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KEATING
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TOM OWEN

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Areas of practice

- Construction & Engineering
- Professional Negligence
- Arbitration
- Energy & Natural Resources
- Infrastructure & Utilities
- Offshore Construction & Marine Engineering
- PFI/PPP
- Property
- IT & Technology

Clerks' Details

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Practice overview

Tom is ranked in Who's Who Legal 2016 as one of the world's leading juniors in construction.

Tom is known particularly for his advocacy and court work. Tom is a confident, robust and versatile advocate. He is regularly instructed to appear as advocate in commercial disputes at trials, applications, pre-action and settlement meetings and at mediations.

Tom is frequently instructed to appear in the High Court and has appeared, as Junior Counsel, in the Court of Appeal.

Tom is recognised particularly for his legal ability and analysis. He is often instructed to advise and to draft statements of case in disputes which are legally complex and which require particularly detailed and precise application of the law. Tom has a special interest in all aspects of the law of contract, tort, restitution and private international law.

Recent Cases

Advocacy

Trials:

- **3 day multi-track trial (High Court, London TCC) – unled.** Tom was defending a claim for breach of contract, a lease, and, originally, breach of the Defective Premises Act 1972. The case raised complex factual and expert evidence as to alleged defects in common parts of a development of residential apartments. The trial ultimately turned on whether a lease between a developer and management company contained implied terms as to the standard of construction of the development. Tom successfully argued that there were no implied terms, as alleged by the Claimant, and obtained judgment for the Defendant.
- **6 day multi-track trial (High Court, London TCC) – unled.** Tom was advancing a claim for breach of contract relating to heat treatment of steel torsion bars used in domestic and international railway rolling stock. Settled.
- **4 day multi-track trial (Central London County Court) – unled.** Judgment for Tom's client with costs and dismissed the counterclaim. The case required extensive cross-examination by Tom of the factual witnesses and submissions on the law of repudiation, notices making time of the essence, delay, the prevention principle and recovery of payments in restitution.
- **2 day preliminary issues trial (London TCC) – led by Marcus Taverner QC.** The Court had to consider the meaning of an exemption clauses which sought to limit the liability of a professional consultant "*for pollution and contamination*" and which sought to exclude "*liability for any claim in relation to asbestos*".
- **2 day multi-track trial (Leeds TCC) – unled.** Tom was acting for a developer in a claim concerning compliance with Building Regulations and the correct measure of damages. The case required critical analysis of the expert evidence, robust cross-examination of the engineering expert and of the factual witnesses.
- **5 day multi-track trial (High Court, QBD) – unled.** Tom was advancing a claim for breach of contract and negligence relating to the sale and supply of goods for use at one of the UK's largest commercial ports. Settled.
- **2 day multi-track trial – unled.** After contested written and oral submissions by Counsel for both parties, Tom successfully obtained strike out of the entire proceedings with costs on the first day of trial.
- **1 day trial – unled.** Tom appeared for the Defendant, a major UK homebuilder. Following cross-examination of the Claimant's witness and submissions on the law, the court dismissed the claim in its entirety and entered judgment for Tom's client.

"Tom Owen is a 'great analyst'"

Who's Who Legal UK Bar, 2015

Appeals:

- **Court of Appeal** – Junior Counsel, led by Simon Hughes QC. The principal issue concerned amendments after expiry of the limitation period, in particular whether they were a "new claim" under section 35 of the Limitation Act 1980 and rule 17.4 of the Civil Procedure Rules and whether they arose out of substantially the same facts as already in issue.

Costs and Case Management Conferences (CCMC):

- **Construction dispute (High Court, London TCC) – unled.** After contested oral and written submissions, the judge approved Tom's client's costs budget as filed and reduced the opposition's costs budget by 10%.
- **Professional negligence dispute (High Court, Leeds TCC) – unled.** After contested oral and written submissions, the judge approved Tom's client's costs budget with minor revisions and reduced the opposition's costs budget by approximately 25%.

- **Commercial dispute (High Court, QBD) – unled.** Tom successfully defended his client’s budget from detailed submissions by Counsel for the opposition and a costs draftsman. Tom secured approval of his client’s budget.
- **Professional negligence dispute (High Court, Manchester TCC) – unled.** Tom obtained a reduction of 15% in the opposition’s cost budget.

Pre-Trial Reviews (PTR):

- **Various (High Court, London TCC) – unled.**
- **Professional negligence dispute (High Court, Leeds TCC) – unled.** Tom resisted an application by the Defendant to amend its counterclaim. Tom also successfully pursued a hard-fought application for further information under CPR Part 18. Having succeeded on all aspects of the applications at the hearing, Tom secured an order for costs payable forthwith and on account.
- **Construction dispute (Central London County Court) – unled.** Tom applied for strike out of the proceedings and obtained judgment with costs payable forthwith and on account.

“Tom Owen ‘sees things others miss’ in cases.”

Who’s Who Legal UK Bar, 2015

Adjudication enforcement hearings – seeking and resisting enforcement proceedings.

