



## Simon Atkinson

Call: 2011

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### Clerks' Details

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### Qualifications and Appointments

- BA (History)/BSc (Chemistry) – Melbourne University
- MA (Law) – Trinity College, Cambridge University

*“He has an absolute mastery of the law and is also very good on his feet – clients have real confidence in him.”*

The Legal 500 UK, 2022

## Memberships

- Chancery Bar Association
- Property Bar Association
- Association of Pension Lawyers
- ACTAPS
- STEP
- Commercial Bar Association

## Publications

- [You raise me up: but for how much longer? CGT and the uplift on death](#) (2021) *Wilberforce Chambers Tax Commentary*
- [International charitable trusts and IHT exemption](#) (2019) *Wilberforce Chambers Tax Commentary*
- [Rules of the DIFC Courts](#) (2018) *Wilberforce Chambers, 5th edition*
- [Approaches to applying a pension increase underpin \(FDR v Dutton\)](#) (2017) *Lexis®PSL*

## Practice Overview

Simon is an experienced and in demand practitioner. He has a broad Chancery practice; the core of his work comprises property, trusts and estates, pensions and commercial litigation.

Simon believes that the giving of practical and clear advice, combined with persuasive and fearless Courtroom advocacy and an eye for detail, are qualities which clients rightly demand and which he brings to the cases on which he is instructed.

Simon regularly appears in the higher courts as well as in the country court and in various tribunals. He is frequently instructed in alternative dispute resolution processes such as mediations and expert determinations (in which he has acted variously as both advocate and expert).

Cases with an international element form a significant part of Simon's practice. Recent instructions have concerned matters in Hong Kong, Singapore, the Channel Islands, Bermuda, the British Virgin Islands and Dubai. He has particular experience of disputes concerning assets and/or parties based in the Middle East. He is a co-author of Wilberforce's publication of the Rules of the DIFC Courts.

### Notable cases in which Simon has been instructed include:

- **Goodrich v AB** [2022] EWHC 81 (Ch): Simon was instructed on behalf of the trustees in an important decision concerning the construction of settlements created prior to the Human Rights Act 1998, the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013. The trustees of two employee trusts sought directions concerning, *inter alia*, the construction of the terms "spouses" and "children" contained in a settlement deed dated April 1990, as well as directions concerning the possible sharing of confidential information between the trusts. The judgment considers the approach to construction of employee trust deeds given their commercial purposes and also whether it is possible to read down the CPA 2004 and the MSSCA 2013 compatibly with ECHR rights, specifically articles 8 and 14, to eliminate potentially discriminatory outcomes between (i) spouses and civil partners, (ii) opposite sex and same sex spouses and (iii) children and step-children in older settlements.
- **National Stadium Project (Grenada) Corp v NH (Caribbean) Ltd** [2020] UKPC 25: This dispute arose out of the construction of a sports stadium in Grenada in the late 1990s and concerned the entitlement to a multi-million dollar fund which had been frozen when the dispute first arose back in 1999. After 20 years, an arbitration, and multiple court proceedings, the matter was finally resolved by the Privy Council in 2020. It is an important recent authority on the law of Quistclose trusts and equitable assignment.



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## Publications continued

- [Where different legal systems collide: the decision in \*Labrousche v Frey & Ors\* \(2016\) \*Trusts & Trustees\* 22 \(7\): 741-752](#)
- [‘Away with words: LPA 1925, s. 62’ \(2016\) \*Wilberforce Property Update\* \(Issue 2\) April 2016](#)
- [‘Self-dealing: rigours and risks’ \(2013\) \*Trusts and Estates Law & Tax Journal\* 149 TEL&TJ 8 – 11](#)
- [‘Talking on sub-tenants: lessons for unwilling landlords’ \(2013\) \*Wilberforce News Alert\*](#)
- News alert: *Ansa Logistics Ltd v Towerbeg Ltd* (with [Martin Hutchings QC](#))

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## Practice Overview continued

