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## Bruce Walker

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**Clerk:** Joanne Caunt

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### PRACTICE AREAS

Property

Landlord and Tenant

Wills, Trusts and Probate

Commercial

### PROFILE

Bruce specialises in property advice and litigation. He is also very experienced in wills, trusts and probate, as well as partnership disputes, banking, construction, insurance and professional negligence matters.

## Property

Bruce has extensive experience in real property litigation and advice. Some key areas in which he regularly advises and litigates are:

- Conveyancing: contracts, transfers, s.2 LP(MP)A 1989, construction, rectification, specific performance, termination for breach, options, pre-emptions, overage clauses
- Land registration: priority of interests, alteration and rectification of the register, applications to the First Tier Tribunal
- Mortgages and charges: legal, equitable, priority, undue influence, mortgagee's duties, charging orders
- Restrictive covenants: whether binding, enforcement in the courts, removal or modification in the UT Lands Chamber
- Boundaries and adverse possession
- Easements and profits: acquisition by express grant / reservation, implication and prescription, rights of way, rights to park, water rights, rights of support, shooting, interference, injunctions
- Trespass
- Nuisance: tree roots, water, noise etc
- Co-ownership: express, constructive and resulting trusts, equitable accounting, TLATA 1996
- Joint ventures and partnerships
- Proprietary estoppel
- Licences
- Professional liability
- Planning

## Recent cases include:

- **Essar Oil v. Persons Unknown** (11/05/2023) – Appeared in the BPC London before HHJ Monty KC, to secure a year-long *quia timet* injunction preventing direct action protests at an oil refinery and oil terminals. The injunction prevents unlawful trespass and / or nuisance, protecting both the sites and protestors.
- **Asquith v. Asquith** 2020 (BPC Leeds) Construction of conveyance, order for sale or partition, valuation, TLATA.
- **Albert v. Davies** 2020 (ChD Liverpool) Family commercial land investments, order for sale or partition, valuation, TLATA.
- **Farrar v. Rylatt** [2019] EWCA Civ 1864 Claim to 2 profit share agreements for building ventures, beneficial interests in the subject land, based on (1) oral agreement and (2) written heads of terms with title “Subject to Contract”.
- **Procter v. Procter** [2019] EWHC 1199 (ChD, Leeds BPC, HHJ Davis-White QC) Removal of trustees, AHA tenancy, intention to create legal relations, no oral tenancy from A to A+B, tenancy at will for want of “best rent”, no licence from A to A+B, no AHA protection of such interests, effect of accountancy transactions dressed as land transactions, claims against trustees for their use & occupation of trust land, family loans and forgiveness, partnership accounts.
- **Fryer v. Hemmens** 14/4/2019 (Leeds BPC Myerson QC) Boundaries, adverse possession, easements, prescription.
- **Lady Maddison v. Hazedrive** 2018-19 Land sale, exercise of termination clause, successfully resisting claim for misrepresentation, security for costs.

