



David Sawtell

Year of call: 2005

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"If you want counsel on your side who is a fighter then David is my first choice for all property and construction matters." The Legal 500, 2022

David specialises in substantial construction, infrastructure, private finance initiative (PFI) and property disputes, as well as commercial dispute resolution. His work frequently has an international edge, involving cross border and overseas transactions and disputes. His work is typically legally and factually complicated. His clients appreciate his robust advocacy allied to his practical and user-friendly manner.

His legal acumen is especially prized. In 2017 David completed an MSc in Construction Law and Dispute Resolution at King's College, London, achieving a distinction. He was awarded prizes for the best overall graduate, best dissertation, the best performance in the second-year examinations, and best performance in the Module AL construction technology examination. David is currently undertaking a part time PhD at the University of Cambridge. He has published widely, winning several awards, scholarships and prizes.

David is regularly instructed in disputes in the High Court (including the Technology and Construction Court (TCC), the Chancery Division, the Queen's Bench Division and the Companies Court), the Upper Tribunal and the Court of Appeal. He is also regularly involved in construction disputes referred to adjudication or arbitration, including internationally in respect of disputes arising from large-scale projects.

Areas of expertise

Construction

Property

Commercial

Professional Negligence

Art and Cultural Property

Insolvency

Property

David's real property work includes mortgages / charges, orders for sale, easements / wayleaves, and trusts of land / beneficial interests. His landlord and tenant practice (both residential and commercial)

includes possession, disrepair and dilapidations, leasehold enfranchisement, breach of covenant / forfeiture, and management and service disputes. David has particular expertise in cases involving all aspects of property development. He frequently advises on restrictive covenants, easements, boundary disputes and overage agreements, as well as the recovery of possession from commercial tenants. He is also regularly instructed in respect of joint venture agreements, disputes where the equity in ***Pallant v Morgan*** arises, or where obligations and remedies arising from unjust enrichment or equity are live issues.

In 2021, David published the second edition of '*A Practical Guide to the Landlord and Tenant Act 1954: Commercial Tenancies*'. David has achieved academic recognition in land law, with his paper on 'Injunctions, land and the cynical breach', considering how the defendant's state of mind influences the availability of an injunction as a remedy in land law, and whether the relevance of this factor is consistent with the proprietary nature of the claimant's infringed rights, winning the prize for the best paper presented by a doctoral student at the Society of Legal Scholar's Annual Conference in 2021. In May 2022, his co-authored book, '*Contested Heritage*,' was released.

Cases of note

- ***Poundland v Various Freeholders*** - David has acted for a number of freeholders in unopposed lease renewals under Part II of the Landlord and Tenant Act 1954 in respect of large-scale retail parks where the tenant retailer has sought to include 'Covid-19 clauses' in the new lease, together with disputes over the effect of the pandemic on rent.
- ***Creebray Ltd v Deninson* [2020] UKUT 262 (LC), [2020] All ER (D) 52 (Sep)** - David acted for the objectors in an application to discharge a restrictive covenant imposing a building line at trial, notwithstanding planning permission for the proposed development of a high-value luxury dwelling.
Judgment
- ***Connaught House Ltd v Harrison* [County Court at Central London]** - David acted for the defendant in a claim involving trespass adjacent to an 18th century building, with a dispute over the ad caelum rule, the tort of malicious falsehood and slander of title, and adverse possession. Succeeded at first instance, with the claimant ordered to pay indemnity costs, permission to appeal refused.
- ***Basnet v Patel* [2019] UKUT 141 (LC)** - David acted for the claimant in a claim involving, a disputed deed of a trust, estoppel by deed and the circumstances under which such a deed can be disputed.
Judgment
- ***Pinisetty v Manikonda* [2017] 5 Costs LO 565; [2017] EWHC 838 (QB)** - Dispute over an oral agreement to sell commercial property to a solicitor's partner. David successfully opposed the proprietary claim.
Judgment
- ***JDI Developments Ltd v Grey GR Ltd* [TCC, 2022]** - David acted for the claimants in a dispute in respect of an airspace development, involving a claim against the freeholder for a failure to ensure that the building had adequate fire safety features, and hence delaying practical completion.

Recommendations

"David has the ability to get to the heart of a dispute with impressive speed. His written advice is clear and focused. As an advocate, David is firm whilst remaining calm. If you want counsel on your side who is a fighter then David is my first choice for all property and construction matters." The Legal 500 (2022)
Construction (Tier 4) Property Litigation (Tier 5)

Memberships

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- Fellow of the Chartered Institute of Arbitrators

- TECBAR
- Property Bar Association
- Chancery Bar Association
- Society of Construction Law
- Adjudication Society
- Selden Society

