

# Tom Cleaver

*“An IP star of the future.”*

– LEGAL 500, 2015

Year of call: **2009**  
Degree: **BA Hons History (Cambridge): Starred First, top of year**



Tom takes instructions in all the main areas of chambers' practice. He has experience of all levels of the English court and tribunal system, as well as of domestic and international arbitration (including CAS), the European Court of Human Rights, the CJEU, and the courts of numerous British Overseas Territories and other jurisdictions such as the Dubai International Financial Centre. He acts regularly in cases of all types, from fast-paced injunctive proceedings to complex and multijurisdictional strategic litigation.

The main focus of Tom's practice is public and commercial law, with a particular emphasis on media and entertainment.

Tom is a member of the Treasury Solicitor's 'C' Panel. He also serves as a member of the Council of the human rights group Liberty.

## EXPERIENCE

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### Public & Regulatory

Tom has acted in a number of important and high-profile public law disputes, for claimants and defendants.

He regularly advises government bodies and regulators, including in a non-litigation context. He spent several months on secondment to Ofgem (the gas and electricity regulator) in 2011 advising on issues of public and European law. His clients have included Ofgem, the FCA, the Gambling Commission, the Environment Agency, and other UK public authorities. He has also conducted training in public law and financial services law for the Dubai Financial Services Authority, for whom he has acted on several occasions. Much of his work involves public international law.

Tom also has a particular interest in civil liberties and human rights: see the separate section below.

## Cases

### **Solar Feed-in Tariffs Litigation**

A high-value and complex dispute about loss caused by the Government's proposal in 2011 to change the terms on which solar photovoltaic installations could qualify for the feed-in tariff.

### **Privacy International v Investigatory Powers Tribunal**

(2016)

A High Court challenge /judicial review of a decision of the Investigatory Powers Tribunal, raising issues concerning (i) the validity and effect of a statutory ouster provision and (ii) the proper approach to statutory interpretation in the context of the powers of the intelligence services.

### **R (British Academy of Songwriters, Composers and Authors) v Secretary of State for Business, Innovation and Skills**

[2015] EWHC 1723 (Admin) and [2015] EWHC 2014 (Admin)

A challenge to the decision to introduce a private copying exception without making any provision for compensation to rightholders. Resulted in the quashing of regulations on grounds of illegality.

### **Badger Cull Litigation**

Various litigation concerning Natural England's licensing of badger culls to take place in Gloucestershire, Somerset, and Dorset in 2013-2015.

### **Calland v FCA**

[2015] EWCA Civ 192

A harassment claim brought by a former IFA against the Financial Conduct Authority in respect of regulatory activity carried out in relation to him.

### **O'Sullivan v FCA**

(2015)

A judicial review claim brought by an individual against the Financial Conduct Authority in respect of its alleged failure to regulate a currency exchange firm.

### **Dubai Financial Services Authority v Deutsche Bank**

(2014)

A case before the DIFC Court concerning the DFSA's powers to compel the production of information (raising issues of Swiss banking law).

## **R (Gibraltar Betting and Gaming Association Ltd) v Secretary of State for Culture, Media and Sport**

[2014] EWHC 3236 (Admin)

A challenge to the Gambling (Licensing and Advertising) Act 2014 on grounds of noncompliance with EU free movement law.

## **Avoncliff Weir**

(2014-2015)

A series of disputes (including judicial review proceedings and a statutory appeal) concerning the Environment Agency's decisions in relation to two applications to build a hydroelectric power facility at Avoncliff.

## **R (Plantagenet Alliance Ltd) v Secretary of State for Justice, University of Leicester**

[2014] EWHC 1662 (QB)

A challenge to the proposed reinterment of King Richard III in Leicester Cathedral.

## **Retrospective taxation of foreign investments**

(2014)

A dispute about whether a retrospective tax imposed by a foreign government is consistent with the terms of a bilateral investment treaty.

## **Martin Coward v Elena Ambrosiadou, IKOS AM, and Kroll**

(2014)

A claim by a hedge-fund billionaire against his former business partner (and estranged wife) concerning allegedly illegal surveillance commissioned by her, raising issues of privacy under Article 8, and of litigation privilege and privilege against self-incrimination in relation to the products of the surveillance.

