

Mark Warwick KC

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The latest edition of the Legal 500 (October 2022) states ‘A superb legal knowledge and vast experience enable Mark to navigate the most tricky of problems involving the most tricky of people. He is a calm and wise presence in your corner’ (This year Mark was also nominated by Legal 500 for real estate KC of the year)The latest edition of Chambers & Partners (October 2022), states “*Mark Warwick is realistic and commercial, and has a speedy turnaround*”*He has the intellect and his manner in court is good*”*He is a go-to for complex mtters*”*Mark Warwick is very energetic and very responsive. He is a KC who always wants to go the extra mile to help the case*”.

The 2021 editions of the above guides stated “*Mark is simply tremendous and is absolutely someone who you would want to have on your team. He is unquestionably hard working, always makes himself available and is always one step ahead. A leader in his very own right.*’ (Legal 500 2021). “Mark Warwick KC is head of chambers and a highly respected silk whose work regularly consists of high-profile and complex real property litigation. He also handles property-related professional discipline matters. He is a leading expert on break clauses. “*Mark is calm and measured and is also very approachable and user-friendly. He is very good in consultation with clients.*” “*His knowledge of property law is huge. He is a machine! You can give him a complex set of papers and he will get back the next day with solutions and ideas*” (Chambers 2021).

Mark’s practice extends to contentious chancery and professional negligence. He has appeared in every tier of court, including the House of Lords and Supreme Court. His reported cases exceed 200.

Mark is the joint author of *Warwick & Trompeter on Break Clauses*, now in its third edition (Hart Publishing).

Landlord & Tenant

Recent cases have involved the law of easements (*Thurloe Lodge v Amberwood Drive* [2021]), the construction of restrictive covenants (*Mackenzie v Cheung* [2022]), the recovery of legal costs from lessees (*Kensquare v Boakye* [2022]), the evidence relevant to a renewal of a lease per the Landlord and Tenant Act 1954 (*Mondial Assurance (UK) v Bridgwater Properties* [2016]), and relief against forfeiture (*Freifeld v West Kensington Court* [2016])

Professional Negligence

Mark often acts for Claimants in claimants against solicitors and other property professionals. He was also recently successful in injuncting a solicitor from acting against a former client, see *Western Avenue v Soni* [2018] PNLR 10

Real Property

Recent cases have involved the construction of the Access to Neighbouring Land Act 1992 ([2022] CH 289), rectifying the land register (*Dhillon v Barclays Bank* ([2021]), undue influence (*Malik v Sheikh* {2018} 4 WLR 86), alleged sham trusts (*Raja v Van Hoogstraten* [2018] and *ND v SD* [2018] 1 FLR 1489), damages for dumping waste on land (*Hyde v Simple Skips* [2017]) and subrogation in the field of mortgages (*Menelaou v Bank of Cyprus* [2016] AC 176)

Trusts, Probate & Estates

Recent trust cases have included a significant decision as to when an express trust by declaration may arise (*Ong v Ping* [2017] WTLR 1365), and the circumstances in which a trustee may purchase trust property (*Newman v Clarke* [2017] 4 WLR 26)

Significant probate and estate cases have included *Re Lavin decd* [2012] CH 573 (“execution” of death bed will) and *Olins v Walters* [2009] CH 21 (elements of enforceable mutual wills)

Notable Cases

Mark has featured in over 200 reported cases. Listed below is a selection of the more prominent and recent of those.

Mackenzie v Cheung [2022] EWHC 1694 (Ch) – Mark succeeded in case regarding construction of restrictive covenants

Jesseman & Anor v Ali & Anor [2022] EWHC 1080 (Ch) [2022] BPIR 1046 Trustee in bankruptcy failed to establish that Mark's client held a property on a constructive trust

Prime London Holdings 11 Ltd Thurloe Lodge Ltd [2022] EWHC 303 (Ch) (14 February 2022) [2022] Ch 289 – Leading case dealing with Access to Neighbouring Land Act 1992

Kensquare Ltd v Boakye [2021] EWCA Civ 1725 (22 November 2021) [2022] L&TR 18 – CA rules upon interim service charges and construction of leasehold covenants

