



David Halpern QC

Education

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Year of Call: 1978

Year of Silk: 2006

Profile



David has immense experience both in commercial Chancery and property litigation and in professional liability claims. He is rated in the Directories for property litigation and for professional liability work.

"A very bright guy, who gets all the angles of a case. He's diligent and conscientious." "He is very thorough, as well as good-humoured and approachable" (Chambers & Partners 2015). 'He has first-rate ability to analyse difficult legal problems and to find a commercial way through them' (Legal 500, 2015).

"Unbelievably brilliant. He is the advocate for all seasons, and fantastically easy to deal with. He's incredibly direct in terms of identifying the problem, fantastic on his feet and a huge amount of fun." "A master tactician," "fantastic on complex areas of law and extremely collaborative in his approach. The lawyer's lawyer." (Chambers & Partners 2014).

As a junior, David built up a wide practice in Chancery chambers embracing property law, company law, insolvency, trusts and civil fraud, with a particular interest in professional liability. Since moving to 4 New Square in 2000 and taking Silk in 2006, he has extended his practice in the areas of professional liability and commercial litigation, whilst continuing to do a broad range of commercial Chancery work.

He has great experience of litigation and mediation as well as advisory work. He also acts as an arbitrator. He has been called to the Bar in Gibraltar.

David is an editor of *Jackson & Powell on Professional Liability* and is currently responsible for the chapters on Accountants and Auditors and on Actuaries.

He is Chairman of the International Subcommittee of the Chancery Bar Association. He is a member of the Property Bar Association, the Professional Negligence Bar Association and COMBAR.

David sits part-time as a judge of the Chancery Division of the High Court and also as a Recorder in the Crown Court. He is a Bencher of Gray's Inn and an advocacy trainer for the Inn and he has chaired Disciplinary Tribunals for the Bar Standards Board.

Chancery

David spent 20 years in commercial Chancery chambers before moving to 4 New Square in 2000. He has experience in all areas of Chancery litigation, with a particular interest in the areas set out below.

Trusts, Wills, Probate and the Administration of Estates

Although much of David's work is more commercial in nature, he has a thorough grounding in the traditional Chancery fields of wills, trusts and probate. He is experienced in contentious and non-contentious probate and in the construction and rectification of wills and trusts and he frequently advises trustees on all aspects of their functions. He appeared in a leading case on the Variation of Trusts Act 1958 (*Goulding v. James* [1997] 2 All ER 339).

Recent and ongoing examples of his work include:

- Defending a breach of trust claim in Jersey for £95m.
- Advising beneficiaries of a BVI settlement in claims against the trustees.
- Acting in a leading case on the limitation period for claims against trustees (*Cattley v. Pollard* [2007] Ch. 353).
- Acting for the trustee of a £40m trust in relation to claims for breach of trust.
- Acting on the rectification of a disability trust which had previously been approved by the Court of Protection.

Property

David is rated as a leading Silk in property litigation by Chambers & Partners (2014) and The Legal 500 (2013). The latest edition of Chambers & Partners says that he is “an eminent property litigation silk with a wealth of experience, who is highly sought after by solicitors for his work on the intersection between property and professional negligence disputes. ‘Unbelievably brilliant. He is the advocate for all seasons, and fantastically easy to deal with. He’s incredibly direct in terms of identifying the problem, fantastic on his feet and a huge amount of fun.’ ‘He’s got all the points and is persuasive in writing.’”

He has advised and appeared in innumerable cases involving contracts for the sale of land, disputes as to title, easements and covenants, claims between developers, and landlord and tenant disputes, particularly in relation to commercial leases.

Recent and ongoing examples of David’s work include:

- A dispute about a ransom strip preventing development of 750 houses.
- Drafting an overage clause to secure an uplift of £45m for a seller.
- Advising a national housebuilder on ownership of a riverbed and whether a large development site had prescriptive rights of drainage.
- A claim to be subrogated to a £3m mortgage where the lender had failed to register his interest at Companies House.
- Acting for a national housebuilder in a dispute about completion of a block of flats.
- An appeal about the limitation period for mortgage debts (*Bradford & Bingley v. Cutler* [2008] EWCA Civ 74).

Company, insolvency and partnership

David’s work in the field of company law is principally concerned with litigation involving shareholders’ and directors’ disputes. He also has considerable experience in relation to company securities and was in the leading case of *Re Portbase Clothing Ltd* [1993] Ch. 388.

During the recession of the 1990s he gained considerable experience in insolvency work, both individual and corporate, and was in the leading case of *Raja v. Rubin* [2000] Ch 274. As the current recession unfolds, he is once again involved in advice and disputes about asset recoveries, transactions at an undervalue, floating charges, set-off and the like.

He has acted in a number of partnership disputes, both litigation and arbitration.

Recent and ongoing examples of his work include:

- Currently engaged in litigation in Gibraltar about a beneficial interest in shares in a major offshore company.
- Advising in Hong Kong in relation to several disputes over share transfers.
- Advising a major mutual indemnity society on its mutual status.
- Acting in several minority shareholders’ petitions.
- Acting for the directors of a property management company (with the benefit of D&O insurance).
- Advising in relation to a firm of solicitors in administration.

