

(B) Contempt in the Face of the Court

Halsbury's Laws of Australia

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[105-25] Conduct amounting to contempt

The paragraph below is current to **17 February 2023**

At common law, a contempt in the face of the court consists of any act in a court (or possibly in the precincts of the court or elsewhere)¹ which interferes with or tends to interfere with the due administration of justice.²

Conduct does not constitute contempt in the face of the court if the proceedings in which the contempt is said to have occurred are complete.³

Various statutory provisions in all jurisdictions deem specified behaviour in the nature of contempt in the face of the court to constitute a contempt or otherwise declare that behaviour to be punishable.⁴

To constitute contempt in the face of the court, the conduct must be intentional.⁵ However, it seems that a non-statutory contempt in the face of the court does not require an intention to interfere with the due administration of justice; the court need only have regard to the apparent purpose or perceived effect of the conduct, although a contempt will be more easily found where such an intention does exist.⁶

At common law, the power to punish contempts committed in the face of the court is an incident of the inherent jurisdiction of all superior and inferior courts of record.⁷

Notes

- 1 There is doubt as to the precise limits at common law of contempt in the face of the court, a phrase described as 'antique and ambiguous': *European Asian Bank AG v Wentworth* (1986) 5 NSWLR 445  at 455 per Kirby P, CA(NSW). The initial unresolved question is whether it embraces only conduct which is 'in the personal knowledge of the court' (see, for example, *McKeown v R* (1971) 16 DLR (3d) 390  at 408 per Laskin J (dissenting)) or whether it includes conduct 'in the cognisance of the court' (*Balogh v Crown Court at St Albans* [1975] 1 QB 73   at 84 ; [1974] 3 All ER 283 at 287; [1974] 3 WLR 314  per Lord Denning MR, CA). A third possibility is that the true position

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lies somewhere between those views: *Registrar of the Court of Appeal v Collins* [1982] 1 NSWLR 682  at 702-3, 705 per Moffitt P, CA(NSW). See also *European Asian Bank AG v Wentworth* (1986) 5 NSWLR 445  at 458 per Kirby P, CA(NSW); *Fraser v R* [1984] 3 NSWLR 212 ; (1984) 15 A Crim R 58, CA(NSW); *Re Goldman* [1968] 3 NSWLR 325  sub nom *Re Goldman and rule nisi for contempt of court* (1968) 89 WN (Pt 1) (NSW) 175 , CA(NSW); *Ex parte Tubman*; *Re Lucas* [1970] 3 NSWLR 41 ; (1970) 72 SR (NSW) 555; 92 WN (NSW) 520, CA(NSW). See further **Contempt**, ALRC Report 35, Sydney, 1987, paras 69-143 (improper behaviour at hearings); Phillipps R, *Reference on Contempt of Court: Improper Behaviour in Court*, Research Paper No 2, ALRC, Sydney, July 1984, p 48.

A person who behaves disgracefully before a judge in chambers is guilty of **contempt**: *Re Johnson* (1887) 20 QBD 68  at 72 , 74 ; 57 LJQB 1; 58 LT 160 per Lord Esher MR. For examples of **contempt** committed in chambers see *Re Slack* (1876) 2 VLR (E) 204 ; *Slack v Atkinson*; *Re Slack* (1878) 4 VLR (E) 230. As to **contempt** by interfering with judges see [105-130].

- 2 *Lewis v Ogden* (1984) 153 CLR 682  at 688; 53 ALR 53 at 56; 58 ALJR 342; BC8400532 per Mason J (Murphy, Wilson, Brennan and Dawson JJ agreeing); *MacGroarty v A-G (Qld) (Clauson)* (1989) 167 CLR 251  at 255 sub nom *MacGroarty v A-G (Qld) (Clauson)* (1989) 86 ALR 513  at 515; 63 ALJR 514 per Mason CJ (Deane, Dawson, Toohey and McHugh JJ agreeing); *Parashuram Detaram Shamdasan v R* (1945) 114 LJPC 95 ; 173 LT 400; [1945] AC 264  at 268 ; (1945) 61 TLR 448 per Lords Macmillan, Goddard and Sir Madhavan Nair, PC. For examples of **contempt** in the face of the court see [105-30].

- 3 *Re Bride*; *Ex parte Stewart* (1996) 60 FCR 569  at 570-1 per Nicholson J (while there is a fine line between **contempt** and perjury, there is no disobedience upon which **contempt** could operate once the proceedings have concluded).

- 4 See, for example:

(CTH) Federal Circuit and Family Court of Australia Act 2021 s 45 (see also *Fierro & Fierro (No 7)* [2023] FedCFamC1A 24 ; BC202302045 at [55] per Austin, Williams and Howard JJ)

(ACT) *Magistrates Court Act 1930* s 307(1)(b), 307(2) (see also *Kaney (as executor of the estate of the late Rushton) v Ruchton* [2017] ACTSC 11 ; BC201700363 at [87], [88] per Refshauge J); (ACT) *Court Procedures Rules 2006* r 2500(b)

(NT) *Local Court Act 2015* ss s, 46(1)(a)

(NSW) *Civil Procedure Act 2005* s 53; (NSW) *District Court Act 1973* s 199; (NSW) *Local Court Act 2007* s 24 (see also *R v Adams* [2017] NSWCA 277 ; BC201709359 at [29] per White JA)

(QLD) *Justices Act 1886* s 40 (see also *Jorgensen v A-G (Qld)* [2020] QDC 6 ; BC202040032 at [20]-[32] per Sheridan DCJ)

(SA) *District Court Act 1991* s 48 (see also *Registrar of the District Court of South Australia v Fryer* [2021] SADC 135 ; BC202113176 at [1] per Burnett J); (SA) *Magistrates Court Act 1991* ss s, 46

(TAS) *Justices Act 1959* s 25; (TAS) *Magistrates Court Act 1987* s 17A (see also *TasBuild Ltd v Jones* (2014) 24 Tas R 278 ; [2014] TASSC 28; BC201403751 at [41] per Porter J)

(VIC) *Magistrates' Court Act 1989* s 133; (VIC) *Children, Youth and Families Act 2005* s 528 (see also *Victoria Police v Gebrehiwot* [2019] VMC 12 at [22] per Maccallum M)

(WA) *Magistrates Court Act 2004* ss s, 16 (as to ibid s 16 see *Re Magistrate T R Watt*; *Ex parte Kearney* [2015] WASC 435 ; BC201511458 at [5]-[7] per Tottle J).

