



Let's talk about trusts law

A look back at the development of trusts law and what has changed over the years.

EMILY CAMPBELL INTERVIEWS BRIAN GREEN QC, 27TH MAY 2021

Emily: So, this is the first of our 'Let's talk about trusts' talks and, Brian, I'm going to be interviewing you looking back at the past, and in the next one, you're going to be interviewing me and we're going to be looking at the future. So, can you tell us how did you come to specialise in private client work?

Brian: It's the usual combination of accident and good fortune. The accident was I had taken a lectureship at the LSE when I left University, where they got me teaching land law and trusts, and the good fortune is that that enabled me to go to the Bar with the princely salary I was receiving from the LSE. I did a land law pupillage and a trusts pupillage, and the trusts pupillage was the second one, and it was with Robert Walker. It gelled and I found myself practising in the area in which I had actually been teaching, and that gelled too, and I absolutely loved every moment of it.

Emily: Being Robert Walker's pupil must have been really interesting.

Brian: It was absolutely fascinating and I learned an awful lot from him, and I'd like to think that many of the things that he taught me I still put into practice today. An almost obsessive fascination with precision in drafting and also in expression when it comes to written work, which was a real hallmark of the way in which he practised. As it happens, he was able to bring such precision to bear using a dictating machine. I have to use more laborious processes. But he was an inspirational teacher and a very good colleague and friend as it turned out.

Emily: Did you have any other pupil masters?

Brian: Well, my first pupil master in land law was Nick Patten. He was the land law pupil master in a different set.

Emily: A distinguished set of pupil masters.

Brian: Yes, he went on to become a Court of Appeal Judge. They were both fantastic pupil masters, great people and they became great good friends.

Emily: Through you?

Brian: [Confusion at being at cross-purposes – after a pause!] Oh no, no I'm not sure they were very good friends themselves, though that's not in any way casting aspersions. No, they were very good friends to me, and I became very good friends with them at the time.

Emily: So, over the years, you must have seen some really substantial changes in private client practice?

Brian: I think so. When I first came to the Bar, private client was regarded as, as it were, "the Rolls Royce" of Chancery practice, rightly or wrongly, and many of the most distinguished practitioners, and many of the most distinguished and most respected judges were private client practitioners. The Chancery Bench had a whole series of specialist private client judges. They obviously could turn their hands to other things, but they were very noted for their [private client] expertise. Other Chancery Judges would very willingly seek out private client cases because they enjoyed them, they thought it was interesting, they thought it was the sort of work that they wanted to be somehow associated with. Why that was I couldn't really tell you. I think part of it may have been snobbery, the notion that private client was to do with landed estates and that made it rather interesting for people to have an association with it, but whatever the reason it was very, very fashionable in those days. These days, it's quite different, as you know.

Emily: Yes, and do you think that they enjoyed being able to have a role in policy? For example, is it good for young people to have too much money too soon? Is it permissible to help avoid taxes?

Brian: They certainly had views on those things, certainly so far as regards young people and very often they would obviously be thinking about their own children, nephews, nieces or children of friends. In the early days, certainly it was the case that there was a certain reluctance to postpone vesting for the benefit of children too far. It's not like today, where you can put a 125-year perpetuity period in on the basis [that property] is never going to vest in anyone [in particular] ever?

Emily: They never like cutting people down to life interests?

Brian: Well, they saw the point that it was undesirable for property to vest in such a way as to crystallise a capital gains tax charge, which was the bug bear for a long period. Then it became possible to hold over as against that possibility and then it ceased to be possible to hold over again. But so far as regards tax, of course, in the early years, even before Ramsey and after Ramsey, when it

came to variations, judges always thought tax avoidance was a jolly good thing.

Emily: And what about the composition of the Bench these days?

Brian: Absolutely Emily, that's the other side of the coin. You look at the Chancery Bench these days and it's got a composition of fantastic practitioners, obviously, but there's not a single private client judge. Everything has changed. The last private client judge was probably Nick Warren. Whether there will ever be another one again, one wonders because it's been the policy of Chancellors, probably since Terence Etherton, to move private client business across to Masters. They do variations these days, which judges used to do.

Emily: And what about economic circumstances, do you think different Governments have influenced private client work?

Brian: I don't think that they have directly influenced it. Indirectly they may have affected the composition of the work. Post-Thatcher, there's new money and new money came to eclipse old money in terms of the size of the trusts that you were dealing with and the objectives with which trusts were being set up and the objectives which variations and the re-direction of the interests under some of the trusts were designed to achieve. So that's one indirect effect, the other indirect effect, I suppose, is that Governments have had aspirations as regards the taxation of trusts and, in their different approaches to the taxation of trusts, they probably made private client work a good deal less interesting than it was in earlier days because, certainly the taxation of trusts in the UK now is essentially transparent, it's not very interesting at all.

Emily: And what about technology, how have you seen that change over the years?

Brian: The world has changed completely, hasn't it? I suppose the two major developments that I've seen in my practical life are firstly STEP, which has been an astonishing organisation, growing from very small beginnings to what it is now.

Emily: Worldwide.

Brian: Worldwide, absolutely, and the education that it provides to people and the resources and the know-how are absolutely fantastic. A wonderful thing. Corresponding to that, on perhaps a slightly more informal basis, are online search engines, which have revolutionised practice, and also the availability of precedents online means that perhaps some of the know-how that individual practitioners used to be able to pedal is no longer required, or at least no longer cherished, in the same way as it was.

Emily: And last question: what's the most unusual piece of work you've done?

Brian: It's a good job that you gave me notice of that question so that I can answer it! The most unusual piece of work that I've done is that, when I was a senior

junior, I was approached by the London Rubber Company, who were the then owners of Durex, who had a particular problem, and the problem was that Richard Branson and the Virgin brand were attempting to enter the market over which they had total domination and they were seeking to prevent this. You may ask, what does that have to do with me? Well, the answer is that the pitch of Virgin was that a percentage of the profits that came from the condom sales were going to go to charity - this was a pitch on the side of the box. The London Rubber Company was sceptical in relation to this pitch and it actually commissioned me to settle a letter to Virgin to put them to proof as to what their actual intentions were. Well, to cut a long story short the net result was a nine-month delay in the marketing of Virgin condoms and I can only imagine, I speculate, that the children born as a result are probably approaching the age of 30 now, and it's all down to me!

Emily: Thank you very much, Brian.

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