

JAMES KIRBY

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(Legal 500 2024)



Call 2017

James Kirby is a Chancery barrister with a practice focused on Trusts and Estates (contentious and non-contentious), Court of Protection and Private Client Tax.

He is ranked by [Legal 500 2024](#) as a 'Rising Star' in Private Client: Trusts and Probate.

James's expertise as advocate may be seen from his successful defence of a probate claim at trial on the basis that the claim had been brought with undue delay: [James v Scudamore](#) [2023] Ch 391. This is now the leading case on delay in probate claims.

He is also an experienced junior counsel in heavy trusts and estates disputes and tax litigation. Reported cases include [Hinduja v Hinduja](#) [2020] 4 WLR 93, [BCM Cayman Ltd v HMRC](#) [2023] STC 1738 and [HMRC v BlueCrest Capital Management LP](#) [2023] EWCA Civ 1481.

James was appointed to the Attorney General's C Panel in 2023. He is also an editor of *Williams on Wills* (11th edition, 2021).

Before becoming a barrister, James was a Fellow in History at Trinity College, Cambridge.

Trusts & Estates

James frequently advises and represents clients in all kinds of matters relating to trusts and estates, both contentious and non-contentious. This includes:

- Applications by trustees/PRs and beneficiaries.
- Applications to remove trustees/PRs.
- Claims for breach of trust.

Location

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- Advice on the exercise of trustees' powers (and challenges to the exercise of those powers).
- Drafting trust documents.
- Applications under the Variation of Trusts Act 1958.

Key cases include:

- [James v Scudamore](#) [2023] Ch 391. James acted for the defendant executor and beneficiary. The judge accepted his argument that a probate claim could be barred by the claimant's delay in bringing the claim.
- The *Hinduja* litigation, a multi-jurisdictional dispute within one of Britain's wealthiest families. James has been instructed as junior counsel (with [Georgia Bedworth](#)), including in [Hinduja v Hinduja](#) [2020] 4 WLR 93, concerning the suitability of a litigation friend, and [Hinduja v Hinduja](#) [2022] EWCA Civ 1492 (permission to appeal), concerning reporting restrictions in the Court of Protection.
- *Bridgmont v Zammit* (County Court at Central London): Represented the claimant in a 3-day trial at Central London County Court concerning the beneficial ownership and sale of a property formerly owned by the client's deceased parents. The claim received media coverage in *The Times* and other newspapers.

Private Client

James has a well-established private client practice, and is equally at home in contentious and non-contentious matters. He also regularly advises on inheritance tax and capital gains tax.

James's contentious experience includes:

- Probate disputes.
- Inheritance (Provision for Family and Dependants) Act 1975 claims.
- Claims concerning trusts of land under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA).
- Applications to remove executors under s 50 of the Administration of Justice Act 1985 and/or trustees under the Trustee Act 1925.
- Applications for the interpretation and/or rectification of wills, trust deeds and other documents.

James's non-contentious experience includes:

- Advising on the interpretation of wills and trusts.
- Applications under the Variation of Trusts Act 1958.
- Deeds of Variation of deceased persons' estates.
- The exercise of trust powers, including powers of appointment and powers of advancement.
- The drafting of wills and trust deeds.
- The administration of trusts and estates.

James also writes occasionally as a private client expert for [LexisNexis](#).

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Court of Protection

James is regularly instructed to act in Court of Protection disputes and to advise on issues relating to mental capacity. He is a contributor to the Court of Protection Law Reports and answers 'Questions for Counsel' on mental capacity issues for *Practical Law*.

Key cases include:

- *Hinduja v Hinduja* [2022] EWCA Civ 1492 (permission to appeal hearing and skeleton argument; led by John McKendrick KC), concerning reporting restrictions in the Court of Protection
- *Re H*: Representing the respondent in an expedited statutory will application involving a disputed will and allegations of undue influence (with [Richard Dew](#)).
- *Re A*: Representing a deputy in an application for the calling in of a previous deputy's bond on grounds of professional negligence.
- *Re C*: Representing the Official Solicitor in an application for an interim, and then final, statutory will.

Taxation

James is frequently instructed to advise on inheritance tax and capital gains tax issues arising in trusts and estates.

Issues on which James has advised include:

- Gifts with reservation of benefit.
- Pre-owned assets tax.
- Availability of the charity exemption from inheritance tax.
- Availability of residence nil-rate band (including late claims).
- Deductibility of liabilities.

James is also frequently instructed to draft trust documents with a tax planning element, such as deeds of appointment and deeds of variation.

He has experience of tax litigation having acted for HMRC (as junior counsel) in tax appeals in the Court of Appeal, Upper Tribunal and First-tier Tribunal, including *BCM Cayman Ltd v HMRC* [2023] STC 1738, *HMRC v BlueCrest Capital Management LP* [2023] EWCA Civ 1481, *HFFX LLP v HMRC* [2023] STC 678 and *Odey Asset Management LLP v HMRC* [2021] UKFTT 31 (TC).

Property

James frequently represents clients in relation to property disputes, with a particular focus on TOLATA claims and claims to the possession of trust and estate property. He also has experience of advising on a wide range of issues relating to trusts of land, settled land and estate property.

