



Dermot Woolgar



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# Contents

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International Commercial Arbitration .....	1
Selected Cases .....	2
Commercial .....	3
Commercial Law .....	3
Injunctions .....	3
Banking & Financial Services .....	4
Bankruptcy & Insolvency Law .....	4
Selected Cases .....	4
Construction & Engineering .....	6
Selected Cases .....	6
Professional Liability .....	7
Selected Cases .....	8
Property Damage .....	9
Selected Cases .....	9
Insurance & Reinsurance .....	9
Selected Cases .....	10
Overseas Territories Work .....	10
Selected Cases .....	10
Qualifications .....	12
Memberships .....	12
Publications .....	12
Recommendations .....	13

"Dermot is one of the most methodical barristers I have ever come across. He is positive in his advice and has an excellent calming manner which is very reassuring to clients."  
(Legal 500, 2021)



+44 (0)20 7797 8100

woolgar@crownofficechambers.com

Dermot Woolgar has an extensive and diverse civil and commercial practice, with particular expertise in the fields of international commercial arbitration, commercial law, construction and engineering, professional liability, insurance, and property damage.

As a result of his early years undertaking commercial chancery work, he continues to be instructed in cases which have real property and insolvency aspects.

In addition, he has acted for nearly 20 years for many of the Governments of the Overseas Territories, typically in a variety of public law-related disputes, and has a detailed knowledge of their constitutions, courts and substantive laws.

He is recommended as a leading practitioner by the Legal 500. He is described as *"very personable, breeds confidence in all who instruct him and clients alike"*. He is praised for having *"an excellent calming manner which is very reassuring to clients"*, for being *"one of the most methodical barristers I have ever come across"*, and he is recognised for his advocacy: *"when sat in court you nearly always think you have instructed the superior counsel"*.

## International Commercial Arbitration

Dermot has a wide international commercial arbitration practice, reflecting his diverse areas of expertise and interest.

He is instructed in disputes concerning the international sale of goods, manufacturing and product liability, mergers and acquisitions, joint venture agreements and restructurings, shareholder agreements, distribution and agency agreements, insurance, banking and financial services, construction and engineering, information technology, international transport, shipping, fishing, and professional liability.

He has been instructed in disputes that have required the application of the substantive laws of a variety of common and civil law jurisdictions, including France, Italy, Germany, Austria, Switzerland, Luxembourg, Slovakia, the Isle of Man, Cayman Islands, BVI, Turks and Caicos Islands, Gibraltar, India, Botswana, Ethiopia, Saudi Arabia, Oman and the UAE.



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He is familiar with many institutional arbitral rules (particularly ICC, LCIA, SIAC, VIAC, SCC, and LMAA) and his expertise extends to the arbitral rules of many commodities trade associations (including GAFTA, FOSFA, the International Cotton Association, and the British Coffee Association).

He has significant experience of jurisdictional challenges and conflicts of laws issues, including issues arising under the Brussels and Rome Conventions.

He also represents clients in arbitration-related court proceedings before the English domestic courts (the Commercial Court, the Technology and Construction Court and the Court of Appeal).

