



NEW SQUARE

# Theo Barclay

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*Outstanding. Smart, diligent, hard-working.*

- Legal 500 2021

He has been recognised by the directories:

- as a “rising star” in Commercial Litigation: *“Outstanding. Smart, diligent, hard-working. Absolutely will go as deep into the subject matter as necessary to find the answers and to be prepared – excellent on his feet and in the courtroom”.*
- as a Leading Junior in Sports Law: *“Excellent oral and written submissions and hugely confident; he has appeared against and beaten several QCs already”.*
- as a Leading Junior in Costs Law: *“Extremely hard working, he gets stuck into problems very quickly, and has well-judged insights into what points really matter.”*

Current and recent cases include:

- ***SKAT v Solo Capital Ltd & Ors*** [2021, ongoing] acting for the Danish tax authority on costs in this multi-billion pound fraud and unjust enrichment litigation (led by Nick Bacon QC).
- ***Lehtimäki v Cooper*** [2020] UKSC 33: the leading Supreme Court case on trust administration, charitable companies and fiduciary duties (led by Guy Mopuss QC and Professor Sarah Worthington QC).
- ***Glencairn v Product Specialities*** [2020] EWCA Civ 609: leading Court of Appeal authority on solicitors’ duties of confidentiality to their former opponents (sole counsel at first instance and in the Court of Appeal).
- ***GHS v Beale, Webstorm & Ors*** [2021, ongoing]: Multi-million pound conspiracy and copyright infringement claim in the IT sector, raising jurisdictional issues *and questions of alternative service (as sole counsel)*.
- ***Combe International Ltd v Dr Augustus Wolff GMBH*** [2021, ongoing]: High Court trademark infringement and passing off dispute between the owners of personal healthcare brands Vagisil and Vagisan (led by Mark Vanhegan QC)



- **Recovery Partners & Anor v Rukhadze & Ors** [2021]: instructed on privilege issues in major Commercial Court fraud litigation arising out of the death of Georgian billionaire Arkady Patarkatsishvili.
- **Beiersdorf v Aldi Stores Limited** [2021, ongoing]: High Court claim against a supermarket for trademark infringement in relation to lookalikes of the Nivea Sun range. Representing Nivea (led by Guy Hollingworth)
- **Winlink Marketing v Liverpool Football Club** [2020] EWHC 2271 (Comm): Part of successful team in this High Court trial concerning brokers' contracts and commission for a sponsorship agreement (led by Robert Anderson QC)
- **Albion Energy Ltd v Energy Investments Global BRL** [2020] EWHC 301: dispute between a Qatari oil exploration company and an energy company (led by Guy Morpuss QC for the appeal to the Court of Appeal)
- **New Balance v Liverpool Football Club** [2019] EWHC 2837: successfully acted for Liverpool Football Club in this Commercial Court trial on whether it was permitted to appoint Nike as its kit sponsor (led by Guy Morpuss QC).
- **BV Nederlandse van Eiprodukten v Rembrandt** [2019] EWCA Civ 596: leading authority on the test for causation in fraud (led by Guy Morpuss QC at first instance and in the Court of Appeal).

### **Academic law**

In addition to his practice, Theo has lectured on commercial law at City University and on international law at King's College, London. He is a regular contributor to legal journals.

### **Outside of Law**

Theo has written about British politics for, among others, the Times, the Daily Telegraph, the Independent and the Spectator.

- His first book, ***Fighters and Quitters: Great Political Resignations*** was published by Biteback in January 2018 (Hardback) and February 2019 (Paperback). It is available [here](#).
- He is a contributing author to ***The Prime Ministers: Three Hundred Years of Political Leadership*** (Hodder & Stoughton, November 2020). It is available [here](#).

### **Privacy Policy**

Click here for a **Privacy Policy** for Theo Barclay.

## **Areas of Expertise**

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### **Commercial Litigation**

Theo is regarded as one of the up-and-coming juniors at the Commercial Bar, having been ranked by Legal 500 as a rising star in commercial litigation.

