

Ian Rogers

MA(Oxon) First Class, LLM (European University Institute, Florence)

Call date: 1995

Telephone: 020 7405 7211

Fax: 020 7405 2084

Email: irogers@monckton.com



Summary

The majority of Ian's work is in his specialist fields of public law, human rights and employment law. Novel cases raising issues under the Human Rights Act are a particular strength of his practice. Much of his advisory, drafting and advocacy work occurs in the commercial sphere, but Ian's strong commercial law practice has also continued to flourish outside his specialist areas.

Frequently, his work involves cross-border disputes and raises issues of the conflict of laws (in particular the recognition of foreign judgments) and EU law.

Ian has appeared before the Privy Council in six cases in the last few years in relation to appeals from Jamaica, Trinidad & Tobago and the Isle of Man. Other work of an international character has included substantial cross-border fraud litigation in The Bahamas, mutual assistance proceedings involving the UK, Australia, Switzerland, the Isle of Man, Jersey and The Bahamas and proceedings in the European Court of Human Rights against Spain and Russia.

Clients continue to benefit from the breadth of work undertaken in diverse areas of law during his first ten years as a barrister, particularly where cases involve intersecting areas of law and a need to understand or forge links beyond the traditional boundaries of a subject.

Major Recent Cases

Ian Rogers has a broad public law practice, with particular expertise in human rights, EC and employment law. Much of his work is in the commercial sphere.

- R(Wheeler) v Prime Minister [2008] ACD 70, appearing for Prime Minister and Foreign Secretary in the challenge to the refusal to hold a referendum on the Lisbon Treaty
- R(Accenture and Barclays Bank) v HMRC [2009] STC 1503, whether outsourcing of 1400 employees fell within the VAT Staff Hire Concession; interpretation of Employment Agencies Act 1973 and authorities on the "control" test in employment law
- Actions against Spain, challenging the LRAU / LUV (dubbed the Valencian 'Land Grab' law by the press) in the European Court of Human Rights: group litigation regarding the compatibility with the right to property (A1P1 ECHR) of Spanish planning law
- R(Veolia) v Notts County Council, Times 15.10.09, absence of commercial confidentiality exception in s15 Audit Commission Act; disclosure of £850 million Waste PFI Contract
- Pattni v Nasir Ali and Dinky International SA [2007] 2 AC 85, Privy Council, whether the Isle of Man courts should recognise a Kenyan judgment relating to a US\$14 million contract for the sale of shares in a Manx company operating Kenyan duty free complexes
- R(Hafner) v Westminster Magistrates' Court (Phillips LCJ, Silber J) [2009] 1 W.L.R. 1005; R(Hafner) v Home Secretary [2007] 1 WLR 950 and mutual assistance proceedings pursuant to a request from Australia concerning Article 8 ECHR confidentiality rights;
- Stojevic v Financial Supervision Commission of the Isle of Man (Privy Council): appearing on behalf of discretionary beneficiaries of a trust concerning assets alleged to be the fruits of fraud arising out of the US\$94 million Komerčni Banka High Court litigation; raising issues under Articles 6,13, 34 and A1P1 of the ECHR
- R(Barnet) v Parking Adjudicator (Admin Court) [2007] RTR 14: appearing on behalf of the Parking Adjudicator in numerous test cases; this case upheld the Parking Adjudicator's decision that all parking tickets must bear a date of contravention and date of issue

- Lee Ling Low v Home Secretary [2009] 2 CMLR 22; 21.10.09 CA, claim of derivative rights of residence in support of Irish company's freedom to provide services under Article 49 EC; claim of illegally present third country nationals to be posted workers
 - Yukos Oil Co v Russia (ECHR application No 14902/04) multi-billion dollar dispute concerning corporate tax and expropriation in the European Court of Human Rights
 - Seaside v Steam Packet Co and Department of Transport, appearing for Attorney-General of the Isle of Man, claims of breach of Articles 28 and 29EC (MEQR) arising from alleged monopoly of ferry services, CA, on appeal to Privy Council
 - Warner v Verifides [2009] Bus LR 500, engagement of privacy rights in application of trustee in bankruptcy for documents from a corporate services provider; meaning of "correspondence" in Article 8 ECHR
 - R(Ashton) v Police Medical Appeals Board [2009] ICR 51, interpretation of Police Pensions Regulations, conflicting Administrative Court decisions on the point
- Member of the Attorney-General's Panel of Treasury Counsel

