

TRUSTS LITIGATION DAY 2023

Wilberforce
CHAMBERS

Monday 23rd January 2023

9am – 5.45pm, followed by drinks and dinner
InterContinental London Park Lane

6.0 CPD

Timetable

9.00am Registration and breakfast refreshments

9.30am **Welcome from the chair**
Jonathan Hilliard KC

9.35am **Excluding spouses from trusts**
Simon Atkinson and Samuel Cathro
This talk will consider the various methods by which settlors, trustees and spouses have sought, successfully or otherwise, to exclude a spouse from a trust. Themes will include:
• "Oops I did it again": Commonly encountered issues in litigation / drafting
• "I will survive": Practical tips for drafters and trustees
• "All by myself": Issues in other common law jurisdictions

10.00am **Four enforcement risks to be aware of**
Jonathan Hilliard KC and Zoë Barton KC
• Contempt of Court – *Barclay* (2022), *Akhmedova*
• Privies – *JSC v Lenux* (2021)
• Attack from above – *St John* (2020)
• Derivative claims – *USS* (2022)

10.25am **When the money runs out: "insolvent trusts" revisited**
Joseph Steadman
• When does a trust become an "insolvent trust" and what does that mean for the trustee?
• How are competing claims to the trust fund resolved?
• What questions remain unanswered following the Privy Council decision in *Z Trusts*?

10.45am **BREAK**

11.20am **Workshop sessions – taking place in person only**
(please select one from the following page)

12.35pm **LUNCH**

1.35pm **Trusts cases update**
Tiffany Scott KC, Emily McKechnie and Jamie Holmes
Tiffany, Emily and Jamie take you through a number of key decisions in England and the offshore world in recent months, distilling practical tips for any trusts litigator, and trends to keep an eye on for the future.

2.05pm **Workshop sessions repeated – taking place in person only (please select another one from the following page)**

3.20pm **BREAK**

3.55pm **Attacks on trusts in civil law jurisdictions**
Robert Ham KC and Michael Ashdown
• Defending English and other common law trusts from attack in civil law/non-trust jurisdictions
• Personal remedies surviving the extinguishment of proprietary rights
• *Byers v Samba* – knowing receipt claims and the non-recognition of trusts

4.20pm **Vulnerable settlors – capacity and undue influence**
Clare Stanley KC
• Challenging inter vivos dispositions, e.g. gifts into trust and exercise of powers of appointment
• Other issues which arise when the matriarch/patriarch becomes vulnerable
• Relevance of the Mental Capacity Act
• The Court of Protection or the Chancery Division?

4.40pm **Would I lie to you: Can you tell a good argument in court?**
Jennifer Seaman, Simon Atkinson, Daniel Petrides and Caspar Bartscherer
A panel of barristers will present a selection of arguments, but which ones succeeded in court and which one is made up?

5.10pm **Guest speaker: Adam Brand – Forensic handwriting analyst and handwriting expert**

5.40pm **Closing remarks from the chair**
Jonathan Hilliard KC

5.45pm Drinks reception

7.00pm Dinner at Theo Randall (pre-booked guests only)

Registration fee:

£299 + VAT for conference only
(in-person attendance)

£360 + VAT for conference and
dinner at Theo Randall

£60 + VAT for conference minus
workshops (virtual attendance)

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Workshops – available to delegates attending in person only.

Please choose one workshop for the session at 11.20am and another workshop for the session at 2.05pm

WORKSHOP 1: Actions for accounts – how they work in practice

Michael Tennet KC, Fenner Moeran KC, James McCreath and Ram Lakshman

- One word – many meanings: Which of the many 'account' remedies are you really interested in? Orders to account, accounts of profits, equitable accounting between co-owners, accounts of rents and profits / other things, and accounts quantifying equitable compensation.
- Magic words: Settled accounts / accounts stated, accounts in the common form and accounts on the basis of wilful default.
- Procedure and accounts: When to claim an account, how to do it, interim remedies.
- How does an account work in the real world? Directions, evidence, accounting / surcharging / falsifying, burden of proof, the hearing, the form of the outcome and consequential relief.
- Limitation and accounts: What is the limitation period (if any), and procedural traps.

WORKSHOP 2: Trustee's rights of indemnity

Gilead Cooper KC, Jennifer Seaman and John Grocott-Barrett

- Basic principles
- Careless trustees [*Laird v Simcock* [2022] EWHC 2293 (Ch)]
- Trustees charging cause [*Re Townsend* [2022] EWCA Civ 880]
- Litigation costs in Part 8 / Part 64 claims
- Beddoes relief
- Successor trustees and insolvent trust funds [*Equity Trust (Jersey) Ltd v Halabi* [2022] UKPC 36]

WORKSHOP 3: Removal applications

David Pollard, Edward Sawyer, Anna Littler and Benjamin Slingo

- Catalysts for removal of trustees
- Good and bad reasons
- What should a trustee do when facing a removal application?
- Challenging removal
- Costs

Please email your choice of workshops to seminars@wilberforce.co.uk or alternatively indicate your choice on your Eventbrite order

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