

# DAVID SCHMITZ



Call 1976

David Schmitz has a varied Chancery and Commercial practice, with particular experience on property litigation and on professional negligence cases involving property. In addition, he deals with trusts, landlord and tenant, pensions, insolvency, undue influence cases, cohabitation disputes, partnerships and charities.

He is a qualified mediator and has been a mediation coach for ADR Chambers.

From 2010 to 2014 he was a Borough Councillor in Haringey, London and served on the planning committee for three years.

He is currently on the panel which reviews applications made to the Bar Pro Bono Unit for assistance in litigation.

## Current and recent matters include:

- A High Court money claim which raises new points on extensions of limitation periods.
- A claim for compensation where land was sold by the trustee in bankruptcy of a person who was not the landowner, but was instead a mere namesake.
- Claims in restitution and negligence for monies paid for gas which was billed to the claimant and paid by it, but which was supplied to neighbouring premises.
- A landlord and tenant dispute, successfully settled, about the ownership of the roof and area above and about whether an order to vary the lease should be made under the Landlord and Tenant Act 1987 because the existing lease did not make adequate provision for the maintenance of the building.
- Advice and letter of claim for the surviving spouse of a member of the NHS pension scheme.
- Application to enlarge trustees' investment powers, where the statutory powers had been excluded in a home-made Will.
- A dispute (successfully settled) on the sale of part of an estate, where compliance with the Law of Property (Miscellaneous Provisions) Act 1989 was in issue and where one of the joint sellers was subject to an order made under the Proceeds of Crime Act 2002.
- A damages claim (settled successfully) against solicitors for failure to advise a purchaser who bought a parcel of development land which did not include the whole of the land which was required for an

## Location

Ten Old Square  
Lincoln's Inn  
London  
WC2A 3SU

## Contact Us

T +44 (0)20 7405 0758  
F +44 (0)20 7831 8237  
E: [clerks@tenoldsquare.com](mailto:clerks@tenoldsquare.com)  
DX: LDE Box No 306

intended development.

- A claim by a litigation funder for monies allegedly due under funding agreement.
- Jurisdiction questions in a matter involving EU-domiciled parties and a party domiciled in a state subject to the Foreign Judgments etc. Act 1933.
- A potential claim against trustees and estate agents arising from the sale of properties in the course of the re-settlement of a landed estate.
- Defending a claim against a trustee in a case of pension scheme “liberation.”

## Reported Cases

- Harvey v Dunbar Assets PLC (No. 2) [2017] BPIR 450 (issue estoppel and res judicata applied by analogy to bankruptcy cases; the limits of promissory estoppel explored)
- Harvey v Dunbar Assets PLC [2013] B.P.I.R. 722 (CA) (Does a contract of guarantee bind any of the signatories if some of the named prospective guarantors do not sign it?)
- Brightlingsea Haven Ltd v Morris [2009] 2 P & CR 169: Whether caravan site owner was precluded by proprietary estoppel from ending periodic tenancies by notice; whether the structures in question were caravans for the purposes of the relevant legislation.
- HSBC Trust Co v Quinn [2007] All ER (D) 125 (Jul): Standard of proof where proprietary estoppel is alleged against deceased person; what is necessary in order to evidence intention that a document should take effect as a deed.
- Ledger-Beadell v Peach [2007] 2 FLR 210: Claim against one cohabitant by the parents of the other for repayment of monies provided to buy a house for the couple. Claimants alleged monies were advanced as a loan; claim defended on basis that monies were subject to presumption of advancement or alternatively that they were held subject to constructive trust.
- Krasner v Dennison [2001] Ch 76 (whether, absent statutory intervention, a bankrupt’s personal pension passes in its entirety to the trustee in bankruptcy)
- Abidogun v Frolan Health Care Ltd – [2001] All ER (D) 305 (Oct) (no entitlement to re-entry on forfeiture caused by denial of landlord’s title unless S 146 LPA notice is served).
- CIBC Mortgages plc v Pitt [1994] 1 AC 200: Undue influence; constructive notice of the same by a mortgagee; requirements for rescinding a transaction where there has been actual undue influence.
- Grant v Edwards [1986] Ch 638: Constructive trusts; co-ownership of house by co-habiting couple; significance of sole proprietor’s statements to cohabitant of his reasons for not putting property into joint names.

## Qualifications

- BA, Syracuse University (USA)

## Associations & Memberships

- Chancery Bar Association
- Professional Negligence Bar Association
- Property Bar Association

---

### Location

Ten Old Square  
Lincoln's Inn  
London  
WC2A 3SU

### Contact Us

T +44 (0)20 7405 0758  
F +44 (0)20 7831 8237  
E: [clerks@tenoldsquare.com](mailto:clerks@tenoldsquare.com)  
DX: LDE Box No 306

## Publications

Currently writing *Art and the Law* which will examine all aspects of the law governing the art market. Chapters on copyright, ownership, interference with ownership and claims by and against states are largely completed.

*“Trust disputes – claims in negligence against trustees for their administration of the trust.”* Lexis PSL Private Client (2019)

*“Neighbourhood Watch” (the effect of Coventry v Lawrence on nuisance claims where there have been changes in the locality)”:* Property Law Journal Dec. 2017 and Jan. 2018

*Atkins Court Forms Vol 37 (1) – Specific Performance* (2015)

*“Threat to Independence (Charities and Gagging Clauses)”* Legalease April and May 2014

*“An Unresolved Question – “Whether the Will Must Be Present when the Testator Acknowledges his Signature”:* Trusts and Estates Law and Tax Journal Sept. 2013

## Speaking Engagements

*Fire Safety and Cladding in Blocks of Flats: Liability and Prevention* (2018)

*Business and Property Court Pilot Scheme on Disclosure: Pre action to Close of Statements of Case and e-Disclosure* (2019)

---

### Location

Ten Old Square  
Lincoln's Inn  
London  
WC2A 3SU

### Contact Us

T +44 (0)20 7405 0758  
F +44 (0)20 7831 8237  
E: [clerks@tenoldsquare.com](mailto:clerks@tenoldsquare.com)  
DX: LDE Box No 306