

Dr. David Hayton

Overview

Dr David Hayton LLD (Cantab) LLD (Newcastle Univ) TEP (Hon) ACTAPS (Hon), Barrister and Benchers of Lincoln's Inn, London, Fellow of King's College London, was a full-time Judge of the Caribbean Court of Justice in Trinidad from July 2005 to July 2019. As a member of the CCJ and one of the Court's longest-serving judges, he has been described by advocates and fellow judges as an "*intellectual giant*" and "*a jurist of international repute*." He is also a part-time Judge on The Court for Trusts and Fiduciary Relations in the Republic of San Marino, Italy (since 2015).

David joined Lennox Paton in early September 2019 as a Consultant, his practice spans the firm's Trust and Litigation groups. He provides legal opinions, litigation support and acts as an expert witness in Trust Law and Arbitration.

He has contributed over 50 papers to learned journals and authored or edited sixteen books in the area of trusts (including Underhill & Hayton, Law of Trusts & Trustees), property, succession and tax. He is thus arguably the leading authority in the United Kingdom and Europe on trust law.

Background

In 1973, I became a Fellow of Jesus College and a lecturer at Cambridge University. After a year or so, I restricted my Bar practice to paperwork as it was impractical to fit in court work. In my 14 years in Cambridge I did stints as Secretary to the Degree Committee of the Law Faculty, as University Advocate and as acting Jesus College Bursar

(overseeing the GBP25million endowment). I also lectured on Revenue Law and on Conveyancing at the Inns of Court School of Law. I headed the UK delegation for the XVth Session of The Hague Conference for the Convention on The Recognition of Trusts 1984 and for the XVIth Session for the Convention on Succession to Deceaseds' Estates 1988. In 1985 I was Visiting Professor of Law at the National University of Singapore.

In 1987 I was appointed Professor of Law at King's College, London, becoming Dean of the Law Faculty 1988-1990 (a separate post from Head of the Department of Law) and Chair 1992-1995 of London University's Board of Studies in Law and of its LLM Management Committee with over 1,000 LLM students. When the Trust Law Committee of England and Wales was set up in 1994 with Mr Justice Vinelott as Chair, I became Deputy Chair, chairing working parties on reform topics till 2005. I was Van der Grinten Visiting Professor at the Nijmegen Radboud University 1995 - 1997. From 1993-1996 I was Assistant Hon Sec and 1996-2001 Hon Sec of the Society of Public Teachers of Law (later the Society of Legal Scholars). I was also on the Law Panel for the Higher Education Funding Council's Research Exercise for grading University Law Schools in 2001.

During my time at King's I wrote a Consultation Paper on Financial Services and Trust Law commissioned in 1990 by the Securities Investment Board and the Investment Management Regulatory Organisation. For the Edwards' Home Office Review of Financial Regulation in the Crown Dependencies (1998 Cm 4109-1) I was the trust law consultant, while in 2000 I visited Washington as technical adviser to the International Monetary Fund advising on Offshore Centres' Trust Law and Trustee Regulation. In 2002 I produced a Report for The Association of Corporate Trustees on Trusts and their Commercial Counterparts in Continental Europe. The Lord Chancellor's Department consulted me from time to time until 2005 on EU succession harmonisation measures leading ultimately to the EU Succession Regulation. On this see letter <https://publications.parliament.uk/pa/ld200910/ldselect/lddeucom/75/75pdf> published in the House of Lords European Union Committee, Sixth Report of Session 2009-2010, The European Union's Regulation on Succession, HL Paper 75, 69-72.

I then accepted the invitation of the Chief Justice of The Bahamas to help clear a backlog of cases, sitting as an acting Supreme Court Judge in Nassau in The Bahamas for 12 weeks in 2000, resigning as a Recorder an office held since 1983. I later accepted an invitation to sit for six weeks in 2001. I was asked to sit in Grand Bahama towards the end of 2003 but declined, the increase in my consultancy Bar practice on top of my other commitments prevented acceptance of the offer.

