

NEW SQUARE CHAMBERS

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Rodney Stewart Smith

Call: 1964

Rodney Stewart Smith's practice embraces all aspects, both litigious and non-litigious, of the administration of trusts, including offshore trusts, and estates including inheritance tax and capital gains tax. Over the 40 years of his professional life he has been engaged in advising and litigating in almost every area of this field, including applications for the construction and rectification of trust documents, applications under the Variation of Trusts Act, disputes over the appointment and removal of trustees, applications to the Court for directions, including Beddoe applications, and probate disputes of all kinds.

Rodney's practice also extends to most aspects of property disputes, including disputes about title and boundaries, mortgages, easements and restrictive covenants and other rights over land and landlord and tenant dispute (particularly in relation to commercial property) and general conveyancing problems.

He also has considerable experience of professional negligence claims against solicitors and others particularly those arising out of tax advice.

His special strength is his ability to provide speedy and reliable advice on specific problems which suddenly arise in the course of a transaction.

Areas of practice

Commercial Chancery

Property

Trusts and Estates

Tax

Appointments

Recorder 1990-2004

General Commissioner of Taxes (Chairman of the Middle Temple Division) 1991-2009

Assistant Boundary Commissioner 1993, 1997 and 2004.

Master of the Bench of the Middle Temple since 1998

Head of New Square Chambers since June 2007

Education and Qualifications

B.A. (Cambridge) and LL.B (Cambridge) (both first class)

Directories and Acknowledgments

Leader at the Bar - Chancery: Traditional - Chambers UK 2011

"tremendous experience"

Chambers UK 2010 - Chancery: Traditional

"veritable fount of knowledge"

Chambers UK 2010 - Chancery: Traditional

Leading Junior - Chancery: Traditional - Chambers UK 2010

"God's gift when it comes to all things technical."

Chambers UK 2009 - Chancery: Traditional

"Very thorough and proves invaluable as he can quickly identify whether you have a case or not."

Chambers UK 2009 - Chancery: Traditional

"tremendously learned - a delightful opponent"

Chambers UK 2009 - Chancery: Traditional

Leading Junior - Chancery: Traditional - Chambers UK 2009

"extremely experienced"

Chambers UK 2008 - Chancery: Traditional

"right out of the traditional chancery mould"

Chambers UK 2008 - Chancery: Traditional

Leading Junior - Chancery: Traditional - Chambers UK 2008

"attention to nitty-gritty detail"

Chambers UK 2007 - Chancery: Traditional

"excellent judgment calls"

Chambers UK 2007 - Chancery: Traditional

Leading Junior - Chancery: Traditional - Chambers UK 2007

"'Skilled trusts lawyer', Rodney Stewart Smith 'knows his onions' and is widely respected for his advisory work and technical capabilities."

Chambers UK 2006 - Chancery: Traditional

Leading Junior - Chancery: Traditional - Chambers UK 2006

Memberships

Chancery Bar Association

Member of the Land Registration Rule Committee since 1990

Member of the Qualifications Committee of the Bar Standards Board 2006-2009.

Member of the Society of Trust and Estate Practitioners

Cases

Commercial Chancery

Name: Hurlingham Estates Ltd v Wilde & Partners

Reference: [1997] 1 Lloyds Rep 525, [1997] STC 627

Comment: A claim for negligence in respect of the failure of a solicitor to advise on the tax

aspects of a complex conveyancing transaction. It was held that it was the solicitor's duty either to give such advice or to warn the client clearly that he was not competent to do so.

Court: High Court

Property

Name: R (on the application of Lewis) v Redcar and Cleveland Borough Council

Reference: [2010] UKSC 11

Comment: In this case, the Supreme Court considered what bearing concurrent user of land by the landowner has on the question whether use by members of the public is "as of right" for the purpose of a town or village green claim.

Court: Supreme Court

Name: Davey and Shaw v Lombard Asset Management (Bahamas) Limited

Reference: [2006] EWCA Civ 1543; [2006] All ER (D) 134 (Oct)

Comment: The issue was whether the vendors were entitled to delay completion of a contract for the sale of land until the purchaser had procured its registration for VAT purposes. It was held that they were as the contract provided that on completion the purchaser should warrant that it was so registered and on the contractual completion date the purchaser was unable to give such a warranty.

