

MICHAEL SELWAY

CALL: 2007

"Very bright and very thorough. His advice is always comprehensive and well considered."
Legal 500 2022

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Michael 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, and has done so since 2008.

He more recently expanded his practice to include the related field of Property and Affairs work in the Court of Protection.

PRACTICE AREAS

- Property & Estates
 - Real Property
 - Landlord and Tenant
 - Inheritance, Wills, Probate and Estates
 - Trusts
 - Commercial
 - Court of Protection
 - Reported, Notable & Recent Cases
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PROPERTY & 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*
- 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.

REAL PROPERTY

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 cohabitants
- Mortgages and charges (including possession)
- Trespass, nuisance and other property torts
- Protection from harassment

Some notable recent cases in these areas:

- *J v J*(2020): claim involving numerous issues as to land ownership, rights of way and access for maintenance
- *Z v H*(2019): claim of alleged nuisance/trespass regarding drainage pipe and effect of public water rights
- *D v M*(2018): construction of conveyance to determine whether claimant had title to land for trespass claim
- *K v L* (2017-18): alteration of register where applicant acquired land by adverse possession prior to registration under respondent's title
- *X v Y*(2017-18): damages claim for misrepresentation about Japanese Knotweed upon sale of property
- *D v L* (2017): 3-day trial as to registration of applicants as proprietors of land on ground of adverse possession
- *N v N*(2016): 3-day trial primarily as to whether grant of right of way over track for use by vehicles included turning space
- *P v A*(2016): appeal over adjournment of mortgage possession claim where related proceedings being taken

LANDLORD AND TENANT

Most areas of landlord and 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

Some notable recent cases in these areas:

- *Meldrum v West*(2019) (cited in argument in Court of Appeal in *Jarvis v Evans* [2021] 1 WLR 24): effect of Housing (Wales) Act on tenancy possession claim by mortgage receivers
 - *A v S*(2017-18): termination of agreement to lease property where party went into possession and paid sums thereunder
 - *J v S & R*(2017): termination of lease dependent on whether individual held it as protected business tenancy
 - *Pendra Loweth v North*(2013-15) (appeared in First-tier Tribunal and drafted grounds of appeal which succeeded in Upper Tribunal [2015] UKUT 91): liability of tenants to pay service charges to management company under lease
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INHERITANCE, WILLS, PROBATE AND ESTATES

Most areas under these headings, 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 Dependents) 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

Some recent notable cases in these areas:

- *A v B*(2019-20): claim under Inheritance (PFD) Act 1975 by adult son of deceased with minor children defendants
 - *Re B*(2017-18): construction and validity of conditional gift in will and practical approach to dealing with same
 - *S v S*(2016): substitution of personal representative of estate and issue as to possession of estate property
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TRUSTS

Most areas of trusts law, 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
- Express, constructive and resulting trusts of land and chattels
- Discretionary trusts and powers of appointment

Some recent notable cases in these areas:

- *Price v Saundry*[2019] EWHC 1039 (Ch) (reversed in part by Court of Appeal [2019] EWCA Civ 2261): liability for costs of claim to remove trustees where not pursued to trial
- *B v R*(2018-19): claim in which beneficial ownership of property contested on various grounds
- *A v M*(2018): equitable accounting for sums related to co-owned property upon order for sale under TLATA

COMMERCIAL

In the commercial field, Michael undertakes both court work and advisory and drafting work in cases involving general contractual disputes and a wide range of contractual issues.

Michael's court work in this field includes multi-track and fast track trials, as well as interim and other hearings, in local courts and those further afield.

Recently, he has dealt with cases involving issues such as:

- Agency
- Assignment and novation
- Misrepresentation and mistake
- Duress and undue influence
- Sale of goods and supply of services
- Various problems with commercial leases
- Guarantees of leases and other contracts
- Various banking matters
- Mortgages and charges
- Possession claims
- Charging orders
- 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 includes Property and Affairs work in the Court of Protection. His established property, trusts and estates practice has previously included matters of capacity, powers of attorney and suchlike, and he is now expanding his work in these areas.

