



## Thomas Lowe QC

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### Clerks' Details

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### Qualifications and Appointments

- Upper Second Class degree (LLB) from London School of Economics
- First Class LLM at Cambridge.
- Inner Temple Queen Elizabeth scholarship at the Bar and a number of prizes at The College of Law

### Memberships

- Chancery Bar Association
- Commercial Bar Association
- British and German Jurists Association

***“A fantastic trial advocate - he is excellent in court.”***

Chambers & Partners 2021

## Publications

- [Arbitration of Trust Disputes](#) (2016) *Issues in National and International Law*
- [Vindicating shareholder rights under nominee and custodian agreements](#) (2015) *Butterworths Journal of International Banking and Financial Law* (6) JIBFL 331
- [Alkers et al \(as joint official liquidators of Saad Investments Company Limited\) v Samba Financial Group](#) (2014) *Wilberforce Legal Digest* (Issue 1) March 2015
- [Mixed and multiple derivative claims to address reflective loss problems](#) (2014) *Trusts & Trustees* 20 (9): 930-032
- [Is liability of trustees for losses in share portfolios illusory?](#) (2012) *Corporate Rescue Insolvency*
- [How many times can I do this? Independent fund directorships](#) (2012) *Butterworths Journal of International Banking and Financial Law*

## Practice Overview

Tom has acted in numerous reported and high-profile cases and cross-border disputes before a large variety of tribunals in a number of different jurisdictions. Much of his work stems from collapses of complex investment structures and from high-value cross-border private client disputes.

He has developed a substantial offshore practice and is one of very few barristers who have had full and not merely ad hoc practising certificates in both the BVI and the Cayman Islands. Hence he has acted for a variety of different parties in hedge fund and banking disputes. *Bear Stearns, Re Sphinx, Re Medley Opportunity Fund* in the Cayman Islands and *Kingate Global Fund v Kingate Management Ltd* in Bermuda.

He is regularly called upon to give expert evidence on both UK and offshore law in the US on matters of company law and the liability of fiduciaries.

Many of the cross-border disputes such as *SAAD v AHAB* have involved asset tracing in the context of commercial or financial fraud but he has had to apply this knowledge in cases in which the primary focus might be as diverse as professional negligence, financial services, shareholder disputes or even judicial review.

Tom has also been involved in a number of leading high value trust and probate cases. Although these cases or his involvement tends to be confidential, reported examples include well-known decisions such as *Walker v Stones* and *Al Bassam* in the UK, *Re A v N* and *Re Circle Trust* in the Cayman Islands and *Wang Din Shan v Nina Wang* in Hong Kong.

Tom is ranked as a leading silk in Chambers & Partners, 2021 which describes him as ***“A fantastic trial advocate - he is excellent in court.”***, ***“A devastating cross-examiner. A real iron fist in a velvet glove.”***, ***“He is excellent and knows the Caymans inside out.”*** and is ***“Very creative and an intellectual powerhouse.”***

The Legal 500 2021 edition describes Tom as ***“He is user-friendly, client-focused and easy to work with, able to grapple with the most complex of cases.”*** ***“An extremely effective cross examiner and very effective with clients.”*** and the ***“Standout star of the offshore bar - extremely bright and a pleasure to work with.”***

The previous Chambers & Partners 2020 edition describes Tom as ***“an outstanding intellect, an amazing advocate and great at strategy. Very approachable, always responds in a timely fashion, always gets everything done - a solicitor's dream.”***



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## Professional Liability

The nature of Tom's work frequently involves negligence on the part of investment managers, actuaries, directors and others who are in the position of trustees and fiduciaries. He regularly finds himself defending auditors and accountants and lawyers both in the UK and offshore.

He has given expert evidence in the US on fiduciary duties and negligence of accountants, administrators and fund managers, usually in the context of financial failures. Such cases include *Re Primeo* in New York, *Wimbledon* in California and the *BP Securities Litigation* in Texas.

He has been counsel in well-known cases such as the claim against trustees in *Walker v Stones* and on behalf of auditors involvement in a take-over *Morgan Crucible v Hill Samuel*.

Recent examples of his work include defending solicitors in the Cayman Islands, defending one of the principal fund managers embroiled in the *Madoff* claims in Bermuda and in the UK and Isle of Man acting for the claimant against fund managers in *Isis v Kaupthing*.

## Trusts, Tax, Probate and Estates

Tom has frequently been instructed to act on behalf of clients in contentious well-known trust matters mostly offshore and high value probate cases. Although the cases or his involvement is often confidential, he has appeared in a number of important reported cases on trust matters such as *Walker v Stones* (UK the test for dishonesty in exoneration clauses), *Re Circle trust* (status of protectors and duties of trustees) and *Re BIO Trust or A v N* (duties of trustees and effect of forfeiture clauses).

