

Don McCue

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Don's practice is primarily commercial litigation and arbitration. He also appears in professional negligence cases, partnership and LLP actions, solicitors' disciplinary proceedings and trust litigation.

He is client friendly and known for his ability to assimilate a complex brief and respond rapidly with tactics and strategy, including pre-emptive remedies when required.

He has authored Chambers' bulletins on Partnership law and LLPs (with Edward Cohen), and on SRA investigations and Solicitors' Disciplinary Tribunal proceedings.

He is a mediator with ADR Group.

Contract

He conducts contract litigation and arbitration of all kinds, particularly sale of goods, commercial agency, building and engineering and motor industry cases.

Recent contract arbitrations

- Engineering: **AA vs G**: for claimant in LCIA arbitration. Claim for \$3m unpaid fees for work on a development site in Moscow. Preliminary hearing on jurisdiction and applicable law decided in claimant's favour. Arbitration settled on favourable terms.
- Arbitrage Trading: **X vs Y**: for claimant in 2-week LCIA Arbitration. Claim for €18 million arbitrage profits lost as a result of D wrongly suspending claimant from LLP.

Recent contract cases

- Engineering: **Delphi Diesel vs Tyco Electronics**: for claimant: claim for £900,000 loss caused by a defective fuel pump component supplied by D. D agreed two days before 8-day trial to pay 90% of claim plus costs.
- Construction: **Countrywide Construction Ltd vs Eurasian Aviation**: for claimant: claim for substantial monies owed after wrongful expulsion from site when job nearly finished. Counterclaim for defective design, delay, and defective workmanship. Claim upheld and counterclaim dismissed.
- Economic Duress: **Opel/Renault vs Mitras Automotive**: for claimant in claim for recovery £520,000 paid to D, a supplier, under duress (threat to stop supplying part). Claimant succeeded at trial.
- Construction: **London Borough of Islington vs Makers UK**: for LBI in claim for defective design and construction of "green roof" over car park. Settled a week before trial by payment of most of claim plus costs.
- Construction: **Orchard Construction vs Gallant**: for claimant, a small building partnership which had been excluded from site owed £300,000. Full recovery after 9-day trial.

Professional negligence

He acts for and against lawyers, accountants, architects and surveyors.

Recent professional negligence cases

- **W vs CB and P**: for claimant: action against a prominent London matrimonial firm and a matrimonial specialist QC for negligent ancillary relief advice.
- **W vs P**: claim against solicitors. Serious problems with liability, quantum, and especially limitation. Good settlement at mediation.

Partnership

- **Luper vs Lewis Nedas & Co**: for defendant firm contesting former partner's claim to fix firm with liability to Legal Services Commission for clawback of overpayments. At trial claimant capitulated after three days, abandoning claim and paying D's costs.
- **Patel vs Patel**: for claimant, widow of a partner, claiming for account. Main issue D's counterclaim for repayment of large sums he allegedly paid into partnership. Counterclaim failed at trial and Court of Appeal dismissed D's appeal.

Disciplinary proceedings

He has acted for a number of solicitors accused of misconduct, including the two respondents in **Re Beresford and Smith** (SDT, December 2008), the most high-profile of the Coal Health Compensation Schemes cases.

His bulletin on the growth of regulation affecting solicitors, SRA disciplinary investigations and Solicitors Disciplinary Tribunal proceedings was published in October 2009. He has given a series of talks on the SRA Code of Conduct 2011.

Trust litigation

Dishonest assistance: **Starglade Properties Ltd v Nash [2010] EWCA Civ 1314**: for D, who controlled a company which received and dealt with a fund which, unbeknownst to D, was impressed with a trust. Claim failed at trial but C's appeal allowed: a person is guilty of dishonest assistance in a breach of trust - even if unaware of the existence of the trust - if he assists in what is in fact a breach of trust and his conduct was dishonest as objectively determined by the court. See Don's article, first published in *Trusts and Trustees*, Vol 17 No. 2, March 2011, on the 11SB website.

Cohabitee beneficial interest disputes

He has acted in a number of cohabitee beneficial interest claims. In **Mannion v Boyd (2011)** he appeared for the claimant, who established interests in two properties and recouped via equitable accounting a sum she had paid to the Respondent to enable him to purchase a shareholding in his company.

Other

He has been in a number of Supreme Court Costs Office "costs war" cases (challenges to validity of CFAs), including **Myatt vs National Coal Board [2007] 1 WLR 554 sub nom Garrett vs Halton Borough Council: CA**.

Scopelight Ltd vs Chief of Police of Northumbria and Federation Against Copyright Theft: for claimant (file-sharing site). Don submitted that once the CPS has decided not to bring a public prosecution, the police statutory power to retain seized property (PACE s22) does not permit police to retain it for the benefit of a person (FACT) bringing a private prosecution. Submission upheld at first instance, but reversed in the Court of Appeal.