



PARK
SQUARE

BARRISTERS

David Rose

Call: 1977

Commercial & Chancery

Ranked in Tier 1 for Commercial, Banking, Insolvency and Chancery Law – The Legal 500 (2019)

‘Highly recommended for contentious probate and trusts matters’ – The Legal 500 (2019)

Probate & Inheritance

A major part of David’s practice relates to probate and inheritance matters, including those with an international dimension. He has a particular expertise in dealing with contentious probate cases, especially those concerning challenges to wills upon the grounds of lack of testamentary capacity and undue influence, in addition to those relating to claims against estates based upon constructive trust and proprietary estoppel arguments and cases concerning the interpretation of Wills.

“Very experienced in contentious trust and probate work” – The Legal 500 (2017)

“Recommended for probate and inheritance matters.” – The Legal 500 (2016)

“Recommended for probate and inheritance cases, as well as TOLATA applications and commercial matters.” – The Legal 500 (2015)

“He has great attention to detail.” — The Legal 500 (2014)

Linked with his probate work is David’s equally extensive experience of claims brought under the [Inheritance \(Provision for Family and Dependents\) Act 1975](#). He has dealt with a very large number of such cases, from those involving multi-million pound estates (*Moss v Moss*) to those which are much more modest. He is particularly experienced in dealing with mediations in such cases, both as representative of a party and as a mediator. David has shared his experience by presenting a number of seminars on this area of law over the past few years.

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- *Shaw v Anderson* (2017) (Leeds County Court) – Probate – Application by a Court-appointed Administrator for directions relating to administration of estate where beneficiaries were in disagreement.
 - [Wright v Waters \[2014\] EWHC 3614 \(Ch\)](#) – Inheritance Act & proprietary estoppel case involving a dispute between an adult brother and sister relating to their mother’s will. Issues included the effect of an estrangement between the testatrix and her daughter.
 - [Ritchie v Joslyn & Others \[2009\] EWHC 709 \(Ch\)](#) – (Probate; testamentary capacity; delusions; constructive trust; proprietary estoppel) – A will was overturned on the grounds that the testatrix had been suffering from delusions about her family at the time she made it.
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- *Moss v Moss* (2003) (Fam.D) – (Inheritance (Provision for Family and Dependents) Act 1975) – Claim by the



Education:

1975 Downing College, Cambridge, BA (Law Tripos)

1976 Downing College, Cambridge, LLB (International Law)

1977 Inns of Court School of Law, Bar Finals

1979 Downing College, University of Cambridge, MA

2015 Leeds Beckett University, Certificate in Language & Related Studies

Career:

1978 Pupil of Matthew Caswell at No 6, Leeds

1979 Tenant at No 6

2015 No 6 becomes Park Square Barristers

widow involving a large estate following a short marriage (Led by Eleanor Hamilton QC, now Eleanor King LJ).

- [Bell v Georgiou & RAF Benevolent Fund \[2002\] WTLR 1105; \[2002\] EWHC 1080 \(Ch\)](#) – Probate; rectification of wills – An unusual contested application to vary a will.

"I have instructed David on more cases than I can remember over the past 5 years or so, most frequently in relation to those concerning property matters, contractual issues and, in particular, trusts and contentious probate. On every occasion bar none he has, very quickly, got to the heart of the issues and given practical, clear advice that is appreciated and easily understood by clients.....and myself for that matter! He is without fail the first person I think of when my clients need specialist advice in any of the above areas." (Daniel Edwards, Lupton Fawcett Solicitors)

Trusts & TOLATA

David Rose has represented many clients in trust disputes, and regularly advises and assists with drafting work in non-contentious trust/proprietary estoppel cases (including applications under the [Trusts of Land & Appointment of Trustees Act 1996](#) (TOLATA) and the [Variation of Trusts Act 1958](#)). In particular, he has dealt with many constructive trust/proprietary estoppel cases at all stages from initial advice through to contested trials.

As a trustee of a local charity David has first-hand experience of both the law and practice relevant to the operation of a charity. He has been involved in a number of cases involving charities, including those dealing with legacies, disputes relating to property and the terms of their trust deeds.

Property disputes

David Rose has extensive experience of dealing with all forms of property dispute, including those concerned with rights of way, restrictive covenants and boundaries as well as disputes relating to nuisance and property sales. He has dealt with a number of matters falling under the [Party Wall, etc Act 1996](#). He also deals with landlord & tenant disputes relating to both commercial and agricultural property.

- [Shoaib v Mangera \(2017\) \(Burnley County Court\)](#) – Joint property venture – promissory note – recovery of debt.
- [Akhtar v Rodger & Foster \[2012\] EWHC 2963 \(Ch\)](#) – Landlord & tenant dispute involving an issue as to the true identity of the tenant and the effect of LPA receivership.
- [Yorkshire Dance v West Park Properties Limited \(2012, TCC\)](#) – Relating to contract; party-wall proceedings; undermining of foundations; enforcement of Tomlin Order; and frustration.
- [Perriam Ltd v Wayne & Daly \[2011\] EWHC 403 \(QB\)](#) – Interpretation of a lease and deed of variation (case involving a landlord & tenant).
- [O'Donoghue v Enterprise Inns plc \[2008\] EWHC 2273 \(Ch\)](#) – Setting-aside of the arbitration award in a property rent review involving a landlord & tenant.
- [Tozer v Hargreaves Quarries \(1999\) \(Unreported, QB\)](#) – Structural damage to property caused by vibrations created by quarry blasting (nuisance/negligence).
- [Pocklington v Creaser \(Nos 1 & 2\) \(Unreported, ChD\)](#) – Lengthy and complex partnership claim and associated property dispute.