In 2004 I was elected a Bencher of Lincoln's Inn. I also saw the advert in the New Law Journal for judges for the Caribbean Court of Justice with its original jurisdiction (like the European Court of Justice) over the Caribbean Community's Revised Treaty of Chaguaramas, and its appellate jurisdiction as the agreed replacement under the Agreement Establishing the CCJ for the Judicial Committee of the Privy Council.

I applied for the CCJ Bench, hoping my stints as a Judge in Nassau would help qualify me for the CCJ Bench. I was interviewed with many others and offered a judgeship, so becoming one of the original seven CCJ Justices on 1st July 2005. In 2005 I also became Emeritus Professor of Property Law and a Fellow of King's College, London and was

awarded the degree LL.D. (Cantab) for my publications. I am also an Honorary Member of the Society of Trust and Estate Practitioners and the Association of Contentious Trust and Probate Specialists. In 2015 I was installed as a (part-time) Judge of the Fiduciary Court of San Marino.

When I attained the compulsory retiring age of 72 years in July 2016 the Regional Judicial and Legal Services Commission extended my tenure the maximum three years to the age of 75 years, where I retired in 2019.

David Hayton

Books (Click to expand)

Hayton, *Registered Land* 1973, 3rd ed 1981 Sweet & Maxwell

Hayton & Tiley, *Capital Transfer Tax* 1975, 2nd ed 1978 Butterworths

Hayton (ed) Hayton & Marshall, *Commentary and Cases on Trusts* 6th ed 1975 to 12th ed 2005 Sweet & Maxwell - then passed on to Professors Charles Mitchell and Ben McFarlane

Hayton (ed) Vol 48 *Trusts*, Halsbury's Laws of England 1984 Butterworths

Hayton(ed) Underhill & Hayton, *Law of Trusts and Trustees* 13th ed 1979 to 16th ed 2003, then (with eds P Matthews & C Mitchell) 17th 2006, 18th ed 2010 and 19th ed 2016 Butterworths, LexisNexis

Hayton (ed) Megarry's *Manual of the Law of Real Property* 6th ed 1982 Stevens

Hayton, *Law of Trusts* 1989, 4th ed 2003 Sweet & Maxwell (plus Japanese edition)

Hayton (ed) *European Succession Laws* 1991, 2nd ed 2002 Jordans

Hayton et al *Vertrouwd Met de Trust: Trust and Trust-like Arrangements* 1996, W Tjeenk Willink

Hayton et al (eds) *Principles of European Trust Law* 1999 Kluwer Law International

Hayton (ed) *Modern International Developments in Trust Law* 1999 Kluwer Law International

Hayton (ed) *Law's Future(s)* 2000 Hart Publishing

Hayton (ed) *Extending the Boundaries of Trusts and Similar Ring-Fenced Funds* 2002 Kluwer Law International

Hayton et al (eds) *Towards an EU Directive on Protected Funds* 2009 Kluwer

Hayton (ed) *The International Trust* 3rd ed 2011 Jordans

Hayton (ed) *Trusts and Powers* Vol 98 Halsbury's Laws of England 5th ed 2013 Butterworths LexisNexis

Published papers (Click to expand)

'Overriding Rights of Occupiers of Matrimonial Homes' (1969) 33 Conv 254

'Restrictive Covenants as Property Interests' (1971) 87 LQR 539

'The Femme Fatale in Conveyancing Practice' (1974) 38 Conv 110

'Land Law: Getting Priorities Right' (1976) 29 Current Legal Problems 26

'Equity and Trusts' in J Jowell & P McAuslan (eds) *Lord Denning: The Judge and the Law* Sweet & Maxwell 1984, 79

'Personal Accountability of Strangers as Constructive Trustees' (1985) 27 Malaya Law Review 313

'The Hague Convention on the Law Applicable to Trusts and on their Recognition' (1987) 36 ICLQ 260