Many statutory provisions require that misconduct be 'wilful' before it can constitute **contempt** in the face of the court. In considering the conviction of a barrister upon a charge laid under (VIC) *County Court Act 1958* s 54A (repealed), the Full Court of the High Court of Australia stated in *Lewis v Ogden* (1984) 153 CLR 682  at 688; 53 ALR 53 at 56; 58 ALJR 342; BC8400532 per Mason J (Murphy, Wilson, Brennan and Dawson JJ agreeing): '...the word "wilfully" means "intentionally", or "deliberately", in the sense that what is said or done is intended as an insult, threat, etc. Its presence does more than negative the notion of "inadvertently" or "unconsciously"...The mere voluntary utterance of words is not enough. "Wilfully" imports the notion of purpose'.

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See also *Bell v Stewart* (1920) 28 CLR 419  at 427; [27 ALR 1](#) at 4 per Isaacs and Rich JJ; *R v Coroner at Melbourne*; *Ex parte Ericksen* [\[1981\] VR 205](#)  at 208 per Anderson J; *G v Moss* (1984) 37 SASR 9  at 15 per Johnston J.

The requirement that conduct be 'wilfully' done is satisfied by committing the acts deliberately with the intention that they should interrupt the proceedings or with knowledge that there is a risk that the conduct will do so: *Bodden v Cmr of Police of the Metropolis* [\[1990\] 2 QB 397](#)  at 405 ; [\[1989\] 3 All ER 833](#) at 837; [\[1990\] 2 WLR 76](#) ; [\(1990\) 154 JP 217](#) per Beldam LJ, CA. See also *R v Selby Justices*; *Ex parte Frame* [\[1992\] QB 72](#) ; [\[1991\] 2 All ER 344](#) at 352; [\[1991\] 2 WLR 965](#)  at 973-4  per Otton J, QB.

- 5 *Ex parte Tuckerman; Re Nash* [1970] 3 NSW 23  at 28 per Asprey, Holmes and Mason JJA, CA(NSW); *Registrar of the Court of Appeal v Collins* [\[1982\] 1 NSWLR 682](#)  at 690-1 per Moffitt P. With regard to **contempt** by publication an absence of intention is not decisive: *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351  at 371; [1955] ALR 265; (1955) 29 ALJR 304; [BC5500130](#) per Dixon CJ (Fullagar, Kitto and Taylor JJ agreeing); *Attorney-General (NSW) v Mirror Newspapers Ltd (Bradley case)* [1962] NSW 856 ; [1962] SR (NSW) 421 at 429; (1961) 79 WN (NSW) 56 per Evatt CJ, Herron and Collins JJ; *Registrar of the Court of Appeal v Willesee* [\(1985\) 3 NSWLR 650](#) ; 17 A Crim R 238; *Wade v Gilroy* (1986) 83 FLR 14 ; [10 Fam LR 793](#); (1986) FLC ¶91-722, Fam C of A. As to intent to prejudice proceedings by publication see [\[105-65\]](#). As to the requirement in some legislation that misconduct be 'wilful' see note 4 above.
- 6 *Ex parte Tuckerman; Re Nash* [1970] 3 NSW 23  at 28 per Asprey, Holmes and Mason JJ, CA(NSW); *Registrar of the Court of Appeal v Collins* [\[1982\] 1 NSWLR 682](#)  at 690-1 per Moffitt P. With regard to **contempt** by publication an absence of intention is not decisive: *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351  at 371; [1955] ALR 265; (1955) 29 ALJR 304; [BC5500130](#) per Dixon CJ (Fullagar, Kitto and Taylor JJ agreeing); *Attorney-General (NSW) v Mirror Newspapers Ltd (Bradley case)* [1962] NSW 856 ; [1962] SR (NSW) 421 at 429; (1961) 79 WN (NSW) 56 per Evatt CJ, Herron and Collins JJ; *Registrar of the Court of Appeal v Willesee* [\(1985\) 3 NSWLR 650](#) ; 17 A Crim R 238; *Wade v Gilroy* (1986) 83 FLR 14 ; [10 Fam LR 793](#); (1986) FLC ¶91-722, Fam C of A. As to intent to prejudice proceedings by publication see [\[105-65\]](#).
- 7 As to superior courts see *R v Metal Trades Employers' Assn; Ex parte Amalgamated Engineering Union, Australian Section* (1951) 82 CLR 208  at 241-3, 254; [1951] ALR 93 at 100-102, 108; (1951) 24 ALJ 553 per Latham CJ (dissenting) and Dixon J respectively. As to inferior courts see *Re Dunn* [1906] VLR 493 ; (1906) 12 ALR 358. As to jurisdiction to punish criminal **contempt** see [\[105-15\]](#). For the definition of 'court of record' see [\[105-335\] note 1](#).

[105-30] Examples

The paragraph below is current to **17 February 2023**

The following forms of conduct have been held to constitute **contempt** in the face of the court.

- (1) *Assaults upon and threats to persons in court.* An assault upon a judicial officer who is carrying out official functions in a court is a serious **contempt** in the face of the court.¹ Similarly, it is a **contempt** to assault or threaten any person in court during proceedings.² It is a **contempt** to offer threats of violence to counsel and solicitors in the precincts of the court.³
- (2) *Insults to the court.* Insulting⁴ words or acts directed towards the presiding judicial officer,⁵ counsel, solicitors⁶ or jurors⁷ may constitute a **contempt**. The manner in which otherwise proper words are used may render them improper.⁸ Statutory provisions in some jurisdictions render punishable wilfully insulting behaviour in court.⁹

