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Edward Cohen

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Year of Call: 1972

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PRACTICE AREAS

Commercial

Company

Insolvency & Restructuring

Offshore and International

Partnership and LLP

Professional Negligence and Disciplinary

PROFILE

Edward has practised since 1973 in the field of general commercial and chancery dispute resolution and advice. He co-founded his previous Chambers, 11 Stone Buildings, in 1975 and was Head of Chambers from October 2004 until January 2015. He joined Enterprise Chambers in October 2015. He has sat as a Recorder since 2000. Although the vast majority of his work comes from solicitors or foreign lawyers, he does also undertake licensed and public access work.

Over the years he has established a formidable reputation and has become highly respected, appearing in many reported decisions ranging from the House of Lords and Privy Council to the Court of Appeal and courts of first instance. Whilst his practice concentrates on the areas of commercial contracts of all kinds (both domestic and international), partnerships and LLPs, company and insolvency, professional negligence and civil fraud, within those areas his practice is wide-ranging, which enables him to advise and act with confidence in multidisciplinary cases.

His experience and expertise gained over many years of practice means that he is regularly instructed in cases which would otherwise require the services of a QC. Moreover, he is noted for combining an excellent legal brain, good judgement, tactical acumen, commerciality and a very approachable manner with an extremely conscientious approach towards research and preparation, persuasively presented and carefully crafted paperwork and forceful and astute advocacy of the highest standard. His skills and reputation in all these aspects and the truly excellent service which he provides are reflected by the testimonials of him included in recent years in the legal directories.

Those descriptions have included references to his having “one of the most incisive legal brains at the Bar”; being “a tactical and polished advocate”; “having a delightful manner with clients”; being “a delight to work with” and a “star in all areas”, with “the ability to call things correctly”; producing “written work which is second to none”; bringing “strong commercial understanding to a case”; being “very thorough, bright and quite formidable”; and offering “excellent legal analysis combined with shrewd commercial judgment”.

PRACTICE AREAS

Commercial

Edward deals with all aspects of commercial law in both court and arbitration proceedings. Much of his work is focused upon contractual disputes but they encompass commercial contracts of many different kinds in all spheres of the business world, often involving international aspects and clients based outside the UK, which may in turn give rise to conflicts of law issues.

Over the years his extensive experience has also included contracts in the media, entertainment and sports industries (sometimes involving copyright issues as well), in addition to the supply of goods and services, banking (acting for and against banks), insurance, commercial property and breach of employment and related duties.

He is also experienced in civil fraud litigation, including the obtaining or resisting of interim relief relating to the preservation of assets. He has regularly represented clients at mediations with successful results and he has also been specifically asked by solicitors to act as a mediator in particular disputes.

Relevant cases include:

- Acting for claimant in LMAA international arbitration arising out of sale and purchase of shares in vessel-owning companies. Obtained award of over US \$13m and subsequently successfully resisted Commercial Court proceedings to challenge award (2017-2019)
- Acting for defendant in Circuit Commercial Court resisting claim under guarantee for over £2m. Successful application to set aside default judgment and case continuing.
- Acting for 2 of 4 defendants resisting claims in excess of £1.5m alleging dishonest assistance in breaches of fiduciary duty (continuing).
- Acting for multi-claimants, who purchased off-plan investment units in student accommodation, claiming that completion payments were made in reliance on architect's fraudulent certificates of practical completion (continuing).

