

Overview

Commercial Disputes
 Consumer Credit
 Partnership and Joint Ventures
 Professional Liability
 Property
 Trusts
 Wills and Estates

Profile: Overview

Mark has a broad Chancery practice with an emphasis on property litigation, trust and estate disputes and related professional liability claims. He has appeared in such high-profile claims as the interest rate swaps litigation and the Railtrack Private Shareholders Action Group litigation against the Secretary of State for Transport and the Department of Transport.

Experience and Expertise

Mark West has a busy general Chancery practice and is consistently recommended by the legal directories for traditional Chancery and property litigation expertise. In July 2012 he was appointed as a Deputy Judge of the Upper Tribunal (Administrative Appeals Chamber), sitting on a part-time basis between 15 and 30 days a year. In February 2013 to January 2018 he was appointed a Member of the Council of the Inns of Court Disciplinary Tribunal (now the Bar Tribunals and Adjudication Service) and has sat as a Visitor to the Inns of Court.

Cases and Work of Note

- *Fielden v. Christie-Miller* [2015] EWHC (Ch) 87 (Sir William Blackburne) (the relationship between proprietary estoppel and the unanimity principle where the representations relied on by the beneficiary are made by one of several trustees; the relationship between proprietary estoppel and the principle that trustees cannot fetter the exercise of their discretion)
- *Tregonwell Monro Smith v. Herbert & Ors* [2014] EWHC 4177 (Ch) (Deputy Master Matthews) (section 12 of the Trusts of Land & Appointment of Trustees Act 1996; purposes of the trust; unavailability and unsuitability of land for occupation by a beneficiary)
- *McLean Estates Ltd v. Earl of Aylesford* [2009] EWHC 697 (Ch) (HHJ Purle QC) (mines and minerals; whether Mercia Mudstone within a 1922 exception and reservation of mines and minerals; powers of working minerals; ownership of the void left by extraction of minerals)
- *Banfield v. Leeds Building Society* [2007] EWCA Civ 1369 (Court of Appeal) (whether endowment mortgage or repayment mortgage; no obligation to account in respect of a mortgage indemnity guarantee; effect of failure to surrender insurance policy on existence of possession action)
- *Weir v. Secretary of State for Transport (No.2)* [2005] EWHC 2192 (Ch) (Lindsay J) (the Railtrack litigation; administration order; misfeasance in public office)
- *Weir v. Secretary of State for Transport (No.1)* [2005] EWHC 812 (Ch) (Lindsay J) (the Railtrack litigation; costs capping orders)
- *Barclays Bank Plc v. Bee* [2002] 1 WLR 332 (Court of Appeal) (termination and renewal of business tenancy: landlord had served 2 inconsistent s 25 notices: one valid on its face stating no opposition to the new tenancy and the other, invalid on its face, stating opposition but omitting the grounds for opposition; whether tenant entitled to treat notice of non-opposition as valid so as to preclude landlord from serving proper notice of opposition)
- *Batchelor v. Marlow* [2001] 1 EGLR 119 (Warren J); [2003] 1 WLR 764 (Court of Appeal) (whether parking of cars can exist as an easement; whether acting contrary to enforcement notice constitutes illegality for the purposes of prescription)
- *Portman Building Society v. Bevan Ashford* [2000] Lloyd's Rep PN 354 (Court of Appeal) (measure of damages in solicitor's negligence action where solicitor failed to inform lender of borrowers' proposal to grant second charge: application of test in SAAMCO to solicitor's negligence action)
- *Kleinwort Benson v. Lincoln CC, Birmingham CC, Kensington & Chelsea LBC & Southwark LBC* [1999] 2 AC 349 (House of Lords) (whether money paid under a void interest rate swap contract can be recovered on the ground that it was paid under a

- mistake of law)
- *Portman Building Society v. Hamlyn Taylor Neck* [1998] 4 All ER 202 (Court of Appeal) (whether a lender has a cause of action in restitution to recover money paid under a mistake of fact in the context of a solicitor's negligence action)
- *Chong Kai Tai Ringo v. Lee Gee Kee* [1997] HKLRD 491 (Privy Council) (provisional agreement for sale and purchase of a flat; whether obligation of purchasers concurrent with obligation of vendors to deliver an executed assignment; whether clause providing for payment of a liquidated amount in case of failure to complete was a bar to specific performance)
- *Kleinwort Benson v. Birmingham CC* [1997] QB 380 (Court of Appeal) (whether passing on is a defence to restitution of monies paid under a void interest rate swap contract)
- *Morgan Grenfell v. Welwyn Hatfield DC; Islington LBC (Third Party)* [1995] 1 All ER 1 (Hobhouse J) (whether interest rate swap contracts are wagers within the terms of s 18 of the Gaming Act 1845 and/or the Gaming Act 1892)
- *Kleinwort Benson v. Sandwell BC* [1994] 4 All ER 890 (Hobhouse J) (restitution of monies paid under ultra vires interest rate swap contracts)

