

# Landmark Chambers

## Barrister CV

Nicholas Taggart



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# Nicholas Taggart

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“... has an encyclopaedic knowledge of property law and rolls up his sleeves and gets stuck into the detail. Definitely my go to barrister if I want the right answer” - Legal 500.



Expertise

Property

## Contact Practice Managers

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## Practice Summary

Nic Taggart has been acknowledged by both Chambers & Partners and Legal 500 as a top-tier “leading junior” barrister in real estate litigation for over 18 years. Principally a specialist in commercial real estate law, Nic also likes getting involved in the more *recherché* areas.

Nic deals with just about every aspect of commercial real estate, with an emphasis on commercial landlord and tenant work, such as dilapidations, rent reviews and lease renewals under the Landlord and Tenant Act 1954. Being, at heart, an anarchist, Nic has undertaken many cases under “Ground (f)” of the 1954 Act (including the leading case of *S Franses v. The Cavendish Hotel (London)*) and disposed of a few guarantees under the Landlord and Tenant (Covenants) Act 1995 (including the leading case of *K/S Victoria Street v. House of Fraser*).

Nic also has experience and expertise in the usual land law disputes, involving restrictive covenants, easements (including rights of light), boundary disputes, land registration matters, including adverse possession, overage and development disputes,

trespass and nuisance claims. Nic also has a particular specialisation in respect of conveyancing issues, arising before or after the transaction. He enjoys getting stuck into some more *recherché* aspects of real estate, such as mines and minerals, manorial and customary rights, utility wayleaves and property aspects of infrastructure provision, riparian rights, the real estate aspects of canals and harbours, and drainage. He also has experience and expertise in disputes involving property-related professional negligence, acting for claimants and insurers.

Nic is qualified and experienced as an arbitrator and as a legal assessor, but lacks the disposition to be a mediator.

For laughs, he is an editor of *Hill & Redman's Law of Landlord and Tenant* (contributing to the chapters on termination, possession and business tenancies), a member of the editorial boards of both *The Conveyancer and Property Lawyer* and *The Journal of Building Survey, Appraisal & Valuation*, and a past member of both The Law Society's Conveyancing and Land Law Committee and the RICS Dilapidations Steering Group. He is a regular speaker at Property Litigation Association and RICS events and provides in-house training for a number of solicitors firms. He appreciates that he needs to get out more.

Away from the law, Nic is a devotee of proper relaxation. His interests include photography, reading military histories, listening to music not popular since the 1980s and doggedly supporting the Williams F1 team.

## Property

Nic's practice ranges over almost all aspects of real property work, both contentious and non-contentious. His experience including the following aspects of real property law (conveyancing disputes) includes:

- Restrictive covenants (enforcement and applications for modification or discharge)
- Easements, including rights of light and *profits-à-prendre*
- Trespass and adverse possession
- The structuring of complex property transactions
- Riparian law
- Mining and gravel extraction
- Manorial rights and the effect of royal grants and charters
- Rectification
- Misrepresentation claims
- *Bona vacantia*
- The law relating to estate agency.

Nic also advises on a wide range of environmental law issues including nuisance, conveyancing of contaminated land, utilities and water rights.

Interesting cases include:

