



Tim Morshead QC

Call: 1995 Silk: 2011

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Expertise

Property, Rating and Valuation, Mediation

Overview

Tim is a litigation specialist practising in commercial and real estate law. He has appeared in many of the leading cases in these areas, including interpretation of contracts as well as the valuation, rating, planning and public law issues which arise. He also has expertise in the fields of nuisance, professional negligence, compulsory purchase, highways, town & village greens and local government law. A member of the Treasury "A" Panel until taking silk, he is an experienced trial and appellate advocate, including in the Supreme Court / House of Lords and Privy Council.

Advocacy and Litigation Experience

Tim is an experienced litigator with appearances in a variety of tribunals including the Supreme Court, House of Lords, the Privy Council, the Court of Appeal, the High Court (Chancery Division, Queen's Bench Division, Technology & Construction Court, Commercial Court, Administrative Court), the County Court, the Lands Tribunal (now the Upper Tribunal, Lands Chamber), various Valuation Tribunals and Leasehold Valuation Tribunals and planning and other statutory and non-statutory inquiries. He is an experienced cross examiner of factual and technical/ expert evidence.

Tim also has experience of sitting as a non-statutory inquiry inspector, arbitrator and legal assessor. He is a qualified ADR group mediator.

Reported cases

A fuller list of Tim's cases can be provided on request but over the past few years his main reported cases have been these:

Supreme Court:

Southwark London Borough Council and City of London Corporation v. Transport for London [2018] 3 WLR 2059: real estate/ highways: Tim acted for TfL in this appeal concerning the meaning of the word "highway": does it mean just the "top two spits" as had been thought and held below? Or can it include the whole interest in the land covered by the surface of the highway?

Regency Villas Title Ltd v. Diamond Resorts (Europe) Ltd [2018] 3 WLR 1603: real estate/ easements: a case concerning the legal characteristics of an "easement".

Cardtronics Europe Ltd v. Sykes [2019] 1 WLR 2281: rating: whether ATMs situated in shops are liable to rates. Tim acts for HMRC and permission to appeal to the Supreme Court has been granted with a hearing due in March 2020.

Iceland Foods Ltd v. Berry [2018] 1 WLR 1277: rating: a case concerning the interpretation of the Plant and Machinery Regulations in relation to Iceland's air conditioning equipment.

Woolway (VO) v. Mazars LLP [2015] AC 1862: rating: this case is the leading modern authority on the identification of the "hereditament" in rating.

Arnold v. Britton [2015] AC 1619: contracts/ real estate: this case about a lease is a leading modern authority on the interpretation of contracts.

(Older House of Lords cases:

Chartbrook Limited v. Persimmon Homes Limited [2009] 1 AC 1101: contracts/ real estate: this case about an overage agreement is a leading modern authority on the interpretation of contracts.

Cobbe v. Yeoman's Row Management Limited [2008] 1 WLR 1752: real property/ equity: this was a case about proprietary estoppel.)

Waters v. Welsh Development Agency [2004] 1 WLR 1304: compulsory purchase: this case established the modern principles applicable to identifying "the scheme" for the purposes of applying the *Point Gourde* principle.

Court of Appeal:

Cardtronics Europe Ltd v. Sykes [2019] 1 WLR 2281: rating: see above.

Jones v. Oven [2018 All ER(D) 65: real property: interpretation of covenant.

Dudley Muslim Association v. Dudley MBC [2016] 1 P&CR 10: public law and real property: this case concerned the relationship between public law concepts and ordinary contract law.

Swift 1st Ltd v. Chief Land Registrar [2015] Ch 602: real property: this case concerned the fraud/forgery provisions of the Land Registration Act 2002.

Beech v. Kennerley [2012] 9 EG 150: real property: easements.

Rota Milton Keynes Council v. Secretary of State for Communities & Local Government [2012] JPL 728: public law: this case concerned the law of legitimate expectations.

