



David Drake

Year of Call: 1994

"He's super-bright and you can absolutely rely on him. He's great to work with as he's user-friendly and really rolls his sleeves up."

Chambers & Partners

ddrake@serlecourt.co.uk

clerks@serlecourt.co.uk



Practice Overview

David has a broad commercial chancery practice, encompassing general commercial litigation, commercial fraud and breach of fiduciary duty, company and insolvency, and professional negligence disputes, appearing in fora as diverse as the Technology and Construction Court and the European Commission. He is often involved in cases with an international element, and in matters arising from a complex or technical background.

Areas of Expertise

Civil Fraud

David has considerable experience acting and advising in high value civil fraud litigation, including for the Government. His practical expertise includes disputes over Freezing Injunctions, document-preservation orders, the impact of parallel criminal proceedings and multi-jurisdictional disputes.

Secretary of State for Health & others v Servier Laboratories Ltd (2011-present): acting for the English NHS in long-running litigation, arising from allegations that a French pharmaceutical company obtained patents for one of its drugs by fraud, that has led to decisions on issues including the impact of a French criminal statute invoked to resist providing further information [2014] 1 WLR 4383, and the role of knowledge in the defence of failure to mitigate loss [2016] 5 CMLR 25.

Coll v Floreat Merchant Banking Ltd [2014] EWHC 1741 (QB); (2014) 158 (24) SJLB 53: acting for the defendants

in successful opposition to an attempt to bring a committal application against defendants and solicitors on the basis of inter partes correspondence in advance of an injunction application in commercial fraud dispute.

Raiffeisenlandesbank Niederösterreich Wien v Maxfold Contracts LLP (2011-2012): acting for the claimant bank in the English portion of international litigation raising issues of corporate governance, and the accessory liability of offshore nominee corporate directors, and their human directors in turn (instructed by Peters & Peters).

Team Relocations GmbH v Williamson & others (2010-2011): litigation arising from alleged breaches of directors' duties under German law, by executives of a German subsidiary within an international group (instructed by Peters & Peters).

Sibir Energy plc v Tchigirinski & others (2009): claim for hundreds of millions of US dollars alleged to have been misappropriated from a Russian energy company whose shares were listed in London (instructed by Bird & Bird).

Stow v Stow [2008] Ch 461: jurisdiction challenge regarding an application for negative declaratory relief by trustees of a fund who anticipated facing claims brought for the benefit of an insolvent estate by a trustee appointed under an insolvency administration order, following allegations of tax evasion by HMRC (instructed by Fladgate).

Secretary of State for Health v Norton Healthcare Ltd (2002-2010): acting for the English NHS in price-fixing claims against pharmaceutical companies, which ran in parallel with an SFO investigation and proceedings. The litigation gave rise to decisions on whether a parallel criminal investigation provides grounds for a stay of civil proceedings ([2004] Eu LR 12), and on compelling reasons for trial rather than summary determination where a covert conspiracy is alleged ([2005] Eu LR 135) and on freezing injunctions in support of claims under Insolvency Act 1986 s. 423 regarding dividend declarations ([2009] EWHC 1317).

Society of Lloyd's v Jaffray (No 1), Times, 3 August 2000, and (No 2), 3 November 2000, Cresswell J: trial of the Lloyd's names' allegations that the Society made fraudulent misrepresentations as to rigour and reliability of its accounts, and the treatment of asbestosis risk underlying them (instructed by Grower Freeman and Goldberg).

Commercial Litigation

David has extensive experience of contractual and other commercial litigation, including disputes with an international element.

Network Rail Infrastructure Ltd v Handy [2015] EWHC 1175 (TCC), [2015] EWHC 1460 (TCC), [2015] 4 Costs LR 631: acting for Network Rail in test cases regarding who should bear economic losses arising from contracts with Train Operating Companies, where indemnity costs were sought against the insured defendants (instructed by Hay & Kilner).

Coll v Floreat Merchant Banking Ltd [2014] EWHC 1741 (QB); (2014) SJLB 53: acting for the defendants in successful opposition to an attempt to bring a committal application against defendants and solicitors on the basis of inter parties correspondence in advance of an injunction application in commercial fraud dispute.

