

JAMES E. PETTS



Call 2002

James Petts's practice is in the fields of Chancery and commercial, with a particular focus on contentious matters involving especial forensic rigour, either in terms of the law or facts, including claims involving an element of fraud or where there are serious disputes of primary fact (e.g. relating to undue influence or disputed oral agreements).

James's interest in claims involving a significant element of fraud or dishonesty come from the first three years of his practice at the Bar in which he practised in criminal law, before going on to develop a successful Chancery and commercial practice. James is the (civil) education secretary to the Fraud Lawyers' Association and contributes to Westlaw Topics on fraud related subjects.

Commercial & Business Disputes

James acts in relation to commercial chancery matters, including insolvency, unfair prejudice petitions, and trusts disputes in a commercial context.

Recent cases

- Appearing successfully for the defendant in a trial regarding the alleged surrender of a charge over property by virtue of the mortgagee having proved in bankruptcy, disclosing the charge but erroneously failing to state its value.
- Acting for the defendant in an intimated claim to enforce an Australian judgment for costs arising out of a failed attempt by the defendant to enforce her own English judgment against the defendant in Australia (in circumstances where the claimant had been declared bankrupt in Singapore but not discharged from that bankruptcy) and in relation to the recovery of the original judgment debt from the claimant.
- Acting for the claimants in a claim in the High Court for a declaration of trust over shares in a special purpose vehicle intended for the development of a substantial parcel of land.
- Acting for a defendant to a High Court claim in proprietary estoppel and a simultaneous unfair

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prejudice petition arising out of a joint restaurant business in London after the personal relationship between the defendant and the claimant had broken down.

- Acting for the defendant in intimidated litigation brought by a major outsourcing company used by a high street bank arising out of an allegedly mistaken payment of just over £2m made by the bank to a company under his control.

Reported cases

- *Maqsood v. Mahmood* [2012] EWCA Civ. 251 (mentioned in the White Book at para. 3.4.18) – appeal against a striking out of claim at trial (having not appeared below) on the basis that, contrary to the judge’s judgment, the claims were not lacking in merit; appeal dismissed on the basis that the arguments now advanced could not readily have been perceived by the judge on the way that the case was put before him, and concerned a difficult area of law (proprietary remedies for unjust enrichment) that the court did not think this the appropriate case to address. That issue of law was ultimately resolved by the Supreme Court in *Re D&D Wines* [2016] 1 W. L. R. 3179.

Partnerships & LLPs

James’s practice includes contentious cases relating to partnerships, their formation and dissolution.

Recent cases

- Acting for the claimants in a professional negligence claim against a major firm of solicitors arising out of a settlement of a significant partnership and company dispute regarding a family business of property rentals and care homes at a mediation, which settlement resulted in several further years of litigation.

Reported cases

- *Khan v. Nationwide Solicitors* [2014] EWHC 841 (QB) – acting for the successful respondent in an appeal against the striking out of a claim on the basis of a partnership agreement in circumstances where James successfully argued that the partnership agreement was not binding until it had been signed by all of the four intended partners, having been signed by only three, and in circumstances where there was no evidence of the non-signing intending partner having done anything by way of acting on the basis of the agreement (even though the other three arguably had).

Property

James has experience of dealing with a range of property disputes, from landlord and tenant (commercial or residential) to proprietary estoppel and trust disputes (including express and constructive trusts), adverse possession claims, boundary disputes and easement/right of way disputes. James also has significant experience of property disputes in the context of contentious probate.

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- Acting for the claimants (franchisor and franchisee) in a claim against their landlord of commercial hospitality premises arising out of persistent water leakage into and a partial collapse of those premises.
- Acting for claimants in relation to a right of way and boundary dispute involving residential property.
- Acting for the claimants in relation to a boundary dispute and adverse possession claim, together with a dispute relating to private nuisance relating to the alleged instability of a steep bank, relating to adjoining residential premises.
- Advising a party to a boundary dispute involving adverse possession of a formerly spare strip of land at the end of a garden in London that had recently been purchased by a neighbouring landowner from a developer.
- Acting for defendants in a claim between owners of superadjacent and subjacent flats in a converted terrace house in a dispute regarding legal responsibility for the structural instability of the building.
- Acting for the claimant in a successful claim by an interior designer for unpaid fees and (mostly) unsuccessful counter-claim for allegedly defective work arising out of the refurbishment of a “gastro-pub” in Essex operated by a celebrity chef.
- Acting for the claimant in the trial of a successful claim for monies owed for building works arising out of the refurbishment of a vineyard and visitor centre in Devon, and defending an unsuccessful counterclaim arising out of allegedly defective works.
- Acting for the successful claimants in a claim for damages for negligent misrepresentation arising out of the purchase of a house, the misrepresentation relating to the condition of the house.
- Acting for claimants in a claim for specific performance of a settlement agreement arising out of an intimated claim under the **Landlord and Tenant Act 1954** for a new tenancy of commercial premises.
- Acted for the successful respondent in an application for permission to appeal against a finding in her favour made at trial that the appellant personally, rather than the company of which he was a director, was liable for defective works carried out to her home, as well as various other matters.

