



## Thomas Braithwaite

Year of Call: 1998

*'Super efficient! Very knowledgeable and able to simplify very complex matters.'*

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## Practice Overview

Tom practises in all areas of chancery commercial work, with a particular emphasis on:

- Property Litigation
- Partnership - Professional partnership disputes, LLPs and dissolutions
- Commercial litigation
- Company & Insolvency
- Wills & Trusts, including offshore trusts
- Professional Negligence - in these and other fields

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## Areas of Expertise

### Property

Property disputes form a significant part of Tom's practice, and he is highly regarded for his work in this area of the law. He has particular experience in more complex real property issues, including manorial and foreshore rights, in respect of which he has frequently been called upon to advise. His cases include:

*Bett v. Crown Estate* [2020] (FTT): Whether the movement of the high water mark on the Norfolk coast was accretion or an avulsion.

*Arabi v. Arabi* [2017] EWHC 1384 (Ch): Claim of beneficial interest in property following alleged joint venture between brothers.

*Loose v Lynn Shellfish* [2017] AC 599 (Supreme Court): Intervention on behalf of the Crown Estate in a case concerning prescriptive rights over the foreshore and the doctrine of accretion.

*Lictor Anstalt v Mir Steel UK* [2014] EWHC 3316 (Ch): Successful claim on behalf of the owners of a steel mill who had failed to protect their rights on the land register and lost their title due to the mill's annexation to the land. The court held that the sale of the mill by administrators was a breach of contract, procured by the purchasers, and that such claims survived despite non-registration at HMLR.

*Nissan v. Four Square* [2013]: Validity and construction of an easement to park.

*Faulkner Investments v. Nassif* [2012]: Claim concerning the status of occupation of a discretionary beneficiary of an offshore trust.

*BOC v. Aeternum Capital* [2012] (Comm): Claim for specific performance under a development agreement.

*Amin v Amin* [2009] EWHC 3356 (Ch): Acting for family and minor partnership interests in a wide-ranging partnership dispute, including claims to a constructive trust interest in the family home.

*Volta Developments v Waltham Forest Friendly Society* [2008] EWHC 1295 (Ch): Construction of grant of right of way.

*Crown Estate v. Roberts* [2008] 4 All ER 828 (Ch): Acting for the Crown Estate to defeat various manorial claims over the foreshore and seabed of Pembrokeshire based upon the supposed ancient rights of the Lord Marchers (led by Frank Hinks QC)

*Roberts v. Swangrove Estates & others* [2007] 2 P&CR 17 (Ch) and [2008] Ch 439 (CA): Successful claim by the Crown Estate to adverse possession of the bed of the River Severn, including a determination of the constitutional ability of the Crown to acquire title by adverse possession. Upheld on appeal (led by Frank Hinks QC on appeal).

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## Partnership and LLP

Tom acts in all kind of partnership and LLP disputes, and frequently advises solicitors, doctors and other professionals. He is the author of the LLP section in the 9th edition of *Morse on Partnership and LLP Law* (OUP, 2020) and is a contributor to Whitaker & Machell, *The Law of Limited Liability Partnerships* (Bloomsbury, 2016). In addition to acting in a number of confidential arbitrations and mediations, he has advised professional firms on disciplinary and procedural matters and has carried out internal investigations on their behalf. His cases include:

*Re Bell Pottinger LLP* [2019]: Acted for former members of an LLP facing claims to recoupment of drawings

*Backos v. WFW* [2019] EWHC 243 (Ch): Scope of arbitration clause in LLP Agreement.

*Prevezer v. WFW* [2018] (Comm): Former LLP member's claim for consultancy remuneration.

*Hanlon v. Human Capital Investment Group* [2013] (Ch): Dispute concerning the acquisition of a recruitment agency, in which the claimants attempted to assert the existence of a joint venture.

*Norbrook v. Robson* [2012] (QB): Questions of ownership of documents held by the secretary of an unincorporated association.

*Metrobrook v. Highland* [2011] (Ch): Dispute concerning shopping centre developments, in which the claimants attempted to set aside expert determinations and to assert the existence of a joint venture.

*Amin v Amin* [2009] EWHC 3356 (Ch): Acting for family and partnership interests in a wide-ranging dispute, including claims to a constructive trust interest in the family home.

