

# James Kemp

Call 1999

"James is a meticulous barrister providing advice clearly and constructively. He has a way with clients making them feel comfortable and confident in his ability to deal with the case head on" Legal 500

## EXPERTISE

James is an experienced Chancery practitioner. He regularly appears in the relevant courts and tribunals and acknowledged by his inclusion in the Legal 500 for this area. In addition he is also a full member of the [Society of Trust and Estate Practitioners \(STEP\)](#). James is also instructed in cases where mental health and capacity are an issue and thus has experience in dealing with such property and affairs in the Court of Protection. He heads Trinity's Agricultural Practice Group and is experienced in representing various parties in licensing and commercial matters.

## INHERITANCE, PROBATE AND TRUSTS

### Contentious Probate

- Challenges to and interpretation of wills
- Removal and substitution of personal representatives
- Issues arising out of the administration of estates
- Claims under the Inheritance Act
- Intestacy
- Applications to the court for directions and orders.
- Duty of care in the preparation and execution of a will, rectification, and deeds of variation

### Trusts

- Variation, rectification, and termination of trusts
- Interpretation of trust documentation
- Challenges to the validity of trusts
- Administration of trusts
- Removal of trustees
- Allegations of breach of trust and tracing against trustees and third parties

## PROPERTY

Real property



## Expertise

Inheritance, Probate & Trusts

Court of Protection & Adult Care

Property

Agriculture & Rural Affairs

Inquests

Licensing

Business & Commercial Litigation

Insolvency & Restructuring

- Adverse possession and title issues
- Co-ownership (TOLATA), trusts of land, proprietary estoppel
- Boundary disputes
- Easements (rights of way)
- Trespass, and nuisance
- Land covenants
- Commons and village greens

#### Landlord and Tenant

- Commercial, residential and agricultural tenancies.
- Interpretation of leases
- Leasehold covenants
- Forfeiture and actions for breach of covenant
- Statutory regulation of tenancies including business tenancy renewals, leasehold enfranchisement and extension, service charges and commonhold.

## AGRICULTURE & RURAL AFFAIRS

With a strong interrelation with his property experience and an understanding in the particular way matters affect farmers and the agricultural community, James has worked with landowners, farmers, tenants, land agents and chartered surveyors on cases such as:

- Farm Tenancies both those under the Agricultural Holdings Act and Agricultural Tenancies Act, interpretation and application of leases and their terms
- Farms workers housing rights
- Succession rights, including proprietary estoppel claims
- Partnership disputes
- Water and drainage rights
- Boundary disputes, easements and public and private rights of way and shooting rights
- Claims in regard to applications of chemicals to crops
- Listed buildings
- Boundary disputes, easements and public and private rights of way and shooting rights
- Claims in regard to applications of chemicals to crops.
- Listed buildings

## COURT OF PROTECTION

James specialises in property and affairs matters

- Jointly owned property and other trustee matters
- Deputyships
- Powers of Attorney
- Statutory wills and gifting

## LICENSING

## Clerking team



**Steve Walker**  
Lead Civil Clerk  
0191 245 9589



**Josh Stewart-Tilling**  
Lead Employment Clerk  
& Civil Clerk  
0191 300 9359



**Chris Gibbin**  
Clerk  
01642 247 569



**Paul McNab**  
Civil & Criminal Silks'  
Clerk  
0113 3235 955



**Fiona Bullock**  
Direct Access Clerk  
01642 247 569



**Aimee Bloxham**  
Civil Clerk  
0191 245 9556

- Alcohol licensing applications,
- Reviews into premises licenses and appeals
- Sexual entertainment venues
- Represents trade objectors, local residents and the police

## BUSINESS AND COMMERCIAL LITIGATION

- Insolvency both corporate and personal
- Company and partnership law,
- Directors' duties, and liabilities (including disqualification),
- Professional negligence
- Unincorporated associations, clubs and other associations

## MEMBERSHIPS

Society of Trust and Estate Practitioners (STEP)

## LECTURES & SEMINARS

- Contentious Probate
- Agricultural law
- Trusts of Land
- Neighbour Disputes
- Civil litigation update
- Expert Witnesses
- Environmental Damage - Interested Parties

