Modern Trust Litigation:

GETTING IT RIGHT

Tuesday 24 January 2012
The Dorchester Hotel, London
9.00am – 5.00pm



5.5 CPD Hours £220 + VAT (= £264)
Includes documentation, refreshments, lunch and evening drinks reception

WILBERFORCE CHAMBERS

John Martin QC is Head of Chambers at Wilberforce. He specialises in domestic and international litigation and related advisory work in a very wide range of chancery and commercial matters. The majority of his work is based in business and property law, from traditional chancery cases relating to trusts, land and charities to commercial contract disputes of all types. He has been a judge of the Courts of Appeal of Jersey and Guernsey since 2007, and a deputy High Court Judge since 1993. He frequently acts as an arbitrator in commercial and property disputes and is an experienced mediator. John is recognised in the legal directories as a leading silk: he *"has good judgement and common sense, and knows the law inside and out"*, and is *"one of the most proficient trial lawyers around."*

Lawrence Cohen QC took silk in 1993 and has regularly advised and appealed in litigation for some of the world's super-rich families. With a chancery background firmly on the business side, he is often called on to solve seemingly intractable problems placed by older trusts, especially when disputes break out in families or in the administration of trusts or estates. He is well known for his preference for attempting to find solutions outside the courtroom. He has acted for and against professional trustees and standards of administration and, on occasion, has been fairly described as 'breathtaking' – sometimes with surprising outcomes!

Robert Ham QC was called to the Bar in 1973 and took silk in 1994. Most of his practice involves trusts in one way or another, ranging from traditional advisory and drafting work, often tax related, to all forms of trust litigation and trust-based occupational pension schemes. He devoted the best part of a decade to the problems of the Thyssen-Bornemisza family and has been involved in many of the Hastings-Bass cases. He is appearing for the appellants in *Futter v Futter*. Robert has appeared in many offshore jurisdictions, from Borneo to the Cayman Islands.

Michael Furness QC Michael began his career at the Bar as a private client trust lawyer and this work still forms an important part of his practice. He advises on and conducts international succession and trust disputes. He is currently working on three separate disputes over the running of large family trusts in Bermuda. In London, he is representing a life tenant and former trustee in a dispute involving the ownership, by a trust, of a Liechtenstein Foundation. Michael also undertakes tax litigation on behalf of both HMRC and taxpayers, most recently (for HMRC) *DCC v HMRC* in the Supreme Court and (for the taxpayer) *Mayes v HMRC* in the Court of Appeal. He also advises and appears for the Hong Kong Commissioner of Inland Revenue – see *Shui On Credit Co Ltd v CIR* (Court of Final Appeal) and *Aviation Fuel Supply Co v CIR* (High Court).

Christopher Nugee QC's practice covers chancery and commercial work including pensions, real property, landlord and tenant, hostile trust litigation, and energy and other commercial contracts. He regularly sits in the Chancery division as a Deputy High Court Judge and was recently appointed as a judge of the Courts of Appeal of Jersey and Guernsey. Christopher is described as *"utterly outstanding"* and considered *"excellent at contentious trust litigation,"* he is popular as he *"remains calm and shows great judgment in tight situations."*

James Ayliffe QC is a commercial litigator with particular expertise in contentious trust matters. Recent cases have included disputes regarding the existence of a trust with assets worth some £1bn, mismanagement of trust investments, negligence by professionals advising trustees, trustees' duties to protect trust assets, tracing of trust assets, and priority of trustees' liens. James also has expertise in a number of other areas (such as company, insolvency, and financial services), which can be invaluable in this field. His expertise in insolvency, in particular, has proven useful in recent years, as the global downturn has affected many of those involved with trusts. Much of his work has international elements, with recent cases touching on jurisdictions as diverse as the Channel Islands, BVI, the Cayman Islands, Cyprus, New York, South Africa and Ukraine. In one current case, he is assisting an overseas tax authority to pursue monies transferred by its largest tax debtor into a trust structure located across several off-shore locations.