- **British Telecommunications plc v. Rail Safety and Standards Board Ltd.** [2012] L&TR 35 (CA) – agreements for lease; specific performance. An agreement for the grant of a sublease was made conditional upon the superior landlord's consent being granted. The agreement contained in an annex a form of deed to be executed by the superior landlord, *mesne* landlord and subtenant. Relying on a long-stop date provision, the proposed subtenant rescinded the agreement at a time when all the parties had executed the deed in escrow, but the deed had not been completed. The Court of Appeal held that, on the true construction of the agreement, the parties had stipulated that the superior landlord's consent could only be validly given in one way, thereby avoiding the difficulties caused by informal consents, and that the proposed sub-tenant was accordingly entitled to rely on the long-stop provision. Nic acted for the successful proposed subtenant.
- **Barton v. The Church Commissioners for England and Wales** [2008] EWHC 3091 (Ch); [2008] PLSCS 354, (Morgan J) – easements and *profits-à-prendre*. The Court had to consider whether fishing rights could be acquired by prescription, through acts of ownership by the Bishops of Hereford, and their tenants, since 1759. The Church Commissioners successfully established an “unstinted right of piscary in gross”: before this, the last reported case where a claim of this nature succeeded was in 1863. The Court also considered the effects of certain royal grants and charters dating back to the 11<sup>th</sup> Century.
- **Re Cain's Application** [2009] UKUT 212 (LC), (Upper Tribunal, Lands Chamber) – modification of a restrictive covenant under the Law of Property Act 1925, section 84; meaning of “change in the character of the application land or the neighbourhood”; whether covenant to retain a building scheme secures practical benefits or substantial advantage to other beneficiaries of the covenant.
- **RMC (UK) Ltd. v. Nahab** [2002] PLSCS 20.6.02 (Neuberger J) – construction of option contract and grants of mines and minerals. The Court gave guidance on whether an option to extract minerals should be construed without hearing evidence as to the “matrix of fact” in which it was granted, and in particular what was the parties' objective state of knowledge as to the nature of the minerals which might be extracted.
- **Frogmore Developments Ltd. v. Shirayama Shokusan Co.** [2000] 1 EGLR 121 (Neuberger J) – easements, rights of light. The Court had to address whether an express grant of a right to light in a lease had entitled the grantee a sufficient right to light; interaction between an express grant and a potentially inconsistent.
- **Re University of Westminster's Application** [1998] 3 All ER 1014; (1999) 78 P&CR 82 (CA) – modification of a restrictive covenant under the Law of Property Act 1925, section 84. The Court of Appeal reviewed the matters the Lands Tribunal can have regard to when exercising its discretion to modify or discharge a restrictive covenant. It also set out the appropriate notification procedure in cases where the number of properties with the benefit of the covenant was very large. The Court also considered whether the absence of any person claiming the benefit of the covenant should influence the decision to modify or discharge.
- **Gan v. Wood** [1998] EGCS 7.5.98 (CA) – proprietary estoppel. In order to found a proprietary estoppel, the detrimental reliance had to be proportionate to the consequences of the estoppel being asserted. So, expenditure of small sums maintaining a house in Mayfair let on a short lease was insufficient to support an alleged proprietary estoppel in respect of an oral promise to grant an option to grant a fresh lease.
- **CIN Properties Ltd. v. Rawlins** [1995] 2 EGLR 130; (1995) 69 P&CR (CA) – trespass; highways. The freeholder owner of a shopping centre owner had the right to revoke a licence to some, but not all members of the public for any reason it wished. This did not infringe the human rights of the excluded individuals, even though this was the primary retail location in the town. The freeholder also had the right to ban those persons from “walkways” created under the Highways Act 1980, if their

conduct was not consistent with exercising a right to pass and re-pass, because that conduct exceeded their rights to use a highway and so was a trespass.

- **Department of Transport v. Williams** (1994) 138 SJLB 5; Times, December 7, 1993 (CA) – trespass and tort. The Department of Transport obtained an injunction to restrain protestors from interfering with the construction of a highway, the M3 at Twyford Down. The injunction was based on trespass in part, but also to restrain the tort of wrongful interference with the discharge of a lawful statutory duty. The Court of Appeal supported the Judge's conclusion that the tort of wrongful interference with trade extended to bodies discharging statutory functions and upheld the practice of granting injunctions against persons identifiable only by photographs and code-names.

Nic has been acknowledged by both Chambers and Partners and Legal 500 as a top-tier "leading junior" barrister in real estate litigation for over 18 years.

## Commercial Landlord and Tenant

There are very few aspects of commercial landlord and tenant law that Nic does not undertake (he finds the countryside faintly disturbing, so he does not undertake any agricultural tenancies work). Other than that, he does it all, including "first refusal" cases under the Landlord and Tenant Act 1987. He is particularly experienced in work which requires a good understanding of valuation, such as rent review, dilapidations and lease renewals.

