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David Donaldson KC

"a brilliant mind"
– LEGAL 500, 2015



Year of call:	**1968**
Appointed to silk:	**1984**
Degree:	**MA (Cantab), Dr Jur (Freiburg)**
Languages:	**French (fluent), German (fluent), Spanish (working knowledge)**

David Donaldson KC is a highly respected commercial silk, with a broad range of experience across a number of specialist disciplines. These include extensive experience of financial services, banking, insurance and reinsurance, contractual and jurisdictional disputes. He has appeared in a wide range of domestic, European, overseas and international courts and tribunals, including many times in important cases in the House of Lords and the European Court of Justice.

A highlight was his involvement in the long-running Kuwait Airways Corporation v Iraqi Airways Corporation, litigation arising out of the Iraqi invasion of Kuwait in 1990 and involving claims for $1.5 billion after the seizure and removal of the Kuwaiti Airbus and Boeing airliner fleet by Iraq. The case involved complex and fundamental issues of public and private international law, non-justiciability, rights to property in a transnational context and damages.

David was appointed a Recorder in 1994 and a Deputy High Court Judge from 1995 to February 2016, sitting initially in the Queen's Bench and from 1999 mainly in the Chancery Division. He has also sat as an arbitrator in international arbitrations.

Professional Experience:

1986-1996 Arbitrator

1995-2016 Deputy High Court Judge

1965-1969 Fellow of Gonville and Caius College, Cambridge

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EXPERIENCE

Commercial

David advises and acts in all areas of commercial law including banking, insurance, reinsurance, financial services, contracts, conflict of laws and jurisdictional disputes. David's banking experience extends across retail, merchant, and bank finance disputes and bank documentation (bills of exchange, letters of credit, guarantees etc.) advising and acting for and against banks. He has appeared in a number of specialist disciplinary and regulatory tribunals, including in the financial services and insurance sectors.

In addition to these areas he has advised and acted in shipping, aviation, company disputes, patent licensing, vending agreements, sale and purchase of ships, commodity trading, professional negligence (accountants, solicitors).

Cases

'Sauvegarde' Advice

Advising the Department of Transport on implications for the Channel Tunnel Concession of the decision of the Paris Commercial Court placing the Eurotunnel Group companies under sauvegarde.

Military Export Controls

Advising on export controls on military material.

Health Insurance Contracts

Advising on implications of FSA Principles for renewable health insurance contracts.

Political Risk Insurance

Advising ECGD on revisions to Political Risk insurance policies.

Anzef Ltd and others v Secretary of State for Trade and Industry

Acting for and advising ECGD in complex litigation in connection with ECGD insurance policies in respect of political risk in relation to the Dabhol power plant in India, includes issues of public international law.

Player Claim Against Club

Acting for a Spanish football player in a claim against Chelsea FC.

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Aircraft Sale Agreement

Acting for UK, French and German export credit guarantee agencies in claims based on sale agreement for 3 Airbus aircraft.

PFI Contracts

Advising on powers of NHS Hospital Health Trusts and Foundation Trusts to enter into PFI contracts.

Injunction

Acting for and advising a shipyard in relation to an injunction to complete construction.

Channel Tunnel Project Re-Financing

Advising on re-financing issues in connection with the Channel Tunnel Project and on the internal powers of the Secretary of State to give a guarantee and the impact on his prerogative and common law powers of legislation in this area.

Tax Avoidance Schemes

Advising on regulations governing tax avoidance schemes and the impact on legal privilege.

R (on the application of Merseyside Passenger Transport Authority & Ors) v Secretary of State for Transport

[2006] EWHC 226 (Admin)

A decision of the Secretary of State to withdraw funding for a public transport scheme was not in breach of any legitimate expectation or an unreasonable or unlawful act as the funding was dependant on conditions, in particular, upon a fixed cost for the scheme, which were not met.

Kuwait Airways Corporation v Iraqi Airways Corporation

[2002] AC 883

Major piece of litigation arising out of the Iraqi invasion of Kuwait in 1990 and involving claims for $1.5 billion after the seizure and removal of the Kuqaiti airliner fleet by Iraq. The case involved complex and fundamental issues of public and private international law, non-justiciability, rights to property in a transnational context and damages.

Anzef Ltd and others v Secretary of State for Trade and Industry

Complex litigation in connection with ECGD insurance policies in respect of political risk in relation to the Dabhol power plant in India, includes issues of public international law.

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Groupama Navigation et Transports & Ors v Catatumbo C A Seguros
(CA) (2000) 2Lloyd's Rep 350

The presumption that facultative reinsurance cover was back-to-back with the original insurance was not rebutted. Case concerned issues of insurance law, contract, shipping and conflict of laws.

