

Pascal Bates - Civil (including Public) Law CV

Civil practice centres on commercial contract, property disputes, contested probate disputes, disclosure and public law.

Commercial Contract

Commercial contract cases include both advisory work and litigation. Pascal has recently advised on the enforceability and true construction of interest rate swap agreements. More substantial cases litigated or settled shortly before trial have included:

Abrahams and another v. Selbo and another, 2009, Chancery Division

Construction of a compromise agreement and underlying issues of alleged fraudulent misrepresentation, estoppel, waiver in disputes over the management of businesses seeking to exploit an IT device which were set for a 10 day trial.

Haller v. DB UK Bank Limited (formerly Morgan Grenfell & Company Limited) and another, 2007, Commercial Court

Claim by a former senior executive and director against companies of the Deutsche Bank Group for loss of an alleged contractual entitlement to acquire emerging markets distressed debt assets which it was contended would have generated profits in excess of US \$300 million – a 35 day trial was fixed for dozens of witnesses to give detailed evidence about events spanning more than a decade in the context of voluminous contemporaneous documentation.

Latimer Management Consultants Limited and others v. Ellingham Investments Limited and another [2005] EWHC 1732 (Ch), Chancery Division

Questions of the enforceability of parol contracts allegedly lacking in valuable consideration, of collateral contracts, of estoppel, of rectification, of the liability of a shadow director and of the standing of beneficiaries under a discretionary trust to sue when the trustee declines so to do.

Adina Kohn v. Lakshmi Mittal and Usha Mittal, 2005, Queen's Bench Division

Claim against the well known steel baron and his wife for a property finder's fee alleged to be payable ad valorem on the acquisition of a multi-million pound property in Kensington Palace Gardens.

Property

Many of Pascal's cases have involved disputes over real property, such as:

Parker and another v. Whitehorne, 2010, Central London County Court Chancery List

Dispute between neighbours who were also landlord and tenant arising from works alleged to have given rise to trespass, nuisance, breach of covenant, breach of parol contract and permanent incursion into the freeholder's undemised land.

Meretz Investments N.V. and another -v- ACP Limited and others [2007] EWCA Civ 1303, Court of Appeal (Pill, Arden & Toulson L.JJ.)

Appeal from Lewison J., the issues concerned whether a guarantor should be held liable in substantial damages for loss occasioned by the exercise of a mortgagee's power of sale and the ambit of the torts of conspiracy and inducing breach of contract in the light of the supervening House of Lords ruling in *OBG v. Allan* – the appeal lasted a week.

Meretz Investments N.V. and another -v- ACP Limited and others (No.2) [2007] Ch. 177; [2006] EWHC 74 (Ch), Chancery Division (Lewison J.)

One of a series of claims between various parties involved in a development of luxury penthouses in Knightsbridge; this dispute concerned whether a mortgagee had a power to sell a lease, whether by reason of previous proceedings cause of action estoppel and/or issue estoppel and/or abuse of process prohibited it from being contended that the mortgagee had no such power of sale, whether the exercise by the mortgagee of any such power to sell the lease to an associated transferee was improper, whether there were breaches of obligations to construct penthouses and to perform a lease-back option and the liability of the developer, its mortgagee, their directors and the associated transferee for alleged economic torts, principally conspiracy – the trial lasted a month.

Meretz Investments N.V. -v- ACP Limited (No.1) [2002] EWHC 1019 (QB), Queen's Bench Division

One of a series of claims between various parties involved in a development of luxury penthouses in Knightsbridge; this dispute concerned the liability to pay substantial commission from the proceeds of sale of a large luxury penthouse.

Jelson Limited -v- Derby City Council, [1999] 4 P.L.R., Chancery Division

Rectification of a section 106 agreement to provide affordable housing; this was for a time the leading authority on the application of the Law of Property (Miscellaneous Provisions) Act 1989 to section 106 agreements.

Contested Probate

Pascal also has extensive experience in litigating contested probate issues:

Santarsiero and another -v- Wadwell: in re dos Santos (deceased) [2003] EWHC 194 (Ch), Chancery Division (Blackburne J.)

Alleged fraudulent procurement of letters of administration and deliberate maladministration of an intestate estate by a friend and creditor of the deceased to the detriment of his blood relations – 13 day trial.

Dunner -v- Kestenbaum and others: in re Lerner (deceased) Chancery Division (Lawrence Collins J.).

Alleged want of knowledge and approval, undue influence, lack of testamentary capacity and lack of due execution in the making of various English and foreign wills by an elderly millionaire leaving his estate to his landlady in place of his family – 20 day trial settled on day 11.

Hart -v- Dabbs and others: in re Dabbs (deceased) Court of Appeal and Chancery Division (Lloyd J.).

Alleged want of knowledge and approval by an elderly millionaire and alleged forfeiture for unlawful killing when a testator left a non-relative the bulk of his estate and died in circumstances which led a Coroner's jury to bring in a verdict of unlawful killing – 5 day trial.

Disclosure

Pascal's civil disclosure work has often involved public institutions, bringing in questions of freedom of information and public interest immunity. Pascal acted for the Warwickshire Constabulary to intervene in High Court pre-claim disclosure applications in proposed Fatal Accident Acts claims when it was feared disclosure might prejudice a major investigation into four deaths at a fruit packing plant.

Pascal's disclosure work often involves consideration of ancillary issues of property rights and/or privilege. In 2012 he advised a local authority on the implications of releasing into the public domain CCTV footage of an incident obtained in the course of a regulatory investigation in the face of opposition from the original copyright holder. Also in 2012, he twice advised upon the extent to which legal professional privilege might be a defence to the requisition of documents using statutory powers, in one instance acting for the party seeking the documents and in the other for the party from which they were being sought.

Public

Pascal's recent public law advisory instructions have included advising applicants on the correct approach to government procurement applications and advising solicitors on a complex point of statutory construction of public funding regulations. He has been instructed in judicial reviews of the Coroner for Derby and South Derbyshire, of the Criminal Cases Review Commission, of a police authority, of a well-known university and of the Crown Court on an important wasted costs issue (*R. (AB) v. X C.C.* [2009] EWHC 2009 1149 (Admin), Hickinbottom J.).

Other

Besides the above areas, a wide range of other civil cases has been undertaken, especially those involving allegations of fraud, violence or other criminality. Pascal represented Steven Berkoff, the noted actor and playwright, in the Queen's Bench Division before Eady J. on allegations of rape, psychiatric injury and defamation of character by a litigant in person. He has also been instructed on the question of whether a civil court should report a third party's alleged criminal conduct revealed by civil proceedings when the victim did not wish to pursue the allegation and has advised upon the extent to which decisions taken by an insolvency practitioner perceived as unfairly favouring creditors at the expense of the debtor can be challenged.