Nic knows his limitations (or at least some of them) and no longer undertakes any leasehold enfranchisement, right to manage or residential service charge cases.

Interesting cases include:

- **K/S Victoria Street v. House of Fraser (Stores Management) Ltd.** [2012] Ch 497 (CA) – guarantees under the Landlord and Tenant (Covenants) Act 1995. This is the leading case on the validity of guarantees under the 1995 Act, establishing that any person who had guaranteed a tenant's obligations under a lease could not be contractually required to give a further guarantee in respect of an assignee of the lease. Such a requirement would "frustrate the operation of" the Act and was, therefore void, whether it be contained in the tenancy itself or even in a subsequent transaction and even if both parties might have freely and willingly entered into the transaction. Nic acted for the successful guarantor.
- **British Telecommunications plc v. Rail Safety and Standards Board Ltd.** [2012] L&TR 35 (CA) – agreements for lease; specific performance. An agreement for the grant of a sublease was made conditional upon the superior landlord's consent being granted. The agreement contained in an annex a form of deed to be executed by the superior landlord, *mesne* landlord and subtenant. Relying on a long-stop date provision, the proposed subtenant rescinded the agreement at a time when all the parties had executed the deed in escrow, but the deed had not been completed. The Court of Appeal held that, on the true construction of the agreement, the parties had stipulated that the superior landlord's consent could only be validly given in one way, thereby avoiding the difficulties caused by informal consents, and that the proposed sub-tenant was accordingly entitled to rely on the long-stop provision. Nic acted for the successful proposed subtenant.
- **Windsor Life Assurance Co. Ltd. v. Lloyds TSB Bank plc** [2009] 3 EGLR 53 (HH Judge Peter Cowell, CLCC) – Landlord and Tenant Act 1954, section 29(5). The Court gave guidance on the procedure by which the tenant must notify the Court that it does not wish to be granted a new tenancy, following the landlord's application to court. The Court found that the claim

was terminated even where the tenant had not made a formal application but just written a letter and that the Court had made no order on receipt of the letter.

