

# Trust and Estates Litigation

*'Put not your trust in money, but put your money in trust',*

Oliver Wendell Holmes Snr, The Autocrat of the Breakfast Table

Thursday 27 November 2008  
Central London



## SPEAKERS

Chaired by:

**DAWN GOODMAN**  
Withers LLP

**STEVEN KEMPSTER**  
Taylor Wessing LLP

**SOPHIE HOFFMAN**  
Boodle Hatfield

**BERNARD VISCHER**  
Schellenberg Wittmer

**ROBERT HUNTER**  
Allen & Overy LLP

**FRASER ROBERTSON**  
Appleby

**ANTHONY POULTON**  
Baker & McKenzie LLP

**PATRICK HAMLIN**  
Withers LLP

**SUE MEDDER**  
Withers LLP

**JOHN RIMMER**  
Dickinson Cruickshank

**ZIVA ROBERTSON**  
Mourant

## Practical strategies for handling claims arising from trusts and estate management

- Consider whether the **test for capacity** has changed under the Mental Capacity Act 2005
- Compare and contrast claims under the **IPFDA 1975** with **entrenched heirship claims**
- Discover **what protection is available** for personal representatives and trustees
- Understand how claims may arise from **problematic or doubtful lifetime transactions**
- Join in the panel debate where our five multi-jurisdictional experts will discuss the **key differences in their locality** and the resultant enforcement problems

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# Practical strategies for handling claims arising from trusts and estate management

## WHO ARE THE SPEAKERS?

**STEVEN KEMPSTER** is head of the Trust and Estates Disputes group at Taylor Wessing LLP. He specialises in the resolution of disputes relating to the formation or administration of trusts and estates both in a UK and international context. He is recommended in *Chambers* and *Legal 500* and he lectures regularly in the UK, Channel Islands and Switzerland on these issues. He is a member of the Association of Contentious Trusts and Probate Specialists and the Charity Law Association.

**BERNARD VISCHER**, LL.M. (University of Pennsylvania), TEP, was admitted to the Geneva Bar in 1980. He is head of Schellenberg Wittmer's private capital and estate planning group in Geneva. He worked as a research and teaching assistant at the University of Geneva from 1981 to 1983. His main areas of practice include private banking law and wealth structuring matters for high net worth individuals.

**ROBERT HUNTER** is a partner in Allen & Overy LLP and is head of the Trust, Asset Tracing and Fraud (TATAF) Group. He is widely known as one of the leading fraud specialists in the country. He has been described in the legal press as "guru" and "authority" in the area of fraud litigation. He is Secretary of the Association of Contentious Trust and Probate Specialists.

**FRASER ROBERTSON** is a partner in and head of the Appleby Litigation and Insolvency Group in Jersey. He is an experienced commercial litigator, having previously practised in London prior to moving to Jersey in 1994. He specialises in trust litigation, fraud and asset tracing and regulatory matters. He has acted and appeared before the Jersey courts in a number of significant trust disputes including the Minwalla Litigation. He is an ADR accredited mediator and regularly writes and speaks on fraud and contentious trust matters.

**ANTHONY POULTON** is a partner in the Dispute Resolution Department of Baker & McKenzie's London office and chairs the firm's highly rated Trust Disputes Group. Anthony specialises in Trust and Private Banking related litigation and has substantial experience of international trust based disputes, often involving fraud and asset tracing. In connection with such disputes, he acts variously for trustees, beneficiaries and interested third parties such as creditors and foreign prosecution authorities. He is a regular speaker at conferences and is a member of ACTAPS.

**JOHN RIMMER** is a partner at Dickinson Cruickshank, a leading law firm in the Isle of Man. He advises individuals and trust companies on all matters concerning trusts, wills, succession and probate. He is chairman of the Isle of Man branch of STEP, as well as a member of ACTAPS. He qualified as a solicitor in England and practised in London before re-qualifying in the Isle of Man. He writes and speaks internationally on trusts, and wrote the Isle of Man chapters in Tottel's International Succession Law and Garb & Wood on International Succession.

**ZIVA ROBERTSON** is a partner of Mourant du Feu & Jeune in Cayman, having joined the firm in April 2008 to lead the Cayman trust litigation practice. Ziva was admitted as an English solicitor in 1997 and as a Cayman attorney in 2004. A member of STEP and ACTAPS, Ziva specialises in complex trust disputes, often involving cross-jurisdictional elements. She has extensive experience in advising and representing trustees, protectors and beneficiaries.

