



Tom Weekes QC

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Expertise

Property

Overview

Tom is a property law specialist. He has a court-based practice focused on real estate disputes and commercial landlord and tenant litigation.

Before being appointed as Queen's Counsel (in 2016), Tom was named Real Estate Junior of the Year at the Chambers UK Bar Awards 2014. He has represented clients in all courts and tribunals determining property disputes (including the Supreme Court, Privy Council, the Court of Appeal (on many occasions) and the Upper Tribunal). Recommendations in the legal directories have

included:

- “He is clear, helpful and excellent on his feet. He presents things step by step and lays it out really well.” “He is a leading specialist in restrictive covenants and he is user-friendly and very bright.” (Chambers & Partners, 2022)
- “Tom is a team player who goes the extra mile for clients.” (Legal 500, 2022)
- “His pleadings are always incredibly well structured and forceful.” (Legal 500, 2021)
- “Tom is ultra-reliable and gives prompt, focussed and intelligent advice” (Chambers & Partners, 2021)
- “Carving out a name as the primus inter pares for property development disputes” (Legal 500, 2020)
- “He is brilliant – very reactive, straightforward, practical and commercial” (Chambers & Partners, 2020)
- “Really gets to grips with a case and delivers highly effective advocacy” (Chambers & Partners, 2019)
- “Peerless in his breadth of knowledge” (Legal 500, 2017)
- “Excellent in every regard, user-friendly [and] knowledgeable” (Chambers & Partners, 2016)
- “His lateral thinking brings positive outcomes” (Chambers & Partners, 2015)
- “Incredibly able...his performance in court is particularly impressive” (Legal 500, 2014)
- “Extremely able advocate” (Legal 500, 2014)
- “No unnecessary posturing” (Chambers & Partners, 2013)
- “gets great results” (Legal 500, 2011)

Tom has extensive experience acting in disputes about developments. He advises developers at an early stage about the best strategy for developing land burdened by covenants or easements. Tom has appeared in leading cases about the enforceability and interpretation of covenants; he has acted many times for applicants or objectors on applications under s.84(1) of the *Law of Property Act 1925* for the discharge or modification of covenants; and he has appeared in cases challenging refusals of consent for developments. As the co-author of *Rights of Light: The Modern Law* (Jordans, 2015, 3rd ed), he offers specialist advice and representation in rights of light cases. Tom has also appeared in cases about whether developers have succeeded in exploiting perceived drafting loopholes to avoid paying overage and in disputes about options and conditional contracts.

Tom regularly acts in land ownership disputes, which have included leading Court of Appeal authorities about adverse possession and land registration.

In the field of commercial landlord and tenant litigation, Tom acts in (contested and non-contested) lease renewals and in litigation about forfeiture, dilapidations, rent reviews and consents. He has represented clients in many cases about whether tenants have satisfied break conditions (including vacant possession and payment conditions). As the author of *Property Notices* (LexisNexis, 2021, 3rd ed), he has acted in many cases about the validity of break notices (and other notices), including Court of Appeal cases about whether a permissible method of service has been adopted.

Tom’s recent cases include *Bath Rugby Ltd v Greenwood* [2021] EWCA Civ 1927 (acting for Bath Rugby in a leading Court of Appeal authority about the annexation of the benefit of restrictive covenants to land which established that Bath Rugby’s ground at the Rec is not subject to restrictive covenants that might have impeded the proposed construction of a new stadium); *Fearn v Tate Board of Trustees* [2020] Ch 621 (representing leaseholders on a Supreme Court appeal in a leading case about whether observation from a viewing gallery into neighbouring flats is a nuisance); *Hampstead Garden Suburb v Zakaim* (2020) (successfully representing Hampstead Garden Suburb Trust establishing that it had not unreasonably refused consent for a development under an estate management scheme); *Nathwani v Kivlehan* [2021] UKUT 84 (LC) and *Blue Angel Properties Ltd v Jenner* [2020] UKUT 360 (LC) (applications under s.84(1) of the LPA 1925 to modify covenants to permit developments); *Bella Italia Restaurants Ltd v Stane Park Ltd* [2019] EWHC 2747 (Ch) (whether a contractual obligation to grant a lease can be performed by procuring the grant of the lease by someone else); and *Knight v Goulandris* [2018] 1 WLR 3345 (a Court of Appeal authority about service by email).

