



Ian Simester

Call 2022

 ips@fountaincourt.co.uk  +44 (0)20 7583 3335

Ian Simester has a broad commercial practice, with a particular specialism in commercial litigation, arbitration, civil fraud, and banking matters.

Ian has been instructed in several high-profile cases since taking tenancy, including *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28 (one of The Lawyer's Top 10 Appeals of 2023) and *Palladian Partners LP and others v Republic of Argentina and another* [2023] EHC 711 (Comm) (one of The Lawyer's Top 20 Cases of 2022).

Prior to transferring to the Bar, Ian taught at King's College London; qualified as a solicitor at Sullivan & Cromwell LLP (based in London and Washington, DC); and served as the Judicial Assistant to Lady Black and Lady Rose in the Supreme Court of the United Kingdom and the Judicial Committee of the Privy Council.

Ian was admitted to the New York State Bar in 2018 and to the roll of solicitors of England and Wales in 2020.

Recent Highlights

R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28

An appeal concerning whether standalone litigation funding agreements pursuant to which a funder is entitled to recover a percentage of any damages recovered constitute "*damages-based agreements*" for the purposes of section 58AA(3) of the Courts and Legal Services Act 1990 and other associated legislation. The case is one of *The Lawyer's* Top 10 Appeals of 2023.

Fiesta Hotels and Resorts SL and others v Deutsche Bank (CL-2020-000748)

A \$500 million derivative mis-selling claim involving (amongst other things) allegations of fraud, breach of tortious duty and lack of capacity.

Palladian Partners LP and others v Republic of Argentina and another [2023] EHC 711 (Comm)

A €1 billion+ noteholder claim brought by holders of GDP-linked bonds issued by the Republic of Argentina as part of its national debt restructuring. A 4-week Commercial Court trial took place in October/November 2022. The case is one of *The Lawyer's* Top 20 Cases of 2022.

Soteria Insurance Ltd (formerly CIS General Insurance Ltd) v IBM United Kingdom Ltd [2022] EWCA Civ 440

Assisting (during pupillage) with a successful appeal concerning the construction of an exclusion clause which purported to exclude liability for “*indirect or consequential losses, or for loss of profit, revenue [or] savings*”. The Court of Appeal’s decision is now the leading authority on the nature of wasted expenditure claims. The case is one of *The Lawyer's* Top 10 Appeals of 2022.

Loreley Financing (Jersey) No 30 Limited v Credit Suisse Securities (Europe) Limited and Others [2022] EWHC 1136 (Comm)

Assisting (as a pupil) with a successful application for disclosure arising in the context of a claim relating to the sale of an RMBS-linked CDO to a Jersey incorporated SPV. The application turned on an interesting aspect of the law of privilege (concerning whether litigation privilege protects the identity of the person giving instructions to solicitors in litigation). The main trial is one of *The Lawyer's* Top 20 Cases of 2023.

Expertise

Administrative & Public Law

Notable Administrative & Public Law cases

R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28

An appeal concerning whether standalone litigation funding agreements pursuant to which a funder is entitled to recover a percentage of any damages recovered constitute “*damages-based agreements*” for the purposes of section 58AA(3) of the Courts and Legal Services Act 1990 and other associated legislation. The case is one of *The Lawyer's* Top 10 Appeals of 2023.

R (Begum) v Secretary of State for the Home Department [2021] UKSC 7

Appeals in three sets of proceedings relating to the Secretary of State’s decision: (i) to deprive Ms Begum of her British citizenship (the “*deprivation decision*”); and (ii) refusing Ms Begum’s application for leave to enter the United Kingdom to pursue an appeal against the deprivation decision. Amongst other things, the appeals raised difficult questions about the relationship between the right to a fair hearing and the public interest in national security. (As a Judicial Assistant at the Supreme Court.)

R (SC, CB and 8 children) v Secretary of State for Work and Pensions [2021] UKSC 26

An appeal concerning whether the ‘two child limit’ (a provision of primary legislation which caps the individual element of child tax credit to the amount payable in respect of two children) is compatible with articles 8, 12, and 14 (read with article 8 and/or A1P1) of the ECHR. (As a Judicial Assistant at the Supreme Court.)

R (Friends of the Earth) v Heathrow Airport Ltd [2020] UKSC 52

An appeal concerning the lawfulness of the Secretary of State’s decision to designate the Airports National Policy Statement (the national policy framework which governs the construction of a third runway at Heathrow Airport) and its accompanying environmental report. (As a Judicial Assistant at the Supreme Court.)

