

# JAMES EGAN



Call 2015

James has a busy and successful traditional and commercial chancery, property and private client practice. Both in and out of Court, he is often commended for his attention to detail, focused legal analysis, and his persuasive written and oral advocacy. He takes a calm and considered view to all cases, combining his legal knowledge with practical, commercial advice. Whilst he is often recommended for his amicable and sensitive interaction with lay clients, he is not afraid to advise lay clients realistically about the prospects of success and financial implications of proceeding to trial. Notwithstanding, in Court, James is a robust litigator and does not shy away from pursuing a difficult argument.

Whilst James is regularly instructed in cases of all sizes and complexity, his expertise has led him to be instructed by a number of leading firms often in high value and complex cases. For example, in the recent reported case of *Harbour Fund III LP v Kazakhstan Kagazy Plc* [2021] EWHC 1128 (Comm) James, led by Rupert D'Cruz QC, successfully defended Kazakhstan Kagazy JSC against numerous claims by Harbour Fund III LP in relation to a \$300 million judgment obtained in early *Kagazy v Zhunus* litigation. This high value dispute spanned multiple areas of law including conflicts of laws (particularly the application and interpretation of Kazakh rehabilitation/insolvency law), alleged contractual variation and interpretation, alleged agency and authority issues, and alleged unjust enrichment/restitution. Mrs Justice Moulder found in favour of Kazakhstan Kagazy JSC on all issues in her 72-page judgment which can be viewed [here](#).

James's multi-disciplinary expertise means that many of his cases span multiple different areas of law, his practice largely focuses upon:

- Trusts, inheritance and probate matters
- Corporate and personal insolvency matters
- Property and residential/commercial landlord and tenant claims
- Court of Protection
- Commercial disputes
- Partnership and company disputes

James is also regularly instructed in cases brought by or against children and/or protected parties, and he is

## Location

Ten Old Square  
Lincoln's Inn  
London  
WC2A 3SU

## Contact Us

T +44 (0)20 7405 0758  
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E: [clerks@tenoldsquare.com](mailto:clerks@tenoldsquare.com)  
DX: LDE Box No 306

therefore very familiar with acting on behalf of or litigating against 'litigation friends' for children and protected parties (and consequently the procedures set out in Part 21 of the Civil Procedure Rules and/or Insolvency Rules 12.23-12.25). Having dealt with multiple such cases, James is experienced in adapting his approach sensitively to ensure the best and most appropriate handling of such cases.

## Trusts & Estates

James has extensive experience in all aspects of trust, probate and estate claims (including drafting applications for service of proceedings out of the jurisdiction) and advising upon allegations of professional negligence in this context. He also has significant experience in offshore litigation.

### Recent Private Client: Contentious experience includes:

- Successfully advising and representing personal representatives, beneficiaries and applicants both pre-action, in mediations and at Court in Inheritance (Provision for Family & Dependents) Act 1975 claims. James deals with estates at all values, regularly handling matters from modest estates through to those valued in the several millions of pounds. James has advised and represented spouses, former spouses, cohabitants, dependents and children of the Deceased in their claims.
- Successfully removing and defending trustees/personal representatives in removal claims (both onshore and offshore);
- Successfully applying to rectify the register of members and appointing directors after the sole director/shareholder of a 'Model A' Articles of Association company has died;
- Successfully applying by way of originating summons to remove final caveats;
- Successfully representing beneficiaries in construction/rectification claims;
- Advising on and drafting '*Cobden-Ramsay v Sutton* Order' proceedings;
- Drafting section 116 Senior Courts Act 1981 passing-over proceedings;
- Successfully advising on and drafting proceedings to compel trustees to transfer assets to absolute beneficiaries;
- Successfully applying for an account and inventory of a high value estate;
- Advising on, drafting and successfully recovering possession of the Deceased's property;
- Advising on equitable tracing and personal remedies for the recovery of misapplied trust monies;
- Advising on the operation of Discounted Discretionary Gift trusts;
- Advising on potential claims for an account of lifetime transfers allegedly procured through undue influence and/or non-compliance with the Code of Practice for LPAs;
- Advising on survivorship to joint bank accounts;
- Advising and drafting proceedings for potential claimants on testamentary challenges (including lack of capacity, want of knowledge and approval, and undue influence);
- Advising on and drafting pre-action correspondence in claims involving *Quistclose* and statutory trusts;
- Applications to pay funds into Court pursuant to section 63 of the Trustee Act 1925.
- Advising on vesting orders and declarations in the insolvency context.