'Remedial Constructive Trusts of Homes' [1988] Conv 259

'Developing the Law of Trusts for the 21st Century' (1990) 106 LQR 83

'Equitable Rights of Cohabitees' [1990] Conv 370

'When is a trust not a trust?' (1992) 1 JTCP 3

'Constructive Trusts of Homes – A Bold Approach' (1993) 109 LQR 485

'Trust Law and Occupational Pension Schemes [1993] Conv 283

'Equity's Identification Rules' in P Birks (ed) *Laundering and Tracing* Oxford 1995, 1

'The Irreducible Core Content of Trusteeship' in AJ Oakley (ed) *Trends in Contemporary Trust Law* Oxford 1996, 47

'The Significance of The Hague Convention on Trusts and on Succession: A Common Law Perspective' in Borrás et al (eds) *E Pluribus Unum Liber Amicorum Georges Droz* Martinus Nijhof, The Hague, 1996, 121

'Fiduciaries in Context: An Overview' in P Birks (ed) *Privacy and Loyalty* Oxford 1997, 283

'English Fiduciary Standards and Trust Law' (1999) 32 Vanderbilt Jo of Transnational Law 555

'Problems in Attaining Binding Determinations of Trust Issues by Alternative Dispute Resolution' in R Atherton (ed) *Papers of the International Academy of Estate and Trust Law* 2000, 11

'Determination of the Objectively Applicable Law Governing Succession in Deceaseds' Estates' in *Les Successions Internationales dans L'Ue: Perspectives pour une Harmonisation*, Deutsches Notarinstitut 2004, 359

'Shams, Piercing Veils, Remedial Constructive Trusts and Tracing' [2004] Jersey LR 6

'Pension Trusts and Traditional Trusts: Drastically Different Species of Trusts' [2005] Conv 229

'Wills and Succession in the European Union' (2005) 24 Estates Trusts & Pensions Journal (Canada) 263

'Recent English Developments affecting the Property and Financial Interests of the Non-traditional Family' in R Croucher (ed) *Families and Estates: A Comparative Study* Kluwer Law International 2005,129

'Unique Rules for the Unique Institution, the Trust' in S Degeling & J Edelman(eds) *Equity in Commercial Law* Thomson, Sydney, 2005, 279

'The Trust in European Commercial Life' in J Lowry & L Mistelis (eds) *Commercial Law: Perspectives and Practice* LexisNexis 2006, 123

'Future Trends in International Trust Planning' (2006) 13 JTCP 55

'Lessons from Knowing Receipt Liability in Australia' (2007) 21 Trust LI 55

'Major Trends in the Trust World' Parts I and II [2007] PCB 39 and 122

'The Nature and the Constitution of Trusts; the Scottish Law Commission's Proposals (2007)11 Edin LR 270

'A Review of Current Trust Law Issues' (2008) 22 Trust LI 81

'Developing the Common Law where Statute has spoken' (2008) 29 Company Lawyer 2

'Trust Disputes with Article 5(6) of Brussels I (2009) 23 Trust LI 3

'Current Trust Law Issues' (2009) 16 JTCP 237

'Beneficiary Control of Trust Affairs' (2010) 17 JTCP 1

'The Interrelated Liability in Equity of Financial Institutions used in furtherance of fraud' (2010) 31 Company Lawyer 103

'Death of a Marriage: Marital Break-ups and Interests under Trusts' (2010) 16 Trusts & Trustees 617

'Some Current Trust Law Issues' (2010) 24 Trust LI 217

'Some Crucial Aspects of s 21 Limitation Act 1980' (2010) 17 JTCP 55

'Proprietary Liability for Secret Profits', (2011) 127 LQR 487

'Foundations and Trusts Contrasted' (2011) 17 Trusts & Trustees 462

'Setting Gifts Aside for Mistake' (2011) 17 Trusts & Trustees 937

'The Development of Equity and the "Good Person" Philosophy in Common Law Systems' [2012] Conv 263

'Suing Third Parties involved in Fraud: Some Key Issues' [2012] 26 Trust LI 197

'Trusts in Private International Law' The Hague Academy of International Law 2013 Lecture Course published in Académie de Droit International Collected Courses 2013 pp 9-98, Martinus Nijhof 2014

