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Practice

- Administrative and Public Law
- Arbitration
- Commercial Litigation
- Conflict of Laws
- European Law

EU (all areas ranging from free movement of goods or companies to public procurement; customs to competition; application of regulations and directives in areas from commercial to criminal law), EU Agriculture & Fisheries.

Competition (especially in relation to shipping and transport, retailing/distribution, utilities) & state aid with regulatory work in Water, Gas, Telecoms, OFT/European Commission, and Financial Services.

Public law, ECHR (including coroners, agriculture, tax), Environment, Health (including medicines regulation, food safety and issues arising from overseas provision).

Conflict of laws, Rome Convention, Brussels Convention and EU Regulation 44/2001, Foreign law, International law, Arbitration.

Career

- 2010 Chairman of the liaison committee between all EU lawyers and the European Courts of Justice – CCBE Permanent Delegation to the Court of Justice and the General Court of the European Union
- 2008 Silk
- 2005-8 Junior Counsel to the Crown (A Panel)
- 1988-9 Tutor, London School of Economics
- 1985 Call: Middle Temple

Education

- 1986 Licence spéciale en droit européen, Université Libre de Bruxelles
- 1984 MA, Downing College, University of Cambridge

Languages

Strong languages - French, German, Italian, Spanish – has worked on cases in all four languages and presented argument in French.

Member

Agricultural Law Association
Bar European Group
Bar Pro Bono Unit
British Institute of International and Comparative Law
British-Italian Law Association

CCBE (Head of UK Delegation – represents UK legal profession in Europe)

Commercial Bar Association (COMBAR)

European Circuit (Circuit Junior)

International Committee of the Bar Council

Publications

Author of chapter on procedure of direct actions to the European Courts in *European Courts Procedure* (2010)

Author of chapter on European Union Law in *Judicial Review*, Supperstone, Goudie & Walker (4th edn, 2010)

Co-author (with Alexander Layton QC) *European Civil Practice* (July 2004) Sweet & Maxwell, a major commentary on the Brussels Convention and EU Regulation 44/2001 which draws on EU case law and on the case law of the national courts of EU member states.

Formerly co-editor, *The European Advocate*, quarterly journal of the Bar European Group which covers issues of EC law, Brussels Convention and Human Rights law for advocates.

Commercial Debt in Europe: Recovery and Remedies, Guy and Mercer, Longman (1991); Comparative survey of Mareva and summary judgment procedures in national courts of Member States of EU.

Various articles including as co-author 'Language as a Barrier to Trade: The Loi Toubon' [1996] *ECLR* 308, submissions of the English Bar to the European Commission in respect of various legislative proposals

Lectures / Seminars

Frequently participates as speaker in seminars both in England and abroad involving subjects of a European or contractual nature including in the recent past;

EU Taking of Evidence Regulation and Service Regulation (IBA)

Using EC Law creatively in the Media Sector

Issues of EC law in Unfair Contract Terms (Office of Fair Trading)

Cultural Impediments to Free Movement of Goods and Services (Bar European Group, Vienna Conference)

Public International Law and EC Law (University of Salamanca, Spain - in Spanish)

EC Law and National Remedies (Associazione di Giuristi Italo-Britannica, Padua)

Sanctions and Penalties in EC Agricultural Law (Agricultural Law Association)

Single payment scheme and Member State freedom to take agri-environmental measures (Burgos)

Lisbon Treaty for Litigators

Specific Areas

Administrative & Public Law

Has been a regular litigant for and against Government entities for over ten years, generally in cases which raise EU issues but also in cases with Human Rights or regulatory law. Experienced in the application of public law applied to coroners inquests and also in relation to a diverse range of regulatory panels and procedures.

Agriculture & Fisheries

Very experienced litigator on all public law issues affecting agriculture. Has worked with the NFU for many years dealing with a vast range of cases involving interpretation of the Common Agricultural Policy and now the Single Payment Regime. Also advises and represents French farming unions before the French courts and the European Commission. He is instructed by the Azores in their judicial review of an EU Fisheries Regulation which adversely affects the marine environment of the Azores.

Group or Class actions

Has been involved in litigation involving multiple claims arising from the failure of Government to implement EU directives in the field of financial services and also from anti-competitive agreements leading to fines by regulators.

Commercial Agency

Has had a steady stream of commercial agency cases concerning applicability of the regulations and levels of quantum. Particularly experienced in cases where foreign law becomes an issue.

Commercial Arbitration/Litigation

Experienced litigator and regularly acts as counsel in arbitral tribunals, often where EU, competition or foreign law issues are raised including recently leading a team of Greek, Swiss and English counsel in an ICC arbitration in Geneva and arbitrating competition law issues. In appropriate circumstances will also litigate/arbitrate in French, German, Spanish and Italian.

