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## Simon Colton KC

Barrister

Call 1999 Silk 2017



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## Scope of Practice

• Commercial Litigation • Banking and Financial Services • Professional Negligence and Liability • Jurisdiction and Conflict of Laws • Civil Fraud and Economic Torts • Arbitration • Water, Energy and Natural Resources

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## Overview

Simon Colton KC undertakes a broad range of commercial litigation and arbitration. He has substantial experience in very large-scale and multi-jurisdictional litigation, often involving complex questions of jurisdiction and conflicts of laws and foreign law issues. He has particular expertise in the interplay between SFO investigations and civil proceedings; in water industry matters; and in the fields of civil procedure, damages, civil fraud, the law of economic torts, and restitution for unjust enrichment.

Simon leads a team of seven Counsel acting for the SFO in *ENRC v The Director of the Serious Fraud Office*. He is also instructed for the defendant in the £100 million shareholder claim, *Various Claimants v G4S Ltd (formerly G4S plc)*, and for two defendants in *Jinxin Inc v Aser Media Pte Ltd.*, a claim in which in excess of US\$ 660 million in damages are sought for deceit and unlawful act conspiracy. Simon's previous high value cases include *Sabbagh v Khoury* (from 2013 until it settled in 2020); and acting for Boris Berezovsky in *Berezovsky v Abramovich* (2009-2012).

Simon appears regularly before a range of tribunals, most frequently the Commercial Court and the Court of Appeal, either alone or as part of a team. He is comfortable working in Italian and in French, and accepts work involving instructions and documents in those languages.

Simon has given expert evidence on English law for the purpose of foreign proceedings conducted in the United States, Israel and Thailand. In addition to written reports, he has been cross-examined in Israel, and deposed in US proceedings.

Simon was formerly a member of the Attorney-General's 'A' Panel of Junior Counsel, and has continued to appear as

Leading Counsel for a range of Government departments in a number of commercial matters.

Simon has been a Deputy High Court Judge since 2021, sitting in the Family Division and in the Commercial Court. He was previously a Recorder (2018-2021) and Vice-Chair of the Professional Conduct Committee of the Bar Standards Board (2016-2019).

Simon has been the specialist editor of the three chapters on procedure since the 20th (2017) edition of McGregor on Damages, the leading practitioner text.

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## Examples of Recent Cases

### Commercial Litigation

- **Magomedov and ors v TPG Group Holdings and ors [2023] EWHC 2655 (Comm)**  
Leading a team of four counsel representing three defendants. Successfully resisted an on notice application for an \$8.8 billion freezing order, with the court finding that the applicants did not even genuinely consider there to be a real risk of dissipation.
- **Various Claimants v. G4S Ltd (formerly G4S plc) [2021] EWHC 524 (Ch); [2022] EWHC 1081 (Ch); [2022] EWHC 1742 (Ch); [2022] EWHC 1719 (Ch); [2023] EWHC 2863 (Ch)**  
Acting (with Laurence Rabinowitz KC, Emma Jones and Harry Stratton) for G4S, the multinational security services company, defending shareholder claims arising out of alleged fraudulent misstatements in G4S's annual reports. The claim raises issues concerning liability under section 90A of the Financial Services and Markets Act 2000. In March 2021, Mann J struck out approximately 90% of the first claim, on a range of procedural grounds, following a successful application by G4S. In May 2022, Miles J upheld G4S's arguments as to the interpretation of the 'Person Discharging Managerial Responsibility' (PDMR) in the context of s.90A, substantially narrowing the scope of the claimants' available arguments at trial.
- **Jinxin, Inc v Aser Media Pte Ltd and others [2022] EWHC 2431 (Comm); [2022] EWHC 2856 (Comm)**  
Leading a team of three counsel acting for two defendants in claims alleging deceit and unlawful act conspiracy. The claimant purchaser of a sports rights agency seeks rescission of the sale and purchase agreement, alternatively damages in excess of US\$ 660 million. Trial will take place in 2025 with a time estimate of 21 weeks.
- **ENRC v. Serious Fraud Office [2020] EWHC 522 (Comm); [2020] EWHC 2197 (Comm); [2022] EWHC 1138 (Comm)**  
Leading a team of seven counsel acting for the SFO, defending a Commercial Court claim for in excess of \$90 million, involving allegations of inducing breach of a solicitor's retainer and misfeasance in public office. This was one of The Lawyer's 'Top 20 cases of 2021'. Following a 47 day trial, Waksman J cleared the SFO of most of the allegations of wrongdoing levelled against it. Simon continues to lead for the SFO in the further stages of the proceedings.
- **Maranello Rosso Ltd v Lohomij BV and ors [2022] EWCA Civ 1667**  
Appearing for the First and Fourth Respondents successfully resisting an appeal against summary judgment. In the context of allegations of unlawful means conspiracy, dishonest assistance and wrongful interference

