



Falcon Chambers



## Kester Lees

Called 2010



Falcon Chambers

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## Practice Summary

All aspects of commercial, residential and agricultural landlord and tenant law, including a wide variety of disputes arising under the 1954 Act, the Rent Acts, the Housing Acts and enfranchisement legislation. Kester also practices in all areas of real property law including restrictive covenants, easements, adverse possession, land registration boundary disputes, trusts and mortgages. Kester's practice also encompasses all aspects of property related insolvency law.

Kester regularly appears in the High Court, Upper Tribunal (Land Chamber), First Tier Tribunal (Property Chamber), the Leasehold Valuation Tribunal and County Courts across the country.

Kester recently appeared in the Supreme Court in *M&S v BNP* [2015] UKSC 72 (led by Guy Fetherstonhaugh QC) which is the leading case on implied terms, break clauses and the apportionment of rent. Kester was also instructed in the *Canary Wharf v Lehman Brothers* litigation.

- Education
  - Kester obtained a first class degree in Theology at the University of Birmingham, graduating first in his year. He then converted to law on a two year senior status law degree at City University, during which he held an Inner Temple scholarship and a City University Postgraduate Law Scholarship. Graduating with a first class degree and first in his year, Kester was awarded several prizes including the Old Bailey Press Prize for Land Law and the Recorder of London Prize for being the 'best law student' in the faculty.
  - Kester went on to obtain a Distinction on the BCL at Brasenose College, University of Oxford, where he held an AHRC Award and was awarded the Allen & Overy Prize for Corporate

Insolvency Law on the BCL and various College prizes.

- Professional

- Kester was awarded an Inner Temple Major Scholarship and Duke of Edinburgh Entrance Scholarship for his BVC year.
- Kester was classified as Outstanding on his BVC at City Law School. He was subsequently awarded the Ede & Ravenscroft Prize by the Inner Temple.
- During his BVC year Kester was a Visiting Lecturer at City University, London tutoring in contract law.
- Kester is a member of the Chancery Bar Association and the Property Bar Association. Kester recently became a committee member of the Property Bar Association with special responsibility for liaising with the Junior PLA.
- Since 2012 Kester has been Co-Editor for Casenotes for The Conveyancer and Property Lawyer, the leading property law journal. He is a Contributing Editor to the Woodfall Bulletin and also regularly contributes to the Landlord and Tenant Review. Kester is also the author of several topics on Westlaw Insights including Business Tenancies, Security of Tenure and Periodic Tenancies.
- Kester has also provided in-house seminars to solicitors firms and client institutions direct as well as a regular guest speaker for CLT, a leading CPD provider, including a webinar on mortgagee remedies. Recent topics include: Tenant insolvency, Forfeiture, when Mortgagees ought to pay residential service charges to protect their security.

- Recent Cases

Recent cases in which Kester has been instructed include:

- **Heron Quays (HQ2) T1 Ltd & anr v Jervis & anr** (as Administrators for Lehman Brothers Limited) (led by Guy Fetherstonhaugh QC) – Kester is instructed on behalf of the Canary Wharf Group in the upcoming ten week High Court trial concerning the Lehman Lease of 25 bank Street and issues such as repudiatory breach damages in the leasehold context and dilapidations.
- **Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd** [2016] A.C. 742 (led by Guy Fetherstonhaugh QC) – the leading Supreme Court decision on implied terms, break clauses and the apportionment of rent.
- **Cannon v 38 Lambs Conduit LLP** [2016] UKUT 371 (LC) – the leading decision on the relationship between s.47 of the Landlord and Tenant Act 1987 and the jurisdiction of the First Tier Tribunal (Property Chamber) under s.27A of the Landlord and Tenant Act 1985.
- **Helix 3D Ltd v Dunedin Industrial Property Nominee Ltd** [2016] EWHC 3012 (CH) – Kester acted for the successful claimant in a one day High Court trial concerning the true construction of the mechanism of an option agreement.
- **Sendrove v Jennings Racing Limited** – acted for the defendant in a five day trial in the County Court at Central London concerning dilapidations and the true construction of the demise (successfully settled on terms at trial).
- **NCP v Hawksworth** – Kester acted for the successful defendant landlord in this uncontested 1954 Act lease renewal concerning two car parks in Peterborough. The case raised interesting points as to the valuation of the car parks, the appropriate valuation date where the term is agreed to be calculated by reference to a date to the trial and the availability of a turnover rent upon renewal (against a silk).
- **Conway v Shelton** – Kester acted for the successful claimant in a two day trial before the FTT concerning the rectification of a transfer and contract for sale (dating from the 1990s) (against a silk). The case also raised interesting questions as to actual occupation of car parking spaces.
- **Lloyds TSB v Kendall** – a 3 day trial in the High Court concerning the ambulatory nature of constructive trusts of the family home.
- **Re Caste Court Freehold Limited** – a 4 day service charge dispute before the Leasehold Valuation Tribunal worth in excess of £1.5m.

