

MICHAEL SELWAY

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Michael Selway practises in [Property & Estates](#) and [Commercial](#) law, appearing in the High Court, County Court and other tribunals, acting in mediations and doing advisory and drafting work in a wide range of cases in these areas.

He more recently expanded his practice to include the related field of Property & Affairs work in the [Court of Protection](#).

Expertise

Property, Trusts & Estates

In these fields, Michael has expertise in the areas listed under the headings below (see Real Property; Landlord and Tenant; Inheritance, Wills, Probate and Estates; Trusts), and also has experience in other areas, including common land and rights of common, manorial rights, public rights of way and property/estates-related aspects of banking and insolvency.

Michael appears in hearings (and has acted in a number of reported or cited cases) in courts and tribunals across South West England and South Wales, as well as in London and further afield, including:

- Fast track and multi track trials, a wide range of interim and other hearings, case and costs management conferences and appeals in the High Court (especially the Business and Property Courts, Chancery Division and Probate Registry) and the County Court; and
- Final hearings in the First-tier Tribunal, Property Chamber, Residential Property and Land Registration Divisions, LVT and RPT.

He also represents clients in mediations, as well as conducting negotiations and conferences and undertaking advisory and drafting work in all of the areas mentioned here.

Featured Property, Trusts & Estates cases

Winter & Winter v Winter [2023] EWHC 2393 (Ch): Proprietary Estoppel

Led by Hugh Sims KC, Michael acted for the claimants in this challenge to dispositions made to the defendant by their father in his last will. Following a 4-day trial in Bristol, Zacaroli J found in favour of the claimants on their proprietary estoppel claim in relation to their father's share in the family business. The Judge rejected the contentions, inter alia, that the claimants had received sufficient value from the realisation of their own shares in the business to prevent an estoppel from arising on the basis that there had been no detriment due to countervailing benefits or that it was not unconscionable to resile from the assurances made or otherwise. Adopting the starting point from *Guest v Guest*, he decided the appropriate remedy was to give full effect to the assurances.

C & Ors v C & Ors (July 2023): Right of Way, Aggravated/Exemplary Damages

3-day trial as to the existence and extent of a right of way alleged to have arisen by prescription over a track across land of the claimants to access property of the defendants, where declaratory and injunctive relief and both aggravated and exemplary damages were claimed for alleged trespass.

Cain v Ash, Bowles & Roylance [2023] UKFTT 00492 (PC): Adverse Possession

3-day trial of an application for adverse possession of land, made 2 years after the rejection of a previous application under Schedule 6 of the Land Registration Act 2002; the judge determined that, properly construed, Schedule 6 required the applicant to establish 10 years of adverse possession prior to his previous application, as well as 2 years thereafter.

Reed v Pearson, Pollard & Born [2022] EWHC 2292 (Ch): Overage

Claim for payment under an overage deed on the basis that, inter alia, certain General Permitted Development Orders made under the Town and Country Planning Act 1990 amounted to a grant of 'Planning Permission' as defined by the deed so as to trigger such payment; this was rejected by the judge.

A v B (2019-20)

Claim under Inheritance (Provision for Family and Dependants) Act 1975 by adult son of deceased with minor children defendants.

Price v Saundry & Sanders [2019] EWHC 1039 (Ch) (reversed in part by Court of Appeal but not for Michael's client [2019] EWCA Civ 2261)

Liability for costs of claim to remove trustees where claim not pursued to trial.

Meldrum & Freeman v West (2019), HHJ Jarman QC (cited in argument in Court of Appeal in *Jarvis v*

Evans [2021] 1 WLR 24):

Effect of Housing (Wales) Act 2014 on tenancy possession claim by mortgage receivers.

A v M (2018)

Equitable accounting for sums related to co-owned property upon order for sale under Trusts of Land and Appointment of Trustees Act 1996.

Pendra Loweth v North (2013-15) (Michael appeared in First-tier Tribunal and drafted appeal which succeeded in Upper Tribunal [2015] UKUT 91)

Liability of tenants to pay service charges to management company under lease.

Day v Shaw [2014] EWHC 36 (Ch), [2014] 2 P & CR D1, [2014] All ER (D) 120 (Jan), Morgan J

Equity of exoneration and its effect on holder of charging order.

Real Property

Michael has experience in most areas of Real Property, including:

- Adverse possession and title to land
- Boundary disputes and party walls
- Easements (rights of way and other rights)
- Restrictive and other land covenants
- Conveyances, estate contracts, options
- Land registration and land charges
- Constructive and resulting trusts of land
- Proprietary estoppel
- Co-ownership and rights of cohabitees
- Mortgages and charges (including possession)
- Trespass, nuisance and other property torts
- Protection from harassment

Landlord & Tenant

Michael has experience in most areas of Landlord & Tenant, including:

- Residential and commercial tenancies
- Common law and statutory regulation
- Assignment and interpretation of leases

- Breach of covenant and unlawful eviction
- Termination of leases (including possession)
- Forfeiture and relief against forfeiture
- Service charges and dilapidations
- Lease enfranchisement and extension, RTM
- Business tenancy renewals
- Tenancy deposit schemes
- Licences and tenancies at will
- Social housing, ASBIs, contempt of court

Inheritance, Wills, Probate & Estates

Michael has experience in most areas under Inheritance, Wills, Probate and Estates, including:

- Interpretation of wills
- Formal and substantive validity of wills (formalities, testamentary capacity, knowledge and approval, undue influence, fraudulent calumny)
- Family provision claims under the Inheritance (Provision for Family and Dependants) Act 1975 (including adult children, spouses and dependants)
- Appointment, removal and substitution of personal representatives
- Duties and powers of personal representatives
- Issues arising in the administration of estates
- Applications to the court for directions
- Contentious and non-contentious probate

Trusts

Michael has experience in most areas of Trusts, including:

- Validity, interpretation, variation and administration of trusts
- Appointment, removal and substitution of trustees
- Duties and powers of trustees
- Rights of beneficiaries
- Breach of trust disputes
- Co-ownership of land and TLATA claims
- Express, constructive and resulting trusts of land and chattels
- Discretionary trusts and powers of appointment

Commercial Dispute Resolution

In the Commercial field, Michael undertakes both court work (trials and other hearings) and advisory and drafting work in cases involving general contractual disputes and a wide range of contractual issues, as well as aspects of banking and enforcement, including:

- Agency
- Assignment and novation
- Misrepresentation and mistake
- Duress and undue influence
- Guarantees
- Various banking matters
- Charging orders and orders for sale
- Third party debt orders
- Interpleader

As a cross-over with his Property practice, he also has particular expertise in matters concerning mortgages and charges and commercial leases (as to which, see headings above).

Court of Protection

Michael's practice also encompasses Property and Affairs work in the Court of Protection. His established Property, Trusts and Estates practice has previously involved matters of capacity, powers of attorney and suchlike, and he is now expanding his work in these areas, dealing with hearings including as to the removal of an attorney, enforcement of a bond and making of a statutory will.

Education

- BVC (Outstanding), UWE Bristol
- BA (First Class), University of Oxford

Memberships

- Middle Temple
- Chancery Bar Association