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David Hughes

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Practice Overview

David joined chambers in 2007, prior to which he had been in full-time practice at the Gibraltar Bar. He has a broad common law, commercial and public law practice.

Commercial and contractual litigation probably makes up the largest single element of David's practice. He appears and advises in building disputes, disputes arising out the sale of businesses (including the sale of intellectual property rights), unfair prejudice proceedings, partnership disputes, denied boarding claims, commercial lease disputes and commercial disputes in the sporting context. He is a committee member of the Wales Commercial Law Association.

David appears for and advises claimants in actions against the Police, and for both claimants and defendants in commercial disputes and professional negligence and personal injury claims.

He has a strong interest in information and intellectual property law. He is a member of the Welsh Assembly's panel of counsel for intellectual property matters, and advises on issues relating to privacy and data protection as well as more conventional intellectual property matters.

David has an active defamation practice, one of the few barristers based outside London to regularly practice in this field. His experience includes defamation cases involving social media and in the local government context, and he has advised defendants in a number of cases involving Gibraltar government ministers. David authored the joint response of Public Law Wales and the Wales Commercial Law Association to the Government's consultation on the draft Defamation Bill, and has regularly given talks on defamation.

David's public law practice involves advising public bodies and potential claimants and appearing on behalf of both claimants and defendants in judicial review actions. He also appears in cases involving mental health issues. In this, he builds on his experience in Gibraltar, where he was involved in many of the most important Constitutional cases and where he continues to be active in public law. David appears in planning and village green inquiries and appeals.

David has a keen interest in housing law, in particular in social housing. Much of his public law work in Gibraltar relates to social housing, and he is experienced in Wales in using public law arguments to resist possession claims in social housing cases. He has also given a lecture on the Housing (Wales) Act.

He has given evidence to both the Welsh Assembly's Constitutional and Legislative Affairs Committee's inquiry into the establishment of a separate Welsh jurisdiction, and also to the Welsh Government's consultation on the same subject. He is a committee member of Public Law Wales.

David's employment law practice involves appearing for both Claimants and Respondents in the Employment Tribunal. He also acts in employment-related cases in the ordinary civil courts, for example in confidential-



information or restraint of trade cases. David is an elected member of Liberty's national policy council.

David speaks fluent Spanish as well as excellent French and good Italian.

Notable and Reported cases

- Picardo –v- Gingell.

Advising the defendant in a libel claim by the Chief Minister of Gibraltar

- R (Costa) –v- Minister for Social Security.

Advising and undertaking written advocacy on behalf of the Claimant. Re the entitlement of the Claimant to reasons for a decision refusing him a benefit, and to any policy concerning the benefit.

- McEvoy –v- Michael [2014] EWHC 701 (QB).

For the Claimant (against Hugh Tomlison QC) – Where a local politician complained of statements made in leaflets produced by the local branch of a rival political party, the chairman of that branch could be considered a publisher of the leaflets despite not having written them himself. Judge also held that, if necessary, he would have found that the printer and promoter of electoral material was a publisher of the same for the purposes of the law of defamation, as David had argued.

- Cometson v Merthyr Tydfil CBC [2012] EWHC 3446 (Ch); [2012] 50 E.G. 101 (C.S.)

A local housing authority co-ordinating a group repair scheme under the Housing Grants, Construction and Regeneration Act 1996, which had entered into separate contracts with the property owners and the builders, was not the main contractor and was not therefore responsible for the quality and progress of the work. While the local authority did not act as agent for the property owners, it had nevertheless assumed various obligations, which it had to discharge in accordance with the Supply of Goods and Services Act 1982 s.13 and s.14.

- Re Park Farm, Gilwern.

Appeared on behalf of the Brecon Beacons National Park Authority responding to an appeal against an Enforcement Notice.

- Re Park Farm.

For Brecon Beacons NPA, responding to an appeal against an Enforcement Notice

- Pulsar –v- Pringle.

For the Defendant in chancery proceedings and the Claimant in company proceedings, in a dispute between persons behind a company created for the exploitation of intellectual property rights in a hair removal machine.

- CSC –v- Jones –v- Jones –v- Celtic Marches.



