

# Thomas Raphael QC

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Languages: French (fluent)



## Overview

Thomas is a commercial silk, with a wide commercial practice, and well known as a lead advocate in difficult cases on private international law.

His commercial practice covers general commercial matters, banking, financial services, shipping, aviation, commodities, property, offshore energy, insurance and reinsurance, pharmaceuticals and life sciences, and transjurisdictional disputes. Thomas also has a leading practice in cross-over cases involving intellectual property, competition law, commercial law and private international law.

Thomas has argued cases at all levels of the higher English courts including the Supreme Court.

He appears in commercial arbitrations before the ICC, LCIA, and other trade specific arbitral forums, including the LMAA, LME, and RSA. Arbitrations have concerned subjects including mobile telephone contracts, international construction, superyachts, shipbuilding, charterparties, commodities, patent licensing and FRAND.

Thomas accepts appointments as an arbitrator in international arbitrations. He speaks fluent French and also acts as an expert witness on English law in foreign courts, including the French, Italian, Belgian and US courts.

He is the author of *The Anti-Suit Injunction*, which is the lead work on anti-suit injunctions and related issues in the conflict of laws. It has been cited with approval and adopted by the High Court and Court of Appeal on numerous occasions, and the Advocate General

## Publications

- *The Anti-Suit Injunction (2nd edn)* (Oxford University Press 2019).
- 'Do As You Would Be Done By: System-transcendent Justification and Anti-suit Injunctions' [2016] *Lloyd's Maritime and Commercial Law Quarterly* 256.
- 'The Problem of Horizontal Effect' [2000] *European Human Rights Law Review* 493.

## Professional memberships

- CIArb: Fellow
- LMAA: Supporting Member

## Lectures / talks

Thomas has lectured widely on numerous topics including, recently, private international law, contractual interpretation, and FRAND.

One example is 'FRAND - International Implications': Singapore Law Academy of Law (20 May 2018).

of the European Court of Justice, as well as in the courts of Hong Kong and Singapore. The second edition has been published in September 2019. Recently Quentin Loh J in the High Court of Singapore described it as a “very instructive” text.

## Education

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- University of Cambridge, Sidney Sussex College: BA in Law, Top First in Year and Slaughter and May Prize.
- University of Oxford: Magdalen College: BA in Politics, Philosophy and Economics

## Example cases

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- *Mobile Technologies v Prince Hussam* – \$0.5 billion loan dispute, which has led to anti-suit injunctions ([2018] 2 Lloyds Rep 192); sanctions for contempt of court ([2018] 9 WLUK 109); a decision on the boundaries of the court’s powers to order disclosure [2019] EWHC 2968 (Comm); and a judgment on the scope of the arbitral tribunal’s powers under the LCIA rules to correct or clarify awards [2019] EWHC 3109 (Comm).
- *SAS Institute Inc v World Programming Ltd* [2019] EWHC 2481 (Comm), [2020] EWCA Civ 599 – an anti-enforcement injunction in a copyright case involving cutting-edge question as to the boundaries of the Court’s powers.
- *Clearlake Shipping v Xiang Da* (The Chang Hang Guang Rong) [2019] EWHC 2284 (Comm) – an anti-suit injunction to restrain proceedings in Singapore.
- *Pfizer Ltd v Roche* [2019] EWHC 1520 – the scope of the court’s powers to grant declarations.
- *Conversant Wireless v Huawei Technologies* [2018] EWHC 2549: FRAND dispute about intellectual property licensing including an anti-suit injunction.
- *Lemos v Blue Diamond* [2018] EWHC 1595; [2018] 4 WLUK 437: property litigation, involving injunctions and claims as to the ownership of Liberian companies.
- *Contract of Affreightment Arbitration* (2018): arbitration concerning contractual interpretation in relation to a large-scale contract of affreightment.
- *A v B* [2018] 1 All ER Comm 509: s 69 and s 68 challenges to an arbitration award.
- *Dell Emerging Markets Ltd v IB Maroc Com SA* [2017]: anti-suit injunction to restrain proceedings brought in Morocco in breach of an exclusive jurisdiction clause and a claim for unpaid invoices.
- *Actavis v Eli Lilly* [2017] 1 All ER Comm 24 (CA); [2017] UKSC 48: multi-jurisdictional dispute in the life sciences field raising issues about applicable law and legal interpretation.
- *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWHC 2831 (Pat): application for an anti-suit injunction in large scale FRAND litigation concerning telecoms licensing.
- *Fujifilm Kyowa v Abbvie* [2017] Bus LR 333; [2017] EWCA Civ 1: jurisdictional dispute about valuable pharmaceutical products, including an anti-suit injunction.
- *Commercial arbitration against a state* (2017): major arbitration involving claims against a state arising out of the breakdown of a privatisation agreement.

## Private international law

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- *SAS Institute Inc v World Programming Ltd* [2019] EWHC 2481 (Comm), [2020] EWCA Civ 599 – an anti-enforcement injunction in a copyright case involving cutting-edge question as to the boundaries of the Court’s powers.
- *Clearlake Shipping v Xiang Da* (The Chang Hang Guang Rong) [2019] EWHC 2284 (Comm) – an anti-suit injunction to restrain proceedings in Singapore.
- *Conversant Wireless v Huawei Technologies* [2018] EWHC 2549: a FRAND dispute about intellectual property licensing

including an anti-suit injunction.