(Older cases of importance in their fields:

Real estate: *Silkstone v. Tatnall* [2012] 1 WLR 400, *Franks v. Bedward* [2012] 1 WLR 2428, *Batsford Estates (1983) Co Ltd v. Taylor* [2006] 2 P&CR 5, *Starmark Enterprises v. CPL Distribution Ltd* [2002] Ch 306.

Rating: *Bradford (VO) v. Vtesse Networks Ltd* [2010] RA 69,

Planning/ minerals: *Rota Bleaklow Industries Ltd v. SSCLG* [2009] 2 P&CR 21)

High Court:

Rota Principled Offsite Logistics Ltd v. Trafford Council [2018] RA 499: rating: Tim acted on behalf of a rates mitigation business in this case which vindicates its scheme for the mitigation of empty rates.

Upper Tribunal:

Harding v. Secretary of State for Transport [2017] RA 271: compulsory purchase: whether the “hereditament” covered by the blight provisions included both elements of a property used for equestrian purposes even though separated by a road.

Clients

Tim’s clients include major landholdings, large commercial organisations, supermarket operators and other retailers, branches of the central government, governmental and quasi-governmental agencies, banks, pension funds, charities, local authorities and statutory bodies, as well as private individuals and companies.

Property Law

Most of Tim’s work concerns land and he has a substantial “classic” Chancery and property law practice including: proprietary estoppel, fraud and constructive trusts, mortgages, land registration, commercial landlord and tenant litigation and arbitration (including rent review, business tenancy renewals, insolvency issues and dilapidations), overage agreements, disputed contracts for the sale of land, interpretation & rectification of development agreements other documents, restrictive covenants (including applications to the Lands Tribunal to modify or discharge restrictive covenants to enable residential and commercial development to proceed), easements, nuisance, trespass, adverse possession and disputed wayleave agreements both for and against statutory undertakers.

Valuation

Tim’s work often brings him into contact with valuation questions, and not only in relation to rent review and dilapidations cases. He has appeared frequently in the Lands Tribunal in valuation cases.

Compulsory Purchase and Compensation

Tim has advised and acted for a variety of clients in relation to HS2, Crossrail, the Olympic CPO, the Channel Tunnel Rail Link CPO, the Bedford Bypass CPO, the Clapham Bypass CPO and other highway schemes; and in relation to the compensation payable under such schemes.

Rates

Tim’s property practice extends into the law of rates and he has appeared frequently for HM Revenues & Customs as well as for ratepayers in a large number of the leading cases in this field.

Highways and town and village greens

Tim also has extensive experience of the law of highways and town and village greens, as well as planning law and other more-or-less public law related aspects of land law. He has appeared as counsel at inquiries and in statutory appeals/ judicial reviews of decisions in these fields. he has also sat as a village green inspector.

Public and Planning Law

Tim also has considerable public law experience outside the property field, partly but not wholly in the planning field. He is now frequently instructed to advise and appear in cases involving elements of both property and public law, including for example: vires questions arising in connection with land transactions by or with public bodies, human rights issues relating to the use and occupation of land and interference with title.

Property

“Classic” property law and Chancery cases

- *Knights Construction (March) Limited v (1) Roberto Mac Limited (2) Chief Land Registrar* [2011] EWLandRA 2009-1459. Tim was instructed by the Chief Land Registrar in this intervention before the Adjudicator the HM Land Registry in a test

case to establish the scope of the jurisdiction to rectify the register for mistake under the Land Registration Act 2002.

