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COMMERCIAL & CIVIL FRAUD

NEWSLETTER JANUARY 2026

Welcome to our first Commercial and Civil Fraud newsletter of 2026.

In these newsletters we aim to provide a digestible summary of six cases of interest from the last two quarters, listed in chronological order.
We all know how busy practice can be, therefore as previously, the purpose of this newsletter is not to analyse decisions, but to provide brief details of what each case is about and why it may be of interest.

The second half of 2025 was a busy period for the Supreme Court and Privy Council in the Civil Fraud sphere, with five of our six cases coming from the highest court. While the cases range across a number of different areas, there emerges a particular focus on the scope of equitable remedies. The cases in this newsletter demonstrate the Supreme Court and Pricy Council re-affirming, and to some degree extending the flexibility and generosity of equitable remedies and are indicative of the courts' continued willingness to hold fraudsters, defaulting fiduciaries and dishonest assisters to account (**Stevens; Mitchell**), including for the dissipation of assets and unauthorised profits. Across remedies, privilege, knowledge, reliance and loss, the courts have emphasised substance over form and resisted technical arguments that would otherwise shield sophisticated wrongdoing from effective redress. It seems that the colloquial 'scumbag rule' (i.e. that scumbags lose cases) continues to hold sway over even the highest courts in this area.

At the same time, the cases below also show a close engagement with the conceptual boundaries of liability, clarifying the proper limits of fiduciary relationships and the tort of bribery (**Hopcraft**), the mental element required for conspiracy and deceit (**Lakatamia; Credit Suisse Life**), and the scope of legal advice privilege in shareholder disputes (**Jardine**).

Stuart Sanders
Barrister

Call: 2017

Callum Rodgers
Barrister

Call: 2024

Dishonest assistant can be liable for dissipation of unauthorised profit by trustee

Stevens v Hotel Portfolio II UK Ltd [2025] UKSC 28

Supreme Court (Lord Briggs, with whom Lords Reed, Hamblen and Richards agreed, Lord Burrows dissenting): 23 July 2025.

Mr Ruhan, a director of the claimant, HPII, orchestrated a scheme to acquire three London hotels owned by HPII, dishonestly assisted by Mr Stevens. Acting through entities owned by Mr Stevens as nominee, Mr Ruhan purchased the hotels from HPII at market value. Although HPII therefore suffered no loss on the sale, Mr Ruhan later resold at a substantial profit, with Mr Ruhan receiving unauthorised profits of c. £100m. Mr Ruhan then dissipated that unauthorised profit meaning that the sums could not be recovered from him. HPII sought to recover the c.£100m from Mr Stevens, on the basis that he had also dishonestly assisted in its dissipation. Mr Stevens argued that the making and dissipation of the profits formed part of a single fraudulent scheme which caused no net loss to HPII, and that imposing liability would improperly make him responsible for the trustee's profits, beyond the scope of accessory liability.

The Supreme Court held that Mr Stevens was liable for the c.£100m. Once the profits were received by Mr Ruhan, an institutional constructive trust immediately arose (per FHR European Ventures LLP v Mankarious [2014] UKSC 45) and so the profits were beneficially owned by HPII. The dissipation therefore caused loss to HPII because it was the dissipation of its property. In so doing, the Court re-affirmed the institutional, rather than remedial, nature of this form of constructive trust, and emphasised that the dissipation of unauthorised profits is a separate breach of trust to the making of those profits, with Mr Stevens not entitled to set off the earlier profits against that fresh breach. Lord Burrows dissented, viewing the conduct as a single fraudulent scheme causing no net loss to HPII.

The end of the 'Shareholder Rule' exception to legal advice privilege

Jardine Strategic Limited v Oasis Investments II Master Fund & Ors No 2 (Bermuda) [2025] UKPC 34

Judicial Committee of the Privy Council (Lords Briggs, Leggatt, Burrows, Lady Rose and Lord Richards): 24 July 2025.

Following the amalgamation of two companies within the Jardine Matheson group, the shares in one of the merging companies were cancelled and the newly formed company was required to pay fair value for the cancelled shares to those that voted against the merger. A dispute arose as to the fair value of those shares and statutory appraisal proceedings were commenced in Bermuda. In the course of those proceedings, the shareholders sought disclosure of legal advice obtained by the company prior to the amalgamation, relying on the so-called 'Shareholder Rule', under which a company is unable to assert legal advice privilege against its shareholders in respect of advice obtained during the shareholder relationship.