- ***Shirayama Shokusan Co.Ltd. v. Danovo Ltd. (Nº.4)*** [2005] EWHC 2589 (Ch); [2005] 44 EG 134 (CS) (Sir Donald Rattee, sitting as a Judge of the High Court) – forfeiture and relief. The case concerned the “Saatchi Gallery” when it was located at the former County Hall. Having dealt with various arguments relating to the proper construction of the lease, estoppel and misrepresentation, the Court set out the circumstances in which the tenant’s conduct, including its wilful and deliberate breach of covenant and its conduct of the litigation itself, would disentitle it from obtaining relief from forfeiture. The Court also had to consider whether a tenant’s failure to make a proper response to the service of a section 146 notice shortened what might otherwise be the “reasonable time” for compliance with such a notice.
- ***Fairgate International Ltd. v. Citibank International plc*** [2006] 1 P&CR 2; [2005] 2 EGLR 48 (CA) – dilapidations. The Court of Appeal had to consider the interaction between covenants to repair and reinstate demised premises at the end of a lease and an unusual obligation on the tenant to carry out significant works of improvement at the end of the term, at the landlord’s request. The tenant argued that the obligations were mutually inconsistent, and therefore it had no obligation to undertake any work. The Court held that the “reasonably practical building surveyor” would assess the competing obligations and devise a programme of works that made sense overall of the obligations.
- ***Hemingway Realty Ltd. v. Master, Wardens and Commonalty of Freemen of the Art or Mystery of Clothworkers*** [2005] L&TR 21; [2005] 2 EGLR 36 (Patten J) – rent review. In this case, the a lease provided in clear terms for the right to implement the rent review was exercisable by the landlord alone. The tenant argued that the absence of an “upwards only” review formula was meant that the Court should construe the clause as either requiring the landlord to implement the mandatory review, or be subject to an implied term that the right to implement a review was exercisable by both landlord and tenant. The tenant’s arguments were rejected, as the lease was clear and unambiguous.
- ***Shirayama Shokusan Co.Ltd. v. Danovo Ltd. (Nº.3)*** [2004] EWHC 2288 (Ch); [2005] L&TR 15 (Blackburne J) – unreasonable withholding of consent. By a lease the tenant was entitled, subject to the prior written consent of the landlords not to be unreasonably withheld or delayed, to erect signage on the common parts. The landlords gave consent on terms that the right granted would be determinable on 28 days’ notice. In proceedings for an interim injunction to restrain the landlords from removing the signage following the termination of the licence, the tenant established at least an arguable case that a term that the landlords’ right of termination was only exercisable for good reason and that there was no sufficiently good reason shown.
- ***Shirayama Shokusan Co.Ltd. v. Danovo Ltd. (Nº.1 & Nº.2)*** [2004] 1 WLR 2985 (Blackburne J) – alternative dispute resolution and access to justice under the Human Rights Act 1998, Article 6(1). The Court concluded that it could not compel a non-party to attend a mediation; nor could it adjourn a case for a prolonged period of time in order to pressurise an unwilling party to attend a mediation.
- ***PW & Co. v. Milton Gate Investments Ltd.*** [2004] Ch 142; [2004] 3 EGLR 103 (Neuberger J) – break clauses and rights of third parties; estoppel by convention. The landlord and tenant of a substantial City of London office building agreed that the tenant could break the lease, but would have to pay a premium of some £6m if the premises were not substantially sub-let. The tenant exercised the right when the premises were fully sub-let. The Court held that, as a matter of law, the sub-leases terminated immediately when the superior lease from which they were carved was terminated by a break clause. However, in equity, an estoppel by convention could prevent the parties, including the sub-tenants- from asserting that the sub-leases

would determine. On the facts, however, it was just and equitable to release the sub-tenants from the common convention. Consequentially, the landlord and tenant were also released and the tenant had to pay the £6m.

- **Pubmaster Ltd. v. Gibb** [2002] EWHC (Ch 142); (Rimer J) – forfeiture and relief from forfeiture. The Court had to consider whether the principles of issue estoppel would prevent a tenant who had previously consented to an order for relief from forfeiture which had subsequently not been complied with could subsequently argue that the forfeiture was unlawful. The Court concluded it would be an abuse of process to allow the tenant to reopen the proceedings.
- **Tomkins v. Basildon District Council** [2003] L&TR 7; [2002] 3 EGLR 33 (CA) – variations in tenancy terms and surrender by operation of law. The Court of Appeal concluded that a business tenancy had not become a residential tenancy (thereby moving the obligation to repair from the tenant to the landlord by reason of the Landlord and Tenant Act 1985, section 11) simply because the landlord had turned a blind eye to the cessation of business use at premises where the tenant also resided, or even when the landlord paid housing benefit to the tenant in respect thereof.
- **Shirayama Shokusan Co.Ltd. v. Oceanic Village Ltd. (Nº.2)** [2001] L&TR 35; [2001] 7 EG 162 (CS) (Nicholas Warren QC, sitting as a Deputy Judge of the Chancery Division) – derogation from grant; restrictive covenants. The landlords granted the tenant an exclusive right to sell merchandise relating to the “London Aquarium” within the former County Hall building. The Court found that, as a matter of construction, this also prevented the landlords from itself opening a competing business on other land owned by it immediately adjacent to the building.
- **Commercial Union Life Assurance Co.Ltd. v. Label Ink Ltd.** [2001] L&TR 29 (HH Judge Rich QC, sitting as a Deputy High Court Judge) – conditional break clauses, meaning of “material breach of the covenants”. The tenant’s right to break a lease was contingent on it not having made any material breach of covenant. The Court rejected the landlord’s arguments based upon breaches of the repairing covenants as not being “material”. However, it found that the tenant had failed to comply with the covenant to pay rent on time, by sending a post-dated cheque through the post, which arrived after the due date, notwithstanding the provisions of the Bills of Exchange Act 1982.
- **Havant International Holdings Ltd. v. Lionsgate (H) Investment Ltd.** [2000] L&TR 297 (Hart J) – break notices and agency. In this case, the tenant incorrectly identified itself on a break notice, which was signed by a person who was not an officer of the correct tenant company. Hart J held that the reasonable recipient of the notice would not be confused as to the identity of the tenant, as the break right was personal to the “correct” tenant. The reasonable recipient would also readily infer that the signatory was an agent of the “correct” tenant. The lease was, accordingly, determined.
- **Oliver Ashworth (Holdings) Ltd. v. Ballard (Kent) Ltd.** [2000] Ch 12; [1999] 2 EGLR 23 (CA) – break notices Distress for Rent Act 1737, section 18. The tenant served a break notice which the landlord was entitled to treat as defective. The tenant stayed in occupation until the law was changed by the decision in *Mannai Investments*. Following that decision, the landlord accepted the lease was at an end, but amended its claim to include a claim for trespass damages based on double rent under the 1737 Act. The Court of Appeal rejected the tenant’s argument that the landlord had elected between inconsistent remedies and so could not seek double rent, but held that the landlord was not entitled to double rent because the Act required the landlord to have treated the tenant as a trespasser throughout.
- **Shirayama Shokusan Co.Ltd v. Oceanic Village Ltd. (Nº.1)** [1999] EGCS 83 (Neuberger J) – rectification. The Court reiterated that a claim for rectification needed to be proved with “strong, irrefragable evidence” and that the Court would not usually rectify an agreement simply because one party had been tough and successful in negotiations, and the other had been had missed a point or had failed to appreciate the likely effect of the agreement.

