

McDONNELL'S RANGE

He gunned for Johnny Rotten and the Sex Pistols when they took on Malcolm McLaren. While maintaining a thriving domestic practice, he's fought regularly in Hong Kong's courts since the territory's colonial days. And, more exciting still, he once had to hand-sift through sections of a 400,000-page church archive. Thankfully much of his legal research is now conducted electronically but from **Alistair King's** chat with him, it's clear that after four decades at the Bar, **John McDonnell QC's** thirst for a meaty challenge is as strong as ever.



John McDonnell QC

"I've never wanted to be a full-time judge; I find it too difficult to make up my mind," says John McDonnell QC, appearing to have made up his mind. "I'm much happier being instructed to fight for one side," adds the distinguished silk, deputy judge and head of 13 Old Square, a top commercial and chancery set that he established in London in 2004.

Fearing the judicial embarrassment of "invariably thinking later of points not raised with counsel," the former Oxford Union president is at his most effective when up against an opponent in court – in London and often overseas – or preparing for cases from the comfort of his County Durham home, where much of his research is conducted electronically.

On that technological point, McDonnell claims to be something of an amateur. Together with his diffidence for the bench, I take this to be modesty, albeit completely sincere; despite being of a generation that cut its legal teeth well before the mass use of computers, let alone the internet, he was one of the first and most enthusiastic barristers to get onboard – or rather online – with case law on CD-ROM in the mid-1990s. Later migrating to the web, these databases were joined 10 years ago by the provider-neutral JustCite citator, of which McDonnell is also a long-term subscriber.

Continuing to use such devices – in conjunction with a world-class advocate's intellect – to great effect, McDonnell says his experience at the Bar "permits no easy summary". In two and a half pages, I'll no doubt demonstrate the validity of this assertion. But a snapshot of some of his key cases, legal anecdotes and trial-winning research tools should be a worthy substitute for a pithy précis; and it was for help with one that I eventually tracked him down.

I was keen to contact the legendary John McDonnell when I first learnt of his membership of Justis Publishing's 100-user-strong focus group, which was set up last year to help develop the



JustCite results screen for "proprietary estoppel"

third incarnation of JustCite.

Like many a busy barrister, his eagerness to assist me was inversely proportional to his availability. But, with two postponed interviews and a delayed court hearing under our belts, we finally spoke – for nearly an hour – a week or two after the new JustCite was launched just before Christmas last year.

Though he graduated from Oxford in 1962 and was called to the Bar in 1968, McDonnell didn't start full-time practice until 1972 when he joined what was then One New Square, the intervening years being spent variously at Harvard, working for one-time Democratic presidential nominee and Senator, George McGovern, and as Assistant Private Secretary to the Secretary of State within Her Majesty's Diplomatic Service.

Despite this moderately late start as a practising lawyer, McDonnell has crammed more successful and high-profile cases into the years that have followed than most contemporaries would in several lifetimes. Many of these reported, his cases range across areas as broad as companies and insolvency, Chinese customary law, conflict of laws, judicial review, human rights, intellectual property, contempt of court, fraud, trusts and the

JustCite: "a godsend"

shibbolethically named proprietary estoppel.

As a non-lawyer, that last phrase has always baffled me but it's the meat and drink of chancery specialists like McDonnell. Relating to the rights of others to use an owner's land, those two words are as good as any starting point in investigating some of his cases via JustCite.

Like no other legal search engine, JustCite's algorithms consider the relationship cases have with each other. So when you search for a phrase, case name, citation or any other query, one's results are ranked as if selected by legal experts for true relevance, not by a machine arranging them by keyword frequency. In short, the JustCite citator can direct users to winning results in a flash.

Testing the citator's Quick Search facility with "proprietary estoppel" presents 97 results, 65 of them cases. The first five, ranked according to the explanation above, are very familiar to McDonnell, confirming the effectiveness of using this method to find key precedent, such as one might find presented in a textbook on the subject – but one that's forever up-to-date. Focusing on land occupancy, the second case, *Gillett v Holt*, [2001] Ch 210, is one of McDonnell's.

The results screen of the new JustCite presents concise "profile cards" that contain just enough information for users to decide quickly whether it's worth investigating further by clicking through to the full record, where more detailed citatory information, a short summary and links to third-party full-text providers are given.

Using a convenient colour code, the profile card for *Gillett v Holt* shows the number of subsequent cases that have had a broadly positive, negative or neutral bearing on the precedent it set. Its full record details those cases, each with their own full records (as well as information on which cases *Gillett v Holt* itself considered).

One subsequent case shown by JustCite to have considered *Gillett v Holt* is another of McDonnell's, namely *Thorner v Major*, [2009] 1 WLR 776. Its own JustCite record includes a 500-word summary, providing other users with an indication of whether it could offer them useful precedent.