Contracts & commercial

In commercial matters, David Rose has represented clients in a wide range of cases concerning commercial contracts, including those with an international dimension.

David was a counsel in the landmark case of [Hobson & Others v Ashton, Morton, Slack & Others \(2006\)](#), which arose out of the government's Mineworkers' Compensation Scheme. He was instrumental in the successful opposition to an application for a [group litigation order](#) (under Part 19.11 of the [Civil Procedure Rules](#)) by the proposed claimants and dealt with a number of associated cases following the initial decision as well as other cases relating to the [Miners Compensation Claims](#).

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- [Strydom v Vendside Limited \[2009\] EWHC 2130 \(HC\)](#) – Implied contract terms; disclosure of information; unconscionable bargain.
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- [TS & S Global Ltd v Fithian-Franks & Others \[2007\] EWHC 1401 \(Ch\)](#) – Personal insolvency; statutory demand; setting aside.
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- [Hobson & Others v Ashton Morton Slack & Others \[2006\] EWHC 1134 \(QB\)](#) – Contract; contested the application for a group litigation order.
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- [Pickering v McConville EWCA Civ 554 \(2003\) Times Law Reports 233](#) – Illegality of contract ; the right of the judge to rely on illegality where not pleaded; refusal of application for permission to call additional witness to deal with illegality.
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- [Pocklington v Creaser \(Nos 1 & 2\) \(Unreported, ChD\)](#) – Lengthy and complex partnership claim and associated property dispute.
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Court of Protection

David Rose has experience of dealing with applications in the Court of Protection (both in its current form and in its earlier incarnation) relating to the property and affairs of protected persons. He also has experience of cases involving trusts (including discretionary trusts) established for the benefit of such persons.

Professional Negligence

David has wide experience in handling professional negligence cases involving issues within the scope of his Chancery & Commercial practice, in particular against solicitors, accountants and surveyors arising out of property, trust, inheritance and probate claims.. The length of his experience means that he is well placed to judge the standards reasonably to be expected of a professional. He is a member of the [Professional Negligence Bar Association](#).

David's underlying practice, dealing with all forms of chancery and commercial work, makes him well-suited to deal with such cases, having a clear understanding of the standards of work which can be reasonably expected of professionals.

“He has great attention to detail.” — The Legal 500 (2014)

Approach

David's real skill is his ability to tackle the most complex legal arguments and disseminate sophisticated information for clients from all walks of life. He is equally happy tackling a public enquiry on behalf of a major company as he is applying his legal mind to rights of way causing distress for rural residents; they all feel confident in his ability and informed by his presentation. Meanwhile, judges recognise the strength of his argument and appreciate his clarity and comprehension of the legal case, and opponents respect the ferocity and conviction of his debate.

He has earned the respect of instructing solicitors who have praised his keen attention to detail and confident grasp of the technical elements of litigation. Indeed, some have rued not having appreciated his expert grasp of an argument sooner. One instructing solicitor turned to David when his previous counsel let him down and said, “Once again, may I say how impressed I am with your skeleton and I wish we could travel back in time so I could have instructed you from the off! I shall not make the same mistake again!”

David is at his best when putting uninitiated clients at their ease, yet providing a realistic assessment of their prospects based on his vast experience of both law and the personalities who colour it. His key objective is minimising clients' distress and costs at all times. Making clients' welfare paramount, he is never afraid of providing advice in clients' own best interests, even when it isn't what they want to hear. Intelligent and informed in his understanding of the law and the cases he accepts, David is nonetheless a fearless combatant when presenting a case and has been described by one solicitor as a 'rottweiler' in court.

Seminars & training

David is happy to deliver training and his input is always well-received. Past feedback comments include: “Very concise, pithy summary of a complex area straddling probate/family law issues”; “Excellent course, very knowledgeable speaker. Good focus on key issues”; “Well-organised, well-presented and pitched at the correct level”; and “Excellent comprehensive notes.”

David has presented several seminars dealing with the Inheritance Act, including ' *The Inheritance Act: Anti-Avoidance – Beating the Baddies.*'

His article ' *A Question of Capacity*' (*Leeds & Yorkshire Lawyer*, Issue 91) attracted favourable comments from many solicitors.

Public Access

David may accept [Public Access](#) work, where he can be instructed directly by a member of the public rather than a solicitor.

Contact David's clerks

[Francine Kirk](#) on [0113 202 8605](#)

[Talia Webster](#) on [0113 213 5207](#)

[Patrick Urbina](#) on [0113 213 5250](#)

You can follow David's Blog [here](#).

Personal Injury

David Rose has long experience of dealing with Personal Injury cases, including the prosecution of Professional Negligence cases arising out of underlying PI claims.

“He has great attention to detail.” — *The Legal 500* (2014)

Notable cases

- *Hind v York Health Authority* (1997) 8 MED LR 377 – Medical negligence, limitation
- *Clarkson v Bransford* (1987) CLY 1166 – Personal injury, nervous shock (escape of a snake).

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Park Square Barristers
6 Park Square East
Leeds LS1 2LW

DX number:
26402
Leeds Park Square

T 0113 245 9763
fees@psqb.co.uk
parksquarebarristers.co.uk