- *Pick v Chief Land Registrar* [2011] EWHC 206 (Ch). Another instruction from the Chief Land Registrar who this time argued successfully that title of a trustee in bankruptcy is void against a disponee of registered land unless the bankruptcy petition / order is protected at the date of disposition, even if the petition / order is protected at the date when the transfer to the disponee falls to be registered.
- *Clarke & Anor v Corless & Anor* [2010] EWCA Civ 338, [2010] WTLR 751. Tim was instructed in this witness action in the High Court and in the appeal to the Court of Appeal by the successful Defendant about an alleged constructive trust under the *Pallant v. Morgan* doctrine.
- *Diep v Land Registry* [2010] EWHC 3315 (Admin). Tim was instructed by the Chief Land Registrar in this case concerning the Registrar's power to register with possessory rather than absolute title.
- *Capron v Governor of Turks and Caicos Islands* (Privy Council, [2010] UKPC 2). Tim was instructed by the Governor and Government of Turks and Caicos Islands, who succeeded in the Privy Council in this appeal concerning an alleged contract for the sale of Crown land and alleged proprietary estoppel.
- *Yeoman's Row Management Limited v. Cobbe* (House of Lords, [2008] 1 WLR 1752, with Nicholas Dowding, QC). Tim was instructed by the appellant in this successful appeal to the House of Lords. This is now one of the leading modern cases on proprietary estoppel, including its relationship with constructive trusts.
- *Chartbrook Limited v. Persimmon Homes Limited* (House of Lords, [2009] EWHL 267; [2009] 3 WLR 267, with Robert Miles, QC). This case has clarified the law in several respects, including the rule in *Prenn v. Simmonds* excluding evidence of negotiations as an aid to interpretation and the basis on which the Court orders rectification.
- *Cain, Re Waverley Lodge* [2009] UKUT 212 (LC). Tim appeared in the Lands Tribunal for the applicant under section 84 of the Law of Property Act 1925, who successfully obtained a modification of restrictive covenants to enable the construction of multiple dwelling-houses, without payment of any compensation to the objectors.
- *Seymour Road (Southampton) Ltd v Williams & Ors* [2010] EWHC 111 (Ch). Tim obtained a declaration from the High Court under section 84 of the Law of Property Act 1925, indicating that development land had ceased to be affected by restrictive covenants.

Compulsory purchase/ Compensation/ Valuation/ Rates

- *Bradford (Valuation Officer) v Vtesse Networks Ltd* [2010] EWCA Civ 16; [2010] RA 69. Tim appeared in the Lands Tribunal and in the Court of Appeal for the Valuation Officer in a successful appeal establishing the basis for valuing Vtesse's network of fibre-optic cable in rates.
- *Allen (VO) v. English Sports Council* [2009] UKUT 187 (LC); [2009] RA 289. Tim appeared for the Valuation Officer in a successful appeal establishing that grant should not be taken into account in assessing rateable value.
- *Selfridges Ltd v Humphries (Valuation Officer)* [2009] UKUT 296 (LC); [2010] RA 260 (with David Holgate, QC). Tim was instructed by the ratepayer in this appeal concerning the rateable value of this Oxford Street department store.
- *Persimmon Homes (Midlands) Ltd & Ors v Secretary of State for Transport* [2010] EWCA Civ 474; [2010] RVR 122 and [2009] UKUT 126; [2010] RVR 11 - Tim acted for the acquiring authority in this case which settled in the Court of Appeal with the claimant accepting "nil" compensation.
- *Waters v. WDA* [2004] 1 WLR 1304 (with David Holgate, QC). This case in the House of Lords is the leading modern authority on the *Pointe Gourde* principle.
- *Orange PCS Ltd v. Bradford (Valuation Officer)* [2004] EWCA Civ 155; [2004] 2 All ER 651; [2004] RA 61; (2004) 101(8) LSG 31; (2004) 148 SJLB 236; [2004] NPC 22; Times, February 20, 2004; Independent, February 26, 2004. Tim appeared at first instance and the Court of Appeal in this case re-establishing some of the main principles underlying rating valuations.

Highways and town & village greens

- *Re: Wood Lane, Louth* (letter of recommendation, January 2008) (non-statutory village green inquiry concerning the question whether a public authority with a duty to admit the public could be said to have acquiesced in the use of land by the public "as of right", in which Tim sat as the inspector)
- *Rota Hertfordshire CC v. DEFRA* [2006] EWCA Civ 1718; [2007] JPL 1207; [2007] 1 EG 93 (CS); [2006] NPC 133; Times, January 12, 2007 (concerning important limits on the use of the various powers in the Highways Act 1980 for re-configuring local footpath and bridleway networks)

Public and Planning Law

- *Robert Hitchins Ltd v Secretary of State for Communities and Local Government & Anor* [2010] EWHC 1157 (Admin). Tim

acted for the Secretary of State who successfully resisted this developer's challenge and established that it is lawful for the Secretary of State to judge the "viability" of affordable housing by reference to the possibility of better economic conditions in the future.

