

# NEW SQUARE CHAMBERS

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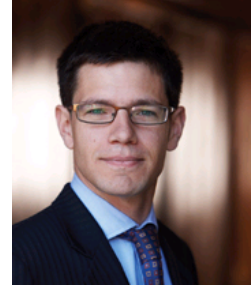
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## Alexander Learmonth

Call: 2000



Alexander was an exhibitioner of New College, Oxford and the recipient of the Tancred Studentship award from Lincoln's Inn. He has a busy chancery practice, appearing regularly in the High Court, various County Courts (particularly in East Anglia and the South West of England) and the Court of Protection, as well as appearing in the Court of Appeal, and before tribunals such as Adjudicator to HM Land Registry and the Leasehold Valuation Tribunal.

For the last three years, Alexander served as an elected member of the Bar Council, and was the Chairman of the Young Barristers' Committee of the Bar Council for 2009. In that role, he was described as "indefatigably assiduous" and "a tough fighter never afraid to speak up for himself". He now sits on the Bar Standards Board's entity regulation working group, and the committee of the Chancery Bar Association.

He is now engaged in producing the forthcoming edition (17th) of *Theobald on Wills*, and in particular the chapters concerning will construction. His other publications include contributions to the *Probate Practitioner's Handbook* and to *Copinger & Skone James on Copyright*.

Alexander's practice encompasses:

### Succession

Alexander has acted in numerous claims under the Inheritance Act 1975 and other contentious probate cases involving questions of testamentary capacity, want of knowledge and approval and undue influence. He regularly advises and represents both representatives and beneficiaries in problems arising in the administration of estates, as well as will construction, rectification, post-death variations and inheritance tax. Alexander has substantial experience in other private client matters, including trusts work and several appearances before the Court of Protection, dealing with powers of attorney.

### Property Litigation

Alexander is regularly instructed on matters such as constructive trusts, undue influence and proprietary estoppel, adverse possession, easements and other boundary dispute matters involving nuisance and trespass, as well as specific performance cases, mortgages and other issues arising in conveyancing. He is also experienced in both commercial and residential landlord and tenant (including leasehold enfranchisement and business tenancy renewals, dilapidations).

### Insolvency

Alexander has been involved in some of the leading cases in the law of bankruptcy, in

particular *Gotham v Doodes* and *French v Barcham*, and is regularly instructed on petitions, annulments, possession orders and voluntary arrangements. He also deals with company winding-ups, misfeasance, preferences and transactions at an undervalue, and questions about directors' loan accounts.

#### Company and commercial disputes

Alexander is familiar with the law on covenants in restraint of trade, and has been involved in a number of cases concerning unfair prejudice and directors' duties. He also deals with contractual disputes, including small construction cases.

#### Professional negligence

Alexander is frequently asked to advise on cases of professional negligence related to the above areas, including negligence by solicitors and other legal and financial professionals.

Alexander also accepts instructions in 'soft' intellectual property matters, such as copyright, passing off and confidential information.

### **Areas of practice**

Commercial Chancery  
Company and Insolvency  
Property  
Trusts and Estates

### **Appointments**

Vice-Chairman of the Young Barristers' Committee for 2008

### **Interests**

Alexander's main pastime is singing, having been a Choral Scholar at New College, and he sings in numerous choirs around London, including the Choir of St Pauls Cathedral, as well as giving the occasional song recital and appearing in operas (most recently playing the role of Counsel in G&S's Trial by Jury as part of the Maldon festival). He is also a keen cyclist, and enjoys a game of bridge when he gets a moment.

### **Languages**

German

### **Education and Qualifications**

New College, Oxford - BA Jurisprudence

Won the Tancred Studentship Award and a Hardwicke Entrance Award.

