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James Howlett

Year of Call: 1980
Telephone: 0115 947 2581

Overview

James has many years of experience in disputes about property and commercial matters, advising and appearing as an advocate in litigation, arbitration, mediation and other forms of ADR.

His wide ranging practice gives him broad knowledge, enabling him to apply principles which have developed in one area to find solutions in others. His advice always begins by recognising the client's need for an outcome which fits their commercial or personal position. He writes in a clear non-technical style, setting out the options to guide the client to the best outcome. He has a strong instinct for the economics and cost-effectiveness of dispute resolution.

Away from the Bar, his interests include architectural and political history, particularly of Eastern and Central Europe. He is the armourer to a young international fencer as well as other club fencers.

He does not play sport but is a season ticket holder at Leicester Tigers and Nottinghamshire Cricket Club.

He loves jazz and classical music but can't play a note.

In suitable cases he accepts work under the Direct Access scheme.

Expertise

Commercial Dispute Resolution

Most commercial dispute resolution turns on the interpretation of contracts, ranging from carefully negotiated formal documents to agreements which – if written at all -, are scribbled on the back of an envelope, although James has yet to encounter a case in which the agreement was actually written on the back of the proverbial fag packet. For many years James has relished the challenge of finding the real meaning of a contract.

The variety of cases in which he has acted recently include disputes about printing machinery, the distribution of mobile telephones, the ownership of a ground works contractor, the sharing of liabilities between the parties to a failed development joint venture, a claim for breach of a senior employee's duty of fidelity in setting up a competing business, a dispute about the sale of textiles with cross allegations of fraud, the defence of a claim for money allegedly retained in breach of duty by a football agent and a dispute about liability for scaffolding lost or stolen whilst on hire.

James regularly acts in loan and guarantee disputes. Recently these have included a dispute about liability for money advanced in unusual circumstances by a company to a relative of a director and a dispute whether money lent by an employee was lent to the company or to one of its directors.

He has acted in several disputes between independent financial advisors and their former networks and in a dispute about the poor investment of a substantial pension fund made by one of a cohabiting couple on behalf of the other.

In addition, James has for many years acted for a substantial freight forwarder and so has developed a particular specialism in domestic and international carriage of goods by road including the numerous ambiguities of the CMR.

Data Protection & Information

As part of his practice involving property and real estate, James has conducted cases involving the surveillance of land by CCTV and other technology in both domestic and commercial settings. James is alert to the legal requirements and code-based best practice guidance which exists including the General Data Protection Regulation and is always ready to receive instructions involving data protection and the surveillance of land.

Planning & Environmental

James has for many years advised on planning matters and appeared at inquiries acting for developers and local planning authorities. There are planning aspects to many property disputes and James is well experienced in advising on those alongside the private law questions which arise. He has recently acted in applications for housing development involving issues of sustainability and five year housing land supply, the successful opposition to development within the setting of a Scheduled Ancient Monument and has advised on an application for the compulsory construction of flood defence works on the client's land.

In relation to compulsory acquisition, James has advised on the application of the Crichel Down rules, claims arising from the Nottinghamshire A46 widening and the Nottingham tram extension. He has substantial experience of injurious affection claims generally.

Property & Real Estate

James acts in every type of dispute which arises in relation to land. In recent times these have included a dispute within an extended family and its trust companies about the ownership of an airfield and adjoining land, liability for making good a crater caused by a sinkhole and advising on the remedies available to a land owner whose land has been put at risk of

flooding by works carried out on adjoining land, the negotiated settlement of a mortgage dispute concerning a Spanish property in which valuation and "best price" issues arose, and a claim alleging misrepresentation about the assignment of a lease. James has a particular interest in ancient land law and has acted in disputes concerning the alienation of settled land before the 1882 Act and the inclosure award affecting "ridge and furrow" field systems in the Isle of Axholme.

He regularly acts in vendor and purchaser disputes including specific performance applications.

He has a strong commercial landlord and tenant practice. Recent cases include relief against forfeiture claims involving properties as diverse as a small hairdressing salon and an amusement arcade, dilapidations claims, the successful defence of a 1954 Act claim for a new tenancy of a sports ground, a dispute whether a lease had been surrendered by agreement in correspondence, dilapidations claims, the status of claimed rights over agricultural holdings, a dispute about whether an agreement created a lease or a licence over office space and rent review arbitrations.