Tom accepts instructions under the Public Access Scheme and he is a qualified mediator.

Adverse possession

Tom has appeared in adverse possession cases before a solicitor to HM Land Registry adjudicators and in the County Court, the High Court (Chancery Division and Queen’s Bench Divisions) and the Court of Appeal. He has successfully represented paper title owners and squatters. In the leading case of *Baxter v Mannion* [2011] 1 WLR 1965 he acted for a paper title owner who had missed the deadline for objecting to an application by an alleged squatter to be registered as the freeholder leading to the registration of the alleged squatter as the freeholder. The Court of Appeal held that the paper title owner was nevertheless entitled to be reinstated as the registered freeholder. In *Nata Lee Ltd v Abid* [2015] 2 P&CR 3, again acting for the paper title owner, Tom succeeded in the Court of Appeal in establishing that the trial judge had misapplied the law when holding that title to land had been acquired by adverse possession. In *Wretham v Ross* [2006] 1 P&CR 1259, an appeal to the Chancery Division, Tom successfully appeared for a squatter.

Break clauses

Tom has acted in many break clauses disputes. As the author of *Property Notices* (Jordans, 2015, 3rd ed), he is often instructed in cases turning on whether a break notice is invalidated by a supposed defect in the content of the notice or whether it has been properly served (including recently for LSE). Tom is also frequently instructed in disputes about whether break conditions have been satisfied (e.g. conditions requiring a tenant to give vacant possession, to pay any outstanding rent or to comply with repair covenants (including recently for Bournemouth University)). In *MW Trustees Ltd v Telular Corp* [2011] L&TR 19, he obtained a finding that a landlord had waived defects in a break notice by “accepting” the notice. And he appeared in *Siemens Hearing Instruments Ltd v Friends Life Ltd* [2015] 1 All ER (Comm) 1068, a leading Court of Appeal authority about the need for strict compliance with break conditions.

Conditional contracts, options and overage

Tom is often instructed in litigation about conditional contracts, options and overage. He acts for several of the major housebuilders. On two occasions, he has successfully acted for sellers of development sites in preventing developers avoiding paying overage in reliance on perceived loopholes in the drafting of overage provisions. In *Sparks v Biden* [2017] EWHC 1994 (Ch), in which overage was payable on the “sale” of the houses (defined as being a sale of the freehold or the grant of a long lease), the Court implied a term into the agreement requiring the developer had to “sell” the houses within a reasonable time (rather than let the houses under ASTs). In *Renewal v Lowry* [2010] EWHC 290 (Ch), in which the “trigger” for the calculation and payment of overage was the sale of the last house on a development, the Court implied term requiring the purchaser to complete and sell the houses as soon as reasonably practicable.

Constructive trusts, resulting trusts and proprietary estoppels

Tom has often been instructed in disputes about the beneficial ownership of property and raising proprietary estoppel claims. In *Hermesen Wilkinson v Hermesen* (2015) he succeeded for a mother in a hotly-contested dispute with her daughter over the beneficial ownership of flat in Kensington. In *HSBC Bank Plc v Dyche* [2010] BPIR 138 he obtained a finding that a father had retained the beneficial ownership of his house after transferring the house to his daughter to enable her to obtain a mortgage and that his beneficial interest had priority to that mortgage. In *Young v Lauretani* [2007] 2 FLR 1211 Tom successfully acted in a dispute over the beneficial interest between former boyfriend and girlfriend.

