



ST JOHNS
BUILDINGS
BARRISTERS CHAMBERS



James Malam

Year of call: 2002

Practice and Reputation

James specialises in commercial and Chancery work, with a particular emphasis on professional negligence and insurance matters.

James is recommended for Chancery and commercial litigation in the Legal 500 2011, which describes him as being "very careful, easy to work with and bright" and having a practice "ahead of his call".

Experience

Before joining chambers James practised as a barrister at Fishburns solicitors, where he dealt with a wide variety and level of cases. Fishburns is a specialist insurance and professional negligence firm.

During 2007 James spent six months working as a Judicial Assistant to the Court of Appeal, where he was assistant to Lord Justice Carnwath.

James completed a Chancery and commercial pupillage at the chambers of Geoffrey Vos QC, 3 Stone Buildings, Lincoln's Inn. Where he experienced a broad range of work, including that arising from the insolvency of Turner & Newell (subsequently *Freakley v. Centre Re. International Co.* [2006] UKHL 45) and *Charalambous v. Charalambous* [2004] EWCA Civ 1030, dealing with the court's power to vary a non-resident matrimonial trust under the Matrimonial Causes Act 1973.

Areas of specialist interest

James has particular experience in the following main areas:

- Professional Negligence;



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- Insurance;
- Construction Disputes;
- Company and Insolvency;
- Trusts and Tax

Recent cases include:

- Drafting Grounds of Appeal and representing a Swiss property investment company at hearing for permission to appeal against findings of fraud and judgment on a c.€14m bond claim.
- Representing debtors at first instance and on appeal in various test cases arising from the provision of credit by financial institutions to consumers, led by David Uff and Lawrence West QC: Carey v. HSBC [2010] Bus. L.R. 1142; Teasdale v. HSBC [2010] 4 All ER 630 (QBD); and Brookes v. HSBC [2011] EWCA Civ 354.

Professional Negligence work includes:

- Claim by Solicitors Regulation Authority for c. £140k turning on the extent of a solicitors' partnership's liability for fraud of a partner acting under an Enduring Power of Attorney, and the limitation period applicable to liability under s.10 Partnership Act 1890.
- Several cases of alleged negligence by insurance brokers, including: broker's liability for incorrect completion of proposal form where insured warranted truth of statements made by broker; broker's failure to draw insured's attention to onerous clauses suspending insurers' liability during breach; insurer's failure to pass material information to insurer or obtain policy suitable for insured's needs. C. £100-300k.
- Undervaluation of commercial property by surveyor, leading to reduced realisation from sale of that property. claim for c.£500k.
- Claims against conveyancing solicitors, including for failure to investigate sufficiency of rights of way and for failure to investigate extent of planning permission granted. claims for c.£200k
- Various claims for auditors' breach of duty, including failure to warn of systemic vulnerabilities in the company's organisation; failure to discover forged receipts/invoices; and failure to investigate the powers/responsibilities of senior employees. losses of c.£100k- £1.3m.

Insurance work includes:

- Declinature, on the basis of misrepresentation and breach of duty of good faith, of insurance claims in respect of two £30m losses.
- London arbitration of dispute over extent of cover provided by D&O policy following US class action against directors of FTSE100 company.



- Construction of policy: whether various allegations by the same client in relation to the same project 'arose out of' a circumstance notified to insurers and whether they constituted one 'Claim' or two, so that they attached to the same policy year. claim for c.£5m

Construction Disputes work includes:

- Galliford Try Infrastructure Ltd v. Mott MacDonald Ltd [2009] PNLR 9: defence of £13m claim for negligent misstatement allegedly made to a design and build contractor by the structural engineer employed by the developer of a large entertainment/shopping development.
- Danish arbitration regarding the negligent design and supervision of the rehabilitation of a Nicaraguan road, including detailed examination of complex engineering issues. £10m claim.
- Adjudication of claims for contract administration failures and underestimation of construction costs against an architect whose ability to give instructions was severely limited due to his mental health. claim was for c.£500k

Company and Insolvency work includes:

- Four-party litigation arising from alleged sale at an undervalue of a car dealership in Preston. Reasonableness of receivers disregarding the possibility of a significantly increased future realisation in favour of a lower current offer. c.£500k
- Liquidator's claim under s.212 Insolvency Act 1986 against former Administrators of the company for wrongfully allowing the company to continue to trade.
- Unfair prejudice (s.994) petitions and claims for equitable winding up.
- Advice to Insolvency Practitioners and their solicitors regarding liabilities under leases or entitlements to proceeds under insurance policies and to other assets.

Trusts and Tax work includes:

- Whether trustee exoneration clause protects trustees against allegations a tax liability was negligently incurred; extent to which trustees had the power under the trust to take the steps necessary to avoid the tax charge. c. £200k claim
- Liability of tax accountant involved in creation of trust for tax mitigation purposes. Significant IHT liability caused by failure to provide terminable life interest to wife and so take advantage of spouse exemption (c.£1.5m tax liability). White v. Jones type issues of incidence of loss and lack of duty.
- Appointment of Judicial Trustee following allegations of dishonesty and breach of trust against professional trustees by lay trustee.



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Memberships

Professional Negligence Bar Association
Chancery Bar Association

Awards

Lord Justice Holker Award, Gray's Inn, 2002

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