

Kevin Pettican

Year of Call: 1994
Email Address: kevin.pettican@3pb.co.uk
Telephone: 0121 289 4333

Overview

Kevin is a senior commercial barrister with a strong practice focused on commercial litigation and arbitration, personal and corporate insolvency, banking and finance, and property litigation. He is a seasoned trial lawyer with experience of appearing in courts at all levels, up to and including the UK Supreme Court and the Judicial Committee of the Privy Council, as well as arbitral tribunals both in London and internationally.

Kevin joined 3PB from a London commercial chambers in September 2024. He has relocated to work from 3PB's Birmingham office, whilst continuing to develop his London-based practice.

Before practicing at the independent Bar, Kevin spent two years as an employed barrister in the commercial litigation team of a boutique City of London law firm, followed by five years working within the international arbitration team of US-based law firm WilmerHale. This background means that Kevin understands the expectations of commercial clients in the litigation process and the need for counsel to work as part of an effective team with instructing solicitors to ensure that those expectations are met or exceeded.

Kevin prides himself on his ability to devise creative and sometimes novel strategies for overcoming apparently insurmountable difficulties in a case. This is reflected in the fact that clients often come to Kevin at a late stage in the litigation process having become dissatisfied with their previous representatives. In such cases Kevin has often been able to turn things around at trial or on appeal or, where this is not possible, at least get the client to a position where a favourable settlement can be negotiated.

Academic qualifications

- BA (First Class Honours), Christ Church, University of Oxford
- Bachelor of Civil Law (BCL), Christ Church, University of Oxford
- BPTC, Inns of Court School of Law

Scholarships

- Major Scholarship, Inner Temple
- Duke of Edinburgh Scholarship, Inner Temple

Professional bodies

- Inner Temple

Direct Access

Kevin Pettican is qualified to accept instructions directly from members of the public and professional clients under the Direct Public Access scheme.

Expertise

Business financing

Kevin is frequently instructed in litigation with banks and financial institutions, especially disputes arising from secured lending and the provision of guarantees.

In recent years, Kevin has been instructed in several cases involving disputes as to the terms and/or enforceability of interest rate swap transactions involving the ISDA Master Agreement. Most recently, in **Deutsche Bank AG London v Comune di Busto Arsizio [2021] EWHC 2706 (Comm)** Kevin was instructed (with Paul Downes KC) by an Italian local authority in Commercial Court litigation concerning the enforceability of two interest rate swaps. This was the first case in which the Commercial Court considered the effect of the decision of the Joint Divisions of the Italian Supreme Court in the Cattolica case (Case No. 8770/20220).

Kevin acted (with Romie Tager KC) for the successful appellants in **Szepietowski v The National Crime Agency [2013] UKSC 65; [2014] 1 AC 338**, which is the leading case on the equitable doctrine of marshalling. Whilst the marshalling of charges is something that normally takes place in the context of secured lending, the case raised complex issues arising from a settlement agreement between Kevin's clients and the National Crime Agency.

Insolvency and bankruptcy

Insolvency & restructuring

Kevin Pettican is regularly instructed in disputes arising in the personal and corporate insolvency context. His experience includes:

- Applications to set aside statutory demands
- Applications to restrain the presentation/advertisement of winding up petitions
- Contested bankruptcy and winding up petitions
- Matters arising during the insolvency process, including resisting applications by office holders to conduct private examinations under s236 and s366 of the Insolvency Act 1986, as well as representing individuals in such examinations
- Issues concerning the appointment of administrators and their powers
- Transaction avoidance claims by office holders
- Claims by trustees in bankruptcy
- Claims by office holders against former directors for fraudulent and/or wrongful trading and misfeasance
- Directors disqualification proceedings

Reported cases

Re: JD Group Ltd [2023]: Acting for a former director in a substantial claim by a liquidator alleging fraudulent trading and misfeasance in the context of an alleged MTIC fraud.

Hira v Kanzai Securities Ltd [2017] EWHC 2213 (Ch): Successful defence of an appeal against an order refusing to set aside a statutory demand where the debtor was arguing that his liability under the personal guarantee did not give rise to a liquidated debt.

The Law Society v Beller [2014] EWHC 3923 (Ch); [2014] BPIR 1480: Successful defence of a claim by the Law Society to recover a fund representing the work in progress of a solicitor's former practice. The case raised complex issues concerning the relationship between an IVA entered by the former solicitor and the statutory trust that arose following the Law Society's intervention in his practice.