### **Directories and Acknowledgments**

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

### **Memberships**

Elected member of the Bar Council since 2007

Professional Practice Committee, providing guidance to the Bar on issues of professional ethics

Member of the Bar Council's Finance Committee

## Cases

### Commercial Chancery

Name: Cembrit Blunn Ltd v Apex Roofing Services LLP  
Reference: [2007] EWHC 111 (Ch)  
Comment: Whether artificial slates of satisfactory quality, and whether infringement of copyright and breach of confidence by circulating internal memo.  
Court: High Court

### Company and Insolvency

Name: Gotham v Doodes  
Reference: [2007] 1 WLR 86; [2007] 1 All ER 527; [2006] All ER (D) 348 (Jul), Times Law Reports, 14 August 2006  
Comment: This matter arose out of a charge imposed over a bankrupt's former property pursuant to s. 313 of the Insolvency Act 1986. The effect of the charge was that the bankrupt's former property re-vested in the bankrupt, but subject to the s. 313 charge. Over 12 years passed after the granting of the charge before the trustee in bankruptcy sought to enforce it by making an application for possession and sale.

The bankrupt set up a limitation defence, relying on s. 20 of the Limitation Act 1980. The trustee succeeded in front of the Chief Registrar, who was reversed on appeal to the High Court. The Court of Appeal restored the Chief Registrar's decision, holding that the bankrupt had no limitation defence to the enforcement of the charge. The Court held that the trustee's right to receive the money secured by the charge did not accrue until an order for possession and sale of the bankrupt's property was made. As such, notwithstanding the time delay of over 12 years, time for the purposes of the Limitation Act 1980 had not yet started to run.

The decision is welcome news for those trustees who have the benefit of s. 313 charges. Its effect is that no limitation period applies to such charges prior to the date on which an order for possession and sale is obtained. Trustees will, instead, have 12 years after obtaining an order for possession and sale to enforce the same.

Court: Court of Appeal

Name: Gooch v Inland Revenue  
Comment: Successful appeal against district judge's refusal to set aside statutory demand.  
Court: High Court

### Property

Name: Bolt v Smith  
Comment: Adjudicator to the Land Registry - adverse possession.

Name: Cousins v Lewis  
Comment: Prescription of right of way over shared drive.

Name: Colin Dawson Windows Ltd v Howard  
Reference: [2005] EWCA Civ 9; [2005] 2P & CR 19; [2005] NPC 8  
Comment: Pleaded the successful defence in this case but was unable to appear at trial or on appeal due to prior commitments.

Whether an implied licence to remain in possession of land while negotiations for sale continued.

Court: Court of Appeal

Name: Vale v Armstrong  
Reference: [2004] EWHC 1160; [2004] WTLR 1471; [2004] 24 EG 148 (CS)  
Comment: Whether presumption of undue influence arose where house had been transferred to nephew by uncle's enduring power of attorney.

In this case Alexander was instructed after close of evidence to make closing speeches, and on applications for permission to appeal and on the form of order.

Court: High Court

Name: Green v Lord Somerleyton  
Reference: [2003] EWCA Civ 198; [2004] 1P & CR 33; [2003] 11 EG 152 (CS); [2003] 100 (10) LSG 31; [2003] NPC 29  
Comment: Whether landowner liable for flooding caused to lower landowner by blocked ditches.

Court: Court of Appeal

## Trusts and Estates

Name: French v Barcham  
Reference: [2008] EWHC 1505 (Ch); [2008] NPC 80; The Times, July 24, 2008  
Comment: Trustees in bankruptcy and occupation rent - whether trustee in bankruptcy entitled to compensation under the Trusts of Land and Appointment of Trustees Act 1997.

Court: High Court

Name: Vale v Armstrong  
Reference: [2004] EWHC 1160; [2004] WTLR 1471; [2004] 24 EG 148 (CS)  
Comment: Whether presumption of undue influence arose where house had been transferred to nephew by uncle's enduring power of attorney.

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Court: High Court

Name: H (a child) v Kennett  
Comment: Successful application on behalf of discretionary beneficiary to be able to occupy and restrain sale of trust property, on basis of improper exercise of trustees' powers.

Court: High Court

Name: Re Heighway

Comment: Concerning capitalisation of widow's life interest in intestacy out of time.

Court: High Court