



David Murray

Call date: 2004

Email: dm@fountaincourt.co.uk

Practice Areas

David Murray practises in all areas of commercial law. He is described in the 2011 edition of *Chambers & Partners* as having “**everything it takes to be a future star**” and as “**a commercially astute junior who provides ‘an all-round first-class service’**”. The 2010 edition of the Legal 500 says he has “**an authority beyond his call**”.

David has particular experience in:

- Arbitration
- Aviation
- Banking and financial services
- Civil fraud
- Commercial litigation
- Consumer credit
- Insurance and reinsurance
- Private international law
- Professional negligence
- Sale of goods

Recent Practice

Significant recent cases

- *Stone & Rolls Ltd v Moore Stephens* [2009] UKHL 39, [2009] 1 AC 1391 (House of Lords – auditors’ negligence and the illegality defence)
- *Safeway Stores Ltd v Twigger* [2010] EWCA Civ 1472; [2011] 2 All ER 841 (Court of Appeal – indemnity in respect of criminal penalties)
- *Williams v Lishman, Sidwell, Campbell & Price Ltd* [2010] EWCA Civ 418, [2010] PNLR 25 (Court of Appeal – deliberate concealment under the Limitation Act 1980)

Arbitration

David has considerable experience in both institutional (ICC, LCIA) and ad hoc arbitrations, both as sole advocate and as a junior member of a team.

Recent experience has included acting as sole counsel in two ICC arbitrations – one, in London, concerning the breach of a share sale agreement relating a joint venture company in Dubai; and one, in Paris, concerning the design and manufacture of a grand prix racing motorcycle.

Experience as a junior includes an ICC arbitration concerning a joint venture to design and manufacture gas turbines; the case involved issues of the Tribunal’s jurisdiction as well as the underlying dispute.

David also has experience of acting in court proceedings concerning arbitrations – a recent example is a substantial application to the Commercial Court for a stay of English proceedings in favour of a foreign arbitration. David is currently instructed (as sole counsel) in a case before the courts of the Dubai International Finance Centre, involving an application to dismiss court proceedings there based on an arbitration agreement.



Aviation

David has extensive experience of aviation matters, ranging from small disputes concerning passenger claims and private aircraft to multi-million dollar claims relating to large commercial airliners.

David was recently instructed (with Michael Crane QC and Rosalind Phelps) in a substantial dispute concerning the sale of six Boeing 747 aircraft. The case settled shortly before a 6-week trial in the Commercial Court. He is currently instructed in a High Court claim arising out of a helicopter crash.

David regularly acts for airlines in claims brought by passengers under the Warsaw and Montreal Conventions. He has also advised on a variety of other aviation-related disputes, for example concerning security interests over aircraft and aircraft maintenance disputes. He has been instructed to provide expert evidence for foreign proceedings on the liability in English law of aircraft manufacturers for injuries suffered by passengers in air accidents.

Banking & Finance

David has very substantial experience in all manner of banking and finance disputes. He regularly acts for retail, commercial and investment banks.

On the investment banking side, current instructions include a very substantial Commercial Court dispute between a large investment bank and a European public institution concerning a synthetic CDO transaction, and another substantial Commercial Court dispute concerning the trading of freight derivatives.

David was also recently instructed in a dispute concerning the marketing of a CDO transaction to a Thai financial institution, and a substantial Commercial Court dispute concerning a syndicated loan agreement to a Nigerian telecommunications operator.

On the retail/commercial side, David has extensive experience of bringing and defending claims concerning loans, guarantees, mortgages and other security interests, fraud, breach of mandate, mistaken payments and negligence.

David has extensive experience in defending claims brought against banks under legislation such as the Unfair Terms in Consumer Contracts Regulations 1999 and the Consumer Credit Act 1974 – particularly in relation to bank charges and payment protection insurance. He has also advised in relation to the lawfulness of terms in one of the large banks' standard mortgage contracts.

David also has extensive experience of banking regulation and disputes concerning the application of rules imposed by the Financial Services Authority and other regulators.

Commercial Litigation

David is regularly instructed in all types of commercial and contractual disputes in a wide range of fields, in addition to the banking and finance experience listed above.

He is currently instructed in a dispute before the Commercial Court concerning the alleged breach of a licence agreement by the licensee of a manufacturer of sportswear. Other current instructions include a dispute between the parties to a joint venture agreement concerning alleged breaches of warranties, and a dispute concerning the sale of shares in a property development company.

