

## David Holland QC & Rupert Cohen

**Recent Cases on Civil Procedure: what might you have missed?**

The recording may be accessed [here](#).

1. GANI ABAIDILDINOV (2) LONDON INFRASTRUCTURE LTD v AFZAL AMIN [2020]  
EWHC 2192 (Ch)
2. LM ASSOCIATES LTD v WILLIAM GIBBESON [2020] EWCA Civ 1460
3. R (on the application of ELIZABETH WINGFIELD) v (1) CANTERBURY CITY COUNCIL (2)  
REDROW HOMES (SOUTH EAST) [2020] EWCA Civ 1588
4. SATYAM ENTERPRISES LTD V BURTON [2021] EWCA Civ 287
5. UK LEARNING ACADEMY LTD V S/S FOR EDUCATION [2020] EWCA Civ 370
6. RG CARTER PROJECTS LTD V CUA PROPERTY LTD [2020] EWHC 3417
7. DIRIYE V BOJAJ & ANOR [2020] EWCA Civ 1400
8. IDEAL SHOPPING DIRECT LTD V VISA EUROPE LTD [2020] EWHC 3399
9. DSN V BLACKPOOL FOOTBALL CLUB LTD [2020] EWHC 670 (QB)
10. BXB v (1) WATCH TOWER & BIBLE TRACT SOCIETY OF PENNSYLVANNIA (2)  
TRUSTEES OF THE BARRY CONGREGATION OF JEHOVAH'S WITNESSES [2020]  
EWHC 656
11. AHUJA V VICTORYGAME [2021] EWHC 1543 (Ch)

PJSC Tatneft v Bogolyubov [2020] EWHC 2437 (Comm) 「Landmark  
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- Communications between company and members of its in-house legal department who were not members of the Russian Bar and whose activity did not fall under Russian federal law regulation governing advocates.
- Legal advice privilege extended to communications with foreign lawyers whether or not they were in-house, and whether or not they were appropriately qualified or recognised or regulated as a professional lawyer, the only requirement in order for legal advice privilege to attach being that the foreign lawyer was acting in the capacity or function of a lawyer.

# Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd [2021] EWCA Civ 551

- Without prejudice privilege
- Joint privilege such that it cannot be waived by one party alone
- The main question is whether the communication was genuinely intended to be a negotiating document
- Recognized exceptions → Evidence of the negotiations is admissible to show that an agreement apparently concluded between the parties during the negotiations should be set aside on the ground of misrepresentation, fraud or undue influence
- Statements made in a mediation position paper showing that the Defendant knew that the Claimant's agent had no authority and/or a personal interest in the outcome of the settlement agreement.

# LEE VICTOR ADDLESEE & ORS v DENTONS EUROPE LLP [2019] EWCA Civ 1600

- Company retained solicitors in respect of an investment scheme. The scheme failed and the company went insolvent.
- The investors claimed that the scheme in which the defendant firm advised the company was fraudulent and issued proceedings against the firm for deceit or negligence
- The investors sought disclosure of documents which had passed between the company and the firm
- The documents were protected by legal advice privilege – question was whether they were disclosable given the dissolution of the company
- Court held that legal advice privilege applied until waived.

## Costs budgets

- CJ & LK PERK PARTNERSHIP v ROYAL BANK OF SCOTLAND [2020] EWHC 2563
- Costs budgets and litigants in person.
- Persimmon Homes Ltd v Osborne Clark LLP [2021] EWHC 831 (Ch)
- The High Court outlined a two-stage process to be adopted when dealing with applications to vary costs budgets under CPR r.3.15A. The applicant first had to satisfy the court that it had met the mandatory requirements of r.3.15A(2) to (4) by establishing (a) that there had been a significant development in the litigation since the last approved or agreed budget which warranted a revision, and (b) that the particulars of the variation had been submitted promptly to the other parties and the court

## Costs

- FREDERICK JOHN WINGFIELD DIGBY v MELFORD CAPITAL PARTNERS (HOLDINGS) LLP [2020] EWCA Civ 1647
- Costs of an interim injunction → usually costs reserved even if injunction ordered
- Exceptions: (1) outcome obvious from the start; (2) dispositive of the issues; (3) conduct
- COHEN v FINE & Oths [2020] EWHC 3278 (Ch)
- Pending the outcome of a review by a working group of the Civil Justice Council costs the guideline rates should be increased by inflation (around 30%)

## LEJONVARN V BURGESS [2020] EWCA Civ 114

- The claimants had claimed damages from the defendant, an architect who had been a friend of theirs, for breach of contract or negligence regarding work done for free on their garden landscaping project.
- Claimants lost on all issues at trial.
- Defendant made a Part 36 offer for £25,000 at start of proceedings.
- Costs on indemnity basis sought
- Allowed on appeal – the question was whether the claim was so speculative, weak or thin that the reasonable claimant would realise that they should no longer be pursued

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.**

# Thank you for listening

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