'The Increasing Significance of Conflicts of Laws' Issues" (2014) 20 Trusts & Trustees 1069

'Fraud and Restitution' in B Rider (ed) *Research Handbook on International Financial Crime*, Edward Elgar Publishing 2015

'Thoughts on Future Trust Law Developments' (2016) 22 Trusts & Trustees 1002

'Reflections on The Hague Trusts Convention after Thirty Years' (2016) Vol 12 Journal of Private International Law No 1, 1-25 <http://dx.doi.org/10.1080/17441048.2016.1139658>

'The Trust as the Modern Vehicle for Investment and Estate Planning in Common Law and Civil Law Countries'. 27 October 2016 paper at www.ccj.org/publications/papers-speeches

'Trust Law and Protected Funds' in D Faber et al (eds) *Trust and Good Faith across Borders, Liber Amicorum, Prof SCJJ Kortmann* Wolters Kluwer 2017, 47

'Third Party Liability of Recipients of Trust Property' forthcoming in P Devonshire (ed) *The Impact of Equity and Restitution in Commerce* (papers delivered at Symposium at Auckland University, New Zealand Sept 2017)

'Proprietary Interests in Foreign Property: Equity's Viewpoint' in D Clarry (ed) *The UK Supreme Court Yearbook 2016-2017 Legal Year*, Appellate Press 2018, 89

'Safeguarding trustees' interests' Trusts & Trustees, Volume 25, Issue 10, December 2019, Pages 1016–1021

Forewords (Click to expand)

David has written forewords for the following books.

M Scott Donald & L Butler Beatty (eds) *The Evolving Role of Trust in Superannuation* Federation Press Australia 2018;

S Strong (ed) *Arbitration of Trust Disputes: Issues in National and International Law* Oxford International Arbitration Series 2016;

C Gothard & S Shah (eds), *The Trust World Survey*, Oxford 2010;

M Dixon & G Griffiths (eds), *Contemporary Perspectives on Property, Equity and Trusts Law*, Oxford 2007;

M Harper et al (eds) *International Trust and Divorce Litigation*, Jordans 1st & 2nd eds 2007, 2013;

STEP France *Trust & Fiducie: Concurrents ou Compléments*, Academy & Finance Geneva 2008;

STEP *A Practical Guide to Transfers of Trusteeships*;

R Belle Antoine *Trusts and related Tax Issues in Offshore Financial Law* Oxford 2013;

James Kessler, *Drafting Trusts and Will Trusts* all editions.

Editorial Boards (Click to expand)

The Conveyancer & Property Lawyer

Singapore Academy of Law Journal

Trusts & Trustees

Wills & Trusts Law Reports



Practice Areas

- Trust & Foundations
- Private Client
- Litigation & Dispute Resolution

Recommendations

David is ranked in **The Legal 500 Caribbean**

David is described by advocates and fellow judges as an "*intellectual giant*" and "*a jurist of international repute.*"

Background & Qualifications

- LLB and LLD, Newcastle University, UK
- MA and LLD, University of Cambridge, UK

Memberships & Professional Affiliations

- Fellow of Jesus College, Cambridge, UK (1987)
- Professor of Law, King's College, London, UK (1987- 2005)
- Dean of the Law Faculty, King's College, London, UK (1988-1990)
- Chair of London University's Board of Studies in Law and Chair of its LLM Management Committee (1992-1995)
- Deputy Chair of the Trust Law Committee of England and Wales (1994-2005)
- Assistant Hon Sec (1993-1996) and Hon Sec (1996-2001) of the Society of Public Teachers of Law (later the Society of Legal Scholars)
- Acting Supreme Court Judge, Bahamian Supreme Court, The Bahamas (2000-2001)
- Bencher of Lincoln's Inn, London, UK (2004)
- Emeritus Professor of Property Law and Fellow of King's College (2005)
- Full-time Judge on the Caribbean Court of Justice, Trinidad (2005 - 2019)
- Part-time Judge on the The Court for Trusts and Fiduciary Relations, Republic of San Marino, Italy (since 2015)