

Terence Bergin KC

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Terence has a high profile practice in Information Technology and Telecommunications, including data protection. Over the last 20 years he has appeared in many of the most important cases relating to the supply of computer and related systems, some of which have established or clarified the principles which underpin this branch of the law.

Information Technology & Telecommunications

Terence has a broad commercial practice, specialising in Information Technology and Telecommunications. He is increasingly instructed in disputes in the cryptocurrency space, particularly involving fraud. He is regularly instructed in relation to the obtaining or resisting of injunctive relief, often mandatory. He frequently advises and appears in complex applications for pre-action and specific disclosure.

He has appeared in many of the most important cases relating to the supply of computer and related systems, some of which have established or clarified the principles which underpin this branch of the law.

He works for suppliers and users. His clients have included major and international IT suppliers, Governments, major software houses, national retailers, public transport providers, local authorities, leading and international telecoms providers.

His cases have involved many different types of technology and software, such as e-Government; flight booking; metals trading front and back-office; telecoms network management; web-crawling; vehicle tracking; benefits administration; and stock-broking transaction settlement.

He has expertise in all aspects of the interpretation of contracts (with particular reference to limitation of liability, exclusion clauses, Unfair Contract Terms Act), the issues arising out of delay and disruption claims, contractual and informal variations, scope creep and outsourcing. He regularly advises on termination issues including the obtaining or resisting of injunctive relief.

He has very good technical understanding and maintains a keen interest in developments, allowing him to understand the complexities of all manner of systems. He gets quickly and efficiently to the heart of complex factual and legal disputes and seeks always to provide a commercial rather than purely legal analysis.

In addition to supply disputes, he has also acted or advised in many matters involving communications (regulatory, contractual and wayleave disputes), the licensing of software, and various aspects of e-commerce and internet publishing, including domain name disputes and data protection.

Terence has extensive experience of all aspects of commercial contractual disputes, involving for example breach of warranty, guarantees, supply of goods and services, agency, and franchising. This also includes the protection of confidential information and employee / director civil fraud.

Examples of recent work and cases:

- Obtaining a worldwide freezing injunction to freeze wallets in a complex cryptocurrency fraud.
- Representing pharmaceutical wholesalers in litigation in respect of unpaid invoices, involving multiple issues concerning incorporation of terms and accounting.
- Representing a software house producing a visualisation and configurator system for the automotive industry.
- Advising an individual in relation to a dispute with Facebook.
- Advising a SaaS supplier in relation to the data protection issues of employee network data scraping and enhancement.
- Defending a substantial claim for alleged breach of a licensing agreement in relation to the IPR in audio-visual equipment used to create composite systems for sale worldwide.
- Advising an international automotive business concerning termination of a software development contract for a data system for the full life-cycle management of a vehicle, from product conception through to product planning, launch of the vehicle and thereafter the management of that vehicle in the marketplace.
- Advising a Government department in relation to a series of unrelated outsourcing/infrastructure contract disputes.
- Advising in relation to the regulatory issues applicable to an innovative banking app.
- Acting for an international telecoms company in connection with the provision of an emergency services radio network system and harmful spiking of frequency to hardware.
- Acting for a major telecoms provider in relation to a contractual dispute and the implementation of an international high-speed data broadcasting network.
- Working with the NHS on its Connecting for Health program with different suppliers; the largest-ever civilian IT procurement.
- Acting for Hutchinson 3G in its dispute with Ericsson over the termination of a £700m outsourcing contract.
- Representing several major software houses in software quality disputes.
- Advising a Local Authority purchasing organisation as to the termination of a software development contract.
- Representing BT plc in a dispute as to consultancy fees.
- Obtaining a freezing injunction on behalf of a car manufacturer against a former employee.
- Obtaining a freezing injunction on behalf of a bank against a former employee.
- Advising a provider of travel services concerning termination of a joint venture agreement with an airline.
- Representing a US IT provider in a dispute with providers of ground handling services as to the termination of a network agreement.
- Advising a soft drinks manufacturer in relation to an application for a mandatory injunction to preserve its business critical software.
- Representing a software house in a dispute in relation to its ATM software.
- Advising an online games provider as to a dispute with its ISP.
- Representing a mobile 'phone services provider seeking injunctive relief against another telecoms provider.