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- (3) *Behaviour disrespectful to the court.* Disrespectful behaviour by words or conduct may constitute a **contempt** in the face of the court.¹⁰
- (4) *Interruption of court proceedings.* Wilful interruption of court proceedings by words or conduct may constitute a **contempt** in the face of the court.¹¹
- (5) **Contempt** by witnesses. It is a **contempt** for a witness who, without lawful excuse,¹² refuses to be sworn or affirmed¹³ or who, being sworn or affirmed, refuses to answer,¹⁴ prevaricates¹⁵ or remains in court after having been ordered to leave.¹⁶
- (6) **Contempt** by jurors. **Contempt** in the face of the court may be committed by a juror.¹⁷
- (7) **Contempt** by litigants. Considerable latitude is extended to litigants in person who may be unfamiliar with proper court procedures and courtesies and who may be emotionally involved in the proceedings.¹⁸ However, serious and persistent misbehaviour by a party during a hearing may result in expulsion from the court room.¹⁹
- (8) **Contempt** by advocates. Alert to the desirability of allowing advocates considerable freedom as to the manner in which they conduct a case, courts are slow to punish advocates for **contempt**. Although not every act of discourtesy by an advocate to the court constitutes a **contempt**,²⁰ behaviour that amounts to a defiance of the court's authority may do so.²¹ A presiding judicial officer has the power to control the proceedings in court, including the conduct of those who participate in those proceedings.²² Amid the tension of the trial process, courtesy, patience and restraint is sought from judges, counsel and solicitors alike.²³ It is a **contempt** of court for an unqualified person to appear before a court purportedly as a barrister.²⁴
- (9) *Service of process in court.* The service of process within the precincts of a court may constitute a **contempt**. For example, where the nature of the process is such that the possibility of it being served within the precincts of the court might deter a party from reporting to the court for other business (in order to avoid being served that process), the administration of justice would be obstructed by that non-attendance. Such circumstances will be rare.²⁵

Other areas of practical importance (unsuitable for inclusion in the list above as discrete examples of **contempt** because they involve issues which are as yet unresolved by judicial decision or legislative enactment) include the following:

- (1) *Photographing or sketching in court.* Photographing or sketching court proceedings may constitute a **contempt** of court as the power to prohibit or regulate the taking of photographs or the making of sketches in court is within a court's inherent or implied jurisdiction.²⁶
- (2) *Tape recorders in court.* There are no relevant statutory provisions relating to the use of tape recorders to record court proceedings by members of the public. Accordingly, any power to prohibit or regulate such conduct may be considered in the context of a court's inherent or implied jurisdiction.²⁷
- (3) *Questions relating to pending taxation offences.* Interrogation of a taxpayer, who has criminal taxation offences pending, by the Deputy Commissioner of Taxation may amount to **contempt** of court depending upon the questions asked. The taxpayer may be entitled to object to certain questions.²⁸

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Notes

- 1 See, for example, *Aphary v Smith* (1559) 2 Dy 188; [73 ER 416](#) (brickbat thrown at judge); *Re Cosgrave* (1877) Seton's Judgments and Orders (7th ed) 457 (egg thrown at judge); *R v Herring* (unreported, SC(NSW), Slattery AJ, No 70140/90, 3 October 1991, [BC9102677](#)) (prisoner escaped from dock, ascended bench and assaulted presiding judge); *Wilson v Prothonotary* [\[2000\] NSWCA 23](#) ; [BC200000520](#) (bags of paint thrown at judge). As to interference with judges see further [\[105-130\]](#).
- 2 *European Asian Bank AG v Wentworth* [\(1986\) 5 NSWLR 445](#)  CA(NSW) (assault committed in court room after judge had delivered decision and retired); *Director of Public Prosecutions v Jones* [\(1985\) 65 ACTR 11](#)  (defendant in custody threatened with violence while attending court of summary jurisdiction); *R v Dent* [\[2016\] NSWSC 444](#) ; [BC201602577](#).
- 3 *Brown v Putnam* [\(1975\) 6 ALR 307](#)  CA(NSW) (counsel threatened outside courtroom by opposing litigants during defended custody proceedings); *Re Goldman* [1968] 3 NSW 325  sub nom *Re Goldman and rule nisi for contempt of court* (1968) 89 WN (Pt 1) (NSW) 175  CA(NSW) (counsel abused and threatened while in lift in court building); *Re Johnson* [\(1887\) 20 QBD 68](#) ; 57 LJQB 1; 58 LT 160, CA (threat to solicitor in corridor outside judge's chambers). As to interference with solicitors and counsel see further [\[105-135\]](#).
- 4 As to the meaning of 'insulting' see *Thurley v Hayes* (1920) 27 CLR 548 ; 26 ALR 120; *Ex parte Breen* (1918) 18 SR (NSW) 1 ; *Lendrum v Campbell* (1932) 32 SR (NSW) 499 ; *Annett v Brickwell* [1940] VLR 312 ; *Gebert v Innocenzi* [1946] SASR 172 ; *R v O'Dea* (1983) 10 A Crim R 240 , Fed C of A; *Brutus v Cozens* [\[1973\] AC 854](#) ; [\[1972\] 2 All ER 1297](#); [\[1972\] 3 WLR 521](#) , HL.
- 5 *Reece v McKenna*; *Ex parte Reece* [\[1953\] St R Qd 258](#)  (defendant said to presiding magistrate in manner that was insolent and truculent, 'You are too hard. I want to be tried by another magistrate'); *Dow v A-G (Qld)* [\[1980\] Qd R 58](#) ; (1979) 2 A Crim R 176 (during exchange with judge, defendant, while displaying an arrogant and truculent attitude, stated 'We are in a court of law, I hope. I hope I have been brought before a court of law'. He shouted at the judge and refused to apologise when requested); *Winmill v Curr* [1981-83] QL 265, DC(QLD) (presiding magistrate in chambers considering application when member of public in court room remarked to police officer that, 'The magistrate does everything you say. He is in your pocket'); *R v Collins* [1954] VLR 46 ; [1954] ALR 122 (affidavit handed to judge's associate, but not read aloud, contained serious allegations that reflected upon integrity of judges of court, counsel and solicitors); *R v Stafford County Court Judge* (1888) 57 LJQB 483 sub nom *R v Jordan* (1888) 36 WR 797, CA (referring to observation by judge defendant said 'That is a most unjust remark'); *R v O'Dea* (1983) 10 A Crim R 240 , Fed C of A (wilful insult to Royal Commission).
- 6 *Re Johnson* [\(1887\) 20 QBD 68](#) ; 57 LJQB 1; 58 LT 160, CA; *French v French* (1824) 1 Hog 138; 16 Digest Repl 7 (**contempt** to insult suitor or counsel while attending before master).
- 7 *Ex parte Pater* (1864) 5 B & S 299; [122 ER 842](#) (insults directed to jury); *Prothonotary of the Supreme Court of New South Wales v Katelaris* [\[2008\] NSWSC 389](#) ; [BC200803096](#). As to interference with jurors see [\[105-140\]](#).
- 8 *Carus Wilson's Case* [\(1845\) 7 QB 984](#) ; [115 ER 759](#); *Ex parte Stewart*; *Re Fellows* [\[1972\] 2 NSWLR 317](#)  at [326](#) per Manning JA, CA(NSW); *O'Hair v Wright* [1971] SASR 436  at 440-1 per Mitchell J. See also note 10 below.
- 9 As to these statutory provisions see [105-25] note 4.
- 10 *Ex parte Stewart*; *Re Fellows* [\[1972\] 2 NSWLR 317](#) , CA(NSW) (upon being told by presiding magistrate that her case could not proceed that day because of lack of hearing time, the defendant repeatedly said in loud and demanding tone of voice 'I want it heard today' and, when magistrate adjourned matter, said in the same tone, 'You can adjourn it to any date you like. I won't be here'); *Ex parte Tuckerman*; *Re Nash* [1970] 3 NSW 23 , CA(NSW) (by pre-arrangement, a number of defendants entering court each made gesture by raising their left arm with hand clenched, gesture that manifested studied disregard of the jurisdiction of court and described by one defendant as 'an international symbol of solidarity in the oppression of justice' and 'the symbol of liberation'); *Mahaffy v Mahaffy* [2013] NSWSC 245 ; [BC201301496](#) at [\[111\]](#), [\[114\]](#) per Garling J (mere discourtesy in words or behaviour not punishable as **contempt**; must consider words and behaviour in context, such as volume and tone of voice, nature of proceedings and relevance of words or behaviour to issues in proceedings). However, it is not every act of discourtesy that constitutes a **contempt**. The statement 'I refuse to recognise the authority of this court' was held not, in itself, to amount to 'disrespectful' conduct within the meaning of the former (SA) Justices Act 1921 s 46: *O'Hair v Wright* [1971] SASR 436 .