He regularly advises in respect of easements. He has recently advised in a case involving an attempt to revive a long-vanished right of way, a landlord and tenant dispute involving an easement of passage of refrigeration gases, disputes about the lawfulness of erecting gates, the threatened obstruction of an easement of access for repair, the termination of multiple tenancies affecting a car breakers' yard, the width of a right of way over agricultural land and the misuse of a right of way by loading and unloading.

He has recently acted in relation to the validity of a covenant not to build without the consent of a vendor which no longer exists and the negotiated release of a "no build" covenant affecting many properties. He has advised on the effect and validity of restrictive covenants for many years.

He acts in mortgage possession claims acting for lenders and borrowers.

James frequently assists with nuisance claims, both statutory and common law. These have recently included claims arising from flooding and the successful defence of a nuisance claim involving tree roots and advising a local authority on a statutory noise nuisance claim made in relation to one of its own facilities..

He deals with boundary disputes – in all their varied forms.

James has recently successfully acted for a land owner in resisting an application to upgrade a footpath to a bridleway. The inquiry involved an argument about the effect on continuity of use of foot and mouth disease closures in the 1960s. He has also recently resisted an application to establish a footpath through an industrial site – successfully relying on an agreement made over 100 years ago.

Professional Negligence

James acts in professional negligence claims concerning his other areas of practice. These have recently included a claim concerning the negligent specification of fire prevention and suppression measures in student housing and the negligent verification of title to a development plot which turned out to be smaller than represented. James has also acted in the negotiated settlement through mediation of a claim against an accountant and a solicitor for the negligent preparation of a share sale prospectus.

Public Sector & Not for Profit

James has wide experience of acting for public authorities in relation to planning and related matters. He has acted for local authorities in development plan inquiries, numerous planning application and enforcement appeals and compulsory purchase inquiries. He has acted for and against local authorities in rights of way cases including the obstruction of footpaths, the upgrading of footpaths to bridleways and statutory and common law dedication disputes. He has also advised on Road Traffic Regulation matters and the lawful application of parking charges.

He has advised authorities on numerous property related matters including the lawful disposal of housing land, attempts to avoid the application of the right to buy.

James has a particular interest in cases in which ancient land law is still relevant to the activities of modern public bodies. These have included the effect of inclosure awards, royal charters concerning markets and fairs, the ownership of an ancient school building and the application of the proceeds of the sale of land affected by the School Sites Acts. He also has extensive experience of litigation affecting the operation of cattle markets.

He has acted for an authority in substantial disciplinary proceedings against senior officers involving the Independent Person process, as well as other internal disciplinary proceedings.

James has an instinctive grasp of the culture and operation of local government, particularly in its more obscure aspects.

Wills, Probate & Inheritance

As rising property values lead to ever larger estates, the incentive to challenge the validity and interpretation of wills, or to bring 1975 Act claims, is increasing. Other issues which frequently arise include the effect of the survivorship principle and the severance or otherwise of joint tenancies. James has advised on these matters, particularly the construction of wills, for many years. He regularly advises personal representatives under the CPR Part 64 "no hearing" procedure and in administration applications under that rule. He is currently acting in a claim against personal representatives alleging misappropriation after death and as attorneys during the deceased's lifetime. Recently James has noticed an increase in instructions in probate and inheritance cases. He is very happy to accept work in this growing field.

Appointments

- Accredited Mediator
- Direct Access Quailifed
- FCIArb Accredited
- Recorder (South Eastern Circuit)

Memberships

- Fellow of the Chartered Institute of Arbitrators
- United Kingdom Environmental Law Association

Education

- LLB, University of Bristol

Notable Cases

- ***Fitzhugh v Fitzhugh*** **[2012] EWCA Civ 694.** Property law; licence to occupy land.

Recommendations

"An exceptionally talented individual."

- Chambers & Partners 2021 - Commercial Dispute Resolution

"His ability to recall case law is second to none."

- Chambers & Partners 2020 - Commercial Dispute Resolution

"He's extremely intelligent and very knowledgeable. He's forthright, clear and very thorough."

- Chambers & Partners 2019 - Commercial Dispute Resolution

"He has a wide-ranging chancery and commercial practice and has an 'encyclopaedic knowledge of land law and related issues."

- Legal 500 - Chancery, Commercial, Insolvency and Banking

"James Howlett is noted for his chancery work, which includes boundary disputes, easements and restrictive covenants."

- Legal 500 - Chancery, Commercial, Insolvency and Banking

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