Conveyancing and land registration

Tom has acted in cases in which parties have attempted to avoid liability under contracts of sale by relying on such things as alleged pre- contract misrepresentations, non-compliance with conditions precedent and breaches of other contractual terms: Including *Bella Italia Restaurants Ltd v Stane Park Ltd* [2019] EWHC 2747 (Ch) (whether a contractual obligation to grant a lease can be performed by procuring the grant of a lease by someone else); *Chinnock v Hocaoglu* [2008] 29 EG 92 and *Wyche v Singla Properties Ltd* (2011). In *Mann & Mann v Cooper* the issue was whether a firm of solicitors had been authorized to enter into a contract of sale on behalf of purchasers. Other cases have concerned the circumstances in which land registers can be altered on the ground of “mistake”: including *Quinto v Santiago Castillo Ltd* [2009] UKPC 15 (a Privy Council appeal in which the issue was whether an original owner was entitled to be reinstated as the registered proprietor following a transfer from a fraudster) and *Baxter v Mannion* [2011] 1 WLR 1594 (a leading Court of Appeal authority concerning the circumstances in which HM Land Register can be altered). In *Starham Ltd v Greene King Pubs Ltd* [2017] 9 WLUK 422 the issue was whether a nineteenth century conveyance had created a licence or easement.

Dilapidations

Tom has represented landlords and tenants in disrepair cases concerning all kinds of properties (including offices, warehouses, farm buildings, hotels, pubs, factories, conduits and residential houses). Most have been terminal dilapidations claims. However, he has also acted on cases in seeking orders for specific performance of repair obligations during the term.

Easements (including rights of light)

As the co-author of *Rights of Light: The Modern Law* (2015, 3rd edition), Tom has acted on many rights of light cases. He frequently advises on the interpretation of rights of light deeds; he has acted in cases concerning whether rights of light have been extinguished or breached; and he acted for a housebuilder in a negligence action against a firm of rights of light surveyors. In *Pavledes v Hadjisavva* [2013] 2 EGLR 123 David Richards J gave guidance about the availability of declaratory relief in respect of a development that would infringe a neighbour's rights of light. In *Jones v Cleanthi* [2007] 1 WLR 1604 the Court of Appeal gave guidance about the circumstances in which an easement can be extinguished by statutory implication.

Estate Management Schemes

Tom has acted for many of the estates with estate management schemes created under the *Leasehold Reform Act 1967* or the *Leasehold Reform, Housing and Urban Development Act 1993*. He represented Hampstead Garden Suburb Trust in the Court of Appeal in *Re Zenios* [2011] EWCA Civ 1645 which concerned the interaction between the planning system and an estate management scheme, and, in the leading case of *Shebelle Enterprises Ltd v Hampstead Garden Suburb Trust Ltd* [2014] 2 P&CR 6, he succeeded in the Court of Appeal in establishing that, when determining an application under an estate management scheme, an estate enjoyed a statutory defence to a claim that it was liable to a tenant affected by the proposed development under the covenant of quiet enjoyment. Tom is currently acting for an estate seeking to vary an estate management scheme.

European Convention and the exercise of statutory powers

Several of Tom's cases have raised issues under the European Convention or concerning the relationship between statutory powers and property rights. In the leading case of *Pirabakaran v Patel* [2006] 1 WLR 3112 the Court of Appeal held that Art 8 required s.2 of the *Protection from Eviction Act 1977* to be interpreted as prohibiting the forfeiture by peaceable re-entry of mixed commercial/residential properties. In *Baxter v Mannion* [2011] 1 WLR 1594 the Court of Appeal held that A1P1 required the provisions of the *Land Registration Act 2002* relating to adverse possession to be interpreted so as to enable a registered proprietor to apply to rectify the register on the ground of mistake if he has lost his land to a supposed squatter who, in fact, was never in possession. In *Jones v Cleanthi* [2007] 1 WLR 1604 the Court of Appeal held that statutory authority was a defence to claim alleging an infringement of a right of way. In *Cusack v Harrow* [2013] 1 WLR 2022 the Supreme Court held that A1P1 was not infringed by a highway authority's obstruction of a frontager's access to the highway and that the authority was entitled to choose to exercise a power under which compensation was payable rather than a power under which no compensation was payable. In *Shebelle Enterprises Ltd v Hampstead Garden Suburb Trust* [2014] 2 P&CR 6 the Court of Appeal held that the bona fide exercise of powers under an estate management scheme was a defence to an action for breach of the covenant for quiet enjoyment in lease. And, in *Fearn v Tate Board of Trustees* [2020] Ch 621, the issue is whether Art 8 requires the law of nuisance to provide a remedy for observation from a viewing gallery.