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- 11 *Registrar of the Court of Appeal v Collins* [1982] 1 NSWLR 682 ; *R v Collins* (1984) 15 A Crim R 148 ; *Re Slack* (1876) 2 VLR (E) 204  (party conducted himself in 'most insolent, violent and contemptuous manner' towards master, counsel and witnesses with result that master found it impossible to proceed: matter adjourned before judge); *Re Dakin* (1887) 13 VLR 522 ; 9 ALT 62 (proceedings interrupted by noise emanating from premises adjoining court); *Morris v Crown Office* [1970] 2 QB 114  ; [1970] 1 All ER 1079, CA (protesters breaking up court proceedings by unruly behaviour); *R v Stone* (1796) 6 Term Rep 527 ; [101 ER 684]; *Bruce's Case* (1828) Sanders' Ch Orders 736, LC; *R v Ogawa* [2011] 2 Qd R 350 ; [2009] QCA 307; BC200909281 at [177] per Keane JA.

Conduct outside the courtroom capable of constituting an 'interruption' is within (UK) **Contempt** of Court Act 1981 s 12: *Bodden v Cmr of Police of the Metropolis* [1990] 2 QB 397  ; [1989] 3 All ER 833; [1990] 2 WLR 76 ; (1990) 154 JP 217, CA. In this case also, the requirement that such conduct be 'wilfully' done is satisfied by committing the acts causing the interruption deliberately with the intention that they should interrupt the proceedings or with knowledge that there is a risk that the conduct will do so. See also *R v Selby Justices*; *Ex parte Frame* [1992] QB 72  ; [1991] 2 All ER 344 at 352; [1991] 2 WLR 965  at 973-4  per Otton J, Div Ct.

- 12 Such as the common law privilege against self-incrimination or a modification thereof, which most jurisdictions have enacted:

(CTH) *Evidence Act 1995* s 128(1) (refusal on grounds that evidence tends to prove the witness committed an offence or is liable to a civil penalty) (see also *Deputy Commissioner of Taxation v Shi* (2021) 273 CLR 235 ; 392 ALR 1; [2021] HCA 22; BC202106920 at [80]-[88] per Edelman J)

(ACT) *Evidence Act 2011* s 128 (see also *Marshall v R* [2023] ACTCA 11 ; BC202301160 at [131] per Mossop, Loukas-Karlsson and Abraham JJ)

(NT) *Evidence (National Uniform Legislation) Act 2011* s 128

(NSW) *Evidence Act 1995* s 128(1) (refusal on grounds that evidence tends to prove the witness committed an offence or is liable to a civil penalty) (see also *Shanahan v Jatese Pty Ltd* (2018) 107 NSWLR 430 ; [2018] NSWSC 1097; BC201806074 at [11], [14], [21] per Hammerschlag J)

(QLD) *Evidence Act 1977* s 10 (see also *Nguyen v Cmr of the Australian Federal Police* (2014) 292 FLR 10 ; 246 A Crim R 244; [2014] QCA 293; BC201409848 at [22] per Fraser JA)

(TAS) *Evidence Act 2001* s 128

(VIC) *Evidence Act 2008* s 128 (see also *Timeless Sunrise Pty Ltd v BigJ Enterprises Pty Ltd* (No 7) [2022] VSC 549 ; BC202209395 at [1] per Delaney J)

(WA) *Evidence Act 1906* s 24 (see also *Western Australia v Dawson* (No 2) [2021] WADC 17 ; BC202140113 at [63] per Gething DCJ).

Compare:

(SA) *Evidence Act 1929* s 18(1)(c).

As to the privilege against self-incrimination see further EVIDENCE [195-7405].

An indemnity procedure is provided for witnesses who have been compelled to make incriminating answers. See also:

(CTH) *Evidence Act 1995* s 128(7) (see also *Cornwell v R* (2007) 231 CLR 260 ; 234 ALR 51; [2007] HCA 12; BC200701731 at [86]-[88] per Gleeson CJ (Gummow, Heydon and Crennan JJ agreeing); (CTH) *Royal Commissions Act 1902* s 6DD; (CTH) *Australian Crime Commission Act 2002* s 30(4), 30(5))

(ACT) *Evidence Act 2011* s 128(7)

(NT) *Evidence (National Uniform Legislation) Act 2011* s 128(7); (NT) *Inquiries Act 1945* s 13

(NSW) *Evidence Act 1995* s 128(7); (NSW) *Royal Commissions Act 1923* s 17

(QLD) *Commissions of Inquiry Act 1950* ss s, 14A, 14B; (QLD) Criminal Code s 442K

(SA) *Royal Commissions Act 1917* s 16

(TAS) *Evidence Act 2001* s 128(7); (TAS) *Commissions of Inquiry Act 1995* ss s, 26

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(VIC) [Evidence Act 2008](#) s 128(7)

(WA) [Evidence Act 1906](#) s 11; (WA) Criminal Code s 422; (WA) [Royal Commissions Act 1968](#) s 20.