Reported cases

- *Gell v. 32 St. John's Road (Eastbourne) Management Co. Ltd.* [2021] EWCA Civ. 789, [2021] 1 W. L. R. 6094, [2022] H. L. R. 5. [2021] L. & T. R. 26 – acted *pro bono* for the appellant in an appeal of a decision made by a circuit judge itself made on appeal. The Court of Appeal, noting that it was surprising that, in the 35 years since the passage of the **Landlord and Tenant Act 1985**, the point had not been determined, ruled that the question of the reasonableness of service charges could only be determined by the court if and insofar as this was raised by the defendant in a statement of case, and thus that the defendant is not entitled to ask the court to adjudicate on this issue after his defence has been struck out (as in this case) or after default judgment has been entered.

Inheritance, Probate & Wills

James is frequently instructed in contentious probate claims and disputes regarding the administration of estates or trusts, including disputes and possession claims regarding the occupation of estate property by beneficiaries or alleged beneficiaries or their tenants and claims involving allegations of fraud and/or undue influence.

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- Advising in a contentious probate claim featuring video wills made during the pandemic.
- Acting for the claimant in a contentious probate claim arising out of the alleged want of testamentary capacity of the deceased.
- Acting for the defendant in a contentious probate claim intimated against the estate of a deceased for revocation of the grant of probate arising out of alleged want of testamentary capacity and undue influence, and an intimated claim against the estate in proprietary estoppel relating to an alleged promise to give the intimated claimant a particular share of the estate in return for sharing the responsibility of caring for the deceased.
- Acting for the claimant in a long-running claim against a serial fraudster and vexatious litigant arising out of the attempted take-over of a house that had been left to the claimant by a deceased neighbour in his will, in which a gang had broken into the house, let it out to tenants then forged tenancy agreements, a will and multiple trust instruments.
- Acting for the claimant in a contentious probate claim arising out of undue influence said by the claimant to have been exerted by the defendant while the defendant was caring for the deceased when the latter was suffering from terminal cancer, during which time the deceased changed her will to give the defendant a life interest in her property, changing the pattern of her previous testamentary dispositions.
- Acting for the claimants in a contentious probate claim, defended by the defendant on the basis of lack of testamentary capacity and want of knowledge and approval, and in which a possession order was obtained against the deceased's widow who had occupied estate property for over 10 years after the deceased's death.
- Acting for the defendant in a contentious probate claim, heard over 5 days, involving a dispute as to the authenticity of a will, want of knowledge and approval of two competing wills and alleged duress and undue influence.
- Advising the young adult children of a deceased person who was murdered abroad by her husband (who committed suicide before he was tried, having raised insanity as a defence) as to the administration of the estate comprising, *inter alia*, the property in which they reside.
- Advising a local authority and settling pre-action correspondence in a case involving the recovery of outstanding care home fees against a solicitor executrix who distributed the estate without paying those fees. Acting for the claimant in obtaining a freezing order and subsequently a default judgment against an agent in an art transaction who fraudulently misrepresented her authority to sell a sculpture worth >£1m by a notable sculptor. The defendant was subsequently convicted and imprisoned for fraud arising out of these facts.

Qualifications

- LL. B. (hons. – first class) University of Reading
- B. C. L., St. Hugh's College, Oxford

Appointments

- Bar Standards Board Independent Decision-making Body
- Civil education secretary, Fraud Lawyers' Association
- Advocacy trainer, Middle Temple

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Associations & Memberships

- Chancery Bar Association
- Fraud Lawyers' Association
- COMBAR
- London Common Law and Commercial Bar Association
- Advocate
- Middle Temple

Publications

- Encyclopaedia of Forms and Precedents – vol. 3(1) auctioneers, estate agents and valuers – co-contributor, 2018 and 2022 reissues
- Westlaw Topics – sole contributor to:
 - deceit and fraudulent misrepresentation;
 - dishonest assistance; and
 - knowing receipt
- *The substance of the rule of law* – International Bar Association Journal, September 2019
- *Licences, death, wills and trespass* [2023] P. C. B. 169

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