Qualifications

- 2017: MSc Construction Law and Dispute Resolution, King's College London (Distinction)
- 2005: Called to the Bar (Lincoln's Inn)
- 2004-5: Inns of Court School of Law, Bar Vocational Course (very competent)
- 2003-4: City University, Post-graduate diploma in law (commendation) 2002-3: Peterhouse, University of Cambridge, MPhil in Medieval History (distinguished performance)
- 1999-02: Peterhouse, University of Cambridge, MA (Hons) in History (Part I: First, Part II: 2:1)

Awards

- 2021: Prize for the best paper presented by a doctoral student at the Society of Legal Scholars Annual Conference.
- 2020: Francis Paterson Scholarship from the Society of Construction Law for PhD at the University of Cambridge.
- 2019: Best Paper Prize for submitted paper to the Cambridge Centre for Property Law conference, 'Regulating Property Law'
- 2017: Society of Construction Law prize for best overall graduate MSc Construction Law; Society of Construction Law prize for best dissertation; Kings College Construction Law Association prize for best performance in the second-year exams
- 2016: Bickerdike Allen award for best performance in Module AL in MSc Construction Law
- 2005: Sunley Scholarship, Lincoln's Inn
- 2004: Lord Denning Scholarship, Lincoln's Inn
- 2002: AHRB scholarship in full for MPhil
- 2001: Edward Lord North Scholarship (Peterhouse)

Additional Information

Select Publications (last 3 years)

Peer reviewed journals

- (forthcoming; accepted for publication) *'Injunctions, land and the cynical breach'* (Legal Studies, 2022).
- *'The residential leaseholder's interest in construction operations'* (2019) 11(2) Journal of Property, Planning and Environmental Law, 108.
- *'Enrichment-based claims for a quantum meruit in construction disputes'* [2020] 36(1) International Construction Law Review 101. Compares common law and civil law unjust and unjustified enrichment claims in construction law.

Journals

- *'The remedies of the mortgagee and appointing receivers'*(2020) 35(11) Butterworths Journal of International Banking & Financial Law 767. (Relief for mortgagees when business borrowers default, examining good faith obligations).
- *'Legal perspectives on putting buildings right post-Grenfell conference'*(co-author) (2020) 23(1) Journal of Housing Law 15. Report on the 2019 'Housing after Grenfell' conference hosted by the University of Oxford.
- *'Adjudications brought by insolvent companies - an exercise in (f)utility?'*(co-author) (2020) 31(8) Cons. Law 24. Discusses the difficulties relating to the interaction between construction adjudication and insolvency.
- *'Revocation of continuing guarantees: principles and rationale'*(2019) 34(7) (co-author) Butterworths Journal of International Banking & Financial Law 438. Sureties' rights to revoke guarantees by giving notice, depending on whether the consideration for the guarantees was divisible or indivisible; considers protection afforded to the surety in civil law systems.

Book reviews

- *'Restrictive Covenants Affecting Freehold Land by G. Newsom and E Paton'*[2021] (1) Conveyancer and Property Lawyer 114.
- *'Collaborative Construction Procurement and Improved Value by D. Mosey'*(2019) 35(6) Const. Law Journal 384.

Papers

- January 2022: *'Restitution: Claims and Disputes outside of Contract'*(Cambridge Construction Law Winter School)
- June 2021: *'Causation in English Construction Law: time for a re-statement?'*(talk and paper for the Society of Construction Law 229).
- 2020: *'Teams of Rivals? How English Construction Law Forces Contracting Parties to Work Together'* (Society of Construction Law Paper D231) (Commended Entry for Hudson Prize): the prevention principle and good faith.
- Regular contributor to University of Oxford blog, *'Housing After Grenfell'*.

Books and book chapters

- (Forthcoming April 2022) *'A Practical Legal Guide to the Removal of Art and Cultural Property from Historic Buildings'*(Law Brief Publishing) (co-authored with Richard Harwood QC and Catherine Dobson).
- Editor of the chapters on adjudication and payment in *'Wilmot-Smith on Construction Law'*(4th edition, OUP, 2021).
- *'A Practical Guide to the Landlord and Tenant Act 1954'*(2nd edition, Law Brief Publishing, 2021) (co-authored).

Conferences and Presentations

- (Forthcoming March 2022) Modern Studies in Property Law 2022: *'Overage agreements and temporal aspects of property development in English land law'*.
- Society of Legal Scholars Annual Conference 2021: *'Injunctions, land and the cynical breach'*, considering how the defendant's state of mind influences the availability of an injunction as a remedy in land law, and whether the relevance of this factor is consistent with the proprietary nature of the claimant's infringed rights. This paper won the prize for the best paper presented by a doctoral

student at the Annual Conference.

- Society of Legal Scholars Annual Conference 2020: *'Intervening uncertainty in property relations and legal interventions into liability, remedies and enforcement: re-visiting the doctrine of frustration'*, comparing English and civil law concepts of frustration in land law obligations and respective responses to COVID-19.
- Cambridge Centre for Property Law 2018, Regulatory issues in property law, *'The residential leaseholder's interest in construction operations'*. Won Best Paper prize.

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