## Selected Cases

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- Acting for shareholder of offshore superyacht management business, contesting unilateral acquisition of shareholding by majority shareholder under buy-out provisions in a shareholders' agreement on the grounds that the shareholder was in breach for having established a competing business several years previously. Issues included proper construction of shareholders' agreement; whether majority shareholder had complied with the steps for a lawful buy-out as laid down in the shareholders' agreement; whether a share valuation had been obtained by the majority shareholder validly in accordance with shareholders' agreement; and whether the disputes between the parties were suitable for early determination (LCIA rules, Isle of Man law, London seat)
- Acting for UK software company, in dispute with a substantial US corporation under a shareholders' agreement, arising from its failure to disclose to its US shareholder a purchase offer received from a competitor of the US shareholder, allegedly in breach of US shareholder's information rights (Ad hoc, English law, London seat)
- Acting for a former shareholder who, after acquiring a 50% shareholding in a UK company under the terms of an SPA, acquired the remaining shares, which were sold for a sum several times greater than the price paid; dispute as to whether anti-embarrassment clause was incorporated in SPA and, if it was, its meaning and effect (Ad hoc, English law, London seat)
- Acting for corporate borrower, operating in automotive and aviation sectors, and borrower's directors who were limited recourse guarantors, seeking to enforce convertible loan agreement against investor; CLA provided for conversion of debt into equity in the borrower's holding company following its incorporation and its acquisition of the borrower's IP rights; limited recourse guarantors obliged to procure issue of preference shares in holding company in favour of investor; dispute as to whether CLA exhaustively defined rights attaching to preference shares and, if not, whether it conferred an option on the investor to refuse to take preference shares and to elect instead to demand repayment of the loan and interest (VIAC rules, Slovak and Luxembourg law, Vienna seat)
- Acting for leading cotton arbitrator in the Commercial Court challenging "the 3 and 8 rule" of the International Cotton Association which limits the number of appointments that ICA arbitrators may accept, on the grounds that both limbs of the rule are unenforceable at common law for being in restraint of trade (*Aldcroft v International Cotton Association* [2017] EWHC 642 (Comm) [2018] QB 725 [2018] 1 All ER (Comm) 721 [2017] 1 Lloyd's Rep 635)
- Acting for an English buyer in ICC proceedings in Delhi in a c£20m product liability/cross-border sales dispute with an Indian manufacturer concerning the design and manufacture of miniature circuit breakers (ICC rules, English and Indian law, Delhi seat)
- Advising defendants, including substantial US manufacturer, being sued in the Bombay High Court for unpaid commission of EUR400k and damages of INR40m as to merits of anti-suit injunction from Commercial Court in London on the basis of an arbitration agreement between one of the

- defendants and the plaintiff which provides for ICC arbitration of disputes in London
- Advising German manufacturer/designer of evaporation cooling system installed in steel plant in South Wales to recover EUR3.8m outstanding from purchaser; purchaser defending claim on grounds that system was performing inadequately and as a result had cross-claim against manufacturer for damages for breach of contract of approximately EUR3m (ICC arbitration, English law, London seat)
  - Acting for English company in Commercial Court on application for interim, and then permanent, anti-arbitration injunction to restrain Dutch supplier of almond meal from pursuing an arbitration before a specialist Board of Arbitration in the Netherlands, in breach of an arbitration agreement which provided for the arbitration of disputes before a specialist tribunal in England; related applications concerning the contempt of the respondent arising from its failure to obey interim injunction. Subsequently successfully represented the English company before the Board of Arbitration in Amsterdam and before an Appeal Board of Arbitration in Rotterdam. (*Whitworths Ltd v Synergy Food Ingredients & Processing BV* [2014] EWHC 4239 (Comm))
  - Acting for legal consultancy in Commercial Court seeking to resist freezing injunction in aid of arbitration proceedings. Subject matter of freezing injunction was defendant's alleged holding in a Kazakh cement company and monies lodged in support of bank guarantees to support related proceedings brought by the defendant in New South Wales. Major issue was whether claimant had obtained bank guarantees from a defendant in the Australian proceedings in breach of the *Harman* undertaking (the implied undertaking against the collateral use of documents obtained in litigation) (*Emmott v Michael Wilson & Partners Ltd* [2013] EWHC 3690 (Comm))
  - Acting in a domestic arbitration in connection with a bonus dispute arising out of a consultancy agreement, and in ensuing challenge and cross-challenge before the Commercial Court concerning breaches of the arbitrator's section 33 powers and duties (*Omnibridge Consulting Ltd v Clearsprings (Management) Ltd* [2004] EWHC 2276 (Comm) [2004] ArbLR 48)

## Commercial

Dermot undertakes a wide range of commercial disputes, principally in the following fields:

### Commercial Law

All aspects, but especially domestic and international sale of goods and associated product liability disputes, agency including commercial agents disputes, contracts of guarantee and indemnity, confidentiality, directors' duties, employment contracts, contracts in restraint of trade, conflicts of laws, franchise agreements, carriage of goods, insurance, asset leases and mortgages of chattels, shareholder disputes.

### Injunctions

Dermot regularly advises, and appears as advocate in the High Court, in connection with applications for injunctions and other forms of urgent relief. Typically these are applications for domestic and worldwide asset freezing orders, search orders, anti-suit and anti-arbitration injunctions, applications to restrain actual or threatened conduct in breach of contract, applications to enforce employment covenants, applications to restrain the presentation or advertisement of winding up and bankruptcy petitions, and



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applications to restrain activities in breach of regulatory regimes such as that under FSMA 2000.

