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## Edward Francis

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**Year of Call:** 1995

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### PRACTICE AREAS

Property

Insolvency & Restructuring

Professional Negligence and Disciplinary

Commercial

Wills, Trusts and Probate

### PROFILE

Ed is a leading property junior with expertise in all areas of real property and landlord and tenant. With a solid grounding in insolvency law and practice, he also specialises in property-related insolvency matters, together with professional negligence litigation arising from property transactions.

He combines an intellectual rigour and sharp analytical mind with a commercial and practical approach to problems. Noted for both his written and oral advocacy, his practice is litigation-focused but he also

frequently advises on transactional matters and issues arising on prospective developments.

He is diligent and hardworking, always conscious of clients' needs and deadlines. A strong believer in the role of the Bar in providing pro bono services in appropriate cases to meet the gap left by the withdrawal of civil legal aid, he is a reviewer for Advocate (formerly the Bar Pro Bono Unit) – and has run the London Marathon to fundraise for the organisation.

In 2020, Edward Francis was appointed Deputy Master of the Chancery Division.

## PRACTICE AREAS

### Property

Ed has expertise and experience across the whole spectrum of property work, his main area of practice, for which he has developed a strong reputation as a leading junior.

He regularly advises and appears in courts and tribunals in disputes concerning easements, restrictive covenants, conveyancing, land registration and priorities, adverse possession, boundaries and party walls, trespass and nuisance, mortgages, options and rights of pre-emption, overage, and trusts of land and proprietary estoppel.

He acts for landlords and tenants in commercial disputes concerning lease renewal, rent reviews, dilapidations, breaches of covenant and forfeiture, exercise of break and other options, and disclaimer and guarantees. And he is also regularly engaged in disputes concerning residential tenancies and long leases, including individual and collective enfranchisement, right to manage and service charges.

Ed has appeared in several ground-breaking cases, including for the successful appellant in the important Court of Appeal decision in *Cherry Tree Investments Ltd v Landmain* [2013] Ch 477.

### Recent cases include:

- acting for tenant in heavily fought five day trial, and in subsequent appeal, in claim for damages for breach of covenant of quiet enjoyment resulting from damage to tenant's business from landlord's redevelopment works to retained parts of building
- acting for charity trustee in High Court challenge to the sale of land forming part of the designated land of the charity which was obsolete and no longer required for purposes of charity (*Dewar v Sheffield City Council* [2019] 2 WTLR 495)
- acting for objector resisting application before Upper Tribunal for modification of restrictive covenant benefitting country estate (*Re Geall's Application* [2018] UKUT 154 (LC))
- acting for applicants in four day FTT hearing claiming prescriptive right of way over upland farm-track providing important secondary means of access to dwellings (*Bealing v Parsons* [2017] UKFTT 344 (PC))
- acting for co-owner of high value commercial property in four day trial concerning dispute over basis on which company controlled by other co-owner was in occupation, and on claim for order for sale and accounts
- advising on claim in nuisance resulting from erosion to canal bank
- advising on claims by investors of failed hotel development scheme to unpaid vendor liens

### Insolvency & Restructuring

With a solid grounding in insolvency work in junior practice, Ed now focuses on property-related insolvency matters, including administrations and CVAs affecting retail tenants.

He acted (with Peter Arden QC) for the landlords in their successful challenge to the Miss Sixty CVA on grounds of unfair prejudice (*Mourant Property Trustees Ltd v Sixty SPA* [2010] 2 EGLR 125).

He regularly advises on topics such as the effect of disclaimer in the context of both liquidations and company dissolutions, landlord's priority claims to rent and other sums as administration expenses, and on claims arising in failed property developments (acting either for investors or office-holders).

## Professional Negligence and Disciplinary

As an adjunct of his property practice, Ed is regularly instructed in professional negligence claims against solicitors, surveyors and other property professionals, and is experienced in dealing with the range of technical issues concerning matters such as causation, damages attributable to the breach of duty, mitigation of loss, and contributory negligence commonly deployed in such claims.