Competition Law

Broad range of competition law experience across a very wide range of industries from electronics and computer components to vitamins; specialist chemicals and oil derivatives to materials for the construction industry; supermarkets to cigarettes & beer/alcoholic drinks. Also was the primary competition lawyer for the successful defendants in the Arkin shipping competition case in the English commercial court based on predatory pricing and has particular experience in transport related issues having

successfully fought off challenges to shipping pools on competition grounds.

Conflict of Laws

Very experienced conflicts lawyer on all conflicts issue from jurisdiction to applicable law, taking evidence and foreign law, often as specialist counsel in a broader team. Co-author of one of the major conflict of laws textbooks (Layton & Mercer) on the Brussels Convention and Regulation 44/2001 with particular responsibility for incorporating citation of decisions from the national courts of most EU member states.

Customs

Has regularly handled issues arising out of EU customs law from issues of community origin to export refunds and extending to issues arising from quotas for goods from non-EU states and applicability of excise duty regime including judicial reviews arising therefrom.

Energy

Frequently advises and represents in this area covering a range of issues from competition to regulatory work (including successfully overturning a sectoral regulator's pricing decision before the Competition Commission and making interim application for redetermination of regulated price); commercial agency and utilities procurement issues.

Environment

Covers a range of environmental issues arising in farming and fisheries contexts such as the application of the precautionary principle to the ecosystem of the mid-Atlantic ridge (for the Government of the Azores) but is also involved in judicial review of EU directives in the field of the environment, in particular where there is an interface with the farming community.

EU

Covers the full range of EU law areas with special expertise in agriculture, competition, state aid and free movement of goods or services as well as free establishment of companies in the EU but extends across into EU law as it affects all areas from tachographs to extradition treaties. Handles arguments on implementation of EU law into English law in all fields.

Financial Services

Particularly experienced in the application of EU Directives to the financial industry (e.g. seeking to sanction failure of Government to apply the Insurance Directives) but also covers the public/regulatory law aspects of financial services.

Healthcare

Has acted as the conflict of laws specialist in several high court

actions involving health care and clinical negligence abroad in particular for service personnel; deals with public law aspects of health care such as competition law issues in relation to dispensing doctors; disclosure of medical records and all EU issues affecting health care.

Human Rights

Has particular experience in the application of human rights within a diverse range of fields of civil law such as agriculture, environment, due process, competition and extending even to the impact of human rights on the conduct of inquests (acted as lead counsel for the coroner in the case of Middleton in the House of Lords). Recently represented the majority of the worldwide shipping industry in the case brought by Capt Mangouras against Spain on the breach of his right to bail.

Public International Law

Frequently covers the public international law arguments arising in relation to EU law such as the Law of the Sea or sanctions but also extends to independent PIL issues in fields such as WTO and sovereign debt issues. Litigated the impact of international law on EC law in the context of shipping pollution.

Public Procurement

Has regularly advised and represented utilities in the UK and abroad (in particular long-standing Greek clients) both in court and before the European Commission on specialist issues of public procurement law. Experienced in the commercial court in dealing with cases involving the UVDB qualification system.

Shipping/Transport

Extensive experience of competition issues both before UK competition authorities and the EU Commission in relation to transport including liner conferences; bulk and tramp shipping; shipping pools; reefer trades; port and airport pricing and discrimination arguments; differential pricing by monopoly operators on shipping routes.

Sport

Deals not only with competition issues (such as competition arguments arising on promotion of clubs) but also on EU free movement issues.

State Aid

Has considerable experience dealing with state aid questions arising in a wide variety of industries both in the UK and abroad and at both central, regional and local government level, including working in a team with local counsel in appropriate cases. Particular experience in relation to state aid arising in relation to fiscal measures.

Tax

Deals with tax issues arising in an EU context such as

differential taxation of subsidiaries based in another EU country and extending into state aid arguments arising out of differential business rates taxation.

Telecoms / Broadcasting

Has dealt with various competition, regulatory and state aid issues arising out of telecoms liberalisation policies, related regulatory issues and extending to competition issues arising from satellite broadcasting, licensing of programmes etc.