At common law, the basic principle relating to journalists protecting their sources of information is that, apart from statutory provisions, members of the press, in courts of law, have no greater and no less privilege than every subject of the King: *McGuinness v A-G (Vic)* (1940) 63 CLR 73  at 92; [1940] ALR 110; (1940) 14 ALJ 38 per Starke J. See also *Re Buchanan* [1964-65] NSWLR 1379 ; (1964) 65 SR (NSW) 9 at 11; 82 WN (Pt 2) (NSW) 83 per Clancey ACJ, Brereton and Wallace JJ; *Hewitt v West Australian Newspapers Ltd* (1976) 17 ACTR 15 ; 27 FLR 222; *Independent Commission Against Corruption v Cornwall* (1993) 38 NSWLR 207 ; 116 ALR 97; *Attorney-General v Mulholland* [1963] 2 QB 477 ; [1963] 1 All ER 767, CA; *Attorney-General v Clough* [1963] 1 QB 773 ; [1963] 1 All ER 420; [1963] 2 WLR 343 ; *Secretary of State for Defence v Guardian Newspapers Ltd* [1984] Ch 156 ; [1984] 1 All ER 453, CA (affirmed in *Secretary of State for Defence v Guardian Newspapers Ltd (Tisdall Case)* [1985] AC 339 ; [1984] 3 All ER 601; [1984] 3 WLR 986 , HL). However, see also *John v Express Newspapers plc* [2000] 3 All ER 257  at 263-66; [2000] 1 WLR 1931 ; [2000] NLJR 615; (2000) *Times*, 26 April per Lord Woolf MR, CA.

As to the 'newspaper rule' relating to the pre-trial disclosure of sources of information by a news media defendant in a defamation or related case see *Wran v Australian Broadcasting Commission* [1984] 3 NSWLR 241  (the 'newspaper rule' is a practice whereby a news media defendant in a defamation action (or related type of action) will not be compelled to disclose the source or sources of its information prior to its trial of the action); *Re Application of Cojuangco* (1986) 4 NSWLR 513  (affirmed in *John Fairfax & Sons Ltd v Cojuangco* (1987) 8 NSWLR 145 , CA(NSW)); *British Steel Corp v Granada Television Ltd* [1981] AC 1096 ; [1981] 1 All ER 417; [1980] 3 WLR 774 , HL. As to defamation proceedings see [105-80]. As to **contempt** by witnesses generally see [105-185]. As to the newspaper rule generally see DEFAMATION [145-445]-[145-460]. As to non-compellability of witnesses and privilege generally see EVIDENCE [195-7100]-[195-7265] (compellability and attendance), [195-7380]-[195-7605] (privilege).

- 13 *Hennegal v Evance* (1806) 12 Ves 201 ; 33 ER 77; *R v Phillips* (1984) 78 Cr App R 88; [1983] Crim LR 822 (in giving the judgment of the court); *Smith v R* (1991) 25 NSWLR 1 ; 56 A Crim R 148, CA(NSW). Duress may negative what is otherwise an offence: *Registrar of the Court of Appeal v Gilby* (unreported, CA(NSW), Mahoney, Priestley and Clarke JJA, No 40172/91, 20 August 1991, BC9101644). See also *R v K* (1983) 78 Cr App R 82; [1983] Crim LR 736. For the statutory provisions see further note 14 below. As to the position where a witness fails to answer a subpoena see [105-185], [105-315].

- 14 *Von Doussa v Owens (No 1)* (1982) 30 SASR 367 ; 6 ACLR 833; 6 ACLR 692; *Von Doussa v Owens (No 2)* (1982) 30 SASR 391 ; *Von Doussa v Owens (No 3)* (1982) 31 SASR 116 ; *Re O'Callaghan* (1899) 24 VLR 957  sub nom *R v Candler*; *Ex rel Dillon* (1899) 5 ALR 163; 21 ALT 7 (coroner's inquiry); *Re Urquhart*; *Ex parte Webb* (1921) 38 WN (NSW) 169  (coroner's inquiry); *Ex parte Fernandez* (1861) 10 CBNS 3 ; 30 LJCP 321; 4 LT 324; 142 ER 349; *Re Davies*; *Butson v Davies* (1888) 21 QBD 236  at 238 ; 4 TLR 580; 37 WR 57 per Mathew J; *Zappia v Registrar of the Supreme Court* (2004) 90 SASR 193 ; 237 LSJS 68; [2004] SASC 375; BC200407874.

It is the usual practice to warn a witness who is unwilling to answer that his or her refusal could constitute a **contempt** of court: *Hancock v Lynch* [1988] VR 173  at 177; (1987) 26 A Crim R 366 at 369-70 per Kaye J. The relevance of the unanswered question may be material as to whether the court should invoke its discretionary power to punish the **contempt**: *Hancock v Lynch* [1988] VR 173  at 177-8; (1987) 26 A Crim R 366 per Kaye J; *Attorney-General v Mulholland* [1963] 2 QB 477 ; [1963] 1 All ER 767, CA.

Statutory provisions relating to witnesses refusing to be sworn or who, if sworn, refuse to answer questions include:

(CTH) Federal Circuit and Family Court of Australia Act 2021 s 200

(ACT) Criminal Code ss 721, 722

(NSW) [Civil Procedure Act 2005](#) s 52

(QLD) [Justices Act 1886](#) s 82

(SA) [District Court Act 1991](#) s 26; (SA) [Magistrates Court Act 1991](#) s 21

(TAS) [Justices Act 1959](#) s 43

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(VIC) Magistrates' Court Act 1989 s 134

(WA) [Magistrates Court Act 2004](#) s 15(1)(c), 15(1)(d).

See further EVIDENCE [\[195-7035\]](#).

As to duress negating what would otherwise be an offence see *Registrar of the Court of Appeal v Gilby* (unreported, CA(NSW), Mahoney, Priestley and Clarke JJA, No 40172/91, 20 August 1991, [BC9101644](#)); *R v K* (1983) 78 Cr App R 82; [1983] Crim LR 736, CA.