## Banking & Financial Services

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Most aspects including bank's duties, banking securities, investment advice, cheques and other negotiable instruments, mortgagees' duties, financial mis-selling claims, consumer credit, and FSMA-regulated activities (for example applications for guidance, collective investment schemes, deposit-taking, prohibitions on financial promotions, and the regulatory obligations of insurers and insurance intermediaries).

## Bankruptcy & Insolvency Law

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Most aspects of both personal and corporate insolvency, including individual and company voluntary arrangements, administration and receivership.

## Selected Cases

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- Acting for shareholder of offshore superyacht management business in obtaining urgent interim injunction from the High Court of the Isle of Man compelling majority shareholder to return shares which it had unilaterally acquired from the shareholder purportedly in the exercise of buy-out provisions in a shareholders' agreement, pending arbitration proceedings by the shareholder contesting the majority shareholder's claims (*Tobin v Döhle (IOM) Limited & Anr* [2020] [\[judgment\]](#))
- Acting for three former employees of claimant energy broking business in substantial Chancery Division £multi-million dispute arising from their unlawful acquisition of significant quantities of confidential information copied from the claimant's database and their commercial exploitation of that information by means of a competitor energy broker. Issues included how to search the data that was acquired during the execution of a search order/imaging order without infringing privilege and without acquiring the defendants' own confidential information; scope and reasonableness of restrictive covenants; and valuation of negotiating damages.
- Acting for Swedish oil procurement company in claim in Commercial Court against US supplier seeking to recover EU customs duty paid following the importation of Libyan low sulphur fuel oil supported by certificates of origin which were subsequently identified as invalid under EU Generalised System of Preferences. Issues included effect of force majeure clause, and whether s26 of UCTA (which would have precluded an exclusion of consequential loss clause in D's terms from being subjected to the test of reasonableness in s3 of UCTA) unlawfully discriminated against C contrary to Art.18 of TFEU.
- Acting for leading cotton arbitrator in the Commercial Court challenging "the 3 and 8 rule" of the International Cotton Association which limits the number of appointments that ICA arbitrators may accept, on the grounds that both limbs of the rule are unenforceable at common law for being in restraint of trade (*Aldcroft v International Cotton Association* [2017] EWHC 642 (Comm) [2018] QB 725 [2018] 1 All ER (Comm) 721 [2017] 1 Lloyd's Rep 635)
- Acting for the Financial Conduct Authority in a series of cases restraining the activities of several "boiler room" businesses operating unlawfully in the UK, typically by engaging in unauthorised deposit-taking, establishing and operating unauthorised collective investment schemes, communicating inducements, and making false statements. Acting for FCA in ensuing applications for compulsory winding-up orders pursuant to s367 of FSMA.

- Acting for English company in Commercial Court on application for interim, and then permanent, anti-arbitration injunction to restrain Dutch supplier of almond meal from pursuing an arbitration before a specialist Board of Arbitration in the Netherlands, in breach of an arbitration agreement which provided for the arbitration of disputes before a specialist tribunal in England; related applications concerning the contempt of the respondent arising from its failure to obey interim injunction. (*Whitworths Ltd v Synergy Food Ingredients & Processing BV* [2014] EWHC 4239 (Comm))
- Acting for claimant against various companies within an IFA group in respect of allegedly defective advice concerning tax avoidance film partnership and music recording artist partnership schemes. Complaints included inadequate steps to establish the client's objectives and his attitude to investment risk; whether or not misrepresentations had been made to the client about the extent to which the schemes had HMRC approval; whether or not there had been manipulation of forms after they had been completed by the claimant; and as to the extent of liability under s39 of FSMA (*Page v Champion Financial Management Ltd & Ors* [2014] EWHC 1778 (QB))
- Acting for legal consultancy in Commercial Court seeking to resist freezing injunction in aid of arbitration proceedings. Subject matter of freezing injunction was defendant's alleged holding in a Kazakh cement company and monies lodged in support of bank guarantees to support related proceedings brought by the defendant in New South Wales. Major issue was whether claimant had obtained bank guarantees from a defendant in the Australian proceedings in breach of the *Harman* undertaking (the implied undertaking against the collateral use of documents obtained in litigation) (*Emmott v Michael Wilson & Partners Ltd* [2013] EWHC 3690 (Comm))
- Acting for wealthy Russian national seeking to set aside asset-freezing injunction in aid of proceedings in another court in which solicitors were suing for unpaid fees and disbursements
- Acting for French company, owner of substantial chateau and grounds, to vary terms of asset-freezing order to enable property to be sold and for directions as to application of proceeds of sale
- Acting for palletised transport distribution services company seeking to resist application to restrain implementation of its notice purporting to terminate its contract with the claimant on the grounds that services had not been provided to contractual KPIs
- Acting for claimant in c£10m breach of contract claim arising from decision of national coach operator to terminate contract to provide coach services on the ground of alleged failures to comply with relevant EU regulations concerning drivers' hours
- Acting for the Isle of Man liquidator of an historical member of the Merchant Navy Officers Pension Scheme as to whether he should admit in the liquidation a proof of debt from the trustees of the scheme in respect of the member's liability to contribute to a significant deficit in the pension fund following court-approved amendments to the scheme's rules and, if the proof should be admitted, in what amount. Case concerned the proper construction of the amendments to the scheme rules and whether they were intended to impose liability in effect retrospectively for a deficit that had accrued after the member had ceased to be under any obligation to make contributions to the scheme, and the evaluation of the scheme's actuary's calculations of the extent of the deficit, the sums required to make good the deficit, the member's share of that sum, and interest.
- Acting for claimant in c£2m claim for breach of contract against national coach operator in respect of early termination of contracts to provide coach services from Midlands to 3 London airports. Complex issues about construction of contracts, and in particular the dispute escalation and termination provisions, and the use of performance evidence to justify the decision to terminate.
- Acting for financial services company defending claim for allegedly negligent mis-selling of equity release product.
- Advising residential property plc as to whether investment arrangements, which were used to fund the acquisitions of residential properties as part of a substantial, national, equity release scheme were unregulated collective investment schemes.