Specialist Areas

Commercial, International & European Community Law

Ian has a broad range of commercial law experience and particular expertise in banking work, including advising an international bank on the implications of the Human Rights Act for aspects of its business and extensive trial advocacy experience in matters concerning the law of guarantees, mortgages and undue influence. He has also been instructed recently in the fields of competition law, partnership, construction law, insolvency and directors' personal liability. He frequently represents parties in applications for urgent relief, such as freezing injunctions. Much of his work is of an international character, raising issues of the conflict of laws and EU law.

- Pattni v Nasir Ali and Dinky International SA, appearing in an appeal in the Privy Council: whether the Isle of Man courts should recognise a Kenyan judgment relating to a US\$14 million contract for the sale of shares in a Manx company operating the Kenyan duty free complexes
- Appearing for the Scottish Ministers and 15 Scottish health boards in Chancery Division litigation raising allegations of anti-competitive behaviour concerning the pricing of warfarin against Norton Healthcare, Goldshield Group and other pharmaceutical companies

Advising a FTSE-100 company in a multi-million pound contractual dispute concerning the termination of a European marketing agreement

- Gaillard and G Holdings Ltd v Villeneuve and Kyoto Securities Ltd: substantial litigation in The Bahamas involving fraud allegations concerning four schemes in which the Defendant financial advisers induced the Claimants to invest
- Re G, M, F and F: American Arbitration: instructed by the liquidator in relation to a US arbitration of a \$9 million dispute
- Lloyds Bank v Norgan (QBD): substantial trial between a bank, property developers and their wives. Law of guarantees and the duty of a bank manager acting as an adviser in relation to investment propositions intended to defraud the family
- Advising on the EC Judgments Regulation No 44/2001 in relation to recognition of a foreign labour court judgment in the UK
- Advising on potential claim against the European Commission in the European Union Civil Service Tribunal
- Lease Products v The Auction Group and Paul Stokes (Court of Appeal): conversion and director's liability trial, successfully representing a lease finance company

Employment Law

Ian is an accomplished employment law advocate with experience ranging over ten years in employment tribunals and the Employment Appeals Tribunal. In addition to familiar unfair dismissal, wrongful dismissal, redundancy

and discrimination claims which make up a large part of employment practice, Ian has considerable expertise and experience in advising on TUPE (including contracted-out service provision changes), employment contract disputes (including restrictive covenants, breach of confidentiality clauses, share option schemes, discretionary bonus clauses, garden leave), equal pay, exclusion of part-time workers from pension schemes and disciplinary proceedings. Clients rely upon his pragmatic and thorough approach to problem-solving, whether advising in conference or in writing, particularly at the early stages of a dispute or before issues in the workplace escalate. His knowledge of EU law is also an advantage in the many areas of European-inspired employment legislation.

- *Mrs Betts and others v Boots*: advising Boots in group litigation test case relating to complaints of exclusion of part-time workers from the company pension scheme amounting to indirect discrimination against women, following the *Preston v Wolverhampton* litigation
- *Braddick v Robson Rhodes*: represented and advised throughout substantial sex discrimination proceedings. Settlement reached before three week hearing started. Instructed by senior director and general manager against global firm of accountants
- *Michaeljohn Management Ltd v MinxatNickyClarke*: successfully representing Defendant booking agents who had set up a business with the hair stylist, Nicky Clarke, in a lengthy trial concerning restrictive covenants and implied duties of fidelity
- *X firm v Y solicitor*: represented firm of solicitors in successfully defending unfair dismissal claim brought by a solicitor. Whether solicitor had resigned or been dismissed by exchange of correspondence and conduct
- Advisory work for a FTSE-100 company concerning proposed withdrawal of a share option scheme and effects on employee's contractual rights
- *Youds and Dudley v Bank of Montreal*: litigation concerning discretionary bonus clauses in bankers' contracts of employment

Nesbitt v Kent Constabulary: Represented police force in resisting sex discrimination claim brought by an officer

- *Theodosopoulou v Bank of Cyprus (EAT)*: successfully represented bank on appeal concerning a 'heat of the moment' dismissal

Advisory work for a local authority concerning a proposed change of service provision in relation to TUPE 2006

Human Rights Law

Ian acts for a wide range of clients in domestic and international human rights proceedings. He has a particular interest in the way in which the autonomous human rights jurisdiction in the United Kingdom and its underlying principles have developed since the introduction of the Human Rights Act. Human rights issues are found in cases across the legal spectrum and clients therefore benefit from his significant practical experience in diverse areas of law.