- 15 See *Morriss v Withers* [1954] VLR 100 ; [1954] ALR 233 ('wilful prevarication' within the meaning of (VIC) Justices Act 1928 (repealed) s 206 includes any intentional quibbling or evasion of the truth); *Coward v Stapleton* (1953) 90 CLR 573  at 578; [1953] ALR 743 at 745; (1953) 27 ALJR 423; [BC5301000](#) per Williams ACJ, Kitto and Taylor JJ (a witness' response may be one in form while in substance it may amount to a refusal to answer. The words viewed in context and the demeanour of the witness must show an intention not to give a real answer. Mere disbelief in the truth of a purported answer is insufficient); *Keeley v Justice Brooking* (1979) 143 CLR 162 ; [25 ALR 45](#); *Skouvakis v Skouvakis* [\[1976\] 2 NSWLR 29](#) ; [\(1976\) 11 ALR 204](#); [1 Fam LR 11,516](#), CA(NSW); *Thelander v Woodward* [\[1981\] 1 NSWLR 644](#) , CA(NSW). Note that the remedy for false answers is normally a prosecution for perjury and not a summary committal for **contempt**: *Coward v Stapleton* (1953) 90 CLR 573  at 579; [1953] ALR 743; (1953) 27 ALJR 423; [BC5301000](#) per Williams ACJ, Kitto and Taylor JJ; *Keeley v Justice Brooking* (1979) 143 CLR 162 ; [25 ALR 45](#); *McGoldrick v Citycorp Finance Pty Ltd* [\[1990\] VR 503](#) . For the meaning of 'perjury' generally see *Encyclopaedic Australian Legal Dictionary*.
- 16 *Amos v Ruby Tin Mining Co* [\(1873\) 3 QSCR 173](#) ; *R v Guthridge*; *Ex parte Campbell* (1878) 4 VLR (L) 77 . As to the practice (although not a universal one) of excluding witnesses waiting to give evidence see *Scott v Scott* [\[1913\] AC 417](#)  at 446; [\[1911-13\] All ER Rep 1](#) per Earl Loreburn, HL; *R v Franz* [1952] VLR 522 ; [1952] ALR 985; *R v Bassett* [1952] VLR 535 ; [1952] ALR 1035; *Attorney-General v Leveller Magazine Ltd* [\[1979\] QB 31](#)  at 44 ; [\[1978\] 3 All ER 731](#) at 736 per Lord Widgery CJ, Div Ct (reversed on other grounds *Attorney-General v Leveller Magazine Ltd* [\[1979\] AC 440](#) ; [\[1979\] 1 All ER 745](#), HL). See also, for example, *Holland v Evans* [\[1959\] VR 54](#) ; [1959] ALR 255 (refusal to exclude **prosecutor**-witness); *Barry v Cullen* [1906] VLR 393  (refusal to exclude party's solicitor and counsel who had been subpoenaed by opposing party). There is no power to exclude during legal argument a defendant who has not obstructed the court's business: *O'Donnell v Dawe* [1905] VLR 538 ; (1905) 11 ALR 273. The failure of a witness to leave the court room after the making of an order requiring him or her to do so does not entitle the court to decline to receive that witness' evidence: *Cobbett v Hudson* (1852) 1 El & Bl 11 at 14; [118 ER 341](#) at 342 per Lord Campbell CJ (Coleridge, Wightman and Erle JJ agreeing); *Amos v Ruby Tin Mining Co* [\(1873\) 3 QSCR 173](#) ; *R v Guthridge*; *Ex parte Campbell* (1878) 4 VLR (L) 77 ; *R v Bicanin* (1976) 15 SASR 20 ; *Moore v Registrar of Lambeth County Court* [\[1969\] 1 All ER 782](#) ; [\[1969\] 1 WLR 141](#)  at 142  per Edmund Davies LJ, CA. Nor does the court have power to refuse to hear the testimony of a person who has remained in court and in respect of whom an exclusion order has not been made: *R v Bicanin* (1976) 15 SASR 20 ; *R v Briggs* (1930) 22 Cr App R 68, CCA; *R v Thompson* [1967] Crim LR 62, CA.

There are statutory powers that enable witnesses (and others) to be ordered to leave the court room: see note 19 below. See further EVIDENCE [\[195-7660\]-\[195-7675\]](#). The power to order witnesses out of court derives from the common law: *R v Tait* [\[1963\] VR 520](#) .

As to in camera and non-publication orders in reporting court proceedings see [\[105-95\]-\[105-100\]](#). See also COURTS AND JUDICIAL SYSTEM [\[125-20\]](#).

- 17 *Welcden v Elkington* (1578) 2 Plowd 516 at 518; [75 ER 763](#) per Court of King's Bench (juror committed to prison for being in possession of sweets). As to what constitutes suitable attire for jurors see *R v Rawcliffe* [\[1977\] 1 NSWLR 219](#) , (1977) 32 FLR 252, CCA(NSW). As to misconduct by jurors generally see [\[105-190\]](#).
- 18 For example, litigants in person were held not to have committed **contempts** in *O'Hair v Wright* [1971] SASR 436  (party stated to presiding judicial officer 'I refuse to recognise the authority of this court'); *In the Marriage of Mulally* (1989) 96 FLR 398 ; [13 Fam LR 499](#) sub nom *In the Marriage of M and M* (1990) FLC ¶92-106, Fam C of A, Full Court (solicitor who was a party repeatedly informed judge that he intended to refuse to comply with order which judge had just pronounced). Insults directed to the judge or jury are more readily capable of being **contempt** than those directed to counsel or an opposing litigant, although '...if a litigant or an advocate threatened or attempted violence on his opponent, or conceivably if he used language so outrageous and provocative as to be likely to lead to a brawl in

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court, the offence could be said to have been committed': *Parashuram Detaram Shamdasan v R* (1945) 114 LJPC 95 ; 173 LT 400; [\[1945\] AC 264](#)  at [269](#) ; (1945) 61 TLR 448 per Lords Macmillan and Goddard and Sir Madhavan Nair, PC. See also *R v Davison* (1821) 4 B & Ald 329; [106 ER 958](#) (repeated use of blasphemous language by a party).

