



# Erskine Chambers Seminar & Talks Programme

## Specialists in:

Corporate Law  
Litigation and Arbitration  
Restructuring and Insolvency  
International and Offshore  
Financial Services

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Michael Todd KC  
David Mabb KC  
Martin Moore KC  
David Chivers KC  
Peter Arden KC  
Raquel Agnello KC  
Andrew Thompson KC  
James Potts KC  
Andrew Thornton KC  
Edward Davies KC  
Ben Shaw KC  
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Andrew Blake  
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# Shareholder Actions and Directors' Duties



James Potts KC

Conor McLaughlin

**Format** - Seminar or talk

## **Who is it for?**

All levels, corporate/commercial lawyers and litigators

## **What does it cover?**

- Directors' duties
  - Overview
  - Duty to promote the success of the company
  - Proper purpose – *Eclairs v JKK*
- Shareholder actions
  - Types of claims
  - Role of the company
  - Use of company funds
  - Privilege and confidence
  - Authority
  - Directors' information rights
- Conclusions

# Drag and Tag Provisions: Pitfalls and Claims



Andrew Blake

Jack Rivett

**Format** - Seminar

## **Who is it for?**

Corporate and litigation teams

## **What does it cover?**

- Construction of and challenges to drag provisions
- Articles or shareholders agreement?
- Introducing amendments to the articles
- Interaction with pre-emption provisions
- Expropriations
- Equality of terms, non-cash offers
- Representations/warranties
- Implementing the drag/tag

## Disputes against Directors



Edward Davies KC

Philip Morrison

Format - Talk

### Who is it for?

All levels, corporate, dispute resolution and employment teams

### What does it cover?

- Removal of directors and preventing removal
- Causes of action
- Authorisation of proceedings
- Privilege and confidence
- Company's role in shareholder disputes
- Use of company funds
- Information rights

## Warranties in Business

### Sales



James Potts KC

Dan Butler

Format - Seminar

### Who is it for?

All levels, corporate and dispute resolution teams involved in drafting or contesting contractual warranty provisions

### What does it cover?

Recent law in this area and its practical implications including:

- Drafting warranties
- Warranties vs representations and indemnities.
- How to manage and run breach of warranty litigation, including : notification
- Expert evidence and disclosure;
- Causation and quantification

# Arbitration of Corporate Disputes



**Andrew Thompson KC**

**Format** - Talk or seminar

## **Who is it for?**

Dispute resolution and corporate

## **What does it cover?**

There is a growing trend towards resolving corporate disputes through arbitration. However, as Andrew Thompson KC explains, many practical issues arise from this:

- Which disputes precisely are arbitrable?
- How are corporate disputes such as unfair prejudice and derivative claims resolved through arbitration?
- What procedural issues arise in arbitration, and how are those different to litigation?
- How do foreign law issues impact the arbitration of corporate disputes?
- In an arbitration, how can one get an urgent interim injunction to stop a corporate transaction?

# Company Voluntary Arrangements – current issues and how to bring and defend challenges



**Raquel Agnello KC**

**Format** - Seminar

## **Who is it for?**

All levels, corporate and restructuring/insolvency teams, commercial property teams

## **What does it cover?**

- Discussion of property rights after New Look and Debenhams- what can CVAs compromise
- Current trends in dealing with property rights and other rights outside of CVAs
- *Snoozebox Limited* -contingent creditor definition and criminal prosecutions, regulatory actions
- Differential treatment of creditors and cram-downs
- Valuation for voting purposes
- Defending challenges including the role to be played by the IPs
- Evidence relating to 'necessity' creditors and the preferential status of HMRC
- What is the appropriate comparator – liquidation/ administration or on-going trading
- Future trends – restricted to retail groups and cases where HMRC liability is manageable?

## Directors' duties in the vicinity of insolvency – the effect of the *Sequana* case



**Andrew Thompson KC**

**Format** - Talk or seminar

### **Who is it for?**

Dispute resolution, corporate and R&I

### **What does it cover?**

The Supreme Court has ruled on the situations in which directors are required to consider creditors' interests as part of their fiduciary duties, and what exactly they are required to do.

Andrew Thompson KC, who was leading counsel for the appellant in the Supreme Court, will explain:

1. What the law now is
2. How it has changed as a result of the *Sequana* decision
3. The practical effect of those changes on claims against directors
4. Their practical effect on the task of advising directors of companies in the vicinity of insolvency.

## Bringing claims against wrongdoing directors



**Edward Davies KC**



**Anna Scharnetzky**

**Format** - Talk

### **Who is it for?**

Corporate and litigation teams; all levels.