- *Actions against Spain*, challenging the LRAU / LUV (dubbed the Valencian 'Land Grab' law by the press) in the European Court of Human Rights: group litigation regarding the compatibility with the right to property (A1P1 ECHR) of Spanish planning law
- *R(Hafner) v Secretary of State for the Home Department* [2006] 3 All ER 382 (Admin Court): representing a Swiss lawyer and law firm in judicial review proceedings concerning Australia's requests for mutual legal assistance in obtaining evidence from the UK, The Bahamas, the Isle of Man, Switzerland and Jersey, raising Article 8 ECHR confidentiality issues. The first reported case on the role of the Secretary of State under sections 13 to 15 of the Crime (International Co-operation) Act 2003
- *R(Hafner) v Bow Street Magistrates' Court*: Judicial Review concerning the role of a nominated court in mutual assistance proceedings where Article 8 rights to confidentiality are asserted by a person about whom questions are asked by the foreign requesting state
- *R v Home Secretary, ex parte Mohammed Khan*: Judicial Review of certificates made under the Nationality, Immigration and Asylum Act 2002 for deportation to Afghanistan. Arguments concerning article 2, 3, physical and moral integrity protected by article 8 and the right to respect for family life under article 8 ECHR
- *Yukos Oil Co v Russia* (ECHR application No 14902/04) multi-billion dollar dispute concerning corporate tax

and expropriation in the European Court of Human Rights

- *Stojevic v Financial Supervision Commission of the Isle of Man (Privy Council)*: appearing on behalf of discretionary beneficiaries of a trust concerning assets alleged to be the fruits of fraud arising out of the US\$94 million *Komercni Banka* High Court litigation; raising issues under Articles 6,13, 34 and A1P1 of the ECHR
- *Columbo Investments v Financial Supervision Commission of the Isle of Man (Privy Council)*: challenge to winding up petition on public interest grounds involving A1P1 ECHR issues
- *Mark Sangster and Randall Dixon v The Queen (Privy Council, on appeal from CA of Jamaica)* [2002] UKPC 58

- *Hossein v Trinidad & Tobago (Privy Council)*
- *Wilson v Trinidad & Tobago (Privy Council)*
- *NatWest v McCarty*: one of the first trials in the UK concerning the horizontal effect of Article 8 ECHR following the HRA. Human rights of the children occupying the home to be taken into account, exercise of discretion under s36 Administration of Justice Act 1970 in such a way that there would not be a disproportionate interference with the education of the children
- *Barclays v Alcorn*: undue influence trial and human rights defences to possession order; application of HRA proportionality test where unnecessary to sell the entire property to satisfy mortgagee's debt; issue as to whether property could be divided into two homes and one sold to satisfy debt

Public & Administrative Law

Ian frequently appears in the Administrative Court and much of his work involves applications for judicial review of the actions of public bodies. He regularly acts on behalf of public bodies, those seeking to challenge their decisions and interested parties.

- *R(London Borough of Barnet) v Parking Adjudicator*: appearing on behalf of the Parking Adjudicator, whose decision was upheld in a test judicial review case brought by Barnet Council concerning the invalidity of a standard form parking ticket issued under the decriminalised parking enforcement regime
- *R v Family Health Services Appeal Authority, ex parte Boots (Lloyds Pharmacy as Interested Party)*: successfully represented the largest community pharmacy operator in the UK in a dispute over competing applications for the right to operate a pharmacy in a new development
- *R(LTI Ltd) v Northampton Borough Council*: represented the Council in successfully resisting a challenge to its decision to license the Peugeot E7 taxi as an additional hackney carriage in Northampton
- *R v FHSAA, ex parte Dr Irwin*: Judicial Review concerning the meaning of "prejudice" in the National Health Service (Pharmaceutical Service) Regulations and the interpretation of departmental guidance
- *Suisse Security Bank & Trust Ltd v Governor of the Central Bank of The Bahamas*. Advisory work on Privy Council appeal against decision of Bahamian Judge on statutory review to uphold Governor's revocation of a banking licence
- *R(Transport for London) v Parking Adjudicator*: ongoing test case concerning the meaning of section 5(1) of the London Local Authorities Act 2000 (power to serve a penalty charge notice by post where parking attendant prevented from issuing a notice)
- *R(Fiona Daniels) v Police Medical Appeals Board*: representing the Board in judicial review proceedings challenging refusal of an injury on duty pension
- Appeared for Swiss lawyer and law firm in mutual assistance proceedings on a request from the Australian Attorney-General for evidence to be obtained by the UK for use in an investigation by the Australian Securities and Investments Commission