R (O) v Secretary of State for the Home Department; R (The Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department [2022] UKSC 3

An appeal concerning whether subordinate legislation (which set a fee of £1,012 payable on an application to register a child or a young person as a British citizen) was ultra vires on the ground that it was unaffordable. (As a Judicial Assistant at the Supreme Court.)

R (Elan-Cane) v Secretary of State for the Home Department [2021] UKSC 56

An appeal concerning whether a policy of Her Majesty’s Passport Office which requires applicants to state whether their gender is male or female is compatible with article 8 (either taken on its own or read together with article 14) of the ECHR. (As a Judicial Assistant at the Supreme Court.)

Attorney General for Bermuda v Ferguson [2022] UKPC 5; Day v Governor of the Cayman Islands [2022] UKPC 6

Two separate appeals concerning whether, properly interpreted, the constitutions of Bermuda and the Cayman Islands confer a constitutional right to the legal recognition of same-sex marriages. (As a Judicial Assistant at the Supreme Court.)

In the matter of T (A Child) [2021] UKSC 35

An appeal concerning the scope of the inherent jurisdiction of the High Court and, in particular, whether it is a permissible exercise of the High Court’s inherent jurisdiction to make an order authorising a local authority to deprive a child of his or her liberty in a placement which was not registered as a children’s home nor approved for use as secure accommodation. (As a Judicial Assistant at the Supreme Court.)

Sanambar v Secretary of State for the Home Department [2021] UKSC 30

An appeal concerning the effect of article 8 of the ECHR on decisions to deport foreign nationals who had lawfully settled in the UK as children and who were subsequently convicted of serious criminal offences. (As a Judicial

Assistant at the Supreme Court.)

Aviation & Travel

Notable Aviation & Travel cases

Aviation Insurance Dispute

Assisting (during pupillage) with the defence of a multi-billion pound claim against a variety of insurance companies arising within the aviation context.

Banking & Finance

Notable Banking & Finance cases

Fiesta Hotels and Resorts SL and others v Deutsche Bank (CL-2020-000748)

A \$500 million derivative mis-selling claim involving (amongst other things) allegations of fraud, breach of tortious duty and lack of capacity.

Palladian Partners v LP and others v Republic of Argentina and another [2023] EWHC 711 (Comm)

A €1 billion+ noteholder claim brought by holders of GDP-linked bonds issued by the Republic of Argentina as part of its national debt restructuring. A 4-week Commercial Court trial took place in October/November 2022. The case is one of *The Lawyer's* Top 20 Cases of 2022.

Newham LBC v Barclays Bank

Assisting (as a pupil) in relation to an appeal against the decision to strike-out claims brought by a local council seeking rescission of hundreds of millions of pounds of 'Lender Option Borrower Option' loans. The claims relied on alleged implied representations based on LIBOR misconduct. They were settled shortly before the appeal was due to commence in February 2022.

Loreley Financing (Jersey) No 30 Limited v Credit Suisse Securities (Europe) Limited and Others [2022] EWHC 1136 (Comm)

Assisting (as a pupil) with a successful application for disclosure arising in the context of a claim relating to the sale of an RMBS-linked CDO to a Jersey incorporated SPV. The application turned on an interesting aspect of the law of privilege (concerning whether litigation privilege protects the identity of the person giving instructions to solicitors in litigation). The main trial is one of *The Lawyer's* Top 20 Cases of 2023.

Film Partnerships Claim

Assisting (during pupillage) with the defence of a substantial multi-party claim arising out of the marketing and operation of film partnership schemes.

Civil Fraud

Notable Civil Fraud cases

Fiesta Hotels and Resorts SL and others v Deutsche Bank (CL-2020-000748)

A \$500 million derivative mis-selling claim involving (amongst other things) allegations of fraud, breach of tortious duty and lack of capacity.

Palladian Partners v LP and others v Republic of Argentina and another [2023] EHWK 711 (Comm)

A €1 billion+ noteholder claim brought by holders of GDP-linked bonds issued by the Republic of Argentina as part of its national debt restructuring. The claim involved serious allegations of bad faith and conspiracy. A 4-week Commercial Court trial took place in October/November 2022. The case is one of *The Lawyer's* Top 20 Cases of 2022.

LCIA Arbitration

Assisting (during pupillage) with a substantial LCIA arbitration claim against an insurance company. The claim involved serious allegations of deceit and conspiracy.