- Acting in claim for escrow monies paid arising out of charge and associated guarantee, challenged on the ground of economic duress (continuing).
- Acting in claim for approx. £670,000 against shipping agent for commission rebate said to have been underpaid (settled 2018).
- Acted for claimant in Commercial Court in multi-million pound claim arising out of repudiation of software international licensing agreement. Settled in May 2017 after start of 8 day trial.
- *Albeshar v Ryan* [2015] EWHC 3058 (Comm) & [2016] EWHC 541 (Comm): acted for 2 of defendants in Commercial Court proceedings in dispute arising from abortive property purchase/development in London. Decisions referenced on whether default judgment could be entered against only 1 defendant and subsequently on the successful application to set aside default judgment.
- Acted in dispute arising out of property joint venture. Claim for approx. £6m (settled 2016).
- Instructed in 2 separate cases involving disputes arising out of the termination of franchise agreements in 2 separate areas of business (2016).
- *Rosserlane Consultants Limited & Anor. V Credit Suisse International* [2015] EWHC 384 (Ch): acted for claimants in multi-million dollar damages claim against a bank arising out of the sale of an oilfield in Azerbaijan (2014/2015).
- Advising on enforceability of ATE insurance in light of alleged non-disclosure (2015).
- Acting in proposed ICC arbitration regarding dispute between hotel and management company (2015).
- £2m claim for alleged profit share on sale of commercial properties (2015).
- *Hertel v Saunders*: Acting for claimants in proceedings arising out of commercial joint venture. Case reported on requirements of Part 36 Offer at [2014] 5 Costs LR 825.
- Acted for successful defendants in the leading contract case of *Walford v Miles* [1992] 2 AC 128, a decision of the House of Lords establishing the unenforceability under English law of agreements to negotiate/agreements to agree.

Company

Over the years Edward has handled many disputes relating to company matters, including many shareholder disputes, technical issues of company law, claims against directors for breach of duty and applications for personal costs orders against company directors/shareholders

Relevant cases include:

- Acting in claim against former directors seeking repayment of monies outstanding on directors' loan accounts and for breach of duty in failing properly to insure company's premises by reason of misrepresentation/non-disclosure to insurer and in failing to submit accurate VAT returns (continuing).
- Acting in proceedings against former director for breach of duty in causing wrongful trading (continuing).
- Acting in proceedings against former directors claiming several million pounds for repayment of misapplied company funds and for breaches of duty in other respects. Case settled on 1st day of 5 day trial and Edward continues to act in enforcement proceedings against respondents (2016-2019).
- Acting for 2 of 4 defendants disputing claims in excess of £1.5m alleging not only dishonest assistance in breach of fiduciary duty but also claiming breach of duty as alleged de facto director (continuing).
- Acting in proceedings seeking declaratory relief regarding the ownership and offices of a family investment company (2015-16)
- Claim for breaches of duty by former directors of an electrical goods supplier in causing the company to make various illegitimate payments/enter into impermissible transactions. Judgment obtained at trial in April 2016 for in excess of £1.5m.

- Claim for breach of duty against 4 former directors of a company arising out of disastrous multi-million pound ventures in India and Qatar relating respectively to the Commonwealth Games in Delhi and the World Cup bid by Qatar (settled 2013).
- Knox v Deane [2005] BCC 884: Successfully resisted, against Leading Counsel, Privy Council appeal involving the interpretation of Barbadian company articles of association. This was the last appeal from the Barbados Court of Appeal to the Privy Council.
- Ashborder BV v Green Gas Power Limited [2005] 1 BCLC 623: With Gabriel Moss QC, successfully acted for claimant challenging asset disposal in case in which the court gave guidance as to the permissible scope of transactions in the ordinary course of business for the purposes of a debenture.

Insolvency & Restructuring

Edward deals with both company and personal insolvency, including claims by administrators/liquidators/trustees in bankruptcy to recover assets for the benefit of creditors, applications to set aside transactions at an undervalue, wrongful trading and misfeasance/disqualification proceedings against directors.

- Acting in claim against former directors of insolvent company seeking repayment of monies outstanding on directors' loan accounts and for breach of duty in failing properly to insure company's premises by reason of misrepresentation/non-disclosure to insurer and in failing to submit accurate VAT returns (2019).
- Acting in proceedings against former directors of insolvent engineering company under s.214 of Insolvency Act for wrongful trading (continuing).
- Acted in misfeasance proceedings for a liquidator against the former directors of a company operating bars in the north of England complaining of the transfer of valuable assets to another company and releasing debt owed to the company for the benefit of the directors' father. Case settled shortly before trial in 2018.
- Claim to set aside transactions at an undervalue involving the transfer of bowling alley sites and assets and further claim against the company's former directors for misfeasance in causing such transactions to take place (2012-2015).
- Advising on potential claim by liquidator arising out of the transfer of the company's former factory premises worth £2m to the company's pension scheme (2014).
- Claim to set aside transactions at an undervalue arising out of the transfer of subsidiary company in the healthcare field (2012/ 2013).
- Gibraltar Insolvency proceedings: acting and appearing in Gibraltar Supreme Court and Gibraltar Court of Appeal in various insolvency proceedings arising out of the complex and high profile insolvency of a well-known firm of local lawyers and the bankruptcy of the partners (concluded 2012).

