough-Ponds (Pty) Ltd v Monsanto Company* 1988 (1) SA 805 (T) at 809F; *Philip Morris Inc v Marlboro Shirt Co SA Ltd* 1991 (2) SA 720 (A) at 735B; *Payen Components SA Ltd v Bovic CC* 1995 (4) SA 441 (A) at 451F–G; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 346H–I; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 196C–G; *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 238A; *South African Airways Soc v BDFM Publishers (Pty) Ltd* 2016 (2) SA 561 (GJ) at 576C; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 300B; *Global Environmental Trust v Tendele Coal Mining (Pty) Ltd (Centre for Environmental Rights and others as amici curiae)* [2021] 2 All SA 1 (SCA) at paragraph [125]; *Khoin v Jenkins and a related matter* [2023] 1 All SA 110 (WCC) at paragraph [51]; *Van Greunen v Govern* (unreported, FB case no 5395/2022 dated 6 April 2023) at paragraph [10]; *Thabang v North West University* (unreported, NWM case no UM 27/2023 dated 20 April 2023) at paragraph [3]; *Evrigard (Pty) Ltd v Select PPE (Pty) Ltd* (unreported, GJ case no 44317/2021 dated 25 April 2023) at paragraphs 33 and 30.

4 *Tiger Trading Co v Garment Workers Union* 1932 WLD 131.

5 *Offit Enterprises (Pty) Ltd v Coega Development Corporation* 2010 (4) SA 242 (SCA) at 259E–G.

6 *Metlika Trading Ltd v Commissioner, South African Revenue Service* 2005 (3) SA 1 (SCA) at 19C–D.

7 See, for example, Nathan *Interdicts* passim; Prest *Interdicts* 9–36.

8 *Judicieele Practijcq* 2 19 1; *Koopmans Handboek* 3 1 4 7; *Setlogelo v Setlogelo* 1914 AD 221; *Grant-Dalton v Win* 1923 WLD 180; *Meyer v Administrateur, Transvaal* 1961 (4) SA 55 (T) at 57; *Van Wyk v Steyn* 1963 (4) SA 814 (GW) at 819–20; *Airoadexpress (Pty) Ltd v Chairman,*

Local Road Transportation Board, Durban 1986 (2) SA 663 (A). It is perhaps of some importance to note that the leading case of *Setlogelo v Setlogelo* 1914 AD 221 does not stand at the beginning of a line of development. The evolution of a *South African* law of interdicts founded upon Van der Linden goes back at least to the middle of the previous century (see, for example, *Blackburn v Krohn* (1855) 2 Searle 209; *Nelson & Meurant v Quin & Co* (1874) 4 Buch 46 at 56–7). That is why Innes JA in *Setlogelo's* case (at 227) could claim that the 'requisites for the right to claim an interdict are well known', and refer to 'the well-known passage in Van der Linden's *Institutes* where he enumerates the essentials for such an application'. See further Prest *Interdicts* 9–36.

9 *LAWSA* XI 294. See, for example, *Buitendach v West Rand Proprietary Mines Ltd* 1925 TPD 886 at 907; *Rivas v The Premier (Transvaal) Diamond Mining Co Ltd* 1929 WLD 1; *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6.

10 Nathan *Interdicts*, in a footnote on the first page of his book, stresses that '[t]he reader must not . . . be misled by the English practice as to injunctions, which differs in various respects from our interdict practice'.

11 [1975] AC 396 (HL), [1975] 1 All ER 504 (HL).

12 [1976] QB 122 (CA), [1975] 2 All ER 829.

13 See Prest *Interdicts* 100 and 108.

14 *Beecham Group Ltd v B–M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 53E where the view is expressed that 'the principles stated by the Court of Appeal in England in the two earlier cases of *Hubbard v Vosper* [1972] 1 All ER 1023 (CA) and *Evans Marshall & Co Ltd v Bertola SA* [1973] 1 All ER 992 (CA), accord more closely with the current authority in South Africa on this subject than does the *American Cyanamid* case'. See Prest *Interdicts* 151–60. In *Ferreira v Levin NO; Vryenhoek v Powell NO* 1995 (2) SA 813 (W) Heher J held (at 825A–B and 836A–D) that the test enunciated in the *American Cyanamid* case should be recognized as of equal validity with the '*prima facie* case though open to some doubt' test when deciding whether interim relief should be granted in constitutional cases.

15 In *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383G Holmes J remarked that provincial decisions dealing with interdicts are 'unfortunately . . . disconcertingly inharmonious'.

16 The *mandament van spolie* bears some resemblance to a final interdict but the requisites differ. Though the *mandament* has sometimes in some way been equated with an interdict (see, for example, *Anderson v Anderson* 1919 EDL 57; *Pretorius v Pretorius* 1927 TPD 178 at 179; *Nienaber v Stuckey* 1946 AD 1049 at 1053; *Van Rooyen v Burger* 1960 (4) SA 356 (O) at 360C–D; *Mutale v Forte* (unreported, GJ case no 2021/46077 dated 19 October 2021) at paragraph [9]; Nathan *Interdicts* 3; Daniels *Burgerlike Prosesreg* Afd L–36), the differences between the two remedies have often been stressed (see, for example, *Burnham v Neumeyer* 1917 TPD 630 at 633; *Mans v Marais* 1932 CPD 352 at 359; *Mandelkoorn v Strauss* 1942 CPD 493 at 497; *Potgieter v Davel* 1966 (3) SA 555 (O) at 558B–559B; *Beukes v Crous* 1975 (4) SA 215 (NC) at 218G–219C; De Waal (1984) 47 *THRHR* 115 at 118; Van der Walt 1984 *De Rebus* 477; Kleyn *Mandament* 323 et sqq; *LAWSA* XI 302).

17 See *Shoba v Officer Commanding, Temporary Police Camp, Wagendrift Dam; Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg* 1995 (4) SA 1 (A) at 19D, in which it was held (at 19D–F) that an Anton Piller order is an order which grants immediate relief of a procedural nature, viz the preservation of evidence, subject to the possibility of a later variation or discharge of the order. On Anton Piller orders, see Part D8 below.

18 *LAWSA* XI 294.

19 Final interdicts are frequently referred to as 'perpetual' or 'absolute' interdicts. While no exception can be taken to the use of the word 'absolute' it is suggested that 'perpetual' is unsatisfactory if only for the reason that a final or absolute interdict need not necessarily be a perpetual one: the case of *Zuurbekom Ltd v Union Corporation Ltd* 1947 (1) SA 514 (A) is an illustration of a final interdict granted for a limited time. Interlocutory interdicts are sometimes termed 'interim' or 'temporary'. As these words all indicate the nature of the interdict in question, and cannot give rise to contradictions in terms, there can be no objection to their use at will. For present purposes the author has adopted the use of 'interlocutory' and 'final'.

20 *Cronshaw v Coin Security Group (Pty) Ltd* 1996 (3) SA 686 (A) at 690C–E, referred to in *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation* 2018 (6) SA 440 (SCA) at paragraph [44] and *Andalusite Resources (Pty) Ltd v Investec Bank Ltd* 2020 (1) SA 140 (GJ) at paragraph [21]. See further the notes s v 'Final interdict' below.

21 *Jordan v Penmill Investments CC* 1991 (2) SA 430 (E) at 436D.

22 An illegal decision (by a municipality) cannot be enforced by means of this interdict (*Nature's Choice Properties (Alrode) (Pty) Ltd v Ekurhuleni Municipality* 2010 (3) SA 581 (SCA) at 588B–D).

23 In *Lipschitz v Wattrus NO* 1980 (1) SA 662 (T) at 673C–D and *Kaputuaza v Executive Committee of the Administration for the Hereros* 1984 (4) SA 295 (SWA) at 317F–H it is stressed that a mandatory order is a form of interdict and can only be granted if all the requisites of an interdict have been established. In *BG Bojosinyane & Associates v The Sheriff Vryburg* (unreported, SCA case no 1072/2022 dated 8 December 2023) the Supreme Court of Appeal applied the requisites of an interdict in upholding an appeal and replacing the High Court's order with a mandatory interdict against a sheriff (at paragraphs [29]–[34]).

24 Baxter *Administrative Law* 690, cited with approval by De Villiers J in *Transnet Bpk v Voorsitter, Nasionale Vervoerkommissie* 1995 (3) SA 844 (T) at 847F.

25 This description of a mandatory interdict was quoted with approval in *Jordan v Penmill Investments CC* 1991 (2) SA 430 (E) at 436E.

26 *Estate Edwards v Sinclair* 1918 EDL 12 at 18. For an instance of a final interdict granted for a fixed time, see *Zuurbekom Ltd v Union Corporation Ltd* 1947 (1) SA 514 (A); *Botha v Maree* 1964 (1) SA 168 (O). If an interdict will operate for an unlimited time, the court can include in its order leave to the person against whom the interdict operates to approach the court for an order amending or rescinding the interdict on good cause being shown that the circumstances have materially changed (*CTP Ltd v Argus Holdings Ltd* 1995 (4) SA 774 (A) at 789A–C).

27 *BHT Water Treatment (Pty) Ltd v Leslie* 1993 (1) SA 47 (W) at 55A–F; and see *Van Niekerk v Van Rensburg* 1959 (2) SA 185 (T) at 187F–G; *Cape Tex Engineering Works (Pty) Ltd v SAB Lines (Pty) Ltd* 1968 (2) SA 528 (C) at 529G–530C; *SAB Lines (Pty) Ltd v Cape Tex Engineering Works* 1968 (2) SA 535 (C); *Masuku v Minister van Justisie* 1990 (1) SA 832 (A) at 840A–B; *Knox D'Arcy Ltd v Jamieson* 1995 (2) SA 579 (W) at 600G–602E; *Info DB Computers v Newby* 1996 (1) SA 105 (W) at 107A–B.

28 *BHT Water Treatment (Pty) Ltd v Leslie* 1993 (1) SA 47 (W) at 55E.

29 1999 (3) SA 897 (W) at 910I–J.

30 2018 (6) SA 440 (SCA).

31 2020 (1) SA 140 (GJ).

32 At paragraph [16].

33 That is, there must be *legal proceedings* pending between the parties (*Botha v Maree* 1964 (1) SA 168 (O); *Winkelbauer and Winkelbauer t/a Eric's Pizzeria v Minister of Economic Affairs and Technology* 1995 (2) SA 570 (T) at 574A–B; *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 403H).

34 See the remarks of Van Heerden JA in *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban* 1986 (2) SA 663 (A) at 681D–F; *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 403I.

35 *Apleni v Minister of Law and Order* 1989 (1) SA 195 (A) at 210B; *Mcilongo v Minister of Law and Order* 1990 (4) SA 181 (E) at 187C; *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 403I–404A; *Witzenberg Properties (Pty) Ltd v Bokveldskloof Boerdery (Pty) Ltd* 2018 (6) SA 307 (WCC) at 310G–311A.

36 *Jordan v Penmill Investments CC* 1991 (2) SA 430 (E) at 438F.

37 *Jordan v Penmill Investments CC* 1991 (2) SA 430 (E) at 436F.

38 *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 404A.

39 *Annex Distribution (Pty) Ltd v Bank of Baroda* 2018 (1) SA 562 (GP) at 568D–569A and 588F.

40 *Metlika Trading Ltd v Commissioner, South African Revenue Service* 2005 (3) SA 1 (SCA) at 19C–D.

41 2011 (1) SA 272 (ECM) at 282I–J. See also *Foize Africa (Pty) Ltd v Foize Beheer BV* 2013 (3) SA 91 (SCA) at 98A–C.

42 *Ex parte Hay Management Consultants (Pty) Ltd* 2000 (3) SA 501 (W) at 507G–J. See also *Foize Africa (Pty) Ltd v Foize Beheer BV* 2013 (3) SA 91 (SCA) at 98B; *Federation Internationale de Football Association v Sedibe* [2021] 4 All SA 321 (SCA) at paragraph [27]; *Corex (Pty) Ltd v Shenzhen Poweroak Newener Co Ltd* (unreported, GJ case no 2023/071667 dated 16 August 2023) at paragraphs [27]–[36]. The lack of jurisdiction cannot be cured by an attachment to found jurisdiction (*Ex parte Hay Management Consultants (Pty) Ltd* 2000 (3) SA 501 (W) at 507G–J; *Federation Internationale de Football Association v Sedibe* [2021] 4 All SA 321 (SCA) at paragraph [27]).

43 *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 (A) at 388–9; and see *Jacobs v Waks* 1992 (1) SA 521 (A) at 533J–534E; *Kolbatschenko v King NO* 2001 (4) SA 336 (C) at 346B–H; *Standard Bank of South Africa Ltd v Swartland Municipality* 2010 (5) SA 479 (WCC). In the latter case it was held (at 483H–484D) that a bank with a mortgage over property on which the owner (mortgagor) has erected an unauthorized structure is not vested with a direct and substantial interest in the outcome of an application by the local municipal authority for the demolition of the offending structure, and that such bank is therefore not entitled, as mortgagee, to interdict the demolition on the ground of non-joinder by the local authority.

44 *Antares International Ltd v Louw Coetzee & Malan Inc* 2014 (1) SA 172 (WCC) at 188C–E, 188I and 190G–H.

45 *Pretoria Estate & Market Co Ltd v Rood's Trustees* 1910 TS 1080 at 1084.

46 In Roman Law the *actio popularis* allowed a private person to sue for any interference with a public right (i e to prevent violations of *res sacrae, res publicae* and *albi corruptio*) whether or not such person himself suffered any special damage thereby.

47 The Court of Mechlin (i e the supreme court of appeal for the whole of the United Netherlands) decided that *actiones populares* were inoperative by 1578. See Devenish *Commentary on the SA Bill of Rights* 578.

48 Section 38*(d)* provides as follows:

'**38.** Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

(a) . . .
(b) . . .
(c) . . .
(d) anyone acting in the public interest . . .'

49 In the first edition of this work a contrary view, relying on Devenish *Commentary on the SA Bill of Rights* and *Commentary on the SA Constitution*, was adopted. It is submitted that, for the reasons set out in the notes to s 38*(d)* of the Constitution s v 'Anyone acting in the public interest' in Volume 1 third edition, Part A, this view can no longer be supported.