Thurloe Lodge Ltd v Amberwood Drive Ltd & Anor [2021] EWHC 1133 (Ch) – Mark's client defeated all aspects of opponent's summary judgment claim, relating to easements

Stonard v Green Shoots Ltd (2021) – Establishing the terms of a financial contract plus quantum meruit

Riverside CREM 3 v Virgin Active (2021) EWHC 746 (Ch) – Whether claim for rent arrears is to be stayed, because of pending scheme of arrangement

Dhillon v Barclays Bank (2021) 1 All ER 421 – rectification of the land register

Co-operative Food v Shah Properties (2019) – Guarantee not invalid because of Landlord & Tenant (Covenants) Act 1995

Thurloe Lodge Ltd v (1) Amberwood Drive Ltd (2) Prime London Holdings 11 Ltd (2019) -Mark obtains injunction over private road in Kensington to enable building work to continue

Snarecroft v Quantum Securities [2018] Lawtel – Judge rules, in favour of Mark's client, that, user as a hotel, would be user "other than for residential purposes", and therefore in breach of the tenants covenant in a lease.

VS v RE [2018] 1 WLR 3757 – Mostyn J – Jurisdiction re orders for sale in the Family Division

Malik v Sheikh [2018] 4 WLR 86 – Fancourt J – Jurisdiction of FTT, and scope of undue influence in a family context.

Raja v Van Hoogstraten – Lawtel (Morgan J) – 27 March 2018 – Mark is successful in resisting a claim that a trust of properties is a sham

Ong v Ping [2017] WTLR 1365– Despite the trust deed having a blank for the trust property, the CA determines there was a valid trust

Hyde v Simple Skips – Lawtel (QBD) – 5 December 2017 – The Court awards Mark’s client nearly £1m for unlawful dumping of waste on the client’s land

Western Avenue Properties Ltd & Anor v Soni & Anor [2017] EWHC 2650 (QB) (26 October 2017); [2018] PNLR 10 – Mark was successful in obtaining an injunction, in preventing a solicitor, who had previously acted for his clients, accepting instructions to take proceedings against them (because there was a risk they would misuse confidential information).

ND v SD and Y Trustees – [2018] 1 FLR 1489 – Mark acted for the trustees of a trust, established by the husband. He successfully resisted the wife’s contention that the trust was a sham.

Barnett Waddington Trustees (1980) Ltd v Royal Bank of Scotland (2017) – Lawtel – 20 April 2017 – The Defendant bank’s attempt to raise a claim, in a second action, ruled an abuse of the process of the Court.

Newman v Clarke – [2017] 4 WLR 26 – Whether T’s purchase, from trustees who included himself, of the freehold interest in a house, pursuant to the Leasehold Reform Act 1967, would be a breach of trust.

Mondial Assurance (UK) Ltd v Bridgewater Properties Ltd – Lawtel 11 November 2016 – The opinion of a properly qualified expert is prima facie admissible, subject to questions as to the weight of his evidence, and his evidence was not subject to the requirements of CPR Part 35 unless the expert had been instructed to give or prepare expert evidence for the purpose of proceedings.

Greenridge v Kempton – Lawtel – 22 January 2016 – Misrepresentation inducing a contract for the sale of offices.

Greyfords v O’Sullivan – Lawtel – 17 December 2015 – When it is possible for a landlord to recover its legal costs, of litigation against tenants, from those tenants via service charges.

Dickinson v UK Acorn Finance – Lawtel (CA) – 25 November [2016] HLR 17 – Whether a mortgagors claim that a mortgage was invalid per statute, was an abuse of the process, because of earlier proceedings.

Menelaou v Bank of Cyprus – [2016] AC 176 – The Supreme Court examines the law of subrogation and unjust enrichment.

Skelwith (Leisure) v Armstrong [2016] ch 345 – Newey J rules that equitable assignee of mortgagee's rights gives power to sell the mortgagor's interest.

Barnett Waddington Trustees v Royal Bank of Scotland [2016] 1 BCLC 508 – Warren J rules that the bank was not entitled to recover "interest rate swap" monies.

Freifeld v West Kensington Court Ltd [2016] L. & T.R. 5 – Mark's client is successful in obtaining relief from the forfeiture of a valuable commercial lease, despite Judge's findings of wilful breaches.