### **What does it cover?**

- Relief from liability under s1157 CA 2006.
- When can someone other than the company bring a claim against a director?
- Ensuring that proceedings are properly authorised.
- Managing the claim; delegation
- Wrongdoer control and derivative claims.
- Directors' duties under ss171 and 172 CA 2006.
- The test for negligence under s174 CA 2006.
- The insolvency context; additional claims for a liquidator
- Indemnities and D&O cover

## Desire, Intention, Conflict,

## Protection: Preferences after

### Comet v Darty



**Raquel Agnello KC**



**Samuel Parsons**

**Format** - Seminar

#### **Who is it for?**

All levels, corporate and restructuring/ insolvency teams

#### **What does it cover?**

Mrs Justice Falk's decision in *Carton-Kelly v Darty Holdings* is probably the most significant decision on section 239 of the Insolvency Act 1986 for decades, not least in terms of value. This talk will consider exactly how significant the decision is, from the perspective of both transactional advisers and insolvency officeholders.

Issues covered include;

When will the presumption of intention to prefer be triggered? What does it mean for your client if it is? What is the relevance of common directorships in the imputation of corporate knowledge? When will conflicts of interest arise in the transactional context?

How can conflicts of interest be overcome?

What role should experts play in preference claims? What can be learnt from *Comet* about how to instruct them?

What can be done to protect clients from preference challenges?

Will *Comet* herald a resurgence in preference claims, or will director duty claims continue to predominate.

## Liability for false or misleading statements to the market



**Edward Davies KC**

**Format** - Talk

#### **Who is it for?**

All levels, dispute resolution and corporate teams

#### **What does it cover?**

- Overview of the statutory framework; ss 90 and 90A FSMA 2000

- Consideration of the specific cause of action under s 90 FSMA 2000 in relation to false or misleading information in a prospectus, as illustrated by the RBS case.

- Consideration of the statutory tort under s 90A FSMA 2000, as illustrated by the *Autonomy* and *Tesco* cases.

- Meaning of 'person discharging managerial responsibilities'

- Causation and loss

- Safe harbour for the issuer and limitation of liability for third parties under para 7, Sch 10A, FSMA 2000

- The consequences for auditors; the *Autonomy* case and the '*Caparo v Dickman* work-around'.

- Practical considerations; group litigation and costs.

## Director's Duties : Subjective or Objective



**James Potts KC**

**Format** - Seminar

### **Who is it for?**

All levels, corporate team

### **What does it cover?**

Our presentation concerns the duties owed by company directors, with a particular focus on the duty under section 171 of the Companies Act 2006 to act within powers, and the duty under section 172 to promote the success of the company. One theme that we will be considering is the extent to which the legal tests that govern these duties require the court to consider the subjective state of mind of the director, or instead depend upon an objective assessment of what was reasonable in the circumstances.

We will address some of the key problematic issues regarding these duties by reference to the most important recent cases. In particular:

- To what extent are the general duties of directors under the Companies Act 2006 owed by shadow directors? Sukhoruchkin v Van Bekestein [2014] EWCA Civ 399
- To what extent do objective considerations intrude into the assessment of whether directors have complied with section 172? Extrasure Travel Insurance Ltd v Scattergood [2003] 1 BCLC 598
- At what point is the duty to take into account the interests of creditors engaged, and what does that duty entail? BTI 2014 LLC v Sequana SA [2016] EWHC 1686 (Ch)
- The application of the proper purpose test for the exercise of directors' powers; Eclairs Group Ltd v Jkx Oil & Gas Plc [2015] UKSC 71

## Corporate Litigation - hot topics and common pitfalls



**Andrew Thompson KC**

**Format** - Talk or seminar

### **Who is it for?**

Dispute resolution and corporate

### **What does it cover?**

Internal disputes within companies and disputes over corporate transactions give rise to distinctive substantive and procedural issues and many common traps.

As a specialist corporate litigator, Andrew Thompson KC highlights the main pitfalls and related hot topics, using a practical approach based on case studies drawn from his own practice over the last 2–3 years. Topics include injunctions, the role of the company in corporate disputes, funding, privilege, the transition from corporate transaction to dispute and reflective loss.

# The 'reflective loss' defence: practice, pitfalls and recent developments



**Andrew Thompson KC Tom Hall**

**Format** - Seminar or talk

## **Who is it for?**

Litigators and Transactional lawyers in the Corporate and Commercial sphere.

## **What does it cover?**

The rule against reflective loss is a frequent trap for unwary claimants in commercial disputes. Knowing when it applies and how to deal with it is of paramount importance for commercial litigators. Practitioners must also be alive to recent developments: since the rule was authoritatively re-stated in *Marex v Sevilleja*, a series of decisions have raised further difficult issues as to its scope and application. In this talk, Andrew Thompson KC and Tom Hall will demystify the rule, provide an update on the present position and give practical advice to litigators in spotting (and avoiding pitfalls), as well as to transactional lawyers in mitigating the rigours of the rule.