For the 3rd party, the only parties between whom a live dispute remaining being the Defendant (effectively Claimant) and the 3rd party (effectively Defendant). Case concerned the sale of intellectual property rights in alcoholic drinks. Although the claim against David's client succeeded, only nominal damages were awarded and a costs order was made in David's client's favour.

- J –v- Heddlu Gwent Police.

Advising the Claimant in a civil claim for wrongful arrest and malicious prosecution.

- Azopardi & Azopardi –v- Merthyr Tydfil CBC.

For the Claimants in a construction dispute relating to works performed on their home under a local authority scheme.

- Leggott –v- North Yorkshire Police.

For the Claimant in a case of unlawful arrest.

- Llewellyn Jones –v- Ali & Ali.

For the Claimants in a case concerning a blocked easement.

- George & Elsdon –v- QPSD.

For the Claimants in a case arising out of the sale of care homes. Case involved significant factual disputes, and there was a counterclaim valued at nearly £600,000. The Claimants' case was largely successful, the counterclaim succeeded only to the amount of £250 and the costs order was in the Claimants' favour.

- R (Israel) –v- Gibraltar Magistrates Court.

Appearing on behalf of the Claimant. The issue was whether s14(2) of Gibraltar's Housing Act 2007 was compatible with the fair trial and respect for the home provisions of Gibraltar's Constitution (similar to ECHR Arts 6 and 8). S14 provides that, where a person is convicted of unlawful occupation and the Attorney-General seeks an order granting possession, that order must be made. An order had been made against David's client, who was in a dispute re public housing with the Gibraltar government. At the hearing of an application for interim relief, it was effectively conceded (the govt agreeing not to seek to enforce the order if substantive JR proceedings were issued and subject to its right to bring conventional possession proceedings).

- Scatchard –v- Peacock.

For the Claimant in a personal injury claim arising out of an RTA. An occupant of the vehicle driven by the Defendant had died in the collision, and client was very concerned at the allegation of contributory negligence against her putting blame onto her for this death. Appeared alone against a QC.

- Unite –v- Sisarello.



For the Defendant in proceedings before the Supreme Court of Gibraltar, concerning an alleged breach of a severance agreement. The claim raised issues about the extent to which a severance agreement can, under the cloak of confidentiality, silence the former employee from commenting on matters in the public domain.

- **Bossano –v- Zammit.**

For the Defendant in threatened libel proceedings in Gibraltar. David led the negotiations against a Gibraltar QC which resulted in settlement.

Administrative & Public Law

David advises and appears for public bodies and individuals across a range of public law areas. He is particularly interested in areas where public law crosses into his other practice areas, for example using public law arguments in social housing cases, in defamation in the local government context, and his practice in actions against the police, where torts based on or involving public law such as powers of arrest or detention are involved. David continues to be involved in public law claims in Gibraltar as well as in Wales. On the Rock, he has appeared in any of the leading Constitutional cases involving the Gibraltar Constitution's chapter on fundamental rights. David's public law cases include:

- **McEvoy –v- Michael [2014] EWHC 701 (QB)** – see above
- **Re Park Farm, Gilwern** – see above
- **Re Park Farm** – see above
- **R (Israel) –v- Gibraltar Magistrates Court** – see above
- **Merton Green**
 - appeared for the successful applicants in an inquiry as to whether land should be registered as a village green
- **Blaenau Gwent v Khan** - represented successful local authority in inquiry re recovery of expenses for workers on a listed building and subsequent judicial review proceedings.
- **R v Probation Service** - For a Claimant seeking a judicial review of decision taken with MAPPA to require him to return to scene of previous offending – resolved amicably to Claimant's satisfaction.
- **Govt. of Spain v Dixon 2008** - Supreme Court of Gibraltar allowed appeal against an order for surrender under European Arrest Warrant to Spain (no appropriate rules in Gibraltar; Anglo-Welsh rules could not be imported).
- **Att. Gen. v Abecasis 2007** - appearing in Court of Appeal on behalf of squatters resisting an application to evict them from government owned flat
- **Re Dixon 2007** - Habeus Corpus proceedings in Court of Appeal following surrender of client to Spain pursuant to a European Arrest Warrant
- **Att. Gen. v Shimidzu [2005] UKPC 26, [2005] 1 WLR 3335** - successful representation of respondent in Court of Appeal-costs regime for indictable trials unconstitutional (as acquitted defendants unable to claim costs)
- **Rojas v Berllaque [2003] UKPC 72, [2004] 1WLR 201** - successful challenge against all-male juries in Gibraltar; appearing alone in Supreme Court and Court of Appeal, and as junior in the Privy Council
- **R v Shimidzu & Martinez [2001-2002] Gib LR 106** - order for disclosure of complaints against a police officer not yet adjudicated upon, and Police Training manual



