



# JAMES E. PETTS

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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.

## EXPERTISE

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### COMMERCIAL & BUSINESS DISPUTES

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James acts in relation to commercial Chancery matters, including disputes as to trusts in a business context, civil fraud, contractual claims, insolvency and unfair prejudice petitions.

### RECENT CASES

- Acting for defendants in a civil fraud claim brought by a UK university which is claiming circa £1.2m.
- Acting for the claimant beneficiaries in an intimated claim to terminate a trust of shares of a portfolio of companies estimated to be worth circa £1.1m.
- Acting in a claim to recover circa £800,000 of historic business lending to an individual secured on his property.
- 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 a defendant to a High Court claim in proprietary estoppel and a simultaneous unfair 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

- **Fulstow v Francis [2024] EWHC 2122 (Ch.)** – A dispute with an estimated value of circa £8m as to whether individuals making an investment in a company developing land had a binding contract and had acquired a beneficial interest in shares of that company.
- **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.

## PARTNERSHIP & LLP

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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.
- Acting in a dispute regarding the terms of the dissolution of a partnership holding a number of residential properties in London.

## 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

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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.

### RECENT CASES

- Advising a major brewery as to its position in respect of an historic guarantee of an authorised guarantee agreement relied upon by a current landlord in respect of a nightclub which had defaulted on its rent during the pandemic but which apparently remains operating.
- Acting at trial for the successful claimants in relation to a claim for declarations as to the locations of two boundaries and successfully defending a counterclaim in nuisance in which it was alleged that the discharge of rainwater from their property to



the defendants' lower property caused dampness in the lower property. The trial was heard over 6 days and involved two sets of experts on each side.

- Successfully defending an application to strike out a claim brought by a landowner against owners of neighbouring property for declarations that the claimant's property has space to park two vehicles, the judge ruling that it was sufficient for the purposes of seeking a declaration that the neighbouring land-owner only had an easement over the land in respect of which a declaration was sought, rather than ownership of it.
- Acting for defendants in a claim between owners of superadjacent and subadjacent flats in a converted terrace house in a dispute regarding legal responsibility for the structural instability of the building and disputed expert evidence as to the cause and extent of the structural problems.
- Acting for the defendant in a claim brought by a former co-habitant of a valuable inherited property in London on the basis of an alleged but disputed oral agreement said to give rise to a constructive trust, and a counter-claim brought in respect of the alleged misappropriation of the defendant's money by the claimant over the course of a number of years.
- Acting in a harassment claim for diminution in value of property arising out of an historic but resolved boundary dispute.
- Acting for the claimant in a claim to forfeit mixed residential and commercial property for non-payment of rent.
- Advising a party to a boundary dispute involving adverse possession of a 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 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 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 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.

## REPORTED CASES

- **Akram v Academy Doors and Windows Ltd. [2023] EWHC 1653 (KB)** – Appeared for the successful respondent in an appeal against a first instance decision that an individual rather than a company was the contracting party in a domestic refurbishment contract which the judge at first instance had found had been breached, and various other matters relating to the contract.
- **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 himself 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.

## CONTENTIOUS TRUSTS & ESTATES

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, alleged misappropriations of estate assets, and claims involving allegations of fraud and/or undue influence.

## RECENT CASES

- Acting for the executors of an estate with an estimated value of circa £8m in a contentious probate claim involving allegations of want of due execution, undue influence, want of knowledge and approval and want of testamentary capacity, including successfully resisting a claim to remove the executors and appoint a temporary executor pending the litigation on the ground



that the executors had not been neutral as to whether the will is valid.

- Appearing at trial in a claim and counter-claim involving cross-allegations of misappropriation of assets from and claims for an account in respect of the estate of a deceased person both before and after death by two parties who had formerly been parties to probate litigation in relation to the same estate (in which litigation James had also appeared).
- Acting in respect of a dispute between an individual and his late son's widow as to the beneficial ownership of a substantial portfolio of London residential properties which had been held by his late son on trust for him, including a dispute about whether there was any severance of a joint tenancy between him and his parents in relation to certain properties held on express trust and whether certain other trust documents are forgeries.
- Advising a charity on an apparent fraudulent misappropriation of assets left to that charity by the executrix of an estate.
- Acting for claimant beneficiaries of an estate in an application for contempt of court brought against an executrix for breaching a court order requiring her to provide information, resulting in the information being provided and an order for costs made against the defaulting executrix and subsequently advising on a devastavit claim against the executrix".
- Acting for the defendant in a contentious probate claim intimated against the estate of a deceased person 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.
- Advising and acting for parties in relation to an estate in which the client's entitlement arose as under a valid polygamous marriage solemnised in a customary ceremony in Nigeria.
- Advising in a contentious probate claim featuring video wills made during the pandemic.
- 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.
- 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.
- 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 together with substantial mesne profits was obtained against the deceased's widow who had occupied estate property for over 10 years after the deceased's death.
- Acting in an application for a 'put up or shut up' order against beneficiaries of an estate who lodged a caveat, permitted it to lapse after pre-action correspondence, then later intimated a claim for revocation of the grant after it had been obtained".

## APPOINTMENTS

- Bar Standards Board Independent Decision-making Body
- Civil Education Secretary, Fraud Lawyers' Association
- Advocacy Trainer, Middle Temple

## ASSOCIATIONS & MEMBERSHIPS

- Chancery Bar Association



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

## EDUCATION & QUALIFICATIONS

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

## 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

## REGULATORY INFORMATION

James E. Petts is a self-employed, independent barrister whose practice is regulated by the Bar Standards Board [Bar Council Ref 44149]. He is fully insured with the Bar Mutual Indemnity Fund [BMIF Ref 2360/084] to provide legal services, please refer to the [BMIF website](#) for full details of the world-wide cover provided. He is registered for VAT under the reference 661114567.