- *Bleaklow Industries Ltd v. Secretary of State* [2009] EWCA (Civ) 206; [2009] 2 P&CR 21; [2009] JPL 1477; [2009] NPC 46. This case concerned the interpretation of minerals permissions and, particularly, the expression "winning and working". The trial judge had given the expression a wide meaning which, on the facts, enabled Bleaklow to extract large amounts of limestone from a national park, to the significant harm of the landscape. Tim (who did not appear below) acted on behalf of the Secretary of State on the appeal, arguing that the expression had an established meaning which, on the facts, prevented such activities. This was accepted and the appeal was allowed.
- *Hammerton v. Ministry of Justice* [2009] EWHC 1423 (Blake J). Whether unfair trial in breach of Article 6 automatically indicates unlawful detention contrary to Article 5, so producing a right to damages; whether damages available at common law or under Article 5 following claimant's imprisonment for contempt later overturned on appeal. Tim appeared for the Ministry of Justice, successfully resisting all parts of the claim.
- *R (H) v Secretary of State for Health* [2005] UKHL 60; [2006] 1 AC 441; [2005] 3 WLR 867 (with Philip Sales). Human Rights Act 1998; Article 5 of the Convention.
- *Sloam v Adjudication Panel* [2005] EWHC 124 (Admin) Regulation of conduct in local authorities.
- With David Elvin QC he was instructed as amicus at first instance in *Rowland v. Environment Agency* [2003] Ch 581 — which, with the later decision in the Court of Appeal, is one of the leading cases on legitimate expectations.

Qualifications

Tim is a graduate of Pembroke College, Oxford. He studied law at the City University. He was the winner for his year of the Inns of Court Mooting Competition and of the Everard ver Heyden Foundation Advocacy Prize and was awarded several scholarships by Lincoln's Inn. He has contributed to Halsbury's Laws of England Open Spaces and Monuments; to Hill & Redman's Law of Landlord and Tenant; and to Jacob's Court Precedents. He is also a qualified ADR Group Accredited Mediator.

Recommendations

For many years Tim has been recognised in the leading UK legal directories, including the 2018 editions of *Chambers & Partners* and *Legal 500* "A phenomenal barrister in whatever he does." "Perfectly suited to highly complex, technical cases." "Technically very able and produces excellent written work."

Other recent descriptions of Tim include:

"an excellent advocate who really understands the subject matter." "He's extremely bright, picks up complex matters quickly and his advocacy is brilliant. He is terrier like in drilling down to the detail, especially in cross examinations" (*Chambers & Partners* 2018)

"Extremely clever and very quick. You ring him and within two hours you get back accurate written advice. He is very good on his feet too, with great communication skills" (*Chambers & Partners* 2017)

"he's rigorous and clever and he's got a very nice style orally - he's a very effective advocate" (*Legal 500* 2017)

"his ability to digest complex situations and quickly get to the heart of a case is very impressive", "He is very persuasive and argues his case very well", "He is thorough, diligent and very accessible. He is also very steeped in his subject" (*Chambers & Partners* 2015)

"His ability to digest complex situations and quickly get to the heart of a case is very impressive", "He is just viciously intelligent and extremely reliable" "He's incredibly clever and terrier-like in court" (*Chambers & Partners* 2015)

"Terrifically clever and a great advocate - definitely a "big picture" silk" (*Legal 500* 2015).

A phenomenal barrister in whatever he does... perfectly suited to highly complex, technical cases.