with the sales of classic cars, Simon persuaded the Court of Appeal that the first instance judge had not impermissibly conducted a mini-trial, and to reject an implied term for which the appellants contended.

- **Castle Water Limited v. Thames Water Utilities Limited [2020] EWHC 1374 (TCC)**

Leading a team of three counsel acting for the defendant in Technology and Construction Court proceedings resisting a claim for in excess of £40 million, and pursuing a counterclaim of a similar value, arising out of the sale to the claimant of its non-household retail business. This was one of *The Lawyer's* 'Top 20 cases of 2021'. The matter settled in mid-2021.

- **Benkel (as trustee in bankruptcy of Eliezer Fishman) v East-West German Real Estate Holding [2019] EWHC 117 (Ch); [2019] EWHC 199 (Ch); [2021] EWHC 188 (Ch); [2021] EWHC 777 (Ch)**

Acted for the successful claimant trustee in an 8-day trial heard before Morgan J in the Chancery Division in February 2021. The claimant proved that the defendants created a corporate structure as a vehicle to hold assets belonging to the bankrupt in an attempt to put assets beyond the reach of his creditors. In pursuing the claimant's claims, the claimant obtained orders recognising the foreign trustee under the cross-border insolvency regulation, a proprietary injunction, the appointment of receivers, an order under the Taking of Evidence Regulation, and an order to join an additional defendant in the course of the trial. Following 3 days of cross-examination by Simon, the Judge held that all of the defendants' witnesses were unreliable, and granted the order the claimant sought.

- **Sabbagh v. Khoury [2014] EWHC 3233 (Comm); [2017] EWCA Civ 1120; [2017] EWHC 3137 (Comm); [2018] EWHC 1330 (Comm); [2019] EWCA Civ 1219; [2019] EWHC 3004 (Comm)**

Appearing (with Laurence Rabinowitz KC and others) in a Commercial Court action for conspiracy under Lebanese law in which damages in excess of US\$600 million were claimed. At a 5 day jurisdiction hearing in July 2014, Simon dealt with all Brussels Regulation issues on behalf of the Claimant. Simon also acted to secure an anti-arbitration injunction, preventing the continuation of an arbitration seated in Lebanon. The claim settled in May 2020.

- **AssetCo plc v. Grant Thornton LLP UK LLP [2019] EWHC 150 (Comm); [2019] EWHC 191 (Comm), [2019] EWHC 592 (Comm)**

Appearing (with David Wolfson KC) for the defendant in an audit negligence claim. Following a 12 day trial, the Commercial Court handed down a 1274 paragraph judgment considering numerous areas in the law of audit negligence and damages, including the duties owed by auditors; the 'loss of a chance' doctrine; intervening acts and the 'very thing' principle; and issues of contributory fault. Simon also appeared in the successful Court of Appeal hearing, in which damages were substantially reduced.

- **Damoco (Bermuda) Ltd and ors v. Atlanta Bidco Ltd [2020] EWHC 501 (Comm)**

Acting for vendors in a Commercial Court claim for unpaid deferred consideration, in excess of €19 million, under a sale and purchase agreement.

- **Nagel v. Pluczenik Diamond Company NV [2019] EWHC 3126 (QB)**

Acting for a judgment debtor resisting an order for cross-examination of its officers. The proceedings involve a novel use of CPR 71 to cross-examine officers on the basis of an order for costs to be assessed, without any debt yet being due.

- **Tchenguiz v. Grant Thornton [2017] EWHC 1284 (Comm); [2017] EWHC 2644 (Comm)**

Appearing as Leading Counsel for the Serious Fraud Office, in the Commercial Court and the Court of Appeal, in long-running applications under which permission was sought by the parties to use disclosure given, and witness statements served, by the SFO in earlier litigation.

