

Harvey McGregor QC

Call year: 1955, Silk Year: 1978

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Pupillage at 3 Essex Court with pupil master Lord Donaldson, later Master of the Rolls, was succeeded by a tenancy at 1 Brick Court. There followed seven years away from the Bar to gain experience elsewhere, first in London with the prestigious advertising firm of J. Walter Thompson and as a Visiting Law Professor at New York University and at Rutgers University in New Jersey. After this, returned to the Bar going into the now Gray's Inn Tax Chambers. This took him frequently to the Caribbean to deal with tax schemes, and he was largely responsible for putting the Cayman Islands, then a group of small islands which no one knew, on to the tax haven map, largely through drafting for the Islands the Trusts Law which was essential for the purpose. His practice started to develop outside the tax field into more general common law and, after as a junior handling single-handed for the defendants the three month negligence and breach of contract case arising from the Emley Moor disaster (see under Major Cases below) and after then taking silk, he moved to 4 Paper Buildings where he has been ever since, being Head of Chambers for a long spell from 1986 to 2000. Elected Warden of New College just before becoming Head of Chambers (see under Appointments below), he nevertheless continued in practice, combining the two positions without difficulty. Since the Wardenship came to an end he has continued in practice but on a reduced scale as he has other activities which he wishes to pursue.

Practice Profile

Range of practice is very wide as is evidenced by the cases listed.

Personal injury

Naturally he is most in demand in relation to damages because of having written the standard text on the subject (see under Publications and Lectures). He has been in quite a number of the leading, difficult cases on personal injury damages. Also his record of personal injury awards is solid. In 1979 he got for a victim of a horrendous injury - see *Watson v. Murphy* at Major Cases, below - what was then the highest award for personal injury ever (though it looks more than moderate against the enormous sums being awarded today); in 1999 he got the highest award for personal injury in the courts of Gibraltar.

Other

However, damages issues cannot always be isolated from issues of liability and he has therefore appeared in cases where liability as well as damages has been central, as with liability for tall structures that collapse (see the Emley Moor mast and the Ronan Point flats at Major Cases below), more recently with liability for deceit as to a child's parenthood (see *P. v. B.* also at Major Cases below) and currently with liability for misfeasance in public office in a case about to be heard in the Supreme Court of India (see *Sancheti v Union of India*, also at Major Cases below). This combination of liability and damages has appeared for him in tort and in contract, in personal injury and in professional negligence. Furthermore, having produced a codification of the law of contract (see under Publications and Lectures), contractual matters of real size have also come his way, and this has been particularly true in respect of international arbitrations, generally involving contracts which, as is so often the case, have specified English law as the governing law (see under Major Cases, list B).

Tax

Tax is of course little in evidence these days, having been away from the Tax Bar for a quarter of a century, but he remains thoroughly au fait with tax issues, and tax issues very frequently appear in the context of cases with a different thrust.

Further Information

Year of call: 1955

Year of silk: 1978

Specialist areas: personal injury and professional negligence

Education: Inverurie Academy; Scarborough Boys High School; Oxford University, The Queen's College; Harvard University, The Law School; Called to the Bar, 1955; Doctor of Civil Law, 1983 (Oxford's highest law degree); Doctor of Juridical Science, 1962 (Harvard's highest law degree)

Appointments: Queen's Counsel, 1978; Bencher, Inner Temple, 1986 -; Member of the Faculty of Advocates, Edinburgh, 1995 -; Associate Member of Her Majesty's Writers to the Signet, Edinburgh, 2002 -; Warden of New College, Oxford, 1985 – 1996; President of the Harvard Law School Association of the UK, 1981 – 2000; Chairman of the Trustees of the Oxford Union, 1994 - 2004; Chairman of the Theatre Councils, 1992 -; President of the Oxford Stage Company, 1992 -; Member of the Academy of European Private Lawyers, 1994 -; Member of the Editorial Board of the Modern Law Review, 1986 –

Committees: Member of the Ogden Working Party responsible for Actuarial Tables for use in Personal injury and Fatal Accident Cases; now in its 6th edition.