Ong v Ping – [2017] EWCA Civ 2069 – CA – Discretionary trust created by settlor sending signed draft to her solicitor.

Day v Tiuta International Ltd [2015] 1 P&CR DG10 (LTL 2 October 2014) – The CA gives detailed consideration to defences available to a chargee's claim to subrogation (including the effect of a cross claim as to damages that exceeds the subrogated sum)

Sugarman v CJS Investments Ltd [2015] 1 BCLC 1 (LTL 22 September 2014) – The CA construes the articles of association of a management company, and the voting rights of the owner of multiple flats in a development.

Edwards v Ashik (LTL – 7 August 2014) – The proper approach to causation & rescission, where fraudulent answers were given to preliminary enquiries.

Cohen v Tesco Properties (LTL – 28 July 2014) – The proper approach to a property sale agreement with a long stop date, plus consideration of a claim for the return of a deposit per s 49(2) LPA 1925.

Bank of Scotland v Joseph [2014] EWCA Civ 28 [2014] 1P & CR 18 – This is the first time that the Court of Appeal has had to consider the use of unilateral notices registered pursuant to the Land Registration Act 2002. In particular: in what circumstances does a notice registered in respect of one property interest give priority to a different interest?

Hart v Hart (LTL 19 July 2013) – Hearing of an unfair prejudice petition under Section 994 Companies Act 2006

Eco 3 Capital Ltd v Ludsin Overseas Ltd [2013] EWCA Civ 413 – Court of Appeal identifies the criteria for establishing a case of fraudulent misrepresentation

Ansa Logistics Ltd v Towerbeg Ltd [2012] EWHC 3651 (Ch) (Floyd J.) – Consideration of what is meant by a ‘parting with possession’ of land.

Hughmans v Central Stream services Ltd [2013] 1 EGLR 27 – Question whether a contract compromising legal proceedings created a proprietary interest in a property owned by the defendant to those proceedings and, if so, whether it took priority over a later charging order

Arrowgame Ltd v Wildsmith [2013] 1 WLR 1051 – First ever contested case on the interpretation of Section 27 of the Landlord and Tenant Act 1987 (concerning acquisition orders)

Greenglade Estates Ltd v Chadha [2012] EWHC 1913 (Ch), [2012] 42 EG 138 – Claim brought by buyers against auctioneers for breach of warranty of authority.

Wimpole Theatre v J.J. Goodman Ltd [2012] EWHC 1600 (QB) – Claim for payment due for procuring the introduction of a production company to an incoming tenant.

Q-Park Ltd v HX Investments Ltd [2012] 2 P&CR 7 – Construction of option/pre-emption agreement.

In Re Lavin Decd (No 2) [2012] Ch 573, [2012] 3 WLR 330 – Deceased’s sister, and sole beneficiary, signs his name on his will, written out by sister’s daughter, when he is on his deathbed. Factors to determine whether the will is valid.

Quest Advisors v McFeely (2011) LTL 9.12.2011 – Consideration of an interim payment pursuant to a specific performance order and repudiation of a specific performance order.

CPS v Piper (2011) (Holman J.) 7.12.2011 – Application of *Jones v Kernott* (2011) when considering the existence and size of a wife’s interest in a property the subject of a confiscation order.

Milebush Properties v Tameside Council CA [2012] 1 P & CR 3 – Whether appropriate to seek declaratory relief where there is a dispute between the non-party beneficiary of an easement granted by a planning agreement and the developer’s successor.

BOH v Eastern Power Networks CA [2011] L&TR 223 – No merger of leasehold and freehold interests, when business tenant acquired part of its reversion, thereby creating a never-ending lease.

Secret Hotels v EA Traveller Peter Smith J. LTL 11.05.2010 – Parallel proceedings & seeking a stay of an English claim where an earlier case was begun in Cyprus.

