In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: the Supreme Court on undue influence in hybrid lending transactions; the Court of Appeal on the correct approach to extended disclosure; and contempt of court.

Our readers may also be interested in this summary of the Privy Council's decision in ***Cayman Shores v The Proprietors of Strata Plan No.79*** [2025] UKPC 27, by the winning appellant's Counsel, Mark Sefton KC and Joe Ollech. The case provides an interesting example of recreational easements post-*Regency Villas*, as well as some points of Cayman land registration law.

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Waller-Edwards v One Savings Bank Plc [2025] UKSC 22

Summary

The Supreme Court determined that where a non-commercial transaction involves any element of suretyship, a lender will be put on inquiry of potential undue influence and should follow the Etridge protocol; hybrid transactions should be treated in the same way as pure suretyship transactions, rather than applying any "fact and degree" test.

The appellant had been in a relationship with a man who had exerted undue influence over her, causing her to enter into a number of financial transactions, including a remortgage of their joint home. Although the lender was not aware of the true manner in which the monies advanced were to be used, it did require a significant percentage of the loan to be used to discharge the man's personal debts. The appellant argued that this element of the loan was a suretyship element which should have put the bank on inquiry as to possible undue influence, and that as a result, she was entitled to have the transaction set aside as against the bank.

Overturning the rulings of the judge at first instance and of the Court of Appeal, the Supreme Court held that there is a bright line rule: where a non-commercial transaction such as this includes any element of suretyship, the bank is put on inquiry as to the possibility of undue influence.

Why it's important

This decision may have significant ramifications both for protocols followed by lenders in the future and for parties seeking to impugn transactions potentially tainted by undue influence. The Court's judgment is clear: there is no room for anything other than a bright line rule. Accordingly, all hybrid transactions fall to be treated as surety loans, and are potentially liable to being set aside if there was undue influence if the Etridge protocol has not been followed.

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Amtrust Specialty Limited (formerly Amtrust Europe Limited) v Endurance Worldwide Insurance Limited (trading as Sompo International) [2025] EWCA Civ 755

Summary

The Court of Appeal allowed an appeal against a judge's refusal to order disclosure of certain classes of document.

The substantive dispute arose out of the failure of a litigation funding scheme. The claimant, a loan provider, blamed various firms of panel solicitors (now in administration) for the failure of the scheme. It made a claim against the defendant, an after the event insurance provider, on the basis of a deed of indemnity. The ATE insurer made a part 20 claim against the solicitors' professional indemnity insurer, seeking to pass on any liability it may have.

One argument raised by the professional indemnity insurer in its defence was that any liability which existed was outside the scope of the insurance it provided to the solicitors. Whether or not that was the case depended on the construction of the policies, in particular whether the events giving rise to the claim were part of the solicitors' 'Professional Business'. The policies contained clauses which could have the effect of incorporating other communications into the terms of the contract.

At a case management hearing, the judge refused to order disclosure of communications between the solicitors and their professional indemnity insurers in the months before the policies were entered into. The Court of Appeal overturned that decision, on the basis that, by refusing to order disclosure on the grounds that he did not consider the documents would assist in construing the policies, the judge had overstepped into territory properly belonging to the trial judge.

Why it's important

This case is important because it provides authoritative guidance regarding the approach to be taken to extended disclosure. Asplin LJ, giving the leading judgment, stressed that there is no threshold test of relevance for extended disclosure. Rather, the degree of likelihood that documents will have probative value is one of several factors to consider – and the fact that the judge determining the disclosure application may consider it unlikely that the documents will make a difference to the outcome at trial is not a reason to refuse disclosure, unless there is "little or no prospect" of the documents being of probative value, or it is not "realistically arguable" that the trial judge will regard them as probative.

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Turner v Coates [2025] EWCA Civ 782

Summary

The Court of Appeal dismissed an appeal against an order committing Mr Coates to prison for 448 days for contempt of court in breaching orders made at the conclusion of boundary dispute proceedings.

On appeal against sentencing for a first committal order in 2023 Mr Coates was warned that any future breaches would likely lead to a substantial prison term. He continued to breach the order, and a second committal application was made. However, he was by then subject to criminal proceedings relating to some of the breaches.

The Court of Appeal upheld the judge's decision that the existence of parallel criminal proceedings did not require an adjournment of the civil contempt proceedings. It also upheld her approach to sentencing, holding that either viewing matters in the round, or considering a sentence for each breach and then considering the "totality principle" and whether any should run concurrently, were valid approaches. It was irrelevant that concurrent sentences had ultimately been imposed in the criminal proceedings.

Why it's important

The case provides welcome guidance on the correct approach to sentencing for contempt in a property case.

Contempt – and the sanctions that might be imposed for it – is a topic which frequently arises when injunctions and undertakings are given. It can also arise where a party fails to pay a costs order made against it, and then fails to comply with an order to provide asset disclosure and attend cross-examination. Practitioners dealing with such cases may also find the decision in ***Al Jaber v Al Ibrahim*, KBD, 13 June 2025**, useful: in that case, the judge initially suspended the order for committal/imprisonment, to give the payee time to comply; when he failed to provide details of his assets a second time, the Court revoked the suspension.

There was a third case about contempt this month, ***Saleemi v Parvez [2025] EWHC (Ch) 1341*:** an immediate 12-month custodial sentence was imposed on an executor found to be in contempt of court because he has not paid over the surplus funds in the estate to the person entitled, despite two court orders to do so.

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