50 The principle stated in the text is that laid down in *Patz v Greene & Co* 1907 TS 427 at 433, which has been approved and amplified in a long line of cases. See, for example, *Dalrymple v Colonial Treasurer* 1910 TS 372; *Madrassa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718 at 726; *Roodepoort-Maraisburg Town Council v Eastern Properties (Pty) Ltd* 1933 AD 87 at 94; *Modern Appliances Ltd v African Auctions and Estates (Pty) Ltd* 1961 (3) SA 240 (W); *Johannesburg City Council v Knoetze and Sons* 1969 (2) SA 148 (W) at 154; *Herbst v Dittmar* 1970 (1) SA 238 (T) at 243; *CD of Birnam (Suburban) (Pty) Ltd v Falcon Investments Ltd* 1973 (3) SA 838 (W) at 844–7 (this case was overruled on appeal, but not on the question of *locus standi*, in *Falcon Investments Ltd v CD of Birnam (Suburban) (Pty) Ltd* 1973 (4) SA 384 (A) at 394); *United Dairies Co-op Ltd v Searle* 1974 (4) SA 117 (E) at 124–6; *Von Moltke v Costa Areosa (Pty) Ltd* 1975 (1) SA 255 (C); *Scott v Theron* 1976 (1) SA 612 (O) at 620; *Glass v Glass* 1980 (3) SA 263 (W) at 266; *Laskey v Showzone CC* 2007 (2) SA 48 (C) at 54E–G; *Old Mutual Life Assurance Co (South Africa) Ltd v Pension Funds Adjudicator* 2007 (3) SA 458 (C) at 463E–H. Our courts have declined to follow the decision in *Salisbury Bottling Co (Pvt) Ltd v Central African Bottling Co (Pvt) Ltd* 1958 (1) SA 750 (FC), in which Clayden FJ criticized the decision in *Patz v Greene & Co* 1907 TS 427.

51 *Patz v Greene & Co* 1907 TS 427; *Du Toit v Wok See* 1951 (3) SA 756 (T); *Modern Appliances Ltd v African Auctions and Estates (Pty) Ltd* 1961 (3) SA 240 (W); *United Dairies Co-op Ltd v Searle* 1974 (4) SA 117 (E). In certain cases it may be necessary to join the licensing authority concerned (*Herbst v Dittmar* 1970 (1) SA 238 (T)).

52 *Dalrymple v Colonial Treasurer* 1910 TS 372 at 399; *Roodepoort-Maraisburg Town Council v Eastern Properties (Pty) Ltd* 1933 AD 87 at 95; *Von Moltke v Costa Areosa (Pty) Ltd* 1975 (1) SA 255 (C); *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 (A). It was held in *Bamford v Minister of Community Development and State Auxiliary Services* 1981 (3) SA 1054 (C) that a member of the public had *locus standi* to apply for an interdict without proof of special damage to restrain an interference with a right of access to a park that had been conferred on all the members of the public (see the remarks of Rabie ACJ in *Cabinet of the Transitional Government for the Territory of South West Africa v Eins* 1988 (3) SA 369 (A) at 391). See also *De Villiers v The Pretoria Municipality* 1912 TPD 626; *Waks v Jacobs en Die Stadsraad van Carletonville* 1990 (1) SA 913 (T) at 919A–C; *Jacobs v Waks* 1992 (1) SA 521 (A); *Kolbatschenko v King NO* 2001 (4) SA 336 (C) at 346B–H.

53 The council stands in a fiduciary relationship to the ratepayers and the latter have an interest sufficiently direct to enable them to intervene when the council expends public revenue in a manner not authorized by the statute creating the municipality (*Dalrymple v Colonial Treasurer* 1910 TS 372 at 382, 383 and 385; *Waks v Jacobs en Die Stadsraad van Carletonville* 1990 (1) SA 913 (T) at 917H–918E). See also *Dormer v Town Council of Cape Town* (1886) 4 SC 240; *Cairncross v Oudtshoorn Town Council* (1897) 14 SC 272; *Maberley v Woodstock Municipality* (1901) 11 CTR 749; *De Villiers v Pretoria Municipality* 1912 TPD 626 at 631; *Director of Education, Transvaal v McCagie* 1918 AD 616 at 627–8.

54 Thus, it was held that a taxpayer who had no personal interest in the matter could not sue for breaches of a statute regulating the allotment of government revenue. He had to show personal damage, or the breach of a duty owed to himself, or an infringement of a right vested in him (*Dalrymple v Colonial Treasurer* 1910 TS 372 at 386 et seq; *Bagnall v Colonial Government* (1907) 24 SC 470; *Director of Education, Transvaal v McCagie* 1918 AD 616 at 621). However, the interdict *de libero homine exhibendo* is part of our law and when the liberty of a person is at stake, the interest of the person who applies for the interdict should be widely construed because illegal deprivation of liberty is a threat to the very foundation of a society based on law and order. Hence the interest that a person may have in the liberty of another may arise not only through family relationship or personal friendship but also through the relationship that binds two persons by reason of agreement relating to a matter of common interest, such as, for example, a partnership, or a society, or a church, or a political party. Any member of such a society or body has an interest in the personal liberty of a co-member (*Wood v Ondangwa Tribal Authority* 1975 (2) SA 294 (A); and see *Bozzoli v Station Commander, John Vorster Square, Johannesburg* 1972 (3) SA 934 (W)). See also, in general, *Democratic Alliance v Acting National Director of Public Prosecutions* 2012 (3) SA 486 (SCA) at 501F–502E; *Fikre v Minister of Home Affairs* 2012 (4) SA 348 (GSJ).

55 *Madrassa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718; *City Council of Johannesburg v Berger* 1939 WLD 87; *Johannesburg City Council v Knoetze and Sons* 1969 (2) SA 148 (W). See also *Estate Agents Board v Fred P Ackermans Properties (Pty) Ltd* 1979 (2) SA 987 (C); *Smalberger v Cape Times Ltd* 1979 (3) SA 457 (C).

56 See *Raubenheimer v Palmer* 1934 WLD 170; *George v Lewe* 1934 CPD 318; and see s 23(6) of the Insolvency Act 24 of 1936.

57 *Mulligan v Mulligan* 1925 WLD 164.

58 There must be no doubt as to precisely who is responsible. If there is such doubt, the interdict will be refused (*Prinsloo v Ned Hervormde or Gereformeerde Church* (1890) 3 SAR 220).

59 If both principal and agent are responsible for the wrong, the interdict may be granted against both (*Hoffman v Prinsloo & Hoffman* 1928 TPD 621). The court will not interdict a company from committing illegal acts on the mere ground that a servant of the company has committed such acts, where the company has not only not authorized those acts but has expressly forbidden them (*Goldsmid v The SA Amalgamated Jewish Press Ltd* 1929 AD 441).

60 *London v Johannesburg Town Council* 1930 WLD 22; and see *Herbst v Dittmar* 1970 (1) SA 238 (T). There was such joinder of the municipality concerned and the grantee in *United Dairies Co-op Ltd v Searle* 1974 (4) SA 117 (E).

61 *St Helena GM Ltd v Minister of Mines* 1947 (2) SA 1103 (T) at 1111.

62 *Abrahamse v Cape Town City Council* 1953 (3) SA 855 (C) at 860.

63 2022 (3) SA 497 (GJ).

64 At paragraphs [10] and [14]–[17].

65 At paragraph [20].

66 At paragraph [18].

67 Unreported, KZP case no 5189/2020P dated 17 March 2023.

68 At paragraph [33].

69 *Wynberg Municipality v Dreyer* 1920 AD 439; *Regal v African Superslate (Pty) Ltd* 1963 (1) SA 102 (A); *Transnet Bpk v Voorsitter, Nasionale Vervoerkommissie* 1995 (3) SA 844 (T) at 848A. The delicts contemplated include the publication of injurious falsehoods (*Helios Ltd v Letraset Graphic Art Products (Pty) Ltd* 1973 (4) SA 81 (T); and see *Elida Gibbs (Pty) Ltd v Colgate Palmolive (Pty) Ltd (1)* 1988 (2) SA 350 (W); *Aetiology Today CC t/a Somerset Schools v Van Aswegen* 1992 (1) SA 807 (W); *Nativa (Pty) Ltd v Austell Laboratories (Pty) Ltd* 2020 (5) SA 452 (SCA)) and the publication of defamatory matter (*Heilbron v Blignaut* 1931 WLD 167; *Minister of Health v Orangia Medical Supplies Ltd* 1946 AD 1033; *Davies v Lombard* 1966 (1) SA 585 (W); *Rautenbach v Republikeinse Publikasies (Edms) Bpk* 1971 (1) SA 446 (W); *Vorster v Strydpers Bpk* 1973 (3) SA 482 (T); *Buthelezi v Poorter* 1974 (4) SA 831 (W); *Fayd'herbe v Zammit* 1977 (3) SA 711 (D)), including the publication of defamatory matter on Facebook (*Heroldt v Wills* 2013 (2) SA 530 (GSJ)). The reputation of organs of state is not capable of being defamed and therefore they do not have standing to apply for an interdict prohibiting defamatory statements about them (*Minister of Police v Silvermoon Investments 145 CC* 2020 (6) SA 586 (KZD) at paragraphs [24], [35], [36], [44] and [48]). See *Erasmus and Others NNO v SA Associated Newspapers Ltd* 1979 (3) SA 447 (W) at 454; *Smalberger v Cape Times Ltd* 1979 (3) SA 457 (C); *Mandela v Falati* 1995 (1) SA 251 (W) and *Treatment Action Campaign v Rath* 2007 (4) SA 563 (C) on applications for interdicts prohibiting future publication. Fault is not a requirement for an interdict based on injurious falsehood: it is sufficient if the representation is false (*Elida Gibbs (Pty) Ltd v Colgate Palmolive (Pty) Ltd (1)* 1988 (2) SA 350 (W) at 353F; *Aetiology Today CC t/a Somerset Schools v Van Aswegen* 1992 (1) SA 807 (W) at 820I; *Nativa (Pty) Ltd v Austell Laboratories (Pty) Ltd* 2020 (5) SA 452 (SCA) at paragraph [53]).
The delicts contemplated further include delictual liability for unlawful interference with trade or business (*Dun and Bradstreet (Pty) Ltd v SA Merchants Combined Credit Bureau (Cape) (Pty) Ltd* 1968 (1) SA 209 (C)).
There can be no actionable wrong if there is justification for the conduct which gave rise to such wrong and, accordingly, an interdict will not be granted under such circumstances (*Hadjidakis v Hall* [2002] 3 All SA 8 (C) at 11*b*).
Whenever a court is asked to restrict the exercise of press freedom for the protection of the administration of justice (whether finally or by

means of a temporary interdict), the following principles laid down in *Midi Television (Pty) Ltd t/a E-TV v Director of Publications (Western Cape)* 2007 (5) SA 540 (SCA) at 548A–D apply:
'In summary, a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjecture or speculation that prejudice might occur will not be enough. Even then publication will not be unlawful unless a court is satisfied that the disadvantage of curtailing the free flow of information outweighs its advantage. In making that evaluation it is not only the interests of those who are associated with the publication that need to be brought to account but, more important, the interests of every person in having access to information. Applying the ordinary principles that come into play when a final interdict is sought, if a risk of that kind is clearly established, and it cannot be prevented from occurring by other means, a ban on publication that is confined in scope and in content and in duration to what is necessary to avoid the risk might be considered.'
See also *Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) at paragraphs [87]–[90] (dealing with repetition of publication that has already taken place) and *Mazetti Management Services (Pty) Ltd v AmaBhungane Centre for Investigative Journalism NPC* 2023 (6) SA 578 (GJ) at paragraphs [34]–[35].
In *Ramos v Independent Media (Pty) Ltd* (unreported, GJ case no 01144/21 dated 28 May 2021) the following order was made in application proceedings (at paragraph 138):
'1. It is declared that the statements made about the Applicant in the article published by the Respondents on 9 December 2020 and attached to the founding affidavit as "FA1" and "FA2" ("the article") are defamatory of her, false and unlawful.
2. The Respondents are interdicted from publishing or republishing:
2.1. the article; and
2.2. any statement that falsely says or implies that the Applicant, while employed as the CEO of Absa Bank, participated in fixing the rand or committed corruption or treason in relation to the fixing of the rand.
3. Within 24 hours of the date of this order, the Respondents are directed to permanently remove the article from:
3.1. the First Respondent's website, www.iol.co.za, and any other online platform on which the article was published;
3.2. all Twitter accounts controlled by the Respondents, including the Twitter account for The Star (@The Star news); and
3.3. all Facebook accounts controlled by the Respondents, including the Facebook page for The Star.
4. Within 24 hours of the date of this order, the Respondents are directed to publish the following retraction and apology in the manner directed in paragraph 5:
"On 9 December 2020, Independent Media published an article on the Independent Online website, and in the Star, which contained various false and defamatory statements concerning Ms Maria Ramos. These include that she is guilty of "fixing the rand", that she engaged in conduct that amounts to, and justifies criminal charges for, "treason or corruption", and that she received improper quid pro quos. Independent Media unconditionally retracts these false and defamatory statements and apologises unreservedly for any harm caused to Ms Ramos."
5. The Respondents must publish the apology referred to in paragraph 5 in the following manner:
5.1. in the next print edition of The Star after the date of this order in reasonably sized print and in a reasonably prominent location on page three;
5.2. on the homepage of the First Respondent's website, www.iol.co.za, for five business days, in reasonably sized print and in a reasonably prominent location;
5.3. in a tweet from The Star's Twitter account (@The Star news), tweeted during ordinary business hours, which tweet must be pinned for at least five business days;
5.4. in a post on The Star's official Facebook page, posted during ordinary business hours, which post must remain on the page for at least five business days.
6. The Respondents are ordered to pay the Applicant's costs, including the costs of two counsel, such costs to include costs of senior counsel.'
In *IRD Global Ltd v The Global Fund to fight AIDS, Tuberculosis and Malaria* (unreported, SCA case no 504/2023 dated 4 July 2024) the Supreme Court of Appeal held that it was settled law that an apology or retraction might serve the same purpose as an award of damages. That relief, however, required the institution of an action. The Supreme Court of Appeal disagreed with the High Court in *Ramos*, and held that motion proceedings were unsuited to deal with defamatory allegations as was done in that case (at paragraphs [24]–[26]).

70 If ordinary criminal remedies do not suffice, an interdict may be obtained to restrain the continuance of criminal conduct (*Ebrahim v Twala* 1951 (2) SA 490 (W), a case where the respondents persistently assaulted the applicant's taxi-operators in order to disrupt his business). An interdict in such a case is, however, the exception (*Colonial Government v Pietermaritzburg Corporation* (1901) 22 NLR 343; *Braunschweig Village Management Board v Witfield* 1917 EDL 164; *Celliers v Lehfeldt* 1921 AD 509). In *Booth and Others NNO v Minister of Local Government, Environmental Affairs and Development Planning* 2013 (4) SA 519 (WCC) the court held (at 537D–538C) that it had the power to suspend an interdict where the conduct in question was criminalized.