- Acting for goods-in-transit insurers in successful claim against sub-carriers to recover outlay where insured's title to goods which were the subject of an FOB contract of sale was possessory only. Also involved questions about limitation of liability under the RHA Conditions of Carriage and common law obligations of carriers of abnormal loads.
- Advising fashion designer in connection with a dispute concerning the construction of an option in a franchise agreement relating to the territory of Hong Kong and its effect on proposed franchises relating to China.
- Acting for company suing former director for account of profits and damages arising from alleged breach of fiduciary duty in diverting business opportunities to his own business. Issues involved extent of a departing director's duties pending expiry of notice of resignation (*Foster Bryant Surveying Ltd & Anr v Bryant & Ors* [2006] EWHC 1232 (QB))
- Acting for director in substantial Chancery Division claim by syndicate of banks for misrepresentation arising from MBO of pharmaceutical business
- Acting for brewers at trial and subsequently in Court of Appeal seeing to enforce a charge against two sureties, who sought to defend the claim inter alia on the grounds that they had been released from the charge by reason of the implementation of an IVA by the principal debtor. Issues involved included undue influence of principal debtor and misrepresentation. (*Greene King plc v Stanley & Anr* [2001] EWCA Civ 1966 [2002] BPIR 491)

## Construction & Engineering

Dermot's construction and engineering practice covers the full spectrum of disputes that arise in this field. He acts and advises in disputes concerning the proper interpretation and application of contract terms (including the terms in the main standard form JCT, NEC, FIDIC and ICE contracts), in loss and expense claims, in defective work and final account disputes, and in disputes concerning delay and disruption. He is regularly engaged in adjudications, especially those of a more significant nature requiring the marshalling and analysis of substantial amounts of evidence. He is often engaged in disputes which have real property or insolvency-related aspects, because of his knowledge and experience from his earlier years in practice undertaking commercial chancery work.

He is a former co-author of the chapter in Emden's Construction Law on construction insolvency.

He is listed as a leading practitioner in the field of Construction in the Legal 500.

## Selected Cases

- Acting for trustees of property fund resisting claim that the failure to achieve practical completion of a specialised engineering facility by the long stop date in an Agreement for Lease entitled the proposed tenant to rescind the AFL; trustees claiming that the proposed tenant's refusal to enter into the lease following the certification of practical completion entitled them to repudiate the AFL, and to seek substantial damages.
- Acting for national provider of property maintenance services to the public sector in adjudication seeking balance of £3.7m said to be unpaid in respect of a £50m NEC3 ECC contract with a local authority, relating to works carried out to 1400 properties over a 4-year period. Issues included proper valuation of works, extent of works undertaken, relevance of contemporaneous records versus recent re-measurements, and lawfulness of retention in absence of a retention clause in the



contract.