Recommendations

- "An incredibly bright barrister able to home in on the nub of a problem and identify it quickly." (Real Estate Litigation, Chambers UK 2018)
- "Demonstrates creativity and imagination in his opinions. HE can approach matters from many different angles which allows for more complete analysis of the legal case." "His written opinions are always well thought through and detailed." (Traditional Chancery Traditional, Chambers UK 2018)
- "Hugely intelligent and a master of his subject." (Property Litigation, The Legal 500, 2017)
- "A first port of call." (Agriculture, The Legal 500, 2017)
- "He is incredibly bright, and has so much experience and knowledge that he's always someone that you would turn to if you were faced with a tricky problem and needed clear and concise advice. He has that gravitas that works well with clients." (Traditional Chancery Traditional, Chambers UK, 2017)
- "He is excellent at dealing with trust-related property issues." (Property Litigation, The Legal 500, 2016)
- "I would say he is exclusively traditional chancery and is extremely knowledgeable." (Chancery: Traditional UK, Chambers HNW, 2016)
- "An experienced property practitioner, who is also active in related professional negligence claims." "Extremely able and very thorough. He's a lawyer who treats everyone on the team with respect." (Real Estate Litigation, Chambers Guide, 2015)
- "A very, very intelligent man whose advice is always very good." (Property Litigation, The Legal 500, 2015)
- "Has substantial experience of trusts and estates cases, and handles work including will rectification and estate administration. He regularly advises on trustee duties and exercise of power issues." "He's incredibly thorough and leaves no angle unexamined." (Traditional Chancery, Chambers Guide, 2015)
- "An esteemed property litigation junior with a wide-ranging practice, who is recognised for his mortgage fraud work and has particular expertise of advising with regard to major developments." "He's particularly good at the academic stuff - the real nitty-gritty stuff. He is incredibly intelligent and that's why we instruct him on really complex issues. His analytical skills are exceptional." "Very intelligent, he's a thorough worker who is client-friendly." (Real Estate Litigation, Chambers Guide, 2014)
- Mark West is recommended. (Property Litigation, The Legal 500, 2014)
- "A highly regarded go-to junior for all manner of trust and estate disputes, he has a practice that encompasses expertise across the spectrum of traditional chancery matters." "He is dauntingly intelligent but also friendly and approachable. A very cerebral barrister, whose opinions and advice are very strong." (Traditional Chancery, Chambers Guide, 2014)
- "Mark West is "probably the cleverest man I've ever met," according to one impressed observer, while a second adds that "his common sense marries well with his technical ability to make things very simple for clients." "A man who gives concise, practical advice, always on time and always on budget," West tackles a wide range of cases but has special focus on matters involving rights to minerals