- **Farrar v. Rylatt** 16/11/2017 (QBD TCC HHJ Raeside QC) Resisting 2 claims to profit share agreements for building ventures, and beneficial interests in the subject land, based on (1) oral agreement and (2) written heads of terms.
- **Re North Harrow Tennis Club** [2017] EWHC 2476 (Pepperall QC) Acting for club trustees, obtaining permission to sell or order for sale, trial on issues of entitlement of club members and distribution by Benjamin order.
- **Dore Properties v. Gunes Ata** 9/11/2016 Construction of contract for sale of land; whether VAT payable on the price.
- **Winterburn v. Bennett** [2016] EWCA Civ 482 (CA) Visible and clear “no parking” signs prevent acquisition of parking easement by prescription.
- **Court v. van Dijk** [2016] EWCA Civ 483 Pipe easement, nuisance by flooding, right to pen back water.
- **Anchor Trust v. Majid** 12/1/2016 (ChD, HHJ Behrens) Rectification of the Land Register for mistake. Mistake, possession, unjust not to rectify, exceptional circumstances. Title deriving from multiple sources (gift of leasehold, agreement for lease, adverse possession).
- **Willow Design (in liquidation) v. London Ebor & RBDA** ChD 2015 Resisting liquidators’ claims to beneficial interest in land, partnership, or land held on joint venture terms.
- **Cromford Group Ltd v. Mosley** ChD 2014-15 Overage agreement, construing valuation formula to ascertain sum payable, where the disposal was to wind farm company by lease at a rent, rather than freehold sale or lease at a premium.
- **Ramsay v. Ramsay** 13/1/2015 (ChD, HHJ Behrens) proprietary estoppel claim by son to father’s farm after his death. [2015] EWCA Civ 1473 (CA) permission to appeal refused.
- **Bennett v. Winterburn** [2015] UKUT 59 (UT, HHJ Purle QC) appeal from Adjudicator to HMLR ([2013] EWLandRA 2013 0081) on claim to prescriptive right of way and to park over a car park – whether *inter alia* signs made user forcible (*vi*).
- **Court v. van Dijk** [2014] EWCA Civ 1530 (CA) oral renewal of application for permission to appeal, before Aikens LJ who refused on paper, permission granted on 3 of 4 grounds; existence of pipe easement, interference, nuisance by flooding.
- **Bowen v. Walton & Crawford** 22/1/2014 (Adjudicator to HMLR) first registration despite lost deeds, prescriptive right of way for access.
- **Taylor v. Colgan** 18/12/2013 (Adjudicator to HMLR) resisting adverse possession to land abutting village green, over which a prescriptive easement ran.
- **West Sussex County Council v. Persons Unknown** 16/9/2013 (ChD, Lang J) Injunction against fracking demonstrators protesting on the highway.
- **Davis v. Bailey & Tibble** 26/4/2013 (ChD, HHJ Raeside QC) Appeal from Adjudicator to HMLR on whether right of way existed on true construction of deeds.
- **Harrogate BC v. Crossland** [2012] EWHC 3260 (ChD, Coulson J) Deemed planning permission for an agricultural building: whether “reasonably necessary for the purposes of agriculture”, notice and counter-notice procedure and timing under the GPDO Sch. 2 Part 6 para. A, injunction to pull down.
- **Muckley v. Farquhar** [2012] EWCA Civ 1179 (CA) Transfer of garden land, delay in registration, new wife’s name added to vendor’s title before transfer registered, her signature later added to unregistered transfer, she claiming her signature forged, relevance of her signature if she had no title when the transfer was originally made.
- **Disney v. Lundean** 6/9/2012 (HHJ Robinson) Physical extent of a right of way and whether excessive to use for a 2nd house on the dominant land.
- **Oliver v. Burgess & Symons** [2012] EWCA Civ 267 (CA), [2012] 2 P&CR 2, [2012] 2 EGLR 9 Easements and boundaries, whether right of way released, width and route of a right of way, whether gates an interference, excessive user, boundary positions, pipe easement, right to connect into new pipes. First instance [2011] All ER (D) 250, [2011] EWHC B9 (ChD, HHJ Behrens).
- **Genn v. Mason** 29/11/2011 (HHJ Behrens) Easements (express rights of way, route and width, ancillary right over verges; implied rights of way; points of access from the route to the dominant tenement), boundaries, harassment.
- **Thorkildsen v. Lovett** 11/4/2011 (Adjudicator to HMLR) Adverse possession of the Tweed riverbank.

