

Specialists in:

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

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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 JKX
- 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

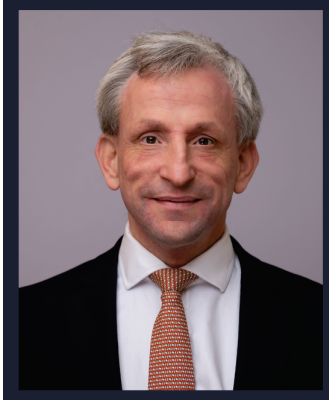
Who is it for?
Corporate and litigation teams

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

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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
- Removal of directors

Zedra in the Supreme Court: what it means for unfair prejudice claims and beyond





Andrew Thompson KC **Lily Church**

Andrew Thompson KC and Lily Church (who appeared in Zedra in the Supreme Court) discuss the implications of this ruling for unfair prejudice claims and other actions in the company and corporate insolvency sphere, including:

- The issues in the case and the result
- The outcome as regards unfair prejudice claims under s994 Companies Act 2006
- The courts' approach now to questions of delay in bringing such claims
- The Supreme Court's explanation of the nature of a s994 claim, the relationship between sections 994 and 996 and the nature of the discretionary power to grant relief under s996
- Practical implications for pursuing s994 claims
- The wider implications of Zedra as regards the application of sections 8 and 9 Limitation Act 1980
- The impact on limitation for claims under sections 214, 238, 239 and 423 Insolvency Act 1986.

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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.

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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

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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.

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Acting for majority shareholders





Chantelle Staynings **Lily Church**

Chantelle Staynings and Lily Church examine the main challenges facing majority shareholders and their advisers. They will look at the practical levers majorities can pull — from altering Articles to exercising drag-along, tag-along provisions and voting rights — when navigating difficult minority situations, and the common pitfalls to watch out for. As well as this, the speakers will also explore how majorities can approach disputes such as unfair prejudice petitions and derivative claims, and the tactical steps they can take to secure the upper hand.

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

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Director's Duties : Subjective or Objective



James Potts KC

Format - Seminar

Who is it for?
All levels, corporate team

What does it cover?
The focus is on the s.171 and s.172 duties and the extent to which the court is required to consider the subjective state of mind of the director.

It also addresses key problematic issues such as shadow directors, evidential challenges, the relevance of objective considerations, and at what point does the duty to take account of creditor interests (Sequana) intrude and what does the duty require.

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.

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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 transation?

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.

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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

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.

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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 litiga tors. 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.

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Challenging directors' decisions and the proper purpose duty



James Potts KC

Format - Seminar or talk

Who is it for?
Litigators and Transactional lawyers

What does it cover?

- The test for assessing the proper purpose duty
  - 4-stage test
  - Whose purpose is it?
  - Multiple purposes.

- Examples of powers that might be challenged
  - Allotments / rights issues
  - Seeking information / suspending share rights
  - Forfeiture
  - Poison pills

- The decision in Tianrui

- Proper purposes in the context of shareholder voting

- How does it fit with the duty of good faith?

- Tactical considerations

- Evidential challenges and the company's privilege (the Shareholder Rule)
- Remedies

Issues over a company's membership in share purchases





Nigel Dougherty **Lily Church**

Format - Seminar or talk

Who is it for?
Corporate Lawyers and corporate Litigators.

What does it cover?
The register of members is a crucial document.
Often problems with the register are identified in the course of due diligence. This talk offers practical guidance as to how such issues might be addressed, including in the ll too common scenario of questionable own share purchases.

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Desire, Intention, Conflict, Protection: Preferences after Comet v Darty



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.

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Litigation Tactics in Unfair Prejudice Petitions





Nigel Dougherty **Lily Church**

Format - Talk or seminar

Who is it for?

Corporate litigators

What does it cover?

This talk explores sophisticated legal and tactical approaches to unfair prejudice petitions, focusing on how to navigate their unique complexities. It will examine common procedural pitfalls that litigators must avoid, as well as strategic levers that can be used to gain advantage—whether through timing, disclosure, or tactical positioning. Attendees will gain practical insights into how the petition differs from routine litigation and why a flexible, case-specific strategy is essential for success.

Reduction of Capital





Chantelle Staynings **Seamus Woods**

An overview of company reductions of capital, covering both the solvency statement procedure and the procedure to obtain court approval. The talk has a practical focus on when and how reductions of capital can be used (including to rectify historic share buybacks), creditor protection issues and common pitfalls to watch out for (and how to avoid them).

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Corrective construction, mistake and rectification: What you need to know and when to rely on them





Nigel Dougherty **Olivia Tolson**

Format - Talk or seminar

Who is it for?

Commercial litigators and corporate/commercial lawyers.

What does it cover?

Despite every effort being made to reflect client intentions, contracts can fail to clearly or properly record the agreement reached between the parties to them. This talk explores how such errors and oversights might be overcome, with a particular focus on (i) corrective construction and (ii) the equitable remedy of rectification for both common and unilateral mistake.

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*.

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Cohen v Co-op Group: Practical lessons





James Potts KC **Matthew Parfitt**





Jack Rivett **Conor McLaughlin**

Restructuring transactions can give rise to difficult issues both at the time they are designed and implemented and, sometimes years later, when they are challenged in litigation. Using the recent Co-operative Group litigation as a case study, this round-table session considers practical lessons for lawyers, other advisers and boards involved in structuring transactions, and for litigators subsequently tasked with defending or challenging them.

Beating (Up) the Minority

A Guide to Defending unfair prejudice Proceedings



Ben Shaw KC

This talk is an essential, practical guide for anyone defending majority shareholders in unfair prejudice proceedings. It covers:

- Standing: does the petitioner have the right to bring s 994 proceedings?
- Scope of s 994: do the minority's complaints fall within the jurisdiction?
- Limitation and delay: can complaints be struck out as too old?
- Quasi-partnership: how can allegation be refuted?
- Answering common complaints of unfair prejudice: exclusion, misappropriation of assets, failure to pay dividends, dilutive rights issues
- Making an effective O'Neill v Phillips offer
- The company's role: can company play active part in proceeding?

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Carillion – where does it leave NEDs ?



Andrew Thompson KC



Andrew Blake

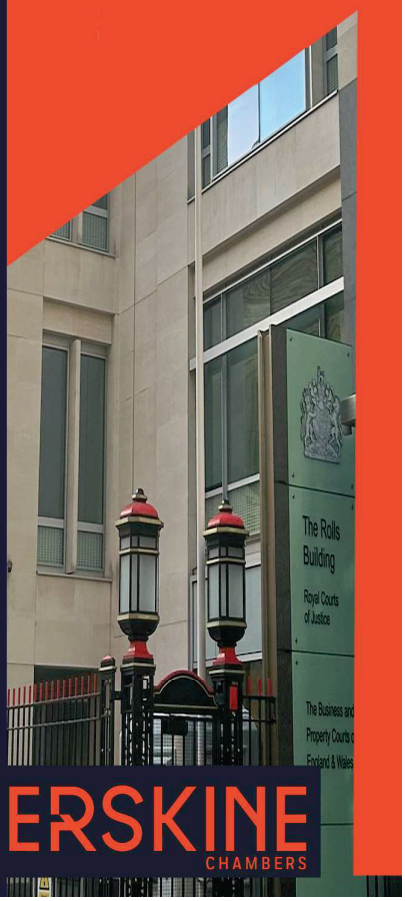


Philip Morrison

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.

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





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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) to dicsuss or arrange a suitable time to schedule an talk or seminar listed in this programme.



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