Professional Memberships: London Common Law and Commercial Bar Association; Professional negligence Bar Association

Languages: French (fluent); German (limited; effectively read only); Chinese (now very rusty Mandarin)

Recent cases

Court Cases

Sancheti v Union of India (2009), appeal to Supreme Court of India in a case of misfeasance in public office against the Government of India, vicariously liable for the acts of their officers; yet to be heard.

Nicholson v Knox [2008] PNLR 33, quantum of damages for injury to credit by bank dishonouring a very large number of claimant's cheques; calculation of interest over 35 year period and therefore necessarily many times the damages themselves; degree of discounting on account of claim being against solicitors who had allowed claim against bank to be struck out

Phillips v Whatley [2008] Lloyd's Rep.I.R. 111, appeal to the Judicial Committee of the Privy Council from the Gibraltar Court of Appeal (below).

Whatley v Phillips (2006) Gibraltar Court of Appeal solicitor's negligence in failing to issue writ in time in respect of two separate accidents; assessment of loss of chance of winning either or both claims and of whether insurance company would have paid up on first claim

Burdis v. Livsey [2003] QB 36, Court of Appeal cost of repairs to her damaged car recoverable though done at no cost to claimant as credit agreement made with repairer unenforceable against her

Admiral Management Services v. Para-Protect Europe [2002] 1 WLR 2722, Chancery Division whether expenditure in uncovering wrongful removal of computer information recoverable as damages or as costs or as both

P. v. B. [2001] 1 FLR 1041, Queen's Bench Division, Stanley Burnton J. deceit by informing claimant that child was his; whether English law recognises such a claim

Gibraltar Homes v. Agroman Empresa Constructora Technology & Construction Court, 1999 issue of enforceability of Spanish guarantee; more than one legal system

Hunt v. Severs [1994] 2 A.C. 350, HL controversial House of Lords decision of great importance no claim for care provided by tortfeasor (a decision since much criticised); appropriate multiplier for future loss (a decision since departed from)

De Martell v. Merton and Sutton Health Authority [1993] QB 204, Court of Appeal whether duty of care owed to foetus born before the Congenital Disabilities Act 1976 but claiming very many years later

Corbett v. Barking Havering & Brentwood Health Authority [1991] 2 QB 408, Court of Appeal need to adjust multiplier in fatal case, calculated from death rather than trial, where dependant a child and an 11 year delay in bringing claim

Roberts v. Johnstone [1989] QB 878, Court of Appeal interest rate to be used for assessing value of special accommodation for seriously injured claimant to be only 2 per cent and not the much higher borrowing rate as formerly; award in respect of gratuitous

care classified as special damages and not general damages for purpose of appropriate interest rate

O'Sullivan v. Management Agency & Music [1985] QB 428, Court of Appeal whether account of profits available where undue influence; awarding of compound interest where undue influence

Newham Borough Council v. Taylor Woodrow, 1983, Court of Appeal, unreported litigation arising out of the collapse after a gas explosion near top of one of the tower blocks at Ronan Point

Independent Broadcasting Authority v. British Insulated Callender Cables(1980)14 BLR1 HL litigation going to House of Lords arising out of the collapse in light winds of the one mile high television mast at Emley Moor in Yorkshire

Watson v. Murphy, 1979 unreported (except extensively in press) road accident involving loss of leg up to hip by Indian sportsman student with difficult issues of personal injury damages

General Tire & Rubber Co. v. Firestone Tyre & Rubber Co. [1975] 1 WLR 819, HL basis of assessment of damages for patent infringement; when discretion as to interest to be exercised

In addition there have been a number of cases fought, generally with successful outcomes, in the courts of Gibraltar in the 1990s.