- Acting for property developer seeking specific enforcement of an Agreement for Lease relating to two purpose-built student accommodation blocks; proposed tenant resisting claim on grounds that buildings suffered from extensive defects and was therefore not practically complete by the long stop date in the AFL. Proposed tenant claimed that the certificate of practical completion was invalid and should be set aside. Proposed tenant counterclaimed for £multi-million damages. Developer brought consequential Part 20 proceedings against the building contractors, the employers agent, and M&E subcontractors. (*Plymouth (Notte Street) Ltd v Mears Ltd* [2019] EWHC 2185 (TCC))
- Acting for the property fund freehold proprietor of the Beetham Tower in Manchester sued by the lessee of the Hilton Hotel for specific performance of the landlord's repairing covenants in the lease of the hotel, so as to compel it to repair defects in the glazing panels throughout the façade of the building. Issues involved the adequacy of the repairs already undertaken, the sufficiency of a regular inspection and maintenance regime, and the extent to which aesthetic considerations bear on the proper construction of repairing obligations. (*Blue Manchester Ltd v North West Ground Rents Ltd* [2019] EWHC 142 (TCC))
- Acting for the successful property developer respondent at trial in the TCC and subsequently in the Court of Appeal, in which the Court of Appeal considered the meaning of "practical completion" in English law for the first time in 50 years and held that trifling patent defects, even if irremediable, do not prevent the certification of practical completion (*Mears Ltd v Costplan Services (South East) Ltd & Ors* [2018] EWHC 3363 (TCC) and [2019] EWCA Civ 502)
- Acting for a national contractor in resisting a claim in adjudication brought by an employer for sums in excess of £1.3m allegedly overpaid during the course of a 5-year measured term JCT contract, as a result of alleged overcharging. Contractor denied overcharging and counterclaimed for £1.6m still unpaid and outstanding. Issues involved whether payments made on interim applications were subject to review when determining the final account in the absence of any pay less notices. The contractor was successful both in defeating the claim and on its counterclaim.
- Acting for property developer of part-commercial, part-residential, building destroyed by fire, seeking specific performance of the architect's obligation to execute collateral warranties in favour of the building's residential lessees. The terms of the warranties included restrictions on the architect's liability to the beneficiaries and the architect's PI policy excluded liability for most claims arising out of a collateral warranty. The spread of the fire was alleged to have been greater than it would have been but for design errors on the part of the architect. The court was required to determine the architect's PI insurers' contentions that the architect would be entitled to rely on the contributory negligence of the contractor as a partial defence to any claim under the warranties (*Oakapple Homes (Glossop) Ltd v DTR (2009) Ltd (In Liquidation) & Ors* [2013] EWHC 2394 (TCC))
- Acting for construction company concerning allegedly negligent design, failure to warn, and defective works at a new marina.
- Acting for UK/Malaysian steel fabricators in claim against Malaysian steel suppliers for defective goods and delays in delivery.

## Professional Liability

Dermot regularly acts in a wide range of professional negligence claims. Because of his long experience in commercial, chancery and property-related disputes, his cases predominantly concern claims in these and related fields. He advises in connection with, and conducts claims, concerning solicitors, barristers and licensed conveyancers; surveyors, valuers, planning consultants and architects; financial advisers, accountants, and other finance professionals; brokers and other insurance professionals.