Much of his probate work involves cross-border disputes with complex estates such as *Al Bassam v Al Bassam* in which the English Court of Appeal considered how it would deal with human rights objections to a trial of a probate claim under sharia law. He spent several years, until its final conclusion, acting as a junior for the ultimately successful defendant in the long running Hong Kong case of *Wang Din Shen v Nina Wang* in which the Court of Final Appeal gave a definitive explanation of the differences between the defences to probate claims.

He has also acted successfully on behalf of purveyors of tax loss schemes in cases such as *Freshwater v KUH* and developed an expertise in the human rights aspects of cross-border enforcement of tax obligations, a subjective on which he has spoken at international conferences. He is currently instructed in ongoing judicial reviews in the Cayman Islands in *MHI Investments v Cayman Islands Tax Information Exchange Authority*, a case arising from challenges in Australia and the UK to tax avoidance structures.

Chambers & Partners, 2016 note that he is renowned for the strength of his offshore practice, which has a particular emphasis on matters proceeding in the Cayman Islands and BVI. He is often instructed in major litigation concerning the failure of substantial investment structures and also regularly appears in professional negligence and shareholder disputes. **"He is absolutely calm when everyone else is running around like headless chickens. He is never intimidated and is a great believer that clarity of strategy is key."**

Tom regularly writes papers and lectures on trust law issues and is currently involved in promoting offshore trust arbitrations.



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## Commercial

Tom has combined an extensive practice in the field for company and insolvency work with a regular case load in the field of civil fraud and asset tracing.

His reported cases range from well-known decisions in the insolvency field such as the landmark case *Wight v Eckhardt Marine* and *Dextra v Bank of Jamaica* a well-known decision of the Privy Council by Lord Goff on the limits of the change of position defence. Over the years he has acted in a number of cases involving corporate fraud, breaches of directors' fiduciary duties or claims for secret profits.

He has been heavily involved in many of the long-running offshore liquidations of foreign banks such as *Kaupthing (Isis v Kaupthing)* in Iceland, the UK and Isle of Man) the relevant claims arising from its securitisation of loans with one of its well-known customers. He has acted for a number of years in billion dollar cases for the major shareholders and owners of Latin American banks in, cases such as *Bancredito* in the Cayman Islands and the Dominican Republic as well as, *Banco Economico* (Cayman Islands and Brazil).

Over the years practising offshore, Tom has had a prominent role in numerous hedge funds disputes.

- He acted for the liquidator in *Re Sphinx* (Cayman Islands), a controversial liquidation arising from the collapse of a well-known prime brokerage house.
- He has defending fund professionals in *Re Oracle Fund* (Bahamas) arising from the collapse of a fund investing in sub-prime US debt.
- He has acted on behalf of creditors in *Lancelot and Palm Beach* (Cayman Islands), the liquidation of the main feeder funds involved in the SU\$10 billion Petters fraud.
- He defended the managers and fund entities in *Gottex v New Stream* (Bermuda) the first reported case on the winding up of segregated portfolio companies.
- He acted on behalf of creditors in *Re Wyser-Pratt* one of the first cases to explore the alternatives to winding up under local insolvency law (Cayman Islands).
- He has acted for liquidators, in the context of hedge fund restructuring in Belmont Finance (Cayman Islands), Medley Opportunity Fund (Cayman Islands), many of which were associated with fraud or asset tracing.

Over the years Tom has often found himself instructed in large well-known fraud and asset tracing cases in the UK. For example, he acted for the plaintiff in *Bottin v Venson*, and on behalf of one the defendants in the *Phillips v Symes* saga liquidators in *Kaupthing v Isis*. He is currently instructed in *AHAB v SAAD*, a multi billion claim relating to a complex, cross-border fraud before the Courts of the Cayman Islands. Tom's knowledge of civil fraud work enabled him recently successfully to defend a US \$1bn bribery claim arising out of the supply of defence equipment in the civil courts in the Cayman Islands as well as fending off a criminal proceedings in the UK in judicial review proceedings.

His technical knowledge of company law, financial services and partnerships has meant that he has frequently been called upon to give evidence in the US, in states including New York, California, Texas and the Carolinas. He is currently retained as an expert on UK law in the BP securities litigation in Texas arising from the gulf oil spill.

## International Arbitration

Tom has appeared before a range of ad hoc private tribunals and been involved in a number of arbitrations in the commercial field as well as shareholder and partnership disputes. Tom is currently involved in an initiative to open up arbitration in the Caribbean for Latin American parties.

Reported examples of arbitration cases include *Fidelity Management SA v Myriad International Holdings* [2005] EWHC 1193 which arose from an ICC arbitration concerning Greek licensing transaction and *AL Thompson v Beazeley* [2011] 2 CILR 496 which arose from an insurance dispute.