Thomas Seymour has a broad-based chancery practice and has extensive experience of private client work, advising and acting for trustees, executors and beneficiaries in contentious and non-contentious trust and probate/administration of estate matters. Thomas has considerable recent experience of appearing and advising in cases with a foreign/international element. He acted for trustees in protracted trust and property-related litigation which culminated in *William Fattal & Others v Walbrook Trustees (Jersey) Limited* [2010] EWHC 2767 (a case relevant to the seminar) in which the trustees relied on an exoneration clause to have a claim for breach of trust struck out before trial. He is ranked in the *Legal 500*, as a *"leading junior"* and described as *"a pleasure to work with and very thorough"*.

Mark Studer has long experience in dealing with all aspects of the law of trusts and settlements, arising both in the UK and in other overseas jurisdictions and he is particularly noted for his drafting skills. His trust work embraces the full range of private client litigation, including in the Court of Protection. Recent contentious work has included involvement in proceedings in the Bahamas, Bermuda, Guernsey and Scotland, as well as in England and Wales. The professional directories recommend Mark as a leading junior in the fields of chancery, private client, personal tax, trusts and probate and also in charity matters. *Chambers & Partners 2012* states: *"He is excellent at reassuring difficult or anxious clients"*, and other recent editions state that *"commentators respect Mark Studer for his intelligence"* and describe him as *"popular with leading solicitors"*.

Daniel Hochberg was called to the Bar in 1982. Since the early 1990s a large part of his practice has consisted of contentious and non-contentious offshore trusts work. He has been involved in many reported cases, particularly in the Royal Courts of Jersey and Guernsey, including *West v Lazards* and the *Esteem* litigation. Daniel always aims to give clear, sound, pragmatic and commercial advice, which draws on his own extensive experience of a wide range of legal problems and his understanding of how offshore trusts and offshore trustees work. He is always willing to travel and work with lawyers in other jurisdictions, clients in their own offices, and to appear in court or provide support to local advocates in offshore jurisdictions.

Judith Bryant was called to the Bar in 1987 and has specialised throughout her career in advisory and litigation work involving trusts (including their taxation), wills, administration of estates, charities, Court of Protection matters, pensions, family provision, trust work associated with high-wealth divorces, and related professional liability matters. She is equally at home in both the contentious and non-contentious fields and has a wealth of experience, having been involved in many cutting-edge cases over the years. Judith is consistently recommended as a leading junior in professional directories. Comments include *"excellent"*, *"always plays a pivotal role in the outcome of any case"*, *"user-friendly"*, *"gives clear advice"*, *"won praise for her 'steadfast manner and practical approach'"*, *"very popular for her 'accessibility' and 'clarity'"*, *"first-class"*, and *"extremely bright, organised and cost-effective"*.

Clare Stanley is described in the directories as *"surely heading for silk – a brilliant legal mind"* and *"not afraid to go all out in even the very biggest of cases"*. She is *"one of those barristers that come out fighting, she is resolute and gets results in court"*. She is recommended as a leading junior in each of *Chambers & Partners, Chambers Global* and *Legal 500* and was listed as a *"Star at the Commercial Bar"* by *Legal Week*. Clare was called to the English Bar in 1994. She read law at Downing College, Cambridge, and also has a degree in economics. Clare specialises in large-scale multi-jurisdictional commercial litigation, mostly involving trusts and complex underlying structures.

Emily Campbell was called to the Bar in 1995 and her practice encompasses a range of chancery and commercial work. She is particularly experienced in both the litigation and advisory sides of the law relating to trusts, estates, taxation and pension schemes. Emily has significant experience of contentious and non-contentious trust and estate litigation, including cases with a foreign element. She advises on a wide range of issues with an emphasis on private wealth planning, tax and the drafting of trust documentation. She was short-listed for the Advocate of the Year at the 2010/11 STEP Private Client Awards.