- and landlord and tenant law." (Real Estate Litigation, Chambers Guide, 2013)
- Property Litigation section, The Legal 500, 2013 Mark West is recommended.
- "Mark West acts for estates and trustees on a range of matters, including the validity of gifts prescribed in wills, breaches of trust claim and estate administration. He is a bright, common-sense lawyer who gives concise, practical advice, always on time and always on budget." (Traditional Chancery, Chambers Guide, 2013)
- "Mark West 'is good to instruct on tricky cases.' His recent work includes acting in relation to guarantee obligations at the Shard of Glass development on the South Bank, and advising on the registration of title to minerals in Cumbria." (Real Estate Litigation, Chambers Guide, 2012)
- Property Litigation section, The Legal 500, 2012: Mark West is recommended.
- "Mark West is 'very clear-headed and focused' and has 'astonishing factual recall,' according to sources. He is widely admired for his deft handling of real property, trusts and estates disputes." (Traditional Chancery, Chambers Guide, 2012)
- Property Litigation section, The Legal 500, 2011: Mark West is recommended
- "...is considered 'a sound practitioner' across a range of property disputes. He recently acted on a case concerning the true construction of a reservation of mines and minerals in a conveyance. Solicitors warm to him as 'he always takes into account the practical needs and expectations of the lay client.'" (Real Estate Litigation, Chambers Guide, 2011)
- "Mark West is 'the soundest pair of hands around' in the fields of trust and estate disputes, and is familiar among peers as 'someone you can trust as a sounding board for unusual chancery matters.' He is a very talented character on his feet, and has most recently been preoccupied with property driven cases." (Traditional Chancery, Chambers Guide, 2011)
- "Mark West is recommended." (Property Litigation, The Legal 500, 2010)
- "Mark West is currently advising a high-street bank on disputes arising from a number of fraudulent mortgages. Observers point to his "detailed and deep analysis: he exhibits complete mastery of the documents at trial." (Real Estate Litigation, Chambers Guide, 2010)
- "Detailed forensic analysis is evident in his opinions." (Property Litigation, The Legal 500, 2009)
- "Property disputes continue to form a substantial part of Mark West's practice. His varied caseload has seen him providing advice concerning the relationship between forfeiture and sub-tenants, acting on a rent review for a lessee of a petrol station and appearing for an Oxford college in a right of way and right to light dispute. Commentators note that he is 'always meticulously prepared' and 'makes it easy for you to build a relationship with him.'" (Real Estate Litigation, Chambers Guide, 2009)
- "Mark West is an 'intelligent and solid chancery junior who commands respect'. He has been involved in rights of pre-emption cases and trusts litigation." (Traditional Chancery, Chambers Guide, 2009)
- "Mark West has come to the fore of late, finding notable success in the arena of mines and minerals disputes. A considerable portion of his caseload is also taken up with tackling mortgage fraud." (Real Estate Litigation, Chambers Guide, 2008)
- "...possessing a very fine mind for detail - as every traditional chancery practitioner should - is Mark West, whose advisory skills in the area are well respected." (Traditional Chancery, Chambers Guide, 2008)
- "Mark West is very intelligent and meticulous according to some commentators, and others identified him as a very impressive traditional Chancery man." (Traditional Chancery, Chambers Guide, 2007)

Qualifications

- First Class Degree in Law (BA) and George Long Prize, Corpus Christi College Cambridge 1985
- First Class Master of Laws Degree, Corpus Christi College Cambridge 1986
- Queen Elizabeth the Queen Mother Scholar of the Middle Temple 1986

Memberships

Chancery Bar Association (Treasurer 2012-2016 to date, former Seminar Secretary and Committee Member from since 2005-2016); Professional Negligence Bar Association;

Property Bar Association; Association of Contentious Trust and Probate Specialists; Bar Pro Bono Unit Panel; Member of the Chancery Litigants in Person Support Scheme.

Publications

Modern Privileges (the application of the doctrine of privileged military wills to modern combat conditions) (September 2016) Trust Quarterly Review 21

Just as they did during the world wars, when faced with novel questions of mass conscription

and the impact of aerial warfare, so the courts should, when faced with modern cyber-warfare and enemies of a type not seen before, interpret the terms of s11 of the 1837 Act to maintain the privilege for serving soldiers

A Sporting Chance: is there a right to use sporting and recreational facilities? (19th February 2016) New Law Journal 11

Adverse possession, illegality and land registration: the balancing of conflicting public policies (2015) Conveyancer 432

The Dangers of Appropriation: A Trap for the Unwary (2015) 31 Journal of Professional Negligence 140

Section 5 of the Limitation Act 1980 and Restitutionary Claims for Money Had and Received (2011) 30 Civil Justice Quarterly 366

The Ownership of Surface Voids Created by Mineral Extraction (2011) Conveyancer 30

Breach of Warranty of Authority in Solicitors' Liability Claims (with Professor Francis Reynolds) (2009) 25 Journal of Professional Negligence 131

Know Your Limits: Trustees' Mistakes under the Limitation Act (2007) 86 Trusts & Estates Law Journal 12

Swaps & Local Authorities: A Mistake? (with Catherine Newman Q.C.) in Swaps & Off-Exchange Derivatives Trading: Law & Regulation (edited by Bettelheim, Parry & Rees) (FT Law & Tax, 1996)

Other Points of Interest Part of DTI team under Hilary Heilbron QC & Michael Boohan FCA appointed to inquire into the affairs of Blue Arrow Plc (Blue Arrow II) (report published September 1992).

Member of joint Bar Council/Law Society working party appointed to review the civil justice system: Report "Civil Justice on Trial, The Case for Change", published June 1993

Contributing editor to Lloyd's Law Reports (Professional Negligence) 1999-2003

Other Details

VAT Registration Number: 524081963 Bar Membership Number: 22204

For More Information

Please click on the links to the left or contact a member of the clerking team.