- **Winkler v. Shamoon [2016] EWHC 217 (Ch)**

Appearing for the claimant in a 4 day jurisdiction hearing on a very substantial Chancery Division dispute as to the ownership of shares. Issues of jurisdiction and governing law, as well as questions of proprietary estoppel, constructive trusts, Israeli law and BVI law arose.

- **Tchenguiz v. Director of the Serious Fraud Office; Rawlinson and Hunter Trustees v. same [2013] EWHC 1578 (QB); [2013] EWHC 2128 (QB); [2014] EWHC 1102 (Comm)**

Appearing (led by James Eadie KC, Dominic Dowley KC and Charles Graham KC) on behalf of the SFO, defending claims for sums in excess of £200 million. Allegations included misfeasance in public office, malicious prosecution, false imprisonment and trespass.

- **Starbev GP Ltd v. Interbrew Central European Holding BV [2013] EWHC 4038 (Comm); [2014] EWHC 1311 (Comm); [2014] EWHC 2863 (Comm); [2016] EWCA Civ 449**

Appearing at first instance and on appeal (with Lord Grabiner KC) for a private equity-sponsored Limited Partnership in its Commercial Court dispute with the world's largest brewer, arising out of the US\$3.5 billion sale of a Central and Eastern European brewing business. Issues of contractual construction and estoppel by convention arise, with in excess of 100 million euros at stake.

- **Boris Berezovsky v. Roman Abramovich [2010] EWHC 647 (Comm); [2010] EWHC 1511 (Comm); [2010] EWHC 2044 (Ch); [2010] EWHC 2010 (Comm); [2011] EWCA Civ 153; [2011] EWCACiv 484; [2012] EWHC 2463 (Comm)**

Appearing for Boris Berezovsky (with Laurence Rabinowitz KC and Richard Gillis KC and others) in a 43 day trial, following numerous and substantial interim applications and appeals, resulting from proceedings claiming damages in excess of \$4 billion. The trial involved complex issues of fact and foreign (Russian) law, in addition to legal issues including the tort of intimidation and choice of law for torts, contracts and trusts. Also appearing in related litigation.

- **BTA v. Ablyazov, Granton Trade Ltd & Ors [2010] EWHC 2219 (Comm); [2010] EWHC 2577 (Comm); [2011] EWHC 470 (Comm)**

Appearing for a number of foreign defendants in proceedings resisting a Kazakh law claim against them seeking damages in excess of \$1 billion. Interim applications related to jurisdiction and to the construction and effect of freezing orders.

## Banking and Financial Services

- **Various Claimants v. G4S Ltd (formerly G4S plc) [2021] EWHC 524 (Ch); [2022] EWHC 1081 (Ch); [2022] EWHC 1742 (Ch); [2022] EWHC 1719 (Ch); [2023] EWHC 2863 (Ch)**

Acting (with Laurence Rabinowitz KC, Emma Jones and Harry Stratton) for G4S, the multinational security services company, defending shareholder claims arising out of alleged fraudulent misstatements in G4S's annual reports. The claim raises issues concerning liability under section 90A of the Financial Services and Markets Act 2000. In March 2021, Mann J struck out approximately 90% of the first claim, on a range of procedural grounds, following a successful application by G4S. In May 2022, Miles J upheld G4S's arguments as to the interpretation of the 'Person Discharging Managerial Responsibility' (PDMR) in the context of s.90A, substantially narrowing the scope of the claimants' available arguments at trial.

- **Banco Santander Totta v. Carris and others [2016] EWHC 465 (Comm); [2016] EWCA Civ 1267**

Appearing (with Laurence Rabinowitz KC and John Odgers KC) for the claimant in five related Commercial Court actions against Portuguese transport companies, arising out of swaps concluded between 2005 and

2007, with mark-to-market values at trial of approximately €1.3 billion. Following the first Financial List trial, lasting six weeks, judgment was entered for the claimant, confirming the validity and enforceability of all swaps. The judgment was upheld by the Court of Appeal in December 2016.

