

## Catharine Otton-Goulder KC

YEAR OF CALL: 1983 YEAR OF SILK: 2000

*"'tough but tactically aware' who is deemed to be  
'balanced and very effective'."*

Chambers & Partners 2009

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## Practice Overview

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Catharine works in general commercial and common law. She handles very large, paper-heavy, litigation as well as smaller trials, arbitrations, and applications. She particularly enjoys complicated and intellectually stimulating work, and solving knotty problems. She has extensive experience in work involving many jurisdictions, both in foreign courts and in arbitrations in this jurisdiction and elsewhere, foreign laws and conflicts of laws issues, injunctions (especially freezing orders) and the tactical, strategic and evidential problems which arise in the conduct of such litigation. She is particularly interested in the best ways of achieving enforcement of judgments and awards. She acted for Barclays Bank in the interest rates swaps litigation, and as advised many banks and institutions concerned about their exposure on their loans to and contracts with public bodies. She was involved in the Tin Council litigation. She acted for Barclays de Zoete Wedd in the administration of British & Commonwealth Holdings plc, and in litigation arising from the collapse of Barings. She represented the Premier League in the trial concerning the issue of whether Premier League clubs were individually entitled to sell the television rights in their matches, and the pharmaceutical industry in a trial about whether resale price maintenance in that industry was justified. She acted for Motorola in seeking to recover over US\$2bn from four members of a Turkish family called Uzan and their company. She has an especial interest and expertise in conflict of laws rules and issues of foreign law, including, for example, Shari'a law and the laws of China; Chile, Peru and Venezuela; France, Germany, Greece, Italy, Monaco and Switzerland; Russia, Azerbaijan and Kyrgyzstan; the Lebanon; Abu Dhabi, Gibraltar, Guernsey, Isle of Man, Jersey and Liechtenstein, and of various American states e.g., Texas and Illinois.

She has given evidence as an expert in English law both in arbitrations (e.g. in Sweden) and in court proceedings (e.g. in Scotland). She has sat as a Recorder for fourteen years in civil and criminal matters; has sat in the Manx Court of Appeal and at first instance; and as a Deputy High Court Judge. She also sits as an arbitrator.

# Commercial

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## Important Cases

### *Russian Commercial Bank v Talon*

In this case, my clients, a Russian individual and his Russian companies, had borrowed substantial sums from the claimant, the Russian commercial Bank, under loan agreements which were expressly governed by English law. The loans were to fund the exploration and development of Siberian oilfields, which were charged as security for the loans. The defendants had submitted to judgment on the faith of representations which they claimed the bank had made to them in order to induce them to do so. The defendants contended that the representations were false and had been made fraudulently, and sought to have the judgments set aside on that ground. I obtained a freezing order in aid of that claim, which was ultimately discharged. The case involved issues of Russian company, Russian insolvency and Russian property law as well as English law.

### *Telos*

This case concerned the mis-selling of timeshares in a holiday complex. One partner in the enterprise had set about misappropriating the other's share in the business. I obtained an injunction, which forced the counterparty to comply with his contractual obligations and achieved a satisfactory settlement at an early stage.

*AK Investment CJSC (Appellant) v. Kyrgyz Mobil Tel Limited and Others (Respondents)* The High Court of Justice of the Isle of Man (Staff of Government Division) [2011] UKPC 7

The Privy Council upheld the decision of the High Court of Justice of the Isle of Man (Staff of Government Division) (i.e., the Manx Court of Appeal, constituted by Catharine and the Judge of Appeal), in a case in which a Kyrgyz company sought to enforce a Kyrgyz judgment against Manx companies in the Isle of Man. The Manx companies counterclaimed and applied to add the defendant companies as defendants to the counterclaim, which was governed by Kyrgyz law. On a challenge to the jurisdiction of the Manx courts, the Second Deemster held that no trial should take place in the Isle of Man, and the courts of Kyrgyzstan were the appropriate forum. The Manx appellate court addressed the issues of conflict of laws, jurisdiction and set out the principles to be applied in identifying the appropriate forum, and whether the Manx court was able to examine and rule on whether a foreign court or court system was corrupt or lacking in independence. The Manx appellate court held that the counterclaim was being pursued in an appropriate jurisdiction in the Isle of Man and that the defendants were proper parties to the counterclaim in the Isle of Man; that there was a discretion to add defendants; and that the defendants should be added to the counterclaim. This case was important not only in settling Manx law on these issues, but has much more general significance for the circumstances in which an English court can examine and rule on whether a foreign court or court system is corrupt or lacking in independence, and in deciding that the relevant test is whether there is a risk that there may not be a fair trial, as opposed to making a

finding that there will not be one.

