

James Holmes-Milner

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James Holmes-Milner practises in the fields of property and insolvency, traditional and commercial chancery (including professional negligence work), costs and employment law.

James sits as a Deputy District Judge (civil) on the SE Circuit, London group. He is authorised to hear personal insolvency and chancery 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 property and employment law.

Areas of Expertise

Commercial and Property

James' property practice covers land registration, boundary disputes, party wall appeals, 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 Commercial and Property cases

LOAN AND SHARE TRANSFER: *Coleman v Mondell* [2020] EWHC 2852 (QB)

On the proper construction of their agreement, the parties intended by way of a collateral contract a loan rather than an outright transfer of shares in a Spanish company.

LAND REGISTRATION: *Williams v Beshai* [2018] UKFTT 0713 (PC). Fraud

Applicant sought registration of a transfer; respondent (the transferor) said that he did not sign either the contract or the TR1. The judge found that although he did not sign the TR1 he did sign the contract. Therefore although the registrar was ordered to cancel the application for registration of the transfer, the judge directed the entry of a notice to protect the contract.

BUSINESS TENANCIES: *Gulf Agencies Ltd v Abdul Salam Seid Ahmed* (2016) [2016] EWCA Civ 44 CA (Civ Div)

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.

ABUSE OF PROCESS: *Singh v Kumar* [2015] EWHC 2582 (QB)

A dentist's claim under an association agreement against an orthodontist for unpaid NHS transitional fees.

RESTRICTIVE COVENANTS: (1) *Alan & Gillian Clarke* (2) *Adrian & Gaynor Davis* (3) *Arthur & Linda Sanson* (4) *Karl Bowker* [2015] UKUT 0044 (LC)

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.

SERVICE CHARGES: *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.

BOUNDARIES: (1) *William Rogers* (2) *Ingrid Rogers v (1) Roger Freeguard (2) Margo Freeguard* [1999] 1 WLR 375

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

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). Recent cases have involved partnership dissolution accounts and the enforceability of arbitration awards.

Notable Chancery cases

BETH DIN ARBITRATION: *Sterling v Rand* [2019] EWHC 2560 (Ch)

The court refused to enforce an arbitration award ordering the transfer of a property's title where, although the award was unchallenged, new evidence had arisen that indicated that an order for specific performance would not be in the interests of justice.

MISTAKE: Ashfaq Ahmed Spaul v (1) MUSHTAQ Mushtaq Spaul (2) A & M Property Construction Services [2014] EWCA Civ 679

A company director was not entitled to the return of shares he had transferred to his former business partner.

SHARIA ARBITRATION: Bhatti v Bhatti [2009] EWHC 3506 (Ch)

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.

BREACH OF FIDUCIARY DUTY: (1) Mushtaq Spaul (2) A&M Property Construction Services Ltd v (1) ASHFAQ Ashfaq Spaul (2) AA Property & Construction Services Ltd [2009] EWHC 3275 (Ch)

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.

INSOLVENCY: Schweppe v Harper [2008] EWCA Civ 442

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.

Employment

James is a co-author of Employment Law Practice: An Expert Guide and contributor to 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 Employment cases

POLKEY: Williams v Amey EAT [2015] 2 WLUK 524

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.

STATE IMMUNITY: 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.

DIPLOMATIC IMMUNITY: (1) HA Abusabib (2) RM El-Teraifi v G Taddese [2013] I.C.R. 603

A former diplomat was not entitled to residual diplomatic immunity in respect of his liability for acts of discrimination and harassment against a woman employed as his domestic servant. Her employment was a private matter which could not be regarded as an act in the exercise of his diplomatic function within the Vienna Convention on Diplomatic Relations 1961 art.39(2).

Costs

James has extensive experience in the field of costs litigation.

Notable Costs cases

STATUTE BILLS: Bari v Rosen (t/a RA Rosen & Co Solicitors) [2012] EWHC 1782 (QB)

A client was entitled to a detailed assessment of his solicitor's bills of costs even though his application for assessment was made more than 12 months after he had paid the interim bills where it had been less than 12 months after he had paid the final bill; the earlier bills were not interim statute bills, and there were special circumstances.

Education

- BA Natural Sciences (1986): St Catharine's College, Cambridge
- Diploma in Law (1988): City University

Appointments

- Deputy District Judge, Civil (2006)