James is also instructed to advise in relation to offshore jurisdictions, including most recently in a trustee removal application in the Isle of Man.

James's practical and commercial approach to such cases often means he is asked to review settlement offers

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received, and to prepare draft Deeds of Settlement and/or Deeds of Variation.

## Private Client

James also has extensive experience in non-contentious matters relating to trusts, estates and associated taxation.

## Recent Private Client: Non-Contentious experience includes:

- Advising on intestacy distributions where the Deceased had been adopted prior to the Adoption & Children Act 2002 coming into force;
- Advising on reimbursing expenses incurred by beneficiaries on behalf of the Estate;
- Advising on the construction and rectification of wills and trusts;
- Advising the landlord of a residential property on termination of a long residential lease where the Deceased had died with no known next of kin or personal representatives;
- Advising on non-charitable purpose trusts;
- Advising on the applicable perpetuity period;
- Advising on entitlement to assets due to the failure of a trust;
- Drafting Deeds of Variation;
- Drafting Deeds of Assent;
- Drafting Deeds of Disclaimer;
- Drafting Deeds of Appointment.

## Court of Protection

James has a particular interest in advising and representing parties in applications before the Court of Protection dealing with property and affairs. Having been instructed both by individual parties and by the Official Solicitor acting as litigation friend for P, James has been praised for his sensible and pragmatic handling of proceedings with a view to assisting the parties narrow the issues to be determined by the Court.

## Recent Court of Protection experience includes:

- Successfully defending an application to revoke a Lasting Power of Attorney and removal of attorneys;
- Applications to approve a statutory will on behalf of P;
- Applications to appoint an Interim Deputy;
- A complex Financial Dispute Resolution hearing involving a multi-million pound estate and a number of company and trust structures;
- Advising beneficiaries and personal representatives in relation to the Code of Practice for LPA Attorneys concerning inter vivos gifts and dispositions.

James is also regularly instructed in the 'overlap' between Court of Protection and civil proceedings, particularly

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claims for the restoration of monies allegedly misapplied by attorneys under Lasting Powers of Attorney for Property & Financial Affairs. James's handling of such cases is enhanced by his familiarity with proceedings in the Court of Protection.

## Property

### **Real Property**

James has a keen interest in real property law, including trusts, conveyancing, mortgages, easements and other property rights. He has extensive experience in landlord and tenant work (including for pubs and licensed premises), and is happy to advise and act in relation to business and residential tenancies of all kinds.

## Recent Property experience includes:

- Advising and drafting TOLATA claims by both beneficiaries and trustees, including claims for occupational rent and/or enhanced beneficial interests under section 37 of the Matrimonial Proceedings and Property Act 1970; Advising on protected business tenancies and the renewal process under the Landlord & Tenant Act 1954 (including drafting the applicable notices and counter-notices);
- Advising and drafting pre-action correspondence for the recovery of residential tenancy deposits and, similarly, advising, drafting and representing parties in claims concerning financial penalties for failure to register tenancy deposits under sections 212-215 of the Housing Act 2004.
- Advising on claims for a new residential tenancy pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993;
- Advising on an 'acquisition order' under Part III of the Landlord & Tenant Act 1987;
- Advising and drafting applications to the Land Registry for prescriptive easements;
- Advising on and drafting applications to the Land Registry for acquisition of freehold garden land;
- Advising and defending applications to the Land Registry based on adverse possession;
- Advising on the construction of pre-emption rights;
- Successfully representing parties, both landlords and occupiers, in possession claims and trials (including trespasser claims, section 8, section 21, and Mortgage Arrears) and handling defences based on alleged discrimination arising from disability (s15 EA 2010), alleged indirect discrimination (s19 EA 2010), and postponement of possession for exceptional hardship;
- Successfully representing parties in applications to set aside Interim Charging Orders;
- Successfully representing mortgagees-in-possession seeking to pay surplus proceeds of sale into Court pursuant to section 63 of the Trustee Act 1925;
- Successfully representing mortgagees in claims for breach of common law and equitable duties associated with the sale of a residential property at an undervalue, and declarations of unfair relationship and other relief under the Consumer Credit Act 2006.
- Advising on escheat and rights following dissolution of a company and disclaimer;