### Recent cases include:

- Advising investors in failing student accommodation development scheme in relation to claims against property professionals
- Acting for claimant lender against third party professionals involved in loan transaction following failure to put in place promised security and subsequent impugned compromise of loan
- Acting for well-known London hairdresser in damages claim resulting from loss of business tenancy due to failure to issue renewal application on time
- Acting for owner of Mayfair property in claim against conveyancing solicitors resulting from failure to advise of adverse rights affecting property

## Commercial

Ed has a wealth of experience across the commercial chancery field, in claims for the enforcement of guarantees, challenges to transactions on grounds of misrepresentation, undue influence and fraud, claims for breach of fiduciary obligations, asset recovery and tracing, equipment leasing and finance, partnership and shareholder disputes, amongst other areas.

### Recent cases include:

- Acting for ousted partner in heavily contested four day trial concerned with taking of dissolution accounts and share of post-dissolution profits, involving successful challenge to veracity of figures for turnover in accounts provided by surviving partner
- Acting for borrowers in claim for redemption of charges based upon tender; question relating to validity of tender where tender monies to be raised by refinancing conditional upon release of existing securities (*Shearer v Spring Capital Ltd* [2013] EWHC 3148 (Ch))
- Acting for defendant in High Court four day trial for rescission and damages of sale of ransom strip based on fraudulent misrepresentation (*Bush & Baseline Properties Ltd v King* [2013] EWHC 966 (QB))
- Acting for equipment-leasing company in respect of equipment leased to tenant and affixed to premises in claim for damages against landlord of premises based upon tort of unlawful interference following

forfeiture of lease and reletting of premises with equipment in situ (*Michael Gerson Leasing Ltd v Greatsunny Ltd* [2010] Ch 558

## Wills, Trusts and Probate

Ed regularly advises and acts in contentious probate and Inheritance Act claims, and in claims relating to administration of estates.

He acted for the executor in *Re Samuel deceased* [2018] EWHC 3513 (Ch) in a successful application to strike out as an abuse of process a challenge by a child of the deceased to her last will based on the same grounds as a previous challenge brought by another child which had been compromised without determination on its merits.

## SIGNIFICANT CASES

**Margarita Hamilton -V- Ed Thomas and Matthew Carter (joint trustees in bankruptcy of Roderic Alexander Innes Hamilton) [2022]**  
EWHC 2132 (Ch)

The claim, brought under section 44 (ii) (c) of the Trustee Act 1925, required the court to determine what was the effect on the title to land situate in England of the dissolution, and subsequent restoration of its legal owner, a Guernsey-registered company. The judge agreed with Mrs Hamilton's analysis that the property vested in the Crown on dissolution of the company, the position being governed by English common law as the *lex situs* rather than by Guernsey or English companies legislation, and that on the company's restoration there was no automatic reversion of the property in the company under English common law, in contrast to the position which would apply under statute. In consequence, legal title remained vested in the Crown, and the court retained its power to make a vesting order in favour either of Mrs Hamilton, as a beneficiary, or the company, under the 1925 Act. On the particular facts of the case it was held that Mrs Hamilton's claim for such order should prevail over the competing claim of the company for the property be re-vested in it.

**Dewar v Sheffield City Council [2019]**  
2 WTLR 495

Powers of charity trustee to sell designated land of the charity without replacement under section 6 of the Trusts of Land and Appointment of Trustees Act 1996; lawfulness of Charity Commission guidance on trustee's power; scope of court's power to review determination of Charity Commission as to propriety of trustee's actions; entitlement of trustee to rely on Charity Commission advice under section 110 of the Charities Act 2011.

**Re Samuel (deceased) [2018]**  
EWHC 3513 (Ch)

Strike out as a Henderson v Henderson abuse of process of beneficiary's challenge to deceased's will following compromise of previous proceedings challenging will on same grounds by another beneficiary; although not a party to the compromise, beneficiary had been obliged to make positive challenge to will within those previous proceedings under CPR Part 57, and could not do later so by fresh claim.

**Re Geall's application [2018]**

UKUT 154 (LC)

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Application for modification of restrictive covenant underground (aa) of section 82 (1) Law of Property Act 1925; factors relevant to exercise of court's discretion to exercise power; assessment of compensation upon exercise of power.

**Bealing v Parsons [2017]**

UKFTT 344 (PC)

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Claim to prescriptive right of way; whether claim defeated by sign indicating land to be private under principle in Winterburn v Bennett; whether user during relevant period was at any time with consent of owner.

