

# Raoul Downey

## General Information

Raoul is currently co-located in London and the Republic of Ireland where he and his partner have a permanent home. He practised for nearly 25 years as a tenant in a leading London commercial and employment set and has returned to private practice after spending 5 years assisting his partner in the restructure, relocation and management of her private nursery school business. He is therefore able to combine the substantial experience gained from a broad Chancery, Commercial and Employment practice at the Bar with the practical business experience gained from working in an in-house role.

Raoul is a specialist in both Employment and Chancery work. He has substantial experience in:

- Employment Law and Discrimination
- Commercial and Business Law
- Landlord and Tenant and Property Law
- Customs Duties
- Company Law
- Costs
- Professional Negligence and Regulatory matters

As an advocate Raoul has extensive experience in a wide variety of civil Courts, Tribunals, and other settings, He has delivered lectures and seminars on Employment, Pension, Company and Costs issues and has acted as an Adjudicator for a Financial Services Compensation scheme. He was a regular participant under the ELAAS scheme in the Employment Appeal Tribunal and for the Bar Pro Bono Unit in the Court of Appeal.

Whilst working with his partner, Raoul undertook most of the internal legal work for the business including reviewing and amending terms and conditions of business, contracts and other documentation drafting and reviewing policies and procedures to ensure compliance with relevant legislation and guidelines and liaising with the business' external advisers. He managed an appeal to the business rating valuation of the new premises and generally performed the HR function for the business. This included ensuring TUPE compliance on the transfer of the business to a limited company and successfully handling and representing the company in an Employment Tribunal claim brought by a former employee.

Outside of practice at the Bar, Raoul is currently the Vice-Chairman of the Murrisk Development Association in Ireland and takes an active part in local campaigns and projects. He is also a former international swimmer having represented Hong Kong at both Age Group and National levels. He still swims and competes as a Master at county, regional and national levels.

## Experience

### Employment Law

Raoul has extensive experience in all forms of employment law, including contractual issues, unfair and wrongful dismissal claims, redundancy, restrictive covenants and confidential information, discrimination, TUPE, trade unions and pensions.

Reported cases include:

*Sud v London Borough of Ealing* [2013] EWCA Civ 949 [2013] ICR D39 – Employment Appeal Tribunal Procedure – Whether decision not to remit appeal back to Employment Tribunal was correct – Tribunal Costs

*Jurkowska v HLMAD Ltd* [2008] EWCA Civ 231 [2008] ICR 841 – Appeal Time Limits – Extension of time

*Anglian Windows v The GMB* [2007] EWHC 917 (QB) – Interlocutory Injunction, Strike Action, Ballots and workplaces.

*Fraser v HLMAD Ltd* [2007] 1 All ER 383, [2006] ICR 1395 – Res Judicata and Employment Tribunals. Whether a decision of tribunal on a breach of contract claim precludes a further action for the excess over the tribunal's jurisdiction.

*Smith v Kent County Council* [2004] EWHC 412 (QB) – Deduction from Wages – School Teacher – Strike Action – Burgundy Book conditions

*Green v Governing Body of Victoria Road Primary School* [2004] 2 All ER 763, [2004] ICR 684 – Education, Proper respondent to a claim for unfair dismissal.

*Celtec Ltd v Astley* HL (10 November 2003) – Reference to ECJ – Civil Service Continuity of Employment – Secondment to TECs – Transfer of Undertakings

*Doshoki v Draeger Ltd* [2002] IRLR 340 – Race Discrimination – Compensation for injury to feelings

*Kent & Medway Towns Fire Authority v Pensions Ombudsman* [2001] OPLR 357 – Firefighters' Pension Scheme – whether a payment in lieu of annual leave is included as "pensionable pay"

*Interlink Express Parcels Ltd v Night Trunkers Ltd* [2001] RTR 23 - Road Haulage, whether drivers supplied by third party were temporary employees. Contract, Road Haulage, Use of goods vehicles by drivers employed by defendant on claimant's business, S.2 Goods Vehicles (Licensing of Operators) Act 1995 - Whether drivers "temporary employees" of claimant - whether use illegal - whether contract for supply of drivers void for illegality.

*Van Erp v Adax (Europe) Ltd* [1998] EWCA Civ 93 – Employment Contract, Entitlement to commission

*Wood v Coverage Care Ltd* [1996] IRLR 264 – Unfair Dismissal, Spent Convictions Rehabilitation of Offenders Act 1974.

## **Chancery and Commercial**

Raoul undertakes both contentious and non-contentious Chancery and Commercial work with particular expertise in Company, Landlord and Tenant and Property Law, and Customs Duties.