# Share Sale Agreements: How to Effectively Limit Claims



**Nigel Dougherty**

**Carleen Sobczyk**

**Format** - Seminar or talk

## **Who is it for?**

Corporate Lawyers and Litigators.

## **What does it cover?**

Share & business sale agreements invariably take place pursuant to a written contract, but this is not sufficient to ensure against unforeseen liability attaching to one of the parties. This talk will focus on the various ways in which sale agreements may be undermined or put at risk and will examine strategies that can be put in place to prevent this. We also discuss how to approach matters effectively if things do go wrong.



# Directors' Duties and Insolvency



**Raquel Agnello KC**

**Format** - Seminar

## **Who is it for?**

All levels, corporate and restructuring /insolvency teams

## **What does it cover?**

How to advise clients in relation to proposed reorganisations, restructurings, declaration of dividends and ongoing trading - the tricky tests of 'solvency' (section 643 Companies Act 2006) and 'insolvency' (section 123 of the Insolvency Act 1986)

- When does the duty owed to the company convert into a duty owed to creditors?
- Is this a moveable feast? What happens in cases where the company drifts in and thereafter out of insolvency?
- The insolvency test in section 123 of the IA 1986 as compared to the solvency test in section 643 of the Companies Act 2006 – how are they different?
- What professional advice can a director rely upon in relation to whether a company is solvent or insolvent?
- Are unlawful distributions the new insolvency tool?
- Wrongful trading and avoidance transactions - recent trends – the issue of loss.

# Joint Venture Disputes: rights, remedies and freedoms



**Andrew Thompson KC**

**Format** - Talk or seminar

## **Who is it for?**

Dispute resolution, corporate

## **What does it cover?**

Joint ventures come in diverse forms, but many are corporate. Andrew Thompson KC explores the following key themes:

- Structure - the nature of the JV vehicle matters, with significant differences between purely contractual JVs, company JVs and LLP JVs
- What obligations are owed (and to whom) within the JV structure – which depends very much on the JV vehicle chosen?
- A JV is a deal, so the JV agreement is the starting point In all JV disputes, but there are limits on joint venturers' freedom to contract, which also depend on the nature of the vehicle. For example, there are limits re exit routes, including penalty clause rules
- Remedies and types of action, which are also vehicle dependent
- LLPs as JV vehicles

## Injunctions & Corporate Transactions



**Andrew Thompson KC Andrew Blake**

Stopping a corporate transaction in its tracks through an injunction may be a great prize in a dispute, but it can be difficult to achieve and often comes at the price of a daunting cross undertaking in damages. The general principles on which interim injunctions are granted are well known, but they give rise to distinctive issues when applied to corporate transactions.

Andrew Thompson KC explores those issues for the benefit of both dispute resolution lawyers attacking or defending such transactions and corporate lawyers tasked with getting them through.

## Director's Duties in Insolvency - Impact of Sequana



**James Potts KC**

**Format - Talk**

**Who is it for?**

Insolvency litigators, corporate and restructuring teams.

**What does it cover?**

Duties owed by directors in insolvency and the impact of the recent Supreme Court decision in Sequana.

## Shareholder rights: When is a shareholder a member and when does it matter?



**Edward Davies KC**



**Stephen Horan**

**Format - Talk**

### **Who is it for?**

All levels, Corporate and litigation teams

### **What does it cover?**

- Membership of a company; when is a shareholder a member?
- Rectification of the Register of Members; when is it necessary to go to court?
- Beneficial ownership; custodians and nominees.
- Benefits of membership: voting rights; capital and income.
- Personal actions by shareholders to enforce rights under the articles.
- Standing to present unfair prejudice petitions under s994 CA 2006.
- Members' schemes of arrangement.

## Common Pitfalls in Corporate Transactions



**James Potts KC**

**Format - Talk**

### **Who is it for?**

Corporate teams, corporate disputes teams

### **What does it cover?**

Common pitfalls when advising corporate clients. Importance of identifying the client and scope of instructions; standard of care and skill required; transfer of assets; issues of shares; dividends; own share purchases.

## What is the effect upon transactions of successful Pension Schemes Act 2022 proceedings



**Raquel Agnello KC**

**Format** - Seminar

### **Who is it for?**

All levels, corporate and restructuring/insolvency teams, pension teams

### **What does it cover?**

The Pension Schemes Act 2021 brought into force sweeping powers for the Pensions Regulator to impose criminal or civil sanctions upon corporations. These provisions do not expressly set out what is the effect of any such successful proceeding upon transactions and the rights and entitlements of third parties. The talk will explore these issues and provide some practical guidance in dealing with these issues. The talk will also provide a brief guide to the new powers before considering issues of public policy and illegality.