71 *Benoni Town Council v Meyer* 1959 (3) SA 97 (W); *Benoni Town Council v Meyer* 1961 (3) SA 316 (W); *Johannesburg Consolidated Investment Co Ltd v Elfruci Investments (Pty) Ltd* 1973 (1) SA 494 (W); *Senekal Inwonersvereniging v Plaaslike Oorgangsraad* 1998 (3) SA 719 (O); *City of Tshwane v Ghani* 2009 (5) SA 563 (T) at 567D–570H; *Christopher v Verster* (unreported, WCC case no 9001/2020 dated 4 June 2021).In *Ellaurie v Madrasah Taleemuddeen Islamic Institute* 2021 (2) SA 163 (KZD) the applicant succeeded in obtaining a final interdict against the respondent to tone down Islamic calls to prayer that invaded the use and enjoyment of his residential property and private space. On appeal *sub nomine Madrasah Taleemuddeen Islamic Institute v Ellaurie* 2023 (2) SA 143 (SCA) the Supreme Court of Appeal overturned the order and held that:
(i) the main principle of our neighbour law was that, whilst everyone had a right to undisturbed use and enjoyment of their own property, such right was not unlimited. A limited interference with property rights and enjoyment thereof by owners of other properties in the same neighbourhood was expected and acceptable in law. Mutual tolerance was a civic value that was restricted by the legal yardstick of reasonableness. For nuisance to be actionable it had to seriously and materially interfere with the plaintiff's ordinary comfort and existence (at paragraph [7]);
(ii) the factors relevant in determining whether the reasonableness threshold had been breached included: the seriousness of the interference; the time and duration of the interference; the possibility of avoiding the harm; and the applicant's sensitivity thereto. The interference was not considered to be unreasonable when the harm or complaint in respect thereof arose from a special or extraordinary sensitivity of the plaintiff or applicant to the activity complained:
'The test, moreover, is an objective one in the sense that not the individual reaction of a delicate or highly sensitive person who truthfully complains that he finds the noise to be intolerable is to be decisive, but the reaction of "the reasonable man" — one who, according to ordinary standards of comfort and convenience, and without any peculiar sensitivity to the particular noise, would find it, if not quite intolerable, a serious impediment to the ordinary and reasonable enjoyment of his property.' (at paragraph [9]);
(iii) the application for an interdict in the court *a quo* failed to meet the legal requirements for the relief sought in the application. Because a final interdict was sought, a clear right had first and foremost to be established by the applicant. Then, the applicant had to demonstrate that the nature and/or level of noise unreasonably interfered with his established right. He also had to show that he had no other satisfactory alternative remedy. Contrary to the approach by the court *a quo*, it was, in fact, the applicant who had to satisfy the requirements for the interdict sought, and to satisfy the court *a quo*, in particular, that the interference with his comfort was unreasonable. That he failed to do (at paragraph [11]).

72 The basis on which a person can approach the court to obtain an interdict, be it a prohibitory or a mandatory one, is that set forth in *Patz v Greene & Co* 1907 TS 427, a decision which has been approved and amplified in a long line of cases. See, for example, *Dalrymple v Colonial Treasurer* 1910 TS 372; *Madrassa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718 at 726; *Roodepoort-Maraisburg Town Council v Eastern Properties (Pty) Ltd* 1933 AD 87 at 94; *Modern Appliances Ltd v African Auctions and Estates (Pty) Ltd* 1961 (3) SA 240 (W) at 241–3; *Johannesburg City Council v Knoetze and Sons* 1969 (2) SA 148 (W) at 154; *Herbst v Dittmar* 1970 (1) SA 238 (T) at 243; *CD of Birnam (Suburban) (Pty) Ltd v Falcon Investments Ltd* 1973 (3) SA 838 (W) at 844–7 (this case was overruled on appeal, but not on the question of *locus standi*, in *Falcon Investments Ltd v CD of Birnam (Suburban) (Pty) Ltd* 1973 (4) SA 384 (A) at 394); *United Dairies Co-op Ltd v Searle* 1974 (4) SA 117 (E) at 124–6; *Von Moltke v Costa Areosa (Pty) Ltd* 1975 (1) SA 255 (C); *Scott v Theron* 1976 (1) SA 612 (O) at 620; *Glass v Glass* 1980 (3) SA 263 (W) at 266; *Laskey v Showzone CC* 2007 (2) SA 48 (C) at 54E–G; *Old Mutual Life Assurance Co (South Africa) Ltd v Pension Funds Adjudicator* 2007 (3) SA 458 (C) at 463E–H; *City of Tshwane v Ghani* 2009 (5) SA 563 (T) at 567D–570H; *Bitou Local Municipality v Timber Two Processors CC* 2009 (5) SA 618 (C) at 624G–626I; *Ekurhuleni Municipality v New Star Technology CC* 2023 (3) SA 579 (GJ) at paragraphs [21]–[30] and [32].
In *Capricorn District Municipality v South African National Civic Organisation* 2014 (4) SA 335 (SCA) it was held that it is not competent for a court to grant a *mandamus* against a district municipality to replace and/or repair all defective water metres, water pipes, etc in compliance with its duties to provide access to water services in terms of s 11 of the Water Services Act 108 of 1997. Our courts have declined to follow the decision in *Salisbury Bottling Co (Pvt) Ltd v Central African Bottling Co (Pvt) Ltd* 1958 (1) SA 750 (FC), in which Clayden FJ criticized the decision in *Patz v Greene & Co* 1907 TS 427.

73 *Condé Nast Publications Ltd v Jaffe* 1951 (1) SA 81 (C); *Fax Directories (Pty) Ltd v SA Fax Listings CC* 1990 (2) SA 164 (D).

74 *Cipla Medpro (Pty) Ltd v Aventis Pharma SA and Related Appeal* 2013 (4) SA 579 (SCA).

75 *Coolair Ventilator Co (SA) (Pty) Ltd v Liebenberg* 1967 (1) SA 686 (W); *Harvey Tiling Co (Pty) Ltd v Rodomac (Pty) Ltd* 1977 (1) SA 316

(T).

76 *Polakov Brothers (Pty) Ltd v Gershlowitz* 1976 (1) SA 863 (E); *Capital Estate and General Agencies (Pty) Ltd v Holiday Inns Inc* 1977 (2) SA 916 (A).

77 If, for example, it is likely to be squandered by a person of unsound mind (*Van Woudenberg NO v Roos* 1946 TPD 110) or is the proceeds of a crime for which the owner is about to sue (*Meyer NO v Netherlands Bank of SA Ltd* 1961 (1) SA 578 (GW)) or had been obtained by fraud (*Television and Electrical Distributors (Pty) Ltd v Goodwin* 1956 (1) SA 514 (W)). An interdict restraining a bank from paying in terms of an irrevocable letter of credit will not be granted at the instance of the bank's customer save in the most exceptional cases (*Loomcraft Fabrics CC v Nedbank Ltd* 1996 (1) SA 812 (A) at 816C–H).

78 *Tsichlas v Touch Line Media (Pty) Ltd* 2004 (2) SA 112 (W).

In *Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) the Supreme Court of Appeal confirmed the well-known principle that persons may seek interdicts, interim or final, by way of motion proceedings against the publication of defamatory statements (at paragraph [111]). This principle was reaffirmed in *NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators (Pty) Ltd* [2021] 4 All SA 652 (SCA) at paragraphs [29]–[30]. However, as pointed out in *NBC Holdings* at paragraph [29], the entitlement to proceed in that way is constrained by the fact that in motion proceedings, where the issue is whether the defendant has a defence to a claim based on defamation, it cannot be decided on motion if there is a dispute as to the applicant's right to that relief. See also *Van Greunen v Govern* (unreported, FB case no 5395/2022 dated 6 April 2023) at paragraph [12]; *Du Toit v Becket* (unreported, WCC case no 8687/2023 dated 21 February 2024) at paragraphs [34]–[35]. In the *Economic Freedom Fighters* case, applied in *Van Greunen*, the well-known principle that an unliquidated claim for damages must be pursued by way of action was confirmed in a detailed analysis (at paragraphs [91]–[127]). In *Van Greunen* it was reaffirmed (at paragraphs [16] and [32]) that motion proceedings are not suited for the prosecution and adjudication of claims for unliquidated damages (which obviously include claims based on the *actio iniuriarum* for compensation, i e when an injury to dignity and reputation had been caused, as well as damages in the form of an apology). See also *Evrigard (Pty) Ltd v Select PPE (Pty) Ltd* (unreported, GJ case no 44317/2021 dated 25 April 2023) at paragraphs 39–41; *Ndlozi v Media 24 t/a Daily Sun* 2024 (1) SA 215 (GJ) at paragraphs 18–38 (a case where Media 24 was directed to remove the unlawful and defamatory statements concerning the applicant from all its media platforms including its website, Twitter account, and Facebook account within one week of the date of the order, and the applicant's prayer for an apology and damages were ordered to be dealt with by way of the hearing of oral evidence); *IRD Global Ltd v The Global Fund to fight AIDS, Tuberculosis and Malaria* (unreported, SCA case no 504/2023 dated 4 July 2024) at paragraphs [24]–[26].

If an interlocutory interdict to restrain publication of defamatory material is sought, the ordinary requirements of an interlocutory interdict apply (*Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 398I–399F; *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003 (5) SA 39 (W) at 43C–44B). In *Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 399B–E and *Tau v Mashaba* 2020 (5) SA 135 (SCA) at paragraph [22] the following *dictum* by Greenberg J in *Heilbron v Blignaut* 1931 WLD 167 at 169 was approved:

'It does not appear to me that the law as laid down there is in any way peculiar to libel or slander. I think it is the law which would apply to any apprehended injury. If an injury which would give rise to a claim in law is apprehended, then I think it is clear law that the person against whom the injury is about to be committed is not compelled to wait for the damage and sue afterwards for compensation, but can move the Court to prevent any damage being done to him. As he approaches the Court on motion, his facts must be clear, and if there is a dispute as to whether what is about to be done is actionable, it cannot be decided on motion. The result is that if the injury which is sought to be restrained is said to be a defamation, then he is not entitled to the intervention of the Court by way of interdict, unless it is clear that the defendant has no defence. Thus if the defendant sets up that he can prove truth and public benefit, the Court is not entitled to disregard his statement on oath to that effect, because, if his statement were true, it would be a defence, and the basis of the claim for an interdict is that an actionable wrong, i e conduct for which there is no defence in law, is about to be committed.'

In *Le Grellier v Kamionsky* (unreported, GJ case no 2023-058876 dated 13 November 2023) it was held (at paragraph 41) that, given the general reluctance to grant prior restraints on free expression, courts should almost never grant such restraints *ex parte*. In cases where such restraints are sought, the very least that would have to be shown to establish a prima facie right to interim relief, in addition to the satisfaction of the ordinary requirements for *ex parte* relief (including the likelihood of irreparable harm if notice is given, and disclosure of every fact that might be material to the relief sought) is that the person sought to be placed under restraint cannot realistically make out any of the known defences to a claim of defamation on the material facts.

In *Tau v Mashaba* 2020 (5) SA 135 (SCA) it was held (at paragraph [23]) that the mere say-so of a deponent who alleges a defence of justification in an answering affidavit should not be accepted at face value: the facts on which it is based must be analysed to determine its weight. In other words, a factual foundation for a defence of fair comment or truth and public benefit must be established in evidence. See also *Buthelezi v Poorter* 1974 (4) SA 831 (W) at 836A–F; *Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 399F–G.

In *ENX Group Limited v Spilkin* (unreported, ECGq case no 2296/2022 dated 8 November 2022) the applicant sought a final interdict preventing the respondent from, *inter alia*, defaming the applicant and its CEO, but failed to make out a case for the relief sought. The respondent effectively raised a justification defence of truth and public interest. The application was accordingly dismissed.

In *Herbal Zone (Pty) Ltd v Infitech Technologies (Pty) Ltd* [2017] 2 All SA 347 (SCA) the Supreme Court of Appeal reaffirmed the principle that an interdict to prevent a party from making defamatory statements in the future is 'only infrequently granted' as 'it impinges upon that party's constitutionally protected right to freedom of speech'. The court recognized that in our constitutional era freedom of speech carries greater weight than it had in the past (at paragraph [36]). See also *Du Toit v Becket* (unreported, WCC case no 8687/2023 dated 21 February 2024) at paragraph [40]. In *Van Greunen v Govern* (unreported, FB case no 5395/2022 dated 6 April 2023), the court, although recognizing the *Herbal Zone* judgment, adopted the following approach:

'[18] Section 16 of the Constitution guarantees the right of freedom of expression and speech. Human dignity is also guaranteed as specifically provided in s 10 of the Constitution. Although the court stated in *Herbal Zone* that freedom of speech carries greater weight than in the past, this cannot be interpreted to mean that the right to dignity and reputation of another person should not be considered at all. *In casu*, the applicants are entitled to the protection of their dignity and reputation. In *O-Keeffe v Argus Printing and Publishing Company Co Ltd & Another* [1954 (3) SA 244 (CPD) at 247.] Watermeyer AJ quoted De Villiers, the author of *Injuries*, with approval. Dignity is defined as a "valued and serene condition" in a person's social or individual life which may be violated, either publicly or privately, by another through "offensive and degrading treatment", or when the person "is exposed to ill-will, ridicule, disesteem or contempt". Currie and De Waal [The Bill of Rights Handbook 5th e p 272.] are probably correct by referring to human dignity as "perhaps the pre-eminent value." This submission is in line with the Constitutional Court's approach in *Christian Education in South Africa v Minister of Education* [2000 (4) SA 757 (CC) para 15.]

[19] In the event of conflict between two competing constitutional rights, a balancing act is to be exercised. No right is absolute and although the right to human dignity is seen as a central value and even a pre-eminent value, the facts and circumstances in each case need to be considered to established [*sic*] whether the right to dignity should not be limited. I accept that people serving the public such as lawyers and insolvency practitioners, as in casu, must accept that they may be fiercely criticised from time to time by others such as creditors, disgruntled debtors and even the courts. They are not immune to criticism. In the preparation of this judgment I take cognisance hereof.'

Harms *Main Binder* in paragraph A5.15 points out that it must be borne in mind in considering the balance of convenience or the exercise of the court's discretion, that cases involving an attempt to restrain publication must be approached with caution. In particular the right to freedom of speech should not be interfered with lightly and it should be kept in mind that there is a right to damages and that the interim order may be final in effect. See also *Midi Television (Pty) Ltd t/a E-TV v Director of Publications (Western Cape)* 2007 (5) SA 540 (SCA) at 548F–G (dealing with a restraint on anticipated publication); *Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) at paragraphs [87]–[90] (dealing with repetition of publication that has already taken place).

The courts do not interdict future defamation in broad terms (*Halewood International South Africa v Van Zyl* (unreported, GJ case no 2023/019330 dated 31 March 2023) at paragraph [39] and the cases there referred to; *Du Toit v Becket* (unreported, WCC case no 8687/2023 dated 21 February 2024) at paragraphs [122]–[126]). Rather, a court may interdict specific acts of defamation, for example, it may interdict the respondent from repeating an allegation that the applicant stole money from his employer (*Kaymak v Ralushai; Suma Coal (Pty) Ltd v Ralushai* (unreported, GJ case no 2016/21096 dated 26 January 2023) at paragraph [12] and the cases there referred to; *Nisamoseki Trading Enterprise (Pty) Ltd t/a Nisa Willckx Interiors v Sithole* (unreported, GJ case no 2023-101760 dated 26 October 2023) at paragraph [15]; but see *Itumele Bus Lines (Pty) Ltd t/a Interstate Bus Lines v Msabe* (unreported, FB case no 6450/2022 dated 12 October 2023) at paragraph [57] and paragraph 2 of the order).

79 *Heroldt v Wills* 2013 (2) SA 530 (GSJ).

80 *Wolmarans v Absa Bank Ltd* 2005 (6) SA 551 (C).

81 *Van Aardt v Weehuizen* 2006 (4) SA 401 (N).

