

## Don McCue

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Education: MA (Cantab)  
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### General Profile:

Don conducts heavy contract litigation of all kinds, including Technology and Construction court cases. He also appears in professional negligence cases, partnership and LLP actions, disciplinary proceedings, and cohabitee property disputes.

He is co-author of chambers bulletins on partnership law and LLPs, and author of a chambers bulletin on regulation of solicitors, SRA investigations and Solicitors' Disciplinary Tribunal proceedings

Don 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.

### Contract:

Don specialises in contract litigation of all kinds, particularly building and engineering, motor industry and sale of goods cases.

### Recent Contract cases:

#### Countrywide Construction Ltd vs Eurasian Aviation. TCC

The client was Countrywide (C), a builder which carried out a lot of work for D constructing a large residential dwelling, and was expelled from the site when the job was close to completion and it was owed substantial sums. There was no proforma building contract. D defended and counterclaimed, alleging that C was responsible for defective design, delay, and defective workmanship. At trial the Judge upheld C's claim in full and dismissed the counterclaim.

#### Opel/Renault vs Mitras Automotive: economic duress

Don represented Opel/Renault, manufacturer of the Vivaro van. Mitras was sole supplier of the front bumper mount for the van on "just-in-time" stocking terms. On discovering that Opel/Renault planned to terminate the contract Mitras demanded sums totalling £520,000, to which it was not contractually entitled, and threatened to cease supply if the demand was not met. This would have brought the production line to a stop within hours, causing £1 million per day loss. Opel/Renault capitulated and paid up. Some months later, after Mitras had been replaced as a supplier, on Don's advice Opel/Renault sued to recover the money on the basis that it had been extracted under economic duress. Mitras fought the case throughout. At trial Opel/Renault succeeded in full.

#### Orchard Construction vs Gallant

Don acted for C, a small building partnership which had been excluded from site owed £300,000. After a 9-day trial in TCC C recovered the monies owed plus costs.

#### Delphi Diesel vs Tyco Electronics

Don acted for Delphi, claiming £900,000 for loss caused by a defective component, manufactured by Tyco, in diesel fuel pumps which Delphi manufactured and sold to DAF trucks. After vigorously defending on all fronts Tyco agreed two days before 8-day trial in TCC to pay 90% of Delphi's claim, plus costs

## Professional Negligence:

Don conducts professional negligence actions for and against lawyers, accountants, architects and surveyors. He is experienced at anticipating and formulating responses to the causation, quantum and limitation defences often advanced by PI insurers' solicitors.

## Recent Professional Negligence cases:

### W vs CB and P.

Acted for the Claimant in an action against a prominent London matrimonial firm and a matrimonial specialist QC for negligent ancillary relief advice.

### W vs P

Acted for the Claimant in a difficult claim against former solicitors. Serious problems with liability, quantum, and especially limitation. Don secured an excellent settlement at the mediation after a prolonged debate about limitation.

## Partnership and Disciplinary Proceedings:

Don is experienced in partnership actions, and jointly with Edward Cohen, the Head of Chambers at 11 Stone Buildings, is the author of bulletins, and gives lectures, on partnership law and LLPs.

He appeared for the respondents in **Re Beresford and Smith**, a highly-publicised case in the SDT in late 2008 arising out of the Coal Health Compensation Schemes.

His bulletin on the growth of regulation affecting solicitors, SRA disciplinary investigations and Solicitors Disciplinary Tribunal proceedings was published in October 2009

## Recent Partnership cases:

### Luper vs Lewis Nedas & Co.

Don represented Lewis Nedas & Co. C had previously run his own firm, which merged with D for a trial period of a few months, which proved unsuccessful. After demerger D looked after C's old case files in a storage facility. Subsequently it emerged that C's old firm had potential heavy liabilities to the Legal Services Commission for clawback of overpayments on legal aid cases. The proceedings were C's attempt to fix D with this liability. At the trial, C capitulated after three days and agreed effectively to abandon the claim and pay D's costs.

### Patel vs Patel. Central London County Court (Chancery List)

A case which raised a difficult limitation point. Don represented Mrs. Patel (C). Her late husband and D, his brother, were in partnership. When C's husband died in July 1996 C stepped into his shoes and helped run the shop; a new partnership. But there were never any termination accounts for the first partnership and the trading accounts carried on with no adjustment. The second partnership was dissolved in 2000 when the shop was sold. When C sued for an account D counterclaimed saying he made large payments into the first partnership in the early 1990s, for which Mrs Patel was liable. This case failed on the facts save as to a £24,000 book transfer in 1991, in respect of which the Judge held that D was owed £24,000 by the first partnership but that the claim was statute-barred. The Court of Appeal granted permission to appeal, but the appeal was dismissed

## Beneficial Interest of Cohabitees

Property disputes between former cohabitees are decided according to property and trust principles, and the law is almost entirely judge-made. The cases are numerous and the principles shift over time. Don has been advising and appearing in these cases for many years

### Reilly vs Beckett.

The main issue was the beneficial interest in four residential investment properties bought during 17 years' cohabitation. Effectively, three were in the name of Don's client Mrs Beckett, and one was in Mr Reilly's name with an express declaration of trust in favour of Mrs Beckett. Cash inputs to purchases came from Mrs Beckett's savings accounts, but Mr Reilly claimed a 50% beneficial interest in those accounts. Mr Reilly had done quite substantial renovation work on at least two of the properties. He alleged that the properties were a joint venture. Mr Reilly's case failed, and the investment properties were found to be wholly owned by Mrs Beckett. The House of Lords case **Stack v Dowden** (which became available

halfway through the hearing) though it is a joint-name case, has much in it which is relevant to sole-name cases, and may have added to the complexity of the law in sole-name cases by its critical comments on Lord Bridge's classic threshold requirement in *Lloyds Bank v Rosset*.

### Other:

Don has been involved in a number of Supreme Court Costs Office cases involving challenges to the validity of Conditional Fee Agreements, including the Court of Appeal case *Myatt vs National Coal Board [2007] 1 WLR 554* sub nom Garrett vs Halton Borough Council.

In *Scopelight Ltd vs Chief of Police of Northumbria and Federation Against Copyright Theft* (QBD April 2009: Sharpe J) Don successfully argued that once the CPS has decided not to bring a public prosecution, the statutory power of police to retain seized property under section 22 of PACE does not permit them to retain it for the benefit of a person (FACT) which is bringing a private prosecution.