*Energy Venture Partners Ltd v Malabu Oil And Gas Ltd* [2011] EWHC 2215 (Comm)

Catharine successfully prevented the payment out (other than into court) of \$215 million in relation to a success fee earned by the claimant (a BVI company) in respect of the disposal of the defendant's interests in a Nigerian oilfield payable by the Federal Government of Nigeria.

*Russian Commercial Bank (Cyprus) Ltd v Khoroshilov* [2011] EWHC 1721 (Comm); [2011] All ER (D) 35 (Jul)

The defendant seeks to set aside judgments and an award to which he had consented, on the grounds of fraud. The judgments and award related to loans made to his companies by the Russian Commercial Bank secured by the interests of those companies in oilfields in Siberia, one of which was guaranteed by the defendant personally. The critical agreements all contained an express English law clause, notwithstanding the absence of any connection with this jurisdiction.

*Drachs Investment No 3 Ltd v Brightsea UK Ltd* [2010] EWHC 2848 (Comm); [2010] All ER (D) 142 (Nov)

After the claimant had sold its subsidiary companies to the defendant, the subsidiaries recovered overpaid tax from the Revenue. Catharine successfully obtained an injunction preventing the dissipation of the repayment.

*R v Dobbie* [2009] 27 Isle of Man

In this case, Catharine was the trial judge; she refused an application to recuse herself and made wasted costs orders against both counsel.

*Guerrero v Monterrico Metals plc* [2009] EWHC 2475 (QB); [2009] All ER (D) 191 (Oct)

Catharine obtained an order freezing over £7 million in aid of some 30 Peruvian farmers who had allegedly been tortured in Peru in the course of a peaceful protest at planned mining operations on their land. This was a ground-breaking alliance of expertise in the Commercial Court with experienced PI lawyers which brought about a satisfactory settlement for the farmers.

*Mobil Cerro Negro Ltd v Petroleos De Venezuela SA* [2008] EWHC 532

Pursuant to an agreement with the Defendant, Venezuela's state-owned oil company, the Claimant invested very large sums in oil exploration in Orinoco, Venezuela. The agreement provided for arbitration in New York according to Venezuelan law, and for a mechanism for compensation on the event of expropriation by the Venezuelan government of the Claimant's interests in the oil fields. The Venezuelan government expropriated the claimant's assets without paying any of the agreed compensation. The Defendant had no assets or presence within England and Wales. The case established the circumstances in which the English courts may grant a

worldwide freezing order in aid of a foreign arbitration.

*Intermet FZCO and others v Ansol Ltd* [2007] EWHC 226 (Comm); [2007] All ER (D) 221 (Feb)

The Commercial Court refused to stay the English High Court action, which involved people who were not party to the Swiss arbitration agreement, notwithstanding the common subject matter and the risk of overlap with the arbitration being conducted in Zurich. The action involved the laws of England, Abu Dhabi, Azerbaijan, Gibraltar, Guernsey, Russia and Switzerland and complex conflicts of laws point, as well as a trial within a trial; issues of recognition and enforcement of awards; and domestic and worldwide freezing orders in aid of both the High Court proceedings and the arbitration. The client ultimately recovered 100% of its claim and costs.

*Motorola v Uzans* (No. 2) (Order for Cross Examination) [2002] EWHC 2187 (QB)

(No. 3) (Contempt of Court)

(No. 4) (Application for Stay of Attendance Order) [2003] EWHC 43 (QB)

(No.5) (Contempt: Committal) [2003] EWHC 118 (Comm)

(No.7) (Variation of Freezing Order) [2003] EWHC 1534 (Comm)

(No. 8) (Trial) [2004] EWHC 3169 (Comm)

Catharine led a large team of lawyers on injunctive proceedings in which Motorola seeks to recover US\$3bn stolen from it by fraud of a Turkish company in the context of Motorola's attempt to set up a mobile telephone network in Turkey. One of the defendants tried, but failed to become Prime Minister of Turkey. On the failure by any of the Defendants to make proper disclosure, each was ordered to attend court to be cross-examined on his/her assets. Each failed, and the court passed the highest sentence yet imposed for contempt of court in relation to breaches of court orders for disclosure of assets.