Court: Court of Appeal

Name: Lynn Lewis Limited v The Environment Agency

Reference: 2005/1068

Comment: The issue was the ownership of land forming the bank of the River Thames at Shepperton and adjoining Shepperton Lock. It was held that (a) the Environment Agency's predecessor in title, the City of London, had not acquired title to the land under the Private Act of 1810 which authorised construction of the Lock, (b) the land did not constitute part of the towpath constructed as part of the Lock works and (c) Lynn Lewis Limited had acquired title to the land by adverse possession.

Court: Adjudicator to HM Land Registry

Name: Inglorest Investments Ltd v Campbell and another

Reference: [2004] All ER (D) 50 (Apr), [2003] All ER (D) 251 (Jul)

Comment: A freehold property was purchased in the name of an individual who was the sole shareholder of a solvent company in voluntary liquidation, the purchase price being paid out of money in the company's account. The Court of Appeal, upholding the decision of the trial judge, that the individual was the beneficial owner of the property.

Court: Court of Appeal

Name: Atwood and others v Bovis Homes Ltd

Reference: [2001] Ch.379, Times Law Reports, 18 April 2000, [2000] 3 EGLR 139, [2000] All ER (D) 512, [2000] 4 All ER 948

Comment: The issue was whether a drainage easement acquired by prescription for the benefit of agricultural land remained exercisable when the land was developed residentially. It was held that it did, provided that the exercise of the right for a different purpose did not increase the burden on the land subject to the right.

Court: High Court

Name: Wards Construction (Medway) Ltd v Kent County Council
Reference: [1999] 1 EGLR 111, [1999] 2 PLR 61, [1999] All ER (D) 113, [1999] LGR 675, Times Law Reports, 3 March 1999
Comment: The Court of Appeal held, on a preliminary point arising in an action claiming negligence by a highway authority in its conduct of compulsory purchase compensation proceedings, that it was not ultra vires for the authority to enter an agreement under section 278 of the Highways Act 1980, which required the developer to pay the cost of acquiring land needed for essential highway improvements.
Court: Court of Appeal

Trusts and Estates

Name: Baker v Baker and Hazel
Reference: (2008) 2 FLR 767
Comment: There were three related issues. It was held that (a) a will in favour of the Second Defendant made by the deceased in hospital few days before he died was invalid due to his incapacity, (b) a claim by her to his estate based on a proprietary estoppel failed but (c) the Defendant should be awarded a life interest in the deceased's house under the Inheritance (Provision for Family and Dependents) Act 1975
Court: High Court

Name: Oakley and another (as Personal Representatives of Jossaume) v Inland Revenue Commissioners
Reference: [2005] WTLR 181, [2005] STC (SCD) 343
Comment: A Special Commissioner held that a close company had been given by a will a right to occupy land rent free and had therefore, rather unusually, an interest in possession in the land for Inheritance Tax purposes.
Court: Special Commissioners of Income Tax

Name: Inglorest Investments Ltd v Campbell and another
Reference: [2004] All ER (D) 50 (Apr), [2003] All ER (D) 251 (Jul)
Comment: A freehold property was purchased in the name of an individual who was the sole shareholder of a solvent company in voluntary liquidation, the purchase price being paid out of money in the company's account. The Court of Appeal, upholding the decision of the trial judge, that the individual was the beneficial owner of the property.
Court: Court of Appeal

Name: Re Yorke Deceased
Reference: [1997] 4 All. E.R. 907
Comment: This was a test case concerning the appropriate course of action to be taken by executors of a deceased Lloyd's Name in relation to the Name's contingent liabilities of a remote nature. It was decided that in general executors should be given liberty to distribute without providing, or making a reserve for, such liabilities.
Court: High Court

Public Law

Name: R (on the application of Lewis) v Redcar and Cleveland Borough Council
Reference: [2010] UKSC 11
Comment: In this case, the Supreme Court considered what bearing concurrent user of land by the landowner has on the question whether use by members of the public is "as of right" for the purpose of a town or village green claim.
Court: Supreme Court