Offshore and International

Edward's practice regularly includes substantial and high value disputes, usually of a commercial nature, involving foreign parties and transactions with international aspects, which may in turn give rise to conflicts of law issues. Such cases in which he has been involved have given rise both to court proceedings and to arbitration proceedings taking place in London at one of the well-known international arbitration centres.

Relevant cases include:

- Acting for claimant in LMAA international arbitration arising out of sale and purchase of shares in vessel-owning companies. Obtained award of over US \$13m and subsequently successfully resisted Commercial

Court proceedings to challenge award (2017-2019).

- Acting for defendant in proceedings in Birmingham Circuit Commercial Court resisting claim under guarantee for over £2m in respect of liabilities of an associated Russian company to another Russian company for goods supplied in Russia. Successful application to set aside default judgment and case continuing.
- Acted for claimant in Commercial Court in multi-million pound claim arising out of repudiation of software international licensing agreement. Settled in May 2017 after start of 8 day trial.
- Rosserlane Consultants Limited & Anor. V Credit Suisse International [2015] EWHC 384 (Ch): acted for Claimants in multi-million dollar damages claim against a bank arising out of the sale of an oilfield in Azerbaijan (2014/2015).
- LCIA Arbitration involving claims and cross-claims alleging breaches of licence agreement for the broadcasting of an international TV channel in foreign territories (2013).
- Gibraltar Insolvency proceedings: acting and appearing in Gibraltar Supreme Court and Gibraltar Court of Appeal in various insolvency proceedings arising out of the complex and high profile insolvency of a well-known firm of local lawyers and the bankruptcy of the partners (concluded 2012).
- Tasarruf Mevduati Sigorta Fonu v Demirel [2007] 4 All ER 1014, a decision of the Court of Appeal which concerned the alleged misappropriation of substantial sums from Turkish companies leading to a Turkish judgment and important issues regarding enforcement of the same in England.
- Knox v Deane [2005] BCC 884: Successfully resisted, against Leading Counsel, Privy Council appeal involving the interpretation of Barbadian company articles of association. This was the last appeal from the Barbados Court of Appeal to the Privy Council.

Partnership and LLP

Edward has regularly advised and acted in partnership and LLP disputes. His assistance is often sought in the context of disputes among partners/members of professional partnerships/LLPs, where his extensive knowledge of partnership/LLP law and tactical acumen have enabled such disputes to be resolved with as little pain and acrimony as possible. He also regularly advises as to the provisions which should, or should not, be included in written partnership/LLP agreements to minimise the risk of future disputes. His multi-disciplinary expertise enables him to give complete advice on other aspects which regularly arise in partnership/LLP disputes, such as contract, insolvency, professional negligence, civil fraud, insurance and commercial property. In recent years he has acted in relation to partnerships/LLPs involving solicitors, foreign lawyers, accountants, property investment and development and asset investments.

Relevant cases include:

- Acting for defendant LLP resisting claim under guarantee for over £2m. Case involves issues regarding authority to execute the guarantee in light of express provisions in LLP Agreement, the Limited Liability Partnership Act 2000 and the Companies Act 2006 as applicable to LLPs (continuing).
- Proceedings to wind up substantial family property investment and development partnership (2015-16).
- Advising on dispute between members of LLP involved in options trading (2016).
- Advising substantial accountancy LLP on various aspects arising out of proposed change of structure to limited company (2015).
- Claim to partnership interest in worldwide investments of high value.
- Dispute in offshore partnership of lawyers (settled 2012).
- Property partnership: long-standing dispute between the 2 partners of a property investment partnership giving rise to many complicated issues. A satisfactory settlement was secured on the first day of the hearing (2011).
- Claim for dissolution by partner in long-established accountancy partnership in arbitration proceedings

(concluded 2011).

