

Simon Brilliant

Simon is a well established practitioner in a range of real property and landlord and tenant matters. He specialises in litigation and related advisory work, and undertakes both commercial and residential cases. He has considerable experience of both oral and written advocacy. He sits as a specialist tribunal judge dealing with both land registration and residential property disputes.

He is an accredited mediator, and has been described by experienced counsel as

“An unflappable mediator, who really does go the extra mile. He kept us all on track, and cracked a dispute that I was convinced was destined for court.”

Further information

Other publications

- The single county court

Qualifications

- LLB Manchester University
- RG Lawson Prize in Roman Law 1973
- BCL Lincoln College Oxford 1975
- Called to the Bar Middle Temple 1976
- Member of the Bar Council Professional Conduct Committee 2002-2005
- Deputy Adjudicator to HM land Registry 2004-2013
- Judge of the Land Registration Division of the Property Chamber of the First-tier Tribunal since 2013
- Judge of the Residential Property Division of the Property Chamber of the First-tier Tribunal since 2014

Property

Simon frequently deals with cases concerning the construction of conveyances and transfers, rectification of documents, alteration of the register, priorities, adverse possession, mortgages, easements, joint ownership, proprietary estoppel and constructive trusts, and buyer and seller disputes. He has a particular interest and expertise in boundary disputes.

Simon contributes to the titles “Land Registration” and “Trespass to Land” to Atkin’s Court Forms and is the co-



Year of Call: 1976

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author of LexisNexis' "A Practical Guide to Land Registration Proceedings".

Landlord & Tenant

In residential landlord and tenant matters, Simon's regular work includes forfeiture, the right of first refusal under the Landlord & Tenant Act 1987, collective enfranchisement and lease extension, service charges and the right to manage. In commercial landlord and tenant matters his regular work includes rent review, renewals of business leases and consent to assignments.

Contentious Trusts and Probate

Simon has substantial experience of the law of joint ownership and applications under the Trusts of Land etc Act 1996. His probate work includes testamentary capacity and family provision disputes.

Recent Cases:

Simon has recently obtained:

- an order determining the boundary on a substantial Grade I listed Cotswold estate in a position substantially different to that shown on the registered title plans.
- a satisfactory settlement for a family property company against a major housebuilder where he was able to put forward a powerful argument that the housebuilder's notice purporting to exercise an option on a £3.5M plot was bad in law.
- an order for rectification of a commercial under-lease which failed to mirror certain terms of the head lease, where he was able to show the parties had intended otherwise. The application had been strenuously opposed by the landlord seeking to obtain commercial advantage from the discrepancy.

Reported Cases:

- *Idnani v Elisha* [1979] RTR 488, CA (bailment)
- *Hulme v Langford* [1985] 50 P&CR 199, CA (statutory tenancy)
- *Lynch v Sudjic* [1987] Times 18/5/87 (contractual illegality)
- *Brinnand v Ewens* [1987] 19 HLR 415, CA (proprietary estoppel)
- *Barclays Bank v Kennedy* [1989] P&CR 221, CA (undue influence)
- *Gore v Carpenter* [1990] 60 P&CR 456 (severance of joint tenancies)
- *Denetower v Toop* [1991] 3 AER 661, CA (first refusal under Landlord & Tenant Act 1987)
- *Hounslow BC v Hare* [1991] 24 HLR 9 (right to buy and rectification of the register)
- *Target v Clothier* [1993] 25 HLR 48, CA (mortgage possession)



- Kay Green v Twinsectra [1996] 4 AER 546 (first refusal under Landlord & Tenant Act 1987)
- Abada v Gray [1998] TLR 369 (payment into court)
- Twinsectra v Jones [1998] 2 EGLR 129 (first refusal under Landlord & Tenant Act 1987)
- Kincaid v Hartlepool BC LTL 5.12.00 (duty of care owed by occupier of beach)
- Newman v Folkes [2002] PIQR Q2 upheld on appeal [2002] EWCA Civ 591 (loss of earnings)
- Charles v NTL Group Ltd [2002] EWCA Civ 2004 (Part 36 offers)
- Royal Bank of Scotland PLC v Victoria Street (No 3) Ltd [2008] EWHC 579 (Ch) (commercial landlord and tenant: consent to assignment: summary judgment)
- Royal Bank of Scotland PLC v Victoria Street (No 3) Ltd [2009] L & TR 17 (commercial landlord and tenant: consent to assignment)
- Lombard North Central PLC v Remax Harborne Ltd [2009] L & TR 14 (commercial landlord and tenant: consent to assignment)
- Clarence House Ltd v National Westminster Bank PLC [2009] 3 All ER 175 (commercial landlord and tenant: virtual assignment)
- Sargespace Ltd v Azadian Property Ltd (2012) unreported (interpleader following a default judgment)

Simon's decisions include:

- Wilkinson v Farmer [2010] EWCA Civ 1148 (construction of width of right of way) (appeal in Court of Appeal)
- Khan v Khan [2011] EWLandRA 2008_0837 (procedure where a party has been directed to commence court proceedings and the proceedings are struck out)
- Palace Gate Worldwide Ltd v Palacegate Agencies Ltd (2010) Rec 2009/007 (jurisdiction to alter the register in a rectification of a document application pursuant to s.108(2) Land Registration Act 2002)
- Quigley v Masterson [2012] 1 All ER 1224 (severance of a joint tenancy) (appeal in High Court)
- Burton v Walker [2014] 1 P&CR 9 (validity of lordship of the manor and alteration of the register against a registered proprietor) (appeal in Court of Appeal)