Paddington Basin v West End Quay (2010) 1 WLR 2735 – Whether an agreement dealing with the provision of services to a large number of lessees is a qualifying long term agreement for the purposes of s.20 of the Landlord & Tenant Act 1985

Standard Life v W&J Linney (Lewison J.) LTL 25.2.2010 and [2011] L&TR 9 – Break notice served upon original landlord, and copied to present landlords agent “for information”, ineffective to determine the lease

Baker Tilly v Computer Associates ChD LTL 14.12.09 – Break notice valid despite being served in former name of the tenant

IRT Oil v Fiber Optic LTL 3.12.09 – Difficulty of assessing damages does not deprive Claimant of recovering a substantial award

Transview Properties v City Site Properties CA LTL 25.11.09 – CA spells out criteria for adducing fresh evidence on appeal. Purchaser of property fails to obtain rectification of a sale agreement, so as to include an overage abatement provision.

Quest Advisors v McFeely LTL 22.10.09 – Assignment that was in breach of contract term not to assign, adjudged not to be a repudiatory breach of that contract

In Re Lavin Decd LTL 9.10.09 – Proper approach to dispute over validity of a disputed will

Olins v Walters CA [2009] Ch. 212 – Requirements needed to establish an enforceable mutual wills agreement

Bindra v Chopra CA LTL 20.3.09 – Construction of trust deed, dealing with interests on death

Langham Estate Management Ltd v Hardy (2008) 3 EGLR 125 – How to assess damages for breach of a landlord’s repairing covenants

Leonora Investment Co v Mott Macdonald CA LTL 23.7.08 – A landlord’s failure to follow the prescribed machinery for the collection of service charges means that its claim fails

Hollis v Rolfe LTL 22.7.08 – Catholic Church failed to establish that sale of former Convent School was in breach of trust or as a result of undue influence

Kurtha v Marks LTL 28.2.08 – Application of the law of limitation to lost/stolen art

Greenwood Reversions Ltd v World Environment Foundation CA (2009) L&TR 2 – The proper approach to the grant of relief against forfeiture of a long lease

The County Homeseach Company (Thames & Chilterns) Ltd v Cowham [2008] 1 WLR 909 – First case before CA dealing with a claim by a buyer’s agent for commission on sale of a property

Statek Corp v Alford [2008] BCC 266 – Breach of trust and fiduciary duties, and limitation

El Nasharty v Sainsburys [2008] 1 Lloyds Rep 360 – Whether an injunction seeking to enforce an arbitration agreement is compatible with Art 6 of ECHR

Business Environment Bow Lane Ltd v Deanwater Estates Ltd CA (2007) 32 EG 90 – Representations to tenant prior to entering into lease overridden by the executed lease

Lay v Drexler CA (2007) Bus LR 1357 – The proper approach to costs pursuant to the Landlord & Tenant Act 1954 when landlord issued application for a new lease which the tenant later decided it did not want

Yewbelle Ltd v London Green Developments Ltd CA (2008) 1 P&CR 279 – Conditional contracts – obligation to use all reasonable endeavours to complete a s.106 agreement

Weston v Gribben LTL 2.11.06 Court of Appeal – Consideration of the limits upon the Court’s jurisdiction to add a party outside the limitation period

Weston v Dayman [2008] 1 BCLC 250 Court of Appeal – Effect of consent order discharging receivership and powers of a court to vary a consent order

Harris v Wallis (Times 12.5.06) – Court can order security for costs against a Claimant who took steps in relation to his assets long before litigation was begun, if those steps made it more difficult to enforce an order for costs

Fitzroy House Epworth Street v The Financial Times Ltd [2006] 1 WLR 2207 – Court of Appeal overruled decision in *Commercial Union v Label Ink* (2001) L&TR 29 and decided that in a break clause, the test for ‘material compliance’ with the covenants in a lease was entirely objective

London Diocesan Fund v Phithwa (Avonridge Property Co Ltd, Pt 20 Defendant) [2005] 1 WLR 3956 – House of Lords rules that the anti-avoidance provisions of Landlord & Tenant (Covenants) Act 1995 do not prevent the original landlord limiting its liability

Burkle Holdings Ltd v David Eric Laing [2005] EWHC 638 (QB) – Issues of general importance to the solicitors’ profession concerning joint and several retainer and legal professional privilege

Sainsbury’s Supermarkets Ltd v Olympia Homes Ltd [2005] 25 EG 193 (CS) Mann J. – Option agreement – whether Claimant’s option constituting equitable interest binding on purchaser – effect of failure to register title by grantor of option

Englewood Properties Ltd v Patel and Cornberry Ltd [2005] 1 WLR 1961 – Vendors duty as trustee between contract and completion

