



[Home](#) [◆ Our People](#) [◆ Madeleine Heal](#)

Madeleine Heal

[◆ Back](#)



Year of Call: 1996

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PRACTICE AREAS

Commercial

Company

Intellectual Property, Media and Data Privacy

Offshore and International

Civil Fraud

Insolvency & Restructuring

Partnership and LLP

PROFILE

Madeleine is a detailed and pragmatic commercial advocate specialising at trial and on appeal in commercial, company, civil fraud, intellectual property, media & privacy litigation, international and offshore disputes, insolvency and restructuring. She covers the liabilities of directors and office holders,

recovery of assets by office holders in an insolvency, and shareholder disputes, knowing receipt and dishonest assistance actions, actions raising limitation and conflict of laws, disputes arising from technology and licensing agreements, patent, trade mark, copyright and design infringement disputes, cyber fraud, interim remedies, agency agreements, distribution agreements, commercial contracts, joint ventures, partnership, misrepresentation and civil fraud.

Madeleine has appeared as counsel in the courts of the Cayman Islands and in the High Court of Australia. She has assisted in litigation in Hong Kong and Jersey. She has extensive experience in privacy, and breach of confidence and contractual disputes, particularly in the music, film and video game industries; GDPR, cyber-security and the consequences of a data breach; and liability in relation to the internet.

PRACTICE AREAS

Commercial

Represents corporate and individual clients in all manner of commercial disputes including claims arising out of share and asset sale agreements, agency agreements, distribution agreements, commercial contracts, joint ventures, partnership, sale of goods, insurance, reinsurance, misrepresentation and civil fraud, company law, and banking

Recent Cases include:

- advising on data protection and privacy issues arising from a NYSE listed client's audit committee investigation into the theft of many millions by a Director after the company was forced to declare Chapter 11 bankruptcy. An audit committee sought to access and review company emails, detecting data wiping software. Such data that remained revealed the Director to be the ultimate beneficiary of the misappropriation. The Director sought an injunction from EU Data Protection authorities to restrain data processing in the UK which was granted on an interim basis. US authorities issued a subpoena for the data with which the audit committee could not comply because of the interim order. Advised on issues of data protection and jurisdiction of the court in London to assist in tracing assets.
- represented a putative director in the Cayman Islands courts regarding shares in state entities, whether written shareholder resolutions of the Cayman companies purportedly signed on behalf of state entities were valid and effective, whether written resolutions purported to remove directors of and appoint new directors to the Cayman companies and the effect of UN sanctions and orders on written resolutions and freezing assets.
- advised in *Palladyne International Asset Management B.V. v Upper Brook (A) Limited et al* regarding shares in Cayman companies held by Libyan state entities, whether written shareholder resolutions of the Cayman companies purportedly signed on behalf of the Libyan state entities were valid and effective, whether written resolutions purported to remove directors of and appoint new directors to the Cayman companies, the effect of UN sanctions and orders on written resolutions freezing assets in respect of Libya and whether those signing the written resolutions were properly authorised to do so on behalf of the Libyan state entities as a matter of Libyan or Cayman law.
- acted for claimants pursuing fraud and partnership accounts claims in respect of a technology joint venture
- appeared in many cases where conflict of laws issues are uppermost including *Banner Universal Motion Pictures v Endemol Shine Group Limited* [2017] EWHC 2600 (Ch), *NTT Data Hong Kong Limited v Octo 3 Limited* and *Tyrone Lynch* [2018] HKCFI 325, *Sir Christopher Lee v Moreno de la Hija* [2017] EWHC 634 (Ch); *BSI Enterprises Ltd and Cayman Music Ltd v Blue Mountain Music (Island Records)* [2015] EWCA Civ; and *Nautech Services Limited v CCS Limited*.
- appeared in partnership and joint venture disputes regarding breach of contract, breach of confidence

and misuse of confidential information

Company

Corporate governance issues including the calling and conduct of meetings, and directors' duties. Share sales and financial assistance. Issues arising out of the grant of security by companies.

Recent cases include:

- Advised on the winding up of Scottish Re Group, a life reinsurance company headquartered in Bermuda, with parallel winding up proceedings in the Cayman Islands.
- Advised on the meaning and effect of share pre-emption and transfer provisions contained in Articles of Association and inconsistent provisions contained in a shareholders agreement.
- Acting for the Petitioners in 'unfair prejudice' proceedings.
- Acting in proceedings against former director for breach of duty in causing wrongful trading
- Acting for claimant alleging dishonest assistance in breach of fiduciary duty and breach of duty as de facto director, including limitation under section 21(1) of the Limitation Act 1980.