Additional Information

Ian read Law at Hertford College, Oxford, where he obtained a First Class Honours degree and was awarded the University Prize for Tort. Called to the Bar in 1995, he soon developed a successful and diverse practice in commercial and common law, with trial advocacy consistently forming a substantial part of his work in a range of

courts and tribunals. Ian obtained valuable experience abroad, firstly in Australia in 1998, and later in Italy, in 2001. In Australia, as a Pegasus Scholar, he worked for several months for a leading global commercial litigation department and then as a Judicial Associate to Mr Justice Lindgren in the Federal Court. In Italy, he took a sabbatical year at the European University Institute, Florence, in order to research and monitor the impact of the Human Rights Act in its first year of operation. He was awarded the Master's degree in Comparative, European and International Law and published in the fields of human rights and EU law.

Publications

Ian has lectured and published on human rights, EU, commercial and employment law, notably 'The Creation of a Private Law of Human Rights in the UK' (EUI) and chapters of 'Employer's Liability Cases' (Butterworths).

- 'Oliver & Dingemans Employer's Liability Cases' (Butterworths, 2003). Author of chapters on EU law, human rights and Crown proceedings
 - 'Human rights update' Solicitors Journal (2005) Page 1250, 21/10/2005
 - 'Food for Thought' (2005) Legal Week, 15/9/2005, on the ECJ's decision on the challenge to the validity of the Food Supplements Directive by the Alliance for Natural Health
 - 'Equality at work' Solicitors Journal SJ (2003) Vol.147 No.48 Page 1442, 19/12/2003. Comments on the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003, implementing Council Directive 2000/78
- 'How to spot a human rights point in a private law case' (2002) New Law Journal NLJ Vol.152 No.7056 Pages 1723-1725, 15/11/2002.

Thesis publication: 'The Creation of a Private Law of Human Rights in the UK' (EUI, Florence, 2002)

- 'From the Human Rights Act to the Charter: Not another human rights instrument to consider?' European Human Rights Law Review (2002) EHRLR Issue 3 Pages 343-356, 1/5/2002 - 1/6/2002. Outlines an argument for the potential of the Charter of Fundamental Rights of the European Union to develop UK domestic human rights law

Other Details in Brief

- First class honours degree in Law from Hertford College, Oxford (1994)
- Winner of the Oxford University (Martin Wronker) Finals Prize for Tort (1994)
- Winter Williams award and Hertford Scholarship (1992-93)
- Prince of Wales Scholarship at Bar School awarded by Gray's Inn (1995)
- Pegasus Scholarship from the Inns of Court (1998)
- SCR Visitor to Trinity College, Melbourne, worked for Mallesons Stephen Jaques commercial litigation department in Melbourne and as Judicial Associate to Mr Justice Lindgren at the Federal Court of Australia in Sydney (1998)
- Master's degree from European University Institute, Florence in Comparative, European and International Law (2002)

Languages

French (holder of Diplome Approfondi de Langue Francaise)

Good working knowledge of Italian and Spanish

Basic working knowledge of German

What the directories say

The **Legal 500, 2010** recommends Ian Rogers as a Leading Junior in Civil liberties and human rights (including public inquiry law and actions against the police)

The **2008** and **2009** editions of the **Legal 500** recommend Ian Rogers as a Leading Junior in Human Rights and Civil Liberties.

The **2009** edition of the **Legal 500** observes that "Monckton Chambers' Ian Rogers, among others, plays to chambers' recognised strength on all European law matters. This includes strength in ECHR litigation, in which court members of chambers have appeared regularly."