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TIMOTHY HARRY

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OVERVIEW

Tim's practice is in Chancery and commercial litigation, with an emphasis on commercial disputes, property litigation, professional negligence, partnership, company law and insolvency. He is instructed in cases both domestically and internationally.

Tim is called to the Bar in Hong Kong, and so also practises from QED Chambers, 3102 Tower Two, Lippo Centre, 89 Queensway, Admiralty, Hong Kong. He is on the List of Counsel for instruction in civil cases on behalf of the Hong Kong Government.

He is called to the Bar of the Eastern Caribbean and has done work for Cayman, Swiss and Isle of Man firms. He has also been admitted to practise in the courts of the Dubai International Finance Centre (DIFC), and has been called to the Bar of Samoa for the purpose of conducting an appeal before the Court of Appeal there (comprising New Zealand judges).

He sits as an arbitrator, and is an accredited mediator. He is on the Register of Arbitrators in the Chamber of Commerce, Astana, Kazakhstan. He is qualified to accept instructions on a direct access basis.

He is recommended in The Legal 500 and Chambers UK Directory.

EXPERTISE

COMMERCIAL LITIGATION & ARBITRATION

He has extensive experience of commercial litigation and arbitration not only in England but also in Hong Kong,

Singapore, the Eastern Caribbean and Samoa. He has been instructed in domestic arbitrations, and also in long running international arbitrations subject to LCIA, HKIAC, SIAC and ICC Rules. This has included court applications relating to an arbitration such as successfully opposing the disqualification of an arbitrator for bias in an UNCITRAL arbitration, and successfully opposing an UNCITRAL award being set aside for procedural unfairness.

He has frequently been instructed in cases involving commercial litigation interim remedies (freezing injunction and ***Chabra***, ***Anton Piller*** and ***Norwich Pharmacal*** applications).

By way of example, he has completed two substantial commercial arbitrations, one ICC arbitration in Singapore under the laws of Thailand relating to a joint venture for the production of eucalyptus pulp; and the other an LCIA arbitration under the laws of New York relating to an IT royalties arrangement; he has acted for Hanson plc in relation to an interference by a pipeline with its aggregates dredging operation in the North Sea; he has acted on behalf of Danone for the purpose of obtaining a Norwich Pharmacal order to support economic tort proceedings in California (***Danone Asia PTE Ltd v SB Chow & Co***); he has successfully opposed the disqualification of an arbitrator for bias in an UNCITRAL arbitration (***Jung Science Information Technology Co Ltd v ZTE Corpn***); he has successfully opposed an UNCITRAL award being set aside for procedural unfairness; he has acted for a hedge fund in a BVI case in relation to a hotel project joint venture on the mainland of China; he has acted in a case which deals with the principles relating to contempt of court in the context of a freezing injunction (***Gill v Darroch***); and has appeared in the Court of Appeal of Samoa on the issue of whether the confidentiality provisions of the local companies legislation can be overridden by ***Norwich Pharmacal*** principles.

He acted successfully in the Court of Appeal for the respondent in ***HMRC v Payroll Pensions Services Ltd*** (2024) which decided that HMRC is not exempt from having to give a cross-undertaking in damages when applying for the appointment of provisional liquidators.

COMPANY & PARTNERSHIP

He has frequently been instructed in litigation relating to shareholders' disputes, derivative actions, joint ventures and the lawfulness of shareholder and Board resolutions.

He acted for the claimants in the long running ***Macro*** litigation, which covers all of the major issues relating to an unfair prejudice petition; the circumstances in which rights of pre-emption can be triggered; and the conclusiveness of an expert's determination in the context of a share valuation directed by the court.

He has acted successfully in a recent HKIAC arbitration relating to the triggering of "buyout" provisions for "material breach" of a shareholders' agreement.

He has appeared in the only reported English case on the allocation of costs in a double derivative action in an offshore (St Vincent) trusts context (***Popely v Popely***).

He has acted successfully in an appeal in the Eastern Caribbean Court of Appeal dealing with the threshold requirements of a derivative action in the BVI (***Basab Inc***).