Chambers & Partners

Cases

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|-------------|--|
| 04 Aug 2017 | Southwark LBC v Transport for London [2018] P.T.S.R. 333 |
| 23 Nov 2016 | Iceland Foods Ltd v Jane A Berry [2016] EWCA Civ 1150 |
| 01 Dec 2015 | London Borough of Southwark v Transport for London [2015] EWHC 3448 (Ch) |
| 05 Nov 2015 | Dudley Muslim Association v Dudley Metropolitan Borough Council [2015] EWCA Civ 1123 |
| 29 Jul 2015 | Woolway v Mazars [2015] UKSC 53 |
| 10 Jun 2015 | Arnold v Britton & Ors [2015] UKSC 36 |
| 18 Feb 2015 | London Borough of Southwark & City of London Corporation v Transport for London [2015] EWHC 383 (Ch) |
| 13 Feb 2015 | Hardman v British Gas Trading Ltd [2015] UKUT 53 (LC) |
| 13 Jun 2014 | Wheeler v Norfolk CC [2014] EWHC 2232 (Admin) |
| 16 Mar 2012 | R (Midlands Co-Operative Society Ltd) v Birmingham City Council & Tesco Stores Ltd. [2012] Eu L.R. 640 |
| 09 Feb 2011 | Knights Construction (March) Limited v (1) Roberto Mac Limited (2) Chief Land Registrar [2011] EWLandRA 2009-1459 |
| 01 Jan 2011 | Pick v Chief Land Registrar [2011] EWHC 206 (Ch) |
| 03 Dec 2010 | Diep v Land Registry [2010] EWHC 3315 (Admin) |
| 27 May 2010 | Robert Hitchens Ltd v Secretary of State for Communities and Local Government & Anor [2010] EWHC 1157 (Admin) |
| 31 Mar 2010 | Clarke & Anor v Corless & Anor [2010] EWCA Civ 338, [2010] WTLR 751 |
| 28 Jan 2010 | Bradford (VO) v Vtesse Networks Ltd [2010] EWCA Civ 16; [2010] RA 69. |
| 28 Jan 2010 | Bradford (Valuation Officer) v Vtesse Networks Ltd [2010] EWCA Civ 16; [2010] RA 69 |
| 27 Jan 2010 | Persimmon Homes (Midlands) Ltd & Ors v Secretary of State for Transport [2010] EWCA Civ 474; [2010] RVR 122 and [2009] UKUT 126; [2010] RVR 11 |
| 21 Jan 2010 | Capron v. Governor of Turks and Caicos Islands (Privy Council, [2010] UKPC 2) |
| 21 Jan 2010 | Seymour Road (Southampton) Ltd v Williams & Ors [2010] EWHC 111 (Ch) |
| 24 Nov 2009 | Cain, Re Waverley Lodge [2009] UKUT 212 (LC) |
| 18 Mar 2009 | Bleaklow Industries Ltd v. Secretary of State [2009] EWCA (Civ) 206; [2009] 2 P&CR 21; [2009] JPL 1477; [2009] NPC 46 |
| 01 Jan 2009 | Selfridges Ltd v Humphries (Valuation Officer) [2009] UKUT 296 (LC); [2010] RA 260 |
| 01 Jan 2009 | Hammerton v. Ministry of Justice [2009] EWHC 1423 (Blake J) |
| 30 Jul 2008 | Yeoman's Row Management Ltd v Cobbe [2008] UKHL 55 |
| 18 Jul 2008 | Odogwu v. Chief Land Registrar [2008] EWHC 3565 |