- **Assorted swaps claims**

Acting for a major bank in a number of claims seeking enforcement of swaps contracts against foreign public bodies.

- **Deutsche Alternative Asset Management (UK) Ltd**

Appearing (with Laurence Rabinowitz KC) for the defendant to a claim for in excess of €158 million arising out of the management of an investment fund. The proceedings settled in early 2017.

- **Lehman Brothers International (Europe) (In Administration) v JP Morgan Chase Bank NA**

Acting (with Daniel Toledano KC) for first defendant in claim arising out of a suite of contractual arrangements.

- Advising a major financial institution in connection with an ongoing regulatory investigation.

- **ING Bank v. Ros Roca SA [2010] EWHC 50 (Comm); [2011] EWCA Civ 353**

Appearing (in a 4 day trial in the Commercial Court and with Charles Graham KC in the Court of Appeal) for a Spanish company successfully resisting a claim for €7 million in professional fees brought by an investment bank. Legal issues relating to contractual construction and estoppel (on which it is now a leading authority).

- Advising an Italian public body in a €45 million claim for unjust enrichment against an investment bank in respect of a range of financial transactions (Commercial Court).

## Professional Negligence and Liability

- **Castle Water Limited v. Thames Water Utilities Limited [2020] EWHC 1374 (TCC)**

Leading a team of three counsel acting for the defendant in Technology and Construction Court proceedings resisting a claim for in excess of £40 million, and pursuing a counterclaim of a similar value, arising out of the sale to the claimant of its non-household retail business. This was one of *The Lawyer's* 'Top 20 cases of 2021'. The matter settled in mid-2021.

- **AssetCo plc v. Grant Thornton LLP [2019] EWHC 191 (Comm); [2019] EWHC 592 (Comm)**

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- **Heather Capital Ltd v. KPMG Audit LLC**

Acted (with Rhodri Davies KC), for the defendant accountants in £90 million audit negligence claim.

- **Riyad Bank v. Ahli United Bank (UK) Plc [2005] EWHC 279 (Comm); [2005] 2 Lloyd's Rep 409; Court of Appeal [2005] EWCA Civ 1419**

Appearing (with Michael Brindle KC) in a 20 day Commercial Court trial, and in the Court of Appeal, in a

successful professional negligence claim. A leading authority on duties of care owed in three-party contractual relationships.

## Civil Fraud and Economic Torts

- **Magomedov and ors v TPG Group Holdings and ors [2023] EWHC 2655 (Comm)**  
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- **Benkel (as trustee in bankruptcy of Eliezer Fishman) v East-West German Real Estate Holding [2019] EWHC 117 (Ch); [2019] EWHC 199 (Ch); [2021] EWHC 188 (Ch); [2021] EWHC 777 (Ch)**  
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as to the interpretation of the 'Person Discharging Managerial Responsibility' (PDMR) in the context of s.90A, substantially narrowing the scope of the claimants' available arguments at trial.

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- **JD Wetherspoon v. Harris and ors** [2013] EWHC 1088 (Ch)

Appearing (with John Wardell KC) for a property developer resisting an ongoing multi-million pound claim for dishonest assistance and bribery.

- **Boris Berezovsky v. Roman Abramovich** [2010] EWHC 647 (Comm); [2010] EWHC 1511 (Comm); [2010] EWHC 2044 (Ch); [2010] EWHC 2010 (Comm); [2011] EWCA Civ 153; [2011] EWCACiv 484; [2012] EWHC 2463 (Comm)

Appearing for Boris Berezovsky (with Laurence Rabinowitz KC and Richard Gillis KC and others) in a 43 day trial, following numerous and substantial interim applications and appeals, resulting from proceedings claiming damages in excess of \$4 billion. The trial involved complex issues of fact and foreign (Russian) law, in addition to legal issues including the tort of intimidation and choice of law for torts, contracts and trusts. Also appearing in related litigation.

- **BTA v. Ablyazov, Granton Trade Ltd & Ors** [2010] EWHC 2219 (Comm); [2010] EWHC 2577 (Comm); [2011] EWHC 470 (Comm)

Appearing for a number of foreign defendants in proceedings resisting a Kazakh law claim against them seeking damages in excess of \$1 billion. Interim applications related to jurisdiction and to the construction and effect of freezing orders.