He has acted for the Taiwanese offshore shareholders in the major shareholders' dispute relating to what was one of Hong Kong's terrestrial TV channels, ***ATV.***

He also appeared in the Court of Appeal in Samoa on the issue of whether the confidentiality provisions of the local companies legislation can be overridden by ***Norwich Pharmacal*** principles.

REAL ESTATE

He has a wide-ranging breadth of experience. His work includes general conveyancing disputes, issues in relation to commercial leases, rent reviews, break options, overage, easements, restrictive covenants, contaminated land, adverse possession and the Electronic Communications Code.

By way of example, he has been instructed on issues relating to the extent of a beneficial interest (***Lennox Lewis v Eliades***); for Barclays Bank in the Court of Appeal as to whether time was of the essence for triggering a rent review clause (***Barclays Bank v Savile Estates***); in relation to one of the seminal cases on the Trusts of Land Act 1996 (***The Mortgage Corporation v Shaire***); on the interpretation of a standard form covenant in a Crown Lease in Hong Kong (***Expressluck Development v the Secretary for Justice);*** in the Court of Appeal in relation to the interpretation of a building restrictive covenant (***Jarvis Holmes v Marshall***); on the issue of whether a property transaction or a trust can be struck down as a sham (***Nightingale Mayfair v Mehta***); on one of the leading authorities on the meaning of a "house" in the context of the Leasehold Reform Act 1967 (***Howard de Walden v Malekshad,*** House of Lords); on how a licensee can obtain a title by way of adverse possession (***J Alston v BOCM***); and on the previously unexplored issue of whether an unincorporated association can adversely possess (***Mitchell v Watkinson***).

He has been a contributing editor of Hill & Redman's Law of Landlord and Tenant.

PROFESSIONAL NEGLIGENCE

His expertise includes claims against solicitors, barristers, surveyors, auditors, project managers, quantity surveyors and Lloyds agents. He has been one of the contributing editors of Professional Negligence and Liability, and is contributing the chapters relating to solicitors', valuers' and accountants' negligence for the next edition of the publication 'Lender Claims'.

He has been in some of the leading authorities including ***Platform Home Loans v Oyston*** (valuers' negligence, damages, House of Lords); ***Mortgage Express v Bowerman*** (extent of solicitor's duty to a lending institution); ***Zwebner v The Mortgage Corporation*** (solicitor's liability on an undertaking); ***Paratus v Countrywide Surveyors*** (effect of securitisation on a professional negligence claim, margin of error and contributory negligence); and ***D B Bank v Edmunds & Co*** (extent to which solicitors can be held liable for breach of trust in a conveyancing transaction).

INSOLVENCY & ASSET RECOVERY

He has, by way of example, acted for HSBC in the 10 year long litigation relating to the liquidation of the electronics conglomerate Akai (***Kong Wah Holdings Ltd v HSBC***); in ***Lord v Sinai Securities*** (the test for a transaction at an undervalue); in ***Greenhaven Motors*** (the principles for the sanctioning of a compromise by the court in an insolvency context); and in ***Re Rosshill Properties*** (when a mortgagee can be given permission to enforce its security against a company in administration).

He appeared successfully in ***Re E Realisations 2020 Ltd*** in obtaining relief for administrators from strict compliance with their obligations when obtaining consent from creditors for the renewal of their term in office, and also in obtaining permission from the court for an extension of the period of administration; and also separately in obtaining a ***Mawer v Bland*** order extending the period of bankruptcy until the bankrupt complied with his duty to the trustee in bankruptcy.

Most recently in ***HMRC v Payroll & Pension Services Ltd*** he acted successfully for the director of a company in having discharged an order for the appointment of provisional liquidators and in having the winding up petition struck out, and in the subsequent related hearings in the Court of Appeal when it decided a previously unsettled issue, that HMRC have to give a cross-undertaking in damages when applying for the appointment of provisional liquidators.

He has recently also been involved in litigation relating to Brexit and the effect of the Recast Insolvency Regulation.

ADR

He is an accredited mediator, having qualified with ADR Chambers. He has been instructed on multiple occasions as a mediator in disputes across the spectrum of Chancery and Commercial litigation, and he has also appeared as Counsel on many occasions in such disputes.

DIRECTORY QUOTES

"A very deep knowledge of the law as well as a calm and measured approach."