Forfeiture

Tom has acted in numerous forfeiture claims for both landlords and tenants. In the leading case of *Pirabakaran v Patel* [2006] 1 WLR 3112, the Court of Appeal held that landlords were not entitled to forfeit leases of mixed-use premises by peaceable re-entry. In *Scribes West Ltd v Relsa Anstalt (No.3)* [2005] 1 WLR 1847 the issue was whether a purchaser of the reversion could forfeit a lease during the "registration gap".

Guarantees

Tom has represented both landlords and tenants in claims in which a landlord has sought to recover the rent under a guarantee. In some of those cases, the issue has been whether the tenant has escaped liability arising from a variation of the lease. In other cases, Tom has acted for landlords faced with a tenant's claim that his signature appearing on a guarantee was forged.

Lease renewals

Tom has appeared in many unopposed lease renewals relating to leases all kinds of premises (including retail units, warehouses and offices). And he has appeared in opposed lease renewals in which the landlord has opposed a new lease under all of the grounds in s.30(1) of Part II of the *Landlord and Tenant Act 1954* (including, on many occasions, grounds (f) and (g)). He has also acted in cases dealing with the quantification of statutory compensation.

Mortgages and charges

Tom appeared in the Court of Appeal in *Tomkins v Bristol & West Investments* [2006] EWCA 977 on an appeal from a committal order made against a mortgagor who had failed to comply with an injunction obtained by the mortgagee. In *HSBC v Collelldevall* [2010] 1 P&CR 4 the issue was whether an occupier's beneficial interest under a constructive trust was an overriding interest, and, if so, whether that interest had been overreached by the creation of a mortgage. *Garwood v Bank of Scotland* [2013] BPIR 450 raised the issue of whether a mortgagee was entitled to set aside a discharge of a mortgage on the ground of mistake.

Notices

As the author of *Property Notices* (Jordans, 2011, 2nd ed), Tom is regularly instructed in cases relating to the validity of notices. He appeared in *Tadema Holdings v Ferguson* [2000] 32 HLR 866 (service on someone mentally incapable of understanding the notice), *Lancecrest Ltd v Asiwaju* [2005] 1 EGLR 40 (subsequent conduct inadmissible for the purposes of interpreting a notice), *MW Trustees v Telular* [2011] L&TR 19 (Ch) (waiver by landlord of defective service), *Freetown v Assethold* [2013] 1 WLR 701 (statutory provisions permitting the service of notices and other documents by post) and *Knight v Goulandris* [2018] 1 WLR 3345 (service by email).

Nuisance

Tom has acted in many nuisance cases, concerning such things as fires, floods, dust, noise and animals. In *Fearn v Tate Board of Trustees* [2020] Ch 621 the issue is whether observation from a viewing platform is capable of being a nuisance.

Party walls

Tom has appeared in several leading party wall cases. In *Freetown v Assethold* [2013] 1 WLR 7012 the Court of Appeal held that the time for appealing against a party wall award ran, not from the date on which the award was dispatched into the post, but from the date on which the award was delivered (or deemed to have been delivered). In *Knight v Goulandris* [2018] 1 WLR 334 the Court of Appeal held that, even before the amendment to s.15 of the Party Wall etc. Act 1996 which expressly permitted service of documents by email, it was possible to serve documents by email. In *Mustapha v Zafrani* (2013) Ramsay J held that, even after the time for appealing had expired, the Court had jurisdiction to substitute the correct respondent to an appeal from a party wall award in place of a wrongly-named respondent.