82 *Wishart v Blieden NO* 2013 (6) SA 59 (KZP). It was held (at 73F–I, 75C–76D and 80E–H) that, in order to obtain an interdict preventing a legal practitioner representing a client against a former client from using or disclosing information received from the former client, the former client would need to prove that (1) confidential information was imparted or received in confidence as a result of the attorney-client relationship and the information remains confidential; (2) it is relevant to the matter at hand; and (3) the interests of the present client are adverse to those of the former client. Where the former client fails to establish any of these requirements, the application for an interdict must fail. In dismissing a subsequent appeal, the Supreme Court of Appeal in *Wishart v Blieden NO* 2020 (3) SA 99 (SCA) held that the common law did not recognize a right of an individual to restrain a lawyer from acting against him where the individual had never been a

client of the lawyer and where the lawyer did not have confidential information in respect of that individual (at paragraph [49]). The application by the appellants to restrain three of the respondents (lawyers) from examining them in an insolvency inquiry was not supported by the facts and the case was not one in which to develop the common law (at paragraphs [49]–[50]). See also *WDL v Gundelfinger* 2022 (2) SA 272 (GJ).

83 *Vital Sales Cape Town (Pty) Ltd v Vital Engineering (Pty) Ltd* 2021 (6) SA 309 (WCC) at paragraph [1].

84 *Christopher v Verster* (unreported, WCC case no 9001/2020 dated 4 June 2021).

85 *City of Cape Town v Those persons attempting and/or intending to settle on the erven in District Six the details of which are identified in Annexure A to notice of motion* (unreported, WCC case no 7349/2021 dated 19 May 2021) at paragraph [22].

86 *Kibo Property Services (Pty) Ltd v Purported Board of Directors Amberfield Manor HOA NPC* (unreported, GP case no 45733/2021 dated 25 October 2021).

87 *Samancor Chrome Ltd v North West Chrome Mining (Pty) Ltd* (unreported, SCA case no 30/2020 dated 23 December 2021) at paragraph [30].

88 *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG).

89 *Eskom Holdings SOC Ltd v Lekwa Ratepayers Association NPC and a Similar Matter* 2022 (4) SA 78 (SCA) at paragraph [7], confirmed on appeal by the majority of the Constitutional Court *sub nomine Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* 2023 (4) SA 325 (CC).

90 *Observatory Civic Association v Trustees, Liesbeek Leisure Properties Trust* 2023 (1) SA 583 (WCC) at paragraphs [144] and [146].

91 *President of the Republic of South Africa v Zuma* 2023 (1) SACR 610 (GJ) (a decision of the full court) at paragraph [22].

92 *Sacramento v City of Tshwane Metropolitan Municipality* (unreported, GP case no 006225/2023 dated 3 February 2023) at paragraphs 23–26.

93 *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* (unreported, GJ case no 18482/2022 dated 12 April 2023) at paragraph [45].

94 *Joubert N.O. v Xacto (Pty) Ltd* (unreported, NCK case no 547/2021 dated 21 April 2023) at paragraph 1.

95 *Body Corporate of the Six Sectional Title Scheme No SS 433/09 v City of Cape Town* [2023] 3 All SA 136 (WCC) at paragraph [69].

96 *Smith v Basson* 1979 (1) SA 559 (W) at 560G–H; *Mbane v Gxenya* (unreported, WCC case no 4211/2022 dated 2 May 2023) at paragraphs 2, 3, 56–62 and 70.

97 *BG Bojosinyane & Associates v The Sheriff Vryburg* (unreported, SCA case no 1072/2022 dated 8 December 2023). In upholding the appeal, the Supreme Court of Appeal replaced the High Court's order with the following order against the sheriff:

'*(a)* Unless authorised by a magistrate in terms of section 14(7) of the Magistrates' Court Act 32 of 1944, the first respondent is directed to effect service and to execute any court process emanating from the office of the applicant without any unreasonable delay;

(b) The first respondent is interdicted from requiring payment of any part of his fees or charges in respect of the service or execution of a court process in paragraph (a) above before serving and executing such process;

(c) After the service or execution of any court process referred to in paragraph *(a)* above, the first respondent is directed, without delay and without first requiring prior payment of any part of his fees and charges relating thereto, to return to the applicant and to the court concerned whatever he has done by virtue of such process, specifying his fees and charges on the original and all copies of the returns of service.'

98 *City of Tshwane Metropolitan Municipality v Glofurn (Pty) Ltd* (unreported, SCA case no 136/2023 dated 19 June 2024) at paragraphs [1] and [26].

99 This kind of interdict is considered exhaustively in *Knox D'Arcy Ltd v Jamieson* 1994 (3) SA 700 (W) by Stegmann J who deprecates the use of the term 'Mareva injunction', derived from English law, to designate the remedy in South African law. Stegmann J suggested that the interdict in question be called an interdict *in securitatem debiti* or an anti-dissipation interdict. The Appellate Division did not find these names felicitous and pointed out that our law has recognized this type of interdict for many years without giving it any specific name (*Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 372A–C).In *Meihuizen Freight (Pty) Ltd v Transportes Maritimos de Portugal LDA* 2005 (1) SA 36 (SCA) at 45D it was remarked that the term 'anti-dissipation interdict' is not entirely accurate. The term has, however, stuck, and it is known for its common usage (*Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd* (unreported, SCA case no 835/2020 dated 29 September 2021) at paragraph [1].)

100 In *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) it was held that this type of interdict is *sui generis*. The question of an alternative remedy does not arise—the interdict is either available or it is not (at 373C–D). An applicant must, except possibly in exceptional cases, show a particular state of mind on the part of the respondent, i e that he is getting rid of his funds (or that he is wasting or secreting assets), or is likely to do so, with the intention of defeating the claims of his creditors (at 372F–H). In the *Knox D'Arcy* case the Appellate Division left open the question as to whether, in principle and on authority, such an interdict should be granted in cases where the respondent is in good faith disposing of his own assets, or threatening to do so, and has no intent to render the applicant's claim nugatory (at 373D–E). The court did, however, remark that there would not normally be any justification to compel a respondent to regulate his bona fide expenditure so as to retain funds in his patrimony for the payment of claims against him (at 372H–I). In *Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd* (unreported, SCA case no 835/2020 dated 29 September 2021) the Supreme Court of Appeal dismissed an appeal against the refusal of an anti-dissipation interdict on the basis that the jurisdictional facts for the grant of the remedy (i e the base requirements as laid down in the *Knox D'Arcy* case) were conspicuously absent, and remarked that it had great difficulty, in such circumstances, to imagine what exceptional circumstances (for lowering the threshold) would be (at paragraph [19]). The Supreme Court of Appeal held, further, that in *Carsten v Kullmann* (unreported, GJ case no 49174/2017 dated 4 January 2018), on which the appellant relied for lowering the threshold to one that an interdict might be granted even when there was a bona fide disposition of property, the base requirements for the interdict had also not been met. The Supreme Court of Appeal consequently considered it unnecessary to take the discussion on exceptional circumstances any further. In summary, an anti-dissipation interdict provides a remedy where an applicant has shown on the established basis of an interlocutory interdict *(a)* a claim against a respondent; and *(b)* except possibly in exceptional circumstances, that the respondent is (intentionally) secreting or dissipating assets or is likely to do so with the intention of defeating the applicant's claim (*KSL v AL* (unreported, SCA case no 356/2023 dated 13 June 2024) at paragraphs [16]–[17], reaffirming the decisions in *Knox D'Arcy* and *Bassani (supra)*).
The Supreme Court of Appeal has emphasized that the order does not create a preference for the applicant to the property interdicted (*Carmel Trading Co Ltd v Commissioner, South African Revenue Service* 2008 (2) SA 433 (SCA) at 435D).
See also *Mcitiki v Maweni* 1913 CPD 684 at 687; *Bricktec (Pty) Ltd v Pantland* 1977 (2) SA 489 (T) at 493E–G; *Smith v Daniels* 1997 (4) SA 711 (SE) at 714J–715A; *Pohlman v Van Schalkwyk* 2001 (1) SA 690 (E) at 696E–700E; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 282G–283C; *Fey NO v Van der Westhuizen* 2005 (2) SA 236 (C) at 249B–250B; *Metlika Trading Ltd v Commissioner, South African Revenue Service* 2005 (3) SA 1 (SCA) at 15C; *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 157C–G; *Carmel Trading Co Ltd v Commissioner South African Revenue Service* 2008 (2) SA 433 (SCA) at 435C–D and 437D–E; *Investec Employee Benefits Ltd v Electrical Industry KwaZulu-Natal Pension Fund* 2010 (1) SA 446 (W) at 421B–D; *Krog v Botes* 2014 (2) SA 596 (GJ) at 600H–601C; *Pepkor Holdings Ltd v AJVH Holdings (Pty) Ltd* 2021 (5) SA 115 (SCA) at paragraphs [21]–[26] (a case dealing with the requirements for the preservation of *res litigiosa*); *MWS v NSS* 2021 (6) SA 201 (NWM) at paragraphs [22]–[25] (a case dealing with a pension interest in a pending divorce action); *Tak v Blue Dart Properties* (unreported, GJ case no 01361/2023 dated 20 April 2023) at paragraph [4]; *Rota Investments CC v Full Score Trading 131 CC* (unreported, WCC case no 16881/2022 dated 26 April 2023) at paragraphs 35 and 40–41. The 'anti-dissipation interdict' should not be confused with a vindicatory or quasi-vindicatory interdict (*Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 283D).
In *Hansen + Genwest (Pty) Ltd v Corporate Selection Umbrella* (unreported, GJ case no 2023-002990 dated 6 February 2023) the third respondent had been employed as the applicant's assistant financial manager until she was dismissed following a disciplinary enquiry in which she had been charged and found guilty of misconduct. The applicant thereafter instituted an action for damages against the third respondent. Subsequently, it applied for an interlocutory interdict contending that the damages that it claimed were caused to it by reason of 'theft, dishonesty, fraud or misconduct' on her part as contemplated in s 37D(1)*(b)*(ii)*(bb)* of the Pension Funds Act 24 of 1956 and, should it ultimately be successful in that regard, the first respondent (a pension fund administered by the second respondent) would be entitled in terms of the said provision to deduct the amount of damages found to be payable from the third respondent's pension benefit and to pay the amount over to it. The court, in granting the interlocutory interdict, held (at paragraph [19]) that the interdict was not of an anti-dissipatory nature interdict but fell into the exceptional category of 'applications for interim relief pending . . . 'quasi-vindicatory' actions . . . when delivery of specific property is claimed under some legal right to obtain possession'. It was held (at paragraph [39]) that in order to obtain such relief, an applicant had to establish:

(a) on a prima facie basis (though open to some doubt) that the member would by reason of any theft, dishonesty, fraud or misconduct be ordered in the action to pay a sum of damages to the employer that exceeded the value of the pension fund benefit sought to be withheld;

(b) that the balance of convenience favoured the withholding of the member's pension fund benefits in the meantime; and

(c) that the applicant had requested the pension fund to exercise its discretion to withhold the pension benefits but the pension fund had unreasonably refused to grant such a request (with such finding of unreasonableness taking into account any specific requirements laid down

by the rules of the pension fund regarding the circumstances under which such a discretion might be exercised and the requirements of procedural fairness).
An application by a spouse married in community of property for an anti-dissipation interdict *pendente lite* to protect such spouse's (contingent) right to accrual in the other spouse's estate will not be granted except in the clearest of cases. The applicant would have to show, in addition to a well-grounded apprehension of irreparable harm, that the respondent has assets within the jurisdiction of the court, has no bona fide defence against the applicant's alleged contingent right, and intends to defeat the applicant's claim or render it hollow by dissipating or secreting assets (*RS v MS* 2014 (2) SA 511 (GJ) at 513J–514C). In *Lovell v Lovell* (unreported, GP case no 24583/2009 dated 22 September 2022) it was held (at paragraph [41]), with reference to *JLT v CHT* (unreported, EL case no 819/2020 dated 22 January 2021) at paragraph [8], 'that the requirements that must be satisfied to obtain an anti-dissipation interdict, which is interim in both form and substance, are the same for any other interim interdict', but that 'it is not essential to establish an intention on the part of the respondent to frustrate an anticipated judgment *if the conduct of the respondent is likely to have that effect'* (at paragraph [40] — emphasis added by the court — with reference to the *JLT* case at paragraph [7]). See also *MD v ND* [2021] 1 All SA 909 (GJ).
See further Prest *Interdicts* 160 et seq; Cane (1997) 114 *SALJ* at 77. For step-by-step practical guidelines, see 2004 (March) *De Rebus* 30–31.

101 On the harsh consequences and unfairness which may result from the *Mareva* injunction in English law, see S A S Zuckerman 'Interlocutory Remedies in Quest of Procedural Fairness' (1993) 56 *Modern LR* 325 at 331–41. See the remarks in *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 379E–380D, approving the warning by Stegmann J in *Knox D'Arcy Ltd v Jamieson* 1994 (3) SA 700 (W) at 708B–D.

102 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 373D.

103 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 373C–D.

104 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 372F–H. See also *Mecjtiki v Maweru* 1913 CPD 648 at 687; *Bricktec (Pty) Ltd v Pantland* 1977 (2) SA 489 (T) at 493E–G; *Carmel Trading Co Ltd v Commissioner South African Revenue Service* 2008 (2) SA 433 (SCA) at 435C–D.

105 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 373D–E.

106 *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 372H–I.

107 *Carmel Trading Co Ltd v Commissioner South African Revenue Service* 2008 (2) SA 433 (SCA) at 435D.

108 *Tsichlas v Touch Line Media (Pty) Ltd* 2004 (2) SA 112 (W) at 129A–D.

109 *Tsichlas v Touch Line Media (Pty) Ltd* 2004 (2) SA 112 (W) at 129D.

110 *Ex parte Simon* (1909) 19 CTR 524.

111 *Standard Bank and Liquidator, Cape of Good Hope Bank v Arnholz* (1891) 6 EDC 128.0

112 *Donne v Harper* (1905) 26 NLR 14; *Ex parte Luckhoff and Asher* (1910) 20 CTR 800; *Stolpinsky v Segal* 1922 CPD 192.

113 *Alberts v Kaplan* (1893) 3 CTR 35.

114 *Forrest v Light* 1908 EDC 465; *Ex parte Polonsky* (1910) 20 CTR 175; *Ex parte Leahy* (1910) 20 CTR 346.

115 *Ex parte Estate Maleppa* (1910) 20 CTR 189; *Ex parte Ince* 1912 JWR 805.

116 *Schiffmann v Hartung* (1910) 20 CTR 388. Where the bail money has been paid out of the funds of the respondent's attorneys and not out of the respondent's own funds, the applicant has no right to interdict it (*Willis v Starkey-Howe* 1955 (1) SA 607 (T)).

117 *Mall v Kharwa* 1962 (1) SA 551 (N).

118 *Van Wyk v Vlok* 1912 JWR 216.

