



James Bailey

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Clerks' Details

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Memberships

- Chancery Bar Association
- COMBAR

“An excellent advocate who commands a courtroom; he is very bright and good with clients.”

Chambers & Partners, 2019

Qualifications and appointments

- Dual Qualifications
- 2003–2006 - Elected member of the Bar Council, Education and Training Committee, Young Barristers' Committee
- 2000–2001 - Finals Examiner at London School of Economics (Commercial Law)
- 2002 - M.A. (Oxon) [Law]
- 2001 - Called to the Cayman Island's Bar
- 1998–2001 - Law Tutor; London School of Economics (Commercial Law)
- 1997–98 - B.C.L. (Oxon)
- 1993–97 - B.A. (Hons.) - Brasenose, Oxford [Law]
- 1988–93 - Winchester College

Practice Overview

James Bailey has developed a successful practice focused on commercial chancery, civil fraud, insolvency and company matters. Regarded as **"approachable, very thorough and conscientious"**, James is said to have **"an exceptional eye for detail"** (The Legal 500). He is also noted for his advocacy: **"Strategically strong and pragmatic"**, **"the impressive James Bailey"** (The Legal 500) is praised for his **"really attractive style in court"** (Chambers UK Bar).

James is consistently recommended in the leading legal directories in the Commercial Litigation, Commercial Chancery, Company and Restructuring & Insolvency categories. Recent quotes include:

"A well-regarded practitioner who has a strong practice encompassing commercial chancery, company and insolvency law. He frequently plays a key role in major, high-profile cases. He is frequently involved in cases concerning misfeasance and wrongful trading claims and has considerable expertise handling contentious recovery work." (Chambers UK Bar 2019)

"An excellent advocate who commands a courtroom; he is very bright and good with clients." (Chambers UK Bar 2019)

Expertise/recent experience:

James experience relates to all levels of court in England. His work also has a significant international dimension including cases relating to the Cayman Islands, the Bahamas, the U.S., Switzerland, Slovenia, Macedonia Italy, South Korea, Hong Kong and Japan. James has been instructed as an expert on matters of English law in courts abroad and his commercial work includes international arbitration.

He was involved in the long-running and controversial *Thevarajah* litigation, which twice came before the Court of Appeal and thereafter the Supreme Court. His cases often include jurisdictional challenges and he is experienced in litigation where the governing law is not that of England and Wales.

James's commercial practice includes a significant amount of fraud work and he is regularly instructed in applications for freezing orders, Norwich Pharmacal orders and Bankers Book Evidence Act relief.

He has a substantial insolvency practice which sits alongside his fraud work, and he is regularly instructed in high-profile matters. Historically he has acted for the Cayman Islands' liquidators of *Enron* and appeared in the *Comet* administration. In 2018, he acted



Practice Overview continued

for Lawrence Stroll, who led a consortium to successfully acquire the Force India Formula 1 racing team. James is a contributor to Tolley's Insolvency Law Service.

James's practice also encompasses a broad range of company work, including in particular claims pertaining to directors' discharge of their duties to their companies, minority shareholder relief, and just and equitable winding up petitions. He also appeared in the seminal *Fort Gilkicker* litigation, which established the existence of multiple derivative claims in English law after the coming into force of the Companies Act 2006.

Commercial

James is renowned as *"an excellent advocate who commands a courtroom; he is very bright and good with clients"* (Chambers UK Bar 2019). His recent commercial work covers a broad range of disputes stretching from urgent freezing orders (often involving fraud) to much longer document-heavy matters requiring detailed forensic analysis. The substantive scope of his work takes him into many different industries, including pharmaceuticals, travel and transportation, construction and engineering, sport, fund management, telecommunications and litigation funding to name a few.

"He is a barrister who can rescue the client from a tight corner" who "has a really attractive style in court and is clearly very brainy" (Chambers UK Bar).

Although James thrives being on his feet, he recognises the importance of early and clear advice and guidance in the search for a satisfactory outcome that does not demand the time and expense of a full trial. As was observed recently: *"He's very good in conference as he is very direct and doesn't sit on the fence. He very much works alongside you and is very supportive."* (Chambers UK Bar 2019). A keen advocate of pragmatism and teamwork in complex litigation, *"he is enthusiastic, bright and increasingly impressive... a well-respected junior in both domestic and international courts"* and *"offers excellent, clear commercial advice"* (Chambers UK Bar).

James is also instructed to advise on commercial transactions, including in particular share purchase agreements, with those instructs emanating from corporate departments as well as litigation departments of substantial law firms. His considerable experience of where contractual arrangements have gone wrong leave him well placed to assist in their drafting. He *"turns work around quickly and to an exceptionally high standard"* (The Legal 500 2019).