- Representing a bank resisting an injunction in relation to entries on the Credit Industry Fraud Avoidance System database.
- Acting for the Claimant seeking payment under a Packaged Network Services Agreement in the airline industry.

Featured Information Technology & Telecommunications cases

Digital Capital Limited v Genesis Mining Iceland EHF [2021] EWHC 2462 (Comm): defending a claim in relation to a cryptocurrency to FIAT software system.

JD Williams and Co Ltd v Welcom Digital Ltd [2021] 3 WLUK 92: defending summary judgment application on a point of construction.

AB v CD [2015] 1 W.L.R. 771: representing the Defendant resisting an injunction where the issue was whether damages were adequate remedy having regard to a provision limiting liability.

AFD Software Ltd v ZIP Address Ltd [2015] EWHC 453 (Ch), [2015] All ER (D) 30 (Mar): successfully defending a substantial breach of copyright claim.

Hamsard 3147 Ltd (t/a Mini Mode Childrenswear) v Boots UK Ltd: successfully defending claim for breach of supply agreement.

TARBS Europe S.A. v The Republic of Macedonia: representing a broadcaster in a dispute arising out agreements for the satellite broadcast of television programmes.

Ericsson Limited v Hutchison 3G UK Limited: representing the Defendant in a dispute about the construction of a telecommunications master agreement.

Domestic & General Services Limited -v- Axon Solutions Limited: acting for the Defendant in a software quality dispute.

Southwark Council -v- IBM UK Ltd: acting for the Defendant in a software quality dispute.

Data Direct Technologies Ltd -v- Marks and Spencer plc: acting for the Claimant claiming maintenance fees.

Fujitsu Services Limited -v- Electronic Data Systems Limited: acting for the Claimant seeking licence and support fees.

TTI Team Telecom International Ltd -v- Axarte Ltd / Hutchison 3G UK Limited: acting for software house in dispute relating to the development of a computerised telephone network management system.

North East Derbyshire DC -v- Anite Public Sector Ltd: acting for software house alleged to have failed to provide effective £3m database driven IT system, but blaming its local authority clients for failing in their contractual obligations to cleanse pre-existing data for use in the system.

EGroup Ltd / Vong Enterprises Ltd -v- Baker: acting for claimants seeking to recover expenditure on the development of web-crawling and affiliate sign-up software.

Sempra Metals -v- Brady: acting for the Claimant in a case concerning metals trading software.

MCI Worldcom Ltd -v- Arc Phone Canada Inc: acting for the Defendant in a case concerning international telephony.

M Ltd -v- S Borough Council: resisting on behalf of the Council an application by M to restrain the Council from terminating for poor performance by M the contract under which the Council had outsourced IT and other functions to M.

ITNET UK Ltd -v- The Cabinet Office: acting for the Defendant in a case concerning e-Government software.

Flowrite Services Ltd -v- Masternaut (UK) Ltd: acting for the Claimant claiming damages for defective vehicle tracking software.

SAM Business Systems Ltd -v- Hedley & Co: acting for software house resisting counterclaim for defective transaction settlement software supplied to firm of stockbrokers.

BCT -v- C. Brewer & Sons Ltd: acting for software house suing distributor to restrain use of software outside terms of contractual licence.

Co-operative Group (CWS) Ltd -v- International Computers Ltd: acting for the national retailer suing for failure to provide a working computer system.

Psychometric Services Ltd -v- Merant International Ltd: acting for software house resisting providing source code for website software in advance of payment.

The Boots Company Plc -v- Amdahl: acting for a national retailer suing a supplier for breach of a promise made in the course of tendering for the updating of an electronic point-of-sale system.

Anglo Group Plc -v- Winther Browne & Co Ltd: acting for the supplier of distribution software sued by a user for scores of alleged defects in standard software.

Education

- BA (Cantab)

Recommendations

Before taking Silk, Terence was twice awarded Chambers & Partners: Information Technology Junior of the Year.

He is recommended for Technology work in the leading legal directories where comments and recommendations include:

- a genuine specialist
- a real star in court
- highly robust and effective performances at hearings; the person to use if you want some beefy cross-examination
- excellent legal and technical knowledge
- speedy, succinct and commercial advice
- a highly gifted lawyer who is also very user-friendly
- very knowledgeable, very careful and a very good cross-examiner
- he has a very keen eye for the fundamentals of a case – he reads the case well and understands it well. He's a fighter but also a nice guy