## PUBLICATIONS

### **In the blood**

DNA tests; Deceased persons; Parentage.  
Trusts and Estates Law & Tax Journal 196 (May) 20-23

### **Mind the Gap?**

Anderson v Spencer  
May [2018] Fam Law 592

### **DNA extracted from deceased may be tested in paternity dispute (Anderson v Spencer)**

Lexis Nexus 19/02/2018

### **Who Died First?**

Critic of the case of Scarle v Scarle [2019] EWHC 2224  
STEP Journal December 2019/January 2020 Volume 27 Issue 10

## ADDITIONAL INFORMATION

James is a qualified PADI Master Scuba Diver. His interests include travel, photography and cycling.

He is direct access qualified and thus is able to undertake suitable cases.



## What Others Say

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"James is a meticulous barrister providing advice clearly and constructively. He has a way with clients making them feel comfortable and confident in his ability to deal with the case head on. His strengths in matters concerning costs in civil proceedings and evidence to provide to the court to advance the case is very thorough"

**Legal 500 2021**

"He has real zeal and knowledge of contentious probate matters"

**Legal 500 2020**

"Highly recommended for traditional Chancery matters"

**Legal 500 2019**

"Very experienced in Chancery cases"

**Legal 500 2017**

"Recommended for Chancery matters"

**Legal 500 2016**

"Experienced in disputes arising from distributions of estates, wills and succession issues"

**Legal 500 2015**

"A highly effective Chancery practitioner"

**Legal 500 2014**

"James Kemp is noted for his 'precise advice, given in a very timely and cost-effective way"

**Legal 500 2013**

## Notable Cases

### Inheritance, Probate and Trust Cases

**Anderson v Spencer** [2018] EWCA Civ 100, [2018] 2 F.C.R. 1

Court of Appeal upheld the judgment of Jackson J in that the High Court had an inherent jurisdiction to direct that DNA extracted from a sample provided by a deceased person while he was alive should be used for paternity testing after his death. The consent of the deceased's personal representative was not required.

**Spencer v Anderson** (Paternity Testing: Jurisdiction) [2016] EWHC 851 (Fam); [2016] Fam. 391; [2016] 3 W.L.R. 905; [2017] 2 All E.R. 846; [2017] 1 F.L.R. 1204; (2016) 151 B.M.L.R. 92; [2016] Fam. Law 808;

**H v J et al** High Court, Chancery Division, Newcastle District Registry

Representing successful claimant in her application for the pronouncement of a will, challenged on capacity, undue influence and want of knowledge and approval. Proceeded only on capacity in submissions the other two being dropped after cross-examination of the defendant. Will duly pronounced.

#### ESTATE OF G

Testator left entire estate to a long-time family friend excluding estranged son who brought an application under the inheritance act. Matter was settled at mediation

#### ESTATE OF C

An unusual case whereby an unmarried couple who had been together some time were going through the process of separation whereby the female partner had purchased a caravan and lived there a number of days of the week, had changed her will and served a notice severing the joint tenancy. The issue was whether the parties were cohabitating enabling the male partner to issue a claim under the above statute

#### **ESTATE OF S**

Representing the executors where a number of beneficiaries to the estate made allegations in respect of the maladministration of the estate of the Deceased by the executors in that property had been lost and destroyed, there were no clear inventory or accounts, and the property had been wrongly placed in the coffin which had since been cremated.

## Property Cases

#### **L v B – Newcastle Business and Property Court**

A claim to replace a septic tank to comply with the relevant regulations whether the replacement could be undertaken by express grant in respect of the use of the said tank which was granted, the case of *Martin v Childs* distinguished. Claim also successful for the removal of a fence to allow them access strip to maintain the claimant's property as per an express grant.

#### **M v M – Newcastle County Court**

Successful claim for rights of way across the Defendant's land by doctrine of lost modern grant, and proprietary estoppel. Damages also awarded for obstruction.

#### **Geo A Carter v Whorlton and Westwick Parish Council – Leeds County Court**

Acting for the successful Claimant for a declaration that a right of way was for residential use over a village green in addition that the building of three new properties requiring use for the right of way would not be an excessive burden and within the original grant.