- **Matthey Securities Ltd. v. Ervin** (1998) 77 P&CR 160; [1998] 2 EGLR 66 (CA) – implied tenancies and surrender by operation of law. The original tenant assigned a lease to a successor who fell into financial difficulties. The successor's guarantor paid the rent whilst personally trading from the premises. The original tenant subsequently argued that the acceptance of rent in such circumstances amounted to a grant of a periodic tenancy to the guarantor and therefore surrendered the lease. The Court rejected this, emphasising that the relationship of landlord and tenant had to be created consensually and that there was no unambiguous evidence of a new tenancy being created. On the contrary, the evidence showed that the landlord, successor and guarantor were all treating the lease as extant.

## Professional Negligence Claim Related to Property

Nic has acted in a wide number of professional negligence claims brought against solicitors, where the alleged negligence arises from property transactions, such as conveyances and the granting of leases. He has also been involved in claims relating to alleged negligence in the management of property portfolios brought against surveyors and property management professionals.

Nic acts for both insurers and insured. He also regularly acts as an independent expert in respect of disputes between insurers and their insured in property-related professional negligence claims, involving both barristers and solicitors.

## Qualifications

- University College London (LLB)
- Wadham College, Oxford (BCL)

## Recommendations

"An outstanding barrister who is great at thinking of pragmatic and commercial solutions. The one to have on your team, and is rightly considered to be a senior statesperson in this field."

**Real Estate Litigation, Chambers and Partners, 2024**

"Nic writes the best opinions of any barrister out there – he is unmatched in his intellectual capabilities, grasp of law and ability to apply it to complex facts."

**Property Litigation, Legal 500, 2024**

"He's a real personality, and clients really warm to that. He is really focused and commercial." "He is always on hand to assist and has encyclopedic knowledge of all property law." "Nicholas gives a very solid analysis, and his strength lies in his detail and thoroughness."

**Real Estate Litigation, Chambers and Partners, 2023**



"Nic writes the best opinions in the real estate legal business. His grasp of all areas of property law is immense and none come close in this area. He possesses the advantage of a professional mindset mixed with strong commercial acumen."

