



NEW SQUARE

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.

"Very intelligent and thoughtful and a good strategic thinker. He is very assured and well-liked by clients and is particularly good with property-related professional negligence litigation." "A very sound and meticulous advocate who is very good at what he does." "He is extremely intelligent with excellent client-handling skills" (Chambers & Partners 2016). "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).

"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).

"He adopts a client-friendly and very practical approach, and is a terrific strategic thinker." "Never more at home than when dealing with tricky cases" (Legal 500, 2016). "A very intelligent and thoughtful barrister, and a good strategic thinker who is well liked by clients." "Particularly good in property-related professional negligence litigation against solicitors and surveyors" (Legal 500, 2015). "He has first-rate ability to analyse difficult legal problems and to find a commercial way through them" (Legal 500, 2014).

As a junior, David built up a wide practice in Chancery chambers embracing property law, company law, insolvency and civil fraud, and trusts and probate, 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 a member of of the Chancery Bar Association and is a former chairman of its International Subcommittee . He is also a member of the Property Bar Association, the Professional Negligence Bar Association and COMBAR.

David sits part-time as a deputy 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.

Professional Liability

David has been rated for in the Directories for professional liability work since the mid-1990s. Before he took Silk he was the highest rated junior and was shortlisted by Chambers & Partners for Professional Negligence Junior of the Year. He is rated by Chambers & Partners (2016) and the Legal 500 (2015) as a leading Silk. Chambers & Partners (2016) says that "he maintains a strong reputation in the field of professional liability and has considerable expertise in claims relating to negligent financial advice. Well equipped to handle commercial disputes. 'Very intelligent and thoughtful and a good strategic thinker.'" The Legal 500 (2015) describes David as "a very intelligent and thoughtful barrister, and a good strategic thinker who is well liked by clients".

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. An article he wrote on auditors' liability was cited by Lord Neuberger in the Supreme Court in *Bilta v. Jetivia* [2015] 2 WLR 1168 at [21].

Recent and ongoing examples of his work include:

- Defending a claim for negligent advice by accountants acting as financial advisers in the sale by tender of a substantial business.
- Acting for both claimants and accountant defendants in relation to failed tax schemes.
- Acting for Barclays Bank in a £50m claim against Grant Thornton arising out of a non-statutory audit report.
- Acting in a claim against accountants for negligently allowing an overseas subsidiary to be struck off, thereby causing the group's valuable intellectual property rights to become bona vacantia (*Insight Group Ltd v. Kingston Smith* [2014] 1 WLR 1448).
- 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 under section 213 of the Insolvency Act 1986.

Financial Services Professionals

Chambers & Partners (2016) says that David "has considerable expertise in claims relating to negligent financial advice" and is "very well equipped to handle commercial disputes". David has considerable experience of acting in relation to the investment duties of trustees, in claims against IFAs for negligent investment advice and in claims for pensions mis-selling.

Examples of current and recent work:

- Acting for an IFA defending a claim arising out of a failed film finance scheme.
- 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, such as property litigation, trusts, company law, insolvency and breach of fiduciary duty. He is rated in the Directories for property litigation as well as for professional negligence. A typical example of his work in the interface between these two areas is *Jassi v. Gallagher* [2007] PNLR 4, where he successfully defended a barrister in the Court of Appeal against a negligence claim arising out of a failed leasehold enfranchisement.

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:

- Acting for a solicitor in striking out a £54m claim for negligence on the grounds that it had no real prospect of success and was an abuse of process (*Ridgewood Properties Group Ltd v. Kilpatrick Stockton LLP* [2014] PNLR 31).
- Acting for both claimants and solicitor defendants in relation to failed tax schemes.
- Acting for a developer suing solicitors and counsel, as well as valuation and planning experts, for negligence in the preparation and conduct of a claim for compensation following the CPO of a tower block in Bristol.
- Defending a barrister sued for negligence in litigation relating to the forfeiture of a lease.
- Acting for Barclays Bank in a claim against solicitors and valuers for breach of fiduciary duty, where the Bank had lost £10m as a result of a mortgage fraud..
- 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).
- Suing a solicitor for breach of warranty of authority in purporting to act for an Embassy selling part of its property.
- Acting for a solicitor-trustee in Jersey defending a £95m claim for breach of trust 95m arising from alleged mis-investment of trust assets.

Surveyors & Valuers

Chambers & Partners (2016), in recommending David for Real Property litigation as well as Professional Liability litigation, says that "he is noted for his specialist knowledge in matters concerning valuation principles." 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:

- Acting for a developer suing valuation and planning experts, as well as solicitors and counsel, for negligence in the preparation and conduct of a claim for compensation following the CPO of a tower block in Bristol.
- Acting for a valuer defending a claim by a developer raising issues about good practice when advising on the sale of development land,
- Acting in a £10m claim on behalf of Barclays 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.

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 and advisory work, with a particular interest in the areas set out below:

- [Real Property](#)
- [Insolvency, Company & Partnership](#)
- [Wills, Trusts and Probate](#)

Real Property

David is rated as a leading Silk in property litigation by Chambers & Partners (2016), The Legal 500 (2015) and Who's Who Legal (2016). Chambers & Partners (2016) says that he "advises on a mix of real estate and professional negligence cases. He is noted for his specialist knowledge in matters concerning valuation principles. 'He is extremely intelligent with excellent client-handling skills.'" Chambers & Partners (2015) describe David as "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.'" Who's Who Legal (2015) describes David as "a very sound property lawyer with a great reputation. He is often hired by developers due to his strong business acumen. He also has a property-related professional negligence practice, and is an excellent all-rounder."

