



## Alexander Learmonth QC

Call: 2000

Silk: 2021

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@alexmonth

*"Really, really good on his feet and never afraid to take out-there points of law." Both "very technical and very pragmatic", he "always gives such sensible advice and comfort to clients."*

### **Chambers UK Bar 2021**

*An excellent trial lawyer, cerebral but assertive and takes the judge with him &ndash; he is a true team player who rolls up his sleeves.*

### **Legal 500 UK Bar 2020**

### **Practice Overview**

Appointed as Queen's Counsel in 2021, Alexander Learmonth has become a major presence at the chancery bar, combining "fine drafting skills" (Chambers UK) with "smooth and persuasive" advocacy" (Legal 500), and is described by clients as "absolutely wonderful". In conference, clients find him "charming" and "affable" (Chambers UK Bar), and able to provide reassurance at an emotionally difficult time.

Alexander's principal area of practice is in succession. Described as "*intellectually and technically remarkable*" (Legal 500), he has appeared in some of the leading cases in his fields, at every level of court, including the first probate case to reach the Supreme Court, *Marley v Rawlings*. He is editor of leading textbooks, Theobald on Wills and Williams, Mortimer & Sunnucks on Executors, Administrators and Probate,

He also has a growing reputation in Court of Protection work and handles professional negligence claims in related fields and the chancery aspects of family proceedings.

He also has recognised expertise in property law, being ranked in the Legal 500 and with several Court of Appeal decisions to his name.

Alexander won 'Advocate of the Year' at the STEP Private Client Awards 2020, was named ACTAPS 'Contentious Barrister of the Year' 2015 and was shortlisted for Chancery Junior of the Year at the Chambers UK Bar Awards 2019. He is now one of the Presiding Judges for the STEP Private Client Awards 2021/22.

Alexander is an IMI-certified mediator, having completed a CMC-accredited course with Phoenix Dispute Solutions in 2020. He is a great believer in mediation as a tool for resolving of succession disputes and brings his expertise to bear both when acting as mediator and when representing a party to a mediation to encourage mutually acceptable solutions.

Alexander is also the Deputy Chancellor for the Diocese of Derby.

*"He has a very good client manner coupled with real intellect, strategic awareness and a desire to win."*

Private Client: trusts and probate - Legal 500 2017

*"Fantastically clever; He is a very good advocate and exceptional on his feet."*

Chancery: Traditional - Chambers UK Bar 2018

*"Is recognised as a true specialist in this area," "He has an excellent eye for detail and truly adds value. Alexander is also a commanding advocate and is a match for most silks on his feet." "He is incredible. He has some phenomenal ideas and is really innovative in a strategic way. I've been really impressed by the way he makes the client's position as strong as possible."*

Chambers High Net Worth 2019 Chancery Traditional: Band 1

*"Never falters and is a man you can have total confidence in." "Up there with the best, he is someone you need if you're faced with a very tricky matter."*

Chambers UK Bar and Global 2019 Trusts: Band 1

*"Has incredible control and focus, and takes a highly strategic approach to his cases." "If you need someone with imagination and a bit of 'outside the box' thinking, he can be very useful."*

Chambers UK Bar 2019 Chancery: Traditional: Band 2

*"Is an excellent trial lawyer, cerebral but assertive and takes the judge with him – he is a true team player who rolls up his sleeves."*

Legal 500 2020 Private Client: Trusts and Probate: Tier 1

*"He has an amazing ability to cut straight to the important points in a case and his written advice is very clear and focused."*

Legal 500 2020 Agriculture: Tier 2

Property Litigation: Tier 5

The "outstanding" Alexander Learmonth of New Square Chambers is considered a "star junior at the bar" who is "fantastic in cross-examination in particular".

Who's Who Legal - 2020

## **Trusts, Wills & Estates**

Winner of ACTAPS award for 'Contentious Barrister of the Year 2015'.

Who's Who Legal publication (UK Bar 2016) state Alexander Learmonth specialises in wills, succession and trusts and is "stellar on paper and on his feet"

### **Succession and Trusts**

Alexander is recommended in both Chambers UK Bar (Chancery: Traditional) and the Legal 500 (Private Client: Trusts and Probate), as a "leading exponent of every aspect of the law of succession and trusts".

