



“He is simply outstanding; on paper, in person and in court”

Legal 500, 2019

Bernard has great experience in both conflict of laws and complex personal injury claims, making him the obvious choice for the most serious cross border personal injury litigation. He has been highly ranked in both areas in leading directories for several years and is the lead author of *Accidents Abroad: International Personal Injury Claims* (Sweet & Maxwell). He is approachable and advises on complex issues in a clear, comprehensible way.

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## PRACTICE AREAS

- Travel Law
- Personal Injury
- Insurance, Professional Negligence and Clinical Negligence

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## PRACTICE AREAS

### TRAVEL LAW

For Travel Law, Bernard is in Band 1 / Tier 1 in 2019 editions of Chambers & Partners and Legal 500. Legal 500 2019 states “His knowledge on issues of jurisdiction and applicable law are unparalleled.”

Bernard is the lead author of *Accidents Abroad: International Personal Injury Claims* (Sweet & Maxwell, 2<sup>nd</sup> ed. 2017), a comprehensive text book on the cross border aspects of personal injury claims. He is unusual in being a true specialist in both cross border litigation and personal injury claims of the highest value. He is instructed equally often by claimants and defendants.

His practice encompasses all aspects of travel law. He has appeared in many jurisdiction challenges and cases

raising issues of applicable law as well as injury and disease claims arising from package travel and claims arising from air and sea travel both in relation to passengers under the Montreal and Athens Conventions and to crew claims. He is well placed to assist with the uncertainties arising from Brexit.

Bernard has advised and appeared in cases involving insurance and MIB issues connected to cross border personal injury litigation, including the European and other cross border aspects of those matters.

He is also experienced in some of the more arcane reaches of international litigation, such as recovery claims by social security bodies and the immunities available to state and international bodies.

## PERSONAL INJURY

For personal injury, Bernard is in Band 1 / Tier 1 in 2019 editions of both Chambers and Partners 2019. Legal 500 2019 states: *"He is simply outstanding; on paper, in person and in court."*

Bernard specialises in high value and complex claims, including spinal injury, brain injury and amputation cases. He has much experience of claims of the highest value and the difficult issues (both human and technical) which arise in personal injury litigation. He maintains an even split between claimant and defendant work.

As well as motor, employer's liability and public liability claims, Bernard has extensive experience of product liability cases and has been instructed in large scale and group litigation.

He is used to dealing with difficult legal issues on liability and causation as well as complex medical and other expert evidence in claims of very high value.

## INSURANCE, PROFESSIONAL NEGLIGENCE AND CLINICAL NEGLIGENCE

As adjuncts to his personal injury and travel law practice, Bernard regularly advises on insurance issues including subrogation, policy interpretation, coverage disputes and Motor Insurers' Bureau (MIB) claims. Again, he represents claimants and defendants. The insurance issues often arise in cross border contexts, including travel policies and motor and public liability policies governed by foreign law. He is experienced in the European law aspects of MIB claims.

Bernard's professional negligence practice is chiefly in claims against solicitors and counsel in respect of failed litigation, often cross border litigation.

He has always undertaken clinical negligence cases as part of his practice, including cerebral palsy cases, wrongful birth, informed consent, and missed cancer diagnosis cases. Recent cases often have a cross border element (e.g. claims of UK domiciliaries in respect of surgery abroad).

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## CASES

The following is a selection intended to give a flavour of the types of cases in which Bernard is often involved.

### TRAVEL

#### ***Hutchinson v Mapfre* [2020] EWHC 178 (QB)**

Jurisdiction challenge raising issues of compatibility of Spanish insurance policy terms with jurisdiction rules of Brussels I Recast in context of tetraplegia claim.

**McCulloch v University of Leicester** (Leicester County Court, 27 February 2020)

Claim under Package Travel, etc., Regulations arising from an injury to a student on a university field trip, concerned with whether such an educational trip falls within the scope of the Regulations.

**Schofield v Gultepe** [2019] EWHC 293 (Admlty)

Liability trial of claim arising from a boat accident in waters off the coast of Greece leading to serious brain injury.

**Syred v Powszechny Zaklad Ubezpiezen (PZU) SA** [2016] EWHC 254 (QB)

Trial under Polish law of contributory negligence and quantum in a case involving a severe traumatic brain injury arising from an accident in Poland.

**Simon v Helmot** [2012] UKPC 5

(Led by Alastair Schaff QC) Hearing by Privy Council of appeal from the Court of Appeal in Guernsey. The case was a catastrophic personal injury claim. The issue for the Privy Council was the discount rate to be applied in the calculation of multipliers for future loss, and in particular whether different discount rates should be applied to earnings related losses as opposed to non-earnings related losses.