- **Country & City Properties v Lake** – Kester acted for the successful landlord in a five day trial concerning alleged dilapidations, arrears of service charges and set off in Brighton County Court (successfully settled on terms at court).
- **Re 2 Dunraven Street** – Kester acted for the successful applicant in a 1 day trial in the Leasehold Valuation Tribunal concerning the reasonableness of one of London’s most prominent landowners’ procedure for obtaining insurance for mixed use blocks.
- **Alder Securities v Worrall** – Kester acted for the successful claimant in a 2 day trial in West London County Court concerning breaches of non-alienation covenants and defences of waiver and estoppel by convention. Kester also more recently appeared successfully in the appeal of this claim, which was dismissed.
- **Neelam Properties Limited v Rivaaz Enterprises Limited** – Kester acted for the successful claimant in a 2 day trial in Willesden County Court concerning whether a rent review provision could be exercised and the defence of estoppel.

Recent advisory instructions include:

- Advising a property developer on the status of occupiers and obtaining vacant possession of numerous commercial units in a £35m development project.
- Advising in-house counsel to a pension fund on the exercise of a break option in a commercial lease.
- Advising a commercial landlord on the insolvency of their corporate tenant and the enforceability of guarantee obligations within the lease.
- Advising a professional indemnity insurer as to adverse possession and land registration issues concerned with the insured conveyancer’s negligence in order to avoid any loss.
- Advising a private landowner as to the enforceability of restrictive covenants granted pre-1926.
- Advising a property investor as to the status of a residential tenant and rights of succession to a Rent Act tenancy.
- Advising a professional indemnity insurer as to whether a course of dealing had lead to severance of a beneficial joint tenancy in a family property so as to avoid any loss for the insured will writers.
- [Publications](#)
  - Surprising defects: Edwards v Kumarasamy (Case Comment)” - L. & T. Review 2016, 20(6), 223-227. Subject: Landlord and tenant - Common parts; Disrepair; Landlords' duties; Notice; Repair covenants; Subtenancies
  - “There's no profit in alienation consents” - S.J. 2016, 160(43), 31 Subject: Landlord and tenant - Conditions; Consent to assignment; Costs; Qualified covenants; Underleases
  - “EMI Group Ltd v O & H Q1 Ltd: the forbidden assignment” (Case Comment)- Conv. 2016, 5, 387-397. Subject: Landlord and tenant - Assignees; Assignment; Guarantors; Leasehold covenants; Leases; Release; Void transactions
  - “M&S and implied terms: better not left unsaid ...” - I.H.L. 2016, Spr, 111-112 Subject: Landlord and tenant - Break clauses; Business tenancies; Implied terms; Interpretation; Rent; Repayments
  - “What's in store after M&S?”- E.G. 2016, 1602, 60-62. Subject: Landlord and tenant - Apportionment; Break clauses; Business tenancies; Implied terms; Interpretation; Rent; Repayments
  - “Uncertainty of term again” (Case Comment). - L. & T. Review 2015, 19(5), 212-216. Subject: Landlord and tenant - Duration; Forfeiture; Housing associations; Notices to quit; Possession; Residential tenancies; Termination Abstract
  - “Wood v Waddington: section 62 and apparently continuous easements...” (Case Comment) - Conv. 2015, 5, 423-432. Subject: Real property - Conveyances; Express grant; Occupation; Rights of way; Statutory easements