Commercial Dispute Resolution

In addition to company and insolvency law (see David’s Chancery page), he undertakes a wide range of commercial work, including sale of goods and share warranties. He particularly enjoys claims for breach of fiduciary duty and constructive trusts which draw on his expertise in Chancery law. He recently obtained a freezing order in the middle of a trial, following his cross-examination of the Defendant.

Recent and ongoing examples of his work include:

- Appearing in the leading case on the limitation period for a constructive trustee (*Cattley v. Pollard* [2007] Ch. 353).
- Acting for a property developer in successfully resisting a claim to a £40m property based on breach of fiduciary duty and breach of confidence.

- Acting for a public authority claiming for extensive fire damage caused by the supply of defective air-conditioning equipment.
- Acting for the seller of intellectual property rights in a claim against the parent company of the purchaser for conspiracy and unlawful interference with the sale contract.
- Advising in Hong Kong in relation to a dispute over derivatives.

Professional Liability

David has been rated for in the Directories for professional liability work since the mid-1990s. He became the highest rated junior in the field and is rated by Chambers & Partners (2014) and the Legal 500 (2013) as a leading Silk. The latest edition of Chambers & Partners says that David is "a master tactician", who conducts cases for and against solicitors, accountants, valuers and surveyors, amongst others. 'Fantastic on complex areas of law and extremely collaborative in his approach. The lawyer's lawyer.'". The Legal 500 (2013) commends David for his "excellent combination of professional negligence and property law expertise".

David first developed an interest in professional liability law when he began to receive regular instructions to defend solicitors during the recession of the 1990s. He appeared in several landmark cases including *Barclays Bank v. Weeks Legg & Dean* [1999] QB 309 and *Hamlyn Taylor Neck v. Portman Building Society* [1998] 4 All ER 202.

As his experience in this field grew, he decided to move to 4 New Square. He now acts for and against professionals in many areas of professional liability work, but retains a particular interest in claims which draw on his expertise in property, business and financial law.

He has given evidence as an expert witness in the USA.

Accountants, Auditors & Actuaries

David is one of the editors of the current edition of *Jackson & Powell on Professional Liability*. He edits the chapter on Accountants and Auditors and has written a new chapter on Actuaries.

Recent and ongoing examples of his work include:

- Defending a claim for the negligent audit of a company, where it was alleged that the auditor had failed to detect frauds by the managing director.
- Defending a claim against an auditor for fraudulent trading (section 213).
- Defending an accountant in relation to a failed film finance scheme.
- Advising on a claim against a firm of accountant for negligence in off-shore tax advice.
- Advising an international firm of accountants in relation to the consequences of a defective trust appointment.
- Defending an accountant in a claim for negligent tax-planning advice to a testator.

Financial Services Professionals

David has considerable experience of acting in relation to the investment duties of trustees and in claims for pensions mis-selling.

Examples of current and recent work:

- Advising a City firm of solicitors whether it had any liability for statements in a prospectus which promoted a financial product as a Collective Investments Scheme.
- Representing an investor on a claim for £4m lost through the negligent investment policy of an IFA.

Lawyers

A major part of David's practice is acting for or against solicitors and barristers in a wide range of cases, but especially in relation to areas of Chancery law which are within his own particular expertise.

He advises on coverage issues such as dishonesty, aggregation and successor practice, and has particular experience of the Minimum Terms for Solicitors. He acts as an arbitrator and conducts dishonesty conferences.

Recent and ongoing examples of his work include:

- Defending a raft of claims against a firm of solicitors for up to £40m for breach of trust and breach of undertakings. This has included a recovery action against the former client's shadow director for conspiracy and inducing breach of contract (*Thames Valley Housing v. Elegant Homes* (2011) NPC 54).
- Acting for a bank in a £10m claim against solicitors for a mortgage fraud.
- Suing a solicitor for breach of warranty of authority in purporting to act for an Embassy selling part of its property.
- Currently acting for a solicitor defending a £15m claim for negligence arising out of the sale of development land,

- involving complex valuation issues relating to the “ransom” value of a restrictive covenant.
- Defending a solicitor who was sued for failure successfully to pursue a claim to a Hong Kong company which owned a golf course.
 - Advising insurers of a City firm on the construction and rectification of a share sale agreement which they had drafted.
 - Acting for a claimant suing a City firm of solicitors over the drafting of an agreement for the purchase of a German company.
 - Defending a barrister in a negligence claim relating to leasehold enfranchisement (*Jassi v. Gallagher* [2007] PNLR 4).
 - Acting for an insurer in successfully exercising a “control” clause.

Surveyors & Valuers

David acts both for and against surveyors and valuers, particularly in claims relating to valuers' liability. He has considerable experience in relation to the valuation of development land and frequently works with experts in the fields of valuation and planning.

Recent and ongoing examples of his work include:

- Currently acting in a £10m claim on behalf of a bank against a valuer arising out of a mortgage fraud.
- Acting for a claimant against a valuer for negligence in failing to advise on the date by which a contract for development land should become unconditional.
- Acting for a project manager of development land in his claim for commission and defending the employer's claim for negligence.

Offshore

David is currently chairman of the International Subcommittee of the Chancery Bar Association.

He has been called to the Bar in Gibraltar where he has been involved in a dispute over ownership of a share of assets with a total value said to be £1bn.

He is currently instructed in Jersey to defend a claim for breach of trust for £95m arising from alleged misinvestment.