119 *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 811–812. See also *Willis v Starkey-Howe* 1955 (1) SA 607 (T) at 609; *Steenkamp v Steenkamp* 1966 (3) SA 294 (T) at 296; *First Industrial Excavation Land Development Engineering & Clearing Corp of SA Ltd v Duncker & Vladislavich (Pty) Ltd* 1967 (1) SA 317 (T); *SA Hyde (Pty) Ltd v Neumann NO* 1970 (4) SA 55 (O); *Fred P Ackerman's Properties (Pty) Ltd v Estate Agents Board* 1980 (3) SA 451 (C) at 459H–460B; *Henegan v Joachim* 1988 (4) SA 361 (D) at 365B–C; *Smith v Daniels* 1997 (4) SA 711 (SE) at 714G–I; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278H–I.

120 *Gernholtz and Another NNO v Geoghehan* 1953 (2) PH F102 (O), cited with approval in *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278J–279C.

121 *Lockie Bros Ltd v Pezaro* 1918 WLD 60, criticized in *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 812H but approved in *First National Bank of Southern Africa Ltd v Perry NO* 2001 (3) SA 960 (SCA) at 968E. In the *Lockie* case the funds that the applicant sought to be interdicted had been mixed with the respondent's funds without authority. Where authority has been given, an interdict will not be granted (*Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 811B–F; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 280G). If the mixture of the applicant's funds with those of the respondent is unauthorized and the respondent owed the applicant a fiduciary duty, the respondent bears the onus of showing what portion is his and what portion is the applicant's, and the funds are treated as belonging to the applicant to the extent that the respondent cannot discharge the onus (*Langermann v Carper* 1905 TH 251, cited with approval in *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 280H).

122 Unreported, SCA case nos 296/2020 and 226/2021 dated 8 October 2021.

123 At paragraphs [13]–[19].

124 Van der Linden *Judicieele Practijcq* 2 19 1; *Koopmans Handboek* 3 1 4 7; Prest *Interlocutory Interdicts* 63–72. The leading case is *Setlogelo v Setlogelo* 1914 AD 221, and the requisites stated therein have often been restated: see, for example, *Francis v Roberts* 1973 (1) SA 507 (RAD) at 511E; *National Chemsearch (SA) (Pty) Ltd v Borrowman* 1979 (3) SA 1092 (T) at 1095D; *Burger v Rautenbach* 1980 (4) SA 650 (C) at 652D–E; *Admark (Recruitment) (Pty) Ltd v Botes* 1981 (1) SA 860 (W) at 861C; *Minister of Law and Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana* 1994 (3) SA 89 (BGD) at 97H–99J; *Sanachem (Pty) Ltd v Farmers Agri-Care (Pty) Ltd* 1995 (2) SA 781 (A) at 789C; *Starke NO v Schreiber* [2001] 1 All SA 167 (C) at 174; *Huey Extreme Club v McDonald t/a Sport Helicopters* 2005 (1) SA 485 (C) at 494A–B; *Davids v Van Straaten* 2005 (4) SA 468 (C) at 478H–I; *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA); *Director of Public Prosecutions (WC) v Midi Television (Pty) Ltd t/a E-TV* [2006] 2 All SA 286 (C) at 295; *North Safety Products (Africa) v Nicolay* [2007] 3 All SA 647 (C) at 649*d*; *Crystal Holdings (Pty) Ltd v The Regional Land Claims Commissioner* [2008] 1 All SA 243 (N) at 260*e–f*; *Chevron South Africa (Pty) Ltd v Awaiz at 110 Drakensburg CC* [2008] 1 All SA 557 (T) at 573*h*–574*a*; *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd* 2015 (3) SA 532 (SCA) at 540C; *Savage v Sisters of the Holy Cross, Cape Province* 2015 (6) SA 1 (WCC) at 9C–E; *Cape Town City v South African National Roads Agency Ltd* 2015 (6) SA 535 (WCC) at 632F–G; *Hotz v University of Cape Town* 2017 (2) SA 485 (SCA) at 496G–H, 496I and 497G–H; *Organisasie vir Godsdienste-Onderrig en Demokrasie v Laerskool Randhart* 2017 (6) SA 129 (GJ) at 134E; *Witzenberg Properties (Pty) Ltd v Bokveldskloof Boerdery (Pty) Ltd* 2018 (6) SA 307 (WCC) at 311A–B; *Jacobs Safaris CC v Bloodlions NPC* (unreported, KZP case no 7187/2019 dated 30 July 2020) at paragraph [10]; *Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd* (unreported, SCA case no 169/2021 dated 27 May 2022) at paragraph [13]; *Moshe v Minister of Agriculture, Land Reform and Rural Development* [2023] 2 All SA 776 (NWM) (a decision of the full court) at paragraph [23]; *Ekurhuleni Municipality v New Star Technology CC* 2023 (3) SA 579 (GJ) at paragraph [11].

125 As Erasmus J put it in *Welkom Bottling Co (Pty) Ltd v Belfast Mineral Waters (OFS) (Pty) Ltd* 1967 (3) SA 45 (O) at 56F:
'Selde vind 'n mens 'n regsbegrip wat meer onduidelik is as die van 'n "duidelike reg" in interdikprosedure.'

126 Van der Linden *Judicieele Practijcq* 2 19 1; *Koopmans Handboek* 3 1 4 7.

127 See, for example, *Setlogelo v Setlogelo* 1914 AD 221.

128 Nathan *Interdicts* 6 n 1, approved in *Welkom Bottling Co (Pty) Ltd v Belfast Mineral Waters (OFS) (Pty) Ltd* 1967 (3) SA 45 (O) at 56F; *Erasmus v Afrikander Proprietary Mines Ltd* 1976 (1) SA 950 (W) at 956C. See also *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 556B–C. In *Mashaba v Muller* (unreported, GP case no 22900/2020 dated 10 March 2021) the court described the right as 'a substantive right' (at paragraph [22]).

129 The word 'clear' relates to the degree of proof required to establish the right and should strictly not be used to qualify 'right' at all. See also *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 556C–D.

130 See also *Dyalo v Mnquma Local Municipality* (unreported, ECM case no 8490/2016 dated 9 September 2016) at paragraph [9].

131 See *LAWSA* XI 296; Daniels *Burgerlike Prosesreg* Afd L–41; *Nienaber v Stuckey* 1946 AD 1049 at 1053–4; *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 524C; *Welkom Bottling Co (Pty) Ltd v Belfast Mineral Waters (OFS) (Pty) Ltd* 1967 (3) SA 45 (O) at 56D; *Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier, SA Polisie, Noord-Transvaal* 1972 (1) SA 376 (A) at 396H; *De Villiers v Soetsane* 1975 (1) SA 360 (E) at 362A; *Beukes v Crous* 1975 (4) SA 215 (NC) at 219B; *Johannesburg City Council v National Transport Commission* 1990 (1) SA 199 (W) at 202F–203H; *Society for the Prevention of Cruelty to Animals, Standerton v Nel* 1988 (4) SA 42 (W); *Crystal Holdings (Pty) Ltd v The Regional Land Claims Commissioner* [2008] 1 All SA 243 (N) at 260*g*.
In *Johannesburg City v K2016498847 (Pty) Ltd* 2022 (3) SA 497 (GJ) the Johannesburg Metropolitan Municipality ('the City') sought an order for an interdict restraining the respondent company from using a certain property as an 'accommodation establishment', such use being

contrary to the way the property was zoned under the applicable Land Use Scheme ('the Scheme'), i e 'Residential 1', and to forthwith use the property in a zone-compliant manner. The City sought further relief: that, should the respondent not comply, the sheriff be authorized to take all necessary steps to give effect to the interdict, including taking into possession 'all that [was] found at the property' and to keep such items that the company was using to conduct an accommodation establishment, pending payment of the City's 'reasonable fees and disbursements' incurred in the execution of the order. The High Court held (at paragraphs [10] and [14]–[17]) that the effect of the order whereby the City sought to enforce the Scheme was the eviction of the occupiers of the property. Consequently, where the City meant to enforce the Scheme through the eviction of people living on the relevant property, further requirements were triggered (at paragraph [20]). The principal requirement was compliance with s 26(3) of the Constitution, which provided that '(n)o one may be evicted from their home . . . without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.' (At paragraph [21].) In seeking relief to give effect to the Scheme by removing people who resided on property in breach of the Scheme from their homes, the City was required to demonstrate that it had engaged meaningfully with each of the affected individuals, and that it would provide alternative accommodation to those individuals where it was reasonable to do so. It would be reasonable to provide alternative accommodation if an occupier would be left homeless without it (at paragraph [24]). The City could not demonstrate a clear right to an interdict which enforced the Scheme through an eviction unless it had shown that it had meaningfully engaged the occupiers of the property in question, and offered to provide alternative accommodation where it was reasonably needed (at paragraph 25]). The City had not made out such a case in its application. The application accordingly had to be dismissed (at paragraph [26]).

132 1984 (3) SA 623 (A) at 634E–G.

133 *Nampesca (SA) Products (Pty) Ltd v Zaderer* 1999 (1) SA 886 (C) at 892H.

134 Van der Linden *Judicieele Practijcq* 2 19 1; *Koopmans Handboek* 3 1 47. Van der Linden uses the words 'een gepleegde feitelijkheid . . . immers een gegronde vrees, dat 'er eene zoodanige feitelijkheid . . . gepleegd zal worden'.

135 The words 'een gepleegde feitelijkheid' used by Van der Linden have been variously rendered as 'a thing actually done by the party to be restrained, prejudicial to the right' (*per* Cloete J in *Blackburn v Krohn* (1855) 2 Searle 209 at 211; and see *Nelson & Meurant v Quin & Co* (1874) 4 Buch 46 at 57; *London & SA Exploration Co Ltd v Dutoitspan Mining Board* (1883) 2 HCG 154 at 159) or as 'any act actually done by the (respondent) showing an interference with the exercise of any alleged rights possessed by the (applicant)' (*per* Kotzé CJ in *Bok v The Transvaal Gold Exploration and Land Co* (1883) 1 SAR 75 at 76) and, in Afrikaans, as ''n gepleegde feit' (*Meyer v Administrateur, Transvaal* 1961 (4) SA 55 (T) at 57D, and *Van Wyk v Steyn* 1963 (4) SA 814 (GW) at 820A). In *Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd* (unreported, SCA case no 169/2021 dated 27 May 2022) at paragraph [13] the Supreme Court of Appeal, with reference to *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA) at paragraph [21], described 'injury' as 'something actually done which is prejudicial to or interferes with the applicant's right'.

136 'Invasion of right' is used in *Von Moltke v Costa Areosa (Pty) Ltd* 1975 (1) SA 255 (C) at 258D; 'infringement' (of the applicant's rights) is the word used in *Rossouw v Minister of Mines and Minister of Justice* 1928 TPD 741 at 745. See also *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA) at 257F–258A.

137 *Jacobs Safaris CC v Bloodlions NPC* (unreported, KZP case no 7187/2019 dated 30 July 2020) at paragaph [15] In *Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd* (unreported, SCA case no 169/2021 dated 27 May 2022) at paragraph [13] the Supreme Court of Appeal, with reference to *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA) at paragraph [21], described 'injury' as 'something actually done which is prejudicial to or interferes with the applicant's right'.

138 *Blackburn v Krohn* (1855) 2 Searle 209; *Bok v The Transvaal Gold Exploration and Land Co* (1883) 1 SAR 75; *Municipal Council of Johannesburg v Robinson Gold Mining Co Ltd* 1923 WLD 99.

139 *Von Moltke v Costa Areosa (Pty) Ltd* 1975 (1) SA 255 (C) at 258D–E.

140 *Volkskas Bpk v Barclays Bank (D C & O)* 1952 (3) SA 343 (A) at 351; *Capital Estate and General Agencies (Pty) Ltd v Holiday Inns Inc* 1977 (2) SA 916 (A) at 930H–932D.

141 *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA) at 257F–258B.

142 Van der Linden *Koopmans Handboek* 3 1 4 7; *Maeder v Perm-Us (Pty) Ltd* 1939 CPD 208; *Condé Nast Publications Ltd v Jaffe* 1951 (1) SA 81 (C) at 86; *Performing Right Society Ltd v Berman* 1966 (2) SA 355 (R) at 357G; *Francis v Roberts* 1973 (1) SA 507 (RAD) at 512G–513E.

143 *Judicieele Practijcq* 2 19 1; *Koopmans Handboek* 3 1 47.

144 In *Setlogelo v Setlogelo* 1914 AD 221 at 227 Innes JA uses the phrase 'injury actually committed or reasonably apprehended'. This phrase has been described as 'very clear' and one that 'has been accepted without comment again and again in subsequent years' (*Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 515F).

145 *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 518A.

146 *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 518A.

147 *Ex parte Lipschitz* 1913 CPD 737; *Seligman Bros v Gordon* 1931 OPD 164; *Pickles v Pickles* 1947 (3) SA 175 (W). In his exhaustive analysis of 'reasonable apprehension' in *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) Williamson J does not explicitly state that the test is objective, but, it is submitted, it is clear from his phraseology (especially at 518C and 524C) and his approach to the facts of the matter before him, that he considered the test to be an objective one.

148 *Bishop of Natal v Green* 1867 NLR 83, 86, 104; *Hamilton v Emanuel* 1867 NLR 299; *Oriental Commercial Bank Ltd v Snell* 1871 NLR 97; *Steenkamp v Kyd* (1898) 8 CTR 252; *Church of England v Colenso* (1899) 20 NLR 85; *Ex parte Chadwick* (1907) 17 CTR 1094; *Siepker v Grobler* (1907) 17 CTR 911; *Hawkins v Lewis* (1908) 29 NLR 294; *Mears v African Platinum Mines Ltd (1)* 1922 WLD 48; *Grant-Dalton v Win* 1923 WLD 180.

149 *Goldsmid v The SA Amalgamated Jewish Press Ltd* 1929 AD 441.

150 Van der Linden *Koopmans Handboek* 3 1 4 7; *Judicieele Practijcq* 2 19 1; *Celliers v Lehfeldt* 1921 AD 509; *Buitendach v West Rand Proprietary Mines Ltd* 1925 TPD 886 at 906; *Chapmans Peak Hotel (Pty) Ltd v Jab and Annalene Restaurants CC t/a O'Hagans* [2001] 4 All SA 415 (C); *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA 252 (SCA) at 257F–258B; *Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd* (unreported, SCA case no 169/2021 dated 27 May 2022) at paragraph [15]. Van der Linden uses the words '. . . geen ander gewoon middel . . . waar door men met het zelfde gevolg kan geholpen worden' (*Koopmans Handboek*); and 'geen ander ordinair middel . . . waar door men met het zelfde effect kan geholpen worden' (*Judicieele Practijcq*).

151 In certain cases an interdict may in fact be *less* drastic than some other remedy available to the applicant; in such circumstances the existence of other remedies will not be a bar to the grant of an interdict (*Peri-Urban Areas Health Board v Sandhurst Gardens (Pty) Ltd* 1965 (1) SA 683 (T)).

152 *Francis v Roberts* 1973 (1) SA 507 (RAD) at 512D–E; and see *Chapmans Peak Hotel (Pty) Ltd v Jab and Annalene Restaurants CC t/a O'Hagans* [2001] 4 All SA 415 (C) at 420*g*.

