



the “first-choice for all high value and complex cases”

Legal 500

PRACTICE AREAS

- Personal Injury and Clinical Negligence
 - Commercial and Professional Negligence
-

SECTORS

- Conflict of Laws
-

PRACTICE AREAS

PERSONAL INJURY AND CLINICAL NEGLIGENCE

“He’s very knowledgeable on conflicts of law in a personal injury context, and tactically astute in his application of foreign law arguments. Approachable.” Chambers & Partners

Bernard’s personal injury work is split fairly equally between claimants and defendants.

He has much experience of claims of the highest value and the difficult issues (both human and technical) which arise in personal injury and clinical negligence litigation.

He also undertakes professional negligence claims arising out of failed personal injury and clinical negligence claims.

His personal injury work for defendants includes substantial experience of dealing with claims believed to be based on, or to involve a substantial degree of, fraud on the part of claimants and he has substantial experience of the medical and other forensic tools available for countering such claims.

His clinical negligence practice includes wrongful birth and informed consent cases.

He is experienced in large scale and group litigation.

COMMERCIAL AND PROFESSIONAL NEGLIGENCE

Bernard has a broadly based commercial practice, often with an insurance aspect, including flood and fire claims and policy interpretation, together with a particular interest in permanent health insurance claims.

His international practice means that he is very familiar with the major international conventions relevant to the carriage of people and goods by air, sea, road and rail.

He has undertaken a significant number of professional negligence claims arising from failed litigation, particularly litigation raising cross border issues. Other professional negligence work includes claims against construction industry specialists (architects, surveyors, engineers).

In addition, Bernard writes and lectures regularly on various subjects related to his practice, but chiefly conflict of laws issues in relation to personal injury and other tortious litigation.

SECTORS

CONFLICT OF LAWS

"Good on the international stuff – he's sensible and measured." Chambers & Partners

Bernard has developed a strong speciality in conflict of laws, reflected in "Accidents Abroad", the book for which he is the lead author. His cross-border work is often though not solely in connection with international personal injury claims. He has appeared in the European Court of Justice and regularly appears in and advises on jurisdiction and applicable law issues arising in cross-border litigation.

CASES

Personal Injury & Clinical Negligence

Gerard Maher (2) Daniela Maher v Groupama Grand EST [2009] EWCA Civ 1191

Trial of 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.

Humphreyes v Nedcon UK Ltd (QBD) 10 November 2004 [2004] EWHC 2558 (QB)

High Court, employer's liability personal injury claim, the latter judgment being on costs issues.

Miller v C&G Coach Services Ltd (CA) 7 March 2003 Lawtel 7/3/2003

Serious head injury case, raising issues as to the proper approach to findings of fact in the face of expert evidence in road traffic accident cases.

Commercial

Heaney v Slaughter & May – 2008

Public liability claim arising from a fall while exiting a water feature in an office reception area. Held that an adult entering such a feature voluntarily accepts the obvious risks arising from that decision.

Whitbread v Fitton – 2008

Fire claim, with fire alleged to have been caused by defective installation and maintenance of a commercial kitchen flue.

Re Shaw and Re Shreeve – 2008

Long inquests arising from the deaths of police officers raising product liability issues in relation to the police motor cycles which they were riding.

Nicholson v F.P. Youngs Transport Ltd – November 2007

Claim arising from lorry overturning, alleged to be by reason of defects in the structure of the trailer bed.

Kyne v Davidson – October 2003

Successfully defending occupiers' liability claim against the well known comedian Jim Davidson.

Alena Ltd v Harlequin Transport Services Ltd (QBD) 20 November 2002 [2002] EWHC 2661 (Comm) [2002] All ER (D) 278 (Nov)

Carriage of goods by road case in which goods were lost following a brake failure on a mountain road; issues of wilful misconduct were raised to the effect that the defendant had consciously and persistently failed to maintain the lorry in accordance with proper practice.

Environment Agency v Eastern Counties Leather

Represented the Environment Agency for some years in relation to the clean up of the Eastern Counties Leather site, involved in an anti-pollution works notice appeal and associated High Court proceedings, from 2002 to 2007.

Health & Safety

R v Network Rail and Others

Instructed for one of the personal defendants in successful defence of charges under the Health and Safety at Work etc. Act 1974 arising from the Hatfield rail crash.

Environmental & Planning

R v Secretary of State for the Environment and Transport and the Regions ex parte Edison First Power Limited (CA) 12 July 2001

Rating liability of power stations.