## **John Hewitt v Tara Rivers**

(2013)

A challenge to the validity of the election of Tara Rivers, the Cayman Islands Minister of Education, Employment and Gender Affairs. The leading case on electoral challenges in British Overseas Territories.

## **Bob Hodge and others v Governor of the Virgin Islands**

(2013)

A challenge in the Eastern Caribbean Supreme Court to the BVI Governor's proposed extradition of four alleged drug smugglers to the United States.

### **Minister of Finance v Bunge Ltd**

(2013)

A case before the Court of Appeal of Bermuda concerning an attempt by the Minister of Finance to compel Bunge Ltd to provide information to the Argentinian Government pursuant to a request made under an international treaty.

### **Banks v Director of Land Valuation**

(2013)

A case before the Court of Appeal of Bermuda concerning the interpretation of the Land Valuation and Tax Act 1967 to a property owned by the husband of the former Premier of Bermuda.

### **Wimbledon Village Surgery v Sutton and Merton PCT**

(2013)

A dispute about whether the cost of an increase in pension contributions was to be borne by the PCT or by practitioners.

### **Dubai Financial Services Authority v Arqam Capital Ltd, Ernst & Young**

(2012)

The first ever case before the Dubai Financial Markets Tribunal, and the first ever appeal from that Tribunal to the DIFC Court.

### **R (BBC and Dominic Casciani) v Secretary of State for Justice**

[2012] EWHC 13 (Admin)

A challenge to the Justice Secretary's refusal to allow the BBC to film an interview with the prisoner Babar Ahmad for broadcast.

### **ITV v TVCatchup**

[2011] EWHC 1874 (Pat)

Part of a team involved for the Secretary of State in resisting a collateral challenge to the lawfulness of amendments made to the Copyright, Designs and Patents Act 1988 using powers under the European Communities Act 1972.

### **R (British Telecommunications plc & another) v Secretary of State for Business, Innovation and Skills**

[2011] EWHC 1021 (Admin)

Part of a team involved in a judicial review of the anti-filesharing provisions of the Digital Economy Act 2010.

**Dr Knight v GMC**

(2015)

A statutory appeal against a decision to impose conditions on a doctor's registration, raising issues about the proper application of the power to impose conditions where those conditions would arguably be tantamount to outright suspension.

**Dr Kakuk v GDC**

(2015)

A judicial review claim brought by a dentist in respect of a finding that her fitness to practise was impaired, raising issues about the circumstances in which a decision can be quashed for irrationality on the grounds of alleged errors of internal logic.

**British Psychoanalytic Council cases**

(2015)

Two challenges to decisions of the British Psychoanalytic Council on behalf of psychotherapists subject to disciplinary action, raising issues about the susceptibility of the BPC's decisions to judicial review.

## Civil Liberties & Human Rights

As well as dealing with human rights law regularly in his other work (in particular his public law and media law work), Tom regularly acts in cases revolving around civil liberties, and has a strong academic and personal interest in the subject.

Before starting pupillage Tom volunteered in the Advice and Information department of human rights group Liberty, advising members of the public on questions of human rights law. He remains involved with Liberty, and has recently been elected to his fourth term as a member of its Council.

## Cases

**Privacy International v Investigatory Powers Tribunal**

(2016)

A High Court challenge /judicial review of a decision of the Investigatory Powers Tribunal, raising issues concerning (i) the validity and effect of a statutory ouster provision and (ii) the proper approach to statutory interpretation in the context of the powers of the intelligence services.

**Privacy International, Greennet and others v GCHQ**

(2015)

A case before the Investigatory Powers Tribunal concerning the mass deployment by GCHQ of malware to computers and mobile devices to enable unauthorised access to their functions and contents, and the targeting by GCHQ of network providers and ISPs to facilitate mass surveillance of their users.

**Hassan v United Kingdom**

(2014)

A challenge before the Grand Chamber of the European Court of Human Rights concerning a civilian interned in Iraq in April 2003 and later found dead. The leading international case on the application of international human rights law during armed conflict.