*Director General of Fair Trading v PATA and PAGB* [2001] EWCA CIV 1217, [2002] 1 WLR 269; [2000] All ER (D) 1895, 2425; [2002] 1 All ER 853

This action concerned the exemption of the pharmaceutical industry from the banning of RPM ("retail price maintenance"). The first trial was aborted because, on an objective test of apparent bias, in particular under the Human Rights Act 1998, one of the members of the court had to recuse herself, and, therefore, the whole court had to recuse itself.

*Director General of Fair Trading v Premier League, BSkyB and the BBC* [1999] All ER (D) 895

The Premier League successfully defended its rules whereby Premier League clubs must dispose of their rights relating to the televising of Premier League matches through the Premier League, and successfully defended the existing sales of such rights to the BBC and to BSkyB

*Credit Suisse v Allerdale District Council* [1997] QB 306; [1996] 3 WLR 894; [1996] 4 All ER 129, 176

(powers of local authorities and boundary between public and private law) Credit Suisse was unable to recover under a guarantee given to it by the local authority in respect of a loan made by the bank to a company which was wholly owned by the local authority, because the local authority had no power to give that guarantee. Since the local authority lacked the capacity to give the guarantee, the bank could not assert private law rights against the local authority, and the court had no power to treat the guarantee as valid.

*Arab Monetary Fund v Hashim (No. 9)* [1996] 1 Lloyd's Rep.589 (CA); [1993] 1 Lloyd's Rep. 543

An English company paid a bribe to Dr Hashim, the president and director general of the AMF, for the award to an associate company of the building contract for the AMF's headquarters in Abu Dhabi. It was held that the claim in contract, tort and quasi contract were to be determined according to the law of Abu Dhabi, under which the claim was time-barred. This case developed the law in the increasingly important area of conflict of laws

*Hazell v London Borough of Hammersmith & Fulham* and all matters relating to Interest Rate Swaps [1992] 2 AC 1; [1991] 2 WLR 372; [1991] 1 All ER 545

Local authorities had no power to enter into interest rate swaps of any kind for whatever purpose; any contracts purportedly made for such swaps were invalid and unenforceable; but money paid purportedly pursuant to such contracts was recoverable by way of restitution, provided money paid by one party to the other was set off against money paid by the other to the first party.

*Environmental impairment loss litigation.*

Settlement was ultimately achieved in massive multi-party litigation involving the insurance and reinsurance in London of losses in America arising out of pollution of the environment.

*International Tin Council litigation*

The ring-dealing members of the London Metal Exchange were not entitled to re-write the terms of the contracts made for the sale and purchase of tin.

Catharine has done a considerable amount of work on the powers of local authorities and other public bodies and the financing of their schemes (e.g. the Cutty Sark Station as part of the extension to the Docklands Light Railway; the Medway Tunnel; Road Schemes; Education; residential homes; refurbishment of Council estates; the development of Heaton Park, Manchester; the sale of property owned by local authorities and registration under the Land Registration Act) given both to banks (e.g. Morgan Grenfell, Samuel Montagu) and local authorities (e.g. Manchester, Kent and Essex), and others (e.g. the Meat and Livestock Commission). She has also done work for regulatory bodies e.g. acting for the PIA in a challenge to the SIB on operation of the compensation scheme for investors. She has also been involved in a number of international banking disputes (e.g. the Yugoslav National Debt; the financing of

engineering projects and modernisation of chemical factories in Russia; participation in BBL loans), family frauds, bank guarantees and letters of credit, and insurance disputes.

## Education & Qualifications

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### Degree

Literae Humaniores Without Viva Voce Examination First Class, Oxford

### Career

2000 Admitted as a Solicitor of the Supreme Court

(Call Date, Inn) 22 November 1983, Lincoln's Inn

Appointed Assistant Recorder in 1997

Appointed Recorder in 2000

Appointed Queen's Counsel in April 2000

Appointed Deputy High Court Judge 2008

## Directory Quotes

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"tough but tactically aware" who is deemed to be "balanced and very effective". She is admired for her "unparalleled knowledge" of the laws and procedures relating to freezing orders. (Chambers & Partners, 2009)