Intellectual Property, Media and Data Privacy

Has 20 years' experience at appellate and trial level in all of the intellectual property courts for patent, trade mark, copyright, and design right infringement actions; database right; privacy and Data Protection; misuse of trade secrets, breach of confidence and misuse of confidential information.

Recent Cases include:

Intellectual Property

- Banner Universal Motion Pictures v Endemol Shine Group Limited [2017] EWHC 2600 (Ch), a copyright and breach of confidence dispute regarding a format for a television game show, raising complex issues of jurisdiction and conflict of laws
- NTT Data Hong Kong Limited v Octo 3 Limited and Tyrone Lynch [2018] HKCFI 325, a summary judgment application in Hong Kong relating to a software licence agreement for online payment services
- Sir Christopher Lee v Moreno de la Hija [2017] EWHC 634 (Ch) regarding a stay in England of a European Enforcement Order registered in England on default copyright judgment in Spain
- Technomed Ltd v Bluecrest Health Screening Ltd [2017] EWHC 2142 (Pat), a breach of confidence, database right and copyright dispute regarding computer algorithms for remote analysis of ECG traces;
- SNE Engineering Limited v Hsin Chong Construction Limited and Chim Kee Machinery Company Limited, in the Hong Kong Court of Appeal [2016] HKCA 617, the first patent appeal in Hong Kong for 30 years, regarding a patent for a method for removing underground building piles to allow for an extension to the MTR rail network on Hong Kong Island
- BSI Enterprises Ltd and Cayman Music Ltd v Blue Mountain Music (Island Records) [2015] EWCA Civ 1151 Arden, Kitchin, and Lloyd Jones LJJ, a copyright dispute against Island Records regarding 13 of Bob Marley's songs written between 1973 – 1976 including No Woman No Cry, which raised complex jurisdiction issues
- Powell v Turner [2013] EWHC 3242 a trade mark, passing off and partnership dispute regarding 1970's

band Wishbone Ash;

- Nautech Services Limited v CCS Limited, Jersey Court of Appeal Bennett P, Collas and Bompas QC JJA, an action for copyright and database right infringement, breach of confidence and contempt of court which was the first case under Jersey's 2012 Intellectual Property (Unregistered Rights) Law.
- appeared or assisted in cases where conflict of laws issues are uppermost including Banner Universal Motion Pictures v Endemol Shine Group Limited [2017] EWHC 2600 (Ch), NTT Data Hong Kong Limited v Octo 3 Limited and Tyrone Lynch [2018] HKCFI 325, Sir Christopher Lee v Moreno de la Hija [2017] EWHC 634 (Ch); BSI Enterprises Ltd and Cayman Music Ltd v Blue Mountain Music (Island Records) [2015] EWCA Civ; and Nautech Services Limited v CCS Limited.
- appeared in partnership and joint venture disputes regarding breach of contract, breach of confidence and misuse of confidential information

Cyber-security, data protection and privacy

Has been at the forefront of developments in cybersecurity and privacy law.

Recent cases include:

- a substantial GDPR compliance project on the implementation of solutions after an audit, including GPS tracking technologies embedded in vehicles and online advertising.
- a US client's audit committee's privacy and data protection investigation into the theft of many millions by a director after the company was forced to declare Chapter 11 bankruptcy.
- a data misuse representative action after Lloyd v Google in a case in which the claimed measure of loss was based on the price for using the information, user or negotiating damages based on what would be a reasonable price for a license to use the data. Loss would have to be assessed individual by individual and there was not a "shared interest" between the individuals, a requirement for a representative action.
- advise whether GDPR provides as much scope as collective proceeding orders under section 47B of the Competition Act 1998 (allowing opt out proceedings), as in the UK it is opt-in only, after Langstaff J held in Morrisons that although the supermarket was not the data controller and had no personal liability for a data leak affecting some 100,000 employees, it was vicariously liable for the data controller, providing employees with the opportunity to claim compensation against their employer for distress.
- an action in Hong Kong relating to a software licensing agreement for the exploitation of card payment services for online sales.

Offshore and International

Has extensive experience in the Chancery Division, the Commercial Court and offshore in commercial litigation, commercial fraud, cross-border restructuring and insolvency, contentious trusts law and intellectual property & privacy. She has appeared as counsel many times in the Cayman Islands Financial Services Division and the Cayman Islands Court of Appeal in both multi-million dollar 'take private' merger and 'fair value' litigation; and in insolvency and restructuring cases. She is a member of INSOL and of the International Women's Insolvency and Restructuring Confederation (IWIRC) and is admitted in the Cayman Islands, Dubai International Finance Centre Courts and to the bar in several states and territories of Australia.