Re: Legal & Equitable Securities plc. (in Liquidation) [2012] EWHC 910 (Ch); (2012) 109 (24) L.S.G 22: A successful challenge to a liquidator's refusal to admit the applicant as a contingent creditor based on a contractual indemnity. The case is significant in terms of the meaning of a contingent liability for the purposes of Rule 13.12 of the Insolvency Rules 1986.

Re: RC Realisations (2011) Ltd: Acting for an Italian company in proceedings arising from the decision of the administrators of RC Realisations to refuse to admit a substantial claim. The case (which settled) concerned the impact of the EU sanctions regime against Iran on two international trade agreements.

Beller v Valentine [2011] EWHC 2397; [2012] BPIR 15: Acting for a former solicitor in a claim for outstanding fees against a liquidator in the context of a third-party funding arrangement. The case is significant in terms of its consideration of the potential liability of an office holder who instructs solicitors in reliance on third party funding.

Civil fraud & asset recovery

Kevin is frequently instructed in commercial cases in which fraud is alleged or which involve the recovery of assets.

Reported cases

Re: JD Group Ltd [2023]: Acting for a former director in a substantial claim by a liquidator alleging fraudulent trading and misfeasance in the context of an alleged MTIC fraud.

Winter v Hockley Mint Ltd [2019] 1 WLR 1617: The litigation involved claims of deceit and conspiracy in the context of office equipment leases. Kevin acted for the successful appellant and the decision of the Court of Appeal is a leading authority on the circumstances in which a principal is vicariously liable for the fraud of his agent.

Szepietowski v The National Crime Agency [2014] 1 AC 338: A successful appeal to the Supreme Court (together with Romie Tager KC) in what is now the leading case on the equitable doctrine of marshalling. The case raised complex issues arising from a settlement of asset recovery proceedings that was originally brought against Kevin's client by the National Crime Agency.

Kinch v Rosling & Ors [2019] EWHC 286: Successful claim on behalf of Leicestershire businessman Gilbert Kinch who had been the victim of an advanced fee fraud in connection with a failed bid to acquire Leicester City Football Club.

Al Baho & Ors v Meerza [2011] EWHC 2984: Acting for a Kuwaiti national, a member of the ruling family of Kuwait and a former English solicitor in litigation arising from the sale of a London property in which it was alleged that the purchaser had paid a bribe and a secret commission had been received. The dispute gave rise to proceedings in the Chancery Division, the Queen's Bench Division (for defamation), as well as proceedings in Kuwait.

Commercial

Kevin Pettican is a commercial litigator with 30 years of experience in litigating and arbitrating business disputes before courts at all levels up to and including the Supreme Court, and before arbitral tribunals both in the UK and internationally.

Whilst Kevin particularly enjoys preparing for and conducting trials, he is a versatile advocate who is equally at home in the applications court, or argument a novel point of law before the Court of Appeal. In all his cases, Kevin seeks to adopt a persuasive and direct approach to advocacy, based on intensive prior preparation.

Reported cases

Deutsche Bank AG London v Comune di Busto Arsizio [2021] EWHC 2706 (Comm): Kevin was instructed (together with Paul Downes KC) by an Italian local authority in Commercial Court litigation concerning the enforceability of two interest rate swaps. This was the first case in which the English Commercial Court considered the effect of the decision of the Joint Divisions of the Italian Supreme Court in the Cattolica case (Case No. 8770/20220).

NaturaStudios Ltd v The New York Laser Clinic Ltd [2019] EWCA Civ 421: This was a dispute concerning the supply of laser equipment to the claimant. Kevin successfully appealed against a decision by the Deputy High Court Judge that permitted the claimant to substantially change its case shortly before trial. Kevin was able to secure from the Court of Appeal a substantial adjournment of the trial and, thereafter, appropriate case management directions.

Winter v Hockley Mint Ltd [2019] 1 WLR 1617: Kevin acted for an office equipment supplier in a substantial trial in the Chancery Division involving allegations of deceit and conspiracy in the context of office equipment leasing agreements. The allegations of wrongdoing against Kevin's client were dismissed at trial and a finding by the trial judge that Kevin's client was vicariously liable for the actions of one of the other defendants was set aside by the Court of Appeal. The Court of Appeal's decision in this case is a leading authority on the circumstances in which a principal will be liable for the fraud of his agent in a commercial context.