- *Asturion Foundation v Alibrahim* [2020] 1 WLR 1627: These ongoing proceedings concern a multimillion-pound property on "Billionaire's Row" in North London. The fiercely contested claim raises multiple questions of Liechtenstein, English and Shari'a Law. Simon acts for Ms Alibrahim, a wife of the late King Fahd of Saudi Arabia, in proceedings brought by a Liechtenstein foundation seeking to set aside a conveyance of the property. The Court of Appeal judgment is now the leading authority relating to the striking out of proceedings for abuse of process where a party is alleged to have "warehoused" proceedings.
- *Long v Rodman* [2019] EWHC 753 (Ch), [2019] EWHC 2451 (Ch): Simon was instructed (along with [Andrew Mold QC](#)) on behalf of two of four beneficiaries of a c. USD130m estate who successfully sought the removal of the professional administrator following a bitterly contested dispute, in which the professional administrator was, unusually, held not to be entitled to recover the majority of his costs from the estate as a result of the way the litigation had been conducted.
- *PS Independent Trustees Ltd v China Shipping (UK) Agency Co Ltd* [2019] ICR 1375: Simon acted for the defendants in a claim for the recovery of a multimillion-pound debt allegedly owed by the defendants in respect of the funding of a defined benefit pension scheme. The claim raised novel questions concerning the interpretation of pensions legislation governing the circumstances in which companies who sponsor multi-employer pension schemes may be liable for debts where another sponsoring company enters into insolvency.
- *Catalyst Housing Limited v Martin* [2018] EWCA Civ 1206: Simon appeared as sole counsel for the appellants in both the renewed oral application for permission to appeal and the substantive appeal in proceedings concerning contractual succession to an assured tenancy under the Housing Act 1988.
- *Interactive Technology Corp Ltd v Ferster* [2017] EWHC 1510 (Ch); [2017] EWHC 1799 (Ch): Simon appeared (with [Clare Stanley QC](#)) in litigation concerning the beneficial ownership of an offshore, web-based business, the admissibility of Part 36 offers in split trial proceedings, and the availability of summary judgment in response to a purported defence of causation where equitable compensation for loss is claimed.
- *Dutton v FDR Ltd* [2015] EWHC 2946 (Ch); [2017] EWCA Civ 200: Simon acted (with [Paul Newman QC](#)) for the successful appellant in proceedings concerning how an underpin operated in relation to the increases applicable to pensions in payment. The underpin arose as a result of a defective trust deed executed in 1991 which purported to change the rate at which pensions in payment were increased from 3% to 5%LPI.
- *Pollock v Reed* [2016] Pens LR 129: Simon acted (with [Edward Sawyer](#)) for the trustees of an occupational pension scheme seeking court approval of a proposed bulk transfer of the scheme's assets and liabilities without individual member consent to a new scheme.
- *Labrousche v Frey; Re Olga Martin-Montis Will Trusts* [2016] EWHC 268 (Ch): Simon acted (with [Emily Campbell](#)) for the professional trustees in a seven-week High Court trial concerning the administration of multi-million pound will trusts created in 1980. The claimant alleged various breaches of trust over decades by the professional trustees and against his own mother, a former lay trustee. The claim raised a number of complex issues of Liechtenstein, Swiss and English trust law.
- *Wood v Waddington* [2014] EWHC 1358 (Ch); [2015] EWCA Civ 538: Simon acted for the successful appellants in a right of way dispute between neighbouring landowners. The claim is now one of the leading authorities concerning the grant of rights of way by operation of law under section 62 of the Law of Property Act 1925.
- *Spencer v Fielder* [2015] 1 WLR 2786: Simon acted for the representative beneficiary in Beddoe proceedings relating to litigation between British Airways and the trustees of the Airways Pension Scheme arising out of the decision of the trustees to grant discretionary benefit increases to members.
- *Cosmetic Warriors Ltd v Amazon.co.uk Ltd* [2014] FSR 31; [2014] EWHC 1316 (Ch): Simon acted for the successful claimant in a trademark dispute between the owner of the 'Lush' cosmetics brand and the well-known online retailer.



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## Practice Overview continued

- *Ansa Logistics Ltd v Towerbeg Ltd* [2012] EWHC 3651 (Ch): A landlord and tenant dispute concerning whether the tenant had breached a covenant against parting with possession and whether the landlord had unreasonably withheld consent to underlet the premises to a third party, Ford Motor Company Ltd.

