



Practice Summary

Gary Cowen's recent appearances in the Court of Appeal include a second appeal in an adverse possession claim and a claim for derogation of grant involving allowing plants to grow over a visibility splay at the end of a right of way. In the Chancery Division, Gary succeeded in persuading the Court that the true construction of a restrictive covenant prevented the owner of a landscaping strip from building a cycle track through it. Gary has also been advising in complex litigation concerning the validity of legal charges where the corporate mortgagor alleged that it had entered into the charges as a result of the undue influence of a third party. He has also continued to take on leasehold enfranchisement work including two appearances in the Lands Tribunal relating to deferment yield rates and the valuation of mooring rights in the LVT.

- Education
 - University of Bristol LLB (1989)
- Professional
 - Called 1990, Inner Temple.
 - Member of the Inner Temple Estates Committee
 - Former member, Bar Council Professional Complaints Committee
 - Deputy Adjudicator to HM Land Registry
- Recent Cases
 - **Co-operative Bank v Hayes Freehold Limited and others** [2017] EWHC 1820 (Ch). The Court refused to imply into the surrender and release of the guarantor of an underlease of which was expressed as being irrevocable and unconditional, a condition precedent that the release should only take place if the head lease was also surrendered. The Court also rejected claims made on the basis of fraudulent misrepresentation, common mistake, the rule in *Pitt v Holt* and unjust enrichment.
 - **Hanina v McSpadden and others** [2017] County Court at Central London HHJ Parfitt. The Court determined that each of the parking spaces in a development of three properties in London should be 2.1m wide. In addition, the Claimant and Third Party successfully argued that they had acquired rights to use a communal bin store situated on the Defendant's land by prescription. The Court also addressed issues relating to the construction of a restrictive covenant and dismissed claims for damages for trespass in relation to the use of the forecourt.
 - **In the matter of Black Ant Co Limited** [2014] EWHC 1161 (Ch) (mortgages, further advances)
 - **Hughmans Solicitors v Central Stream Services Limited (in Liquidation)** [2012] EWCA Civ 1720 (Priorities arising from Tomlin Order).
 - **Carter v Cole** [2009] EWCA Civ 410 (Derogation from grant relating to visibility splay at end of a right of way)
 - **Country Estates Construction v Oxfordshire CC** [2009] EWHC 642 (Ch) (True construction of restrictive covenant relating to landscaping strip)
 - **Sava v SS Global** [2008] EWCA Civ 1308 (Adverse possession, whether acts of possession of paper title owner sufficient to negative possession of squatter)



- **Fairacres v Abdul Mohamed** [2008] EWCA Civ 1637 (Procedure; whether Court correct to uphold unless order)
- **GE Bowra Group v Thanet District Council** [2007] EWHC 2077 (Admin) (Rating; treatment of unoccupied property for non-domestic rating regulations)
- **SS Global v Sava** (Ch D (Peter Leaver QC) 28/9/2007) (Adverse possession, appeal from the Adjudicator on fact)
- **Coles v Sam Smiths Old Brewery** [2007] EWCA Civ 1461 (Validity of option to purchase; whether option binds successor in title which is wholly-owned subsidiary)
- **Leisure Employment Services v Revenue and Customs Commissioners** [2007] EWCA Civ 92 (Minimum wage legislation; whether deductions for gas and electricity bills from wages paid to employees at holiday resorts were lawful)
- **Northstar Land v Brooks** [2006] EWCA Civ 756 (Unilateral attempt to extend time for compliance with a notice to complete; estoppel by representation)
- **James Hay Pension Trustees v Cooper Estates Limited** [2005] EWHC 36 (CH) (rectification)
- **George Wimpey v VI Components** [2004] EWHC 1374 (rectification)
- **Goldstein v Conley** [2001] L&TR 400 (Leasehold Enfranchisement)
- **Ultraworth v General Accident** [2000] 2 EGLR 115 (Disrepair)
- **UYB v British Railways Board Times** 15th November 2000 (Privilege)
- **Cadogan v Morris** [1999] 1 EGLR 59 (Leasehold enfranchisement)
- **King v Dorset County Council** [1999] 1 EGLR 245 (Compulsory purchase)
- **Aldavon v Deverill** [1999] 2 EGLR 69 (Leasehold Enfranchisement)
- **Viscount Chelsea v Morris** [1997] 2 EGLR 100 (Leasehold Enfranchisement)
- **Norman v Department of Transport** [1996] 1 EGLR 90 (Rating)
- **Rodd v Ritchings** [1995] 2 EGLR 142 (Council Tax)
- Publications
 - Contributor to Woodfall on Landlord and Tenant CD-ROM.
 - Contributing editor of Property section of Bullen & Leake & Jacob Precedents of Pleadings (14th ed.) (2001).
 - Commonhold, Law and Practice 2005 The Law Society

Published Comments

"Frequently advises on complex litigation, and has a great deal of experience in the Court of Appeal. Real estate forms the core of his chancery practice and he has notable experience in restrictive covenants and leasehold enfranchisement. Strengths: 'Very user friendly, practical and commercial.' 'A good advocate, able to think on his feet during complicated contested hearings.'" *Chambers UK Guide 2018 (Real Estate Litigation)*