Professional negligence

Tom has acted in many property-related professional negligence disputes. He represented Berkeley Homes in a negligence claim against a right of light surveyor concerning advice given by that surveyor about a substantial development in the City of London. He has acted on claims arising from negligently-drafted overage provisions. And he has acted in several claims against solicitors arising from a negligent failure to serve valid break notices.

Rent reviews

Tom has appeared in many rent review cases. In *Lancecrest Ltd v Asiwaju* [2005] L&TR 22 he established in the Court of Appeal that a rent review notice served after the deadline in the lease was valid. Recently, he has acted in several cases in which the index-linking of the rent in leases of solar parks appeared to require, on each rent review, for the rent to be increased by the full

amount by which the inflation had increased since the commencement of the term.

Restrictive covenants

Tom is regularly instructed in litigation about the interpretation of restrictive covenants and concerning who, if anyone, has the benefit of restrictive covenants. In *Bath Rugby Ltd v Greenwood* [2021] EWCA Civ 1927 he successfully represented Bath Rugby in a leading Court of Appeal authority about the annexation of the benefit of covenants to land which established that Bath Rugby's stadium at the Rec in Bath is not subject to restrictive covenants that might have impeded the construction of a new stadium on the same site. He has appeared in many contested applications to the Upper Tribunal to modify or discharge restrictive covenants under section 84(1)(a), (aa), (b) and (c) of the *Law of Property Act 1925*: including *Re Clearwater Properties Ltd* [2013] UKUT 0210 (LC), *Re Stanborough's Application* [2012] UKUT 21 (LC), *Re Zenios* [2011] EWCA Civ 1645 (CA), *Re Surana's Application* [2016] UKUT 368 (LC), *Re University of Chester's Application* [2016] UKUT 457 (LC), *Re Falmouth Dock* [2017] UKUT 430 (LC), *Re Theodossiades' Application* [2017] UKUT 0461, *Blue Angel Properties Ltd v Jenner* [2020] UKUT 360 (UT) and *Nathwani v Kivlehan* [2021] UKUT 84 (LC). In *Dennis v Davies* [2010] 1 EGLR 81 Court of Appeal held that a restrictive covenant prohibiting causing a "nuisance or annoyance" could be breached by an extension to a house which blocked an attractive view of a river.

Qualifications

Tom graduated from New College, Oxford in 1992 with a First-Class Honours degree in Politics, Philosophy and Economics. He taught economics for a year at Winchester College before studying law at City University. Tom was awarded scholarships by New College, City University and the Inner Temple.

Incredibly able... his performance in court is particularly impressive

Legal 500

Cases

21 Dec 2021	<i>Bath Rugby Ltd v Greenwood</i> [2021] EWCA Civ 1927
07 Dec 2021	<i>Fearn v Tate Board of Trustees</i> [2020] EWCA Civ 104
22 Apr 2021	<i>Nathwani v Kivlehan</i> [2021] UKUT 84 (LC)
18 Dec 2020	<i>Blue Angel Properties Ltd v Jenner</i> [2020] UKUT 360 (LC)
09 Oct 2019	<i>Bella Italia Restaurants v Stane Park Ltd</i> [2019] EWHC (Ch)
20 Feb 2018	<i>Knight v Goulandris</i> [2018] 1 WLR 3345
19 Feb 2018	<i>Theodossiades' Application, Re</i> [2017] UKUT 430 (LC)
23 Nov 2017	<i>Re Falmouth Dockyard</i> [2017] UKUT 430 (LC)
03 Aug 2017	<i>Sparks v Biden</i> [2017] EWHC 1994 (Ch)
18 Oct 2016	<i>Re University of Chester's Application</i> [2016] UKUT 457 (LC)
30 Aug 2016	<i>Re Surana's Application</i> [2016] UKUT 368 (LC)