Applications:

- **Summary Judgment and Strike Out application (High Court, London TCC) – unled.** Tom successfully resisted summary judgment to strike out claims for loss of future business and profits. The application required submissions on assignment, contractual construction and remoteness of damage.
- **Summary Judgment application (High Court, London TCC) – unled.** Tom defended an application concerning whether an agreement was ‘subject to contract’ and conditional upon formal execution.
- **Specific disclosure (High Court, QBD) – unled.** Tom successfully obtained specific disclosure in a commercial dispute.
- **Relief From Sanctions (High Court, Chester District Registry) – unled.** 1 day hearing of a contested relief from sanctions application involving cross-examination by Tom and live evidence.
- **Section 9 Arbitration Act stay application (High Court, Bristol TCC) – unled.**
- **Part 18 requests for further information (High Court, London TCC and Leeds TCC) – unled.** Seeking and resisting applications.
- **Summary Judgment and Strike Out application (High Court, Manchester TCC) – unled.** Tom successfully resisted an application to strike out the claim on the basis of no-loss arguments and allegations of invalid assignment of rights.
- **Amendments – unled.** Tom appeared for a football club, successfully resisting an application to amend to include allegations of defamation against the football club. Tom secured strike out of the application together with an order for costs to be payable to his client forthwith.

Construction & Engineering

- Counsel for a sub-contractor concerning a dispute over works at Heathrow Airport.
 - Counsel for engineering consultants concerning M&E works at a BMW dealership.
 - Counsel for funders and developers concerning fit-out of a Central London hotel.
 - Counsel for Academy schools in a dispute with the main contractor and local authority.
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- Counsel for the employer concerning refurbishment works to a Central London gallery.

Commercial

- Counsel in a claim in the Commercial Court under a guarantee.
- Counsel for a football club in a commercial dispute involving allegations of defamation.
- Counsel in a shipping dispute concerning a termination clause under a charterparty and the BIMCO Barecon 2001 form.
- Advised on economic torts, including conspiracy to injure, unlawful means conspiracy and malicious falsehood in relation to an international exclusive distribution agreement.
- Advised on service of documents out of the jurisdiction under Part 6 of the Civil Procedure Rules and under the Hague Convention.

Professional Negligence

- Junior Counsel in a claim against consulting engineers concerning ground contamination.
- Counsel in a dispute against solicitors concerning advice to settle and conflicts of interest.
- Counsel in a claim against M&E consultants concerning design and review of air conditioning systems.
- Counsel in a claim against geotechnical engineers concerning landslips at a housing development.
- Counsel in a dispute against specialist cladding, window and door designers and contractors.

Arbitration

- Junior Counsel in an ICC Arbitration concerning a residential, office and hotel project in Dubai.
- Junior Counsel in an ICC Arbitration concerning an offshore wind farm.
- Counsel in a claim concerning earthworks at a University campus.
- Counsel for an insurer seeking enforcement of arbitral award.
- Advised on the effectiveness of an arbitration clause in a consumer contract and the effect of the Unfair Terms in Consumer Contracts Regulations 1999.

Energy & Natural Resources

- Counsel in a mining dispute concerning potassium chloride for fertiliser.
- Junior Counsel for the main contractor on mechanical biological treatment energy plant.
- Junior Counsel in a dispute concerning the design and construction of a wind farm.
- Counsel for the Employer concerning installation of photovoltaic solar panels and Feed-in Tariffs (FITs).
- Advised on liquidated damages on sectional completion under a design and build contract of an energy-from-waste facility.

Infrastructure & Utilities

- Counsel in a dispute concerning works to flight training facilities at Heathrow Airport.
- Advised on motorway road maintenance contracts.
- Advocate in disputes concerning damage to apparatus owned by utility companies, in negligence and under the New Roads and Street Works Act 1991.
- Counsel for a contractor concerning flood defence systems along the River Thames.
- Counsel in claim concerning fire damage and remedial works to a hospital.

Offshore Construction & Marine Engineering

- Counsel in a claim concerning bridge linked platforms between oil drilling rigs.
- Counsel in a dispute concerning one the UK's largest commercial ports.
- Advised on non-assignment provisions under an Engineer-Procure-Construct contract for an offshore drilling rig.
- Junior Counsel in a dispute concerning offshore heavy lifting vessels.
- Claim by an oil major against a global offshore contractor in respect of defective installation of a subsea dynamic umbilical cable at a floating production storage and offloading vessel (FPSO).

PFI/PPP

- Advised in relation to defects at a swimming pool and leisure complex.
- Counsel in relation to a dispute concerning works to schools and academies.

Property

- Counsel in a claim concerning remedies for specific performance, rescission and damages relating to the conveyance of residential properties.
- Counsel in a claim concerning private nuisance and trespass to subterranean works.
- Advised on easements (rights of way and parking).
- Counsel in a claim concerning defective title to residential premises.
- Counsel in a dispute between a property management company and developers relating to common parts of a development.

