



Nathan Wells

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RECOMMENDATIONS

"A highly intelligent and conscientious barrister, who is unflappable and invariably good humoured."

The Legal 500 UK Bar 2017

Nathan Wells has a broad chancery practice, with a particular emphasis on wills, probate and estate administration, trusts, charities, real property and related professional negligence. He has appeared as an advocate before all the major tribunals, including the House of Lords, and before numerous specialist tribunals. Nathan undertakes a large amount of advisory work and is happy to advise in writing, in conference and by telephone. He also appears regularly as counsel in mediations and a considerable amount of his private client work is successfully settled in mediation. Nathan is ranked as a leading junior by both *The Legal 500 UK Bar* and *Chambers UK Bar*. He is also called to the Northern Irish Bar.

WILLS AND ESTATES

This is one of the main elements of Nathan's practice, which involves all aspects of the law relating to wills, contentious and non-contentious probate and estate administration. He is the current editor of the Trusts and Estates section of *Butterworths Civil Court Precedents* and a member of ACTAPS.

Nathan is recommended as a leading junior for Traditional Chancery by Chambers UK.

His work in this area includes the following:

- Advising on will construction and acting in construction summonses
- Contentious probate claims in the Chancery Division
- Advising on the wide range of claims arising under the Non-Contentious Probate Rules 1987 and appearing before the Principal and District Probate Registries in more contentious applications under these Rules

PROFESSIONAL LIABILITY

Nathan regularly acts in and advises on professional negligence claims related to his main areas of practice. Much of his professional negligence work therefore involves claims brought against barristers, solicitors or accountants in the context of conveyancing, will drafting and IHT planning, although he has also been involved in claims against other property professionals including surveyors and architects.

Much of his professional negligence work concludes in settlement, but his reported cases include *Green v Eadie* [2012] Ch 363 (and before the Court of Appeal at [2012] EWCA Civ 762) which involved, inter alia, a professional negligence claim against conveyancers who were alleged not to have advised properly on the boundaries of the property purchased by their client.

COMMERCIAL

Nathan is regularly involved in commercial litigation. He has advised on and acted in a wide range of commercial/contractual disputes, with clients ranging from public relations firms to property developers and subject-matter ranging from loan agreements and the sale/supply of goods to trade marks.

He has acted in a number of cases for IFAs who were involved in disputes about the interpretation and effect of their network contracts. These included *Shaw v Lighthouseexpress Ltd* [2010] EWCA Civ 161, in which he acted for the successful Appellant before the Court of Appeal.

Nathan's commercial work frequently involves an international element and he has considerable experience of advising on jurisdictional issues under the Brussels Regulation (Recast) and the common law principles of forum (non) conveniens.

MEDIATION AND ARBITRATION

Nathan has considerable experience as an advocate in mediations. He has participated in a large number of mediations over the years, almost all of which have resulted in settlement.

- Claims for the passing over of potential personal representatives under s 116 SCA 1981 and for the removal/substitution of personal representatives under s 50 AJA 1985
- Claims for devastavit and breach of will trusts
- Claims for family provision under the Inheritance (Provision for Family and Dependents) Act 1975
- Claims for the rectification of wills
- Advising and acting in claims relating to mutual wills
- Claims for an Account by personal representatives
- Part 64 claims for the court's directions concerning the administration of estates.

A good deal of Nathan's work in this area – particularly claims under the 1975 Act – is successfully settled in mediation, although litigation is in some cases unavoidable.

In *Re S decd* (Fam Div, 2008) he acted for the successful Respondent in an appeal from the Principal Probate Registry to the Family Division. The case raised a number of issues, including the vexatious lodging of caveats, and he obtained a somewhat unusual order vacating existing caveats and preventing the lodging of further caveats without the Judge's consent.

In *Ferneley v Napier* [2011] WTLR 1303, he acted for the successful Defendants in an eight day trial in the Chancery Division in which the Claimant sought to propound an alleged will on the basis of oral evidence, pursuant to the principle in *Sugden v Lord St Leonards*.

In *Re D decd* (Ch D, 2017) he acted for the successful Claimant in overturning a purported last Will on the basis of lack of testamentary capacity, notwithstanding a contemporaneous medical report which had purported to confirm the existence of capacity.

In *Re K decd* (Ch D, 2018) he acted for creditors of the Deceased's estate, who applied successfully for the removal of the Deceased's widow as executrix and her replacement by an independent professional administrator under s 116 SCA 1981.

TRUSTS

Trusts law forms one of the main elements of Nathan's practice. He is a co-author of *Tolley's Practitioner's Guide to the Powers and Duties of Trustees* and editor of the Trusts and Estates section of *Butterworths Civil Court Precedents*. He is a member of ACTAPS.