Commercial Crime

Notable Commercial Crime cases

Crown Prosecution Service v Aquila Advisory Ltd [2021] UKSC 49

An appeal concerning whether, in circumstances where a proprietary claim is brought by a company against its directors to recover proceeds of crime received in breach of fiduciary duty: (i) that proprietary claim could be asserted in priority to a confiscation order obtained by the Crown Prosecution Service; and (ii) the illegality of the directors be could be attributed to the company in circumstances where the company suffered no loss and stood to profit from the crime. (As a Judicial Assistant at the Supreme Court).

Commercial Disputes

Notable Commercial Disputes cases

Fiesta Hotels and Resorts SL and others v Deutsche Bank (CL-2020-000748)

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Palladian Partners v LP and others v Republic of Argentina and another (FL-2019-000010)

A €1 billion+ noteholder claim brought by holders of GDP-linked bonds issued by the Republic of Argentina as part of its national debt restructuring. A 4-week Commercial Court trial took place in October/November 2022. The case is one of *The Lawyer’s* Top 20 Cases of 2022.

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Crossley and others v Volkswagen Aktiengesellschaft and others [2021] EWHC 3444 (QB) (The VW Emissions Group Litigation)

Assisting (as a pupil) with a strike-out application in relation to the ‘diesel-gate’ emissions claims against Volkswagen. The claims were initially brought under the largest ever Group Litigation Order (c. 100k Claimants). They were settled in May 2022.

Newham LBC v Barclays Bank

Assisting (as a pupil) with an appeal against the decision to strike-out claims brought by a local council seeking rescission of hundreds of millions of pounds of “Lender Option Borrower Option” (“*LOBO*”) loans. The claims relied on alleged implied representations based on LIBOR misconduct. They were settled shortly before the appeal was listed to commence in February 2022.

Film Partnerships Claim

Assisting (during pupillage) with the defence of a substantial multi-party claim arising out of the marketing and operation of film partnership schemes.

Manchester Building Society v Grant Thornton UK LLP [2021] UKSC 20; Meadows v Khan [2021] UKSC 21

These separate appeals concerned the proper approach to ascertaining the scope of a professional's duty of care in the context of negligent advice given by accountants and doctors. These decisions are now the leading authorities on the scope of the duty of care in negligence. (As a Judicial Assistant at the Supreme Court).

Crown Prosecution Service v Aquila Advisory Ltd [2021] UKSC 49

An appeal concerning whether, in circumstances where a proprietary claim is brought by a company against its directors to recover proceeds of crime received in breach of fiduciary duty: (i) that proprietary claim could be asserted in priority to a confiscation order obtained by the Crown Prosecution Service; and (ii) the illegality of the directors be could be attributed to the company in circumstances where the company suffered no loss and stood to profit from the crime. (As a Judicial Assistant at the Supreme Court).

Bott & Co Solicitors v Ryanair DAC [2022] UKSC 8

An appeal concerning the scope of solicitors' equitable liens. The appeal arose within the context of large-volume claims being made against Ryanair under Regulation No 261/2040 (the 'EU Air Passenger Rights Regulation'). (As a Judicial Assistant at the Supreme Court).

Company, Restructuring & Insolvency

Notable Company, Restructuring & Insolvency cases

Re Fortuna Fix Limited (In Administration) [2020] EWHC 2369 (Ch)

An application by the joint administrators of Fortuna Fix Limited (in administration) ('Fortuna') for directions: (i) following the rejection of their proposals by Fortuna's majority creditor; and (ii) upon that majority creditor's request to requisition a qualifying decision procedure to consider replacing the joint administrators. (Whilst at Sullivan & Cromwell LLP).

Crown Prosecution Service v Aquila Advisory Ltd [2021] UKSC 49

An appeal concerning whether, in circumstances where a proprietary claim is brought by a company against its directors to recover proceeds of crime received in breach of fiduciary duty: (i) that proprietary claim could be asserted in priority to a confiscation order obtained by the Crown Prosecution Service; and (ii) the illegality of the directors be could be attributed to the company in circumstances where the company suffered no loss and stood to

profit from the crime. (As a Judicial Assistant at the Supreme Court).

Competition

Notable Competition cases

R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28

An appeal arising out of the *Trucks* litigation. The appeal concerned whether standalone litigation funding agreements pursuant to which a funder is entitled to recover a percentage of any damages recovered constitute “*damages-based agreements*” for the purposes of section 58AA(3) of the Courts and Legal Services Act 1990 and other associated legislation. The case is one of *The Lawyer’s Top 10 Appeals of 2023*.

Luxembourg v European Commission (T-755/15)

An appeal against the European Commission’s decision that the Luxembourg tax authority’s endorsement of Fiat’s transfer pricing methodology amounted to unlawful state aid contrary to article 107 TFEU. (Whilst at Sullivan & Cromwell LLP).