**Shearer v Spring Capital Ltd [2013]**

EWHC 3148 (Ch)

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Claim for redemption of mortgages; validity of the tender of sums outstanding under mortgages where tender monies to be raised by refinancing conditional upon simultaneous release of security.

**Cherry Tree Investments Ltd v Landmain Ltd [2012] EWCA Civ 736; [2013]**

Ch 477

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Seminal Court of Appeal decision on principles of contractual interpretation as they relate to registered dispositions and other documents on public registers.

**Mourant Property Trustees Ltd v Sixty SPA [2010] EWHC 1890 (Ch); [2010] 2 EGLR 125; [2010]**

BCC 882

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Application by landlord to set aside guarantee-stripping Miss Sixty CVA on grounds of unfair prejudice; duties of administrators in propounding CVA.

**Michael Gerson Leasing Ltd v Greatsunny Ltd [2010]**

EWHC 1887 (Ch); [2010] Ch 558

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Claim by equipment-leasing company in respect of equipment leased to tenant and affixed to premises; whether landlord liable following forfeiture of tenancy for wrongful interference with company's contractual rights to enter and remove equipment from premises in subsequent re-letting of premises with benefit of equipment; whether company's rights to removal of equipment had been extinguished by oral notice given by landlord of termination of tenancy, and whether section 196 of Law of Property Act 1925 applied to notice; assessment of damages based on Wrotham Park / user principle.

**New v Gromore Ltd [2009]**

EWHC 2807 (Ch)

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Claim by business tenant for trespass and wrongful interference with goods; whether landlord liable for unauthorised and unforeseen actions of contracting purchasing in destroying garage premises and valuable contents in course of pre-completion site survey and works.

**Dean & Dean v Angel Airlines SA [2009]**

EWHC 447 (Ch); [2009] BPIR 409; [2009]

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Lloyd's Rep PN 117 – Application by solicitor held out as partner of firm to set aside statutory demand based upon costs orders in litigation brought against firm before solicitor joined; whether liability arising under RSC O. 81 and / or under provisions of Partnership Act 1890.

**Alchemy Estates Ltd v Astor [2008]**

EWHC 2765 (Ch); [2009] 1 WLR 940

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Whether purchaser of leasehold estate entitled to rescind contract under Standard Conditions of Sale by reason of landlord's failure to grant consent to assignment; time within which right of rescission must be exercised.

**PR Records Ltd v Vinyl 2000 Ltd [2007]**

EWHC 1721 (Ch); [2008] 1 Costs LR 119

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Principles and procedure relating to applications for non-party costs orders.

**Fawcett Inn Pubco Plc v Ottley Corp [2006]**

EWHC 1170 (Ch); [2006] 14 EG 176

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Rent review; valuation assumptions and application of presumption of reality.

**Wilderbrook Ltd v Oluwu [2005]**

EWCA Civ 1361; [2006] 2 P&CR 4

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Rent review; construction of review machinery and application of presumption that time not of the essence.

**Kudos Glass Ltd (in liquidation) [2002]**

BCC 416

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Application of funds held by supervisor of CVA following supervening liquidation on creditor's petition.

**Inside Sport Ltd (in liquidation) [2000]**

BCC 40

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Whether compulsory winding up order should be made against company in voluntary liquidation where dispute as to identity of liquidator.

**Bennett v Filmer [1998]**

BPIR 444

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Whether statutory demand valid where based upon claim for account.

## CAREER AND ASSOCIATIONS

Pembroke College, Oxford, 1st class honour degree, Literae Humaniores (Greek and Latin Literature, Philosophy)

Called to the Bar 1995; undertook 12 month pupillage in Chambers

Active member of the Chancery Bar Association and Property Bar Association

Reviewer for Advocate (formerly known as the Bar Pro Bono Unit) responsible for undertaking reviews of applications for pro bono assistance to determine whether claims meet eligibility criteria

Competitive cyclist and cross-country runner

## PUBLICATIONS

Contributing author of Butterworth's Property Insolvency

Contributing author of Butterworth's Annotated Guide to the Insolvency Legislation

Regular contributor to Estates Gazette Q&A series, PLC Blog and Lexis PSL



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