- **ASDA v. Farmers for Action** 15/12/2010 (ChD, HHJ Kaye QC), 20/12/2010 (HHJ Langan QC), 7/1/2011 (HHJ Kaye QC), 21/1/2011 (HHJ Behrens) Injunction preventing protestors interfering with distribution depots.
- **Alexander v. Challenger** [\[2010\] EWHC 2301](#) (ChD, HHJ Hodge QC) Appeal from Adjudicator to HMLR on issues of historic title from the 1800s, adverse possession, registration and easements. [\[2011\] EWCA Civ 500](#) (CA) permission to appeal refused.
- **Thompson v. Bee** [2010] Ch 412 (CA), [\[2009\] EWCA Civ 1212](#), [2010] WTLR 357 Whether a right of way derived from assents to 2 beneficiaries, or the will, construction of the grant, excessive user.
- **Burnside v. Burnside** 19/5/2010 (Adjudicator to HMLR) Rights of way and rights to park by the rule in *Wheeldon v. Burrows* and section 62 LPA 1925.
- **Rennison v. Mason** 10/3/2010 (ChD, Sutcliffe QC) Beneficiary's exercise of option in will, to have the testator's house appropriated to his beneficial interest, whether timeous, whether sham.
- **de Wind v. Wedge** [\[2008\] EWHC 514](#), [2010] WTLR 795 (ChD, Patten J) Inter vivos gift of land, undue influence.
- **Hardiman v. Imperial Homes** 25/9/2007 (ChD, HHJ Kaye QC) Enforcement of freehold restrictive covenant against property developer.
- **Hawkins v. Anderson** 1/11/2006 (Adjudicator to HMLR) Adverse possession of domestic driveway.
- **Re Bee** 9/8/2006 (Adjudicator to HMLR) Construction of will to determine land boundaries.
- **Clarke v. Harlowe** [\[2005\] EWHC 3062](#), [2005] WTLR 1473, [2006] BPIR 636, [2007] 1 FLR 1, [2006] Fam Law 846, [2007] 3 FCR 726, (ChD, HHJ Behrens) Equitable accounting between beneficial owners of land, first starts upon separation (when the relationship breaks down), or (obiter) breach of agreement to make payments.
- **Re Fairclough Homes Ltd** [\[2004\] EWLands LP 30 2001](#), [LP/30/2001](#) (Lands Tribunal, George Bartlett QC) Application to discharge or modify restrictive covenants to allow 2 blocks of 10 flats in place of large single house in prestigious location of North Leeds.
- **Garside v. Lockings** Professional negligence of solicitors in advising on purchase by private mortgagees.
- **Creaser v. Garside** Validity of sale by mortgagee to self and others.

Advising high street lender on implications of the Land Registration Act 2002 for their mortgage portfolio.

## Landlord and Tenant

Landlord and tenant work is a mainstay in Bruce's practice. Regular work includes:

- Commercial, agricultural and residential tenancies, licences and service occupiers
- Landlord and Tenant Act 1954 renewal
- Agricultural Holdings Act 1986 including succession, and Agricultural Tenancies Act 1995 farm business tenancies
- Termination and possession: including forfeiture, relief and waiver, surrender, disclaimer, break clauses, merger
- Covenants against assignment or other alienation
- Dilapidations
- Rent review
- Construction and rectification

## Recent cases include:

- **GT Motoring v Williams** [\[2023\] 1 WLUK 231](#) 25/01/2023 (Leeds BPC, HHJ Kelly) Preliminary issue: ground (f) landlord's intent to demolish or reconstruct. Tenants won on subjective intention (landlords had no firm

and settled intention), objective intention (both planning permission and finance) and timing (whether demolition / reconstruction could commence on termination).