- Foreign (Gibraltar) lawyers partnership dispute: proceedings arising out of the collapse of the partnership, giving rise to issues of whether liability of each partner to third parties under the equivalent of the English Partnership Act (2010/2011).

Professional Negligence and Disciplinary

As well as acting in cases involving alleged breaches of duties of care and skill by company directors and banks, Edward regularly acts in professional negligence claims against solicitors, accountants and financial advisers, as well as valuers, architects and surveyors.

Given his expertise in other areas of law, he is well qualified to deal with professional negligence claims that involve, for example, property, insurance, company and insolvency issues.

He has particular experience in dealing with difficult causation issues, issues that are often more problematic than the establishing of liability.

Relevant cases include:

- Acting for multiple claimants in 3 substantial actions in the chancery division involving claims for damages against 3 separate firms of solicitors for professional negligence/breach of duty arising out of the purchase of units off-plan in UK property developments. 30 day trial (category A) was fixed for June 2019 but each claim settled by then, 2 after separate mediations.
- Acting for a substantial charity claiming damages in excess of £2.25m against former accountants arising out of alleged negligent advice/failure to advise as to available VAT exemption (continuing).
- Claim against accountants for negligent advice/failure to advise in relation to tax avoidance scheme (concluded 2017).
- Advising on merits/quantum of a substantial number of professional negligence claims against property valuers and quantity surveyors as part of a package of claims available to be purchased (2015).
- Claim by purchasers of property against solicitors for failure to advise that the property was within Green Belt land (2010/2011).
- Claims by lenders against solicitors for failing properly to secure loans (2010/2011).

SIGNIFICANT CASES

Various Claimants v Scott Fowler [2018]
EWHC 1891 (Ch)

Decision on costs budget issues in solicitors negligence action.

Albesher v Ryan [2016]
EWHC 541 (Comm)

Decision on setting aside default judgment.

Rosserlane Consultants & Another v Credit Suisse International [2015]
EWHC 384

Multi-million dollar damages claim against a bank arising out of sale of oilfield in Azerbaijan.

Hertel v Saunders [2014]
5 Costs LR 825

Decision on requirements of valid Part 36 Offer.

I-Remit Incorporated v Far East Express Remittance Limited [2008]
EWHC 939 (Ch)

Third party costs order made against shareholders/directors of unsuccessful defendant company.

Tasarruf Mevduati Sigorta Fonu v Demirel [2007]
1 WLR 2508

Decision of Court of Appeal on enforcement of Turkish Judgment in England in the absence of assets within the jurisdiction.

Sctrak NV v Satamatics Limited [2007]
EWHC 3003 (Comm)

Principles as to the grant of interim injunctions in case of alleged misuse of confidential information.

Ashborder BV v Green Gas Power Limited [2005]
EWHC 1031 (Ch)

Application for injunction to restrain compromise of various litigation rights.

Ashborder BV v Green Gas Power Limited [2005]

1 BCLC 623

Decision on meaning of “ordinary course of business” for the purposes of permitted disposals in debenture.

Knox v Dean [2005]

BCC 884

Construction of pre-emption rights in Barbados company’s articles of association. Last civil appeal to Privy Council from Barbados Court of Appeal.

Venture Finance PLC v Mead [2006]

3 Costs LR 389

Costs liability issues after settlement of guarantee claims without resolving costs; whether liability of joint guarantors should be for 50% or 100% of costs.

Reed v Oury [2002]

EWHC 369 (Ch)

Decision granting stay of counterclaim on case management grounds until payment of outstanding costs orders and part of judgment sum. Still cited in current White Book under CPR Part 3.

Walford v Miles [1992]

2 AC 128

Leading decision in House of Lords on unenforceability under English law of agreements to negotiate/agreements to agree.

CAREER AND ASSOCIATIONS

Member of the Commercial Bar Association



Member of the Chancery Bar Association

Recorder: Appointed 2000. Criminal and Civil tickets and Chancery ticket at Central London

Member of Middle Temple (1972) and Lincoln's Inn (1975)

Harmsworth Exhibition (Middle Temple)

J.J. Powell Prize (for top Middle Templar in Bar Finals)

MA (Modern Languages and Law)

King's College, Cambridge (Entrance Exhibition)

Clifton College, Bristol



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