He is described in Legal 500, 2020 edition as "an excellent trial lawyer, cerebral but assertive and takes the judge with him – he is a true team player who rolls up his sleeves."

It is noted in Chambers UK Bar 2020 that he "has an excellent eye for detail and truly adds value. Alexander is also a commanding advocate and is a match for most silks on his feet."

He regularly advises and acts on:

- Contentious probate, including testamentary capacity, knowledge and approval, undue influence and forgery
- Construction, rectification and variation of wills and trusts
- Claims for financial provision under the Inheritance(Provision for Family and Dependents) Act 1975
- Complex trust/estate administration, including claims by, against, or to remove trustees or personal representatives, *Beddoe* orders, *Public Trustee v Cooper* applications etc.
- Inheritance tax, including estate planning and deeds of variation
- Mutual wills, secret trusts, *donatio mortis causa*, proprietary estoppel and constructive trusts
- Charities

His reported cases include several leading cases, most notably *Marley v Rawlings*, the first probate case ever in the Supreme Court, *Re Ashkettle* and *Re Pittaway*.

He edits two of the leading textbooks in the area;

- Theobald on Wills
- Williams, Mortimer & Sunnucks on Executors, Administrators and Probate
- A contributor to the Probate Practitioner's Handbook

He is a full member of the Society of Trusts and Estates Practitioners (STEP), the Association of Contentious Trusts and Probate Specialists (ACTAPS) and a member of the Chancery Bar Association committee.

### Court of Protection

Alexander enjoys a growing reputation in the Court of Protection.

He regularly deals with powers of attorney, deputyship, statutory wills, personal injury trusts, conflicts of laws and best interests decisions.

Alexander has advised and appeared in cases involving all forms of mental impairment, including dementia, learning difficulties, and catastrophic brain injury (not reported due to the confidential nature of the work). He has recently been asked to supply expert evidence in a criminal trial on the law relating to powers of attorney.

His work not only includes property and affairs matters, but also extends to personal welfare decisions, including choice of residence and alleged 'granny-napping'.

Cases in the Court of Protection often raise highly emotive issues; Alexander's sensitive manner with clients and sympathetic style advocacy in court is ideally suited to this work.

### Professional Negligence

Wills, trusts and property work are high-risk areas for lawyers and their clients, and professional negligence claims in these fields are a growth area.

Much of Alexander's succession work arises from badly drafted wills, poorly implemented tax planning schemes and the like, and he is often called upon to advise both disappointed clients and their former advisers. Such claims often involve particularly difficult questions of scope of duty and limitation periods. Alexander has top-level experience in this area, having represented the Respondents in the ground-breaking decision of *Marley v Rawlings (costs)* in the Supreme Court, successfully obtaining a non-party order against the negligent solicitor's insurers for his clients' costs of the whole proceedings. In the hard-fought litigation in *Swain-Mason v Mills & Reeve*, Alexander appeared twice in the Court of Appeal and no fewer than four times in the High Court.

Alexander has also advised on several claims in the field of property law, such as unclear declarations of trust and negligent advice on the merits of an adverse possession claim.

Alexander is regularly instructed by both claimants and by advisers' insurers.

## Property

The Legal 500 2020 edition recommends Alexander in property litigation, as having "*an amazing ability to cut straight to the important points in a case and his written advice is very clear and focused.*" Previous editions describe him as "*a knowledgeable and well-organised advocate, who is persuasive in court*" and "*proactive, insightful and intellectually outstanding*".

With practical experience in all venues from the First-Tier Tribunal to the Court of Appeal, his practice includes:

- Trusts of land and co-ownership (*French v Barcham*)
- Proprietary estoppel (*Bradbury v Taylor, CA*)
- Adverse possession
- Land registration and rectification (*Re Park Associated Developments Ltd*)
- Boundary disputes
- Rights of way and other easements (*Green v Lord Somerleyton, CA*)
- Freehold covenants
- Mortgages (*Gotham v Doodles, CA*)
- Residential and business tenancies, including leasehold enfranchisement, renewals, dilapidations and forfeiture

Alexander is particularly suited to cases involving the effects of insolvency and death on property rights as his reported cases show, He has also appeared in the family court, dealing with third party claims to matrimonial property.