### **Personal Property/Chattels**

James has a keen interest in personal property law.

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## Recent Personal Property experience includes:

- Drafting proceedings and representing parties in bailment, trespass to goods, conversion and other Torts (Interference with Goods) Act 1977 claims;
- Drafting proceedings and representing parties in claims under the Sale of Goods Act 1979, Supply of Goods & Services Act 1982, Consumer Rights Act 2015 and The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

## Commercial & Business Disputes

### **Insolvency**

James has extensive experience in the full range of insolvency matters, and has been instructed in proceedings across the country including London, Manchester, Birmingham, Leeds, and Harrogate. James also has experience in dealing with conflicts of law and offshore insolvency law issues. For example, in the recent reported case of *Harbour Fund III LP v Kazakhstan Kagazy Plc* [2021] EWHC 1128 (Comm) James, led by Rupert D'Cruz QC, successfully defended Kazakhstan Kagazy JSC against numerous claims by Harbour Fund III LP in relation to a \$300 million judgment obtained in early *Kagazy v Zhunus* litigation. This high value dispute included, amongst other issues, disputes over the extent of the authority of a Rehabilitation Manager under Kazakh rehabilitation/insolvency law in relation to a company in rehabilitation. Mrs Justice Moulder found in favour of Kazakhstan Kagazy JSC on all issues in her 72-page judgment which can be viewed [here](#). James has also recently appeared on behalf of one of the defendant directors in a four-day High Court misfeasance trial with allegations of transactions at an undervalue and/or preferences claimed in the hundreds of thousands of pounds.

## Recent Insolvency experience includes:

- Successfully obtaining and defending winding-up petitions against domestic and international companies, insolvent partnerships under the Insolvent Partnerships Order 1994, and/or the winding-up of LLPs under s14 LPPA 2000 and the LPP Regulations 2001. James has also regularly been instructed to advise upon and deal with claims involving the temporary restrictions on presenting winding-up petitions during the coronavirus pandemic under the Corporate Insolvency and Governance Act 2020;
- Successfully obtaining and defending injunctions to restrain presentation and/or advertisement of winding up petitions;
- Successfully applying to rectify the register of members and appoint directors following the death of the sole director/shareholder of a 'Model A' Articles company;
- Advising on and successfully obtaining orders to re-vest the family home following bankruptcy where the automatic re-vesting provisions were not engaged;
- Successfully obtaining extensions of company administrations;
- Setting aside a sham trust within bankruptcy proceedings;
- Successfully obtaining validation orders for payments made/to be made following presentation of a petition;
- Successfully advising upon and obtaining orders for restoration of companies to the Register;
- Successfully making and opposing applications to set aside statutory demands;

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- Successfully advising upon, drafting and ultimately making and defending bankruptcy and winding-up petitions (both in relation to limited companies, traditional partnerships, LLPs and unincorporated associations);