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- **R v Shimidzu [2001- 2002] Gib LR 100** - Supreme Court unable to vary bail conditions imposed by magistrates' court in order to preserve possible costs arguments
 - **R v Stipendiary Magistrate [2001-2002] Gib LR 68** - acting for claimant on application to stay serious criminal charges on the ground that inadequacies in Gibraltar's criminal legal aid scheme made a fair trial impossible. Case led to the first increase in criminal legal aid rates in 20 years
 - **Parody v R [2001-2002] Gib LR 13** - fair trial requirement that magistrates' court give reasons when convicting
 - **R v HM Prison Gibraltar, ex parte Chichon [1999-2000] Gib LR 143** - application for Judicial Review by inmate of prison who had been denied prescription drugs, and failure to provide medical examinations as required by prison rules

Chancery and Commercial

Commercial litigation probably makes up the largest single element of David's practice, and he is often instructed in chancery disputes involving land or businesses.

Currently advising in a high-value claim arising out of a landslip.

- **Azopardi & Azopardi –v- Merthyr Tydfil CBC** – see above
- **Cometson v Merthyr Tydfil CBC [2012] EWHC 3446 (Ch); [2012] 50 E.G. 101 (C.S.)** - see above
- **Pulsar –v- Pringle** – see above
- **CSC –v- Jones –v- Jones –v- Celtic Marches** – see above
- **Llewellyn Jones –v- Ali & Ali** – see above
- **George & Elsdon –v- QPSD** – see above
- **CB Construction v Ramsden and Ramsden** — For defendants in successful resistance to immediate execution of an adjudication award.

Crime

When in full-time practice in Gibraltar, David regularly appeared as a jury advocate, always obtaining at least partial acquittals when the principle defence advocate, and returned to Gibraltar to argue successfully in the European Arrest Warrant case *Govt. of Spain v Dixon* [2007–09 Gib LR 244]. He is a strong believer in acquiring a broad common law grounding in the early years of practice.

Employment

David appears in employment cases, both before the Employment Tribunal and the ordinary civil courts.

- **Unite –v- Sisarello** – see above
- **Rowlands and Rowlands v Ynysybwll RFC** — claimants awarded £80k for constructive dismissal
- **Seafresh –v- Regis & Ors** – for the claimant, concerning the enforcement of non-competition clause.

Mental Health, Vulnerable Adults & Community Care

Has appeared for local authorities seeking to displace nearest relatives, and advised local authorities in this field. Also undertakes work in the Court of Protection.



Local Government and Planning

This area ties in with David's interest and practice in public law, in commercial litigation, and (in particular in mental health and Court of Protection cases) his interest in human rights.

- **Caerphilly –v- D** – for the Defendant, a vulnerable adult against whom possession proceedings brought in respect of publicly-owned home.
- **Re Park Farm, Gilwern** – see above
- **Re Park Farm** – see above
- **R (Israel) –v- Gibraltar Magistrates Court** – see above
- **Caerphilly CBC –v- C**
– for the Defendant, a vulnerable adult against whom possession of a publicly-owned home was sought. Injunction obtained at a time when D lacked capacity held not enforceable.
- **A Local Authority –v- A media organisation** – instructed together with leading counsel on behalf of the local authority, seeking to restrain the publication by the media organisation of confidential material.
- **Re adult services** – advised a local authority on whether support services fell within the scope of s117 of the Mental Health Act 1983.
- Advising a local authority re restraining the use of confidential information in an adoption context.
- **Merton Green** — appeared for the successful applicants in an inquiry as to whether land should be registered as a village green, appearing alone against a silk at the inquiry.
- **Blaenau Gwent v Khan** - represented successful local authority in inquiry re recovery of expenses for workers on a listed building and subsequent judicial review proceedings.

