

Barrister: James Holmes-Milner

Overview:

James practises in the fields of [property](#) and insolvency, traditional and commercial chancery (including [professional negligence](#) work) and [employment law](#). James sits as a Deputy District Judge (civil) on the SE Circuit, London group. He is authorised to hear personal insolvency cases within the county court jurisdiction at the Royal Courts of Justice.

James has undertaken work under the Bar Council's direct public access scheme since 2008, regularly carries out pro bono work and provides training to solicitors and voluntary sector advisers in business tenancy and [employment law](#).

Recent topics of his seminars have included Adverse Possession, Business Tenancy Termination, Residential Tenancies: Possession Pitfalls, TUPE and Insolvency.

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Commercial & Property

Commercial & Property:

James' property practice covers land registration, boundary disputes, easements, forfeiture of leases, insolvency, dilapidations, business tenancy renewal and termination and all aspects of residential tenancies, including service charges. James has lectured for many years in the field of business tenancy termination and renewals, both through CLT and in-house. James is experienced in personal and corporate insolvency matters.

Notable Cases

- [Gulf Agencies LTD v Abdul Salam Seid Ahmed \(2016\) \[2016\] EWCA Civ 44 CA \(Civ Div\) \(Gloster LJ, King LJ, David Richards LJ\)](#): When granting an application for a new tenancy which was opposed by the landlord, a judge had erred in respect of the subjective and objective elements of the landlord's intention to occupy the premises for the purposes of his own businesses. Although the judgment suggested that the judge implicitly did not believe the landlord in certain respects of his evidence, there was no express finding to that effect or clear reasons for that conclusion, and the landlord had satisfied the necessary evidential test regarding objective intention. 3/02/2016.
- [\(1\) Alan & Gillian Clarke \(2\) Adrian & Gaynor Davis \(3\) Aerthur & Linda Sanson \(4\) Karl Bowker \(2015\)](#): It was not appropriate to discharge a restrictive covenant preventing homeowners on a small housing estate from erecting fences and other structures on land intended for recreation.
- [Twenty Two Clifton Gardens Limited v Thayer Investments SA \[2012\] UKUT 71 \(LC\)](#): An appeal to the Upper Tribunal (Lands Chamber) concerning a freeholder's efforts to recover the solicitors' costs and surveyors' fees of LVT proceedings.
- [\(1\) William Rogers \(2\) Ingrid Rogers v \(1\) Roger Freeguard \(2\) Margo Freeguard \(1998\)](#): Extrinsic evidence admissible as an aid to construing the subject matter of an option to purchase property where the description of the property was unclear.

Chancery

Chancery:

James' chancery practice includes property co-ownership disputes, contested probate, administration of estates and Inheritance Act claims.

James has particular experience in dealing with [professional negligence](#) claims against accountants, financial advisers and lawyers (especially arising out of family financial / ancillary relief claims and conveyancing negligence).

He has appeared regularly in the TCC and Mercantile Courts where his most recent cases have involved financial services, partnership and an architect's negligence.

Notable Cases

- [Singh v Kumar \(2015\)](#): A dentist's claim under an association agreement against an orthodontist for unpaid NHS transitional fees had been properly struck out where the dentist had failed to comply with an unless order in respect of disclosure. The fact that he had brought parallel proceedings against other parties for the same sums without disclosing that to the court meant that the proceedings were an abuse of process.
- [Ashfaq Ahmed Spaul v \(1\) MUSHTAQ Mushtaq Spaul \(2\) A & M Property Construction Services \(2014\)](#): A company director was not entitled to the return of shares he had



Call: 1989

Appointments:

Appointed Deputy District Judge (Civil): March 2006.

Education:

Eastbourne College; St. Catharine's College, Cambridge (BA, Natural Sciences); City University (Diploma-in-Law).

Practice areas

- Commercial and Property
- Employment
- Personal Injury
- Professional Negligence

Recent News

- Jennifer Osborne gives online seminar to prosecutors in Tanzania on cryptoassets
- 9 Gough Chambers Congratulates Francesca Kolar on Tenancy
- Andrew Ritchie QC successfully settles Cauda Equina clinical negligence claim for £2.75 million
- Jamie McCracken successfully contests factual evidence of Whistleblowing in the Employment Tribunal.
- Court of Appeal confirms that primary care providers who have claims resolved in their favour before the NHSLA can claim interest on damages

transferred to his former business partner.

