

Rodney Stewart Smith

Joint Head of Chambers

Called: 1964

"A highly respected junior." - Legal 500 2021

"A seasoned member of the Chancery Bar, who has broad knowledge and is a very worthy opponent." Chancery: Traditional - Chambers UK Bar



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Practice Overview

Rodney is a "*veteran of the Chancery Division*" (Chambers UK Bar) and "*an experienced chancery counsel with a broad range of expertise*" (Chambers UK Bar).

His special strength is his ability to provide speedy and reliable advice on specific and unusual problems which suddenly arise in the course of a transaction. He is also a "*veritable fount of knowledge*" (Chambers UK Bar) about erudite areas of chancery law and practice.

His practice covers all aspects, litigious and non-litigious, of the administration of trusts, domestic and offshore, and estates, including related tax questions, and probate and family provision disputes.

His practice also extends to most aspects of property disputes, including those about titles and boundaries, easements, public rights of way and village greens and landlord and tenant issues.

Property

Besides dealing with all the traditional and commercial aspects of property disputes such as easements, restrictive covenants and landlord and tenant matters Rodney has special expertise in the historical aspects of land law and is considered to be "*very good on technically difficult matters*" (Chambers UK Bar).

He has been recently involved in advice and litigation concerning the ownership of the bed of a tidal river and the rights of local inhabitants to fish in the river. This involved the consideration of documents going back to 1147 as well as the history of the use of the river over the succeeding centuries.

He appeared with George Laurence QC in the Supreme Court in *R v Redcar and Cleveland Borough Council* [2010] 2 AC 70, a definitive decision on the meaning of use "as of right" in the context of the village green legislation. He also appeared with Mr Laurence QC in *Powell and Irani v Secretary of State for Environment, Food and Rural Affairs* [2014] EWHC 4009 (Admin) which raised a similar issues in the highway legislation. In both these cases Rodney made significant contributions to the oral and written arguments.

Trusts and Estates

Over his long professional life Rodney has been engaged in advising and litigating in all the major areas of this field. He has a reputation for being "*extremely thorough on all trust issues*" (Legal 500) and having a "*knack for*

straightening out the most Gordian of trust problems" (Chambers UK Bar).

Recent acknowledgements states that Rodney is:

"He has a first-class brain, and is practical, quick and very, very sensible." Chancery: Traditional (Chambers UK Bar 2016)

"An expert on trust administration" (Legal 500, 2016).

He has considerable experience in advising trustees on their appropriate course of action when they find themselves involved in disputes between rival beneficiaries. His article "Serving Two Masters" in the Trust Quarterly Review (March 2010) explored the conflict of interest problems which can face trustees of two or more related trusts. He recently extricated an executor, who had no assets available to him to finance his participation, from litigation in which the beneficiaries were disputing whether a particular asset belonged to the estate.

In recent years he has been involved in a number of applications for rescission or rectification of settlements on the ground of mistake (for example, *Whalen v Kelsey* [2009] W.T.L.R. 1297) and his article "Mistakes by trustees need not be fatal" in the Trust Quarterly Review (March 2014) discussed some of the implications of the *Pitt v Holt* decision including the tax consequences of a transaction being set aside.

Cases

Name: Powell and Irani v Secretary of State for Environment, Food and Rural Affairs

Reference: [2014] EWHC 4009 (Admin)

Date: 5th December 2014

Court: Administrative Court

Comment:

George Laurence QC and Rodney Stewart Smith represented the landowners in the Planning Court in *Powell and Irani v Secretary of State for Environment, Food and Rural Affairs* [2014] EWHC 4009 (Admin), an application to quash an order modifying a definitive footpath map. Judgment was given by Dove J. on 5 December 2014. The footpath in question was shown on the definitive map prepared in 1965 but effective as at a date in 1952. It was extinguished by a diversion order made in 1967 but the map was never modified to give effect to the order. Following the diversion the path continued to be used by the public and the principal question was whether 20 years' use following the diversion was use "as of right" which gave rise to a presumption of dedication under section 31 of the Highways Act 1980. The landowners argued that it did not because a reasonable landowner would have assumed, on the basis of the unaltered definitive map, that the public were continuing to exercise an existing right rather than acquiring a new one and could not therefore have been expected to prevent the continued use. The application was dismissed. The judge held that the Supreme Court in *R(Lewis) v Redcar and Cleveland Borough Council (No.2)* [2010] 2 AC 70 has decided that use is "as of right" if it is use which is "nec vi (by force), nec clam (secret), nec precario (by permission)" and that there is no additional requirement that the use should be such that a reasonable landowner should have been expected to prevent it. Since the continued use of the path following its diversion was admitted to be "nec vi, nec clam, nec precario" the presumption of dedication therefore arose and there was nothing to rebut it.

Practice Area: Property

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

Reference: [2010] UKSC 11; [2010] 2 AC 70

Date: 3rd March 2010

Court: Supreme Court

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.

Practice Area: Property

Name: Baker v Baker and Hazel

Reference: (2008) 2 FLR 767

Date: 13th August 2008

Court: High Court

Practice Area: Trusts and Estates

Name: Oakley and another (as Personal Representatives of Jossaume) v Inland Revenue Commissioners

Reference: [2005] WTLR 181, [2005] STC (SCD) 343

Date: 26th January 2005

Court: Special Commissioners of Income Tax

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.

Practice Area: Trusts and Estates

Name: Lynn Lewis Limited v The Environment Agency

Reference: 2005/1068

Date: 2nd January 2005

Court: Adjudicator to HM Land Registry

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.

Practice Area: Property

Articles

Date	Title	Contributors
4th September 2020	Tax consequences of setting aside a voidable transaction on the ground of mistake Published In <i>Trusts & Trustees</i>	Rodney Stewart Smith
6th December 2018	Farakh Rashid v Teyub Nasrullah: adverse possession of registered land Published In <i>New Square Chambers</i>	Rodney Stewart Smith
1st December 2015	When is property added to a settlement "excluded property"? Published In <i>New Square Chambers</i>	Rodney Stewart Smith
15th January 2015	Case Note Published In <i>Waymark</i>	Rodney Stewart Smith
28th November 2014	Effect of rectification of the register under the Land Registration Act 2002 Published In <i>New Square Chambers</i>	Rodney Stewart Smith
1st March 2014	Rectification of trustee errors Published In <i>STEP</i>	Rodney Stewart Smith



Date	Title	Contributors
28th August 2010	Serving two masters Published In <i>Oxford Press</i>	Rodney Stewart Smith
31st May 2010	Greens: landowners bogey in the Supreme Court Published In <i>New Square Chambers</i>	Rodney Stewart Smith
31st July 2009	A wide-ranging contentious probate claim Published In <i>New Square Chambers</i>	Rodney Stewart Smith
30th November 2006	White v Jones - whatever next? Published In <i>New Square Chambers</i>	Rodney Stewart Smith