19 Statutory powers that enable witnesses (and others) to be ordered to leave the court room include:

(CTH) [Family Law Act 1975](#) s [97](#)

(ACT) [Magistrates Court Act 1930](#) s 310(2)(a) (power to direct who may be present)

(NT) [Supreme Court Act 1979](#) s [17](#)

(NSW) [Civil Procedure Act 2005](#) s 71 (see also *Raybos Australia Pty Ltd v Jones* [\(1985\) 2 NSWLR 47](#) ); (NSW) [Children and Young Persons \(Care and Protection\) Act 1998](#) ss 104, 104A, 104B

(QLD) [Justices Act 1886](#) ss s, 71; (QLD) [Criminal Law \(Sexual Offences\) Act 1978](#) s [5](#); (QLD) [Childrens Court Act 1992](#) s 20(1), 20(2), 20(3); (QLD) [Maintenance Act 1965](#) s [128](#)

(SA) [Criminal Procedure Act 1921](#) s [61](#); (SA) [Evidence Act 1929](#) s [69](#); (SA) [Family and Community Services Act 1972](#) s [237](#)

(TAS) [Justices Act 1959](#) s [37](#); (TAS) Magistrates Court (Children's Division) Act 1998 s 11(2)

(VIC) [Open Courts Act 2013](#) s [30](#); (VIC) Magistrates' Court Act 1989 ss 127, 133(7), 134; (VIC) [Children, Youth and Families Act 2005](#) s [523](#)

(WA) Children's Court of Western Australia Act 1988 s 31.

See further EVIDENCE [\[195-7670\]](#).

However, in the absence of statutory authority, sentence may not be passed in an accused person's absence. See, for example:

(NT) Criminal Code s 361 (court may in certain circumstances conduct the whole or any part of the trial in the absence of the accused)

(NSW) [Criminal Procedure Act 1986](#) s 71 (prosecution evidence must take place in presence of accused, subject to certain exceptions)

(QLD) Criminal Code s 617 (trial must take place in the presence of the accused, subject to certain exceptions)

(TAS) Criminal Code s 369 (trial must take place in presence of accused, except where his or her conduct makes this impracticable)

(WA) [Criminal Procedure Act 2004](#) s [88](#) (trial must take place in presence of accused, except where his or her conduct makes this impracticable).

See also *R v Abrahams* (1895) 21 VLR 343 ; 1 ALR 67; 17 ALT 79 (absence of prisoner during part of proceedings due to illness); *R v Vernell* [1953] VLR 590 ; [1953] ALR 1139 (trial should proceed in the presence of the accused unless his or her conduct is such that the proceedings are interfered with); *R v Sykes (No 2)* [\[1969\] VR 639](#) ; *R v Cornwell* [\[1972\] 2 NSWLR 1](#) , CCA(NSW); *R v Butler* [\(1991\) 24 NSWLR 66](#) ; 56 A Crim R 231, CCA(NSW); *Mann v Doo Wee* (1907) 5 CLR 592 ; *R v Stuart* [\[1973\] Qd R 460](#)  (conduct of accused rendered continuance of proceedings in his presence impracticable) (affirmed in *R v Stuart* [\[1974\] Qd R 297](#) , CCA(QLD)); *R v Nolan* [\[1961\] VR 12](#)  (trial proceeded in the absence of one co-accused).

Where an accused person refuses to answer or plead, the court may enter a plea of not guilty on his or her behalf:

(ACT) [Crimes Act 1900](#) s [282](#)

(NT) Criminal Code s 345

(NSW) [Criminal Procedure Act 1986](#) s 155

(QLD) Criminal Code s 601

(SA) [Criminal Procedure Act 1921](#) s [129\(2\)](#)

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(TAS) Criminal Code s 357 (if jury finds that accused is wilfully standing mute, a plea of not guilty may be entered on his or her behalf)

(VIC) [Criminal Procedure Act 2009](#) s 221

(WA) [Criminal Procedure Act 2004](#) s 126(5).

See also *R v Presser* [1958] VR 45 ; [1958] ALR 248. See further CRIMINAL LAW [130-13645].