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## Offshore

The High Net Worth Guide, 2020 edition recommends Alexander in Offshore. *“He is incredible. He has some phenomenal ideas and is really innovative in a strategic way. I’ve been really impressed by the way he makes the client’s position as strong as possible.”*

Alexander has accumulated considerable experience of dealing with cross-border trusts and estates, having advised on disputed estates of those domiciled abroad, estates with assets in multiple jurisdictions, and on wills executed abroad or in accordance with foreign law, as well as offshore trusts.

## Mediation

Alexander is an accredited mediator with the **International Mediation Institute**, having completed a CMC-accredited course with **Phoenix Dispute Solutions**. He is a great believer in the power of mediation, particularly in the context of inheritance and probate disputes, and in cases between family members.

The outcome of such cases at trial is very often be hard for parties and their lawyers to predict, being highly fact-sensitive (in the case of contentious probate disputes) and dependent on the judge’s evaluation or discretion (in the case of claims under the Inheritance (Provision for Family and Dependents) Act 1975). The result at court is often wholly binary – the will is either valid or it is not – whereas the costs of a full-trial, perhaps lasting a week or more, can be huge, and often disproportionate to the amounts at stake, and with no certainty as to how they will be borne, or whether they will be recoverable in practice.

The effect of being thrown into a dispute like this is involuntarily to turn ordinary people into high-stakes gamblers, often risking more money than they can afford to lose – something they would never normally do. The process is invariably lengthy and emotionally draining, and can negatively affect the whole family.

Mediation offers parties to these disputes a way to step away from the ‘roulette wheel’ of litigation and ‘cash in their chips’. Alexander has experience of several dozen mediations, as advocate and mediator, and is able to inspire parties’ confidence in the process and set them at their ease. He is adept at helping parties to find flexible and sometimes innovative solutions to meet the parties’ needs, in ways not open to the court, very often achieving a saving in inheritance tax at the same time.

## Other forms of ADR: Expert determination, Early Neutral Evaluation and private FDR

Other forms of alternative dispute resolution which Alexander can assist with include expert determination, Early Neutral Evaluation (ENE) and private FDR.

**Expert determination** is often appropriate where there is a disagreement about the meaning of a will or other document, allowing that issue to be resolved by an opinion which all parties will have agreed in advance to be binding on them. This route is much cheaper and more efficient than a Court determination. And in cases where the interpretation of affects the interests of minors, unborn or unascertained beneficiaries, the opinion can be used as the basis for an application using the summary procedure under s.48 of the Administration of Justice Act 1985. Alexander has huge experience in the interpretation of wills, including having appeared in the Supreme Court in the leading case of *Marley v Rawlings* and editing a leading textbook on the subject, *Theobald on Wills*, now in its 19th edition.

**Early Neutral Evaluation** is **growing in popularity**, and can be useful in a variety of disputes, including contentious probate or Inheritance Act cases. Where parties have markedly divergent views on the merits of the case, and feel it would be helpful to know how an independent legal expert in the field thinks the parties’ respective arguments are likely to play out at trial, Alexander can (tactfully) offer both parties an objective view. This can pave the way to a successful exchange of offers of settlement, or improve the chances of success at a later mediation.

**Financial Dispute Resolution** is a procedure familiar to family practitioners, but increasingly common in other areas, in particular in Inheritance Act claims. Originally a **court-led procedure**, it is now often progressed privately, with an independent facilitator in place of a judge. It is somewhere between ENE and mediation, where Alexander will not merely encourage settlement but also express views on the strength of both sides’ cases, and suggest what a sensible outcome might be. It is best done after financial disclosure has taken place.

## Additional Information

### Qualifications / Education

### Awards

Alexander won 'Contentious Barrister of the Year' in the ACTAPS awards 2015.  
Won the Tancred Studentship Award and a Hardwicke Entrance Award  
Advocate of the Year 2020 at the STEP's annual Private Client Awards.