#### **G v G – First Tier Property Tribunal**

Acting for successful applicant before the Property Tribunal in determining a boundary over a communal driveway, involving interpretation of pre registration conveyances, intrinsic evidence, and boundary agreements.

#### **Crosbie v Potto Hall Management Ltd – First Tier Property tribunal**

Acting for the respondent in the first tier property tribunal in a hearing concerning leasehold enfranchisement and the inclusion of restrictive covenants within the applicant's property and reciprocal covenants. Respondents successful in resisting the application that there be no such covenants and of those included on the applicants' property none were deemed to be reciprocal.

#### **Genn v Mason – Leeds County Court**

Property dispute over a farm and the land attached after sale by lots at public auction. Issues encompassed, width of rights of way, access points from the right of way, boundaries, construction of grants in the subsequent transfers dealing with use of the rights of way, various trespass and interference of such rights and harassment.

#### **Cooper v Francis – Newcastle County Court**

Application of a written agreement relating to property between a cohabitating couple both pre and post separation, and variation of its terms either written or orally.

#### **Turner v Hinton – First Tier Property Tribunal**

Acting for the Respondent when the applicant attempted to remove from the registry two-car parking spaces claiming the Respondent had not had adverse possession of them. Judge found for the Respondent

## Agriculture & Rural Affairs Cases

#### **Re B**

Advising a national drinks company on three leases under the AHA encompassing, continuance after fixed term expired, notices to quit, surrender of part of a lease, rent reviews and calculation of future rent and access rights by the landlord

#### **PEFP v NCC**

Local authorities' statutory duty to re house a farm worker under the Rent (Agriculture) Act 1976

## **Re W**

Validity of notices to quit under the ATA 1995

## **In Estate of JT**

Negligence of solicitors for failing to apply to the relevant tribunal in time, succession under the AHA, surrender and re grant of a tenancy and damages

## **GH Trustees**

Succession rights of a tenancy, assignment, surrender and re grant, variation of the tenancy

## **A v S**

Rights of way over farmland for shooting purposes by lost modern grant, prescription, section 62

## **T v T**

Partnerships dissolving, rights of succession, terms of unwritten tenancy

## **B and Others v A and H**

Claim for damages for manufacture and supply of defective fertiliser

# **Inquest Cases**

## **Inquest of DR**

Representing the family in a six-week Article 2 inquest with a jury into the death of a care home resident as a result of a fire at the premises. Interested parties included not only the care home themselves, but also members of staff individually represented, the Fire Brigade and the Police. Successful claim for damages through mediation thereafter.

## **Inquest of NR**

Representing the police concerning the death of woman in a volatile relationship

## **Inquest of LD**

Representing Local Authority in a jury inquest, concerning the death of a resident in a privately run care home. No adverse conclusions against the local authority

## **Inquest of MR**

A jury Inquest, representing a family of an employee who died as a result of a wall falling on him, successful claim for damages thereafter.

## **Inquest of S**

Representing the family of a gentleman who died in hospital where there was suspicion the medical staff had not exercised appropriate care.

## **Inquest of MC**

Representing the local authority as a responsible highway authority in the death of a woman who died as a result of being attacked by a cow on a bridleway. Hearing held with a jury, issues of obstruction and signage of the public right of way. No adverse findings for the authority.

## **Inquest of T**

Successfully argued at pre-inquest review that the local authority was not an interested party as defined by the relevant legislation.

# **Licensing Cases**

## **Porky's Pint**

Representing the local authority, police trading standards in the successful revocation of a premises license when the public house was deliberately opened during lockdown in contravention of the Coronavirus Regulations in force at the time despite numerous warnings. Successfully resisted an Appeal by the premises.

## **Best Kebab**

Representing the license holder in a successful appeal against the revocation of a license at a review hearing for breaches of the license including employing an illegal immigrant and failure to comply with licensing conditions.

**Rialto**

Represented a resident objecting to the grant of a license for the use of outdoor area of the premises which although ultimately was unsuccessful did cause the applicant to withdraw the application for live music and through the presentation of acoustic expert evidence a condition imposed for the construction of an acoustic wall to prevent sound escaping from the premises

**Manhattan's**

Representing the Police, in the successful revocation of a license through breach of licensing conditions at a review hearing