- 20 *Lewis v Ogden* (1984) 153 CLR 682 ; 53 ALR 53; 58 ALJR 342; BC8400532; *Izuora v R* [1953] AC 327 ; [1953] 1 All ER 827; [1953] 2 WLR 700 ; PC; *Maharaj v A-G (Trinidad and Tobago)* [1977] 1 All ER 411 ; PC (barrister's allegation that judge's conduct was 'unjudicial' was discourteous but not **contempt**); *Murphy v Magistrates' Court at Prahran* (1995) 80 A Crim R 92 ; SC(VIC) (an allegation of 'bias' or 'profound bias' made by counsel to a judicial officer cannot, without more, constitute **contempt**); *McKeown v R* (1971) 16 DLR (3d) 390 ; SC(Canada). It is not the function of the law of **contempt** to suppress methods of advocacy which are merely offensive: *Parashuram Detaram Shamdasan v R* (1945) 114 LJPC 95 ; 173 LT 400; [1945] AC 264  at 270 ; (1945) 61 TLR 448 per Lords Macmillan and Goddard and Sir Madhavan Nair, PC. As to solicitors see further [105-175]. As to counsel see further [105-180].
- 21 See, for example, *Ex parte Bellanto*; *Re Prior* [1963] NSWLR 1556 ; [1963] SR (NSW) 190; (1962) 80 WN (NSW) 616 (defiant attempt by counsel to circumvent trial judge's ruling); *R v Mollison*; *Ex parte Faussett* (1872) 3 VR (L) 3; 3 AJR 26 (solicitor fined for defiantly renewing an application which had been refused); *Watt v Ligertwood* (1874) LR 2 Sc & Div 361, HL (advocate defiantly carrying off document in custody of court); *Ex parte Pater* (1864) 5 B & S 299; [122 ER 842] (barrister fined for insulting juror); *R v Byrne*; *Re Swanwick* (1882) 1 QJLJ 66  sub nom *Re Swanwick* (1882) 1 QJLJ 70 ; *Tippett v Murphy* (1982) 16 NTR 13 ; 62 FLR 183; *Lloyd v Biggin* [1962] VR 593 ; *Lewis v Ogden* (1984) 153 CLR 682 ; 53 ALR 53; 58 ALJR 342; BC8400532; *MacGroarty v A-G (Qld) (Clauson)* (1989) 167 CLR 251  sub nom *MacGroarty v A-G (Qld) (Clauson)* (1989) 86 ALR 513 ; 63 ALJR 514.
- As to other forms of **contempt** by solicitors and counsel see [105-175] (solicitors), [105-180] (counsel).
- 22 As to non-statutory powers (see note 19 above for the statutory powers) to exclude from the court room members of the public who are creating a disturbance or who cannot be accommodated see *Ex parte Tubman*; *Re Lucas* [1970] 3 NSWLR 41  at 52-3; (1970) 72 SR (NSW) 555 at 569-70; 92 WN (NSW) 520 at 532-3 per Asprey JA, CA(NSW). This power extends to excluding advocates from court for good cause: *Ex parte Cory* (1864) 3 SCR (NSW) L 304 at 309, SC(NSW). See also *Bell v Norton* (unreported, SC(NSW), Lee J, No 13929/1983, 10 August 1983); *Drummond v Howell* [1923] SASR 124 ; *R v Governor of Lewes Prison*; *Ex parte Doyle* [1917] 2 KB 254  at 271; [1916-17] All ER Rep Ext 1218 per Viscount Reading CJ, KB; *R v Lewes Prison, Governor of*; *Ex parte Doyle* [1917] 2 KB 254 ; [1916-17] All ER Rep Ext 1218.
- 23 *Ex parte Bellanto*; *Re Prior* [1963] NSWLR 1556 ; [1963] SR (NSW) 190; (1962) 80 WN (NSW) 616; *Love v R* (1983) 49 ALR 382 ; 9 A Crim R 1, CCA(WA); *Escobar v Spindaleri* (1986) 7 NSWLR 51 . The display of such qualities is not inconsistent with an advocate's responsibility to discharge his or her duties fearlessly: *Lewis v Ogden* (1984) 153 CLR 682  at 689; 53 ALR 53 at 57; 58 ALJR 342; BC8400532 per Mason J (Murphy, Wilson, Brennan and Dawson JJ agreeing).
- 24 *In the Marriage of Slender* (1977) 29 FLR 267 ; 3 Fam LR 11,419; (1977) FLC ¶90-279, Fam C of A. As to unqualified persons holding themselves out as solicitors see [105-175]. See further LEGAL PRACTITIONERS [250-5000]-[250-5030].
- 25 *Re Tole*; *Ex parte Tole* (1933) 50 WN (NSW) 216 ; *Baldry v Jackson* [1976] 1 NSWLR 19  (affirmed on other grounds in *Baldry v Jackson* [1976] 2 NSWLR 415 , CA(NSW)); *Poole v Gould* (1856) 1 H & N 99; 156 ER 1133 (see also the judgment of Pollock CB, reported in *Poole v Gould* (1856) 25 LJ Ex 250  at 251); *R v Jones*; *Ex parte McVittie* [1931] 1 KB 664 ; [1931] All ER Rep 615, Div Ct. Compare *Cole v Hawkins* (1738) Andr 275 ; 95 ER 396 (service of subpoena on party attending court was a **contempt**). The reason for a 'privilege against service in the precincts of the court' is not the place of service as such, but that service of the bill would interfere with a court's administration of justice: *Re O'Sullivan*; *Ex parte Commonwealth Bank of Australia* (1995) 57 FCR 145  at 149; 129 ALR 295 per Lindgren J. As to obstruction of process servers generally see [105-160].

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- 26** As to a court's power generally to control proceedings, subject to any relevant statutory provisions, the rules of evidence and general practice see, for example, *Re Dunn and The Morning Bulletin Ltd* [1932] St R Qd 1 at 15-16 per Douglas J; *O'Toole v Scott* [1965] AC 939 at 959; [1966] ALR 821; (1965) 39 ALJR 15; [1965] 2 All ER 240 at 247 per Lord Pearson, PC; *Ex parte Tubman*; *Re Lucas* [1970] 3 NSW 41 at 52-3; (1970) 72 SR (NSW) 555 at 569-70; 92 WN (NSW) 520 per Asprey JA, CA(NSW); *Attorney-General v Leveller Magazine Ltd* [1979] QB 31 at 44; [1978] 3 All ER 731 at 736 per Lord Widgery CJ, Div Ct (approved on other grounds in *Attorney-General v Leveller Magazine Ltd* [1979] AC 440); [1979] 1 All ER 745, HL); *Riley McKay Pty Ltd v McKay* [1982] 1 NSWLR 264 at 269-70; (1982) 7 ACLR 116 per Street CJ, Hope JA and Rogers AJA, CA(NSW); *Prothonotary of the Supreme Court (NSW) v Te Rana Rakete* [2010] NSWSC 5; BC201000057.

As to the regulation of the taking of photographs in court in Queensland see (QLD) *Justices Act 1886* s 71B. There are no equivalent provisions in the other jurisdictions. As to the court's inherent jurisdiction to punish **contempt** see [105-335]. See also COURTS AND JUDICIAL SYSTEM [125-110]. See further *Proceedings of Courts and Commissions — Television Filming, Sound Recording and Public Broadcasting, Sketches and Photographs*, NSWLRC, Issue Paper, Sydney, 4 March 1984.

- 27** See *Nguyen v Magistrates' Court of Victoria* [1994] 1 VR 88 (magistrate's discretion to prohibit use of tape recording must be exercised judicially, and should involve consideration of such factors as the assistance to the party that a taped recording of proceedings may provide, and those factors which would render recording inappropriate in the circumstances).

As to a court's power generally to control proceedings, subject to any relevant statutory provisions, the rules of evidence and general practice see note 26 above. See also (UK) **Contempt** of Court Act 1981 s 9 (for circumstances in which use of tape recorders in court constitutes **contempt**). Generally see [105-15]. See also COURTS AND JUDICIAL SYSTEM [125-110]. See further *Sound Recording of Proceedings of Courts and Commissions: The Media, Authors and Parties*, NSWLRC, Report 39, Sydney, 1984.

As to the taking of notes in court, the English view is that any person is entitled to take notes in civil proceedings held in open court: *R v Leicester City Justices*; *Ex parte Barrow* [1991] 2 QB 260; [1991] 3 All ER 935 at 947, 948 per Lord Donaldson of Lymington MR; [1991] 3 WLR 368 at 380, 382 per Staughton LJ, CA. See also *R v Burke* [1993] 1 Qd R 166; (1991) 56 A Crim R 242, CCA(QLD).

- 28** *De Vonk v Cmr of Taxation* (1995) 59 FCR 203 at 217-19; 82 A Crim R 150; 95 ATC 4538 per Carr J (pursuant to (CTH) *Income Tax Assessment Act 1936* s 264 (repealed)).

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