## Water, Energy and Natural Resources

- **Altera Voyageur Production Ltd v. Premier Oil E&P UK Ltd** [2020] EWHC 1891 (Comm)

Appearing for the defendant in Commercial Court proceedings concerning the interpretation of a suite of contracts relating to the charter of an FPSO

- **Castle Water Limited v. Thames Water Utilities Limited** [2020] EWHC 1374 (TCC)

Leading a team of three counsel acting for the defendant in Technology and Construction Court proceedings resisting a claim for in excess of £40 million, and pursuing a counterclaim of a similar value, arising out of the sale to the claimant of its non-household retail business. This was one of *The Lawyer's* 'Top 20 cases of 2021'. The matter settled in mid-2021.

- **ICC proceedings**

Acting for a tenderer against a public authority in respect of a fuel supply contract, bringing a claim in excess of US\$ 800 million.

- **Boots UK Ltd v. Severn Trent Water Ltd** [2018] EWHC 53 (Comm); [2018] EWCA Civ 2795

Appearing for the successful defendant utility company in the Commercial Court and Court of Appeal, Successfully resisting a £20 million action for restitution for unjust enrichment. Issues include the

interpretation of a series of Water Acts and of the defendant's Charges Schemes, and applicable limitation periods.

- **Crown Packaging UK plc v. Severn Trent Water Ltd**

Successfully defended a multi-million pound claim for overpaid surface water drainage charges. The claim raised issues of negligent mis-statement, restitution for unjust enrichment, and interpretation of the Water Industry Act 1991. Following exchange of skeletons, the claimant consented to dismissal of the claim and to pay the defendant's costs.

- **Appearing in an UNCITRAL arbitration resisting a multi-million dollar claim under a suite of contracts relating to an oil pipeline.**

- **BHP Billiton Petroleum GB Ltd and ors v. E.ON UK PLC**

Appearing (with Charles Hollander KC) on behalf of the Buyer in a Commercial Court dispute relating to the interpretation and possible rectification of Gas Sales Agreements, with sums at stake in the hundreds of millions of pounds. After a 3 day hearing, the case settled before judgment.

- **Conducting and advising on an investigation, reporting to an independent company Chairman concerning the dilution of that company's shareholding in a \$2 billion Russian oilfield.**

## Arbitration

- **LCIA proceedings**

Appearing in a claim for in excess of \$500 million, before three former judges of the English Court of Appeal. Simon was instructed after the conclusion of the liability phase, to argue questions of quantum, by reference to expert accounting and factual evidence and points of law.

- **LCIA proceedings**

Appearing in long-running arbitral proceedings under the LCIA Rules, concerning the entitlement of one party to purchase shares from the other under a 'right of first offer' provision. Simon also appeared in a related application, heard by Butcher J in the Commercial Court, seeking a declaration that a 'Partial Final Award' was only an order, not an award, with, in the alternative, a claim for remission of the Partial First Award for reconsideration under s.68 of the Arbitration Act 1996. This application was reported as *YDU v SAB, BYH* [2022] EWHC 3304 (Comm).

- **ICC proceedings**

Acting for a tenderer against a public authority in respect of a fuel supply contract, bringing a claim in excess of US\$ 800 million.

- **Ad hoc arbitral proceedings**

Appearing as Leading Counsel for a Government department, in arbitration seeking range of relief including payment in excess of £50 million.

- **Section 68 / 69 challenge to ad hoc arbitral award [2016] EWHC 1795 (Comm); [2017] EWHC 3580 (Comm)**

Appearing in successive Commercial Court challenges to arbitral awards made in a high value dispute between father and son. Also appearing on issues remitted to arbitrator.

- **UNICITRAL Proceedings**

Appearing resisting a multi-million dollar claim under a suite of contracts relating to an oil pipeline.

- **ICC and Swiss Rules Proceedings**



Appearing (with Adam Constable KC) in arbitrations resisting claims for in excess of \$800 million in connection with a Russian construction project.

- **UNCITRAL Proceedings**

Appearing resisting a claim for in excess of £12.6 million arising out of alleged breaches of contract in the waste management industry.

- **ICC Proceedings**

Appearing for a Chinese supplier of silicon wafers in a \$33 million dispute. Legal issues included contractual construction, penalty clauses and competition issues.