- **HP General Partner v Pudding Pie** 25/1/2022 (Chesterfield CCt, HHJ Godsmark QC) Business tenancy renewal; landlord's ground (f) opposition.
- **Raz v Valli** 19/4/2021 (Leeds CCt Recorder Prichard) Business tenancy renewal; landlord's ground (f) opposition.
- **HP General Partner v Pudding Pie** 8/3/2021 (Leeds CCt, HHJ Jackson) Business tenancy rent arrears during covid, and while renewal proceedings afoot; liability pending interim rent determination; forum and transfer; surrender of subtenancy; apportionment.
- **Procter v Procter** [\[2021\] EWCA Civ 167](#) [2021] Ch 395 Whether A+B can have possession exclusive of A, to imply a tenancy; whether tenancy at will can gain AHA 1986 protection.
- **North West Stevedores v. Associated British Ports** 2019-20 Acting for ABP on its tenant's business lease renewal. Disputed rent and revenue guarantee agreement.
- **Procter v Procter** [\[2019\] EWHC 1199](#) (ChD) Removal of trustees, AHA tenancy, intention to create legal relations, no oral tenancy from A to A+B, tenancy at will for want of "best rent", no licence from A to A+B, no AHA protection of such interests, effect of accountancy transactions dressed as land transactions, claims against trustees for their use & occupation of trust land, family loans and forgiveness, partnership accounts.
- **HP General Partner v. Pudding Pie & Public Sector** 11/2/2019 Possession claim for landlord against (1) yearly periodic head lease tenant, and (2) subtenant who claimed claiming 15 year unexpired lease; preliminary issue whether sublease tenant had a 15 year lease; tactically negotiating subtenant into accepting it must lose whatever the outcome.
- **Osborne v. Skelding** 9/7/2015 (ChD HHJ Raeside QC) Tenant's right of first refusal; meaning of "building" in factual context.
- **Younger Homes v. Roberts** 4/6/2014 (ChD, HHJ Kaye QC) apportionment of rent, surrender of part, liability of remaining part for only part of the rent, forfeiture claim for non-payment of whole rent.
- **Frenchgate Ltd v. Doncaster Trades Union and Labour Club Ltd** 2012-14 Challenging service charge in expert determination proceedings, challenging historic service charge certificates in court proceedings (otherwise time-barred from challenge by expert determination).
- **Agricullo Ltd v. Yorkshire Housing Ltd** [\[2010\] EWCA Civ 229](#) (CA), [2010] 2 P&CR 11, [2010] L&TR 9 Resisting landlord's claim for costs of pursuing tenant to effect dilapidation repairs (by solicitor's correspondence and surveyor's supervision), claimed as recoverable under s.146 costs indemnity clause in lease, despite tenant serving counter-notice preventing forfeiture.
- **Pickard v. Howard** (2011) ALT/Y/S/99 (Agricultural Land Tribunal) AHA 1986 succession, principal livelihood, suitability.
- **Marsh v. Robinson** 11/8/2010 Business lease renewal, landlord's intention to occupy.
- **Skidmore v. Kunz** 22/3/2010 Tenant's claim to protection of Agricultural Holdings Act 1986.
- **Re Oscars Wine Bar, York** 5/12/08 (ChD, HHJ Behrens) Tenant taking trading name to new premises as part of the "goodwill" he purchased, resisting injunctive proceedings by landlord.
- **Bradbury Investments Ltd v. Hicklane Properties Ltd** [\[2008\] EWCA Civ 691](#) (CA), [2009] 1 P&CR 2 Tenant's pre-emption in lease, rectification of valuation machinery.
- **Newcastle United v Nexus** 3/12/2003 (ChD, HHJ Behrens) Consent to assign lease, reasonableness of landlord withholding, prime development land in Newcastle city centre. Obtaining business lease renewal for a local A-level college in the face of a hostile landlord. Advising on the Thomas-Van Staden trap. Brewery's termination of 16 leases and licences to recover land for development.

Bruce regularly advises and litigates in the fields of wills, trusts, probate and administration. His work includes:

- Probate claims (due execution, testamentary capacity, knowledge and approval, undue influence, forgery, fraud)
- Challenges to inheritance, including ademption, satisfaction, election, deathbed gifts, promises to leave property by will, setting aside lifetime gifts for undue influence or lack of capacity.
- Construction and rectification of wills.
- Administration actions (beneficiary and trustee disputes, removing executors and trustees, restraining powers to appoint new trustees, trustees' duties and powers, distribution and winding up).
- Construction of trusts and powers, distribution, perpetuity.
- Trusts in the home (express, constructive and resulting trusts, equitable accounting, TLATA 1996).
- Claims under the Inheritance Act 1975.

