

## Marilyn Kennedy-McGregor

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Lectured on business computing at The City University Business School and ran her own computer consultancy company before coming to the Bar. Known as a forceful advocate she specialises in commercial and real estate litigation, professional negligence, family provision, contested wills and inheritance claims. She also has in recent years been building an increasingly busy planning and environmental law practice acting for major house builders and property developers.

### Landlord & Tenant

She specialises in landlord and tenant litigation, acting both for landlords and tenants, and she has also been involved in negotiating many satisfactory settlements where the outcome, should the matter proceed to trial, is in doubt. Her work encompasses both residential and commercial property, and she is particularly strong on advising on the strategy to achieve the best result for the client. Marilyn especially enjoys cases where the result may depend on successful cross examination.

### Professional Negligence

Marilyn's specialisation in this area relates primarily to solicitors and surveyors' negligence in property matters. She has acted in many cases, for both the professional and the person alleging negligence, and focuses on achieving the best result for the client, whether that be arrived at by litigation or negotiation, and whether the client is most concerned about damages or about the vindication of a professional reputation.

### Environmental

Marilyn Kennedy-McGregor has advised on and appeared in numerous environmental cases. She was environmental standing counsel for Drinkwater Sabey and subsequently BFI, and has also appeared for construction companies, as well as other waste disposal organisations. Her particular expertise is in defending clients being prosecuted for river pollution, although she also has experience of noise and air pollution. She was counsel for the Defendant in the leading case of *National Rivers Authority v Alfred McAlpine Homes (East) Ltd* [1994] 4 All ER 286, and in the case of *London Waste Regulation Authority v Drinkwater Sabey* (Unreported) Divisional Court 17th July 1996.

### Trusts

She specialises in contentious matters directly or incidentally involving trusts, such as commercial, family and property litigation in which resulting and constructive trusts arise as a matter of law, in particular those where negotiating and advocacy skills are essential. She is also experienced in friendly as well as hostile litigation. In addition she advises on the construction of trust deeds and the effects of all types of trusts in non-contentious matters.

### Wills, Probate and Family Provision:

Again her emphasis is on contentious matters, including construing disputed wills, advising on evidence and strategy, negotiating the best settlement for the client and litigating the question in court. At an early stage this also involves careful consideration of which remedy is most appropriate and cost-effective when, as is frequently the case, the client is uncertain of the advantages of disputing the will or alternatively accepting it and seeking financial provision from the estate.

## Recent Cases of Interest for Marilyn include:

*Daniels v Deville*

*Pickenham Homes Ltd v Pickenham Estates Ltd*

*Bondor Developments Ltd v Samuel Beadie (Properties) Ltd*

*Daniels v Samuel Beadie (Properties) Ltd*

### Joint Ventures - Partnership

**Marilyn Kennedy-McGregor** was involved in this 50 day trial of 4 actions which were heard together, all related to the end of a property joint venture. The parties (both Claimants and Defendants) were the members of a family, a family friend, a number of companies owned or controlled by various of the parties, a firm of solicitors and the administrators of some of the companies. Factually the issues before the court were confused and complex, but there were several difficult legal issues flowing from the nature of the joint venture.

The parties did not agree even on the identity of the joint venturers: the Claimants asserted that the joint venturers were all individuals and that they were in partnership, while the Defendants claimed that the joint venturers were companies owned or controlled by those individuals (known as Participators), whose interest in the joint venture was as shareholders. Mr Justice Lindsay held that it was a hybrid joint venture in which both the Participators and the companies were joint venturers, but that they were not in partnership.

He found some implied terms flowing from this hybrid joint venture:

1. The Participators owed each other a duty of good faith
2. No Participator or joint venture vehicle should place him or itself in a position in which his or its duties to the other joint venturers would conflict with his or its own interests
3. No joint venturer could exploit for his or its own benefit any opportunity acquired as a result of being a joint venturer
4. There was no obligation of any Participator to disclose any information on any development or opportunity which might be suitable for exploitation by the joint venture to some or all or the other Participators
5. Participators could compete with the joint venture
6. No Participator is under any personal obligation to indemnify the joint venture company which raised bank funding for the joint venture and which is now left with bank borrowings in respect of the joint venture.

The learned judge has ordered accounts and inquiries into a number of issues raised during the case, including some which were not pleaded, so as to avoid further litigation between the parties.