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## Selected Cases

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- Defending accountants in claims from former clients alleging that they were negligently advised to enter a scheme in order to obtain business premises renovation allowance and thereby reduce income tax liabilities.
- Acting for the commercial tenant of large office premises in £multi-million claim against solicitors for damages arising from the failure of the solicitors to draft an effective break notice, which would have terminated the head lease 10 years before its expiry by effluxion of time.
- Acting for freehold proprietors and their insurers of substantial part residential and part commercial/retail building in action against construction company and building design company under Defective Premises Act 1972 and in negligence concerning defective design and construction of primary and secondary supports for mechanical, electrical and public health installations and fire stopping system that caused fracturing of soil vent pipes and substantial flooding; additional claim against architects under Defective Premises Act and in negligence for failing to reject design.
- Acting for proprietors of newly-constructed townhouse against construction company under Defective Premises Act for failures concerning capping off of drainage pipe which permitted entry of waste into the property on the failure of a pumped waste collection system.
- Defending solicitor-executor in claim by beneficiary of valuable estate under Inheritance (Provision for Family and Dependants) Act; solicitor-executor alleged to be personally liable for consequences of premature distribution of substantial part of estate and for failing to adopt a neutral stance; related claims for alleged negligence concerning failure to give advice about deed of variation to minimise exposure to IHT.
- Acting for claimant against various companies within an IFA group in respect of allegedly defective advice concerning tax avoidance film partnership and music recording artist partnership schemes. Complaints included inadequate steps to establish the client's objectives and his attitude to investment risk; whether or not misrepresentations had been made to the client about the extent to which the schemes had HMRC approval; whether or not there had been manipulation of forms after they had been completed by the claimant; and as to the extent of liability under s39 of FSMA. Case is reported on a procedural issue – whether a default judgment against one defendant is binding on another defendant in the same action (*Page v Champion Financial Management Ltd & Ors* [2014] EWHC 1778 (QB))
- Acting for accountants defending counterclaim alleging negligent preparation of financial statements for parent company which allegedly overstated profits of subsidiary and thus related fee/commission arrangements between parent and subsidiary; issues included content of client's instructions and scope of retainer, including extent to which accountants were under obligation to investigate the client's instructions.
- Acting for accountants defending counterclaim from former client alleging negligent advice in connection with distribution of trust assets allegedly resulting in shortfall in trust assets to cover client's personal liabilities as trustee.
- Accountants claiming unpaid fees; client defending claim and counterclaiming on basis that directors had been exposed to personal claims for breach of warranty in share purchase agreement as a result of failure of accountants to give accurate advice during negotiations
- Acting for property developers in claim against solicitors, architects and planning consultants arising from allegedly negligent conduct of purchase of, and subsequent residential redevelopment of, former commercial site.
- Acting for company in successfully mediated claim against firm of surveyors appointed by insurers for negligent insurance valuation concerning commercial premises subsequently damaged by fire.

- Acting for London hotel proprietors in claim against solicitors for negligent advice in connection with the purchase of a hotel.
- Advising mortgagees in connection with claim against surveyors for allegedly negligent overvaluation of residential property.
- Advising landlord in connection with claim against former managing agents for failing to warn of disrepair.
- Advising Dutch company on merits of claim against liquidators for misfeasance.
- Claim against trading standards department of local authority for allegedly negligent advice concerning regulations governing operation of an unlicensed slaughterhouse.
- Claim against insurance brokers concerning advice given in connection with completion of proposal for critical illness insurance.
- Claim against solicitors concerning failure to warn purchaser of agricultural and development property about public rights of way.
- Claim against solicitors concerning allegedly negligent disposal of share portfolio.

## Property Damage

Dermot has extensive experience of property damage cases arising from floods, fire, explosions, landslips, heave and subsidence.

### Selected Cases

- Acting for property developer of part-commercial, part-residential, building destroyed by fire, seeking specific performance of the architect's obligation to execute collateral warranties in favour of the building's residential lessees. The terms of the warranties included restrictions on the architect's liability to the beneficiaries and the architect's PI policy excluded liability for most claims arising out of a collateral warranty. The spread of the fire was alleged to have been greater than it would have been but for design errors on the part of the architect. The court was required to determine the architect's PI insurers' contentions that the architect would be entitled to rely on the contributory negligence of the contractor as a partial defence to any claim under the warranties (*Oakapple Homes (Glossop) Ltd v DTR (2009) Ltd (In Liquidation) & Ors* [2013] EWHC 2394 (TCC))
- Acting for defendant oil companies in relation to various substantial commercial property damage and business interruption claims arising out of the Buncefield Oil Storage Depot explosion.
- Advising property investment company as to merits of potential claims for loss and damage arising from failure of defendant fully to implement environmental remediation works on substantial commercial / retail site.

## Insurance & Reinsurance

All aspects of non-marine insurance, including disputes concerning the construction of policy conditions, materiality of non-disclosure, extent of insurable interests, fraudulent claims, subrogated claims and general coverage disputes.