Lissack v Manhattan Loft Corporation Ltd [2013] EWHC 128 (Ch): profit-sharing dispute between a property consultant and the developers of St Pancras (instructed by Peters & Peters).

Varma v Mittal (2011-2013): acting for Lakshmi Mittal in a claim in the Commercial Court for commission in relation to offshore oil exploration rights in Nigeria (instructed by Peters & Peters).

Overy v PayPal (Europe) Ltd [2012] EWHC 2659 (QB), [2013] Bus LR D1: acting for PayPal in a dispute in the mercantile court over loss of putative profits from an e-commerce venture, involving the application of European consumer contract law to B2B services (instructed by Bird & Bird and JMW).

Network Rail Infrastructure Ltd v Conarken Group Ltd [2012] 1 All ER (Comm): acting for Network Rail in a test case regarding the recoverability of economic losses, arising from Network Rail's contracts with Train Operating Companies, as damages for tortious interference with the commercial exploitation of land (instructed by Hay &

Kilner).

Raiffeisenlandesbank Niederösterreich Wien v Maxfold Contracts LLP (2011-2012): acting for the claimant in the English portion of international fraud litigation raising issues of accessory liability of offshore nominee corporate directors, and their human directors in turn (instructed by Peters & Peters).

Sibir Energy plc v Tchigirinski & others (2009): claim for hundreds of millions of US dollars alleged to have been misappropriated from a Russian energy company whose shares were listed in London (instructed by Bird & Bird).

One2One Personal Communications Ltd v Jordan [2002] EWCA Civ 644: dispute over expert determination provisions in a share sale agreement's completion-accounts adjustment mechanism (instructed by Bird & Bird).

Europhone International Ltd v Frontel Communications Ltd [2001] STC 1399: dispute over the construction of contractual obligations in relation to periodic billing (instructed by Bird & Bird).

Society of Lloyd's v Jaffray (No 1), Times, 3 August 2000, and (No 2), 3 November 2000, Cresswell J: trial of the Lloyd's names' allegations that the Society made fraudulent misrepresentations as to rigour and reliability of its accounts, and the treatment of asbestosis risk underlying them (instructed by Grower Freeman and Goldberg).

Company

David deals with company disputes particularly involving breach of directors' duties and unfair prejudice challenges – subjects on which he has for many years been a published author. His practice is broadly based, and includes expertise in related areas of constructive trusts, accessory liability, civil fraud and insolvency, as well as pure company issues.

Varma v Mittal (2011-2013): acting for Lakshmi Mittal in a claim in the Commercial Court involving allegations that the corporate veil should be pierced in Mr Mittal's dealings on behalf of a family investment vehicle (instructed by Peters & Peters).

Raiffeisenlandesbank Niederösterreich Wien v Maxfold Contracts LLP (2011-2012): acting for the claimant in litigation raising issues of corporate governance, and the accessory liability of offshore nominee corporate directors, and their human directors in turn (instructed by Peters & Peters).

Team Relocations GmbH v Williamson & others (2010-2011): litigation arising from alleged breaches of directors' duties under German law, by executives of a German subsidiary within an international group (instructed by Peters & Peters).

Sibir Energy plc v Tchigirinski & others (2009): claim for hundreds of millions of US dollars arising from alleged corporate (mis)governance of a Russian energy company whose shares were listed in London (instructed by Bird & Bird).

Sisu Capital Fund v Tucker (No 1) [2006] BCC 463: unfair prejudice challenge to the CVAs achieved in the multi-billion pound TXU energy group restructuring (instructed by Fladgate).

Re UOC Corp [1998] BCC 191: replacement of provisional liquidator with freezing injunction, and dispute as to the provisional liquidator's remuneration.

David is one of the authors of *Minority Shareholders: Law, Practice and Procedure*, 5th ed., 2015, OUP, and a contributor to *The Practice and Procedure of the Companies Court*, 1st ed., 1997, LLP.

Insolvency

David acts and advises in relation to corporate and personal insolvency issues, including disputes over security interests, challenges by dissentient creditors, wrongful trading and breach of directors' duties claims, and issues involving insolvency practitioners' remuneration.

In re WR Refrigeration Limited (2016-present): litigation involving wrongful trading and misfeasance claims involving group accounting and cross-guarantee issues.