Cayman Islands

- Appeared as counsel for large Chinese technology clients before the Cayman courts in actions brought against them by dissenting shareholders in Shanda Games Limited and in Qihoo 360 Technology in the Cayman Islands Court of Appeal; and in Qunar Cayman Islands Limited and Kongzhong Corporation in the Financial Services Division of the Grand Court of the Cayman Islands during 2017/18. The claims were made under section 238 of the Cayman Islands Companies Law for a judicial determination of the 'fair

value' of the companies' shares, raising issues of minority discount, beta and the equity size or small stock premium.

- Advised in *Palladyne International Asset Management B.V. v Upper Brook (A) Limited et al* regarding shares in Cayman companies held by Libyan state entities, whether written shareholder resolutions of the Cayman companies purportedly signed on behalf of the Libyan state entities were valid and effective, whether written resolutions purported to remove directors of and appoint new directors to the Cayman companies, the effect of UN sanctions and orders on written resolutions freezing assets in respect of Libya and whether those signing the written resolutions were properly authorised to do so on behalf of the Libyan state entities as a matter of Libyan or Cayman law.

Bermuda

- Advised on the winding up of Scottish Re Group, a life reinsurance company headquartered in Bermuda, with parallel winding up proceedings in the Cayman Islands.

Jersey

- Assisted Jersey Advocates in *Nautech Services Limited v CSS Limited [2013]* heard in the Samedi Division and Jersey Court of Appeal. A long-running action for database right infringement, breach of privacy and commercial fraud, an action for contempt of court was also heard.

Hong Kong

- Assisted technology and construction clients in the Hong Kong Court of Appeal. It was the first patent case to go the Hong Kong Court of Appeal in 30 years.
- Acted in software and data protection litigation, regarding a contract for electronic payment systems.

Civil Fraud

Madeleine appears in cases involving claims in deceit, mistake and deliberate concealment, misrepresentation, vicarious liability and when a director's wrongdoing constitutes fraud, principal and agent, partnerships, exclusion of liability, whether a claimant has been influenced by the misrepresentation or consented, duties to third parties, remoteness and intended consequences, remedies, privilege, causal connection, abuse of process and estoppel, *res judicata*, bad faith, shareholders who have committed investment fraud in order to own a majority in a company holding intellectual property.

Insolvency & Restructuring

All aspects of corporate insolvency including directors' misfeasance; fraudulent and wrongful trading; preferences and transactions at an undervalue; the payment of unlawful dividends; and the rights and duties of liquidators, administrators, and supervisors of CVAs.

Recent cases include:

- Claim against former directors of insolvent company seeking repayment of monies outstanding on directors' loan accounts
- Proceedings against former directors of insolvent software company under s.214 of Insolvency Act for wrongful trading

- Proceedings to set aside a CVA on the ground that its terms unfairly prejudiced the interests of one of the company's creditors.

Partnership and LLP

All aspects of partnership and limited liability partnership including joint ventures mainly in actions regarding breach of contract, breach of confidence and misuse of confidential information in the technology and entertainment sectors.

Recent cases include:

- acted for claimants pursuing fraud and partnership accounts claims in respect of a technology joint venture
- *Powell v Turner* [2013] EWHC 3242 – Appeared at trial for Martin Turner, founder member of the 70's band Wishbone Ash in a partnership and trade mark dispute brought against a former band member who had set up and was touring a rival Wishbone Ash band.
- Advised and settled proceedings in a dispute between joint venture partners for breach of confidence, breach of contract and design infringement relating to an armoured war vehicle deployed by the MoD in Afghanistan so that an urgent procurement process for the wheel assembly could be undertaken by the MoD. The joint venture partner sought to contract unilaterally with the MoD, disclosing confidential information and in breach of contract.
- Acted for an LLP bringing a claim under a guarantee, including authority to execute the guarantee in light of express provisions in the agreement, the Limited Liability Partnership Act 2000 and relevant provisions of the Companies Act 2006

CAREER AND ASSOCIATIONS

BA, LL.M London School of Economics and Political Science

Member of Chancery Bar Association

Member of Intellectual Property Bar Association

Member of COMBAR

Member of INSOL

Member of IWIRC

Member of EPLAW

Associate Member CIPA

Associate Member CITMA

PUBLICATIONS

Interim Injunctions in Commercial and Chancery cases – is American Cyanamid the test

What Immediate Relief can be Sought From English Civil Courts if a Cryptocurrency Account is Hacked

Class actions resuscitated for infringement of Data Protection Rights

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