His real property work regularly includes litigation and advice on:

- Contracts for the sale of land.
- Disputes as to title (including advising on title) and rectification.
- Disputes involving developers, including easements and covenants, ransom strips and overage (his skill in relation to the field of overage is singled out for praise in the Legal 500 (2014)).
- Landlord and tenant disputes, particularly in relation to commercial leases.
- Mortgages (e.g. *Bradford & Bingley v. Cutler* [2008] EWCA Civ 74).

Recent and ongoing examples of David's work include:

- Acting for a solicitor in successfully striking out a £54m claim arising out of the purchase of 11 petrol filling stations conditional upon the grant of planning permission (*Ridgewood Properties Group Ltd v. Kilpatrick Stockton LLP* [2014] PNLR 31).
- Acting for a developer in a misrepresentation claim arising from an exclusivity agreement for the purchase of a property for £80m.
- Acting for a national leisure company sued for breach of a "keep-open" covenant in a commercial lease, where the defendant was alleged to be the anchor tenant of a shopping centre.
- Acting for a landowner disputing a ransom strip which was preventing the development of 750 houses.
- Drafting an overage clause to secure an uplift of £45m for the seller.
- Advising a national housebuilder on ownership of a riverbed and whether a large development site had prescriptive rights of drainage.

Insolvency, Company & Partnership

Insolvency

During the recession of the 1990s, when he was in a Chancery set of chambers, David gained considerable experience in insolvency work, both individual and corporate, and was in the leading case of *Raja v. Rubin* [2000] Ch 274. During the latest recession, he has been involved in a number of domestic and international insolvencies, acting variously for liquidators, creditors, directors, auditors and shareholders.

Company

David's work in this field is principally concerned with litigation involving shareholders' and directors' disputes and s.994 petitions. He also has considerable experience in relation to company securities and was in the leading case of *Re Portbase Clothing Ltd* [1993] Ch. 388.

Partnership

He is regularly instructed in relation to partnerships and joint ventures.

Recent and ongoing examples of his work include:

- Acting for the controlling shareholder in a claim arising out of the dissolution of companies in Nevis and the Isle of Man, which led to the intellectual property of the company becoming bona vacantia.
- Acting for insolvency solicitors defending negligence claim arising out of their handling of bankruptcies and liquidations.

- Advising professional indemnity insurers on claims arising out of the insolvency of a firm of solicitors.
- Acting for a Nevis Foundation in a dispute litigated in Gibraltar over ownership of a share of assets with a total value said to be £1bn. The claim involved joint venture agreements, trusts and company law issues in England, Russia, the BVI and Gibraltar.
- Advising in Hong Kong in relation to several disputes over share transfers.
- Advising a major mutual indemnity society on its mutual status.

Wills, Trusts and Probate

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) and in a landmark case on the limitation period for claims against constructive trustees (*Cattley v. Pollard* [2007] Ch. 353).

Recent and ongoing examples of his work include:

- Cross-examining an Austrian professor of law as to whether a *Stiftung* (Foundation) was a sham under Liechtenstein law.
- Defending a Jersey trustee against a claim for £95m for alleged mis-investment and breach of fiduciary duty.
- Appearing in the Supreme Court in a landmark case in the law of charitable trusts (*Shergill v. Khaira* [2015] AC 359).
- Acting for an executor and beneficiary defending a claim that the testator's interest in a Liechtenstein Foundation should have formed part of his estate.
- Acting for a beneficiary of a trust of heirlooms seeking to set aside for undue influence a deed of covenant made with the trustees.
- 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.

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.

Recent and ongoing examples of his work include:

- Successfully defending a claim against a development company for alleged breach of fiduciary duty and breach of confidence in proceeding with a £40m development and not sharing the benefit with its alleged joint venture partner.
- 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.
- Acting in a claim against a shadow director who was found liable for inducing the company to commit breaches of contract. David obtained a freezing order in the middle of the trial, following his cross-examination of the defendant. (*Thames Valley Housing Association v. Elegant Homes (Guernsey) Ltd* [2011] NPC 54).

Insurance & Reinsurance

David's insurance work focuses particularly on issues relating to professional indemnity insurance but also extends to general commercial insurance. He has advised a major mutual indemnity insurer on its mutual status. He

regularly advises on indemnity and coverage issues including:

- The Solicitors Minimum Terms and Conditions.
- Indemnity Conferences where he is instructed by the insurer to examine the insured for possible dishonesty.
- Aggregation issues.
- Declinature.

Offshore

David's work has a significant international dimension, which is reflected both in work offshore and in conflict of laws issues in England. His offshore work mirrors the breadth of his domestic practice. He is a former chairman of the International Subcommittee of the Chancery Bar Association and has been called to the Bar in Gibraltar.

Recent and ongoing examples of his work include:

- Cross-examining an Austrian professor of law as to whether a *Stiftung* (Foundation) was a sham under Liechtenstein law.
 - Acting for a solicitor-trustee in Jersey defending a £95m claim for breach of trust arising from alleged mis-investment of trust assets, one of the key issues being the effect of an exoneration clause preventing claims for anything except fraud and gross negligence.
 - Acting for a Nevis Foundation in a dispute litigated in Gibraltar over ownership of a share of assets with a total value said to be £1bn. The claim involved joint venture agreements, trusts and company law issues in England, Russia, the BVI and Gibraltar.
 - Advising a major professional institution in the Isle of Man on the rent review under its lease.
 - Advising in various commercial and company disputes in Hong Kong.
 - Advising on the Nevis law relating to dissolution of companies and bona vacantia.
 - Advising Jersey trustees on requests for information from the Comptroller of Taxes
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