Dealing with will revocation, *Thorner v Major* hasn't yet gathered many subsequent cases. But from running a random selection of older cases from his extensive CV through JustCite, I can surmise that, like so many others, it's likely to form part of McDonnell's contribution to the wealth of useful precedents on the citator.

On the revitalized citator, McDonnell describes JustCite as "a godsend," adding that "it gives a huge new dimension, covering far more than even [its sister service, the full-text legal library] Justis, and providing information on a whole raft of series." But he's also keen to point out that it doesn't provide *too much* information. One doesn't want to "waste time sorting through irrelevant stuff," he says.

Of course JustCite and Justis couldn't – and unfortunately still can't – help with everything; as an aside, McDonnell mentions that when he was working on *Bracken Bank Lodge Ltd v Peart*, [1996] NPC 124, he needed to investigate the nature of "stints," units of grazing "often used in my part of the world and equal to something like two sheep or a cow and a calf." A relevant 1855 case, he says, was only reported in brief in the *Times* (though not the *Times Law Reports*) and in more detail in the *Church Commissioners' Archives*. These huge paper archives were kept in *Bermondsey*, where McDonnell was presented with a Victorian ledger for 400,000 files, his only searchable route to the material.

Luckily most of McDonnell's cases have been neither reported in nor supported by precedent from the *Church Commissioners' Archives*.

"We established that McLaren was working for the Sex Pistols, not the other way around"

The absence of one such case should surprise few. In 1977 he was junior counsel for John "Johnny Rotten" Lydon and the rest of punk ensemble the Sex Pistols. Describing him as "a very moral man," McDonnell explains that Lydon was

reluctant to comply with manager Malcolm McLaren's request that the band record a session in Brazil with violent fugitive and Great Train Robber, Ronnie Biggs.

"Jonny Rotten said it would be wrong," says McDonnell. "He didn't want to do the recording so McLaren sacked him." But through intellectual property law and recourse to past precedent – a task that would no doubt have been quicker had JustCite been around – McDonnell's side "established that McLaren was working for them, not the other way around." He also established through chats with Rotten that Sid Vicious "wasn't really vicious – they called him that after Johnny's hamster". But that's another story.

Though a trip to Brazil wasn't required when representing the



A vicious hamster, yesterday

Image: FreeDigitalPhotos.net

McDonnell's milestones

- 1962: MA, Oxford, where he was president of the debating union
- 1965: LLM, Harvard
- 1966: legislative assistant to South Dakota Senator and Democratic presidential nominee George McGovern
- 1968: called to the Bar
- 1972: following pupillage at what is now Maitland Chambers, gains tenancy at One New Square, which later merges with 12 New Square
- 1977: junior counsel for Johnny Rotten and the Sex Pistols in their victorious case against manager, Malcolm McLaren
- 1996: starts using online case law from Justis, first on CD-ROM, then on the internet
- 1984: made QC
- 1992: appointed Deputy High Court Judge
- 2004: establishes and becomes head of 13 Old Square Chambers, which now has 27 members, including five silks
- 2005: one of The Lawyer's "Hot 100" the year he starts using JustCite, not that cause and effect is implied, of course
- 2010: joins students, librarians, solicitors and fellow barristers in Justis Publishing's 100-member-strong JustCite redevelopment focus group

Pistols, McDonnell tells me that he relishes working abroad. In 1978 after their case "I took to Hong Kong," he says. Over thirty years later, he's still a frequent player on the former British colony's court scene, where his expertise in Chinese family law and land customs is often called on.

Recently litigating in *Sun Honest Development Ltd v Appeal Tribunal (Buildings)*, [2009] 12 HKCFAR 342, an easements case that deals with "lost modern grants" and the niceties of freehold versus leasehold, McDonnell explains that as a result of Margaret Thatcher's negotiation with the Chinese on retaining the structure of its legal system for 50 years post-handover, Hong Kong's Court of Final Appeal must always include one very senior British judge.

This might explain why, according to McDonnell, "Sun Honest is likely to be picked up in England." But, he adds, though "Lord Millett agreed with every submission I wrote, he said that the House of Lords would change

it"; all very confusing but eminently illustrative of why access to a good citator, which also provides information on court hierarchies, can speed up case preparation. For the record, JustCite doesn't yet index material from Hong Kong but it does Singapore, along with an ever growing list of other common law jurisdictions, including Ireland, Canada, Australia and a number of Caribbean countries.

Despite the drain of day-to-day advocacy, McDonnell somehow found the time in 2004 to establish a new set, the now highly regarded 13 Old Square Chambers in Lincoln's Inn. Though he describes his administrative responsibilities as an "awful burden" and sees no commercial advantage in being its head, one motivation for this move was to re-recruit one of the senior clerks who had just been made redundant from his old chambers, indicating to me a real sense of loyalty and decency; an opinion I can assure readers I'd hold even without his support for JustCite.

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