- “Resolving the tension between the Land Registration Act 2002's "priority" and "alteration" provisions” (Case Comment) - Conv. 2015, 3, 253-266. Subject: Landlord and tenant -Land registers; Long leases; Priorities; Rectification; Reinstatement; Retrospective effect; Title to land
- “Reasonable belief" in adverse possession”- E.G. 2015, 1521, 77. Subject: Real property; Legislation - Adverse possession; Boundaries; Reasonable belief; Statutory interpretation; Time limits
- “Residential service charges: the return of a "sets-based" approach to qualifying works” (Case Comment) - W.L.T.B. 2015, 1(Feb), 1-4. Subject: Landlord and tenant - Consultation; Holiday accommodation; Landlords' duties; Residential tenancies; Service charges
- “Francis v Phillips: putting the pin back into the valedictory hand grenade” (Case Comment) - Conv. 2015, 1, 67-77. Subject: Landlord and tenant - Consultation; Fees; Holiday accommodation; Improvements; Landlords' duties; Leases; Residential tenancies; Service charges
- “Disclaimer of leases: an essential guide” - I.H.L. 2014, 224(Oct), 73-76. Subject: Insolvency; Landlord and tenant - Business tenancies; Disclaimer of onerous property; Liquidation; Liquidators' powers and duties; Non-domestic rates; Third parties; Trustees in bankruptcy; Trustees' powers and duties; Unoccupied property; Vesting orders
- “Business rates and disclaimer of leases: the limits of statutory fictions” (Case Comment) - Conv. 2014, 5, 434-444. Subject: Landlord and tenant; Insolvency; Rates - Business tenancies; Disclaimer of onerous property; Non-domestic rates; Unoccupied property
- Lessons to be learned from M&S - Kester's recent talk to the PLA in Leeds can be found [here](#)
- Re Game Station Ltd: A salvaged Salvage Principle” – Conv. 2014, 3, 249-262. Subject: Insolvency - Administrators' powers and duties; Expenses; Liquidators' powers and duties; Provable debts; Rent.
- “Administration and rent - equity in the game at last...” - W.L.T.B. 2014, 2(Apr), 1-4. Subject: Insolvency - Administrators' powers and duties; Expenses; Liquidators' powers and duties; Provable debts; Rent.
- “Superstrike Ltd v Rodrigues: more questions than answers...” - Conv. 2014, 1, 60-69. Subject: Landlord and tenant - Assured shorthold tenancies; Deposits; Landlords' duties; Notices seeking possession; Periodic tenancies; Tenancy deposit schemes.
- “Malik v Fassenfelt: known unknowns” - Conv. 2013, 6, 516-529 Subject: Human rights - Eviction; Possession orders; Proportionality; Right to respect for private and family life; Squatters; Trespassers.
- “Break options and the repayment of overpaid rent - an implication of common sense” - W.L.T.B. 2013, 3(Jul), 1-5 Subject: Landlord and Tenant - Break clauses; Business tenancies; Implied terms; Overpayments; Rent; Repayments.
- “Knowing where to begin - the last day of the period in section 21 notices” - L. & T. Review 2013, 17(4), 129-133 Subject: Housing - Assured shorthold tenancies; Date of termination; Houses; Periodic tenancies; Repossession.
- “Parshall v Hackney: a tale of two titles” - Conv. 2013, 3, 222-232 Subject: Real property - Adverse possession; Boundary disputes; Concurrent possession; Land registration; Limitation periods; Mistake; Rectification
- “Freeholders of 69 Marina: judicial reading between the lines...” – Conv. 2012, 6, 498-505 Subject: Landlord and tenant - Arrears; Costs; Forfeiture; Landlords' duties; Service charges.
- “Tenants take notice! Patel v MRD Property Developments Ltd” - L. & T. Review 2012, 16(6), 226-228 Subject: Landlord and tenant - Business tenancies; Demands; Insurance premiums.
- “Geary v Rankine: money isn't everything” - Conv. 2012, 5, 412-421 Subject: Real Property - Beneficial interests; Business premises; Constructive trusts; Intention; Unmarried couples,
- “Article 8 defences - separating the wheat from the chaff: Corby BC v Scott; West Kent Housing Association Ltd v Haycraft” L. & T. Review 2012, 16(4), 148-152 Subject: Landlord and tenant; Housing; Human rights; Public sector tenancies; Summary dismissal.
- “If you don't ask, you don't get...” - E.G. 2012, 1206, 87 Subject: Adjudicator to HM Land Registry - Indemnities; Jurisdiction; Rectification.

- “A prospective look at rectification” - L. & T. Review 2012, 16(1), 12-15 Subject: Rectification - Adjudicator to HM Land Registry; Deeds; Deeds of variation; Jurisdiction; Retrospective effect; Third parties.
- “A piece of the puzzle: piecing together the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993” - Conv. 2011, 6, 454-464 Subject: Landlord and tenant - Collective enfranchisement; Purchase of Freehold; Statutory contract; Statutory interpretation.
- “Concurrent leases and break clauses” - L. & T. Review 2011, 15(2), 51-55 Subject: Landlord and tenant - Break clauses; Business tenancies; Concurrent Leases.
- “A who's who of concurrent leases” - L. & T. Review 2011, 15(1), 30-33 Subject: Landlord and tenant - Break clauses; Business tenancies; Concurrent Leases; Covenants; Notices; Security of tenure.

## Published Comments

"Talented junior who handles all aspects of landlord and tenant and property law, including leasehold enfranchisement, adverse possession and insolvency matters. Strengths: 'Reliable, efficient and commercial.' 'Persuasive on his feet and great with clients.' 'His excellent grasp of the law is combined with a very practical and commercial approach.' Recent work: Acted in the Canary Wharf v Lehman litigation, a high-value dispute concerning repudiatory breach and repudiatory damages in the leasehold context." *Chambers UK Guide 2019 (Real Estate Litigation)*

"Bright and approachable with a good client manner." *Legal 500 2018*

"Kester Lees' first rate practice covers a range of sector-related areas including agricultural and residential landlord and tenant law. Sources describe him as 'an extremely good junior'." *Who's Who Legal 2018*

"Talented junior who handles all aspects of landlord and tenant and property law, including leasehold enfranchisement, adverse possession and insolvency matters. Strengths: 'He has excellent technical knowledge, is very detail oriented and offers very good commercially aware advice tailored to the client.' 'His advocacy skills are just fantastic and his opinions are solid.' Recent work: Successfully represented the defendant landlord in a two day trial in Cambridge County Court concerning an uncontested lease renewal of two major car parks in Peterborough." *Chambers UK Guide 2018 (Real Estate Litigation)*