**Property Litigation, Legal 500, 2023**

"He is very diligent and knows his law inside and out." "A sharp mind and a sharp wit." "He is friendly, helpful, approachable, bright and a fantastic advocate."

**Real Estate Litigation, Chambers and Partners, 2022**

"Nick has an encyclopedic knowledge of property law and rolls up his sleeves and gets stuck into the detail. Definitely my go to barrister if I want the right answer."

**Property Litigation, Legal 500, 2022**

"Good with clients and experts. Thorough, supportive and very easy to work with." "He gets the commerciality of client issues and he gets under the skin of every aspect of a knotty legal dispute." "Absolute first choice for complex written opinions."

**Real Estate Litigation, Chambers and Partners, 2021**

"He has a wealth of experience and an encyclopaedic knowledge of property law that makes him a leading practitioner."

**Legal 500, 2021**

"Exceptional property expert and extremely helpful." "A real delight to work with and has in-depth knowledge." "He is always thinking outside the box and gets straight to the point."

**Real Estate Litigation, Chambers and Partners, 2020**

"One of the best technical brains in the industry combined with an immense attention to detail."

**Legal 500, 2020**

"Absolutely the first choice for complex written opinions." "Very approachable, forthright and insightful." "Never fails to impress with his encyclopaedic knowledge of property law and his ability to wade through tons of details."

**Chambers and Partners, 2019**

"Hilarious and great fun to work with, he really knows his stuff and always thinks outside the box." "He is bright, sharp and very commercial."

**Legal 500, 2019**

"One of the best technical brains in the industry combined with an immense attention to detail."

**Legal 500, 2018**

## Cases and inquiries

28 06 18	Hemingway Realty Limited v The Clothworkers Company
11 06 18	Fairgate International Ltd v Citibank International Plc [2006] 1 P & CR2
08 06 18	CIN Properties Ltd v Rawlins
08 06 18	Sked v. Towngran Developments Ltd
08 06 18	Roker House Investments Ltd. v. Saunders & Bearman
08 06 18	Gan v. Wood & Others
08 06 18	Crean-Davidson Investments Ltd. v. Earl Cadogan and Others
08 06 18	In University of Westminster's Application
08 06 18	Oceanic Village Ltd. v. Shirayama Shokusan
08 06 18	Mattey Securities Ltd. v. Ervin
08 06 18	Havant International v. Lionsgate
08 06 18	Frogmore Developments Ltd. v. Shirayama Shokusan Co. Ltd.
08 06 18	Ballard (Kent) Ltd. v. Oliver Ashworth
08 06 18	Commercial Union Life Assurance Co.Ltd. v. Label Ink Ltd.
07 06 18	Tomkins v Basildon District Council [2002] 43 EG 208 (CA)
07 06 18	P.W. & Co v Milton Gate [2003] EWHC 1994 (Ch)
31 05 18	Barton v The Church Commissioners for England and Wales
31 05 18	K/S Victoria Street v House of Fraser (Stores Management) Ltd [2010] PLSCS 278
31 05 18	The Bridgewater Canal Co Ltd v Geo Networks Ltd [2010] EWCA Civ 1348 [2010] PLSCS 305 [2010] 49 EG 79 (CS)
29 05 18	Crest Nicholson (Operations) Ltd. v. Arqiva Services Ltd. & Ors. Estates Gazette PP 2015/142
25 01 18	Franses v The Cavendish Estate goes to the Supreme Court

31 01 12	Rail Safety and Standards Board Ltd v British Telecommunications Ltd [2012] EWCA Civ 553
02 01 12	British Telecommunications plc v. Rail Safety and Standards Board Ltd. [2012] L&TR 35 (CA)
02 01 12	British Telecommunications plc v Rail Safety and Standards Board Ltd [2012] L&TR 35 (CA)
01 12 11	K/S Victoria Street v House of Fraser (Stores Management) Ltd [2012] Ch 497 (CA); Windsor Life Assurance Co Ltd v Lloyds TSB Bank plc [2009] 3 EGLR 53