"Highly experienced in appellate cases". *Legal 500, 2017*

"Frequently advises on complex litigation, and has a great deal of experience in the Court of Appeal. Real estate forms the core of his chancery practice and he has notable experience in restrictive covenants and leasehold enfranchisement. Strengths: 'He is incredibly together and calm.' 'He's quick, responsive and able to deal with numerous questions arising out of very complex scenarios.' 'Gives clear and practical advice.' Recent work: Instructed in *Blackwell & Another v Bailey & Another*, a case concerning an injunction designed to prevent the defendant pursuing a business venture in their home." *Chambers UK Guide 2017 (Real Estate Litigation)*

"Very strong advocate – particularly in tribunals; he has the ability to make complex arguments sound simple." *Legal 500, 2016*

"Frequently acts on complex real estate litigation matters. These include leasehold enfranchisement and mortgage related matters. Strengths: 'He has thorough analytical skills. He is pragmatic, imaginative and thinks outside the box.' 'He provides speedy and user friendly advice of the highest quality.' Recent work: Appeared for the respondent, the Phillimore Estate, in a significant appeal concerning enfranchisement valuations". *Chambers UK Guide 2016*.

"Experienced in complex litigation". *Legal 500 2015*.



"Continues to represent clients in major disputes arising from valuations, leasehold enfranchisement, mortgages and rights of way. He also has particular skill in adverse possession disputes. Expertise: 'He provides practical, clear advice, and is also very personable.' Recent work: Acted in a high-value lease renewal dispute concerning an address in Berkeley Square." *Chambers UK (2015)*

"A very skilled advocate with extensive property law experience." *The Legal 500 (2014)*

"Gary Cowen is an admired junior who amongst his property dispute expertise has recent experience of acting on adverse possession claims and taking on leasehold enfranchisement work. Expertise: 'A man of tremendous knowledge and tremendous experience, he's a very wise and amiable barrister'. 'He is very effective and measured in his advocacy skills'." *Chambers UK Guide (2014)*

Listed as a Leading Junior *The Legal 500 (2013)*

"Gary Cowen is 'an intelligent and sophisticated' advocate, according to those that use him. He recently acted for Tetra Pak in obtaining an interim injunction preventing its landlord, Oracle, from blocking an access road to its offices." *Chambers UK Guide (2013)*

"Recommended juniors include the 'commercially minded' Gary Cowen who exhibits 'exceptional understanding of property law' ". *The Legal 500 (2012)*

"Gary Cowen recently appeared in the Chancery Division case Long v Sava, involving a claim to a prescriptive easement in favour of land occupied as a squatter. 'Very user-friendly and good to deal with,' he is a popular choice of counsel among solicitors." *Chambers UK Guide (2012)*

"Gary Cowen 'is commercial and pragmatic' ". *The Legal 500 (2011)*

"The 'tenacious and persistent' Gary Cowen acted in Country Estates Construction v West Oxfordshire County Council, a case concerning a restrictive covenant preventing interference with a landscape strip surrounding a development. Solicitors favour him as he 'has an exceptional understanding of property law and the added bonus of being commercially minded'." *Chambers UK (2011)*

"Gary Cowen 'provides commercially minded advice' ". *The Legal 500 (2010)*

"Gary Cowen won backing as 'a diligent barrister who is comfortable with numbers'. Cowen acted for Sava v SS Global, a case concerning adverse possession". *Chambers and Partners (2010)*

"Gary Cowen "never leaves a stone unturned" in his work". *The Legal 500 (2009)*

"Covering the whole spectrum of property law, whether it be landlord and tenant, professional negligence or compulsory purchase, Gary Cowen is a "great advocate who thinks well on his feet". Sources remark that he provides "confident and thoughtful advice, particularly on the larger commercial cases". *Chambers & Partners (2009)*

Listed as a Leading Junior *The Legal 500 (2008)*

"Gary Cowen gives instructing solicitors and clients "solid, sensible advice" that they can take with confidence. His workload consists of a broad sweep of property matters, but he has focused most recently on the busy area of leasehold enfranchisement." *Chambers and Partners (2008)*

"Senior junior Gary Cowen is "straight and direct" and deals easily with a variety of commercial and residential property matters with mature commercial awareness". *The Legal 500 (2007)*



"Gary Cowen is recommended for his practicality and availability". *Chambers and Partners (2007)*

"Falcon Chambers boasts one of the top juniors for enfranchisement in Gary Cowen". *The Legal 500 (2006)*

"Gary Cowen is "sensible and switched on". *Chambers and Partners (2006)*

Listed as a Leading Junior in Property Litigation and Agriculture. *The Legal 500 (2005)*

"Gary Cowen is "sensible and commercially minded" in that he "has always been able to see the wood for the trees" and is "focussed on what the client wants to achieve." *Chambers and Partners (2005)*

Listed as a Leading Junior in Property Litigation. *The Legal 500 (2004)*

"Gary Cowen is increasing his profile in landlord and tenant work, with particular focus on boundary disputes". *The Legal 500 (2004) Agriculture Section*

"Gary Cowen has been praised for his work in 2002". *The Legal 500 (2002)*

"Recommended as up and coming" *Chambers and Partners Guide (1999/2000)*

"One to watch" *The Lawyer: Landlord and Tenant Bar focus.*