



## John Martin QC

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### Clerks' Details

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### Qualifications and Appointments

- Head of Chambers
- Deputy High Court Judge since 1993
- Judge of the Courts of Appeal of Jersey and Guernsey since 2007
- Justice of the Court of Appeal of the Cayman Islands since 2013
- MA (Cantab)

*“Highly regarded for his wisdom and superb advocacy”*

The Legal 500, 2014

### Memberships

- Chancery Bar Association
- COMBAR
- Professional Negligence Bar Association

### Practice Overview

John Martin is an exceptionally experienced and effective advocate in a very wide range of commercial chancery and business disputes. He is adept at leading a team of specialists in complex litigation, whether within or without his own specialties.

He has a particular expertise in contentious trust cases, in company and insolvency matters, in contract disputes of all types (often with a complex technical background) and in tort (particularly the economic torts, having appeared for the successful party in the leading modern House of Lords case on unlawful means conspiracy, HMRC v Total Network [2008] 1 AC 1174).

He deals also with professional liability disputes in these and other commercial chancery areas. His practice is both domestic and international: Overseas, he has dealt with matters originating in Hong Kong, Singapore, the US, Australia, Canada, Russia, Switzerland, Italy, Bermuda, Gibraltar, Netherlands Antilles, Nevis, the Cayman Islands and the Channel Islands among others, and has appeared in the courts of many of these jurisdictions.

He is a (part-time) appeal court judge in Jersey, Guernsey and the Cayman Islands and has been a deputy High Court judge for over 20 years; and he is an experienced arbitrator in international and domestic disputes. He is also a qualified mediator.

John Martin QC is listed in the **Who's Who Legal: UK Bar 2015** for Private Client.

John Martin QC has been consistently recommended in the legal directories, Chambers & Partners 2015 describe him as *"an enormously impressive man"* with *"tremendous gravitas"* and *"who is terrific on his feet"*. Previous editions note his *"great attention to detail"* and *"superb advocacy"*. He is also commended as being *"prescient in his advice and has an incredible willingness to be part of the team. He doesn't pontificate from afar, and provides invaluable analysis"*.

Chambers & Partners 2016 further describe him as a seasoned member of the Chancery Bar who takes on, inter alia, instructions on matters concerning trusts, property and charity issues. He also regularly acts as a mediator. *"He has been around a long time, and he knows it all."*



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## Pensions

John Martin has frequently appeared in major pensions litigation, particularly where the litigation can be characterised as hostile. He also advises in potentially contentious pension cases.

### Recent examples are as follows:

- Obtained order that party to major pensions litigation represent itself, instead of being obliged to accept representation by others: *Re P D Teesport* [2009] Pens LR 263.
- Appeared in *PNPF Trust Co v Taylor* [2010] Pens LR 261. This was a major case concerning deficit repair contributions in industry-wide scheme. Although unsuccessful at trial, John Martin's client was subsequently able to compromise its appeal on favourable terms available to no other party as a direct result of the litigation strategy adopted.
- Currently instructed in litigation concerning an industry-wide scheme affecting Merchant Navy employees.
- Advised on deficit funding implications of industry-wide scheme affecting the dairy industry.
- Recently determined application for rectification of industry-wide scheme: *MNOPF v Watkins* [2013] EWHC 4741 (Ch).
- Recently advised on the effect of the Public Service Pensions Act 2013.

## Trusts, Tax, Probate and Estates

John Martin has an extensive practice in international and domestic contentious trust work.

### Examples of cases he has been involved in in recent years are as follows:

- Acting in the final proceedings in the Thyssen case in Bermuda and the Cayman Islands, involving protracted and hostile negotiations for the partition of the trust fund.
- Representing the interim administrators of the estate of a Georgian oligarch as party to well-publicised litigation by Boris Berezovsky.
- Representing minor and unborn beneficiaries in extensive and hard-fought negotiations for the partition of a CAD multi-billion trust established by a Canadian in Bermuda.
- Acting for younger members of a family in successfully resisting an attempt by their brother in English proceedings to overturn a confidentiality clause in an order compromising previous family trust proceedings.
- Acting in long-running proceedings in the Cayman Islands concerning a challenge to a trustee's decision to make an IPO in relation to the company through which the trust's business was conducted.
- Acting in proceedings in Bermuda concerning trustee oversight of a major international business owned by the trust.
- Acting in the first bouts of the Wahr-Hansen protracted and hostile proceedings in the Cayman Islands brought by an administrator appointed by a Scandinavian tax authority to recover very substantial sums allegedly misappropriated from a trust.
- Acting in proceedings in Canada relating to the diversification of a £ multi-million pound fund with major land holdings in England.
- Acting in proceedings in the Cayman Islands concerning the validity of a clause purporting to forfeit the interest of a beneficiary who challenged any decision of the trustee or protector: *AN -v- Barclays Private Bank & Trust (Cayman) Limited and others* [2007] WTLR 565.
- Acting in relation to Jersey proceedings concerning the conduct of a company by a beneficiary of a Guernsey trust that controlled the company.