Nathan is recommended as a leading junior for Traditional Chancery by Chambers UK.

He acts regularly in trusts litigation and produces advice and specialist drafting in less contentious trusts matters. His practice covers private trusts (including will trusts), charitable trusts and pension trusts, and includes the following:

- Advising on the interpretation and administration of trusts and applying to the court for directions under CPR Part 64
- Claims for breach of trust by private, charitable and pension trustees
- Claims for the removal of trustees under the High

All disputes have the potential to be resolved in mediation and Nathan has acted successfully in mediations involving commercial clients and large businesses as well as those involving family members.

He has found that private client disputes between family members, such as Will disputes and 1975 Act claims, are particularly amenable to mediation and many of his cases in these areas result in settlement.

Ultimately, however, he takes a realistic approach to each case. In those (fairly rare) cases which are not likely to be susceptible to mediation, he will ensure that time and money is not wasted in pursuing an unattainable settlement.

RECOGNITION

Nathan is recommended for Property Litigation by The Legal 500 and Traditional Chancery by Chambers UK.

Recent editorial has included:

- *"He's very professional and has a nice manner about him."* (Chancery: Traditional, *Chambers HNW London Bar 2020*)
- *"He is very helpful, thorough and knowledgeable."* (Chancery: Traditional, *Chambers HNW London Bar 2020*)
- *"A solid advocate who is very well prepared."* (Chancery: Traditional, *Chambers UK Bar 2020*)
- *"Very thorough with clear advice that the client can understand."* (Agriculture, *The Legal 500 UK Bar 2020*)
- *"Astonishing attention to detail and handles clients fantastically."* (Property Litigation, *The Legal 500 UK Bar 2020*)
- *"His written work is amazing and he is very academic in his writing style; he can write a frightening letter to the other side. He is very quick to identify the courses of action which need to be taken." "Explains complex concepts in a very lucid way, and always keeps the judge's attention."* (Chancery: traditional, *Chambers UK Bar 2019*)
- *"He remains calm, articulate and unruffled*

Court's inherent jurisdiction or under the various statutory powers of removal

- Claims for Accounts
- Claims involving common intention constructive trusts, under the principles in *Lloyds Bank v Rosset*, *Stack v Dowden*, *Jones v Kernott*, etc.
- Claims under TLATA 1996
- Claims for Beddoes and Benjamin relief
- Claims relating to trustees' rights of retainer and indemnity, and other aspects of trustees' costs and expenses
- Applications under the Variation of Trusts Act 1958

He acted (as junior to Robert Pearce QC) for the University of London in *University of London v Prag* [2015] WTLR 705, where the High Court was asked to construe a 1944 Deed of Trust relating to the Warburg Institute.

As well as pure trusts advice and litigation, Nathan frequently encounters elements of trust law as part of his commercial and local government work. He has, for instance, provided trust law advice in the context of housing benefit and council tax benefit claims, and in *Oxford City Council v Pullen* [2005] PLSCS 166 he had to consider the effects of a declaration of trust over a local authority tenancy in the context of a claim for possession.

PROPERTY

Real property forms one of the main elements of Nathan's practice. He has advised on and acted in property cases before all the major tribunals, including the House of Lords and the Privy Council.

He is ranked as a leading junior for Property Litigation by *The Legal 500 UK Bar* which particularly recommends him for *"esoteric land-related problems."*

He has considerable experience of dealing with the specialist area of public and private fisheries (see separate profile).

His practice covers all branches of real property and landlord-tenant law, including the following:

- Proprietary estoppel
- Adverse possession
- Boundary disputes
- Land Registration
- Co-ownership (including TLATA applications, common intention constructive trusts and equitable accounting)
- Easements
- Profits à prendre
- Fisheries
- Nuisance
- Trespass
- Restrictive covenants
- Commercial landlord and tenant, including all aspects of LTA 1954
- Residential landlord and tenant, including public and private sector housing
- Leasehold enfranchisement.