At first instance, the shareholders were successful in relying on the 'Shareholder Rule' and this was upheld by the Court of Appeal for Bermuda.

The Board overturned that decision, holding that the 'Shareholder Rule' should no longer form part of the common law. It concluded that the rule rested on unstable foundations, lacked principled justification, and was inconsistent with modern understandings of legal professional privilege and joint interest privilege. The Board held that privilege belongs to the company alone, and is not displaced merely by the existence of a shareholder relationship. Exercising its power to give a Willers v Joyce direction, the Board declared that the Shareholder Rule is abrogated for the purposes of litigation in England and Wales as well as in Bermuda. The decision represents a significant clarification of privilege in shareholder litigation and removes a long-standing exception to the confidentiality of corporate legal advice.

Clarification of the tort of bribery, fiduciary relationships and unfair consumer lending

Hopcraft v Close Brothers Limited [2025] UKSC 33

The Supreme Court (Lord Reed PSC and Lords Hodge, Lloyd-Jones, Briggs and Hamblen): 1 August 2025.

This case concerned the practice of financial lenders paying undisclosed commissions to car dealers for referrals in car hire purchase transactions. In the three appeals under consideration, the claimant customers had bought cars on finance and alleged that the commissions (undisclosed to them as to either their existence, or in some cases, their amount) to the dealers were either bribes, secret profits in breach of fiduciary duty, or unfair under the Consumer Credit Act 1974 ("**CCA**").

The Supreme Court provided a comprehensive review of the law on the tort of bribery, fiduciary duties and the CCA. It affirmed the existence of the common law tort of bribery notwithstanding its origins in equity, noting that it uniquely establishes primary liability against the briber rather than requiring a claim against them as an accessory to an equitable wrong. It also confirmed that a fiduciary relationship is a necessary element for the tort of bribery as it requires "*the receipt of a benefit by a person who is subject to a fiduciary duty to which the beneficiary of that duty has not given fully informed consent*" [288], confirming that the tort aligns with equitable principles.

The Court concluded, however, that the car dealers were not acting as fiduciaries. This was because even when they were providing credit brokerage to customers they were still acting at arm's length and pursuing their own commercial interests, which is a structural impediment to the finding of a fiduciary relationship. The claims in bribery and for secret profits therefore failed.

Separately, the Court reversed the Court of Appeal's finding on the CCA and found that the s.140A claim of an unfair lender-customer relationship succeeded. The Court emphasised that section 140A confers a broad evaluative jurisdiction and so the non-disclosure of the commission did not necessarily render the relationship unfair, but that in this case the relationship was unfair in all the circumstances because (i) of the high level of commission; (ii) the omission of any reference to the commercial tie between the dealer and the lender; and (iii) the possibility of the commission was not prominent in the disclosed material and would not have revealed the commercial tie even if the (commercially unsophisticated) claimant had read it.

Blind-eye knowledge in unlawful means conspiracy and the Babanaft proviso clarified

Lakatamia Shipping Co. Ltd v Nobu Su & Ors [2025] EWCA Civ 1389

Court of Appeal (Males LJ, with whom Flaux C and Falk LJ agreed:) 5 November 2025.

This case considered claims arising from enforcement proceedings of a longstanding judgment debt against Mr Nobu Su. These claims, which failed at first instance, alleged that the Defendants (Mr Su and his associates Maître Zabaldano and Mr Chang) had dissipated certain of Mr Su's assets subject to a worldwide freezing order and in doing so were liable for (i) unlawful means conspiracy; or alternatively (ii) inducement of a breach of rights existing under a judgment (the 'Marex tort' from Marex Financial Ltd v Sevilleja Garcia [2017] EWHC 918).

The Court of Appeal allowed the appeal. It held that "*despite the high bar which faces an appellant seeking to disturb a judge's findings of fact*" the trial judge's findings as to Mr Chang's lack of knowledge were perverse: on the evidence, he either knew, or was wilfully blind to, the existence of the freezing order and judgment debt, which was sufficient for his liability in unlawful means conspiracy.