A large proportion of Theo's work is in the Commercial Court. He has experience across the whole range of commercial litigation, including banking, civil fraud, company and insolvency, breach of confidence, economic torts, energy and natural resources, all forms of injunctions, restitution, Sale of Goods, trusts, jurisdiction points and conflict of laws.

Examples of recent cases include:

- **SKAT v Solo Capital Ltd & Ors**: [2021, ongoing] acting for the Danish tax authority on costs in this multi-billion pound fraud and unjust enrichment litigation (led by Nick Bacon QC).
- **Lehtimäki v Cooper** [2020] UKSC 33: The leading authority on the courts' jurisdiction over charities and the question of whether charitable trusts owe fiduciary duties (acted as first junior to Guy Moppuss QC and Professor Sarah Worthington QC)
- **Glencairn IP Holdings Ltd v Product Specialties Inc** [2020] EWCA Civ 609: Landmark Court of Appeal decision on the circumstances in which a solicitors' firm will be removed from the record when the firm has previously acted against the same opponent (instructed as sole counsel in the High Court and Court of Appeal)
- **Recovery Partners & Anor v Rukhadze & Ors**: instructed on privilege issues in major fraud litigation arising out of the death of Georgian billionaire Arkady Patarkatsishvili.
- **Winlink Marketing v Liverpool Football Club** [2020] EWHC 2271 (Comm): Acted for the successful defendant in this High Court trial concerning brokers' contracts and commission for a sponsorship agreement (led by Robert Anderson QC)
- **Albion Energy Ltd v Energy Investments Global BRL**: A dispute between a Qatari oil exploration company and an energy company, currently on appeal to the Court of Appeal (instructed for the appeal, led by Guy Moppuss QC)
- **B.V. Nederlandse Van Eiproducten v Rembrandt Enterprises Inc.** [2019] EWCA Civ 596: landmark Court of Appeal authority on the test for inducement in fraudulent misrepresentation and the transferred loss doctrine (led by Guy Moppuss QC in the High Court and Court of Appeal).

Much of Theo's commercial law work is advisory. Recent clients include:

- a financial services company a claim for commission on a company sale;
- a vaccine manufacturer on various supply contracts;
- a broadcaster on issues arising out of organised piracy;
- a global consultancy firm, on the impact of Covid-19 and the force majeure clauses in its contracts;
- a TV network, on the implications of the Covid-19 pandemic on its broadcast licences;
- an ultra-high net worth individual, on a dispute over a film finance loan;
- a solicitors' firm, on whether it had breached a series of undertakings;
- a group of disaffected rail passengers, on the prospects of mounting a group action in against a train operating company;
- a communications agency, on the effects of the House of Lords' Code of Conduct; and
- a leading UK recruitment firm, on a series of breach of contract claims.

Theo has written the following articles on commercial law:

- 'Causation and Quantum in Covid-19 Business Interruption Policy claims', *New Law Journal* (2020)
- 'Moving on from Bolam– the High Court applies the Montgomery v Larnarkshire test in a financial professionals case', *Solicitors Journal* (November 2016)
- 'Labour v Labour: the courts' resolution of political disputes', *Solicitors Journal* (September 2016)
- 'Fair is foul and foul is fair', *Solicitors Journal* Vol 159 no 42 (November 2015)
- 'The proportionality test in UK law: a new ground of review or a fading exception?', *SJOL* (January 2012)

## Qualifications & Memberships

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Theo studied Modern History at Brasenose College, Oxford, where he was an academic exhibitor.

He then achieved a Distinction in the Graduate Diploma in Law, placing second in his year group.

Between 2010 and 2014 he was awarded Hardwicke, Lord Haldane, Lord Denning and Lord Wolfson scholarships by Lincoln's Inn.

In 2017 the Inns of Court awarded Theo the Pegasus Scholarship to undertake a two-month fellowship in the United States to study comparative law. The placement included working in the Supreme Court, Senate and House of Representatives, as well as marshalling federal and state judges in Florida, California, Delaware and Virginia.



Theo is a member of COMBAR, the British Association of Sport & Law, the PNBA and the Financial Services Law Association.