

# JAMES EGAN



Call 2015

James has a busy and successful chancery, commercial and private client practice, and is regularly instructed by a number of leading firms. He has a wealth of advocacy experience spanning the full spectrum of Chambers' work, appearing regularly in his own right in the County Court and High Court. James also has been instructed as specialist chancery counsel in divorce proceedings in the Family Court. 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

In addition to his practice in the Court of Protection, James has been instructed in a number of civil claims in which litigation capacity needed to be investigated in relation to one of the parties. He is therefore familiar with the procedures set out in Part 21 of the Civil Procedure Rules and/or Insolvency Rules 12.23-12.25, as applicable.

## Private Client: Contentious

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.

## Recent highlights include:

- Advising and representing personal representatives, beneficiaries and applicants in mediations and at Court in Inheritance (Provision for Family & Dependents) Act 1975 claims (including Estates valued in the several millions of pounds). James has advised and represented spouses, former spouses,

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- 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 personal representatives and 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 has also been instructed to advise in relation to offshore jurisdictions, including most recently in a trustee removal application in the Isle of Man.

## Private Client: Non-Contentious

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

## Recent highlights include:

- 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;

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- 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 highlights include:

- Applications to revoke a Lasting Power of Attorney and removal of attorneys;
- Applications to approve a statutory will on behalf of P;
- 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 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, and is happy to advise and act in relation to business and residential tenancies of all kinds.

### Recent highlights include:

- Advising on escheat and rights following dissolution of a company and disclaimer;
- Advising on protected business tenancies and the renewal process under the Landlord & Tenant Act 1954 (including drafting applicable notices and counter-notices);
- Advising and drafting pre-action correspondence for the recovery of deposits;
- Advising on claims for a new 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 claims between cohabitants pursuant to TOLATA 1996 and/or Section 37 of the

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Matrimonial Proceedings and Property Act 1970;

- Advising and drafting applications to the Land Registry for prescriptive easements;
- Advising and defending applications to the Land Registry based on adverse possession;
- Advising on the construction of pre-emption rights;
- 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.
- Representing parties in possession claims and trials (including trespasser claims, section 8, section 21, and Mortgage Arrears) and handling defences based on discrimination arising from disability (s15 EA 2010), indirect discrimination (s19 EA 2010), and postponement of possession for exceptional hardship;
- Representing parties in applications to set aside Interim Charging Orders;
- Representing mortgagees-in-possession seeking to pay surplus proceeds of sale into Court pursuant to section 63 of the Trustee Act 1925;
- 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.

### **Personal Property/Chattels**

James has a keen interest in personal property law.

## Recent highlights include:

- 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 Chancery

### **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. He 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 highlights include:

- Contested and uncontested 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;
- Injunctions to restrain advertisement of winding up petitions;

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- 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 considering applications to re-vest the family home following bankruptcy where the automatic re-vesting provisions were not engaged;
- Extensions of company administrations;
- Setting aside a sham trust within bankruptcy proceedings;
- Validation orders for payments made/to be made following presentation of a petition;
- Restoration of companies to the Register;
- Making and opposing applications to set aside statutory demands;
- Advising and drafting bankruptcy and winding-up petitions;

## **Commercial**

### Recent highlights include:

- Successfully obtaining worldwide freezing and proprietary injunctions, *Norwich Pharmacal* orders, interim injunctions and orders for disclosure;
- Advising and 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;
- Representing parties in claims concerning guarantees and indemnities;
- Advising on and 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 highlights include:

- 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 the Companies Act 2006.
- Advising on and dealing with unfair prejudice petitions under section 994 of the Companies Act 2006;
- Applying for relief 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).

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## **Business Rates Disputes**

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

## Capital Taxes

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 highlights include:

- 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 and LLPs

James's experience in partnership includes advising individual members in relation to mergers, partnership exits, transfers of business and the dissolution of partnerships, as well as advising on the construction of partnership and LLP agreements. James also has experience in dealing with the overlap between partnerships, LLPs and insolvency procedures; in particular, 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.

## 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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