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## Selected Cases

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- Acting for property developer of part-commercial, part-residential, building destroyed by fire, seeking specific performance of the architect's obligation to execute collateral warranties in favour of the building's residential lessees. The terms of the warranties included restrictions on the architect's liability to the beneficiaries and the architect's PI policy excluded liability for most claims arising out of a collateral warranty. The spread of the fire was alleged to have been greater than it would have been but for design errors on the part of the architect. The court was required to determine the architect's PI insurers' contentions that the architect would be entitled to rely on the contributory negligence of the contractor as a partial defence to any claim under the warranties (*Oakapple Homes (Glossop) Ltd v DTR (2009) Ltd (In Liquidation) & Ors* [2013] EWHC 2394 (TCC))

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## Overseas Territories Work

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Since 2003 Dermot has acted for, and advised, many of the Governments of the Overseas Territories in connection with a wide variety of matters, ranging from election petitions to constitutional rights, from commercial fishing disputes to employment issues. He has an extensive knowledge of the constitutions, substantive laws, and courts, of many of the OTs. Predominantly his work in this field is in public law disputes of one kind or another.

As a result of his work in this field, he has been recognised as a leading practitioner in the field of administrative and public law by the Legal 500.

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## Selected Cases

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- Acting for Falkland Islands Government in judicial review proceedings before the Supreme Court of the Falkland Islands defending challenges to decisions by the Principal Immigration Officer, upheld on appeal by the Governor after consultation with Executive Council, to revoke the work permits of the applicants on the grounds that they had each been convicted of sexual offences in the Falkland Islands; issues included whether "minded to revoke" letters should have been sent; adequacy of reasons given both by the Principal Immigration Officer and the Governor on appeal; the extent of the Governor's discretion and decision-making powers under section 66 of the Falkland Islands Constitution; the proper construction of the relevant statutory provision and the width of the discretion to revoke; the relevance of a related policy concerning the proper evaluation of criminal offences in the context of applications for work permits; and whether the applicants' constitutional rights to family life under section 9 of the Falkland Islands Constitution were engaged and, if so, whether interference with those rights was proportionate (*R (Fowler and Coleman) v Principal Immigration Officer & HE the Governor of the Falkland Islands* [2021])
- Acting for the Government of South Georgia and the South Sandwich Islands in commercial judicial review proceedings before the Supreme Court of the Falkland Islands and then before the Court of Appeal of the Falkland Islands. The applicant, a Falkland Islands company, challenged the decision of the Director of Fisheries to refuse to grant a 4-year commercial fishing licence to a Chilean-flagged vessel which it had chartered. On behalf of the respondent, an application was successfully made to the Supreme Court to have the *ex parte* grant of permission set aside, on the basis that none of the many grounds of challenge were arguable. The applicant subsequently renewed its application to

move for judicial review before the Court of Appeal, where the application was successfully resisted. (*R (SGF Ltd) v Director of Fisheries of the Government of South Georgia and the South Sandwich Islands* [2019])