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## Private Client Trusts and Probate

Tom has acted in both domestic and international trust disputes, in jurisdictions including the Bahamas, Bermuda, Jersey and Hong Kong. Recent cases include:

*Brocket Hall (Jersey) Ltd v. Dykes* [2019]: Concerning the ownership of chattels at Brocket Hall.

*Patel v. Patel* [2017] EWHC 2247 (Ch): Proceedings for contempt of court following a finding of forgery of a will.

*Re Nina Wang* [2014] HKCA 170 (Hong Kong): Proceedings to determine the true construction and effect of a home-made will of reputedly the wealthiest woman in Asia (led by Frank Hinks QC).

*H v. O* [2012] (Ch): Acting for Isle of Man trustees with respect to claims by liquidator under the Insolvency Act to recover company property.

*Page v. West* [2012] EWHC 4390 (Ch): Application for the sale of trust property.

*Re A Trust* [2012] (Bermuda): Successful application to obtain an anti-suit injunction preventing a disaffected beneficiary from taking proceedings in another jurisdiction relating to a Bermuda Trust (led by Nicholas Le Poidevin QC).

*Re Matthews* [2011] (Ch): Claims in misfeasance against executor.

*Re the Estate of M* [2011] (Bahamas): Acting for the trustees of the estate of a wealthy Bahamian businessman facing adverse claims against the estate.

*G v. S* [2011] (Bahamas): Acting for defendants facing claims of breach of trust and dishonest assistance.

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## Commercial Litigation

Tom often acts in commercial cases in the Business and Property Courts, for clients ranging from FTSE 350 companies to private individuals. He has also advised on commercial disputes in foreign jurisdictions, including the Bahamas and Hong Kong. He has handled cases involving a wide variety of complex technical issues from gas extraction and storage to maritime collisions, and from steel processing to aircraft hull loss. In early practice, Tom acted as registrar on a number of UNCITRAL and LCA international arbitrations. Recent cases include:

*Backos v. WFW* [2019] EWHC 243 (Ch): Successfully resisted an appeal against an arbitrator's jurisdiction award based on the proper construction of the arbitration agreement.

*Simmons Gainsford Corporate Finance v. PSP Facilitating* [2019] (Merc): Whether a claim for introducer's success fee survived termination of an agency agreement.

*St Vincent v. Robinson* [2018] EWHC 1230 (Comm Ct): Acting for a number of Defendants in a multi-jurisdictional fraud claim, resolved by an application to strike out the claim on the basis that the damages claimed constituted reflective loss.

*Trimulgherry Investments v. Locke* [2018] (Merc): Construction and rectification of share sale agreement.

*Vestey Group v. Steller Packing* [2018] (Ch D): Obtaining peremptory order for delivery up of stock; assertions of lien.

*The Cape Bari* [2016] 2 Lloyd's Rep 469 (Privy Csl): Advised the successful appellants on a case involving the

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construction of a clause in an Oil Terminal's standard terms purporting to exclude the Maritime Limitation of Liability Regime.

*Pencil Hill v. Citta di Palermo* [2016] LTL 27/1/2006: Challenge to enforcement of an arbitration award based on public policy and the law of contractual penalties.

*Wych v. Careforce* [2014] 1 Costs LR 1 (Comm): Successful application for relief from sanction under the new CPR 3.9 following breaches of an unless order relating to e-disclosure.

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## Company

Tom's work in this field includes unfair prejudice petitions, actions against directors and claims in insolvency.

*H v. O* [2012] (Ch): Acting for Isle of Man trustees with respect to claims by liquidator under the Insolvency Act to recover company property.

*Re A* [2011] (Ch): Acting for shareholders with respect to allegations against a receiver as to the sale of company property.

*Re Lifemarque* [2009] (Ch): Company valuation in unfair prejudice petition, in which the court considered the merits of differing valuation methodologies (led by Victor Joffe QC).

*Blue Station v. Kamyab* [2007] EWCA Civ 1073 (CA): Claim against director for recoupment.

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## Insolvency

Tom acts in both bankruptcy and corporate insolvencies, and has experience of cross-border insolvency issues. Cases include:

*Re St Joseph's Hospital* [2020] (Ch): Whether administrators could be required to take steps against a pre-pack purchaser when third party assets were included in the sale.

*Opus Property Finance v. Vantreen* [2015] (Ch): Successful appeal against order setting aside statutory demand on the basis that the debt was a penalty and liable to be varied under the Consumer Credit Act.