Dondore Incorporated v Fetaimia [2018] EWHC 1832 (Ch): This was a dispute over whether an oral agreement had been made (and performed) for the sale and purchase of the shares in a BVI company that owned a £2.5 million flat in Knightsbridge. Following a 5-day trial in the Chancery Division, the court found that Kevin's client had entered into an oral agreement with the claimant to purchase the shares in the BVI company that owned the flat, and that the purchase price had been paid to an African company controlled by the claimant.

The Ritz Hotel Casino Ltd v Al-Geabury [2015] EWHC 2294: Acting for the defendant in litigation with the Ritz Club arising from multi-million-pound gambling losses. The case gave rise to complex issues concerning the duties owed by a casino to a self-excluded customer under the Gambling Act 2005.

Szepietowski v The National Crime Agency [2014] 1 AC 338: A successful appeal to the Supreme Court (together with Romie Tager KC) in what is now the leading case on the equitable doctrine of marshalling. The case also raised complex issues of construction arising from a settlement agreement entered between Kevin's client and the National Crime Agency.

Trident Australasia Pty Ltd v Versabuild LLC [2013] EWHC 4838: Security for costs in circumstances where there were no publicly available financial statements relating to the claimant. The issue arose in the context of a dispute between the partners to an international joint venture.

Street v Larkins [2013] EWHC 1408: A dispute between the members of an alleged family partnership arising from the sale and purchase of property in London over a number of years.

Re Giambrone LLP: Acting for various claimants in proceedings for professional negligence against a firm of Registered European Lawyers arising from losses suffered in relation to the purchase of off-plan holiday homes in Calabria, including making one of the first successful applications for summary judgment.

Company / Partnership law and disputes

Kevin Pettican is often instructed in disputes that arise in a company law context or which arise between partners (or the members of LLPs).

Most commonly, these claims involve disputes between shareholders in which relief is sought pursuant to s994 of the Companies 2006, or in which an order is sought for the winding up of the company on the just an equitable ground.

However, Kevin has been involved in a number of claims where disputes have arisen between partners (including disputes as to whether a partnership exists at all) or between members of an LLP.

For example, **Street v Larkins [2013] EWHC 1408** concerned a dispute as to whether a partnership had come into being

because of various property dealings undertaken by various family members, and **Simmons Gainsford LLP v Shah [2008] EWHC 2554** concerned a dispute between a firm of accountants and a former member of the LLP concerning entitlement to the proceeds of a life insurance policy.

Property and Estates

Real property disputes form a significant part of Kevin's practice. Kevin has experience in the following areas:

- Commercial leases, especially contested lease renewals, forfeiture, arrears of rent and dilapidations claims
- Residential leases, especially disputes concerning the enforcement of covenants in long leaseholds
- Claims for specific performance of agreements for the sale and purchase of land
- Title disputes, including claims based on adverse possession
- Disputes between co-owners
- Boundary/neighbour disputes
- Mortgages and charges

Reported cases

Malik v Malik: a long-running family dispute concerning the disputed ownership of a valuable leasehold flat in Knightsbridge giving rise to some complex issues concerning the application of the law of adverse possession to leasehold property.

Dondore Incorporated v Fetaimia [2018] EWHC 1832 (Ch): Successful defence of a possession claim tried over 5 days in the Chancery Division concerning the ultimate beneficial ownership of a £2.5 million flat in Knightsbridge. The court found that Kevin's client had entered into an oral agreement with the claimant to purchase the shares in a BVI company that owned the flat, and that the purchase price had been paid to an African company controlled by the claimant.

Ashley Gardens Freeholds Ltd v Landor (2017) Central London County Court: Successful claim for forfeiture of a long residential lease on the grounds that, by using the flat to operate a B&B business, the leaseholder was in breach of a user covenant prohibiting the use of the flat "for any purpose whatsoever other than as a private residential flat in one occupation". The leaseholder was granted relief on terms that she sold the flat within six months of the judgment to avoid the freeholder obtaining a windfall at her expense. The case received substantial press attention.

King v Robertson [2014] UKPC 34: An appeal to the Privy Council from the courts of St Vincent and the Grenadines concerning adverse possession of land.