REPORTED, NOTABLE & RECENT CASES

A selection of reported, notable and recent cases - in property and estates and commercial law - in which Michael has been instructed:

Davis v Lewis REF/2016/0036, [2017] UKFTT 0181 (PC)

- Represented the two applicants at the three day final hearing of an application in the First-tier Tribunal, Property Chamber, Land Registration Division
- Issue was whether the applicants should be registered as the proprietors of the land in question on the ground that they had title to it by way of adverse possession, where the respondent disputed that the applicants had been in possession of the land

N v M (Sep-Oct 2016)

- Represented two defendants at the three day trial of a claim in the County Court at Cardiff before a deputy circuit judge regarding alleged trespass to chattels and land and interference with a right of way
- Main issue was the construction of an express grant of a right of way for use by vehicles over a track; in particular, whether the right of way included an entitlement to drive larger vehicles over an area of verge to the side of the track in order to have enough space to be able to turn on and off the track

P v A (Jul-Sep 2016)

- Represented the defendant at first instance before a deputy district judge and on appeal before a circuit judge in the County Court at Cardiff
- Main issue was whether the administrator of the estate of a mortgagor should be granted an adjournment of a claim for possession by a mortgagee under Section 36 of the Administration of Justice Act 1970 where the administrator was engaged in other proceedings against a third party to enable her to discharge the mortgage

S v S (Jan-Mar 2016)

- Represented the defendant at the two day trial of a claim in the High Court, Chancery Division, Bristol District Registry
- Issues were whether (i) the defendant should be removed as the personal representative of an estate and the claimant substituted in his place under Section 50(1) of the Administration of Justice Act 1985, and (ii) the defendant should be ordered to give up possession of a property which formed part of the estate

Pendra Loweth Management Ltd v North (2013-15)

- Represented the respondent at first instance in the First-tier Tribunal, Property Chamber, Residential Property Division and drafted grounds of appeal which succeeded in the Upper Tribunal (see the judgment of the latter at [2015] UKUT 91)
- First issue was whether the obligation of tenants to pay estimated service charges on demand to a management company under a lease was subject to a condition precedent which the management company had not complied with
- Second issue was whether the service charges were recoverable by the management company where the name of the landlord had not been included in the demands for the same pursuant to Section 47 of the Landlord and Tenant Act 1987

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

- Represented the claimant at first instance and then on appeal in the High Court, Chancery Division, Bristol District Registry before Morgan J
- Facts: the husband and wife defendants jointly owned a house; a company of which the husband was a director took a loan from a bank for which he gave a guarantee; the liabilities to the bank were charged by the defendants on their house; the house was sold and the bank realised its charge from the proceeds; the claimant held a charging order over any interest which the husband had in the house and sought to realise the same
- Held: the wife was a sub-surety and therefore entitled to be indemnified by the husband as surety for her liability under the bank's charge; as the liability was charged on the defendants' jointly owned house, she was further entitled by way of the equity of the exoneration to be so indemnified from his interest in the house, which was thus extinguished and meant there was nothing to be realised under the charging order

RECOMMENDATIONS

LEGAL 500 2022

Chancery, Probate and Tax

'Very bright and very thorough. His advice is always comprehensive and well considered.'

Tier 2

Property and Construction

Tier 2

LEGAL 500 2021

Chancery, Probate and Tax

'His calm demeanour belies his strong intellect and dogged tenacity.'

Property and Construction

'He provides extremely in-depth advice and leaves no stone unturned.'

LEGAL 500 2020

Property

"Provides extremely in-depth advice and leaves no stone unturned."

LEGAL 500 2019

Property

His practice includes manorial rights matters, boundary disputes and rights of common.

MEMBERSHIPS:

- Middle Temple
 - Chancery Bar Association
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EDUCATION:

- BVC, UWE Bristol - Outstanding
 - BA, University of Oxford - First Class
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RECENT NEWS

- Welcome to another edition of the Guildhall Chambers Property & Estates Team Newsletter, June 2016
 - Property & Estates E-News - Court Of Appeal Decision In Parmar v Upton - December 2015
 - Guildhall Chambers quiz night goes down a "sturm" - September 2015
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