30 Nov 2015	Hermsen-Wilkinson v Hermsen (2015)
04 Dec 2014	Nata Lee Ltd v Abid [2015] 2 P&CR 3
03 Apr 2014	Siemens Hearing Instruments Ltd v Friends Life Ltd [2015] 1 All ER (Comm) 1068
25 Mar 2014	Shebelle Enterprises Ltd v Hampstead Garden Suburb Trust Ltd [2014] 2 P&CR 6
19 Jun 2013	Cusack v Harrow LBC [2013] 1 WLR 2022
29 May 2013	Re Clearwater Properties Ltd's Application [2013] UKUT 210 (LC)
04 Mar 2013	Garwood v Bank of Scotland Plc [2013] BPIR 450
01 Feb 2013	Mustapha v Zafrani
31 Jan 2013	Pavledes v Hadjisavva [2013] EGLR 123
14 Dec 2012	Freetown Ltd v Assethold Ltd [2013] 1 WLR 7012
29 Feb 2012	Re Stanborough's Application [2012] JPL 756
25 Feb 2011	Baxter v Mannion [2011] 1 WLR 1594
09 Feb 2011	MW Trustees Ltd (2) Robert Posel (3) Pamela Posel v Tellular Corporation [2011] L&TR 19
08 Nov 2010	Re Zenios [2011] EWCA Civ 1645
13 Oct 2010	Renewal v Lowry [2010] EWHC 2902 (Ch)
27 Jul 2010	Steward v Gallop [2011] 1 P&CR 17
01 Nov 2009	Crown Estate Commissioners v Wilson
01 Nov 2009	HSBC v Collelldevall [2010] 2 P & CR 4
01 Oct 2009	Dennis v Davies [2010] 1 ELGR 81
28 Apr 2009	Quinto v Santiago Castillo Limited [2009] UKPC 15
12 Feb 2008	Falmouth House Freehold Ltd v Rahimzadeh [2008] NPC 17
09 Nov 2007	Chinnock v Hocaoglu [2008] 2 EGLR 77
23 May 2007	Young v Laurentani [2007] 2 FLR 1211
12 Dec 2006	Jones v Cleanthi [2007] 1 WLR 1604
26 Jun 2006	Tomkins v Bristol & West Investments Plc [2006] EWCA Civ 977
31 Dec 2005	Pirabakaran v Patel [2006] 1 WLR 3112
01 Jul 2005	Wretham v Ross [2005] NPC 87
12 May 2005	Fairgate International Ltd v Citibank International Plc [2006] 1 P & CR2
11 Feb 2005	Lancecrest Ltd v Asiwaju [2005] EWCA Civ 117, [2005] 1 EGLR 40
20 Dec 2004	Scribes West Ltd v Relsa Anstalt (No.3) EWCA Civ 1744, [2005] 1 WLR 1847

10 Oct 2003	Mann & Mann v Cooper
01 Jan 2003	Castlegroom Ltd v Enoch (No.2) [2003] 2 EGCR 54
05 Oct 2001	Berkeley Leisure Group Ltd v Hampton [2001] EWCA Civ 1474, [2001] 2 WLR 224
19 Apr 2000	Michaels v Harley House [2001] Ch 493
25 Jan 1999	Tadema Holdings v Ferguson [2000] 32 HLR 866

Publications

26 Nov 2019	Ground (AA) of S.84(1) of the Law of Property Act 1925
06 Nov 2019	Ground (AA) of section 84(1) of the Law of Property Act 1925 (Paper)
11 Oct 2018	The Service by Email of Party Wall Notices
09 Mar 2017	Section 84 of the Law of Property Act 1925 - A short guide to a difficult provision
29 Apr 2015	Reliance on Documents Containing Forged Signatures
30 Sep 2013	Interpretation of property instruments
22 May 2012	Not a Light Touch: Remedies in Rights of Light Cases
21 May 2012	Break Clause Conditions and The Law of Estoppel
14 Jun 2011	2011 - Damages in lieu
21 Jan 2010	Neighbourhood Property Disputes - Boundary Disputes - Interpretation of Conveyances
07 Oct 2009	Neighbourhood Property Disputes - Boundary Disputes and the Interpretation of Conveyances