153 *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6 at 24–25; *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 518D; *Lubbe v Die Administrateur, Oranje-Vrystaat* 1968 (1) SA 111 (O); *Erasmus v Afrikander Proprietary Mines Ltd* 1976 (1) SA 950 (W) at 965H; and see *Chapmans Peak Hotel (Pty) Ltd v Jab and Annalene Restaurants CC t/a O'Hagans* [2001] 4 All SA 415 (C) at 420*g; Exxaro Coal Mpumalanga (Pty) Ltd v TDS Projects Construction and Newrak Mining JV (Pty) Ltd* (unreported, SCA case no 169/2021 dated 27 May 2022) at paragraph [15].

154 *Rivas v The Premier (Transvaal) Diamond Mining Co Ltd* 1929 WLD 1; *Transvaal Property and Investment Co Ltd v SA Townships Mining & Finance Corp Ltd* 1938 TPD 512; *Van der Merwe v Fourie* 1946 TPD 389; *Fourie v Uys* 1957 (2) SA 125 (C); *Van Wyk v Steyn* 1963 (4) SA 814 (GW); *Lubbe v Die Administrateur, Oranje-Vrystaat* 1968 (1) SA 111 (O); *Erasmus v Afrikander Proprietary Mines Ltd* 1976 (1) SA 950 (W); *UDC Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd* 1979 (4) SA 682 (T) at 695D–696C.

155 Nathan *Interdicts* 34. In *Lubbe v Die Administrateur, Oranje-Vrystaat* 1968 (1) SA 111 (O) the judge refers (at (115D)) to the fact that 'daar is geen gevaar dat applikant enige skade wat hom mag toekom, nie teen die respondent sal kan verhaal nie'.

156 *Wynberg Municipality v Dreyer* 1920 AD 439; *Buitendach v West Rand Proprietary Mines Ltd* 1925 TPD 886; *Rivas v The Premier (Transvaal) Diamond Mining Co Ltd* 1929 WLD 1; *Town Council of Roodepoort-Maraisburg v Posse Property (Pty) Ltd* 1932 WLD 78; *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6; *Transvaal Property & Investment Co Ltd v SA Townships Mining & Finance Corp Ltd* 1938 TPD 512.

157 *Per* Lindley LJ in *Shelfer v City of London Electric Lighting Company* [1895] 1 Ch 287 at 315–316, quoted in *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6 at 25.

158 *Charney v Treubig* 1920 SWA 46; *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6; *Transvaal Property & Investment Co Ltd v SA Townships Mining & Finance Corp Ltd* 1938 TPD 512; *Van Niekerk v Van Rensburg* 1959 (2) SA 185 (T); *Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd* 1961 (2) SA 505 (W) at 518D; *Lubbe v Die Administrateur, Oranje-Vrystaat* 1968 (1) SA 111 (O); *Tullen Industries Ltd v A de Sousa Costa (Pty) Ltd* 1976 (4) SA 218 (T) at 220A.

159 *Van der Merwe v Fourie* 1946 TPD 389 at 393.

160 *Heroldt v Wills* 2013 (2) SA 530 (GSJ) at 543E–G and 545G–546D.

161 *Reserve Bank of Rhodesia v Rhodesia Railways* 1966 (3) SA 656 (SR) at 658E–H; and see *Wynne and Godlonton NNO v Mitchell and another NNO* 1973 (1) SA 283 (E) at 295G–H. In *Heroldt v Wills* 2013 (2) SA 530 (GSJ) the applicant applied for an order against the respondent to desist from posting any information about him on Facebook or on any other social media. It was argued on behalf of the respondent that the applicant had another remedy available to him, in that he could approach Facebook and ask it to remove the respondent's post. The court was unconvinced by this argument and concluded that there was no assurance that Facebook would comply with a request to remove the post (at 543E–G and 545G–546D). An interdict was, accordingly, as far as the posting of information about the applicant on Facebook is concerned, granted against the respondent.
In *BG Bojosinyane & Associates v The Sheriff Vryburg* (unreported, SCA case no 1072/2022 dated 8 December 2023) the sheriff demanded exorbitant fees from the appellant before he would effect service of any process sued out by the appellant. The Supreme Court of Appeal replaced the High Court's order with a mandatory interdict against the sheriff directing him to effect service and execute court process emanating from the office of the appellant, and interdicting him from requiring payment of any part of his fees or charges in respect of the service or execution of a court process before serving and executing such process. Referring to this paragraph with approval, the Supreme Court of Appeal stated (footnotes between [ ]):
'[33] Finally, as regards the third requirement, the appellant established that it has no satisfactory alternative remedy but to apply to court for appropriate relief. Taxation of the fees and charges demanded in advance is not a remedy because such taxation is not available within the legislative framework. Disciplinary proceedings before a committee of the Sheriff's Board do not present a satisfactory remedy to the appellant who would still be required first to pay whatever is demanded as a deposit up front before the court process is served or executed. The disciplinary process will take time, and even if the eventual finding is one of some form of unprofessional conduct and a sanction, it will be no remedy to the appellant who in the interim required service and execution of a court process without unreasonable delay. Instituting disciplinary proceedings is therefore not an alternative satisfactory remedy 'with the same result', [D E van Loggerenberg *Jones and Buckle: Civil Practice of the Magistrates' Courts in South Africa* Volume 1 (Revision Service 27, May 2023) at Act–180; *Reserve Bank of Rhodesia v Rhodesia Railways* 1966 (3) SA 656 (SR)] nor will it provide adequate redress.[*Peri-Urban Areas Health Board v Sandhurst Gardens (Pty) Ltd* 1965 (1) SA 683 (T)].'

162 *Malcomess & Co v Reid* (1894) 8 EDC 186.

163 *Reserve Bank of Rhodesia v Rhodesia Railways* 1966 (3) SA 656 (SR).

164 *Food and Allied Workers Union v Scandia Delicatessen CC* [2001] 3 All SA 342 (A). In *Minister of Health v Drums and Pails Reconditioning CC* 1997 (3) SA 867 (N) it was held (at 877E–G) that criminal sanctions provided for in the penal provisions of an Act is no bar to the granting of an interdict.

165 2017 (2) SA 485 (SCA).

166 At 499D–G and 500H–501B (footnotes omitted).

167 See, for example, *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Grant-Dalton v Win* 1923 WLD 180; *Van den Berg v OVS Landbou Ingenieurs (Edms) Bpk* 1956 (4) SA 391 (O) at 399; *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383A–C; *Pietermaritzburg City Council v Local Road Transportation Board* 1959 (2) SA 758 (N) at 772C–E; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267B–D; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691C–E; *Vagar (t/a Rajshree Release) v Transavalon (Pty) Ltd (t/a Avalon Cinema)* 1977 (3) SA 766 (W) at 771H–772A; *De Meillon v Montclair Society of the Methodist Church of Southern Africa* 1979 (3) SA 1365 (D) at 1370D; *Video Rent v Flamingo Film Hire* 1981 (3) SA 42 (C) at 44E–F; *National Union of Textile Workers v Stag Packing (Pty) Ltd* 1981 (4) SA 932 (W) at 938A–D; *Multi Tube Systems (Pty) Ltd v Ponting* 1984 (3) SA 182 (D) at 186E–F; *Nestor v Minister of Police* 1984 (4) SA 230 (SWA) at 243C–D; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 833E–F; *G S George Consultants and Investments (Pty) Ltd v Datasys (Pty) Ltd* 1988 (3) SA 726 (W) at 732B–742F; *Commissioner for Inland Revenue, Transkei v Jalc Holdings (SA) (Pty) Ltd* 1991 (4) SA 646 (TkGD) at 648C–D; *Shoprite Checkers Ltd v Blue Route Property Managers (Pty) Ltd* 1994 (2) SA 172 (C) at 183F; *Troskie v Van der Walt* 1994 (3) SA 545 (O) at 558D; *Cats Entertainment CC v Minister of Justice* 1995 (1) SA 869 (T) at 871E–F; *Morkel v Absa Bank Bpk* 1996 (1) SA 899 (C) at 902G–J; *Hix Net-working Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 398I–J; *Fraser v Naude* 1997 (2) SA 82 (W) at 84A–C; *Nkalweni v Minister of Justice and Another* 1998 (2) SA 254 (Tk) at 258H–259B; *Ward v Cape Peninsula Ice Skating Club* 1998 (2) SA 487 (C) at 497A–D; *Chief Ncabeleng v Chief Pasha* 1998 (3) SA 578 (LCC) at 583D–F; *Steynberg v Labuschagne* [1998] 3 All SA 384 (O) at 387*j*–388*d*; *Dorbyl Vehicle Trading & Finance Co (Pty) Ltd v Northern Cape Tour & Charter Service CC* [2001] 1 All SA 112 (NC) at 124*g*–134*d*; *Nieuwoudt v Maswabi NO* 2002 (6) SA 96 (O) at 103A; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 277F–I; *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003 (5) SA 39 (W) at 43C–E; *Johannesburg Municipal Pension Fund v City of Johannesburg* 2005 (6) SA 273 (W) at 280E–J; *Wolmarans v Absa Bank Ltd* 2005 (6) SA 551 (C) at 559C–563B; *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 152C–D; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347A–B; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 314F; *Van der Westhuizen v Butler* 2009 (6) SA 174 (C) at 181B–C; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 195D–F; *Pikoli v President of the Republic of South Africa* 2010 (1) SA 400 (GNP) at 403H–410D; *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 555G–559G; *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 235D–E; *Krog v Botes* 2014 (2) SA 596 (GJ) at 601C–602C; *Savage v Sisters of the Holy Cross, Cape Province* 2015 (6) SA 1 (WCC) at 9E–H; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 298F–306B; *Saharawi Arab Democratic Republic v Owners and Charterers of the Cherry Blossom* 2017 (5) SA 105 (ECP) at 119C–D; *Annex Distribution (Pty) Ltd v Bank of Baroda* 2018 (1) SA 562 (GP) at 568I–569B; *South African Broadcasting Corporation SOC Ltd v South African Broadcasting Corporation Pension Fund* 2019 (4) SA 608 (GJ) at 637E–G; *National Commissioner of Police v Gun Owners South Africa* 2020 (6) SA 69 (SCA) at paragraph [36]; *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG) at paragraph [7]; *Observatory Civic Association v Trustees, Liesbeek Leisure Properties Trust* 2023 (1) SA 583 (WCC) at paragraphs [114]–[115] and [144]; *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* (unreported, GJ case no 18482/2022 dated 12 April 2023) at paragraph [27]; *Moshe v Minister of Agriculture, Land Reform and Rural Development* [2023] 2 All SA 776 (NWM) (a decision of the full court) at paragraph [22]; *Thabang v North West University* (unreported, NWM case no UM 27/2023 dated 20 April 2023) at paragraph [28]. In *Knox D'Arcy Ltd v Jamieson* 1995 (2) SA 579 (W) at 592H–593D it is stressed that there is no requirement of law that an applicant for an interlocutory interdict must show that the respondent has no bona fide defence to the action. This view was approved in *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 372C–D. See further the analysis of the requirements in *Ferreira v Levin NO; Vryenhoek v Powell NO* 1995 (2) SA 813 (W) at 830D–836D; *Dorbyl Vehicle Trading & Finance Co (Pty) Ltd v Northern Cape Tour & Charter Service CC* [2001] 1 All SA 112 (NC); *Myflor Investments (Pty) Ltd v Everett NO* 2001 (2) SA 1083 (C) at 1088E–1089F; *Ladychin Investments (Pty) Ltd v South African Roads Agency Ltd* 2001 (3) SA 344 (N) at 353D–354C and *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 313F–320J.

168 See the discussion of the requisites by Heher J in *Ferreira v Levin NO; Vryenhoek v Powell NO* 1995 (2) SA 813 (W) at 830D–834C; *Rizla International BV v L Suzman Distributors (Pty) Ltd* 1996 (2) SA 527 (C) at 530A–J; *Myflor Investments (Pty) Ltd v Everett NO* 2001 (2) SA 1083 (C) at 1088E–J.

169 1973 (3) SA 685 (A). See also *Beecham Group Ltd v B-M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 55A; *Marinpine Transport (Pty) Ltd v Local Road Transportation Board, Pietermaritzburg* 1984 (1) SA 230 (N) at 234C.

170 1957 (2) SA 382 (D).

171 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383D–F; *SA Securitisation (Pty) Ltd v Chesane* 2010 (6) SA 557 (GSJ) at 564D–F.

172 1987 (1) SA 513 (W).

173 [1975] AC 396 (HL), [1975] 1 All ER 504. See further the notes s v 'Nature of remedy — Sources' above.

174 See, for example, *Inter Industria Bpk v Nedbank Bpk* 1989 (3) SA 33 (NC) at 44H–45C; *Coalcor (Cape) (Pty) Ltd v Boiler Efficiency Services CC* 1990 (4) SA 349 (C) at 360A–361E; *Meter Systems Holdings Ltd v Venter* 1993 (1) SA 409 (W) at 425G; *Dorbyl Vehicle Trading & Finance Co (Pty) Ltd v Klopper* 1996 (2) SA 237 (N) at 243H–J; *Radio Islam v Chairperson, Council of the Independent Broadcasting Authority* 1999 (3) SA 897 (W) at 903G; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 314G–H.

175 1995 (2) SA 813 (W) at 825A–B and 836A, approved and followed in *Reitzer Pharmaceuticals (Pty) Ltd v Registrar of Medicines* 1998 (4) SA 660 (T) at 689J–690B.

176 [1975] 1 All ER 504 (HL).

177 *Chief Nchabeleng v Chief Pasha* 1998 (3) SA 578 (LCC) and *Van der Walt v Lang* 1999 (1) SA 189 (LCC).

178 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383E–F; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691F; *Beecham Group Ltd v B-M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 54E–F; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 833G–H; *Commissioner for Inland Revenue, Transkei v Jalc Holdings (SA) (Pty) Ltd* 1991 (4) SA 646 (TkGD) at 654G–H; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 313J–314H; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 196H–I; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 306B; *Homemed (Pty) Ltd v Claasen* (unreported, GJ case no 2022/004040 dated 1 August 2022) at paragraph 80 footnote [34]; *Vea Road Maintenance and Civils (Pty) Ltd v South African National Roads Agency SOC Limited* (unreported, KZD case no D7913/2023 dated 20 November 2023) at paragraph [32].

179 *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1188; *Zulu v Minister of Defence* 2005 (6) SA 446 (T); *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 152E–F.

180 *Moosa v Knox* 1949 (3) SA 327 (N) at 333; *Van den Berg v OVS Landbou Ingenieurs (Edms) Bpk* 1956 (4) SA 391 (O) at 398A–H.

181 1948 (1) SA 1186 (W) at 1189.

182 1948 (3) SA 27 (W).