Reported Cases

R (on the application of TA Gwillim) v. Welsh Assembly Government (2009) NPC 136 (EC Agricultural Law - Single payment scheme – whether the provision for hardship in farmers subject to agri-environmental commitments transferring to the scheme requires a dip in livestock production or not – Held not and therefore WAG's decision unlawful)

Vtesse v. Bradford CA & European Court (whether, in determining the rateable value of a hereditament consisting of fibre optic cable for use in telecoms market, VOA is obliged by the Telecoms Directives to take into account evidence derived from the rateable value of BT which incorporates 75% of UK optical fibre - Effect of state aid rules and whether definition of the relevant market is necessary for the legality of a tax based measure to be assessed)

R (on the application of Partridge Farms) v. Secretary of State for Rural Affairs CA, (2009) NPC 58 (EC law and compensation scheme for cattle culled under TB control measures – whether unlawful differential treatment through failing to differentiate in any way between high value and normal commercial stock – challenge upheld at first instance but CA found no differential treatment)

R (on the application of O'Connor) v. HM Coroner for Avon [2009] 4 All ER 1020 (Coroners' directions regarding insanity when raised in an inquest – departing from position in criminal trial, once insanity is properly raised, it must be disproved to the criminal standard to sustain a verdict of unlawful killing)

Mangouras v. Spain ECHR (Human rights - whether breach of right to bail for ship's master accused of pollution offences to be asked for €3m and, even after providing this sum, being kept under hotel arrest with ban on leaving Spain)

Região autónoma dos Açores v Council Court of First Instance of EU (EU fisheries policy – serious risk to environment through permitting fishing in the Azores waters – whether European Commission interim regulation obviated need for interim relief – on appeal to ECJ)

Répertoire Culinaire v. HMRC ECJ (whether cooking wine is within the alcoholic beverage provisions of the Excise Duty Directive and/or whether it is entitled to exemption – whether ECJ bound by previous caselaw in respect of this issue)

R (on the application of Mabanaff) v. Secretary of State for

Energy and Climate Change [2009] EWCA Civ 224 (EC law – rules on stocks of petroleum products to be maintained by each Member State – to what degree equal treatment of affected businesses needs to be maintained)

Sutton & East Surrey Water Interim Determination (Competition Commission, 2009) (Water sector regulated prices – whether water undertaker entitled to modification of prices to deal with increased energy prices and reduced demand – whether lawful to refuse to increase prices)

R (on the application of RSPCA) v. Secretary of State for the Environment, Food and Rural Affairs [2009] ACD 2 (amendments to rules applicable to slaughter of birds in case of serious health outbreak – whether ultra vires Directive 93/119 or general EU law – Held – lawful). Acting for Defra

R (on the application of Intertanko et al) v. Secretary of State for Transport [2008] ECR I-4057 (ECJ) (whether Directive 2005/35 valid in the light of public international law – held UNCLOS is not a source of rights but Directive must be interpreted in accordance with EC law)

Arbitration on effect of EC competition law on specialist shipping pool, 2008 (whether standard form charterparties entered into by ship operator which shared profits with shipowners could be said to constitute a restriction on competition by object or effect)

Olafsson v. Gissurarson [2008] 1 WLR 2016 (CA) (whether order should be made dispensing with service in Lugano Convention case to ensure that otherwise potential domestic time bar would not defeat the claim – held that order should be made in truly exceptional case)

Boake Allen v. HMRC [2007] 1 WLR 1386 (HL) (limiting the availability of group income elections to subsidiaries of UK companies was not in breach of the non-discrimination articles of the relevant double taxation conventions.

Pirelli Cable Holding v. HMRC [2008] STC 144 (if claimant had been able to make a group income election, non-resident parent companies would not have been entitled under the relevant double taxation agreements to tax credits on the subsequent payment by a UK subsidiary of mainstream corporation tax)

Taylor v Lancs County Council [2005] EWCA Civ 284 [2005] NPC 43, Times, March 31, 2005 (Human rights – property law – whether Case D of the Agricultural Holdings Act 1986 draws an unlawful distinction contrary to Article 14 ECHR between the procedures applicable to tenants who are required to do remedial works and those tenants required to remedy other types of breaches)

Regina (Middleton) v West Somerset Coroner [2004] 2 AC 182 (Human rights – deaths in prisons and the scope of the investigative duty under Article 2 ECHR – whether necessary or appropriate to extend scope of inquests to cover this Coroner's actions – scope of inquests extended.)