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## Trusts, Tax, Probate and Estates continued

- Acting in proceedings in Gibraltar concerning alleged breaches of trust in a substantial fund.
- Currently acting in a family dispute concerning the removal of a newly-appointed trustee and protectors.
- Acting in relation to trusts of bond issue effected in Netherlands Antilles; part of protracted and well-publicised Bell Group litigation primarily based in Australia.
- Currently acting in a family dispute concerning division of a renowned collection of porcelain.
- Currently acting in connection with de facto revocation of trusts affecting very substantial proceeds of the sale of an international business, involving proceedings in Nevis, BVI and London.

## International Arbitration

John Martin has substantial experience of conventional dispute resolution (as a single tribunal or as part of a three-person tribunal) and of alternative dispute resolution, as arbitrator or participant in arbitration.

### The following are examples:

- Acting as single arbitrator in an ad hoc arbitration relating to a dispute about telecommunications provision at Canary Wharf.
- Acting as single arbitrator in an ad hoc arbitration relating to a dispute between British and Canadian companies over payment for extraction of water from the Manchester Ship Canal. An attempt to appeal the award was rejected by the Commercial Court on the ground that the decision was "plainly right".
- Acting as single arbitrator in an ad hoc international arbitration involving a major foreign national telecoms company relating to a dispute between British and Swedish companies over tele-warehousing. In the course of this arbitration, it became necessary to decide the scope of the inhibition in sections 48(5)(b) of the Arbitration Act 1996 on an arbitrator making an award of specific performance of a contract relating to land. An appeal against the decision on jurisdiction was dismissed by the Chancery Division: *Telia Sonera Ab v Hilcourt (Docklands) Ltd* [2003] EWHC 3540 (Ch).
- Acting as counsel in a long-running ICC international arbitration in Paris relating to a dispute between British and Italian companies over rights to software updates reflecting improvements to a naval gun supplied to 39 navies worldwide.
- Acting as counsel in a LCIA international arbitration relating to a dispute over veto rights in shareholders' agreements affecting the conduct of a major international commodities producer.
- Recently nominated as single arbitrator in a LCIA international arbitration in Paris relating to a dispute between Norwegian and French companies relating to closing adjustments in a share sale agreement affecting an oil and gas exploration company operating in Turkey.



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## Commercial

### Company and Insolvency

John Martin has particular expertise in company and insolvency litigation as both advocate and judge. The following are examples:

#### Administration

- *Re Propinvest Group Ltd* (Nov 2011; unreported). Question of appellate court's jurisdiction to grant a stay of administration pending hearing of an appeal against the order.
- *Gaardsoe v Optimal Wealth Management Ltd* [2013] 2 WLR 550; [2013] BCC 53. Question of court's jurisdiction to make an order under Insolvency Act 1986 Sch B1 para 43(6) authorising commencement or continuation of proceedings against a company in administration after administration had ceased and company had gone into creditors' voluntary liquidation.
- *Re Plymbridge Distributors Ltd* (2004; unreported). Application to terminate administration to enable company to go into creditors' voluntary liquidation.

#### Creditors' voluntary arrangements

- *Re Zebra Industrial Products Ltd* [2005] BCC 104. Application by liquidator for determination of question whether funds were held by him for the benefit of creditors generally or only those creditors who were bound by the CVA.

#### Derivative claims

- *Reeves v Sprecher* [2008] BCC 49. Application for permission to continue a derivative claim in relation to a company incorporated in Nevis where one of the issues was whether the English court had jurisdiction to grant permission in relation to the internal management of such a company.

#### Directors' duties

- *G Attwood Holdings Ltd v Woodward* [2009] EWHC 1083 (Ch)
- *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] BCLC 523.

Both of these cases concerned the circumstances in which directors' duties are breached when they make preparations while directors to set up a competing business after their resignation.

#### Financial assistance

- *Anglo Petroleum Ltd v TFB Mortgages* [2007] BCC 407. Complex issues concerning whether the giving of security involved the giving by the company of financial assistance for the purpose of the acquisition of its own shares or to reduce a liability incurred for that purpose contrary to the Companies Act 1985 s151.

#### Misfeasance proceedings

- *Liquidator of Wendy Fair (Heritage) Ltd v Hobday* [2006] EWHC 5803 (Ch). Claim against directors to contribute to the assets of a company in liquidation on the basis that they continued to trade after they should have concluded that there was no prospect of avoiding an insolvent liquidation.

#### Provisional liquidation

- *Re Secure Recovery Limited* (2004; unreported). Secretary of State's application for provisional liquidator on ground of good prima facie case of fraudulent trading.

#### Unfair prejudice

- *Liberal Catholic Church Corporation v Palmer* (2005; unreported). Dispute over prejudicial conduct of splinter non-conformist sect.
- Confidential Arbitration – dispute over veto rights conferred by shareholders' agreements affecting affairs of major international commodities producer
- Dispute originating in Singapore over majority ability to modify pre-emption rights contained in Articles and in shareholders' agreement.