**Tan Eng Hong v Attorney General of Singapore**

[2014] SGCA 53

A challenge under the Constitution of Singapore to the lawfulness of the criminalisation of male homosexual acts under s 377A of the Singapore Penal Code.

**R (BBC and Dominic Casciani) v Secretary of State for Justice**

[2012] EWHC 13 (Admin)

A challenge to the Justice Secretary's refusal to allow the BBC to film an interview with the prisoner Babar Ahmad for broadcast.

## Professional Discipline

Tom has acted for many years in disputes about the lawfulness of disciplinary decisions against regulated entities or individuals. Those cases often raise complex disputes of fact as well as important public law issues.

## Cases

**Dr Knight v GMC**

(2015)

A statutory appeal against a decision to impose conditions on a doctor's registration, raising issues about the proper application of the power to impose conditions where those conditions would arguably be tantamount to outright suspension.

**Dr Kakuk v GDC**

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A judicial review claim brought by a dentist in respect of a finding that her fitness to practise was impaired, raising issues about the circumstances in which a decision can be quashed for irrationality on the grounds of alleged errors of internal logic.

**British Psychoanalytic Council cases**

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## Commercial

Tom has experience of a range of large and complex commercial cases, often with a substantial international element. As well as working as part of large teams on multi-billion-dollar litigation, he regularly acts as sole counsel in smaller disputes. He has particular experience of ex parte relief such as search orders and freezing orders.

## Cases

### **Government of the Republic of the Maldives v GMR-MAHB Consortium**

(2012-2016)

A \$1.4bn UNCITRAL arbitration concerning the development and operation of the main international airport of the Maldives.

### **Rowe and others v Ingenious Media Holdings Ltd and others**

(2016)

A number of claims brought by investors in various 'Ingenious Group' film and video game investment schemes, following decisions by HMRC as to the correct tax treatment of those schemes.

### **Standard Life Insurance v Mark Collins**

(2016)

A dispute about liability of individual directors for losses caused by the collapse of Cattles, a major subprime lender, in 2009.

### **Proxima v Merrill Lynch International**

(2015)

A £500m dispute between Merrill Lynch and a company owned by the Tchenguiz Family Trust, raising allegations of market manipulation and interest rate fixing.

### **Salford Capital Partners Inc**

(2015)

A number of disputes across various jurisdictions involving questions of BVI partnership law, contractual construction and allegations of breach of duty, computer hacking and breach of confidence.

### **Taktouk v Semaan**

[2015] EWHC 652

A dispute between two wealthy individuals about the sale of their former matrimonial home by one of them to a company owned by her new partner (the footballer Cesc Fabregas), raising issues concerning fiduciary duties and res judicata.

### **Jose Cuervo International (UK) Ltd v Ayaz Ali**

(2014)

A High Court claim concerning allegations of a multi-million-dollar fraud perpetrated on Jose Cuervo by its former UK accountant.

### **First Rate FX v Opt FX Ltd and others**

(2014)

A dispute between two foreign exchange traders concerning an alleged team move.

### **Cuccolini S.R.L v Elcan Industries Inc**

[2013] EWHC 2994 (QB)

A dispute between an Italian manufacturer and its New York licensee, raising issues of forum conveniens and whether there is a discretion to stay proceedings under the Brussels Regulation in favour of proceedings in a non-Member State.

### **ODL Securities Ltd v Adrian McGrath, Anthony Clements**

[2013] EWHC 1865 (Comm)

A claim by a foreign exchange broker in respect of millions of pounds lent by its Head of Risk, allegedly without authorisation, to the failing A1 Grand Prix.

### **Kaplan Financial Ltd v Daron Locke**

(2013)

A claim by Kaplan against its former Head of Business Development who left to join the rival education provider BPP and who was suspected to have taken confidential information with him.

### **Zoe Kirk-Robinson v Google Ireland Limited**

(2013)

A cross-border dispute about the suspension by Google of advertising revenue earned through the AdSense programme.

### **Messila House Ltd and Fawaz Al-Hasawi v Omar Al-Hasawi**

(2013)

A dispute between members of the Al-Hasawi family, owners of Nottingham Forest FC, in respect of alleged breaches of fiduciary duty in the management of property investments.