Reported Cases include:

*Brewer v Mann & Other* [2012] EWCA Civ 246 – Sale of Goods and Hire Purchase, Rejection of Goods, Warranties by dealer, Bailment by Description – Adequacy of Judges Reasons

*Tankaria v Morgan* [2005] EWHC 3282 (Ch) – Contempt of Court – Committal Application - Solicitor – failure to disclose and deliver up documents

*Arnold v Harvey* [2004] EWHC 3035 (QB) – Estate Agency- Construction of Share Sale Agreement – Application for interim injunction to restrain alleged breaches of Agreement

*Dastagir v Khan* [2004] EWHC 1302 (QB) – Company Law – Claim for monies due on sale of shares

*London Borough of Haringey v Ball and others* (HHJ Roger Cooke) 6 December 2004 – Landlord and Tenant – Local Authority Landlord - Service Charges – test cases

*Woolwich v Twenty Twenty Productions Ltd* [2003] All ER (D) 211 - Companies - Unfair prejudice to members - Exclusion of member from management of TV production company - Refusal by other members to purchase shares.

*James Robinson Fibres Ltd v Customs and Excise Commissioners* [2003] V & DR 1 - Post Clearance Recovery of Customs Duties

*Eurofi Ltd v Teletech Ltd* [2000] EWCA Civ 245 – Commission payable on a contingency, Construction of Consultancy Agreements – Regional Development Grants

*Overseas Medical Supplies Ltd v Orient Transport Services Ltd* [1999] 2 Lloyd's Rep 273- Insurance, International Carriage, BIFA Conditions, Unfair Contract Terms Act 1977 - whether Clauses 13(B) and 29(A) of BIFA Conditions were unreasonable limitations of liability for freight forwarding agent's failure to insure goods.

*Paperlight Ltd & Others v Swinton Group Limited* [1998] CLC 1667 - Franchise Contract, Renewal rights - Notice required by a franchisor before withdrawal from franchise business.

*Commissioners of Customs & Excise v Cedar Health Ltd* [1998] All ER (D) 230 - Customs and excise - Duties - Meaning of 'medicament' in Combined Nomenclature of the Common Customs Tariff - Whether product a 'medicament' only if it had an effect on the precise functions of the human organism - Council Regulation (EEC) 2658/87.

*Commissioners of Customs & Excise v Invicta Poultry Ltd* [1998] 3 CMLR 70 - Post Clearance Recovery of Customs Duties, Article 220(2)(B) of Council Regulation (EEC) No. 2913/92

*Hughes v Cork* [1994] EGCS 25 CA - Adverse Possession, whether possessor's belief that he was true owner meant that the possession was not adverse

*Millar v Bassey* [1994] EMLR 44 - Striking-out, Wrongful Interference with trade or business, intention of alleged tortfeasor, RSC 0.18 r.19

Other notable cases include:

*Miller & Fletcher v Levy Gee* (1998) – Investment Advice by Accountants to well-known pop star and record producer to become Lloyd's Names – Lloyd's of London - Payment into Court – Time for acceptance.

*AMF v Hashim* (1993) – appeared as Junior Counsel at trial of AMF's claims of fraud and breach of fiduciary duty against Dr Hashim and other defendants whilst running AMF. Included claims for equitable remedies in rem and issues of conflict of laws.

## **Professional Negligence**

Raoul has been involved in a wide variety of professional negligence claims including claims against solicitors, surveyors and valuers, accountants, brokers and medical professionals. He also has represented professionals before various disciplinary tribunals. He has experience of group litigation having been involved in the *HIV Haemophilia Litigation* in the early 1990s

Notable cases also include:

*Miller & Fletcher v Levy Gee* (1998) – Accountant's negligence – Investment Advice

*Bristol & West Building Society v Evans Bullock & Co* (1995) - Solicitor's negligence – Conveyancing – Mortgages - Costs

## **Costs**

It has been noted judicially that Raoul "**clearly has a very considerable knowledge and experience**" of matters relating to the powers of costs judges and costs (per Drake J in *Skuse v Granada* [1994] 1 WLR 1156). He has experience in both contentious and non-contentious costs matters and in the Supreme Court Costs Office.

Other Reported cases include:

*Sud v London Borough of Ealing* [2013] EWCA Civ 949 [2013] 5 Costs LR 777 – Employment Tribunal Orders for Costs

*Lyreco v Martin* [2009] EWHC 2105 (QB) [2009] All ER (D) 142 - Costs - Order for costs - Discretion - Claimant succeeding in proceedings against first two defendants but not against third - Claimant not responding to third defendant's indication of willingness to negotiate reasonable settlement - Whether facts justifying departure from normal rule as to costs - CPR 44.3

*Wiggins v Richard Read Transport Limited* (CA) The Times 14 January 1999 - Costs - Order against non-party - Natural Justice

*Mainwaring v Goldtech Investments Limited* (CA) The Times February 19, 1991 - Solicitor's personal liability for costs, Use of Privileged and Confidential Documents, RSC O.24 r.14A

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