MCI Worldcom International Inc. v. Primus Telecommunications Inc. [2004] 1 BCLC 42 – Misrepresentation by agent of contracting party

Lewis v. Eliades [2004] 1 WLR 692 – Jurisdiction to enforce foreign judgment

P&S Platt Ltd v. Crouch [2004] 1 P. & C.R. 18 – Court of Appeal decided that mooring rights were granted to a purchaser of land because of s62 LPA 1925

Gill v. Tsang LTL 10.7.2003 – Jurisdiction to vary an order for specific performance existed despite the varied order differing from the terms of the parties’ agreement

London & Argyll Developments v. Mount Cook Land LTL 10.6.2003 – Lloyd J rectifies lease by construction, by inserting words into an alternations covenant

Co-operative Group v. Vivienne Properties EG 1.5.2003 – Time limit for application to vary lease per s84(12) LPA 1925 runs from date of lease not from any earlier date

London & Regional v. TBI LTL 22.3.2002 – Court of Appeal to decide no arguable trust claim where any agreement was without prejudice

Fivecourts Ltd v. J R Leisure Development Ltd [2001] L+TR 47 – No further relief to tenant when existing consent order re relief against forfeiture. Also no relief to sub-tenant

City Alliance v. Oxford Forecasting [2001] 1 All E.R. (Comm) 233, CA – Appellate guidance on circumstances when a contract’s literal meaning can be ignored in favour of some other meaning

Sheikh Ahmed Jaber Al-Sabah v. Fehmi Mohammed Ali, Lange Estates Ltd, Brain & Brain (a firm) & Georgiou Nicholas (a firm) LTL 29.6.2000 – Sheikh defrauded of flats (whilst in Kuwait), solicitor unwittingly helped fraudster

Hertfordshire Investments Ltd v. Bubb [2000] 1 WLR 2318 – Adducing fresh evidence on appeals and on applications to set aside judgment

Broadmoor Special Hospital v. Robinson [2000] 1 WLR 1590 – Public bodies’ jurisdiction to obtain injunction

Petra Investments Ltd v. Jeffrey Rogers [2000] L & TR 451 – When landlord’s changes to a shopping centre derogate from a tenant’s grant

Gatwick Parking Services Ltd v. Sargent [2000] 2 EGLR 45 – Landlord opposing new lease per s30(1)(g) and adducing fresh evidence.

Banner Homes Group Ltd v. Luff Developments Ltd [2000] Ch 372 – Oral joint venture enforceable through constructive trust

In Re Blenheim Leisure (Restaurants) Ltd (No. 2) [2001] BCC821 – Proper approach to application for restoration to register

In Re Blenheim Leisure (Restaurants) Ltd (No. 1) [2000] BCC554 – Landlord joined to object to restoration of tenant to the companies register

Rainbow Estates Ltd v. Tokenhold Ltd [1999] CH 64 – Landlord obtaining specific performance of tenant’s repairing covenant

Romulus Trading v. Comet Properties [1996] 2 EGLR 70 – Letting adjacent premises for competing use not a derogation from grant

Kelsey H.A v. King [1996] 28 HLR 270 – Circumstances in which Court can dispense with Notice per S8 HA 1988

Howard de Walden Estates Ltd v. Pasta Place Ltd [1995] 1 EGLR 79 – Discharge of sureties' liabilities by variation

Milverton Group Ltd v. Warner World Ltd [1995] 2 EGLR 28 – Landlord having to give credit for guarantor's payments

Mercantile Group v. Ayiela [1994] QB 366 – Discovery/injunction against third parties

Connaught Restaurants Ltd v. Indoor Leisure Ltd [1994] 1 WLR 501 – Exclusion of equitable set-off

Handel v. St Stephens Close Ltd [1994] 1 EGLR 70 – Rights to park

Ashley Guarantee plc v. Zacaria [1993] 1 WLR 62 – Mortgagee's right to possession

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Professional Memberships

- Chancery Bar Association
- Property Bar Association
- Professional Negligence Bar Association
- Member of Chartered Institute of Arbitrators (MCIArb)
- Called to the BVI Bar

Privacy Notice

Please see Mark's Privacy Notice [here](#).

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BSB & VAT Information

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