- [Bhatti v Bhatti \(2009\)](#): Arbitration-the court granted summary judgment on the applicant's claim to the beneficial ownership of certain properties following the determination of the dispute in that party's favour by a quasi-judicial body of the Muslim community acting as an arbitral body for English legal purposes.
- [\(1\) Mushtaq Spaul \(2\) A&M Property Construction Services LTD v \(1\) ASHFAQ Ashfaq Spaul \(2\) AA Property & Construction Services LTD \(2009\)](#): A director had acted in breach of his fiduciary duty by diverting money intended for use by a company that was controlled by him and his brother into a company under his sole control.
- [Schweppe v Harper \(2008\)](#): An agreement between the claimant and the defendant whereby the former sought, in return for a fee, to annul the latter's bankruptcy and to secure finance to pay off creditors was too uncertain to be a contract.
- [Skeete v Pick & Anor \(2007\)](#): A bankrupt had no locus standi to challenge a court declaration as to the beneficial ownership of a property that he and his former partner owned as tenants in common.
- [Ciba v Davies & Hannan \(2006\)](#): As at the time of executing a will a testator had possessed testamentary capacity, the court pronounced in favour of that will notwithstanding the testator's subsequent mental changes.
- [Corsini v Corsini \[2004\] EWHC 102 \(Ch\)](#): Executors and Administrators - Distribution of assets - Appropriation - Sale of an asset - Defendant retaining part of proceeds of sale on trust - Appropriation of cash - Entitlement to interest.

Employment

Employment:

James is a co-author of Employment Law Practice: An Expert Guide, please find it [here](#) and of [Remedies in Employment Law](#).

James' clients include blue chip companies, recruitment agencies and public sector employers. James is regularly called upon to draft contracts and policies and to act for employees in high value compromise agreements.

Notable Cases

- [Williams v Amey EAT \(Judge Eady QC\) 16/02/2015](#): An employment tribunal's decision to reduce an employee's compensatory award for unfair dismissal by 100 per cent, by a combination of a Polkey reduction and a reduction for contributory fault, was overturned. The tribunal's reasoning was inadequate and it was unclear whether it had asked the correct questions.
- [Benkharbouche v Sudan \[2014\] ICR 169; \[2013\] IRLR 918](#): The State Immunity Act 1978 s.16 and s.4 could not be read down so as to provide that state immunity would not prevent an employment claim where that would be incompatible with an embassy employee's right of access to court under the European Convention on Human Rights 1950 art.6. However, because those provisions conflicted with employees' rights to an effective remedy and a fair trial under the Charter of Fundamental Rights of the European Union art.47, they had to be disapplied insofar as the claims were within the material scope of EU law.
- [\(1\) HA Abusabib \(2\) RM El-Teraifi v G Taddese \(2011\)](#): It was appropriate to grant relief from sanctions under CPR PD 16 and CPR r.3.9 where evidence in support of a response, but not a draft ET3 response form, had been filed in time. EAT (Judge McMullen) 2/08/2011
- [Jones & Another v Loppington House Ltd \[2007\] All ER \(D\) 152 \(Feb\)](#): A successful perversity challenge to an employment tribunal's decision.
- [Beckett v Bristol United Press Ltd \[2005\] All ER \(D\) 225 \(Apr\)](#): Appeal against an employment tribunal's findings of repudiatory breach of contract.
- [Kredenza Ltd v Jovicevic UKEAT/0605/05/DM \(Transcript\)](#): Appeal against an employment tribunal's refusal to accept employer's response out of time or to review its decision. The issue was whether the tribunal failed to consider relevant matters.
- [A N Howard v \(1\) Millrise LTD \(T/A Colorflow \(in liquidation\)\) \(2\) SG Printers \(T/A Colourflow\) \(2004\)](#): Where the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 were engaged and there were no recognised trade unions or existing employee representatives, employers were required to invite affected employees to elect employee representatives with whom the employer could consult or, where employee representatives were not elected within a reasonable time, to supply the required information individually to the employees affected.
- [Pickering v Summer Bridge Doors Ltd \[2003\] All ER \(D\) 161 \(Sep\)](#): Disability discrimination.
- [Hutchison 3G UK Ltd v Mason \[2003\] All ER \(D\) 196 \(Sep\)](#): Disability discrimination.

For more information please call our clerks on **020 7832 0500**

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