183 1948 (1) SA 1186 (W) at 1189; restated in, *inter alia*, *Knox D'Arcy Ltd v Jamieson* 1995 (2) SA 579 (W) at 592H–593B; *Spur Steak Ranches Ltd v Saddles Steak Ranch* 1996 (3) SA 706 (C) at 714E; *Simon NO v Air Operations of Europe AB* 1999 (1) SA 217 (SCA) at 228F–H; *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 152E–F; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 196G–I; *Pinzon Traders 8 (Pty) Ltd v Clublink (Pty) Ltd* 2010 (1) SA 506 (ECG) at 513A–C; *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 556A–B; *Basil Read (Pty) Ltd v Nedbank Ltd* 2012 (6) SA 514 (GSJ) at 523F; *Saharawi Arab Democratic Republic v Owners and Charterers of the Cherry Blossom* 2017 (5) SA 105 (ECP) at 119F–120A; *Bombardier Africa Alliance Consortium v Lombard Insurance Company Ltd* 2021 (1) SA 397 (GP) at paragraph [12]; *Eskom Holdings SOC Ltd v Lekwa Ratepayers Association NPC and a Similar Matter* 2022 (4) SA 78 (SCA) at paragraph [21], confirmed on appeal by the majority of the Constitutional Court *sub nomine Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* 2023 (4) SA 325 (CC); *Njokweni v Qina* (unreported, ECM case no 3839/2022 dated 23 March 2023) at paragraph [19]; *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* (unreported, GJ case no 18482/2022 dated 12 April 2023) at paragraphs [28]–[29]; *Thabang v North West University* (unreported, NWM case no UM 27/2023 dated 20 April 2023) at paragraph [1].

184 And the ultimate onus (*Godbold v Tomson* 1970 (1) SA 61 (D) at 63C–D).

185 1955 (2) SA 682 (C) at 688D–E.

186 Author's italics.

187 See, for example, *Fourie v Uys* 1957 (2) SA 125 (C) at 127H–128D; *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383C–G; *Freinkel v Garment Workers Union of SA* 1961 (1) SA 507 (W) at 509E–H; *Gosschalk v Rossouw* 1966 (2) SA 476 (C) at 489E–F; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267E–F; *Esselman v* Administrateur, SWA 1974 (2) SA 597 (SWA) at 598H; *Polakov Brothers (Pty) Ltd v Gershlowitz* 1976 (1) SA 863 (E) at 867E–H; *Beecham Group Ltd v B–M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 55A; *Stellenbosch Wine Trust Ltd v Oude Meester Group Ltd* 1977 (2) SA 221 (C) at 238F; *Barnard v Thelander* 1977 (3) SA 932 (C) at 939A–D; *Investors Mutual Funds Ltd v Empisal (SA) Ltd* 1979 (3) SA 170 (W) at 174G; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 833H; *Shoprite Checkers Ltd v Blue Route Property Managers (Pty) Ltd* 1994 (2) SA 172 (C) at 183D; *Fraser v Naude* 1997 (2) SA 82 (W) at 84C; *Simon NO v Air Operations of Europe AB* 1999 (1) SA 217 (SCA) at 228G–H; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 313I–314G.

188 See, for example, *Ivoral Properties (Pty) Ltd v Sheriff, Cape Town* 2005 (6) SA 96 (C) at paragraph [37].

189 See, for example, *Mariam v Minister of the Interior* 1959 (1) SA 213 (T) at 218C–E and the cases referred to by the majority in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* 2023 (4) SA 325 (CC) at paragraph [277] footnote [210].

190 *Fourie v Olivier* 1971 (3) SA 274 (T) at 285B, not following *Mariam v Minister of the Interior* 1959 (1) SA 213 (T) at 218C–E; *National Gambling Board v Premier, KwaZulu-Natal* 2002 (2) SA 715 (CC) at 731G–732B; *Majake v Commission for Gender Equality* 2010 (1) SA 87 (GSJ) at 102H–103H. See, however, *Tony Rahme Marketing Agencies SA (Pty) Ltd v Greater Johannesburg Transitional Metropolitan Council* 1997 (4) SA 213 (W) at 215C–216C; *Zulu v Minister of Defence* 2005 (6) SA 446 (T) at 460D–461C. In *Geyser v Nedbank Ltd: In re Nedbank Ltd v Geyser* 2006 (5) SA 355 (W) it was held (at paragraph [9]) that 'a legal issue should only be decided at the interlocutory stage of the proceedings if it would result in the final disposal of either the matter as a whole or a particular aspect thereof'.

191 *Mariam v Minister of the Interior* 1959 (1) SA 213 (T) at 218C–E; *Tony Rahme Marketing Agencies SA (Pty) Ltd v Greater Johannesburg Transitional Metropolitan Council* 1997 (4) SA 213 (W) at 215J–216A. The contrary view expressed in *Fourie v Olivier* 1971 (3) SA 274 (T) at 285B was not approved in the latter case. In *Ward v Cape Peninsula Ice Skating Club* 1998 (2) SA 487 (C) at 498F it is suggested that only 'ordinary' (as opposed to 'difficult') questions of law should be decided at the interlocutory stage of the proceedings. See also Prest *Interdicts* 59–60.

192 2023 (4) SA 325 (CC); and see *H & I Civil & Building (Pty) Ltd v City of Cape Town* (unreported, WCC case no 59/2024 dated 30 January 2024) at paragraphs [43]–[44]; *Burger NO v Nel* (unreported, NWM case no 1744/2024 dated 28 May 2024) at paragraphs [75]–[81].

193 *Author's note: Johannesburg Municipal Pension Fund v City of Johannesburg* 2005 (6) SA 273 (W).

194 *Author's note:* At paragraph 9.

195 *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 688F, referred to with approval in *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 231A–C.

196 *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 682B–C, referred to with approval in *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 231C–E. See also *Public Protector v Speaker of the National Assembly* 2020 (12) BCLR 1491 (WCC) at paragraph [18]; *Observatory Civic Association v Trustees, Liesbeek Leisure Properties Trust* 2023 (1) SA 583 (WCC) at paragraphs [115]–[116]; *Unyazi Rail (Pty) Ltd v Passenger Rail Agency of South Africa* (unreported, GJ case no 60552/2022 dated 14 March 2023) at paragraph [26] (a case where an interlocutory interdict pending the applicant's review of its disqualification from a tender process was refused because it had shown no more than a weak prima facie right); *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* (unreported, GJ case no 18482/2022 dated 12 April 2023) at paragraphs [30]–[33].

197 2012 (6) SA 223 (CC) at 231C–E.

198 At 236G–237A. See also *Public Protector v Speaker of the National Assembly* 2020 (12) BCLR 1491 (WCC) at paragraph [18]; *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG) at paragraph [34]; *Observatory Civic Association v Trustees, Liesbeek Leisure Properties Trust* 2023 (1) SA 583 (WCC) at paragraphs [115]–[116]; *Dovepire Properties (Pty) Ltd v Insurance Sector Education and Training Authority* (unreported, GJ case no 18482/2022 dated 12 April 2023) at paragraphs [31]–[32].

199 *Myflor Investments (Pty) Ltd v Everett NO* 2001 (2) SA 1083 (C) at 1096D–E.

200 *Nieuwoudt v Maswabi NO* 2002 (6) SA 96 (O) at 102H–I.

201 *Sea Lake Investments (Pty) Ltd t/a Sea Lake Industries v Msunduzi Municipality* [2006] 1 All SA 656 (N) at 659*h–i*.

202 The harm must be anticipated or ongoing (*National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) at 231D; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 300B). See also the notes s v 'Definition' above.

203 *Braham v Wood* 1956 (1) SA 651 (D) at 655B.

204 *Cowen & Hammond v Campbell* 1906 TH 191 at 194.

205 *Randles Brothers & Hudson and Trustee of Berkowitz v Brewer* 1908 TS 673.

206 *Minister of Law and Order v Nordien* 1987 (2) SA 894 (A) at 896G–I; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347B–E. See also *End Conscription Campaign v Minister of Defence* 1989 (2) SA 180 (C) at 208I–209C; *Janit v Motor Industry Fund Administrators (Pty) Ltd* 1995 (4) SA 293 (A) at 304H–I; *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG) at paragraph [37].

207 *Minister of Law and Order v Nordien* 1987 (2) SA 894 (A) at 896H–I; *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347D–E; *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG) at paragraph [37].

208 The original statement of the principle in *Setlogelo v Setlogelo* 1914 AD 221 at 227 reads as follows:
'But he does not say that where the right is clear the injury feared must be irreparable. That element is only introduced by him where the right asserted by the applicant, though *prima facie* established, is open to some doubt. In such case he says the test must be applied whether the continuance of the thing against which an interdict is sought would cause irreparable injury to the applicant. If so, the better course is to grant the relief if the discontinuance of the act complained of would not involve irreparable injury to the other party . . .'
See further *Grant-Dalton v Win* 1923 WLD 180; *Ndauti v Kgami* 1948 (3) SA 27 (W) at 36; *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 813; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267C; *Hydro Holdings (Edms) Bpk v Minister of Public Works* 1977 (2) SA 778 (T) at 785H; *LC Diamond Cutting Works (Pty) Ltd v Diamond Cutting Board* 1983 (2) SA 760 (W) at 766D–767D; *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 557C–G.

209 *Mcilongo NO v Minister of Law and Order* 1990 (4) SA 181 (E).

210 *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347E–F.

211 2018 (1) SA 94 (CC).

212 At 120C–D. See also *Annex Distribution (Pty) Ltd v Bank of Baroda* 2018 (1) SA 562 (GP) at 578D–E.

213 *Ndauti v Kgami* 1948 (3) SA 27 (W) at 36–7: *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383D–G; *Van Niekerk v Botha* 1958 (2) SA 655 (N) at 656H; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691F–G; *Bamford v Minister of Community Development and State Auxiliary Services* 1981 (3) SA 1054 (C) at 1060E–F; *LC Diamond Cutting Works (Pty) Ltd v Diamond Cutting Board* 1983 (2) SA 760 (W) at 766H–767B; *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban* 1984 (3) SA 65 (N) at 70C–D; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 847H–848G; *Harnischfeger Corporation v Appleton* 1993 (4) SA 479 (W) at 491C–E; *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 361D–F; *Fedsure Life Assurance Co Ltd v*

Worldwide African Investment Holdings (Pty) Ltd 2003 (3) SA 268 (W) at 277F–I; *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003 (5) SA 39 (W) at 43F; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 314G; *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 557H–I; *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) at 302B–C.

214 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383D–G; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691F–G; *Beecham Group Ltd v B-M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 55A; *Marinpine Transport (Pty) Ltd v Local Road Transportation Board, Pietermaritzburg* 1984 (1) SA 230 (N) at 234C; *Coalcor (Cape) (Pty) Ltd v Boiler Efficiency Services CC* 1990 (4) SA 349 (C) at 360A–361E; *Meter Systems Holdings Ltd v Venter* 1993 (1) SA 409 (W) at 425G; *Dorbyl Vehicle Trading & Finance Co (Pty) Ltd v Klopper* 1996 (2) SA 237 (N) at 243H–J; *Simon NO v Air Operations of Europe AB* 1999 (1) SA 217 (SCA) at 231G–I; *Radio Islam v Chairperson, Council of the Independent Broadcasting Authority* 1999 (3) SA 897 (W) at 903G; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 314G–H; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 195I–196A; *SA Securitisation (Pty) Ltd v Chesane* 2010 (6) SA 557 (GSJ) at 564D–F; *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP) at 557J–558B; *Cipla Medpro (Pty) Ltd v Aventis Pharma SA and Related Appeal* 2013 (4) SA 579 (SCA) at 594B–C; *Mogalakwena Municipality v Provincial Executive, Limpopo* 2016 (4) SA 99 (GP) at 118H–J; *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (2) SA 585 (ECG) at paragraph [66]; *Burger NO v Nel* (unreported, NWM case no 1744/2024 dated 28 May 2024) at paragraphs [75]–[81]. The *Eriksen Motors* case (*supra*) was followed in *Ferreira v Levin NO; Vryenhoek v Powell NO* 1995 (2) SA 813 (W) at 832D–833H, a decision which was approved in *South African Informal Traders Forum v City of Johannesburg* 2014 (4) SA 371 (CC) at 380D. See also *Resilient Properties (Pty) Ltd v Eskom Holdings SOC Ltd* 2019 (2) SA 577 (GJ) at 587F–588G.

215 *Batista v Commanding Officer, Sanab, SA Police, Port Elizabeth* 1995 (4) SA 717 (SE) at 7231; and see *Sema v Minister of Safety and Security* 1995 (2) SA 401 (O) at 406I–J.

216 2012 (6) SA 223 (CC).

217 See the notes on final interdicts s v 'No other remedy' above.

218 Generally speaking the fourth requisite, lack of any other ordinary remedy, follows as a natural corollary on proof of irreparable loss (see *Ncongwane v Molorane* 1941 OPD 125 at 130).

219 *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278C–E.

220 *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 810–811; *UDC Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd* 1979 (4) SA 682 (T) at 688G; *Nedbank Limited v Mvula* (unreported, WCC case no 5058/2024 dated 27 August 2024) at paragraph [29].

221 This example was cited with approval in *Nedbank Limited v Mvula* (unreported, WCC case no 5058/2024 dated 27 August 2024) at paragraph [29].

222 *Huthwaite v Wainer Ltd* 1916 WLD 117; *Hawkins' Trustee v Corio Saw and Planning Mills* 1923 WLD 125; *Berman v Winrow* 1943 TPD 213. For this reason the applicant is entitled to an interim interdict even in the absence of grounds for apprehending an alienation of the property (see *Mulligan v Mulligan (II)* 1925 WLD 178 at 181; *Kilroe v Kilroe* 1928 WLD 112 at 114–115). If the respondent has no intention of parting with the property, the interdict will not harm him; if he has, the applicant has grounds for apprehension.

223 *Maroudus v Curich* 1924 WLD 249; *Ogilvie Flour Mills Co Ltd v HF Picot & Co Ltd* 1927 WLD 146 at 150; *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 813; *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 384F–G; *Coetzee v Rabie* 1964 (2) SA 626 (C) at 633D–E; *VSA Motor Distributors (Pty) Ltd v Rossman* 1980 (3) SA 1164 (D) at 1170F; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278E; *Fey NO v Van der Westhuizen* 2005 (2) SA 236 (C) at 250C–G; *SA Securitisation (Pty) Ltd v Chesane* 2010 (6) SA 557 (GSJ) at 563I–564D.

224 *Cowen & Hammond v Campbell* 1906 TH 191; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278E–F.

225 *Mathews v Mathews* 1935 TPD 124 at 128; *Voloshen v Highspeed Laundry and Cleaning Services (Pty) Ltd* 1938 CPD 341; *Stansfield v Kuhn* 1940 NPD 238; *Miller v Spamer* 1948 (3) SA 772 (C); *Steenkamp v Fourie* 1948 (4) SA 536 (T); *Starr v Ramnath* 1954 (2) SA 249 (N); *Sandell v Jacobs* 1970 (4) SA 630 (SWA) at 633A; *Candid Electronics (Pty) Ltd v Merchandise Buying Syndicate (Pty) Ltd* 1992 (2) SA 459 (C) at 464F; *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 278D.

226 *Ndauti v Kgami* 1948 (3) SA 27 (W) at 37.

