



# Ian Simester

Call 2022

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

Ian has been instructed in several high-profile cases since taking tenancy, including *Gormsen v Meta* (one of the Legal 500 and Legal Business' cases of the year for 2024); *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

### Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others

Collective proceedings in which it is alleged that Meta abused the dominant position of the Facebook platform by requiring UK users, as a condition of access to Facebook, to allow Meta to collect and use personal data concerning the users' activities outside of Facebook without receiving a corresponding value transfer in return. The aggregate losses claimed in the proceedings have provisionally been estimated to be in the region of £3 billion, and the case was featured as one of the Legal 500 and Legal Business' cases of 2024.

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

A successful 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

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was one of *The Lawyer's* Top 10 Appeals of 2023.

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#### **Fiesta Hotels and Resorts SL and others v Deutsche Bank**

A \$500 million derivative mis-selling claim involving (amongst other things) allegations of fraudulent misrepresentation, breach of tortious duty, and lack of capacity. The proceedings gave rise to three interlocutory hearings in the first half of 2024, and settled in advance of a ten-week Commercial Court trial scheduled for January 2025.

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#### **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 was one of *The Lawyer's* Top 20 Cases of 2022.

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#### **SIAC Arbitration**

Acting for an Indian telecommunications company in a US \$90million SIAC arbitration arising out of a failed merger. The claim involved complex issues around contractual termination rights, joinder of non-parties, and the effect of no oral modification clauses.

## Expertise

### **Administrative & Public Law**

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#### **Notable Administrative & Public Law cases**

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

A successful 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 was one of *The Lawyer's* Top 10 Appeals of 2023.

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#### **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.)

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**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.)

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**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.)

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**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.)

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**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.)

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**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.)

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**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.)

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**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.)

## AI, Crypto & Technology

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### Notable AI, Crypto & Technology cases

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#### Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others

Collective proceedings in which it is alleged that Meta abused the dominant position of the Facebook platform by requiring UK users, as a condition of access to Facebook, to allow Meta to collect and use personal data concerning the users' activities outside of Facebook without receiving a corresponding value transfer in return. The aggregate losses claimed in the proceedings have provisionally been estimated to be in the region of £3 billion.

## Aviation & Travel

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### Notable Aviation & Travel cases

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#### Aviation Insurance Dispute

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

## Banking & Finance

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### Notable Banking & Finance cases

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#### Fiesta Hotels and Resorts SL and others v Deutsche Bank

A \$500 million derivative mis-selling claim involving (amongst other things) allegations of fraudulent misrepresentation, breach of tortious duty and lack of capacity. The proceedings gave rise to three interlocutory hearings in the first half of 2024, and settled in advance of a ten-week Commercial Court trial scheduled for January 2025.

#### Palladian Partners v LP and others v Republic of Argentina and another [2023] EHW 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 was one of *The Lawyer's* Top 20 Cases of 2022.



## Newham LBC v Barclays Bank

Assisting 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.

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

Assisting 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 was one of *The Lawyer's* Top 20 Cases of 2023.

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## Film Partnerships Claim

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

## Civil Fraud

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### Notable Civil Fraud cases

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## Palladian Partners v 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. The claim involved serious allegations of bad faith and conspiracy. A 4-week Commercial Court trial took place in October/November 2022. The case was one of *The Lawyer's* Top 20 Cases of 2022.

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## LCIA Arbitration

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



## Commercial Crime

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### Notable Commercial Crime cases

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#### 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

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### Notable Commercial Disputes cases

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

Assisting with a successful appeal concerning the proper construction of an exclusion clause which included 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 was one of *The Lawyer’s* Top 10



Appeals of 2022.

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

Assisting 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.

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## Newham LBC v Barclays Bank

Assisting 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.

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## Film Partnerships Claim

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

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## 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).

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## 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

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### Notable Company, Restructuring & Insolvency cases

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#### 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).

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## Competition

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### Notable Competition cases

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Collective proceedings in which it is alleged that Meta abused the dominant position of the Facebook platform by requiring UK users, as a condition of access to Facebook, to allow Meta to collect and use personal data concerning the users' activities outside of Facebook without receiving a corresponding value transfer in return. The aggregate losses claimed in the proceedings have provisionally been estimated to be in the region of £3 billion.

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

A successful 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 was one of *The Lawyer's* Top 10 Appeals of 2023.

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#### 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

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Notable Employment cases

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### Advice in Relation to Whistle-blower Claims

Assisting 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

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Notable Financial Services cases

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### FCA Final Notice against PriceWaterhouseCoopers (16 August 2024)

Acting for the FCA in its enforcement action against PricewaterhouseCoopers ("PwC") following the collapse of London Capital & Finance plc ("LCF") in relation to PwC's failure to report to the FCA their belief that LCF might have been involved in fraudulent activity. This was the first time that the FCA fined an audit firm and the first time that action was taken by the FCA in relation to the statutory reporting duty in question (namely, that under Regulation 2 of the Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001).

## Group Litigation

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Notable Group Litigation cases

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## Insurance & Reinsurance

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### Notable Insurance & Reinsurance cases

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#### Aviation Insurance Dispute

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#### LCIA Arbitration

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## International Arbitration

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### Notable International Arbitration cases

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#### SIAC Arbitration

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## Privilege, Confidentiality & Conflicts of Interest



## Notable Privilege, Confidentiality & Conflicts of Interest cases

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

Assisting 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.

## Professional Negligence

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### Notable Professional Negligence cases

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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).

## Tax

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### Notable Tax cases

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#### 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).

#### 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).



### Balhousie 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* (3<sup>rd</sup> edn, 2022) – Chapter 11 (*Credit Derivatives and Restructuring*).

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