- Acting for Ascension Island Government before the Supreme Court of St Helena and then before the Court of Appeal of St Helena in proceedings brought by the former Chief Executive Officer of AIG, who alleged that he had been unlawfully dismissed by the Administrator. Issues included the availability of injunctive relief against the Crown; the jurisdiction of the Supreme Court of St Helena to grant interim declarations; abuse of process arising from multiple actions; and whether the plaintiff had affirmed his contract of employment and subsequently resigned.
- Acting for the Government of South Georgia and the South Sandwich Islands in commercial judicial review proceedings before the Supreme Court of the Falkland Islands, in which the applicant challenged the refusal of the Director of Fisheries to grant a licence to its vessel Jacqueline to fish for Patagonian toothfish in the South Georgia and South Sandwich Islands maritime zone for the 2012 season. The vessel had been awarded a licence every year for the past 14 years, except once, when the decision to refuse her a licence was successfully challenged both in the Falkland Islands and in the UK. Issues included whether the applicant had a legitimate expectation of consultation in respect of changes to the licensing policy (including the exclusion of loyalty as a licensing criterion), and whether foreign policy advice given by the Foreign and Commonwealth Office had been misapplied. All the grounds of challenge failed. (*R (Quark Fishing Ltd) v Director of Fisheries of the Government of South Georgia and the South Sandwich Islands* [2013])
- Acting for the Government of South Georgia and the South Sandwich Islands in judicial review proceedings before the Supreme Court of the Falkland Islands, and then before the Court of Appeal of the Falkland Islands. The applicant, a Spanish company, challenged the refusal of the Director of Fisheries to grant a licence to their vessel Viking Bay to fish for Patagonian toothfish. Issues included whether the Director had failed to follow his own published policy, whether in reaching his decision he had taken irrelevancies into account, and whether the published policy exhaustively defined the relevant licensing considerations. The applicant abandoned its application shortly before the substantive hearing. (*R (Copemar SA & Anr) v Director of Fisheries of the Government of South Georgia and the South Sandwich Islands* [2011])
- Acting for the Government of the Falkland Islands in judicial review proceedings before the Supreme Court of the Falkland Islands. The applicant, a Falkland Islands company, challenged the refusal of the Governor of the Falkland Islands to grant it long term individual transferable quotas in three fisheries. The Governor took the applicant's track record into account, which was depressed as a result of the loss of a vessel by fire. Issues included whether the Governor had applied his policy in an over-rigid and disproportionately unreasonable manner. The challenge failed. (*R (South Atlantic Marine Services Ltd) v Attorney General of the Falkland Islands* [2007])
- Acting for the Government of South Georgia and the South Sandwich Islands in commercial judicial review proceedings before the Supreme Court of the Falkland Islands. The applicant, a Uruguayan company, challenged the refusal of the Director of Fisheries to grant a licence to their vessel Isla Alegranza to fish for Patagonian toothfish. Issues included whether foreign policy advice given by the Foreign and Commonwealth Office had been unlawful, and the non-justiciability of foreign policy matters. The challenge failed. (*R (Isla Alegranza SA) v Director of Fisheries of the Government of South Georgia and the South Sandwich Islands* [2006])
- Acting for the Government of St Helena in judicial review proceedings before the St Helena Supreme Court concerning the failure of the Government to determine an application for an immigrant's landholding licence. Issues included role of ExCo, confidential of ExCo minutes, and ouster of judicial review under St Helena Constitution
- Acting for the Government of the Falkland Islands in judicial review proceedings before the Falkland



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Islands Supreme Court. The applicant challenged the lawfulness of an immigration decision taken by the Governor of the Falkland Islands. Issues included the relationship between the Governor and ExCo under the Island's constitution and the effect of human rights provisions entrenched in the Constitution (*R v Attorney General of the Falkland Islands ex p Bingham* [2003])

- Acting for the Turks and Caicos Islands Government, representing electoral officials in election petitions before the Turks and Caicos Islands Supreme Court in which the results of the Islands' 2003 general election were challenged. Issues included the effect of irregularities in the electoral roll, the conclusiveness of the roll, allegations of bribery and corrupt practices, and refusal of the remedy of scrutiny (*Been v Astwood & Ors* [judgment]; *Hanchell v Skippings & Ors* [judgment] [2003])

## Qualifications

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- LLB (Hons) (Manchester University)
- Diploma in International Commercial Arbitration (Chartered Institute of Arbitrators)

## Memberships

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- London Court of International Arbitration
- Chartered Institute of Arbitrators
- London Common Law and Commercial Bar Association (Committee Member)
- Professional Negligence Bar Association
- Technology and Construction Bar Association
- Commercial Bar Association
- Administrative Law Bar Association

## Publications

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Co-author of chapter on Construction Insolvency in Emden's Construction Law

"Regulation or Red Tape: the UK equity release market": co-author (with Rob Sheldon and Liam Corrigan of DWF LLP) of chapter in *Making the Most of Equity Release: Perspectives from Key Players*, published by The Smith Institute, March 2012

"Still an Empty Concept?": co-author (with Keith Shaw of Pinsent Masons LLP) discussing the implications of *NYK Logistics Ltd v Ibrend Estates BV* [2011] EWCA Civ 683 on the meaning of "vacant possession", published in the *Estates Gazette*, 23 July 2011

"The Seduction of Iconoclasm": discussion of the exemptions for religious organisations in the Equality Act (Sexual Orientation) Regulations, published in *Law and Justice* 2007, 158, 64

"Citibank NA v MBIA Assurance SA & Ors [2007] EWCA Civ 11": co-author (with Justin Davis of Crown Office Chambers): Case Commentary published in *International Corporate Rescue: Vol 4 (2007) Issue 5*



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## Recommendations

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"Dermot is very personable, breeds confidence in all who instruct him and clients alike. When sat behind him in court you nearly always think you have instructed the superior counsel."

Legal 500, 2022

"Dermot is one of the most methodical barristers I have ever come across. He is positive in his advice and has an excellent calming manner which is very reassuring to clients."

Legal 500, 2021