

Year called 2005

[david.sawtell@39essex.com](mailto:david.sawtell@39essex.com)



David specialises in substantial construction and property disputes, as well as commercial dispute resolution. He is frequently instructed in cases involving the development and use of land, buildings and property, as well as matters involving serious commercial, insolvency and company law issues. His work frequently has an international edge, involving cross border and overseas transactions and disputes.

His clients appreciate his robust advocacy allied to his practical and user-friendly manner. His work is typically legally complex.

In 2017 David completed the 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, researching the taxonomic interface between construction law and property law.

David is regularly instructed in disputes in the High Court (including the TCC, the Chancery Division, the Queen's Bench Division and the Companies Court) and the Court of Appeal. He is also regularly involved in construction disputes referred to adjudication or arbitration. He is adept in different forms of alternative dispute resolution, regularly representing clients in mediations and joint settlement meetings: he is a Fellow of the Chartered Institute of Arbitrators.

David speaks regularly at seminars and conferences on both construction and property law. He is also frequently published in leading practitioners' journals. In 2017, along with Richard Hayes, he wrote 'A Practical Guide to the Landlord and Tenant Act 1954: Commercial Tenancies' (published by Law Brief Publishing), placing a particular emphasis on the development aspects of commercial property.

---

## PRACTICE AREAS

- Construction
- Commercial

---

## SECTORS

- Property
- Art & Cultural Property
- Professional Negligence
- Insolvency

---

## PRACTICE AREAS

### CONSTRUCTION

David has a busy construction law practice, encompassing all kinds of infrastructure, construction, energy and development disputes. He is regularly involved in large scale, legally complex adjudications, as well as international arbitration.

He is also instructed in respect of commercial disputes related to construction operations, including insolvency, investment and development agreements, option agreements, and company law disputes.

In 2017 David completed the 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's recent work includes the following:

- Currently acting, as lead counsel, for a core participant in Phase 2 of the Grenfell Tower Inquiry.
- Led by Dr Tim Sampson in the Court of Appeal in *Gosvenor London Ltd v Aygun Aluminium UK Ltd* [2018] EWCA Civ 2695
- Adjudication and litigation in the TCC arising out of a subcontractor's design responsibility in a large scale mixed use development
- DIFC-LCIA arbitration: acting for specialist supplier of scaffolding and building services across multiple projects in the UAE
- 5-day TCC trial in respect of a quantum meruit arising out of a residential development and option agreement dispute before Stuart-Smith J in January 2018 (*Peacock v Imagine Property Developments Ltd* [2018] EWHC 1113 (TCC))
- Acting for a group of over 30 occupiers in an action arising out of a recent cladding fire
- Adjudication arising out of major London skyscraper and hotel development, leading junior counsel.
- Advising in respect of architect's professional negligence arising out of high-value residential development
- Advising in respect of contractor's claims and architect's professional negligence arising out of major

refurbishment work

- Series of connected adjudications proceedings arising out of major local authority regeneration project
- Adjudication enforcement proceedings in the TCC arising out of question as to whether jurisdiction was exhausted in 'smash and grab' claim
- Advising in respect of adjudication in respect of major rail engineering infrastructure project
- Successfully resisting winding up proceedings where a pay less notice was not served in response to an application for payment in reliance on extensive defects and incomplete work arising out of the construction of a new veterinary hospital
- Successful resistance to winding up petition in construction insolvency proceedings: *Mulalley and Company Ltd v Regent Building Services Ltd* [2017] EWHC 2962 (Ch)
- Claims arising out of a FIDIC Silver Book EPC project in respect of supply of utilities
- Water damage to commercial and residential property arising out of a defective sluice

## COMMERCIAL

As part of his general commercial practice, David has extensive experience in a wide range of civil areas.

He has experience of drafting and appearing in interim applications for injunctions, freezing injunctions, search orders, delivery-up, and disclosure.

His work regularly exposes him to complicated procedural issues such as *res judicata*, summary judgment applications and costs disputes. He is also regularly involved in disputes arising out of indemnities and guarantees.

**Commercial litigation:** David practices across a wide spectrum of commercial and civil litigation fields. He is often instructed in cases where dishonesty or fraud is alleged.