EU & Competition

David has a broad range of EC law experience that includes acting for the UK government on Article 177 interventions in a large variety of cases, including freedom of movement of goods, vocational education grants and fees, common commercial policy, Article 85 and 86. Advised on competition law in relation to sports TV broadcasting, and on directives in numerous areas, e.g. medicines, insurance companies.

Public & Regulatory

David has advised in public law cases of a commercial nature: e.g. bus transport, compulsory tendering, financial services, private finance initiative, privatisation. David has extensive hospital PFI experience, having advised both project contractors and banks and other financial institutions in relation to the PFI Design, Construct, Finance and Operate (DCFO) contracts for new hospitals with NHS Hospital Trusts at Norfolk and Norwich, Barnet General, Dartford, Wycombe General and Amersham, and Birmingham.

David also has extensive transport experience and has advised on a number of significant projects, including the Design, Build, Finance and Operate contract for Greater Manchester Light Railway system, application of Railway and Transport Acts to Merseyrail, the Transport Acts and buses, South West Trains in relation to powers of Franchising Director, Virgin Trains re franchising and Government powers in relation to Channel Tunnel Rail Link financing.

He also acted for the Department of Transport in relation to the withdrawal of a £190 million grant for the Merseytram project.

ACHIEVEMENTS

Selected earlier reported cases

Commercial

- Kuwait Airways Corporation v Iraqi Airways Corporation [2002] AC 883.

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- Ex Parte Granada Television [2001] 1 AC 300 (HL)
- Groupama Navigation et Transports & Ors v Catatumbo C A Seguros (CA) (2000) 2Lloyd's Rep 350
- In the matter of Westminster Property Management Ltd (No 1) (CA) [2000] 1 WLR 2230
- Mander v Equitas [2000] Lloyds IR 520 (Commercial Court)
- Sea Assets Ltd v PT Garuda Indonesia QBD (Commercial Court) [2000] 4 All ER 371
- Groupama Navigation et Transports and others v Catatumbo Seguros (CA) [2000] 2 Lloyds Rep 350
- Vehicle Inspectorate v (1) Bruce Cook Road Planning Ltd (2) Anthony Cheetham (HL) [1999] 1 WLR 1907
- Modahl v British Athletic Federation (HL) (1999)
- On Demand Information v Michael Gerson (1999) 2 All ER 811
- Prince Jefri Bolkiah v KPMG [1999] 2 W.L.R. 215, HL
- Sacor Maritima SA v Repsol Petroleo SA (1998) 1 Lloyd's Rep 518
- Source Ltd v TUV Rheinland Holding AG and Others [1998] Q.B. 54, CA
- Boss Group Ltd v Boss France SA [1997] 1 WLR 351, CA
- Bank Tejarat v Hong Kong and Shanghai Banking Corporation 1995 1 Lloyds 239 (Commercial Court)
- Bates v Barrow 1995 1 Lloyds 680 (Commercial Court)
- Standard Bank v Bank of Tokyo 1995 2 Lloyds 169 (Commercial Court)
- Kitechnology B.V v Unicor Gmbh 1995 F.S.R. 765 (Court of Appeal)
- Toomey v Eagle Star (No. 2) [1995] 2 Lloyds Rep 88 (Commercial Court)
- Toomey v Eagle Star (No.1) 1994 1 Lloyds Rep 516 (Court of Appeal)
- Leyland Daf Ltd v Automotive Productions Ltd [1994] 1 BCLC 245, 1993 BCC 389, CA
- Deutsche Gennossenschaftsbank v Burnhope [1995] 1 WLR 1580 [HL]
- Napier v Hunter 1993 A.C. 713 (House of Lords)
- G & H Montage GmbH v Irvani [1990] 1 Lloyds 14 (Court of Appeal)
- First National Bank of Boston v Union Bank of Switzerland [1990] 1 Lloyds 32 (Court of Appeal)
- R. I.R.C. ex parte Camacq 1990 1 All E.R. 173 (Court of Appeal)
- The 'Simona' 1989 A.C. 788 (House of Lords)
- Hong Kong and Shanghai Bank v Kloeckner [1989] 2 QB 514 (Commercial Court)
- Etri Fans Ltd v NMB [1987] 1 W.L.R. 1110 (Court of Appeal)
- British Caledonian Airways v Laker 1985 A.C. 58 (House of Lords)
- "Tilly Russ" [1985] 3 WLR 179 [ECJ]
- "Bureau National Interprofessionel du Cognac v Aubert [1988] 4 CMLR 331 [ECJ]
- Ahmed Saeed Flugreisen v. Zentrale zur Bekampfung unlauteren Wettbewerbs eV [1990] 4 CMLR 102 [ECJ]

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Public & Regulatory

- R (on the application of Merseyside Passenger Transport Authority & Ors) v Secretary of State for Transport [2006] EWHC 226 (Admin)
- Mass Energy Ltd v Birmingham City Council, 1993 Env. L.R. 298, CA

VAT registration number: n/a

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