Key cases include:

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- *Bridgmont v Zammit* (County Court at Central London): Represented the claimant in a 3-day trial at Central London County Court concerning the beneficial ownership and sale of a property formerly owned by the client's deceased parents. The claim received media coverage in *The Times* and other newspapers.
- *G v G*: Striking out a TOLATA claim over a family home as an abuse of process in light of related family court proceedings (and representing the client successfully on appeal).
- *UBS AG v Rose Capital Ventures Ltd* [2018] EWHC 3137 (Ch) [2019] 2 BCLC 47: mortgage possession claim (with [Jonathan Gavaghan](#))
- *Re C Ltd*: Application for land to be vested in a residents' management company under s 181 of the Insolvency Act 1986.

Partnerships & LLPs

James has experience of advising on partnership and LLP law, especially in relation to trusts and estates.

He has also acted as junior counsel in LLP tax cases, including [BCM Cayman Ltd v HMRC](#) [2023] STC 1738, [HMRC v BlueCrest Capital Management LP](#) [2023] EWCA Civ 1481, [HFFX LLP v HMRC](#) [2023] STC 678 and [Odey Asset Management LLP v HMRC](#) [2021] UKFTT 31 (TC). These appeals raise significant points of partnership/LLP law concerning profit allocations and the nature of a member's interest in an LLP.

Charities

James is regularly instructed to advise on issues of charity law, often in the context of wills, trusts, tax or property issues. His experience includes:

- Advising and representing a large charity in a claim brought against it by one of its members in relation to a ticket scheme operated by the charity.
- Advising and representing a charitable company in a claim brought against it by a donor seeking recovery of a donation on the basis of mistake.
- Advising a government department on whether a charity was an exempt charity or not.
- Advising on whether a claim by a charity for an injunction constituted "charity proceedings" under s 115 of the Charities Act 2011.
- Advising on the interpretation and effect of charitable gifts in wills.
- Advising on whether a substantial lifetime transfer to a foreign charity might qualify for an exemption from IHT.

Commercial & Business Disputes

Recent highlights include:

- Providing legal research, advice and drafting to a major financial institution on specialist trust and insolvency issues

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- Applying successfully for a vesting order under section 181 of the Insolvency Act 1986
- Representing clients in winding up and bankruptcy petitions
- Assisting in drafting an application notice and skeleton argument for setting aside service of a freezing order out of the jurisdiction
- Representing a solicitor's firm at a CCMC in a claim concerning unpaid legal fees

Inheritance, Probate & Wills

James frequently advises and represents clients in all kinds of matters relating to inheritance, probate and wills, both contentious and non-contentious. This includes:

- Probate disputes.
- Inheritance (Provision for Family and Dependants) Act 1975 claims.
- Applications to remove executors under s 50 of the Administration of Justice Act 1985.
- Applications for the interpretation and/or rectification of wills, trust deeds and other documents.
- Advice on the interpretation of wills and the administration of estates.
- Drafting wills.
- Post-death variations, including deeds of variation and applications under the Variation of Trusts Act 1958.

Notable cases include:

- [James v Scudamore](#) [2023] Ch 391. James acted for the defendant executor and beneficiary. The judge accepted his argument that a probate claim could be barred by the claimant's delay in bringing the claim.
- [Bridgmont v Zammit](#) (County Court at Central London): Represented the claimant in a 3-day trial at Central London County Court concerning the beneficial ownership and sale of a property formerly owned by the client's deceased parents. The claim received media coverage in *The Times* and other newspapers.

James is also an editor of *Williams on Wills* (11th edition, 2021).

Offshore

James has experience of offshore trusts litigation, including complex and high-value multi-jurisdictional disputes. His experience includes:

- Acting for the settlor in a disputed *Public Trustee v Cooper* application in very high-value trust proceedings in Jersey.
- Drafting a skeleton argument in opposition to an anti-suit injunction in a trusts dispute.
- Drafting written contentions in opposition to an application for permission to appeal in a privacy application.
- Drafting a statement of case in a breach of trust claim relating to an employee benefit trust in the financial services industry.

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Recommendations

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Qualifications

- Bar Professional Training Course (Outstanding), City Law School (2017)
- Graduate Diploma in Law (Distinction; Equity & Trusts Prize), City Law School (2016)
- DPhil in History, Balliol College, Oxford (2014)
- MSt in History (Distinction), Balliol College, Oxford (2011)
- BA in History (First Class – highest of year; Gibbs Prize and Arnold Prize), Balliol College, Oxford (2010)

Associations & Memberships

- Member of the Chancery Bar Association
- Member of the Court of Protection Bar Association and CoPPA (Court of Protection Practitioners' Association)
- Member of ConTrA (Contentious Trusts Association)
- Fellow of the Royal Historical Society

Publications

[Williams on Wills](#) (11th edition, 2021) (with Francis Barlow KC, Susannah Meadway and James MacDougald).

['Drawing a Veil? Privacy and Anonymity in Trusts and Capacity Proceedings'](#), *Trusts & Trustees*, 2023, vol. 29, 760-768 (with Georgia Bedworth).

['Can delay defeat a probate claim?'](#), *Private Client Business*, 2023, 4, 158-164.

['Statutory Wills and Probate Disputes: Contested Wills in the Court of Protection'](#), *Private Client Business*, 2022, 3, 104-111 (with Richard Dew).

['Tax Planning in the Court of Protection'](#), *Lawskills* (Sep. 2018).

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