- **SIAC Proceedings**

Appearing (with Laurence Rabinowitz KC) in an arbitration defending a claim for approximately \$250 million arising out of commercial dealings in South-East Asia.

- **UNCITRAL Proceedings**

Appearing seeking an indemnity under a financial services agreement.

- **LCIA Proceedings**

Appearing in a lengthy arbitration in connection with an Iranian distribution agreement, in a claim for breach of contract giving rise to Wrotham Park 'reasonable fee' damages.

## Other significant experience

- **Cruz City 1 Mauritius Holdings v Unitech Ltd & ors**

Appearing in the High Court of Justice of the Isle of Man, under a Temporary Advocate's Licence, in a five day trial. Issues of facts arising alongside questions of trust and company law.

- **Ryanair Ltd v. Secretary of State for the Home Dept [2018] EWCA Civ 899**

Appearing for the Home Secretary, on the first appeal and on a second appeal to the Court of Appeal, successfully resisting a challenge by Ryanair to the carrier charges scheme under section 40 of the Immigration and Asylum Act 1999. The challenge raised novel points concerning the interpretation of the Free Movement Directive (Directive 2004/38/EC), and the conformity of section 40 with EU law.

- **R (Sustainable Development Capital LLP) v. Secretary of State for Business, Energy and Industrial Strategy [2017] EWHC 771 (Admin)**

Appearing (with Steven Kovats KC) for the successful defendants in a commercial judicial review, arising out of the sale of Green Investment Bank plc in a £2.3 billion deal. The claim raised issues of justiciability, delay, procedural fairness and rationality, and the appropriateness of proposed remedies.

- **Oyesanya v. Mid-Yorkshire Hospitals Trust [2015] EWCA Civ 1049**

Appearing in successful appeal to Court of Appeal on issue of Limitation Act defence.

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## What the Directories Say

*"Simon is a brilliant barrister and advocate. It is a real treat to watch him in the courtroom - he offers a masterclass in advocacy. (Chambers and Partners 2024 - Commercial Dispute Resolution)*

*"Simon brings extraordinary knowledge of the law to his cases and combines it with being very down to earth in his advocacy style."*

## (Chambers and Partners 2024 - Commercial Dispute Resolution)

*"Simon is a phenomenal KC and a wonderful person to work with on the toughest matters. He is a brilliant advocate, a master of law and court practice, and a supreme tactician."* (Legal 500 2023 - Commercial Dispute Resolution)

*"Simon is a brilliant cross-examiner and leader. Clients just love him."* "He is a completely safe pair of hands and great to deal with." (Chambers and Partners 2023 - Commercial Dispute Resolution)

*"Measured, calm and very impressive. He is very clever - a real intellectual, academic type."* (Chambers and Partners 2022 - Commercial Dispute Resolution)

*"Separates the wheat from the chaff with ease, always makes himself available and great fun to work with. I cannot recommend him highly enough."* (Legal 500 2022 - Commercial Litigation)

*"An instructing solicitors' dream. He is highly responsive, a master of civil procedure and process, a great tactician and a simply brilliant advocate".* (Legal 500 2021- Commercial Litigation)

*"Has the ability to produce detailed and compelling drafts at great speed."* "He is very bright, very responsive, and just a really good person to have on board." (Chambers and Partners 2020 - Commercial Dispute Resolution)

*'An excellent junior silk who represents the next generation.'* (Legal 500 2019- Commercial Litigation)

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## Education

Trinity Hall, Cambridge (1994-1998) M.A. (Hons)  
Modern Language and Law with a European Option

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## Other Academic Achievements

Inner Temple Major Scholarship (1998)  
Diplôme universitaire d'études juridiques françaises, Université de Poitiers (1996-1997)  
Elected to Scholarship of Trinity Hall (1995)  
Diploma from Università per stranieri di Perugia (1994)

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## Awards

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# Contact Clerks



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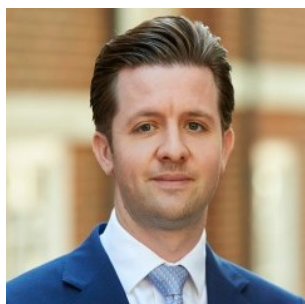


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