David was recently instructed in *Safeway Stores Ltd v Twigger* [2010] EWCA Civ 1472; [2011] 2 All ER 841, which raised for the first time the issue of whether a company which has been fined for breaking the law can claim an indemnity for the fine from the employees allegedly responsible for the infringement.

Further recent instructions include a substantial dispute in the British Virgin Islands concerning the ownership of shares in a large mobile phone operator, a Commercial Court dispute concerning the sale and financing of a cargo ship, and a High Court dispute concerning a gold mine in Ukraine.



David has considerable experience of county court and High Court trials and applications, including applications for freezing and other injunctions, and other interim relief. Subject matter has included sale of goods, construction, banking and insolvency.

Conflict of laws

David has been involved in several international commercial disputes raising issues of jurisdiction and choice of law. Recent examples have included an application to the English court for a stay of proceedings in favour of the courts of Uganda on *forum non conveniens* grounds, and an application to the Commercial Court for a stay of proceedings under the European judgments regulation in favour of the courts of Italy. David also has experience of disputes involving significant elements of foreign law.

Consumer credit

David has substantial experience of acting for banks and other financial institutions in claims concerning agreements regulated by the Consumer Credit Act 1974, and claims in relation to payment protection insurance.

Insolvency

David has acted for and advised both individuals and companies on a variety of insolvency matters.

Insurance & Reinsurance

David is regularly instructed to advise on a range of insurance issues, such as coverage disputes and aggregation clauses.

For example, he was recently instructed (with Michael Crane QC and Nik Yeo) in an arbitration concerning the construction of a Lloyd's directors' and officers' liability policy.

Media and entertainment

David acted (with Bankim Thanki QC) for Sheikh Adbulla Al-Khalifa of Bahrain in his High Court claim against Michael Jackson for breach of a recording contract. The case settled in the second week of the trial.

Professional negligence

David has extensive experience of professional negligence claims, particularly in the financial sector. He was instructed (with Michael Brindle QC and Mark Simpson QC) in *Stone & Rolls Limited v Moore Stephens* (House of Lords); [2009] UKHL 39, [2009] 1 AC 1391) which raised for the first time the question whether an auditor can rely on the defence of illegality when sued for failing to detect fraud in the audited company.

David also acted (with Mark Simpson QC) in *Williams v Lishman, Sidwell, Campbell & Price Ltd* (Court of Appeal: [2010] EWCA Civ 418), which concerns numerous points under the Limitation Act 1980.

He is currently instructed by one of the "Big Four" accountancy practices in a Commercial Court claim for negligence in the conduct of financial due diligence.

David has recently been instructed in relation to an auditors' negligence dispute in Hong Kong, and is currently instructed in a solicitors' negligence claim in the courts of the Dubai International Finance Centre.

He is also currently instructed by a large bank in relation to a very substantial claim for negligent investment advice.



David has experience of pursuing and defending solicitors' negligence claims in a range of fields, including negligent drafting of agreements and negligent conduct of proceedings.

Professional regulation

David is regularly instructed by the Solicitors Regulation Authority in a variety of matters, including appeals to the High Court from decisions of SRA adjudication panels, and in judicial review proceedings. Subject matter has included interventions into solicitors' practices, decisions relating to admission to the roll of solicitors, and findings of inadequate professional service against solicitors.

David also acts for the Financial Services Authority, and is currently instructed in relation to judicial review proceedings arising out of penalties imposed by the FSA on a senior member of staff of a major bank.

Education

- MA (Law), Christ Church, Oxford (First Class)
- BCL, Christ Church, Oxford (Distinction and highest mark in the University)
- BVC, Inns of Court School of Law (Very Competent)

Prizes & Scholarships

- Vinerian Scholarship (Oxford University)
- Eldon Scholarship (Oxford University)
- Mansfield Scholarship (Lincoln's Inn)
- Prize for best performance in Restitution BCL paper (Oxford University)
- Prize for best performance in Commercial Law Finals paper (Oxford University)

Appointments

Tutor in law, Christ Church, Oxford, 2004 - 2005

Other experience

Internship at the ICC International Court of Arbitration, Paris, October - December 2005

Pegasus Scholarship, Hong Kong, September - December 2007

David is admitted to practise in the courts of the Dubai International Finance Centre.

Languages

French (fluent)

Interests

Mountaineering, water sports, travel