He particularly enjoys acting in cases which have an unusual or historical element, such as those which raise issues of riparian or sporting rights or the older forms of conveyancing.

in difficult circumstances." (Agriculture, *The Legal 500 UK Bar 2019*)

- *"His pleadings are brilliant and forensically constructed"* (Property litigation, *The Legal 500 UK Bar 2019*)
- *"Excellent at reaching favourable settlements for his client, and very bright. He gives very clear advice and is an authoritative figure." "Creative and imaginative in his approach to legal advice, he can think outside the box."* (Chancery: Traditional, *Chambers UK Bar 2018*)
- *"A very good advocate who keeps the judge's attention and makes strong arguments."* (Chambers HNW 2018)
- *"A highly intelligent and conscientious barrister, who is unflappable and invariably good humoured."* (Property Litigation, *The Legal 500 UK Bar 2017*)
- *"Exceptional, his advocacy is first-rate, but undramatic, as befits the Chancery Division."* (Agriculture, *The Legal 500 UK Bar 2017*)
- *"The quality of his written work is excellent. He is invariably well prepared and always appears calm and unruffled, even in circumstances where others might become flustered."* (Chancery: Traditional, *Chambers UK Bar 2017*)
- *"At the top of his game."* (Property litigation, *The Legal 500 UK Bar 2016*)
- *"Very hardworking...He has a sharp intellect...and although he is undoubtedly a very clever man he possesses a natural charm and modesty which puts lay clients at their ease. There is nothing pompous or pedantic about him and he is a good listener. His paperwork is immaculate and reflects the scholarly approach which he brings to every matter."* (Chambers HNW 2016)

PUBLICATIONS

Nathan is a co-author (with Stephen Lloyd, Jill Gibson and Catherine Finely) of Tolley's Practitioner's Guide to Powers and Duties of Trustees.

He is also the current editor of the Trusts and Estates section of Butterworths Civil Court Precedents.

His property work often raises a wide range of ancillary issues, such as conversion, restitution, regulatory offences and claims under the Animals Act 1971.

Nathan acted as sole counsel for the Respondent before the House of Lords in *London Diocesan Fund v Phithwa (Avonridge Property Co Ltd, Part 20 defendant)* [2005] 1 WLR 236, where the House considered the anti-avoidance provisions of the Landlord and Tenant (Covenants) Act 1995, and as junior counsel for the Appellant in *Creque v Penn* (2007) 70 WIR 150, where the Privy Council considered the effect of a receipt clause in BVI registered conveyancing.

He also acted for the successful Claimant in *Owers v Bailey* [2007] P&CR DG17, a rare example of a case in which aggravated damages were awarded for interference with an easement.

More recently, he acted for the successful Defendant in *Pearson v Foster* [2017] EWHC 107 (Ch), a seven day High Court trial in which a number of unusual and complex property issues were raised, including the riparian rights attaching to an artificial watercourse, the extinguishment of profits of fishery and prescriptive rights to impound and release water for the benefit of an ancient watermill.

FISHERIES AND WATER LAW

As a specialist element of his Real Property practice Nathan has a particular interest in, and considerable experience of, the common law of fisheries. He is ranked as a Tier 1 Leading Junior for Agriculture by *The Legal 500 UK Bar*.

His clients have included landed estates, angling clubs, developers, farmers and residential property owners. He deals with shellfish and floating fish and with profits of fishery and corporeal fisheries in all tidal and non-tidal waters (including artificial watercourses). His recent advisory and litigation work has included the following issues:

- The interpretation of grants/reservations of fisheries
- Registration of fishing rights
- Rights of access to fisheries
- The implication of rights ancillary to profits of fishery
- Interference with fishing rights
- The existence of several fisheries in tidal waters (which require a Crown grant prior to 1189)
- Property rights in fish stocks
- Extinguishment and abandonment of fisheries
- Ownership of river beds

In addition to his specific work on fisheries, Nathan also has considerable advisory and litigation experience concerning property rights relating to water. His recent work has included agricultural and domestic drainage rights, claims to a supply of water, claims against statutory water undertakers under s 209 WIA 1991, the nature and operation of riparian owners' rights in natural and artificial watercourses and prescriptive easements regulating the supply of water to an ancient watermill.

Nathan acted for the successful Defendant in *Pearson v Foster* [2017] EWHC 107 (Ch). The Claimant argued unsuccessfully that certain rights ancillary to his profit of fishery entitled him

QUALIFICATIONS

- BA (Jurisprudence): Pembroke College Oxford.
- LLM: St Catharine's College Cambridge.

Nathan was called to the Bar in 2000 and began his tenancy after spending six months as the Judicial Assistant to the President of the Family Division and the Vice-Chancellor. He had previously worked as a Research Assistant at the Law Commission (Property and Trust team) and had taught Land Law at Oxford.

MEMBERSHIPS

Chancery Bar Association; ACTAPS; Northern Ireland Bar.

to interfere with the sluice gates serving the Defendant's ancient watermill. The case raised a substantial number of complex issues, including the interpretation of the ancillary rights, extinguishment of fisheries, the boundaries of single bank fishing, the nature and effect of the Defendant's riparian rights and the prescriptive rights to impound and release water for the benefit of the watermill.