### **Cherney v Deripaska**

(2012)

Part of the Defendant's counsel team in a multi-billion-dollar claim concerning the ownership of Rusal and allegations of criminality in 1990s Russia.



### **Hewlett Packard Ltd v a supplier of printer products**

(2012)

A claim in respect of a major supplier's allegedly fraudulent misuse of a special discount on supplies in order to undercut market prices.

### **Dubai Financial Services Authority v Arqaam Capital Ltd, Ernst & Young**

(2012)

The first ever case before the Dubai Financial Markets Tribunal, and the first ever appeal from that Tribunal to the DIFC Court.

### **Masri v Consolidated Contractors Company and others**

[2011] EWHC 1024 (Comm)

Contempt of court proceedings in the long-running dispute between Munib Masri and the Consolidated Contractors group of companies.

## **Media & Entertainment**

Tom regularly acts for media law clients in a range of contexts, both advisory and litigious, and in various courts and arbitral tribunals.

He is rapidly becoming one of the country's leading barristers in the field of interactive entertainment, combining interest and expertise in the relevant law with a thorough awareness of the industry and its needs. He has advised and represented a range of publishers (such as Sony Computer Entertainment Europe and Bandai Namco) and developers (such as Doublesix and Sumo Digital).

He also has a great deal of experience in relation to music, film and TV, with his clients having included the BFI, the BBC, ITV, Rihanna, and members of One Direction. He is a particular authority on difficult issues of film copyright, having advised a number of clients on chain-of-title issues and copyright under predecessor legislation.

Tom occasionally writes as a videogame historian. His article Videogames and the English Courts was published by Read-Only Memory in 2015.

***“He is practical, commercial and very rigorous in his approach.”***

– CHAMBERS UK, 2016

## **Cases**

### **Rebellion Interactive Ltd v Square Enix**

(2016)

A High Court dispute about the development of the aborted FPS game 'Rift'.

### **Disc Solutions Ltd v Lex Records Ltd**

(2016)

A dispute about the release and alleged underperformance of 'Nehruviandoom', a collaborative studio album by hip hop artists MF Doom and Bishop Nehru.

### **David Axon v Ministry of Defence**

[2016] EWHC 787 (QB)

A High Court dispute about an article published in The Sun about the Claimant, a warship commander, allegedly on the basis of information leaked by a rogue employee at the MOD's Permanent Joint Headquarters.

### **Yorke & Others v Parlophone Records Ltd**

(2016)

A High Court dispute between the band Radiohead and their original record label about the proper royalty payable in respect of digital exploitation of their works under a contract agreed in 1992.

### **FilmFlex Movies Ltd v Piksel Ltd**

[2015] EWHC 426 (Ch), continuing in 2016

A High Court dispute concerning the rights to the source code in respect of a video-on-demand platform, encompassing issues about compliance with court orders for delivery up of source code.

### **Sopher v Guy Lawrence and others**

(2016)

Acting for numerous musicians (including Sam Smith, Eliza Doolittle, and the bands Disclosure and AlunaGeorge) in a claim by an individual for infringement of copyright in lyrics allegedly written by her in a notebook years before but subsequently lost.

### **ITV v PRS and MCPS**

(2015-2016)

A dispute in the Copyright Tribunal about fees charged to ITV for the use of music in its programming.

### **BSI Enterprises Ltd v Blue Mountain Music Ltd**

[2015] EWCA Civ 1151

A dispute about the copyright in thirteen works composed by Bob Marley but falsely attributed to others, including 'No Woman No Cry'. Currently on appeal to the Court of Appeal.

### **Akhtar v Bhopal Productions (UK) Ltd**

[2015] EWHC 154 (IPEC)

A dispute about copyright in relation to the film 'Bhopal: A Prayer for Rain', raising issues about the proper application of the IPEC costs rules relating to unreasonable behaviour.

### **Doublesix Digital Publishing Ltd v Anime Virtual Ltd and Born Ready Games Ltd**

(2014)

A High Court dispute about royalties in relation to the game Strike Suit Zero, raising issues such as whether backing a game on Kickstarter in return for the promise of a copy amounts to a 'sale'.

### **PRS v Cineworld Cinemas Ltd**

(2014)

A dispute in the Copyright Tribunal about the application of the tariff governing the use of music by Cineworld.