Employment

Notable Employment cases

Advice in Relation to Whistle-blower Claims

Assisting (during pupillage) with various pieces of advice in relation to potential claims by whistle-blowers against their former employers for (amongst other things) breach of the duty of care established in *Rihan v Ernst & Young Global Limited and others* [2020] EWHC 901 (QB).

Financial Services

Notable Financial Services cases

Advice to a Professional Regulator

Advising a professional regulator in relation to the reporting duties of a leading professional services partnership and the regulator’s potential avenues of recourse.

Insurance

Notable Insurance cases

Aviation Insurance Dispute

Assisting (during pupillage) with the defence of a multi-billion pound claim against a variety of insurance companies arising within the aviation context.

LCIA Arbitration

Assisting (during pupillage) with a substantial LCIA arbitration claim against an insurance company. The claim involved serious allegations of deceit and conspiracy.

International Arbitration

Notable International Arbitration cases

LCIA Arbitration

Assisting (during pupillage) with a substantial LCIA arbitration claim against an insurance company. The claim involved serious allegations of deceit and conspiracy.

Privilege, Confidentiality & Conflicts of Interest

Notable Privilege, Confidentiality & Conflicts of Interest cases

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Professional Negligence

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Tax

Notable Tax cases

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An appeal against the European Commission's decision that the Luxembourg tax authority's endorsement of Fiat's transfer pricing methodology amounted to unlawful state aid contrary to article 107 TFEU. (Whilst at Sullivan & Cromwell LLP).

Tinkler v HMRC [2021] UKSC 39

An appeal concerning whether a taxpayer can be prevented from challenging the validity of an enquiry into their tax return by HMRC where both parties have proceeded, for nearly a decade, on the mistaken assumption that the enquiry was validly initiated by a letter sent to the taxpayer. Now the leading authority on estoppel by convention. (As a Judicial Assistant at the Supreme Court).

Balhouses Holdings Ltd v Commissioners for Her Majesty's Revenue & Customs (Scotland) [2021] UKSC 11

An appeal concerning whether the sale and leaseback of a care home involve the disposal of the owner's entire interest such that it effectively lost the benefit of zero-rating under paragraph 36(2) of Schedule 10 to the Value Added Tax Act 1994. (As a Judicial Assistant at the Supreme Court).

Commissioners for Her Majesty's Revenue and Customs v Tooth [2021] UKSC 17

An appeal concerning the Revenue's powers to make discovery assessments under section 29 of the Taxes Management Act 1970. (As a Judicial Assistant at the Supreme Court).

R (on the application of Haworth) v Commissioners for Her Majesty's Revenue & Customs [2021] UKSC 25

An appeal concerning the interpretation and application of the follower notice regime contained in Part 4 of the Finance Act 2014. (As a Judicial Assistant at the Supreme Court).

Education

- BPP University: Legal Practice Course (Distinction)
- Harvard Law School: Master of Laws (Various Dean's Scholar Prizes)
- Harvard Business School: Cross-registrant (Grade I)
- Merton College, University of Oxford: BA (Hons) in Jurisprudence (First Class Honours)

International Bar / Court Appointments

- Called to the Bar in the State of New York (2018)

Appointments, Memberships and Prizes

- Pegasus Scholarship (2022)
- Horizon Legal Advice Clinic: Outstanding Volunteer Award (2020)
- Pro Bono Innovation of the Year (as part of the Executive Committee of Pro Bono Connect) (2018)
- Dean's Scholar Prize in Corporations (Harvard Law School, 2017)
- Dean's Scholar Prize in Taxation (Harvard Law School, 2017)
- Dean's Scholar Prize in Economic Analysis of Law (Harvard Law School, 2017)
- Prize for exceptional exam performance in Final Honours School (Merton College, 2016).
- Nine Fowler Prizes for exceptional exam performance (Merton College, 2014-2016).
- Postmastership (Merton College, 2015)
- Allen & Overy Prize (Merton College, 2015)
- F.E. Smith Memorial Mooting Prize (Merton College, 2014)
- Exhibitionership (Merton College, 2014)
- Slaughter and May prize for the top paper in Criminal Law (Oxford University, 2014)
- Prize for top first-year law student (Merton College, 2014)

Publications

- A New European "arm's length" Principle (2020) L.Q.R. 370
- Contributor to C. Howard, P. Warner, and C. Beatty, *Restructuring Law & Practice* (3rd edn, 2022) – Chapter 11 (*Credit Derivatives and Restructuring*).