Recent experience:

- In 2018, James acted as lead advocate in an international arbitration concerning the design and construction of a €65million hydroelectric dam and power plant in Eastern Europe. The case required a detailed understanding not only of engineering, but also of the foreign law governing the substantive contractual dispute.
- James's work will often involve jurisdiction issues and in 2018 he acted in the dissolution of a multinational architectural firm, which concerned legal structures in England, Dubai and the British Virgin Islands. The case required a three day hearing in the Chancery Division to determine the most appropriate forum for the parties to resolve their differences.
- James acted (also in 2018) for the consortium led by Canadian billionaire Lawrence Stroll in his acquisition for the Force India Formula 1 motor racing team, previous under the control of Indian billionaire Vijay Mallya. The transaction was not only exceptionally complex, but also ground-breaking and for the first time the FIA permitted the purchase of the assets and goodwill of an F1 team rather than requiring the purchase of the team company itself.
- James is frequently instructed in urgent applications to court to preserve not only assets, but also control of corporate vehicles. He appeared in the long-running and controversial *Thevarajah* litigation concerning an alleged fraud against the purchase of certain special purpose vehicles. The case took him to the Court of Appeal twice, and thereafter to the Supreme Court, serving as a powerful and successful illustration of the importance of making accurate strategic and substantive decisions when advancing interim applications.



Civil Fraud

"A go-to counsel for complex matters" (The Legal 500), James is *"regarded as a strong commercial litigator who enjoys the full support of the market"*.

James's *"confidence boosting"* (Chambers UK Bar) commercial work ranges from acting for public limited companies to small and medium sized businesses.

James acted in the long-running and controversial *Thevarajah* litigation concerning an alleged fraud against the purchase of certain special purpose vehicles. Twice listed for trial and now having been the subject of two Court of Appeal decisions on separate points ([2014] C.P.Rep19; [2015] EWCA Civ 41; The Times, 26th March 2015), the part of the case pertaining to the Jackson Reforms and the decision in Mitchell was determined by the Supreme Court in 2016.

James's commercial work often involves asset preservation, in particular urgent injunctive relief, and asset tracing and recovery. *"He is a barrister who can rescue the client from a tight corner"* who *"has a really attractive style in court and is clearly very brainy"* (Chambers UK Bar). A keen advocate of pragmatism and teamwork in complex litigation, *"he is enthusiastic, bright and increasingly impressive... a well-respected junior in both domestic and international courts"* and *"offers excellent, clear commercial advice"* (Chambers UK Bar).

Company

James is regularly involved in acting for both directors and shareholders in company disputes and is ranked as a leading junior by Chambers UK Bar and Chambers Global.

"His technical ability is excellent, and he is very good at complex and detailed cases involving lots of numbers." (Chambers UK Bar).

"He is really easy to deal with, thorough, responsive and very knowledgeable" (Chambers UK Bar).

He appeared in the seminal case of *Re Fort Gilkicker* [2013] Ch. 551; [2013] W.L.R. 164; [2013] 3 All.E.R. 546; [2013] B.C.C. 365 in which he successfully contended (against the position of Lord Millett writing extra-judicially) for the continued existence of multiple derivative actions in English company law after the coming into force of the Companies Act 2006.

James's company work includes advising directors on their duties generally, and is often involved in "split board" cases where he has assisted private equity and hedge funds. *"He is highly intelligent, hard-working and insightful"* (Chambers Global). He was instructed in the British Universities and Colleges Sport matter over the construction of certain articles of association, a dispute which picketing students brought into the public eye.

James is also regularly involved in minority shareholder cases where his strong mathematical background makes him a favourite in cases involving complex forensic accounting.

Insolvency

Described as *"a formidable advocate, who is able to dominate a courtroom"* (The Legal 500), James has been instructed in high-profile insolvency and restructuring work including *Enron* (Cayman Islands), *Comet* and the *London Underground Public-Private Partnership*.

"He is very hard-working and a real details man. He is also very strong on his feet and is an authoritative figure that judges listen to." *"He is a very sensible operator who is able to take a pragmatic view."* (Chambers UK Bar, 2019)

He is also described as *"excellent in insolvency cases with a cross-border dimension"*. (The Legal 500, 2019)

Recent experience:

- In 2018, James acted for a consortium led by Canadian billionaire Lawrence Stroll in the successful acquisition of the Force India Formula 1 motor racing team from Indian billionaire Vijay Mallya. The transaction was exceptionally complex and involved a structure never previously used in Formula 1.



Insolvency continued

- James acted for the successful petitioning creditor in the matter of *Re Paul Baxendale-Walker (a bankrupt)*, a notorious piece of litigation arising out of negligent advice given by a former tax barrister and solicitor. Unusually the case concerned the appointment of an interim receiver, and thereafter the successful appointment of specifically named trustees in bankruptcy upon the making of a bankruptcy order.
- James is instructed by office holders, creditors and debtors alike which gives rise to a broad range of work, including the challenging of the inappropriate use of the insolvency regime. Examples include the abuse of the IVA procedure in the *Miss World* litigation.
- By way of sub-specialism, James's insolvency practice includes matrimonial insolvency. He has been instructed in various high value divorces and acted for the wife against her purportedly bankrupt husband in the "quite extraordinary" *Young v Young* litigation.
- James was instructed as an English law expert in proceedings before the Supreme Court of South Korea on a cross-border insolvency aspect pertaining to the "rehabilitation" (administration) of the Samsun Logix Corporation.