**Naraji v Shelbourne** [2011] EWHC 3298 (QB)

Clinical negligence claim brought by a professional footballer against a knee surgeon in relation to surgery in Indiana, USA. In addition to medical issues, the case raised issues of res judicata in relation to a previous claim in Indiana and issues of limitation under the foreign applicable law.

**Maher v Groupama Grand Est** [2009] EWCA Civ 1191

Issues of whether the assessment of damages and award of interest in a direct claim against an insurer are matters of substantive or procedural law for purposes of private international law.

**Thwaites v Aviva Assurances** [2010] Lloyd's Rep. I.R. 667

Personal injury claim brought by an English resident injured in a French adventure park while on holiday. The issue was whether the English courts had jurisdiction, turning on whether the existence of a direct right of action against an insurer was a matter of substantive or procedural law.

**Owusu v Jackson** [2005] QB 801 (ECJ)

Tetraplegia claim resulting from swimming accident in Jamaica. On reference from Court of Appeal, the European Court of Justice held that when the claim was brought against an English domiciled defendant, the English court had no power to stay the case on grounds of forum non conveniens, even in favour of the courts of a country which was not a member State of the European Community.

PERSONAL INJURY (INCLUDING CLINICAL NEGLIGENCE)

The cases listed under Travel almost all involve serious personal injury. These cases are domestic personal injury claims.

**Jagger v Holland** [2020] EWHC 46 (QB)

Claimant was run down by a lorry on Midsummer Common leading to a leg amputation. Trial of liability in claim

against lorry driver and the organisers of the fairground which the lorry was servicing.

***LMN (by his litigation friend EDE) v East and North Herts NHS Trust*** (High Court, 2019)

Approval of a >£10 million settlement (including periodical payments) arising from clinical negligence at birth leading to severe brain injury.

***ABC (by his litigation friend Michael Knott) v Estate of GHI deceased*** (High Court, 2019)

Approval of a >£5 million settlement (including periodical payments) for a severe traumatic brain injury arising from a road traffic accident.

***Barnes v Howard*** [2017] EWHC 959 (QB)

High Court trial of liability in a claim for very serious injuries arising from a motorcycle accident.

***Curtis v Cambridgeshire CC*** (Cambridge County Court, August 2017)

Trial of public liability claim arising from an accident caused by deficient design of a crossing point over a guided busway. The accident led to a significant brain injury.

***Nichols v Cibas*** (2017, High Court)

Trial of liability in a claim for serious brain injuries arising from a collision between a lorry and a car.

***Ide v ATB Sales Ltd*** [2008] EWCA Civ 424

Two product liability cases, heard together by the Court of Appeal as giving rise to an issue of principle as to the circumstances in which a trial judge is entitled to make findings in the absence of direct evidence.

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## RECOMMENDATIONS

Bernard is in Band 1 / Tier 1 for both Travel Law and Personal Injury in both Chambers & Partners and the Legal 500.

### RECENT QUOTES

*"His knowledge on issues of jurisdiction and applicable law are unparalleled"* – Legal 500, Travel (2019).

*"He is simply outstanding; on paper, in person and in court"* – Legal 500, Personal Injury (2019).

*"A silk in waiting – judges absolutely adore him"* – Chambers & Partners, Travel (2019).

*"Simply brilliant – he always talks sense and is concise and sensible"* – Chambers & Partners, Personal Injury (2019).

*"He cuts through the most complex issues to get to the heart of the matter."* – Legal 500, Personal Injury (2018)

*"His knowledge of travel and international claims is second to none."* – Legal 500, Travel Law (2018)

*"An excellent barrister who is very calming and measured."* – Chambers & Partners, Personal Injury (2018)

*"Experienced and unflappable. He takes things in his stride and inspires confidence."* – Chambers & Partners (2018)

*"Impressive, massively experienced and always has a good command of a case."* – Chambers & Partners (2018)

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## APPOINTMENTS

Recorder of the Crown Court (2007)

CEDR accredited mediator

Member of PlcArbs arbitrator's panel (i.e. arbitrator for Personal Injuries Arbitration Service)

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## MEMBERSHIPS

- The London Common Law & Commercial Bar Association
  - The Personal Injury Bar Association
  - The Pan-European Organisation of Personal Injury Lawyers (PEOPIL)
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## QUALIFICATIONS

Middle Temple – Benefactors' Scholarship and Cunningham Pupillage Award

Bar Finals: Very Competent

City University: Diploma in Law with distinction

Churchill College, Cambridge: MA (Hons) Upper Second Class in Classics and English

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