227 See *Ndauti v Kgami* 1948 (3) SA 27 (W) at 36–37; *Webster v Mitchell* 1948 (1) SA 1186 (W); *Steenkamp v Fourie* 1948 (4) SA 536 (T); *VSA Motor Distributors (Pty) Ltd v Rossman* 1980 (3) SA 1164 (D) at 1170F.

228 *Mostert v De Beers Consolidated Mines Ltd* (1893) 7 HCG 25 at 33; *Wynberg Municipality v Dreyer* 1920 AD 439 at 447; *Rivas v The Premier (Transvaal) Diamond Mining Co Ltd* 1929 WLD 1 at 14–16; *Transvaal Property & Investment Co Ltd v SA Townships Mining & Finance Corp Ltd* 1938 TPD 512 at 520–521; *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 361H–362C; *Lieberthal v Primedia Broadcasting (Pty) Ltd* 2003 (5) SA 39 (W) at 43E; *Cape Town City v South African National Roads Agency Ltd* 2015 (6) SA 535 (WCC) at 632F–G. The discretion of the court is not a 'narrow discretion' as an appeal court is entitled to substitute its view for that of the court (*Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W) at 277I–278B).

229 *Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd* 1933 WLD 6 at 25.

230 *Kemp, Sacs & Nell Real Estate (Edms) Bpk v Soll* 1986 (1) SA 673 (O) at 689I–690A.

231 *Hotz v University of Cape Town* 2017 (2) SA 485 (SCA) at 497A–B and the cases referred to at 497H–I; *Ekurhuleni Municipality v New Star Technology CC* 2023 (3) SA 579 (GJ) at paragraph [11].

232 *Transvaal Property & Investment Co Ltd v SA Townships Mining & Finance Corp Ltd* 1938 TPD 512 at 521. See also *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Rivas v The Premier (Transvaal) Diamond Mining Co Ltd* 1929 WLD 1 at 14–16; *Gründling v Beyers* 1967 (2) SA 131 (W) at 155C; *Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd* 1971 (2) SA 397 (W) at 404E; *Burger v Rautenbach* 1980 (4) SA 650 (C) at 652E; *Kemp, Sacs & Nell Real Estate (Edms) Bpk v Soll* 1986 (1) SA 673 (O) at 689H. See further De Villiers (1984) 47 *THRHR* 280 at 297 and *LAWSA* XI 297.

233 *Zuurbekom Ltd v Union Corporation Ltd* 1947 (1) SA 514 (A) at 537; *Harnischfeger Corporation v Appleton* 1993 (4) SA 479 (W) at 490G–491B.

234 *Zuurbekom Ltd v Union Corporation Ltd* 1947 (1) SA 514 (A) at 537. Thus, in *Witbank Colliery Ltd v Malan and Coronation Colliery Co Ltd* 1910 TPD 667 at 679 and 684 the result of a long delay was that in the circumstances damages was the only appropriate remedy left. In *Kemp, Sacs & Nell Real Estate (Edms) Bpk v Soll* 1986 (1) SA 673 (O) the grant of an interdict would, in the circumstances and as a result of long delay, have served no purpose.

235 *Botha v White* 2004 (3) SA 184 (T) at 193G–H.

236 See, for example, *Messina (Tvl) Development Co Ltd v SAR&H* 1929 AD 195 at 215; *Yusuf v Abboobaker and Pietermaritzburg Local Road Transportation Board* 1943 NPD 244 at 247; *Ndauti v Kgami* 1948 (3) SA 27 (W) at 36–37; *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383E–F; *Limbada v Dwarka* 1957 (3) SA 60 (N) at 62B–F; *Chopra v Avalon Cinemas SA (Pty) Ltd* 1974 (1) SA 469 (D) at 472H–473A; *Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) at 399A; *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 196A–B; *Hotz v University of Cape Town* 2017 (2) SA 485 (SCA) at 497I–J; *Vea Road Maintenance and Civils (Pty) Ltd v South African National Roads Agency SOC Limited* (unreported, KZD case no D7913/2023 dated 20 November 2023) at paragraph [35]. In *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 361H–I it is stated, probably *obiter*, that 'the statement that a Court has a wide discretion seems to mean no more than that the Court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision.' In *Plettenberg Bay Entertainment (Pty) Ltd v Minister van Wet en Orde* 1993 (2) SA 396 (C) it was held (at 399D–401A) that the court did not have a discretion to grant an interlocutory interdict for the protection of a right (pending an appeal) that the court had already found the applicant was not entitled to. This decision was distinguished, qualified and not followed in *Indwe Aviation (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa (Pty) Ltd (No 2)* 2012 (6) SA 110 (WCC).

237 *Yusuf v Abboobaker and Pietermaritzburg Local Road Transportation Board* 1943 NPD 244 at 247; *Limbada v Dwarka* 1957 (3) SA 60 (N) at 62B–F; *Rizla International BV v L Suzman Distributors (Pty) Ltd* 1996 (2) SA 527 (C) at 536C–D. The statement in the text may have to be reconsidered in view of the analysis of the nature of the discretion in *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 360A–H.

238 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383E–F; *Gründling v Beyers* 1967 (2) SA 131 (W) at 155C.

239 *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383E–F; *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691F–G; *Beecham Group Ltd v B-M Group (Pty) Ltd* 1977 (1) SA 50 (T) at 54E–F; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 833F; *Erasmus v Senwes Ltd* 2006 (3) SA 529 (T) at 540E; *Breedenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) at 314H.

240 *Juta & Co Ltd v Legal and Financial Publishing Co (Pty) Ltd* 1969 (4) SA 443 (C).

241 *Sandell v Jacobs* 1970 (4) SA 630 (SWA) at 635B–E; *Chopra v Avalon Cinemas SA (Pty) Ltd* 1974 (1) SA 469 (D) at 472E.

242 *Hillman Bros (West Rand) (Pty) Ltd v Van den Heuvel* 1937 WLD 41, from which it is further apparent that the terms imposed must be reasonable; *Nolte v Johannesburg Consolidated Investment Co Ltd* 1943 AD 295 at 318–320; *Ndauti v Kgami* 1948 (3) SA 27 (W) at 37; *Braham v Wood* 1956 (1) SA 651 (D) at 655.

243 *Chopra v Avalon Cinemas SA (Pty) Ltd* 1974 (1) SA 469 (D) at 473A.

244 *Dunbar v Rossmaur Mansions (Pty) Ltd* 1946 WLD 235; *Johannesburg Consolidated Investments Co v LK Investments* 1947 (2) SA 465 (W); *CD of Birnam (Suburban) (Pty) Ltd v Falcon Investments Ltd* 1973 (3) SA 838 (W).

245 *Peri-Urban Areas Health Board v Sandhurst Gardens (Pty) Ltd* 1965 (1) SA 683 (T); and see the authorities referred to in the following footnote.

246 *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T) at 347G; *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) at 110F; *Bitou Local Municipality v Timber Two Processors CC* 2009 (5) SA 618 (C) at 624G–626I.

247 1956 (1) SA 651 (D) at 655G–H.

248 *Hillman Bros (West Rand) (Pty) Ltd v Van den Heuvel* 1937 WLD 41; *Ndauti v Kgami* 1948 (3) SA 27 (W); *Chopra v Sparks Cinemas (Pty) Ltd* 1973 (4) SA 352 (D); *Shoprite Checkers Ltd v Blue Route Property Managers (Pty) Ltd* 1994 (2) SA 172 (C); *Rizla International BV v L Suzman Distributors (Pty) Ltd* 1996 (2) SA 527 (C).

249 *South African Human Rights Commission v City of Cape Town* 2021 (2) SA 565 (WCC) at paragraphs [77]–[78] and [80]. See also ZT Poggenpoel and S Mahomedy 'Evictions during the COVID-19 pandemic and beyond — Discussion of *South African Human Rights Commission v City of Cape Town* 2021 (2) SA 565 (WCC)' (2021) 32.3 *SLR* 482.

250 *Botha v Dreyer* (1880) 1 EDC 74; *In re The Corinbatore* (1897) 18 NLR 179; *SA Trade Protection Society and Trust Co Ltd v Hearne and Meikle* 1904 TH 19; *Estate Scholtz v Carroll* (1906) 23 SC 430; *Burgers v Fraser* 1907 TS 318; *In re Cousins* 1911 CPD 463; *Frank v Van Zyl* 1957 (2) SA 207 (C) at 211E–F; *Elliott Bros (EL) (Pty) Ltd v Smith* 1958 (3) SA 858 (E) at 862B–E; *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C) at 522F.

251 *Elliott Bros (EL) (Pty) Ltd v Smith* 1958 (3) SA 858 (E) at 862F. See further *Meikle v SA Trade Protection Society and Trust Co* 1904 TS 94 at 97; *Burgers v Fraser* 1907 TS 318 at 320; *Frank v Van Zyl* 1957 (2) SA 207 (C); *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C) at 522F.

252 *Elliott Bros (EL) (Pty) Ltd v Smith* 1958 (3) SA 858 (E) at 863D.

253 Another remedy would be damages, but since an interdict will not be granted in the first place where damages would be an adequate remedy, there can be few instances when pecuniary compensation will recompense the injured party.

254 *Dlalisa v Elston* 1962 (3) SA 910 (D).

255 *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C) at 522B.

256 1940 NPD 188.

257 1996 (3) SA 686 (A) at 690E–F. See also *JR 209 Investments (Pty) Ltd v Pine Villa Country Estate (Pty) Ltd; Pine Villa Country Estate (Pty) Ltd v JR 209 Investments (Pty) Ltd* 2009 (4) SA 302 (SCA) at 312B–D; and see *African Wanderers Football Club (Pty) Ltd v Wanderers Football Club* 1977 (2) SA 38 (A) at 47C–D; *Van Niekerk v Van Niekerk* 2008 (1) SA 76 (SCA) at 78 G–I; *Atkin v Botes* 2011 (6) SA 231 (SCA) at 233A–236B, where the relevant authorities are discussed; *International Trade Administration Commission v Scaw South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at 642D–643F; *Du Preez v Viljoen NO* (unreported, WCC case no A174/2016 dated 11 October 2017) at paragraphs [20]–[22]; *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation* 2018 (6) SA 440 (SCA) at 453C–458B; *City of Tshwane Metropolitan Municipality v Moipone Fleet (Pty) Ltd* (unreported, SCA case no 57/2019 dated 27 May 2020) at paragraph [21]; *Economic Freedom Fighters v Gordhan* 2020 (6) SA 325 (CC) at paragraph [49].

258 *Metlika Trading Ltd v Commissioner, South African Revenue Service* 2005 (3) SA 1 (SCA) at 12F–G; *JR 209 Investments (Pty) Ltd v Pine Villa Country Estate (Pty) Ltd; Pine Villa Country Estate (Pty) Ltd v JR 209 Investments (Pty) Ltd* 2009 (4) SA 302 (SCA) at 312B–D; *International Trade Administration Commission v Scaw South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at 642D–643F.

259 2020 (6) SA 69 (SCA); and see *Economic Freedom Fighters v Gordhan* 2020 (6) SA 325 (CC) at paragraphs [49] and [50]; *Van Huyssteen v Pepkor Speciality (Pty) Ltd* (unreported, SCA case no 334/2019 dated 30 June 2020) at paragraphs [17]–[19]; *Eskom Holdings SOC Ltd v Lekwa Ratepayers Association NPC and a Similar Matter* 2022 (4) SA 78 (SCA) at paragraph [7] and the cases there referred to (an appeal against the order of the Supreme Court of Appeal was dismissed by the majority of the Constitutional Court *sub nomine Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* 2023 (4) SA 325 (CC)).

260 2010 (2) SA 573 (SCA) at paragraph [20].

261 2016 (6) SA 279 (CC) at paragraph [40].

262 At paragraph [15].

263 2023 (1) SA 353 (CC).

264 As to which, see *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A) at 532I–533B.

265 At paragraph [45].

266 At paragraph [40].

267 At paragraph [45].

268 Unreported, SCA case nos 879/2022; 913/2022 dated 23 November 2023.

269 At paragraph [8].

270 [2024] 1 All SA 615 (SCA).

271 The Supreme Court of Appeal found that the respondents in the appeal had not alleged facts in their application for an interlocutory interdict in the court *a quo* to make out a prima facie case and, for that reason, it was 'one of those exceptional cases where, despite the interim nature of the order, it falls within the appeal jurisdiction of this Court' (at paragraph [29]). The Supreme Court of Appeal also found that there was an additional reason why the interlocutory interdict was appealable:
'[30] There is an additional reason for this interim interdict being appealable. The equality court found, albeit on a prima facie basis, that Nedbank's decision to close the respondents' accounts was based on unfair racial discrimination. This is a serious charge. Racism is a scourge which has infected the fabric of our national life for well over three hundred years. The Equality Act was specifically devised, in part, to address and eliminate this scourge. Any order under this section of the Equality Act requires a finding that the entity against which the order is granted has unfairly discriminated on the ground of race. A finding of that nature has obvious serious reputational repercussions, particularly considering Nedbank's standing as one of the major banks in South Africa. Where a case is properly made out for an order having this effect, a party cannot be heard to complain. However, where, as in this case, the order ought never to have been made, justice requires that the impugned decision is rendered appealable and rectified.'

272 *MV Snow Delta Serva Ship Ltd v Discount Tonnage Ltd* 2000 (4) SA 746 (A), which overruled the decisions in *Du Randt v Du Randt* 1992 (3) SA 281 (E); *Interkaap Ferreira Busdiens (Pty) Ltd v Chairman, National Transport Commission* 1997 (4) SA 687 (T) and *MV Triena: Haji-Iannou v MV Triena* 1998 (2) SA 938 (D).

273 *St Elmo's Trading (Pty) Ltd v Hathorn NNO* 2000 (4) SA 126 (C) at 134D, which followed and approved *Chrome Circuit Audiotronics (Pty) Ltd v Recoton European Holdings Inc* 2000 (2) SA 188 (W); *Constantinides v Jockey Club of South Africa* 1954 (3) SA 35 (C); *Ismail v Keshavjee* 1957 (1) SA 684 (T); *SAB Lines (Pty) Ltd v Cape Tex Engineering Works (Pty) Ltd* 1968 (2) SA 535 (C); *The MV Snow Delta: Discount Tonnage Ltd v Serva Ship Ltd* 1996 (4) SA 1234 (C), which was confirmed on appeal in *MV Snow Delta Serva Ship Ltd v Discount Tonnage Ltd* 2000 (4) SA 746 (A). If the parties become reconciled and do not proceed with the action, the *lis* between the parties disappears and an interdict granted *pendente lite* ceases to operate (*Isaacs v Williams* 1983 (2) SA 723 (NC)).

274 *Kelly Group Ltd v Solly Tshiki & Associates (SA) (Pty) Ltd* 2010 (5) SA 224 (GSJ) at 231F–G.

275 *Constantinides v Jockey Club of South Africa* 1954 (3) SA 35 (C) at 53H and 54G–55A; *Kelly Group Ltd v Solly Tshiki & Associates (SA) (Pty) Ltd* 2010 (5) SA 224 (GSJ) at 231G.