Tiffany Scott read Classics at Oriel College, Oxford (where she was an Exhibitioner), and went on to obtain a distinction in the Postgraduate Diploma in Law. She was called to the Bar in 1998 and has a broad commercial and traditional chancery practice, within which she specialises in trusts and estates litigation, property litigation and professional negligence actions. She is recommended as a leading junior in all three areas by the *Legal 500*. She is experienced in all aspects of trusts and estates work – contentious and non-contentious, offshore, onshore and multi-jurisdictional, with clients ranging from investments banks to charities to private individuals. She also has expertise in business litigation of all kinds including partnership and fund disputes, company and insolvency claims and civil fraud claims. *Chambers and Partners* states: *"sources emphasise her fine cross-examination skills and say 'her style is effective as she is ruthless, yet never over the top, when exposing the limitations of her opponent's case'."*.

Jonathan Hilliard came top of his year in both his undergraduate and post-graduate law degrees at Cambridge University, receiving a starred first degree in the latter, and was called to the bar in 2003. He was recently listed as one of the 10 stars of the junior chancery and commercial Bar in Legal Week, who described him as *"absolutely brilliant: lots of brain power - impresses solicitors and silks alike"* and stated that *"he completely outflanks some senior members of the Bar"*. He had previously been listed as one of the 10 future stars of the Bar in the *Times*, which said that *"he has it all - no wonder he's in demand"*, and is highly recommended in both UK legal directories, *Chambers & Partners 2012* describing him as *"phenomenally bright"*. He has a broad trusts practice and spends a significant amount of his time on high value private and commercial trust disputes, often (in the case of private trusts) with significant offshore and/or family law elements.

Andrew Mold obtained a first in law from Cambridge University and an LLM from Harvard Law School. He was called to the Bar in 2003. He is recommended by *Chambers & Partners* and the *Legal 500* for traditional chancery, commercial chancery and pensions work, and is described as: *"a star in the making"* who provides *"a remarkable intellectual contribution to a case"*, *"a first-class junior who produces superb work"*, *"a lawyer with a thorough understanding of trust disputes"* and *"incredibly easy to deal with"*. He has also gained considerable experience of working on so-called 'big money' divorce cases involving the treatment of trust assets, which includes being instructed for the wife in *Charman*. A significant part of Andrew's work involves offshore trusts and related issues (in particular, obtaining or resisting interim relief) and he has been admitted to the Bar of the Cayman Islands, where he has appeared as an advocate. Andrew works equally well as the sole advocate on a case or as part of a wider team in larger-scale litigation.

Modern trust litigation: Getting it right

A day of practical talks, including workshops and discussions led by noted practitioners on the topics that matter in contemporary trust litigation. Both contentious and non-contentious proceedings will be covered, from recent developments in varying trusts to attacking trusts in family proceedings.

9.00am — **Registration, tea and coffee**

9.30am — **Welcome and introduction**

9.45am — **The role of trustees in litigation**


Michael Furness QC and Emily Campbell

- When should trustees apply for directions before bringing or compromising proceedings?
- When should trustees remain neutral in litigation?
- What happens when a Beddoe goes wrong?
- Alternative forms of trustee protection

10.30am — **Trustees' liability to outsiders**

James Ayliffe QC

- Basic rule of personal liability with corresponding rights of indemnity and lien
- Risk of loss of priority for lien – issues arising from Dominion v Capmark [2011] EWCA Civ 380
- Limiting personal liability to outsiders
- Direct claims against trust assets by outsiders
- Consideration of some overseas jurisdictions – Channel Islands, Cayman Islands and BVI

11.00am — **Tea break**

11.20am — **Dealing with Divorce: claims for financial provision involving trusts**


Jonathan Hilliard and Andrew Mold

- What counts as a 'nuptial settlement'?
- Relying on the 'resources' argument
- Trustees' duties and relevant considerations
- Getting information out of trustees

12.05pm — **Workshops**

Delegates are required to choose one of the following workshops to attend:


WORKSHOP 1

Changing trusts led by Judith Bryant and Tiffany Scott

- Presentation
- Potential pitfalls
- Practical problems


WORKSHOP 2

"They do things differently..." led by Daniel Hochberg and Mark Studer

- A conflict of laws workshop including a case study involving an ancillary relief application and offshore trusts
- Trusts disputes and disputes involving trusts
- The different approaches of the English courts and the courts in offshore jurisdictions
- The effect of the recent Jersey and Guernsey statutory changes, and the way local courts interpret them
- The possibilities of forum shopping
- The enforcement of orders offshore


WORKSHOP 3

Enforcement against trust assets led by James Ayliffe QC and Clare Stanley

Case studies considering typical factual scenarios and issues such as:

- the range of remedies
- freezing injunctions and other interim measures
- recent developments - including the Privy Council decision in TMSF regarding appointment of receivers over settlor's right of revocation
- cross-border considerations
- pursuit of foreign tax debts

1.05pm — **Lunch**

2.15pm — **Exculpation**


Lawrence Cohen QC and Thomas Seymour

- Invite the audience to decide whether this topic is dead or alive after Armitage v Nurse
- Review developments in the principles and some surprising twists in this thorny topic, such as the emergence of trustee remuneration as a 'weapon' for beneficiaries
- A discussion on the proposition 'Exculpation clauses are rarely in the best interests of settlors, beneficiaries or professional trustees and should only be adopted after advice about the drawbacks'

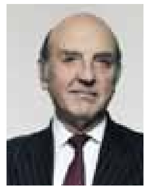
3.00pm — **Trusts owning companies: liability of trustees for trading and other losses**

Clare Stanley

- Scope of trustee's duty
- Defences to beneficiary claims
- Trustees as shadow/de facto directors and potential liability under Insolvency Act 1986

3.30pm — **Tea break**

3.50pm — ***Mock Trial:* 'Judging the judges'**


Judged by Robert Ham QC

John Martin QC and **Christopher Nugee QC** (judges of the Courts of Appeal of Jersey and Guernsey) argue out a topical trustee retirement dispute brought to court by disgruntled beneficiaries. The dispute will touch on:

- The test for retirement in practice
- Conflict of interest as grounds for removal
- When a trustee should stay or go and on what terms

4.50pm — **Conclusions**

5.00pm to 7.00pm — **Drinks reception**

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Detach and return

WILBERFORCE CHAMBERS

Registration instructions

REGISTRATION

Registration fee £220 + VAT (£264)

Registration fee includes attendance at the seminar, workshops, seminar documentation, refreshments, lunch and evening drinks reception.

The registration fee must be paid in advance of the seminar to guarantee your place. We regret that no refunds will be made in the event that delegates are unable to attend.

CPD HOURS

Recognised by The Law Society. Full attendance of the seminar qualifies for 5.5 CPD points.

TWO EASY WAYS TO BOOK YOUR PLACE:

By email to: seminars@wilberforce.co.uk
By post to: Wilberforce Chambers (DX: 311 Chancery Lane)
8 New Square, Lincoln's Inn, London WC2A 3QP

PLEASE COMPLETE AND RETURN THIS REGISTRATION FORM, CLEARLY STATING WHICH WORKSHOP SESSIONS YOU WOULD LIKE TO ATTEND.

Send your cheque made payable to 'Wilberforce Chambers' with your registration form.

I enclose a cheque for £ ______ to reserve ______ place(s)

Name(s)

Contact number

Company

Address

Postcode

Email

Position(s)

Please indicate if you have any special requirements

Workshops

Please select one of the following workshops that you would like to attend:

WORKSHOP 1 ☐ WORKSHOP 2 ☐ WORKSHOP 3 ☐

We will do our best to accommodate you. Please note, places for each workshop are allocated on a 'first-come, first-served' basis.

For further seminar and registration information, please contact Naomi Shogbola or Christine Nicholls via email at **seminars@wilberforce.co.uk**