## Why attend this conference?

As can readily be seen from the ever-increasing body of case law in this sector, trust and estates litigation is a rapidly evolving field of law.

**Chaired by Dawn Goodman** and featuring leading experts from the onshore and offshore world, this packed one day conference will examine the main issues that may lead to claims arising and provide practical examples of how best to mitigate risk.

Our **panel of multi-jurisdictional experts** will advise you on the key differences in their locality and guide you on pitfalls to avoid when putting theory into practice. Covering the Channel Islands, the Cayman Islands, the Isle of Man, Liechtenstein and Switzerland, this authoritative meeting is a must for all trusts lawyers, trust corporations and in-house counsel from financial institutions.

Topics include:

- Has the **test for capacity** changed under the Mental Capacity Act 2005?
- What type of claims are likely to arise from **problematic or doubtful lifetime transactions**?
- On what grounds can a **trustee** be forced out of office?
- What **protection** is available for personal representatives and trustees?

## Who should attend

Trusts lawyers; private client lawyers; chancery specialists at the bar; trustees and their advisers; representatives for trust corporations and their advisers; banks; in-house counsel for financial institutions and accountants.

# PROGRAMME – Thursday 27 November 2008

08.50 Registration and coffee

## 09.20 Chair's opening remarks

**DAWN GOODMAN**, *Partner*, **Withers LLP**

## 09.30 An overview of validity and capacity claims – has the test for capacity changed under the Mental Capacity Act 2005?

- Challenging the validity of wills and trusts
- Recent cases on testamentary capacity
- The impact of Mental Capacity Act 2005
- Practical issues and the use of experts

**STEVEN KEMPSTER**, *Partner*, **Taylor Wessing LLP**

## 10.15 Claims under the Inheritance (Provision for Family and Dependants) Act 1975 contrasted with entrenched heirship claims

**SOPHIE HOFFMAN**, *Solicitor*, **Boodle Hatfield**  
**BERNARD VISCHER**, *Partner*, **Schellenberg Wittmer**

11.00 Coffee

## 11.20 Claims arising from problematic or doubtful lifetime transactions

- Undue influence
- Lack of capacity to give away assets
- Abuse of power by an attorney
- Proprietary estoppel
- Fraud

**ROBERT HUNTER**, *Partner*, **Allen & Overy LLP**

## 12.00 Protections for personal representatives and trustees

- Exoneration and exculpation clauses
- Applications and indemnities
- Indemnities

**FRASER ROBERTSON**, *Partner*, **Appleby**

12.45 Lunch

## 13.45 Attacks on trustees

- The duty of care
- Breach of trust and other types of attack
- Liability for poor investment performance
- Creditor and third party claims
- Forcing trustees out of office

**ANTHONY POULTON**, *Partner*, **Baker & McKenzie LLP**

## 14.30 An introduction to attacks on trusts and foundations

- Fraud
- Insolvency
- Technical invalidity including sham
- Forced heirship
- Community property
- Divorce

**PATRICK HAMLIN**, *Partner*, **Withers LLP**

**SUE MEDDER**, *Partner*, **Withers LLP**

**DAWN GOODMAN**, *Partner*, **Withers LLP**

15.30 Afternoon tea

## 15.50 Gathering the ammunition – disclosure of trust documents

- Claims by beneficial objects: *Schmidt v Rosewood*
- New guidelines on letters of wish: *Breakspear v Ackland*
- Third-party claims
- Watchful eyes: foreign government claims

**JOHN RIMMER**, *Partner*, **Dickinson Cruickshank**

## 16.20 Offshore and continental Europe's views of these claims and claims arising from enforcement in other jurisdictions

**Channel Islands** – **FRASER ROBERTSON**, *Partner*, **Appleby**

**Cayman Islands** – **ZIVA ROBERTSON**, *Partner*, **Mourant**

**Isle of Man** – **JOHN RIMMER**, *Partner*, **Dickinson Cruickshank**

**Liechtenstein** – **Speaker to be confirmed**

**Switzerland** – **BERNARD VISCHER**, *Partner*, **Schellenberg Wittmer**

Panel discussion

## 17.40 Chair's closing remarks

## 17.45 Close of conference and complimentary drinks reception



### Chaired by:

**DAWN GOODMAN** heads up Withers' contentious trust and succession team, which is the largest in Europe and has recently won the STEP Contentious Team of the Year award. Dawn advises on domestic and international trust and succession litigation from the consensual to the fraudulent. She represents lay and professional trustees and personal representatives, non-trustee fiduciaries, settlors, beneficiaries, heirs and adverse claimants.

# Registration

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## Administration

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