### **EC1 Music v Lily Allen**

(2014)

A High Court dispute between Lily Allen and her former manager.

### **Racing game arbitration**

(2014)

An LCIA arbitration about the development of a racing game for PS3 and Xbox 360.

### **Jodie Marsh v Click Media Entertainment Ltd**

(2014)

A High Court dispute between Jodie Marsh and her former manager about allegedly overclaimed commission.

### **Discovery Communications Europe Ltd v Blizoo Media and Broadband EAD & another**

(2013)

A dispute about the distribution of TV channels including the Discovery Channel in Bulgaria.

### **Gordon Ramsay v Sara Stewart**

(2013)

A claim by Gordon Ramsay against one of a number of alleged co-conspirators in a campaign of email hacking and interference with his business, and a counterclaim in respect of alleged misuse of private information.

### **Gordon Ramsay v Phil Hall**

(2012)

A claim against Gordon Ramsay's former public relations adviser in respect of an alleged conspiracy to leak private photographs and medical information obtained through email hacking.

**Dorothy Henson v Warner Chappell Music Ltd, Universal Music Ltd, and others**

(2012)

A dispute about the authorship of, and copyright in, Death in Vegas's 1999 track "Dirge".

**R (BBC and Dominic Casciani) v Secretary of State for Justice**

[2012] EWHC 13 (Admin)

A challenge to the Justice Secretary's refusal to allow the BBC to film an interview with the prisoner Babar Ahmad for broadcast.

**Bergling & Pournouri v Simco Limited t/a Syco Music**

(2011)

An application by Avicii for an injunction to prevent the release of Leona Lewis's single 'Collide' on grounds of copyright infringement.

**Peoples Studios Ltd v Dirtee Stank Recordings**

(2011)

A contractual dispute arising out of a track on Dizzee Rascal's fourth album, Tongue N' Cheek.

## Intellectual Property

In addition to his extensive work in connection with the media industries (see the separate section above for details), which regularly raises IP issues, Tom has expertise of various other aspects of intellectual property law.

*"An IP star of the future."*

— LEGAL 500, 2015

## Cases

**Norgine B.V. v Salix Pharmaceuticals Inc**

(2016)

A dispute over the scope of a pharmaceutical licensing agreement, concerning the circumstances in which an exclusive licence granted in respect of one product will extend to an allegedly new product developed by the licensor.

**Tom Gauld v Reed NCFE Limited**

(2016)

A dispute in IPEC concerning the use by the Defendant, a provider of recruitment-related services to educational institutions, of a drawing by the Claimant, and award-winning illustrator.

**Stik v Lamberty Limited**

(2016)

A dispute about the acquisition by an art gallery of works painted by the Claimant on two shipping containers in Poland, raising issues of alleged derogatory treatment by removing them from the site and offering them for sale.

### **Red Bull GmbH v Bull Brand Ltd**

(2015)

A trademark dispute between Red Bull and a British seller of tobacco-related products.

### **Camper & Nicholson's (Designs) Ltd v Camper & Nicholson's International SA**

(2014)

A dispute about the ownership of the rights to the oldest marine leisure brand in the world.

### **Jack Wills Ltd v House of Fraser Ltd**

[2014] EWHC 110 (Ch)

A dispute about House of Fraser's use of a logo of a pigeon wearing a bowler hat, said to infringe Jack Wills's trade mark of a pheasant wearing a top hat.

## **Sport**

Tom has represented a wide range of sporting bodies, clubs and players in disputes ranging from commercial (such as contractual or IP disputes) to disciplinary issues. His clients have included the International Cricket Council, the FA, and several major English football clubs. He recently spoke at a Law In Sport seminar on 'Running Football Disputes'.

***"He has a prodigious work rate, and the output of his efforts is consistently impressive."***

– LEGAL 500, 2015

## **Cases**

### **Capstone Sports Management Ltd v Daniel Opare**

(2016)

A dispute between a player and his former management company about money allegedly due under a management agreement

### **Geoff Banks v British Horseracing Authority**

(2016)

A dispute about loss caused to bookmakers as a result of the mishandling of a race at Ascot in July 2015.