## LLPs - companies in disguise



**Andrew Thompson KC**

**Format** - Talk or seminar

### **Who is it for?**

Dispute resolution, corporate

### **What does it cover?**

In many respects, particularly in relation to disputes, LLPs are essentially very like companies; and the idea of a 'limited liability partnership' is a misnomer. There are however some narrow, but important, differences between LLPs and companies which are traps for the unwary. Andrew Thompson KC has been involved in many of the leading cases on disputes within LLPs, including F&C and *Flanagan v Liontrust*.

## Sequana in the boardroom



**Andrew Thompson KC**

**Format** - Talk or seminar

**Who is it for?**

Dispute resolution, corporate and R&I

**What does it cover?**

A more focused version of the above talk on directors' duties in the vicinity of insolvency, concentrating on the practical implications of the decision and how it is being applied in practice by those advising directors in such situations. It addresses issues such as:

- how the type of corporate action that a board may be considering, and the characteristics of that board, may impact the advice given;
- the increasing realisation that the Sequana judgment has created new difficulties which are yet to be solved; and whether we can learn any lessons from the parallel between developments in the law in Delaware and what we are experiencing now.

## Privilege in Corporate Disputes



**James Potts KC**

**Format** - Seminar

**Who is it for?**

Corporate teams, corporate dispute teams

**What does it cover?**

Explaining where privilege will and will not apply in the context of advising companies. Practical issues that can arise through a failure to appreciate and manage this issue. Rights of access to directors and shareholders. How this issue can play out in litigation.

# Carillion – where does it leave NEDs ?



**Andrew Thompson KC**



**Andrew Blake**



**Philip Morrison**

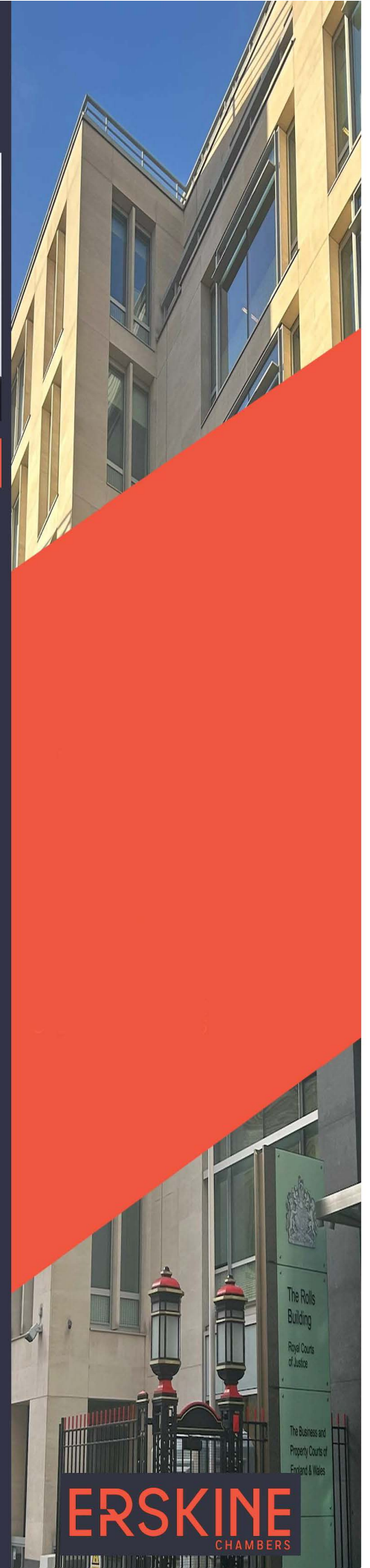
**Format** - Seminar or talk

## **Who is it for?**

This talk will be of interest to corporate lawyers, R&I lawyers and litigators.

## **What does it cover?**

Andrew Thompson KC, Andrew Blake and Philip Morrison successfully defended the non-executive directors in the Carillion directors disqualification case, recently abandoned by the Secretary of State just before trial. They discuss where that abandonment leaves the law as to the role and duties of non-executive directors and the lessons to be learned, both as regards the threat of disqualification proceedings and as regards non-executive directors more generally.





## GET IN TOUCH

Our members are happy to deliver the listed talks in different formats this includes in person seminars, virtual talks and roundtable discussions.

Please contact our Marketing Manager Sanuja Linkeswaran ([Sanuja@Erskinechambers.com](mailto:Sanuja@Erskinechambers.com)) to discuss or arrange a suitable time to schedule an talk or seminar listed in this programme.



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