- Breach of trust / fiduciary duty
- Property damage and loss of use
- Contractual disputes (including misrepresentation and undue influence)
- Guarantee / indemnity disputes
- Factoring agreements
- Conversion and trespass to goods
- Supply of goods and services
- Bailment
- Partnership disputes
- Drafting agreements

**Contractual and financial disputes:** David is often involved in cases involving finance / brokers (especially for the purchase or development of land or construction), guarantee agreements and indemnity provisions, and disputes over insurance.

**Company disputes:** he is often instructed to advise on and to appear in relation to company disputes and Companies Act applications.

- Companies Act applications
- Unfair prejudice applications
- Shareholder disputes

---

## SECTORS

### PROPERTY

David has extensive experience of a wide range of disputes involving property.

His 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.

He appears regularly in the Chancery Division, Upper Tribunal, and the First Tier Tribunal (Property Chamber) in respect of both residential leases and land registration. He is a member of the Chancery Bar Association.

In 2017, David's book 'A Practical Guide to the Landlord and Tenant Act 1954: Commercial Tenancies' co-authored with Richard Hayes was published by Law Brief Publishing. He has considerable experience of all aspects of commercial property 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 especially adept in issues involving aspects of planning law and the LTA 1954. He has also advised in respect of assets of community value under the Localism Act 2011, burial grounds, and compulsory purchase. David also has considerable expertise in construction law, making him especially well placed to advise in respect of disputes where there are crossover issues. 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.

**Commercial property:** David is regularly instructed in relation to commercial property of all kinds. He has particular expertise in cases involving Part II of the Landlord and Tenant Act 1954.

- Renewal and termination of tenancies protected by Part II of the Landlord and Tenant Act 1954
- Break clauses and notices
- Forfeiture and relief from forfeiture
- Recovery of possession
- Rent arrears
- Dilapidations

- Injunctions to protect the occupiers of commercial premises
- Disputes arising from and advice in relation to the conveyancing of land

**Residential property:** He is often involved in cases involving residential property, both leasehold and freehold.

- Leasehold enfranchisement
- Management of long leases (acting for both landlords and tenants)
- Land Registry fraud
- Disrepair

**Real property and land registration:** David has a busy caseload involving real property disputes.

- Adverse possession
- Trespass
- Boundary disputes
- Easements
- Wayleaves
- Overage agreements

**Mortgages and charges:** David is often involved in cases involving the validity and priority of charges (both legal and equitable) and subsequent enforcement by possession / sale.

Recent examples of David's property work include:

- *Creebray Ltd v Deninson* [2020] UKUT 262 (LC), [2020] All ER (D) 52 (Sep): successfully 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.
- Led by Nicholas Padfield, QC in respect of a railway arches dispute involving the Landlord and Tenant Act 1954, A1P1, estoppel and derogation from grant
- development lease for the construction of a new storey on top of an existing multi-storey residential unit with issues of fire safety
- 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
- A disputed deed of the trust and the circumstances under which such a deed can be disputed (*Basnet v Patel* [2019] UKUT 141 (LC))
- 5-day TCC trial in respect of a quantum meruit arising out of a residential development and option agreement dispute before Stuart-Smith J in January 2018 (*Peacock v Imagine Property Developments Ltd* [2018] EWHC 1113 (TCC))
- Representing a family trust in a complicated dispute over a commercial lease renewal with a split reversion under the Landlord and Tenant Act 1954

- Disputes over prescriptive easements in agricultural land
- *South v McGaan* (QBD, March 2018) – appeal from TOLATA claim on the question of interest following week-long trial involving issues of hybrid commercial / familial investment
- *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. Successfully opposed proprietary claim
- £0.5m commercial dilapidations claim
- *Bichay v Bassaly* (2016, Chancery Division) – three-day trial in the Chancery Division of proprietary estoppel and unpaid vendor's lien involving alleged partnership involving financial transactions in California
- *Ramanathan v Rudra* [2016] EWHC 1062 (Ch) – issues of *Pallant v Morgan* equity, delay and laches arising from a property investment in the 1990s

## ART & CULTURAL PROPERTY

Practising real property, commercial and construction law, David is well placed to advise in respect of private law disputes arising out of art and heritage installations. He is currently undertaking a PhD part time at the University of Cambridge, researching the incorporation of moveable property into land as part of construction operations. He is currently advising in respect of a multi-million pound claim arising out of the construction of a prominent history and heritage centre. As part of his commercial practice, has been instructed in a dispute involving the ownership of fine wines following an insolvency event, where the sale agreement included a retention of title and proceeds clause. David is also regularly instructed by charities and by ecclesiastical bodies in respect of private law disputes arising out of property.