### **Indian Hockey Federation v International Hockey Federation and Hockey India**

(2015)

A dispute in CAS between two rival national hockey federations in India about which of them should be recognised by the international federation.

### **Forest Green Rovers FC v FA**

(2015)

A Rule K dispute about the circumstances in which it is appropriate for a football league to order that a match in respect of which there has been a points deduction should be replayed.

### **Transfer fee dispute**

(2014)

A dispute between two English clubs about the interpretation of a transfer fee agreement, specifically in relation to payments due on a subsequent resale of the player.

### **Watford FC v Matchsaver Ltd**

(2014)

A High Court dispute about an allegedly defective pitch covering system supplied to Watford FC.

### **James Holden v FA**

(2014)

A Rule K arbitration concerning the length of a player's suspension for headbutting and grabbing the testicles of a match official.

### **Sells Goalkeeper Products v Allan McGregor**

(2013)

A High Court dispute about a sponsorship agreement with Scotland's leading goalkeeper.

### **Matt King v London Marathon Ltd**

(2013)

A dispute about the London Marathon's refusal to allow a disabled athlete to participate in the race and the compliance of that decision with equality law.

### **Ashley Theophane v Hennessy Sports Management Limited**

(2012)

A dispute before the British Boxing Board of Control concerning Ashley Theophane's successful defence of the British light welterweight title against Jason Cook.

### **West Ham United FC v Brescia Calcio**

(2012)

A dispute before the Court of Arbitration for Sport concerning non-payment of a transfer fee.

## **EU & Competition**

Tom has experience of a wide range of European law, particularly EU telecommunications law and competition law. He has been involved not only in EU law challenges in domestic courts but also in prospective challenges to acts of EU institutions.

## Cases

### **R (British Academy of Songwriters, Composers and Authors) v Secretary of State for Business, Innovation and Skills**

[2015] EWHC 1723 (Admin) and [2015] EWHC 2014 (Admin)

A challenge to the decision to introduce a private copying exception without making any provision for compensation to rightholders. Resulted in the quashing of regulations on grounds of illegality.

### **Delaney v Secretary of State for Transport**

[2014] EWHC 1785 (QB)

A Francovich damages claim concerning the UK's implementation of Directive 84/5/EEC, brought by a man seriously injured in a car accident while transporting a large quantity of cannabis for the purpose of supply.

### **R (Gibraltar Betting and Gaming Association Ltd) v Secretary of State for Culture, Media and Sport**

[2014] EWHC 3236 (Admin)

A challenge to the Gambling (Licensing and Advertising) Act 2014 on grounds of noncompliance with EU free movement law.

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Part of a team involved for the Secretary of State in resisting a collateral challenge to the lawfulness of amendments made to the Copyright, Designs and Patents Act 1988 using powers under the European Communities Act 1972.

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[2011] EWHC 1021 (Admin)

Part of a team involved in a judicial review of the anti-filesharing provisions of the Digital Economy Act 2010.

## ACHIEVEMENTS

### Education

BA Hons History (Cambridge): Starred First, top of year; Graduate Diploma in Law (College of Law): Distinction

- Winner, FSLA (Financial Services Lawyers Association) Essay Competition, June 2010
- Winner, Andrew Lees Essay Prize (UK Environmental Law Association), March 2010
- Winner, Law Reform Essay Competition (Bar Council), November 2009
- Finalist, Graham Turnbull Human Rights Essay Prize (Law Society), April 2009
  
- Winner, Inter-Inn Mooting Competition, June 2009 (for Lincoln's Inn)
- UK Semi-finalist, Jessup International Law Moot, February 2009 (for Lincoln's Inn), and winner of special prize for being the only competitor to score a perfect 100
  
- Lord Mansfield Scholarship (Lincoln's Inn), 2008
- Hardwicke Scholarship (Lincoln's Inn), 2008
- Makin-Foster Prize for History (Peterhouse), 2007
- College Prize for History (Peterhouse), 2007

Tom worked as a researcher at Unlock Democracy (formerly Charter 88) in 2008, researching and preparing briefing papers on issues of human rights law and constitutional reform.

Tom is a former Trustee and Secretary of the Fitzrovia Neighbourhood Association.