Re Lapland (UK) Ltd (2012-2013): acting for PayPal in a dispute over insurance funds held by the administrator of a Santa Claus theme park that failed because of too much snow at Christmas in 2009 (instructed by JMW).

Secretary of State for Health v Norton Healthcare Ltd [2009] EWHC 1317: acting for the English NHS in a dispute over a freezing injunction blocking declaration of dividends within a group structure, in support of claims under Insolvency Act 1986 s. 423 to set such declarations aside as transactions defrauding creditors (instructed by Peters & Peters).

Stow v Stow [2008] Ch 461: jurisdiction challenge regarding an application for negative declaratory relief by trustees of a fund who anticipated facing claims brought for the benefit of an insolvent estate by a trustee appointed under an insolvency administration order, following allegations of tax evasion by HMRC (instructed by Fladgate).

Stone v Vallance [2008] BPIR: statutory demand set aside application relying on a cross-claim based on a right of indemnity arising under an arbitration award.

Sisu Capital Fund v Tucker (No 2) [2006] 1 All ER 167: dispute over insolvency practitioners' ability to recover as costs of litigation the expense of their staff undertaking litigation tasks (instructed by Fladgate).

Sisu Capital Fund v Tucker (No 1) [2006] BCC 463: minority creditor unfair prejudice challenge to the CVAs achieved in the multi-billion pound TXU energy group insolvencies (instructed by Fladgate).

Re UOC Corp [1998] BCC 191: replacement of provisional liquidator with freezing injunction, and dispute as to the provisional liquidator's remuneration.

Professional Negligence

David has extensive experience of professional negligence disputes, in particular in relation to solicitors and accountants. He has appeared in one of the leading House of Lords decisions on limitation in the professional negligence context, and gives talks on limitation issues.

In re WR Refrigeration Limited (2016-present): litigation involving breach of duty claims against company directors involving group accounting and cross-guarantee issues.

Instructed in 2011 to advise on rectification and professional negligence claims arising from a £20m share-sale transaction (instructed by Ashurst).

Team Relocations GmbH v Williamson & others (2010-2011): litigation arising from alleged breaches of directors' duties under German law, by executives of a German subsidiary within an international group (instructed by Peters & Peters).

Cohen and Chadwick v Hillel (2006-2009): breach of duty claims against the directors of a company the business of which was debt-financed speculative share trading.

Vine-Hall v Hazlems Fenton (a firm) (2006): accountants' negligence litigation concerned with tax advice as to the on- and off-shore structures designed to exploit intellectual property rights in a cosmetics brand.

Cave v Robinson, Jarvis & Rolf [2003] 1 AC 384: the leading House of Lords case on limitation periods for deliberate breach of duty and their application in professional negligence cases (instructed by Beachcroft).

Gribbon v Lutton [2002] QB 902: Court of Appeal decision on abuse of process, issue estoppel and restitution in a professional negligence dispute over stakeholder arrangements and interpleader proceedings (instructed by Beachcroft).

Chancery

Private International Law

Recommendations

Chancery: Commercial, Company, Fraud: Civil (Chambers & Partners)

Chancery: Commercial (Chambers Global)

Commercial Litigation, Company and Partnership, Fraud: Civil, Professional Negligence (The Legal 500)

Quotes

"He is great at analysing academically tricky areas." "A great advocate with a first-class brain who is also fantastic on paper." "He is a pleasure to work with and is a QC in all but name." (Chambers & Partners, 2021)

"He is knowledgeable in the area, user-friendly and able to think laterally and come up with solutions." (Chambers & Partners, 2021)

"An absolutely fantastic junior - he's a great advocate and is fantastic on paper. He is incredibly easy to work with." "He is phenomenal at turning things around quickly and is incredibly hard-working." (Chambers & Partners, 2021)

"Clever and a pleasure to work with." (Legal 500, 2021)

"He is very able junior for professional negligence instructions." (Legal 500, 2021)

"Available, clever and a pleasure to work with." (Legal 500, 2021)

"One of the smartest lawyers one could possibly meet – never intimidated by any legal issue and an immense talent." (Legal 500, 2021)

