

Frederick Wilmot-Smith

YEAR OF CALL: 2018

Email: Frederick.Wilmot-smith@brickcourt.co.uk



Practice Overview

Frederick has a busy practice spanning commercial and public law. He has appeared in a range of courts, up to and including the Supreme Court, and, drawing on his substantial experience as an academic lawyer, advises on all aspects of private law, especially on complex matters relating to unjust enrichment and remedies.

Present cases include a number of instructions for HMRC in respect of overpaid tax and *Republic of Mozambique v Credit Suisse International*, a claim in the Commercial Court alleging bribery of over US\$1 billion.

He was previously an academic at the University of Oxford, where he is a Fellow of All Souls College. He has published widely on a range of subjects and taught, for example, graduate seminars in commercial remedies and restitution of unjust enrichment. His work has been cited before the United Kingdom Supreme Court, as well as numerous other courts worldwide.

Commercial

Cases in which Fred has been instructed include:

- *Republic of Mozambique v Credit Suisse International*: a substantial claim brought by the Republic against financial and commercial institutions. Acting for the Seventh – Tenth Defendants, Fred is led by Duncan Matthews QC, Philip Riches QC and Ben Woolgar. The case has been to the Court of Appeal once already on a section 9 challenge.

- *Patisserie Valerie v Grant Thornton*: proceedings brought by Patisserie Valerie alleging negligence by the auditors. Acting for Grant Thornton and led by Simon Salzedo QC, James Brocklebank QC and Ed Harrison.
- Led by Fred Hobson, acting for the third defendant in *Terre Neuve SARL v Yewdale*, a multi-million pound fraud claim;
- *Stokoe Partnership v Patrick Grayson and others*: instructed by the claimant in a case alleging breach of confidence and unlawful means conspiracy. Led by Tim Lord QC and Gerard Rothschild, the case went to the Court of Appeal on a question of cross-examination of a *Norwich Pharmacal* deponent on their affidavit.
- *CVS v Ralph*: led by Thomas Plewman QC, Fred acts for the claimant in a case alleging deceit and breach of contract.
- *Vale v Steinmitz*: led by Stephen Houseman QC, Fred was instructed to argue before the Court of Appeal on a question concerning the scope of equitable rescission in an arbitration context.

Frederick also acts alone in a number of matters, both in the County Court and the High Court, and is happy to take advisory instructions or to act as an expert.

Public Law

Frederick has acted *pro bono* in the First-Tier Social Security Tribunal and the Upper Tribunal in cases involving Human Rights Act 1998 and Child Tax Credits.

He also acts for HMRC in various cases concerning restitution of overpaid tax. Current instructions include *Test Claimants in the Franked Investment Income Group Litigation* (where Fred appeared before the Supreme Court twice recently), *Jazztel* (which will be heard by the Court of Appeal in early 2022), *BT Pension Scheme* and *British Telecom* (where an appeal to the Court of Appeal is also pending).

Other information

Professional experience

Fellow of All Souls College (2011-2018, 2019-present)

Selected publications

- *Equal Justice: Fair Legal Systems in an Unfair World* (Harvard University Press, 2019)
- 'Termination After Breach' *Law Quarterly Review* (2018) 134 (Apr), 307-325
- 'Should the Payee Pay?' *Oxford Journal of Legal Studies*, (2017) 37(4), p. 844-861
- 'Retrospective Mistakes of Law' in PS Davies and J Pila (eds) *The Jurisprudence of Lord Hoffmann* (Oxford: Hart, 2015)
- 'Reconsidering "Total" Failure', *Cambridge Law Journal* (2013) 72(2), 414
- 'Replacing Risk-Taking Reasoning', *Law Quarterly Review* 2011, 127, 610-630

- Co-editor of three edited collections: *Defences in Contract* (Oxford: Hart, 2017) ; *Defences in Unjust Enrichment* (Oxford: Hart, 2016) and *Defences in Tort* (Oxford: Hart, 2015)
- Part of the advisory group (with a number of judges, practitioners and academics) which assisted Professor Andrew Burrows in producing *A Restatement of the English Law of Contract* (OUP, 2016)

Education

- D.Phil, All Souls College, Oxford
- M.Phil, Balliol College, Oxford (Distinction)
- B.C.L., Balliol College, Oxford (Distinction)
- Undergraduate, Christ's College, Cambridge (Double First Class)

Scholarships and prizes

- Eldon Scholar (most promising Oxford graduate intending to practise at the Bar)
- Prize Fellow of All Souls College, Oxford
- Vinerian Scholar (top mark on the Bachelor of Civil Law)
- Scholar of Christ's College, Cambridge
- Various prizes in Cambridge and Oxford for performance in examinations