B Arbitrations

Re British Shipbuilders, 2003-2007 advising employers and insurers on what could become a class action by hundreds of employees contracting an essentially harmless condition through exposure to asbestos

Re Duke Group, 2003 advising claimants from Australia on prospects of successfully pursuing a massive company fraud claim in England after an eventually unsuccessful litigation all the way up to the High Court of Australia; advised on separate issues of damages and conflict of laws

Medibar v. Epis and Roche: ICC arbitration, Zurich, 2001 Roche pulled out of a contract to develop a drug against a variety of diseases and the Israeli claimant claimed damages; issues of the effect of anticipatory breach of contract and of provability of hypothetical lost profits

Kuwait Investment Authority v. Republic of Iraq: United Nations Compensation Commission, Geneva, 2001 reparations claim arising out of Iraq's invasion of Kuwait; one major issue was whether the claim for several millions of dollars of interest lay

Lockheed Martin v. Thomson, New York, 2001 creating an elaborate computer system, which went wrong, to detect missiles and the like for the Portuguese Air Force, loss of profit and loss of business reputation in contract; matter later settled

Braspetro Oil Services Co. v. Great Man-Made River Authority, ICC Arbitration, Paris 1997 massive failure of water wells in Libya being built by Brazilian company for the Government of the Republic of Libya, sued for breach of contract

Southern Pacific Properties v. Arab Republic of Egypt, ICC Arbitration, Paris 1990 contract to build hotels and homes close to the Pyramids; repudiatory breach when Egyptian Government had change of mind

Publications and lectures

McGregor on Damages: 18th edition out late 2009

Contract Code: written for Law Commission 1966-1971; published in Italy and England 1993

Articles over the years, of which perhaps the most widely known is:

The International Accident Problem: 33 Modern Law Review 1 (1970)

recently there is:

Costs as Damages: the Flawed New Approach: Professional negligence Law Review (Feb.2008)

Lectures over the years, the latest (in ascending order of time) being:

January 2002:*Standardisation of Personal injury Claims*; contributor to Meeting of International Experts at Tilburg University, The Netherlands

October 2002: *Damages in Personal injury Actions in England*; to postgraduates at the Scuola Superiore de Sant'Anna in Pisa

November 2002:*Difficulties, Puzzles and Controversies in Damages Today*: Commercial Law Aspects; to the Commercial Bar Association, COMBAR

January and February 2003: *Compensatory and Restitutionary Damages in Contract*, to undergraduates at the University of Edinburgh

March 2003: *Damages and Taxation* ; to the Chancery Bar Association

June 2007: *The Role of Mitigation in the Assessment of Damages*, First International Conference on Contract Damages at the University of Birmingham (to be published circa June 2008)

July 2007: *Restitutionary Damages: a Bold New Idea or a Contradiction in Terms?* to the London Common Law and Commercial Bar Association

October 2007: *Loss of a Chance: Where has it Come From and Where is it Going?* to the Professional negligence Bar Association (published February 2008)

March and October 2008, March 2009: *Mistake in Contract* and *Damages in Contract*, in comparative law (English, Scots, French and German) to graduates, mainly from other countries, at the University of Edinburgh

What others say

On my first edition of McGregor on Damages:

'There can be little doubt that the book is a major piece of scholarship of our generation': Law Quarterly Review, April 1962

'Let there be no doubt about it; the reputation will be a very high one. This monumental work . . .': Modern Law Review, May 1962

On the Contract Code:

'McGregor's contract code assumes a great emblematic value for European culture . . . This project can, to some extent, be compared to the landing of the Apollo 11 team on the moon . . . or the fall of the Berlin wall . . .'

From the Law Commission Report (Law Com No.262, 1999) on Damages for Personal injury: Medical, Nursing and Other Expenses; Collateral Benefits

'We have been helped by a large number of people in our work on this report. In particular, Harvey McGregor QC has given us the benefit of his unrivalled expertise on many issues and, having been leading Counsel in a number of the important cases, has given us insights that we would not otherwise have gleaned.'

Subject of the Valerie Grove interview: in The Times Law Section, 20 January 1998