### Professional Appointments

Chairman of the Young Barristers' Committee for 2009  
Bar Council from 2007-2009 and 2013-2014, sitting on Professional Practice Committee, providing guidance to the Bar on issues of professional ethics

### Memberships

CBA - Chancery Bar Association (committee)  
STEP – Society of Trusts and Estates Practitioners (full member)  
ACTAPS – Association of Contentious Trusts and Probate Specialists  
BBA - Barristers' Benevolent Association (committee)

### Languages

German

### Cases

#### Aggregation of claims against solicitors' insurance?

Reference:

Date: 28 Oct 2020

Court:

Judge:

Practice Area:

#### Alexander Learmonth successfully defends the will of the late law lord, Lord Templeman, against his son's challenge on grounds of alleged lack of mental capacity.

Reference:

Date: 19 Mar 2020

Court:

Judge:

Practice Area:

#### Price -v- Saundry & Anor

Reference: [2019] EWCA Civ 2261

Date: 18 Dec 2019

Court: Court of Appeal EWCA Civ

A sought an account in common form, alleging various improper payments and receipts. HHJ Matthews heard the account, made a number of findings of improper payments by the trustee and ultimately ordered the trustee to repay £52,701 plus interest to the trust. On costs, he ordered the trustees to pay the applicant's costs of the account, partly on the indemnity basis because a Part 36 offer had not been met. However, he ordered that the trustees could have both their own costs and the costs ordered to be paid to the claimant out of the fund, because he did not consider he had found the trustees guilty of any breach of trust. The claimant appealed.

The Court of Appeal reversed the decision.

A trustee's right to an indemnity arises from s.31 Trustee Act 2000 and applies if the court is satisfied of two matters: (1) Were the expenses not improperly incurred? And (2) were the expenses incurred by the trustee acting on behalf of the trust, rather than for his own benefit?

If a breach of trust causing loss to the trust fund or other misconduct is established against the trustee, the trustee may be deprived of his indemnity. Misconduct in this context should be construed widely to include not only misconduct in the

sense of dishonesty but also conduct which is unreasonable in the circumstances. It does not extend, however, to a mere mistake on the part of the trustee.

The taking of an account in common form is hostile litigation and may involve findings of breach of trust and/or other misconduct; historically it was the only means by which such allegations could be made. The account taken by the judge below revealed serious misconduct by the trustee; the decision to preserve their indemnity failed to recognise the seriousness of that misconduct. Although an adverse costs order made inter partes does not necessarily lead to the loss of a trustee's indemnity, it is a strong indicator that the requirements of section 31 may not have been met. Similarly, the failure to meet a Part 36 offer is a material indicator in the assessment whether to deprive the trustee of their indemnity.

The Court of appeal ordered that the trustee pay her own and the claimant's costs of the account personally.

**Judge:** Underhill VP, Asplin and Arnold LJ

Civil Fraud

Commercial Litigation

Company & Partnership

**Practice Area:**

Intellectual Property

Offshore

Property

Trusts, Wills & Estates

### **Antonio v Naib**

**Reference:** Antonio v Naib [2019] EWHC B17 (Ch) (31 October 2019)

**Date:** 31 Oct 2019

**Court:** Chancery Division

Alexander successfully resisted an application for pre-action disclosure by a beneficiary under an estate. To read more, please click here: <https://www.bailii.org/ew/cases/EWHC/Ch/2019/B17.html>

**Judge:** Deputy Master Bartlett

**Practice Area:** Trusts, Wills & Estates

### **Moursi v Doherty**

**Reference:** [2019] EWHC 830 (Ch)

**Date:** 02 Apr 2019

**Court:** High Court

The case concerns the undue influence of an elderly lady by a much younger man (whom she believed to be her boyfriend) in respect of the transfer of a house at an undervalue.

Alexander Learmonth represented the successful claimant.

View judgment [here](#).