"David is excellent on the technical detail and grasps highly complex issues quickly. He's very responsive and trusted by those that instruct him." (Chambers & Partners, 2020)

"David is excellent with technical detail and grasps highly complex issues quickly. He's very responsive and trusted." "He's exceptionally bright, very commercial and flexible. His advocacy style is great and he's easy to work with." (Chambers & Partners, 2020)

"He is excellent at handling the technical details of a case and grasps highly complex issues quickly." "He finds niche points that will help the client and argues them persuasively." (Chambers & Partners, 2020)

"Very user friendly, hardworking and intelligent, he has a remarkably wide-ranging legal knowledge." (The Legal 500, 2020)

"Unbelievably bright and someone you want on your side." (The Legal 500, 2020)

"Has an eye for relevant detail, a good understanding of the law, and an ability to write coherently." "He is a nice bloke and wonderfully bright, but he wears it lightly." (Chambers Global, 2019)

"He's super-bright and you can absolutely rely on him. He's great to work with as he's user-friendly and really rolls his sleeves up." (Chambers & Partners, 2019)

"Incredibly clever." "His judgement is superb. He knows what will play well. He gives sensible and practical advice. He is easy to work with." (Chambers & Partners, 2019)

"He is awesome – very clear advice and strong leadership, his results are uniformly great." (The Legal 500, 2019)

"He is a pleasure to work with and the results are uniformly great." (The Legal 500, 2019)

"Very user friendly, brainy, and fastidious." (The Legal 500, 2019)

"Provides clear advice and is a strong leader." (The Legal 500, 2019)

"Displays excellent technical skill and the ability to quickly and succinctly drill down into the detail of a case." "He is in the top handful of juniors for fraud-related matters." (Chambers & Partners, 2018)

"Possesses excellent technical skill and the ability to quickly and succinctly drill down to details." (Chambers & Partners, 2018)

"Excellent technical skill and the ability to quickly and succinctly drill down to the details." "Superb. He has a good strategic mind." (Chambers & Partners, 2018)

"His written work is the best I've seen. It's just so clear, easy to follow and polished. He's got a real economy in the way he writes, and he says exactly what he needs to, no more or less. He's a cut above the rest." (Chambers & Partners 2017)

"He is what you want as he knows his law and is lovely to work with." (Chambers & Partners, 2017)

"He has a high degree of technical skills and can express the most complex matters in simple, direct terms." (Chambers & Partners, 2017)

"A sleeves-rolled, battling, user-friendly and very clever." (The Legal 500, 2017)

"Recommended for unfair prejudice challenges." (The Legal 500, 2017)

"A truly stellar lawyer: a wonderful advocate and a mega brain." (The Legal 500, 2017)

"He's a very clever boy." "He is just so clever and he is great with clients." (Chambers & Partners, 2016)

"His paperwork is the legal equivalent of poetry: there are no wasted words, it's well put together and easy to read."

"He is a tremendous team player and an extraordinarily clever and wonderful person to work with." (Chambers & Partners, 2016)

"Extremely bright." "You can send him anything, however complex, and he'll get it." (Chambers & Partners, 2016)

"Super hard-working and someone with a great eye for relevance." "He's very highly thought of." (Chambers & Partners, 2016)

"When confronted with the most esoteric legal problems, he finds the answer" and "He is a super junior and a tremendously hard worker who has a real knowledge of the law." Chambers Global 2015

"has an exceptional intellectual ability, and he is extremely proficient both on paper and on his feet" and "Good to work with, industrious and has great judgement" Chambers & Partners 2014

"an exceptionally clear thinker" who has "particular skills in assessing and dealing with complex systems and calculations, and is able to explain complex issues succinctly and with remarkable clarity"

The Legal 500 2013

“very clear-thinking and very strong analytically.” Chambers & Partners 2012

“without doubt very technically gifted and a wonderfully charismatic advocate”. Chambers & Partners 2011

Publications

David is one of the authors of *Minority Shareholders: Law, Practice and Procedure*, 5th ed., 2015, OUP, and a contributor to *The Practice and Procedure of the Companies Court*, 1st ed., 1997, LLP.

Education & Qualifications

MA, BCL, Worcester College, Oxford

Memberships

Chancery Bar Association
Commercial Bar Association