IT & Technology

- Counsel in a dispute concerning the updating of the website of a leading advertising agency.
- Counsel in a commercial broadband and telecommunications dispute, raising issues of loss of profit, loss of reputation and exclusion clauses.
- Counsel in a dispute concerning the supply and transport of high voltage switchgear electronics.
- Advised in relation to GPS tracking technology.
- Advised in relation to distribution agreements for satellite antennae.

Insurance

- Counsel in a claim against insurers under a defective title property policy.
- Advised on the recoverability under an insurance policy for subsidence damage.
- Advised on the subrogated rights of an insured as against a co-insured of a joint names insurance policy on a dispute concerning damage to a hospital.
- Drafted statements of case and advised on coverage under NHBC and related insurance policies and their legal effect upon independent liability under construction contracts, leases, guarantees and the Defective Premises Act 1972.
- Advised on remedies concerning insurance disputes through the Financial Ombudsman, under the ICOBS rules and the Financial Services and Markets Act 2000.

Private International Law (conflicts of law)

- Counsel for owners of a Central London restaurant, advising on jurisdiction under the Brussels I Regulation Recast and choice of law in contract and tort.
- Advised on the jurisdiction of the English High Court under the Lugano Convention over a company domiciled in Switzerland.

- Advised on the effectiveness under English and EU law of sale and distribution agreements for satellite antennae.
- Assisted in advising on the validity of a Kuwaiti contract of guarantee.
- Advised on the Brussels I Regulations, Rome Convention, Rome I Regulations and Rome II Regulations.

Selected Reported Cases

- *Persimmon Homes Ltd & Others v Ove Arup & Partners Ltd & Another* [2015] EWHC 3573 (TCC)
- *Seeney v Gleeson Developments Ltd* [2015] EWHC 3244 (TCC)
- *Errington v David Brown Gear Systems Ltd* [2014] EWHC 4255 (TCC)
- *Co-operative Group Ltd v Birse Developments Ltd and Others* [2013] B.L.R. 383, [2013] EWCA Civ 474

Education & Professional Career

Appointed to the CEDR Solve Adjudicator Panel	2013
TECBAR-accredited Adjudicator	2013
Tenant, Keating Chambers	2012
Pupil, Keating Chambers	2011-2012
Bar Professional Training Course, Nottingham Law School - ranked top in the year	2010-2011
MA (Hons) Law, University of Cambridge, Downing College	2007-2010
Loughborough Grammar School, Head Boy (2006/07)	2000-2007

Awards & Scholarships

The Baron Dr Ver Heyden De Lancey Prize, ranked top Middle Templar on the BPTC	2012
Certificate of Honour, Middle Temple	2011
Lord Taylor Prize, ranked top in the year at Nottingham Law School BPTC	2011
The Advocacy Prize, Nottingham Law School BPTC	2011
Winner of the Nottingham Law School Ropewalk Mooting Competition	2011
Queen Mother Scholarship, Middle Temple	2010
Finalist, University of Cambridge De Smith Mooting Competition	2010
Sporting Colours, Downing College	2010
Downing College Lovells Prize	2008
Finalist, representing the University of Cambridge at the International Roman Law Moot Conference	2008

Memberships

Middle Temple

Society of Construction Law (SCL)

TECBAR

COMBAR

LCLCBA

TECBAR - accredited Adjudicator and, by invitation, a Member of the CEDR Solve Adjudicator Panel.

Seminars, Publications & Papers

- By invitation of King's College London, Tom is a lecturer and examiner on the MSc Construction Law & Dispute Resolution course.
- Tom lectures on all aspects of Civil Procedure and Civil Litigation.
- Article: "Late amendments and amendments after the expiry of the limitation period"
- Article: "Practical Guidance on Relief From Sanctions after Denton – July 2014"
- Article: "Construction Adjudication Enforcement"
- Article: "Liquidated damage: are they penal?"
- Article: "Who is the contract with: the director or his company?"
- Article: "Silence: unreasonable refusal of ADR."
- Article: "Liability for natural nuisances."
- Article: "Tree roots: causation in natural nuisance cases."
- Article: "Practical guidance on relief from sanctions after Mitchell and Durrant - January 2014."
- Co-Author of the 5th Edition of Halsbury's Laws of England: Income Taxation – Sub-contractors in the Construction Industry.
- Author of iSurv: Payment under Construction Contracts.
- "Amendments after limitation: limiting the amendments", KC Construction Update, Summer 2013 (pp.12-13).
- Sweet & Maxwell webinar Masterclass from Tom Owen: "Nuisance and Rylands v Fletcher: recent developments".
- Sweet & Maxwell webinar Masterclass from Tom Owen: "Commercial Property – pre-contractual representations, agents' duties and guarantees".
- By invitation of legal publishers, Sweet & Maxwell, Tom Owen is the author of "Defective Premises" and "Lis Alibi Pendens" for Westlaw UK Insight.
- Further, by invitation, Tom Owen is the author of: "Construction Adjudication: Enforcement" and "Construction Adjudication: Overview" for Westlaw UK Insight.

Languages

English (native)

French (professional working proficiency)

German (professional working proficiency)

Additional Information

Tom is a keen sportsman. He enjoys playing and watching football, rugby and cricket.