The Court further held that the standard Babanaft proviso – that the terms of the Order "*do not affect or concern anyone outside the jurisdiction of this Court*" - did not afford Maître Zabaldano a defence where he knowingly assisted the placing of assets beyond the reach of the English court. That followed from JSC BTA Bank v Ablyazov (No 14) [2018] UKSC 19 which could not be relevantly distinguished from the present case: the trial judge's view was therefore "*contrary to binding authority*". The claim against Mr Su had had only failed because the claims against his conspirators had failed below, so it was unnecessary for the Court to consider whether Mr Su would also independently be liable for unlawful means conspiracy. In light of that conclusion on unlawful means conspiracy, it was also unnecessary for the Court to consider in detail the 'Marex tort' which it described as "*a novel and developing tort*", noting that the issues raised of the necessary mental element of the tort and the possibility of a defence of justification should instead be resolved in a case in which they are critical.

Awareness of a representation is not a necessary ingredient of the tort of deceit

Credit Suisse Life (Bermuda) Ltd v Bidzina Ivanishvili & Ors (Bermuda) [2025] UKPC 53

Judicial Committee of the Privy Council (Lords Hodge, Briggs, Leggatt, Richards and Lady Simler): 24 November 2025

Mr Ivanishvili invested c.$750m with a subsidiary of Credit Suisse, CS Life, under life insurance policies. It was later discovered that an employee of CS Life had fraudulently dealt with and misappropriated the funds. Mr Ivanishvili made a number of claims against CS Life, including a claim in deceit. In relation to that claim, the Bermudan court found that when the employee recommended investment in the life insurance policies, he thereby impliedly (falsely) represented that he did not intend to manage the investment fraudulently. However, Mr Ivanishvili had given no evidence that he was consciously aware of this implied representation, nor even that he assumed it to be the case.

The Privy Council found that as a matter of Bermudan law (which it held was identical to English law in this regard) the claim in deceit could succeed, because there is no legal requirement that the Claimant must be aware of the representation on which the claim is based. While the Claimant must act in reliance on the false representation, that does not mean that he must have been consciously aware of it. The Privy Council relied on the case of Gordon v Selico Ltd (1986) 18 HLR 219, in which a seller had painted over dry rot to conceal it; he was liable in deceit for impliedly representing that there was no dry rot, even though the buyer was not aware even that a representation had been made. Here, and in similar cases of implied representations, the representee relies on the representation through a process of unconscious assumption, and conscious awareness of the representation is not a necessary ingredient of the tort. Accordingly, Mr Ivanishvili's claim succeeded as a matter of Bermudan law (although the deceit claim failed because it was time barred under Georgian law).

No fixed date for assessment of equitable compensation

Mitchell v Sheikh Mohamed Bin Issa Al Jaber [2025] UKSC 43

Supreme Court (Lord Hodge DPSC and Lords Sales, Stephens and Richards): 24 November 2025.

The Defendant Sheikh was a director of a BVI company ("**the Company**"). The Company had acquired 891,761 shares ("**the 891K shares**") in JJW Inc, and had subsequently been wound up. After the winding up order had been made, the Sheikh, purporting to act as director (even though his powers as director had come to an end), dishonestly caused the 891K shares to be transferred to JJW Guernsey. Subsequently, all of JJW Inc's assets and liabilities were transferred to JJW UK ("**the Asset Transfer**"), which rendered the shares in JJW Inc valueless. The Supreme Court found that the Sheikh was liable for breach of fiduciary duty in relation to the transfer of the 891K Shares and JJW Guernsey for knowing receipt, however a critical question was whether the liquidators could recover substantial equitable compensation, notwithstanding that the transferred shares had subsequently become valueless.

On this question, the Court of Appeal had held that equitable compensation should be assessed at the date of trial, and since the shares were valueless at that time, the Company had suffered no loss. The Supreme Court disagreed, holding that there is no invariable rule as to the date of assessment, instead the question "is an open one, which requires consideration of what is just and equitable as between the beneficiary and the trustee." [96]

In the present case, the Company suffered an immediate loss when the 891K were misappropriated by the Sheikh. That loss was the value of the shares, then c.€67m. Accordingly, the Sheikh was seeking to prove that the subsequent Asset Transfer broke the chain of causation, and so he bore the burden of so doing. Further, it found that "supervening events also appear to be unlikely to qualify if the defendant fiduciary had a hand in them, in the absence of a clear and convincing innocent explanation provided by the fiduciary." [110] Since the Sheikh could not show that he had played no part in the Asset Transfer, his assertion that it broke the chain of causation failed, and he was liable for the full c.€67m loss.