International Personal Injury and Conflict of Laws

Simon v Helmut 29 October 2012 [2012] UKPC 5; [2012] Med. L.R. 394

(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 with a value of some £14 million. 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) (Poplewell J, 15 December 2011).

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.

Saldanha v Fulton Navigation Inc [2011] EWHC 1118 (Admlty); [2011] 2 Lloyd's Rep. 206

Case raising issue as to the location for jurisdiction purposes of an accident on an Indian ship located in English territorial waters.

Thwaites v Aviva Assurances [2010] I.L.Pr. 47; [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.

(1) Gerard Maher (2) Daniela Maher v Groupama Grand Est [2009] EWCA Civ 1191; [2010] 1 W.L.R. 1564.

Trial of 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.

Graham Trevor Anderson (Claimant) v Michel Lyotier & Wendy Lyotier (T/A Snowbizz) (Defendants) & Jerome Portejoie (Part 20 Defendant) [2008] EWHC 2790 (QB)

Tetraplegia claim arising from skiing accident in France, raising liability issues under the Package Travel Regulations 1992.

Wardlaw v Foreign & Commonwealth Office

Case testing the scope of the third party jurisdiction rules under Council Regulation 44/2001 (the Judgments Regulation), and in particular whether the special jurisdiction rules for third party claims can be relied on once the main claim has been compromised.

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.

Professional Negligence and Commercial

AXA Insurance Limited v Various Firms of Solicitors (2010)

Professional negligence group litigation brought by insurers to the Composite Legal Expenses scheme (CLE), against various panel solicitors.

Alan Peter Ide v ATB Sales Ltd; Lexus Financial Services (t/a Toyota Financial Services (UK) Plc) v Sandra Russell (CA) [2008] EWCA Civ 424

Appeared in 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.

Winterthur Swiss Insurance Co v AG (Manchester) Ltd & ors ('The Accident Group Litigation') (2007)

Professional negligence action on a grand scale, brought by insurers to The Accident Group (TAG), against TAG Panel Solicitors.

Thames Water Utilities Ltd v Ministry of Defence (CA) [2006] EWCA Civ 1620

A restitutionary claim brought against a sewerage undertaker for overcharging. The claim was defeated by reference to the statutory charging powers, and it was held that the undertaker was not obliged to charge simply on the basis of the volume of water discharged by a customer into the sewers.

Crawford v Financial Institutions Services (PC) [2003] UKPC 49; [2003] 1 W.L.R. and [2005] UKPC 40

Commercial claim arising from a bank collapse, on appeal to Privy Council from Jamaican High Court; the first judgment was on procedural issues, the second on substantive issues.

Personal Injury

Kennedy Paul Saldanha v Fulton Navigation Inc [2011] EWHC 1118 (Admlty)

The courts of England and Wales had jurisdiction to determine a claim arising from injuries sustained by an Indian employee whilst working on board a vessel registered in the Marshall Islands when it was lying at anchor off the Welsh coast.

RECOMMENDATIONS

Bernard is highly recommended for his personal injury work by Chambers & Partners and the Legal 500.

Chambers & Partners also recommend Bernard in Travel Law.

Quotes

"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)

"He has amazing attention to detail, but also gets to the heart of the matter and sees the bigger picture." – Legal 500 (2015)

"He is outwardly laid-back, but is very bright, works hard, is prompt in his responses and is easy to deal with." – Chambers & Partners (2015)

"Good on the international stuff – he's sensible and measured." – Chambers & Partners (2015)

"Incredible attention to detail." – Legal 500 (2014)

"His depth of knowledge is fantastic, as is the way he expresses his opinions in pleadings." – Chambers & Partners (2014)

"On high-value cases he's exceptionally good." – Chambers & Partners (2014)

"He has fantastic knowledge of the law in this area, is very personable and knows his stuff." – Chambers & Partners (2014)

"Clients appreciate the 'amazing attention to detail' of Bernard Doherty, who 'manages to cut through all the evidence to the heart of the matter.' He wins respect for his 'ability to explain the most complex point in a clear and concise way, be it in his written advice, in conference or in his advocacy.'" – Chambers & Partners (2012)

"has a very pleasant manner, which helps to inspire confidence in clients". He is also commended for his "thorough approach to his cases." – Chambers & Partners (2010)

APPOINTMENTS

Recorder of the Crown Court: 2007

CEDR accredited mediator

MEMBERSHIPS

- The London Common Law & Commercial Bar Association
- The Personal Injury Bar Association

QUALIFICATIONS

Middle Temple – Benefactors’ Scholarship and Cunningham Pupillage Award

City University: Diploma in Law with distinction

Churchill College, Cambridge: BA (Hons) Upper Second Class

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