*Ryan v. Tiuta International* [2015] BPIR 123 (Ch): Application to set aside statutory demand against guarantor on the basis of allegations of lawful act economic duress.

*Lictor v. Mir Steel* [2014] EWHC 3316 (Ch): Successful claim of procuring breach of contract brought against a purchaser of assets from a company in administration, the court rejecting a claim that the defence of justification should be available to the purchaser of assets from a company in administration (with Dan McCourt Fritz).

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## Professional Negligence

Tom has considerable experience of professional liability claims, particularly involving solicitors, barristers, accountants and company directors. Recent examples include:

- Claim against solicitor for alleged breach of trust in payment of sale proceeds.
  - Interpleader application on behalf of solicitors allegedly holding trust monies.
  - Alleged negligence in negotiation of complex share buy out.
  - Concurrent claims in England and Jersey against advocates and barrister for alleged mishandling of trusts litigation.
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## Recommendations

Real Estate (*Who's Who Legal*, 2020)

Partnership, Real Estate Litigation (*Chambers & Partners*)

Property Litigation, Company, Partnership, Professional Negligence (*The Legal 500*)

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## Quotes

*'Super efficient! Very knowledgeable and able to simplify very complex matters.'* (Legal 500, 2021)

*"His client handling is superb." "Gives pragmatic and astute advice."* (Chambers & Partners, 2019)

*"A skilled advocate who knows how to find the most effective arguments in the most awkward situations." "Inventive, with excellent attention to detail, he is a man who has strong advocacy skills combined with a personality which appeals to solicitors and lay clients alike."* (Chambers & Partners, 2019)

*"He is particularly excellent on his feet in court."* (The Legal 500, 2019)

*"He cuts to the chase and asks the right questions from the get-go."* (The Legal 500, 2019)

*"Highly skilled in presenting the client's case in the most seductive way possible."* (The Legal 500, 2019)

*"Tom Braithwaite is a brilliant source of robust, no-nonsense advice."* (Chambers & Partners, 2018)

*"Intelligent and unflappable." "He's a powerful opponent and a very, very bright man."* (Chambers & Partners, 2018)

*"He has a calm and powerful advocacy technique and outstanding analytic skills."* (The Legal 500, 2017)

*"He is very strong on the law and absorbs large amounts of information in a short period."* (The Legal 500, 2017)

*"He is very persuasive on his feet and judges like him. He has a winning advocacy style." "He is authoritative, gives clear advice and doesn't sit on the fence."* (Chambers & Partners, 2017)

*"Very bright, quick on the uptake and good at identifying and explaining problems." "A highly intelligent, fine advocate who thinks things through from first principles."* (Chambers & Partners, 2017)

*"He is clear and insightful in his advice."* (Chambers & Partners, 2016)

*"A true expert in partnership cases, who helps clients see the wood from the trees and focus on the real issue in dispute." "He gave pragmatic, astute advice in relation to the merits of the claim."* (Chambers & Partners, 2016)

*"Knows partnership law inside and out. He's very quick, and very good on the detail."* (Chambers & Partners, 2015)

*"He is very good at analysis and research, and knows how to explain the results to the client." "He has a very nimble mind and is a very approachable character, who is extremely good with clients."* (Chambers & Partners, 2015)

## Publications

- Morse & Braithwaite, Partnership & LLP Law (2020)
- Time and Tide (2017) 167 NLJ 13
- Rentcharges: The Land that Time Forgot? [2016] Conv. 466
- Contributor, Whitaker and Machell, The Law of Limited Liability Partnerships (2016)
- The Personal Touch (2015) 165 NLJ 7
- Squatters' Rights (2009) NLJ Supp. 27 Feb
- The Rule in Pearson v Spencer - Selecting the route of a right of way [2009] Conv. 93
- Still Unsettled - Disclosure of Part 36 offers to the trial judge (2007) 151 SJ 882

- Mine! Ownership of the client file (2006) 150 SJ 182
  - Cause and Effect: Relying on your own wrong (2004) 148 SJ 964
  - Chance Calculations: Damages for loss of a chance (2004) 148 SJ 838
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## **Education & Qualifications**

Jesus College, Cambridge - MA (Double First Class)

George Long prize for Roman Law, Cambridge University

CJ Hamson prize for Obligations, Cambridge University

Kennedy Scholar, Lincoln's Inn

Thomas More Bursar, Lincoln's Inn

## **Memberships**

Property Bar Association

Chancery Bar Association

Commercial Bar Association

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