Personal Injury and Clinical Negligence

Has considerable experience of personal injury cases, including significant head injuries. Also has experience of cross-border litigation, and has appeared successfully unled against silk-level opposition.

Police Actions and Prison Law

Numerous cases for claimants in police and prison cases, including against forces in the Midlands and the North of England and in Gibraltar. Cases include;

- **S –v- A prison governor** – advising the claimant in respect of unlawful detention in a prison.
- **J –v- Heddlu Gwent Police** – advising the Claimant in a civil claim for wrongful arrest and malicious prosecution.
- **Leggott –v- North Yorkshire Police** – see above
- **N –v- Home Office** – advising Claimant in respect of unlawful detention in a prison.
- **R v Probation Service** - For a Claimant seeking a judicial review of decision taken with MAPPA to require him to return to scene of previous offending – resolved amicably to Claimant's satisfaction.

Regulatory, Inquiries and Inquests

Appearing at planning and village green inquiries.



Sports Law

Appearing and advising in commercial disputes in the sporting context, including a claim concerning racehorse training fees and a partnership in a racehorse.

Education & Qualification

- Inns of Court School of Law – BVC 1996-97
- University of Glamorgan – CPE 1995-96
- University of Wolverhampton – B.A. (hons) Modern Languages (French & Spanish) including Erasmus exchanges at the Universidad de Granada, Spain and the Université de Mons-Hainault, Belgium – 1991-95.

Careers

- Tenant at 30 Park Place – June 2007 – present.
- Also a tenant at 4-5 Gray's Inn Square, London, and a consultant at Phillips Barristers & Solicitors, Gibraltar.
- Associate at Phillips Barristers & Solicitors - September 1997 – August 1999 and September 2000 – July 2007
- Pupillage – September 1999 – September 2000

Awards

Middle Temple Anglo-American Scholar 1997, Jules Thorn Scholar 1996, Blackstone's entrance exhibition 1995.

Related News

David spoke at the British-Spanish Law Association's 2015 annual conference in Palma, Majorca. His talk, delivered together with a Spanish abogada, was entitled "Pride and (without) prejudice: the treatment of inter-partes correspondence in England & Wales and Spain". He has spoken at previous BSLA conferences, at the Legal Wales Conference on a number of occasions, to the Public Law Project's Wales conference, and to the Murcia (Spain) Bar's private international law conference.

Related Publications

- "Justice for Wales" – pamphlet published with others.
- "Our Quasi-Federal Kingdom", Society of Conservative Lawyers, September 2014 (with others)
- Caseless tweets cost Confederation of South Wales Law Societies Legal News August 2013 Article for South Wales Solicitors on defamation, why it matters to their clients, and the lessons from the McAlpine -v- Bercow case
- Constitutional Litigation in Gibraltar – the legacy of Rojas –v- Berllaque", The Commonwealth Lawyer, December 2012
- Gibraltar and Wales: Indications of possible development of devolution" (2006) WJLP 330, A discussion of how devolution in Wales might develop, based on experience of Gibraltar's Constitutional position. Prepared having spoken to the Legal Wales Conference on the same subject.
- Had a fortnightly column in a Gibraltar newspaper when in full-time practice there, often writes pieces on current and legal affairs in the Western Mail and the Gibraltar Chronicle.



Memberships

- Liberty (elected to the national policy council)
- Police Action Lawyers Group
- Administrative Law Bar Association
- Planning and Environmental Bar Association
- Commonwealth Lawyers Association
- British Spanish Law Association (committee member)
- Public Law Wales (committee member)
- Wales Commercial Law Association (committee member)
- Society of Conservative Lawyers.

Recommendations

- 'Highly recommended for judicial reviews' (Legal 500, 2017)
- 'Experienced in businesses, partnership and building disputes' (Legal 500, 2017)
- 'Recommended for contractual disputes in the construction and engineering industry' (Legal 500, 2016)
- 'Knowledgeable in judicial reviews and a wide range of constitutional matters' (Legal 500, 2016)