Holleran v Severn Trent Water Plc [2004] EWHC 2508 (Public procurement – whether claim was statute-barred under the Utilities Contracts Regulations 1996, Reg. 32(4), through failure to respect three month deadline – whether three month deadline Article 6 ECHR compliant – need for dealing with complaints quickly in the public interest)

Re A (a child) v Ministry of Defence [2005] QB 183 (CA) (Duty of care – non-delegable – negligent treatment of soldiers and dependants in hospitals in Germany – hospitals were part of a “health service” organised and administered by the Ministry which declined all responsibility in the event of claims – soldiers should sue in Germany under German law and in German language – CA hopes Ministry of Defence will help soldiers)

Arkin v Borchard et al. (No. 3) [2004] 1 Lloyd’s Rep. 636 (Costs of Part 20 proceedings where defendant successfully defended claims by claimant but had been singled out of a group of jointly liable potential defendants and had joined others from same group as Part 20 defendants)

Arkin v Borchard et al. (No. 2) [2004] 1 Lloyd’s Rep. 88 (Costs – insolvent claimant and professional funder – whether professional funder should be ordered to pay costs of successful defendants – whether grounds for order to pay part of costs)

Leeds City Council v James Stuart Watkins and another (2003) 14 EG 122 (CS) : Times, April 9, 2003 (Competition law and Market law – exercise by city council of exclusive rights under market law for their own commercial purposes did not place city council in a de facto dominant position on the relevant market – refusal to accept that there was a relevant market – no restrictive agreements proved)

Arkin v Borchard et al. [2003] 2 Lloyd’s Rep. 225 (EU competition law – claim for damages – shipping liner conferences – no abuse of a dominant position – conduct within the block exemption – no causation in any event) (Note – acted for successful defendants in the most substantial competition litigation ever in the UK courts)

National Iranian Oil Corpn. v IRI International Corpn [2002] EWCA Civ 1024 (CA) (Rome Convention - law applicable to a contractual obligation in the absence of choice - force of the presumption in Article 4(2) Rome Convention on the law applicable to contractual obligations - whether appropriate to apply Article 4(5))

Henderson v Jaoen (CA) [2002] 2 All ER 705 (CA) (Jurisdiction - whether jurisdiction in English courts following tort in France - Brussels Convention - jurisdiction in relation to torts)

Castille v DTI [2002] Eur. L.R. 209 (EU Customs law - whether DTI in breach of EU customs legislation in rejecting multiple applications for EU import quota)

R v Minister of Agriculture, Fisheries and Food ex parte Fisher [2000] ECR I-6751 (ECJ) (EU Agriculture - whether MAFF obliged to disclose information to current farmer of land in order for him to apply for EU subsidies in respect of that land -

penalties may not be imposed if failure to disclose

Agnew v Lansforsakringsbolagens [2001] 1 AC 223 (HL)
(Jurisdiction - breach of pre-contractual duty of disclosure in insurance contract - whether a matter relating to a contract for the Brussels Convention)

R v Swale BC ex parte Lidl (UK) GmbH [2001] EWHC Admin 405 (State aid/sale at an undervalue contrary to s. 123 Local Govt Act 1972 – highest offer on the table is not necessarily the best offer)

Arkin v Borchard et al [2000] UKCLR 495 (Limitation period applicable to competition law - alleged abuse of a dominant position by a liner shipping conference - applicable limitation period - estoppel following proceedings before the European)

Sutton & East Surrey Water v Ofwat, Competition Commission Report, 2000 (appeal against regulator's decision - whether fixing of k factor for prices in the water industry granted SESW sufficient resources to carry out its statutory duties as a water undertaker – answer in negative)

R v Secretary of State for Trade and Industry et al. ex parte the Isle of Wight Council (2000) COD 245 (EU Regional Policy – administration of policy by the DTI – Isle of Wight poor but aggregated with rich region – whether lawful not to include Isle of Wight as a potential recipient of regional selective assistance and/or structural funds from the EC)

Leidig v Intervention Board for Agricultural Produce [2000] Lloyds Rep PN 144 (CA) (Negligent advice by Board to a farmer on milk quota and whether cream sales were subject to levy – in consequence farmer believing that his enterprise was viable continued and invested in it – entitled to levy but to no damages on account of continuing in business or investing therein).

R v S of S for Health ex parte Eastside Cheese, Duckett intervening [1999] 3 CMLR 123 (implementation by UK of EU food law - whether ban proportionate)

Norbain v Dedicated Micro [1998] EuLR 266 (Competition - alleged abuse of a dominant position - whether injunction available to oblige a supplier to continue to supply pending trial)

Stevenage Borough Football Club v The Football League [1997] 9 Admin LR (competition law and restrictive rules for entry to a higher league - injunctive relief to force promotion)

Flynn v Rizrani The Times, 20 July 1995 (the effect of Article 8a of the EC Treaty on the free movement of persons)

Kitechnology v Unicor [1994] ILPr. 560 (Jurisdiction - place where the harmful event occurred for the Brussels Convention on jurisdiction - intellectual property)

European Commission v East Africa Conference Lines
European Commission XXIIIrd Report on Competition Policy, 1993, paras. 230-231 (Article 81 and Article 82 EC - whether lawful for a shipping liner conference to require 12 months'

notice of leaving the liner conference).

If you require further information please contact
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