### Recent cases include:

- **Wills v. Sowray** [2020] EWHC 939 (ChD) Claim to farmland by proprietary estoppel.
- **Procter v Procter** [2019] EWHC 1199 (Ch) removal of trustees, whether AHA tenancy, effect of accountancy transactions dressed as land transactions, claims for use and occupation by trustees, family loans and forgiveness.
- **Anglia v. Dunn** 2019 Defending "heir hunter"; intestacy, searching for beneficiaries, distribution, further beneficiaries surfacing with "disappointed beneficiary" claims; competing "heir hunter" taking assignments of those claims and suing; s.61 Trustee Act 1925.
- **Re: Barks** 14/11/2018 Whether manuscript document was a holograph will or a disclaimer, consequent representation orders and administration orders.
- **Hall v Hudson** 2011-2018 Inheritance on intestacy; illegitimate son of the deceased proving parentage; DNA testing of deceased's tissue samples; half siblings refusing DNA testing of samples or themselves.
- **Re Aspinall (deceased)** [2017] WTLR 447, [2017] EWHC 454 (Ch) Construction of will, excluding from devise that part which was subject to a CPO and had become part of the M65 years prior to the will and death; alternatively ademption of that part of the land devised which was subject to a CPO prior to deceased's death but which had not completed by transfer.
- **Re Ezair** 2013-2016 Removal of puppet trustee, appointment of new trustees, order restraining settlor from appointing new trustees.
- **Re Buckley** 14/7/2014 (FamD) Application for probate of holograph will, defeating propounder's claim under under N-CPR.
- **Dalton v. Franks** 23/6/2014 Inheritance Act 1975 claim by widow.
- **Thompson v. Packman** 17/1/2014 (ChD, HHJ Behrens) Benjamin Order, declaration of intestate death of son, to enable distribution of grandmother's estate to her grandchildren.
- **Muckle v. Muckle** 17/1/2013 (ChD, HHJ Behrens) Beneficiary forcing administration and distribution of the estate, following family deadlock for nearly 15 years.
- **Dols v. Smith** 20/2/2012 (Court of Protection) Mental capacity and revocation of EPA.
- **Driver v. Lee & Priestley** (2011) £3m White v. Jones type professional negligence claim against solicitors for failing to draft will expeditiously, before testator died.
- **Taylor & Nelson v. Ireton** 22/11/2010 (ChD, Richards J) Deathbed gift of land.
- **Rennison v. Mason** 10/3/2010 (ChD, Sutcliffe QC) Beneficiary's exercise of a will option, to have the testator's house appropriated to his beneficial interest, whether timeous, whether sham.
- **Thompson v. Bee** [2010] Ch 412 (CA), [2009] EWCA Civ 1212, [2010] WTLR 357 Whether a right of way derived from assents to 2 beneficiaries, or the will, construction of the grant, excessive user.
- **de Wind v. Wedge** [2008] EWHC 514, [2010] WTLR 795 (ChD, Patten J) Inter vivos gift of land, undue influence.
- **Halstead v. Beaumont** 16/4/2007 (ChD, HHJ Spencer QC) Inter vivos gift of land, lack of capacity, undue influence, unconscionable bargain, election.

- **Clarke v. Harlowe** [\[2005\] EWHC 3062](#), [2005] WTLR 1473, [2006] BPIR 636, [2007] 1 FLR 1, [2006] Fam Law 846, [2007] 3 FCR 726, (ChD, HHJ Behrens) Equitable accounting between beneficial owners of land, first starts upon separation (when the relationship breaks down), or (obiter) breach of agreement to make payments.
- **Porthouse v. Blacklock** 12/8/2004 (ChD, HHJ Langan QC) Removing a belligerent executor.
- **Race v. Race** [2002] WTLR 1193, [\[2002\] EWHC 1868](#) (ChD, HHJ Behrens) Ademption of devise of land.
- **Ward v. Wrightson** (New Law Online 202022801) Resisting Inheritance Act claim brought against farmer's son.