## PROFESSIONAL NEGLIGENCE

- David is regularly instructed in respect of cases involving the alleged liability of professionals, especially where this relates to property development and insurance.
- He has particular expertise in cases involving solicitors (especially in respect of conveyancing or litigation), lettings agents, valuers and insurance brokers.
- He is also instructed to advise in respect of architect's professional negligence cases where there has been a failure to supervise the works or to administer the contract appropriately.

His recent work includes:

- Architect's professional negligence
- Advising in respect of a solicitor's failure to advise in respect of marriage value in the conveyance of leasehold property
- mishandling of litigation for possession of property alleged to have been subject to a number of leases
- Solicitor's professional negligence arising out of a failure to comply with limitation periods and procedural issues in defamation litigation

## INSOLVENCY

David is regularly involved in insolvency litigation arising out of both corporate and personal insolvency. In

particular, he is regularly instructed in cases involving insolvency aspects of construction law, property or cross-border disputes.

Examples of recent insolvency work include:

- Advised a finance company on cross-border insolvency involving an international airline, with issues of mutual dealings, the anti-deprivation rule and conflict of laws.
- Successfully obtained an injunction against both a company and its former director from presenting a winding-up petition against a well-known UK contractor for debts allegedly arising out of construction contracts: *Mulalley and Company Ltd v Regent Building Services Ltd* [2017] EWHC 2962 (Ch).
- Successfully resisting winding up proceedings where a pay less notice was not served in response to an application for payment in reliance on extensive defects and incomplete work arising out of the construction of a new veterinary hospital.
- Advised and represented a group of trustees of a charitable trust who were served with a statutory demand for £1.6m where the Attorney General intervened. The statutory demand was successfully set aside.
- Successfully obtaining a vesting order in respect of a sublessee's interest arising out of a complicated leasehold structure and multiple insolvency events
- Acted for the liquidator in a claim against the former director of the insolvent company and an associated company in claim arising out of alleged wrongful trading, preferences and breach of fiduciary duty.
- Acted on behalf of a Local Authority who resisted the annulment of a bankruptcy order on the grounds that the debtor lacked capacity at the time that the order was made.
- Advised in respect of the effect of disclaimer arising from corporate and personal insolvency, and the resulting application for a vesting order in respect of residential property.
- Advised in respect of a reservation of title clause arising out of the sale of fine wine.

---

## 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)

---

## ADDITIONAL INFORMATION

---

## PUBLIC ACCESS

David is qualified to undertake work on a public access basis.

---

## AWARDS

- 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)
- 

## MEMBERSHIPS

- Fellow of the Chartered Institute of Arbitrators
  - TECBAR
  - Property Bar Association
  - Chancery Bar Association
  - Society of Construction Law
  - Adjudication Society
- 

LONDON

MANCHESTER

SINGAPORE

KUALA LUMPUR

BARRISTERS · ARBITRATORS · MEDIATORS

---

81 Chancery Lane,  
London  
WC2A 1DD  
Tel: +44 (0)20 7832 1111  
DX: London/Chancery Lane 298  
Fax: +44 (0)20 7353 3978

82 King Street,  
Manchester  
M2 4WQ  
Tel: +44 (0)16 1870 0333  
Fax: +44 (0)20 7353 3978

Maxwell Chambers,  
28 Maxwell Road,  
04-03 & 04-04, Maxwell Chamber  
Suites  
Singapore 069120  
Tel: +65 6320 9272

#02-9, Bangunan Sulaiman,  
Jalan Sultan Hishamuddin,  
50000 Kuala Lumpur,  
Malaysia  
Tel: +60 32 271 1085

---