**Judge:** Master Price

**Practice Area:** Trusts, Wills & Estates

### **Griffin v Higgs**

**Reference:** [2018] EWHC 2498 (Ch)

**Date:** 03 Oct 2018

**Court:** High Court

**Judge:** Stephen Jourdan QC (sitting as High Court judge)

**Practice Area:** Trusts, Wills & Estates

### **Goss-Custard & anr v Templeman & ors**

**Reference:** [2018] EWHC 2476 (Ch)

**Date:** 26 Sep 2018

**Court:** High Court

Alexander Learmonth successfully defends summary judgment application in probate dispute about the will of the

legendary law-lord, the late Lord Templeman. The matter is now being listed for trial in 2019.

View judgement [here](#).

**Judge:** Master Shuman  
**Practice Area:** Trusts, Wills & Estates

### Patel and Ors

**Reference:** [2017] EWHC 3229 (Ch)  
**Date:** 07 Dec 2017  
**Court:** High Court

Alexander Learmonth (led by David Head QC) successfully has will forger committed to 12-month prison sentence for contempt.

Click [here](#) to view judgement.

Click [here](#) to view article in The Times.

**Judge:** The Honourable Mr. Justice Marcus Smith  
**Practice Area:** Trusts, Wills & Estates

### Griffin v Higgs

**Reference:** [2017] EWHC 2559 (Ch)  
**Date:** 15 Nov 2017  
**Court:** Chancery Division

Alexander Learmonth wins trial against silk and 2 other counsel to remove three professional executors replaced on grounds of conflict of interest and professional embarrassment, with costs.

**Judge:** Deputy Master Linwood  
**Practice Area:** Trusts, Wills & Estates

### In the Estate of Prabhavati Patel

**Reference:** [2017]  
**Date:** 10 Feb 2017  
**Court:** Chancery Division

Will forgery: Alexander Learmonth wins High Court trial in *Patel v Patel* involving modern forensic techniques for detecting document fabrication

- <http://www.thetimes.co.uk/edition/news/accountant-forged-his-mother-s-will-in-feud-over-160m-business-empire-2l8c0sz9g>
- <http://www.outlookindia.com/newscroll/indianorigin-man-found-guilty-of-forging-mothers-will-in-uk/990106>
- <http://www.dailymail.co.uk/news/article-4230954/Man-forged-dead-mother-s-slice-family-fortune.html>
- <http://www.standard.co.uk/news/uk/accountant-branded-a-liar-in-court-after-forging-his-mother-s-will-to-get-40m-a3468416.html>
- <http://www.india.com/news/agencies/indian-origin-man-found-guilty-of-forging-mothers-will-in-uk-1846662/>
- [http://www.hamhigh.co.uk/news/crime-court/highgate\\_chartered\\_accountant\\_forged\\_his\\_mum\\_s\\_signature\\_to\\_claim\\_share\\_of\\_160m\\_business\\_empire\\_1\\_4894229](http://www.hamhigh.co.uk/news/crime-court/highgate_chartered_accountant_forged_his_mum_s_signature_to_claim_share_of_160m_business_empire_1_4894229)

Click [here](#) to view judgment

**Judge:** Andrew Simmonds QC sitting as a Deputy Judge of the High Court  
**Practice Area:** Trusts, Wills & Estates

### Articles

Date	Title	Contributors
12 Aug 2020	Theobald on Wills Top Ten Tidbits by Alexander Learmonth (Editor) Today: Revocation! Published in	Alexander Learmonth QC

04 Aug 2020	Charities sue jailed solicitor and her firm over lost estate monies Published in <i>The Law Society Gazette</i>	Alexander Learmonth QC
07 Apr 2020	Top Ten Easy Mistakes When Executing Wills Published in	Alexander Learmonth QC

## Publications

Date	Title	Contributors
10 Mar 2021	New edition of the Probate Practitioner's Handbook	Alexander Learmonth QC
01 Jun 2020	"Trustees in the Firing Line"	Alexander Learmonth QC
23 Feb 2020	Williams Mortimer & Sunnucks: Executors, Administrators and Probate	Alexander Learmonth QC Leigh Sagar Aidan Briggs
21 Feb 2020	Theobald on Wills	Alexander Learmonth QC

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