## **Commercial**

### Recent Commercial experience includes:

- In the recent reported case of *Harbour Fund III LP v Kazakhstan Kagazy Plc* [2021] EWHC 1128 (Comm) James, led by Rupert D'Cruz QC, successfully defended Kazakhstan Kagazy JSC against numerous claims by Harbour Fund III LP in relation to a \$300 million judgment obtained in early *Kagazy v Zhunus*. This dispute spanned multiple areas of law including alleged contractual variation and interpretation, alleged agency and authority issues, and alleged unjust enrichment/restitution. Mrs Justice Moulder found in favour of Kazakhstan Kagazy JSC on all issues in her 72-page judgment which can be viewed [here](#).
- Successfully obtaining worldwide freezing and proprietary injunctions, *Norwich Pharmacal* orders, interim injunctions and orders for disclosure;
- Advising and successfully representing banks, credit providers and customers within commercial disputes arising out of the sale of goods (including pursuant to the Sale of Goods Act 1979, Supply of Goods & Services Act 1982, Consumer Rights Act 2015 and The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013);
- Advising on agency agreements;
- Successfully representing parties in claims concerning guarantees and indemnities;
- Advising on and successfully representing parties in Consumer Credit Act 1974 claims;
- Advising on jurisdictional disputes (forum and choice of law) arising from international supply contracts.
- Advising on and drafting pre-action correspondence in claims concerning *Quistclose* trusts, and statutory trusts (for example, under the Estate Agents Act 1979) in the commercial context;
- Advising and drafting unjust enrichment and restitution claims

James is also happy to provide non-contentious contractual advice and drafting particularly in the context of contract renewal processes.

## **Company/Directors' Duties**

### Recent Company experience includes:

- Advising on and dealing with unfair prejudice petitions under section 994 of the Companies Act 2006 (as to which, see further experience under the 'Insolvency' heading above);
- Successfully applying for the Court to relieve a director from liability for breach of directors' duties under section 1157 of the Companies Act 2006;
- Advising and drafting corporate governance documentation (including resolutions, minutes of meetings, and amendments to Articles of Association).
- Assisting Lesley Anderson QC in *Bhullar v Bhullar & Ors* [2017] EWHC 407 (Ch) which was a complex High Court derivative claim trial concerning breach of directors' duties, the *Re Duomatic* principle, limitation issues under sections 21 and 32 of the Limitation Act 1980, and relief under section 1157 of

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the Companies Act 2006.

### **Business Rates Disputes**

James is experienced in advising and representing parties within business rates avoidance schemes and subsequent applications to set aside liability orders.

## Taxation

James has a keen interest in capital taxes. He is fully familiar with the tax treatment of Deeds of Variation when effecting post-death variations, and also Deeds of Variation/consent orders within Inheritance (Provision for Family & Dependents) Act 1975.

### Recent Tax experience includes:

- Advising on sections 142 and 144 of the Inheritance Tax Act 1984 and section 62 of the Taxation of Chargeable Gains Act 1992 when dealing with variations and distributions from will trusts;
- Advising on gift with reservation of benefit issues arising in the context of Discounted Gift Trusts;
- Advising on the calculation of the residence nil-rate band in a high value estate;
- Drafting Deeds of Appointment out of a discretionary will trust;
- Drafting a Defence & Counterclaim in a claim concerning negligent tax advice.

James also has experience in winding-up and bankruptcy cases arising from tax-related liabilities.

## Partnerships & LLPs

### Recent Partnership experience includes:

- Advising individual members in relation to mergers, partnership exits, transfers of business and the dissolution of partnerships;
- advising on the construction of partnership and LLP agreements
- Advising on the conflicts of laws as to the appropriate jurisdiction to litigate a partnership dispute within;
- Drafting proceedings for declarations of the existence of a disputed partnership, its dissolution by notice, and consequently for all the usual accounts/inquiries to bring about the dissolution;
- Defending claims for an account in respect of winding up proceedings;
- Advising on and representing partners and partnerships in insolvency proceedings particularly in relation to the winding-up of insolvent partnerships (and concurrent bankruptcy petitions of individual partners) under the Insolvent Partnerships Order 1994, and/or the winding-up of LLPs under s.14 LLPA 2000 and the LLP Regulations 2001.

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## Qualifications

- MA, Downing College, University of Cambridge (2018)
- Bar Professional Training Course (Outstanding), BPP University (2015)
- BA Law (Double First Class), Downing College, University of Cambridge (2014)

## Associations & Memberships

- Contentious Trusts Association ('ConTrA')

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