Legal 500 ()

"He is phenomenally hard-working and doesn't leave any stone unturned."

Chambers UK ()

"Excellent with clients and at providing clear legal advice."

Legal 500 ()

"He is a delight to work with, and homes in on the real issues of a case."

Chambers UK Real Estate Litigation ()

"A lauded junior in the real estate litigation field"

Chambers UK Real Estate Litigation ()

"Accessible, commercial and helpful."

Chambers UK Real Estate Litigation ()

"Very able, extremely user-friendly, commercial and bright."

Chambers UK Real Estate Litigation ()

"Thorough, responsive and commercial" "formidable opponent."

Chambers UK Real Estate Litigation ()

"Provides a swift and comprehensive service."

Chambers UK Real Estate ()

"Very client-focused and a pleasure to deal with."

Chambers UK Real Estate Litigation ()

"Thorough advice and fine-quality written submissions."

Chambers UK Real Estate Litigation ()

"Excellent written advice"

Legal 500 Property Litigation ()

"Proactive; goes the extra mile."

Legal 500 Real Estate Litigation ()

"Delivers considered and well-researched advice"

Legal 500 Real Estate Litigation ()

"Flexible, commercial and very popular with clients."

Legal 500 Professional Negligence ()

"Thinks outside the box."

Legal 500 Professional Negligence ()

QUALIFICATIONS

- MA (Oxford) First Class
- Bachelor of Civil Law, Oxford
- Formerly Lecturer in Law, Hertford College, Oxford

MEMBERSHIPS

- Commercial Bar Association
- Chancery Bar Association
- Professional Negligence Bar Association
- Property Bar Association (former committee member)
- In Hong Kong: Hong Kong Bar Association

NOTABLE CASES

- *HMRC v Payroll & Pension Services Ltd (2024)*
- *Re E Realisations (2020) Ltd (2023)*
- *Popely v Popely (2020)*
- *Homes Of England Ltd v Horsham Holdings Ltd (2019)*
- *Ohna v Goldberg (2014)*
- *Bank of Ireland v Philip Pank Partnership (2014)*
- *Mitchell v Watkinson (2013)*
- *Paratus AMC Ltd & RMAC 2005 NS1 Plc v Countrywide Surveyors Ltd (2011)*
- *PGF II SA & PGF II (Lime) SA v Royal & Sun Alliance Insurance Plc (2010)*
- *Westvilla Properties Ltd v Dow Properties Ltd (2010)*
- *Forty-Five Holdings Ltd v Grosvenor (Mayfair) Estate (2009)*

- *Nailrile Ltd v Earl Cadogan / Regency Lodge & Others (2008)*
- *J Alston & Sons v BOCM Pauls Ltd (2008)*
- *Lennox Lewis v Eliades & Ors (2005)*
- *Lord v Sinai Securities Limited (2004)*
- *Jarvis Homes Ltd v Richard Marshall & Brenda Marshall (2004)*
- *Malekshad v Howard de Walden Estates Ltd (No.2) (2003)*
- *Collins v Howard de Walden Estates Ltd (2003)*
- *Lloyds TSB Bank Plc v Edward Symmons (2003)*
- *Malekshad v Howard de Walden Estates Ltd (2002)*
- *Rock Garden Limited v Covent Garden Market LP (2002)*
- *P&O Overseas Holding v Rhys Braintree Ltd (2001)*
- *Fordgate Wandsworth v Bernard Neville & Co and Teacher Stern Selby (1999)*
- *Edward Horrill v Alice Cooper (2000)*
- *The Mortgage Corporation Ltd v Shaire (2000)*
- *Trustees of Gunter Estate v Tristem*
- *Nightingale Mayfair Ltd v Mehta (1999)*
- *Platform Home Loans Ltd v Oyston Shipways Ltd (1999)*
- *Re: Greenhaven Motors (1998)*
- *Maes Finance Ltd v Leftleys (1998)*
- *Rita Zwebner v The Mortgage Corporation Ltd (1998)*
- *The Mortgage Corporation v Anscombe & Ringland (1998)*
- *Olympia & York Canary Wharf Ltd v Oil Property Investments Ltd (1994)*
- *Re: Vedmay Ltd (1993)*