

JAMES KIRBY



Call 2017

James Kirby is a Chancery barrister with experience across all areas of Chambers' expertise including Private Client (Contentious and Non-Contentious); Capital Taxes; Court of Protection; and Property.

James appears regularly in the High Court and County Court, and has also appeared in the First-tier Tribunal (Tax Chamber) and the Court of Protection. He is equally happy being instructed on his own account or as a junior within a wider team.

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

Private Client: Contentious

James' experience includes:

- Applications to remove executors under s.50 of the Administration of Justice Act 1985 (from drafting proceedings to successful disposal hearings in the High Court)
- Appearing as junior counsel (led by [Eason Rajah QC](#) and [Georgia Bedworth](#)) at an interim hearing regarding the appointment of a litigation friend and privacy orders in a high-value family property dispute
- Drafting skeleton arguments, witness evidence and summonses in offshore trust proceedings
- Striking out a TOLATA claim over a family home as an abuse of process (and representing the client successfully on appeal)
- Appearing in a Part 8 directions hearing in the High Court regarding the removal of executors in a £multi-million estate
- Drafting a settlement agreement in a 1975 Act dispute involving insolvency and survivorship issues
- Advising on merits in a 1975 Act claim by a former civil partner of the deceased
- Drafting witness evidence in 1975 Act proceedings

Location

Ten Old Square
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London
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- Advising on merits in a potential breach of trust claim against an executor/trustee
- Appearing successfully in a claim for a division of chattels under s.188 of the Law of Property Act 1925

Private Client: Non-Contentious

James regularly advises trustees, personal representatives and beneficiaries on matters concerning trusts and estates, including tax matters.

Particular experience includes:

- Advising on class gifts in wills, including the rules governing the closing of classes
- Advising trustees on the scope of a power of advancement
- Advising on the effect of a conditional revocation clause in a will
- Advising on the construction of a will directing executors to pay tax on property subject to a testamentary power of appointment
- Advising an executor on conflict of laws issues relating to foreign assets
- Advising trustees on terminable life interests in residential property (including tax consequences)
- Drafting deeds of variation under s.142 of the Inheritance Tax Act 1984
- Drafting trustee resolutions relating to beneficiary loans

Property

James has a particular interest in the ownership and occupation of trust and estate property.

His experience in property-related matters includes:

- Appearing successfully to strike out a TOLATA claim relating to a family home as an abuse of process
- Appearing in a two-day interim application in a high-value mortgage possession claim in the High Court (led by [Jonathan Gavaghan](#))
- Applying successfully for land to be vested in a residents' management company under the Insolvency Act 1986
- Appearing at a disposal hearing of a Part 8 claim for an order for sale
- Drafting Particulars of Claim in a dispute concerning breach of trust by the vendor of a property
- Advising on a proposed application for an order for sale under TOLATA
- Successfully opposing a tenant's application for an injunction against a landlord
- Residential possession proceedings under s.8 and s.21 of the Housing Act 1988
- Possession proceedings against trespassers (commercial and residential), including interim possession orders
- Representing a mortgagor's tenant in mortgage possession proceedings
- Appearing in the First-tier Tribunal Property Chamber (Residential Property)

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Court of Protection

James has a strong interest in Court of Protection work. He is an editor of the Court of Protection Law Reports and was a founding committee member of the Court of Protection Bar Association.

Particular experience includes:

- Acting (as junior counsel) in a complex and high-value property and affairs dispute
- Advising on the effect of loss of capacity on a beneficiary's "right to reside" in trust property
- Drafting a Position Statement for the Official Solicitor in a dispute concerning unauthorised gifts by an LPA attorney
- Drafting advice regarding professional negligence and the creation and abuse of Lasting Powers of Attorney

Capital Taxes

James' experience relating to capital taxes includes:

- Advising on whether substantial lifetime gifts triggered a pre-owned assets tax charge or constituted gifts with reservation of benefit
- Advising on claiming residential nil-rate band after the expiry of the two-year period
- Advising on the grossing up for IHT purposes of a legacy to pay tax on settled property
- Advising executors on the deductibility of liabilities for IHT purposes
- Advising on and drafting a s.144 appointment from a nil-rate band trust
- Drafting correspondence with HMRC
- Drafting s.142 deeds of variation
- Advising on IHT domicile issues

James also has experience of tax litigation (from statements of case through to trial in the FTT) as junior counsel for HMRC in a series of cases concerning partnership income tax avoidance schemes: [Odey Asset Management LLP v HMRC \[2021\] UKFTT 31 \(TC\)](#) and [HFFX LLP v HMRC \[2021\] UKFTT 36 \(TC\)](#).

Partnerships & LLPs

James' experience includes acting as junior counsel in high-value LLP income tax appeals in the First-tier Tribunal (Tax Chamber): [Odey Asset Management LLP v HMRC \[2021\] UKFTT 31 \(TC\)](#) and [HFFX LLP v HMRC \[2021\] UKFTT 36 \(TC\)](#). Both cases raised significant points of partnership/LLP law concerning profit allocations and the nature of a member's interest in an LLP.

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Other experience includes:

- Drafting a letter before claim in a partner exit dispute in a major professional services firm
- Drafting advice concerning partnership property
- Drafting written submissions for arbitration in a partnership dispute

Charities

James' experience includes:

- 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 inheritance tax implications of a gift to a community benefit society
- Advising on charitable gifts in a will and CIO status

Commercial Chancery

Recent highlights include:

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

Qualifications

- Bar Professional Training Course (Outstanding), City Law School (2017)
- Graduate Diploma in Law (Distinction; Equity & Trusts Prize), City Law School (2016)
- Princess Royal Scholarships, Inner Temple (BPTC and GDL)
- DPhil in History, Balliol College, Oxford (2014)
- MSt in History (Distinction), Balliol College, Oxford (2011)
- BA in History (First Class – highest in university), Balliol College, Oxford (2010)

Associations & Memberships

- Member of the Chancery Bar Association
- Member of the Court of Protection Bar Association
- Fellow of the Royal Historical Society

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Publications

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

James has also published a number of articles in leading historical journals and a book (on 19th-century religious history) with Oxford University Press.

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