## Commercial

Commercial disputes comprise a significant proportion of Simon's work. Instructions range from small consumer disputes to multi-party, multi-jurisdictional litigation. He acts both in his own right and as a junior as part of a larger team. He has a particular interest in cases involving civil fraud, company disputes, asset-tracing and cross-border issues and disputes with a Middle Eastern element.

### Notable instructions include:

- *National Stadium Project (Grenada) Corp v NH (Caribbean) Ltd* [2020] UKPC 25: This dispute arose out of the construction of a sports stadium in Grenada in the late 1990s and concerned the entitlement to a multi-million dollar fund which had been frozen when the dispute first arose back in 1999. After 20 years, an arbitration, and multiple court proceedings, the matter was finally resolved by the Privy Council in 2020. It is an important recent authority on the law of Quistclose trusts and equitable assignment.
- Acting (with [Clare Stanley QC](#)) in *Interactive Technology Corporation Ltd v Ferster* [2017] EWHC 1510 (Ch); [2017] EWHC 1799 (Ch), which concerned the beneficial ownership of an offshore, web-based business and the relief to be granted to a company whose director had been found liable for dishonest breaches of his fiduciary duties.
- Acting for trustees of an employee benefit trust in relation to the proposed sale of the shares in the company which formed the principal asset of the trust.
- Acting for members of a private company limited by guarantee who were purportedly expelled under the disciplinary procedures contained in the company's articles of association.
- Acting (with [James Ayliffe QC](#)) in proceedings concerning a purported joint venture development of land. This ongoing litigation concerns two claims, one a derivative action and the other a direct action, brought by the representatives of one of the parties to the alleged joint venture.
- Acting (with [Nikki Singla QC](#)) for various director defendants of a Jersey-based corporate trustee in a two-day mediation. The Jersey litigation concerned alleged breaches of trust and directors' common law and fiduciary duties as directors of a corporate trustee of a family settlement.
- Appearing (with [John Wardell QC](#)) in High Court litigation where both parties had brought unfair prejudice petitions under s. 994 of the Companies Act 2006. The case concerned various sale purchase agreements relating to a technology joint venture. The litigation raised, amongst other things, issues of international law, including the existence of constitutional and customary values in foreign countries and their impact on disclosure obligations in English courts.
- Acting in arbitration proceedings concerning a multi-million pound construction project in the Middle East.
- Instructed in a case concerning the purported forfeiture of a business tenancy in the Dubai International Finance Centre for non-payment of rent and relief under the DIFC Real Property Law and DIFC Law of Damages and Remedies.
- Advising on the extent of third-party disclosure obligations in unfair prejudice petitions.
- Instructed in a landlord and tenant dispute concerning the repairing obligations of high velocity lifts in a newly-built high-rise tower in London.
- Acting for a business intending to offer will-writing and probate services in relation to regulatory requirements under the Legal Services Act 2007.



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## Commercial continued

- Appearing for the claimants in *Cosmetic Warriors Ltd v Amazon.co.uk Ltd* [2014] FSR 31; [2014] EWHC 1316 (Ch), a European Community trademark dispute.
- Acting for a cosmetics company in relation to its international distribution agreements and alleged breaches of those agreements by the company's overseas distributors
- Appearing for a defendant in proceedings concerning the sale of allegedly defective switchable transparent glass LCD panels.
- Acting for a defendant in proceedings concerning an alleged joint venture between business partners. Accounts and inquiries were sought as were the repayment of monies allegedly loaned and the recovery of other luxury assets said to be held as part of the alleged joint venture.
- Acting for a project management business in relation to a claim for breach of contract arising out of a proposed redevelopment of substantial commercial premises and the funding arrangements to be provided by a local authority.
- Acting in professional negligence proceedings brought by the purchaser of a long leasehold of commercial premises against its conveyancing solicitors in respect of an alleged failure by the solicitors to advise properly in relation to planning matters relating to the property.
- Instructed in a case concerning the validity of two purported buy-backs of shares in a private company which buy-backs did not comply with the formalities set out in the Companies Act 1985 and the Companies Act 2006.
- Acting for the managers of a commercial premises following damage to the property and its contents having been sustained and a dispute arising as to whose responsibility it was to insure the contents of the premises under the terms of the service contract agreed between the various stakeholders.
- Acting for a sub-contractor concerning a potential claim for breach of contract against the head contractor in relation to support services provided on behalf of a local authority.