## Commercial

- Partnership
- Banking (mortgages and guarantees)
- Construction
- Insurance
- Professional negligence
- Confidential information injunctions

### Recent cases include:

- **RACL v. Keith Davidson Partnership** 2019-20 (ChD) Surveyors said to have wrongly certified practical completion, causing investor purchasers of properties to release balance payments
- **Farrar v. Rylatt** [\[2019\] EWCA Civ 1864](#) Resisting appeal, claim to 2 profit share agreements for building ventures, beneficial interests in the subject land, based on (1) oral agreement and (2) written heads of terms headed "Subject to Contract".
- **Thackray v. Bartle** 2019 Professional negligence; loss of a chance; correct basis to value lost Agricultural Holdings Act protected tenancy.
- **Farrar v. Rylatt** 16/11/2017 (QBD TCC HHJ Raeside QC) Resisting 2 claims to profit share agreements for building ventures, and beneficial interests in the subject land, based on (1) oral agreement and (2) written heads of terms.
- **Re North Harrow Tennis Club** [\[2017\] EWHC 2476](#) (Pepperall QC) Acting for club trustees, obtaining permission to sell or order for sale, trial on issues of entitlement of club members and distribution by Benjamin order.
- **Dore Properties v. Gunes Ata** 9/11/2016 Construction of contract for sale of land; whether VAT payable on the price.
- **CHS v. DNH** [\[2015\] EWHC 1214](#) (ChD, HHJ Hodge QC) Super injunction to prevent publication of private confidential information. Made final 10/3/2015 and 11/5/2015 (ChD, Norris J).
- **Head v. Enterprise Insurance** 2015 Enforcing FOS Final Decision against insurer.
- **Jordan v. NIG** 2014-2015 Claim on insurance policy, enforcement.
- **Kiely v. Mortgage Express et al** 7/2/2014 (ChD HHJ Raeside QC) Resisting injunction application to prevent a mortgagee and receivers from selling.
- **Temperley et al v. Rashid** 2/7/2013 (ChD, HHJ Saffman) GP partnership, ownership of building, nature of occupancy of some of their number – TLATA or lease.
- **Manchester Building Society v. Haresign** 22/11/2011 Enforcement of mortgage guarantees.
- **ASDA v. Farmers for Action** 15/12/2010 (ChD, HHJ Kaye QC), 20/12/2010 (HHJ Langan QC), 7/1/2011 (HHJ Kaye QC), 21/1/2011 (HHJ Behrens) Injunction preventing protestors interfering with distribution depots.
- **Driver v. Lee & Priestley** (2011) £3m White v. Jones type professional negligence claim against solicitors for



failing to draft will expeditiously, before testator died.

- **Lohia v. Clearpath Ltd** 17/12/2009 (Central London CCt) Contract for sale of shares in SPV (property holding company) terminated by vendor, method of termination, whether exercise of rescission clause or acceptance of repudiatory breach, consequential claim in damages flowing if acceptance of repudiatory breach.
- **Berrygate Hill Nurseries Ltd v. S&A Soft Fruits Ltd** 16/4/2009 (ChD, HHJ Brown QC) Claim for commercial supply of strawberry plants, counterclaim for infected plants and lost business profits.
- **Re Oscars Wine Bar, York** 5/12/2008 (ChD, HHJ Behrens) Tenant taking trading name to new premises, resisting injunctive proceedings by landlord.
- **Victoria Construction Ltd v. David Wilson Homes Ltd** 2005 ChD Termination of £5m land contract by option, resisting challenge to expert determination of value.
- **Garside v. Lockings** Professional negligence of solicitors in advising on purchase by private mortgagees.
- **Creaser v. Garside** Validity of sale by mortgagee to self and others.

## CAREER AND ASSOCIATIONS

Northern Chancery Bar Association

Chancery Bar Association

Property Bar Association

Gray's Inn

Prince of Wales Scholar 1993, Gray's Inn

Prince of Wales Scholar 1992, Gray's Inn

University of Westminster

Sheffield University

Downing College, Cambridge University

The Manchester Grammar School

## PUBLICATIONS

Procter v Procter: Partners Beware – The Paradox of Non-Exclusive “Exclusive Possession”.



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## CONNECT WITH US





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