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| 01 Jan 2008 | Vtesse Networks Ltd v. Bradford [2006] EWCA Civ 1339; [2006] RA 427; [2006] 43 EG 179 (C.S.); (2006) 103(42) LSG 33; [2006] NPC 110 |
| 01 Jan 2008 | Re: Wood Lane, Louth (letter of recommendation, January 2008) |
| 12 Jan 2007 | Rota Hertfordshire CC v. DEFRA [2006] EWCA Civ 1718; [2007] JPL 1207; [2007] 1 EG 93 (CS); [2006] NPC 133 |
| 01 Jan 2007 | Chartbrook Ltd v. Persimmon Homes Ltd [2007] EWHC 409 (Ch); [2007] 1 All ER (Comm) 1083; [2007] 2 P&CR 9; [2007] 11 EG 160 (C.S.) |
| 19 Oct 2006 | London Mayor Ken Livingstone wins appeal against suspension |
| 04 Oct 2006 | Ken Livingstone (Mayor of London) v Kingston (Ethical Standards Officer) |
| 04 Apr 2006 | Beasley v. Munt [2006] EWCA Civ 370 |
| 24 Feb 2006 | Kingston (Ethical Standards Officer) v. Livingstone (Mayor of London) |
| 24 Oct 2005 | R (H) v Secretary of State for Health [2005] UKHL 60; [2006] 1 AC 441; [2005] 3 WLR 867 |
| 14 Jul 2005 | Legends Surf Shops Plc (In Administrative Receivership) v Sun Life Assurance Society Plc |
| 29 Apr 2005 | Batsford Estates (1983) Co Ltd v Taylor |
| 01 Jan 2005 | Abbey National Plc v O'Hara |
| 01 Jan 2005 | Simmons v. First Secretary of State |
| 01 Jan 2005 | Todd v Secretary of State for the Environment, Food and Rural Affairs |
| 01 Jan 2005 | R (H) v. Secretary of State for Health |
| 01 Jan 2005 | R (on the application of Hertfordshire County Council) v Secretary of State for Environment, Food and Rural Affairs |
| 01 Jan 2005 | Sloam v Adjudication Panel [2005] EWHC 124 (Admin) |
| 29 Apr 2004 | Waters v. Welsh Development Agency |
| 01 Jan 2004 | Bishopsgate Foundation v. Curtis |
| 01 Jan 2004 | South Tyneside Borough Council v Wickes Building Supplies Ltd |
| 01 Jan 2004 | Orange PCS Ltd v Bradford (VO) |
| 01 Jan 2004 | R (MH) v SSH |
| 31 Dec 2003 | Burrows v. SSETR |
| 01 Jan 2003 | Rowland v. Environment Agency |
| 01 Jan 2002 | Kingsalton Ltd. v. Thames Water Developments |
| 01 Jan 2002 | Newman (Inspector of Taxes) v. Hatt |
| 01 Jan 2002 | R (Corus UK Ltd) v. Valuation Office Agency [2001] EWHC Admin 1108 |
| 01 Jan 2002 | Henry Boot Homes Ltd v. Bassetlaw D.C. |

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| 01 Jan 2001 | Stapel v. Bellshore Property Investments Ltd |
| 01 Jan 2001 | Starmark Enterprises Ltd v CPL Distribution Ltd |
| 01 Jan 2001 | Hattingh v Secretary of State for the Environment, Transport and the Regions |
| 01 Jan 2001 | R (Persimmon Homes (Thames Valley) Ltd) v. North Hertfordshire DC |
| 01 Jan 2000 | Bellow Properties Ltd v. Trinity College Cambridge |
| 01 Jan 2000 | Frogmore Developments Ltd v Shirayama Shokusan |
| 01 Jan 2000 | Frogmore Developments Ltd. v. Shirayama Shokusan Co. Ltd. |
| 01 Jan 1999 | Green v. Turner |
| 01 Jan 1998 | Woodridge Ltd v Downie |
| 01 Jan 1970 | Allen (VO) v. English Sports Council [2009] UKUT 187 (LC); [2009] RA 289 |

Inquiries

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|-------------|-------------------------|
| 01 Nov 2007 | Village green inspector |
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Publications

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|-------------|---|
| 11 Apr 2019 | Avoidance |
| 29 Apr 2015 | Fraud and the Land Registration Act 2002 |
| 15 Apr 2015 | The extent of the the hereditament: Woolway and the rating hypothesis |
| 02 Apr 2014 | Identifying the hereditament - Woolway and other cases |
| 03 Feb 2012 | Let there be (some) light |

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