- *Mobile Technologies v Prince Hussam*: a \$0.5bn loan dispute which has led to anti-suit injunctions [2018] 2 Lloyds Rep 192, and sanctions for contempt of court [2018] 9 WLUK 109.
- *The Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWHC 2831 (Pat) – an application for an anti-suit injunction in large scale FRAND litigation involving telecoms licensing.
- *Fujifilm Kyowa Kirin Biologics Company Ltd v Abbvie Biotechnology Limited* [2016] EWHC 2204 – in a major intellectual property dispute, worth £1.2m per day, a jurisdictional question of general importance relating to the scope of the Court’s powers to serve proceedings out of the jurisdiction under CPR Part 6 and the Brussels I Recast. Thomas Raphael QC led a team of four counsel including another QC.
- *Chugai Pharmaceutical v UCB Pharma SA* [2017] FSR 45 – a dispute about important points of justiciability in pharmaceutical litigation.
- *Anan Kasei v Molycorp Chemicals & Oxides* [2016] EWHC 1877 – the resolution of a major point of principle on the scope of Article 24(4) of the Brussels I Recast and the ECJ decision in *GAT v LUK*.
- *Actavis v Eli Lilly* [2012] EWHC 3316 (Pat); [2013] EWHC 3479; [2013] EWCA Civ 517; [2014] 4 All ER 331; [2015] EWCA Civ 666; [2015] EWHC 2124 – a ground-breaking claim, concerning the cancer drug pemetrexed, in which Actavis asserted and obtained jurisdiction over the non-UK designations of a European patent and issues arose as to whether the Rome II Regulation meant that the *lex causae* applied to the conditions for negative declaratory relief. It is one of the lead cases on the Rome II Regulation. Thomas Raphael QC led the private international law elements of the case.
- *Future Investments v FIFA* [2010] ILPr 34 – a jurisdiction challenge in an intellectual property claim against FIFA in respect of broadcasting rights to the World Cup.
- The *Masri v CCC* litigation, which gave rise to numerous judgments of the High Court, Court of Appeal and House of Lords on fundamental questions of jurisdiction and the court’s extra-territorial powers, including: *Masri v CCC (No 2)* [2009] QB 450 (CA) – an extra-territorial receivership order; and *Masri v CCC (No 3)* [2009] QB 503(CA) – an anti-suit injunction to restrain re-litigation of English proceedings); [2010] 1 AC 903 – applications for the examination of foreign directors of foreign companies under CPR 71.

## General commercial

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- *Mobile Technologies v Prince Hussam* – \$0.5 billion loan dispute, which has led to anti-suit injunctions ([2018] 2 Lloyds Rep 192); sanctions for contempt of court ([2018] 9 WLUK 109); a decision on the boundaries of the court’s powers to order disclosure [2019] EWHC 2968 (Comm); and a judgment on the scope of the arbitral tribunal’s powers under the LCIA rules to correct or clarify awards [2019] EWHC 3109 (Comm).
- *SAS Institute Inc v World Programming Ltd* [2019] EWHC 2481 (Comm), [2020] EWCA Civ 599 – an anti-enforcement injunction in a copyright case involving cutting-edge question as to the boundaries of the Court’s powers.
- *Clearlake Shipping v Xiang Da* (The Chang Hang Guang Rong) [2019] EWHC 2284 (Comm) – an anti-suit injunction to restrain proceedings in Singapore.
- *Pfizer Ltd v Roche* [2019] EWHC 1520 – issues as to the scope of the court’s powers to grant declarations.
- *Conversant Wireless v Huawei Technologies* [2018] EWHC 2549: a FRAND dispute about intellectual property licensing including an anti-suit injunction.
- *Lemos v Blue Diamond* [2018] EWHC 1595; [2018] 4 WLUK 437: property litigation, involving injunctions and claims as to the ownership of Liberian companies.
- *A v B* [2018] 1 All ER Comm 509 – section 69 and section 68 challenges to an arbitration award.
- *Dell Emerging Markets Limited v IB Maroc Com SA* [2017] – Anti-suit injunction to restrain proceedings brought in Morocco in breach of an exclusive jurisdiction clause and a claim for unpaid invoices.
- *Commercial arbitration against a state* (2017) a major arbitration involving claims against a state arising out of the breakdown of a privatisation agreement.
- *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWHC 2831 (Pat) – an application for an anti-suit injunction in large scale FRAND litigation involving telecoms licensing.
- *A v B* [2017] 2 Lloyds Rep 1 – a challenge to an arbitration award raising novel issues on the applicability of the heads of s.68.
- *Actavis v Eli Lilly* [2016] EWHC 234 (Pat) – in the context of a large-scale intellectual property dispute, Thomas Raphael QC handled the commercial aspects of the dispute, including issues of contract law and estoppel.
- *Licensing/FRAND arbitration* (2015) – a high value licensing arbitration involving questions of FRAND.

- *IPCO v Nigerian National Petroleum Corporation* – a claim in respect of enforcement of a \$150 million Nigerian arbitration award (Comm Ct, 12 March 2013).
- *Wright v Deccan Chargers Sporting Ventures Ltd* [2011] EWHC 1307 (QB) – a jurisdiction challenge in a claim for wrongful dismissal of the claimant as chief executive officer of Deccan Chargers, an Indian Premier League cricket team.
- *Applications by British Airways plc, British Midland Airways and EasyJet Airline Company Limited in respect of the route London-Cairo/Alexandria* (CAA, SCAC 1/10) – hearing before the Civil Aviation Authority on the allocation of route frequencies.
- *Tramtrack Croydon Limited v London Bus Services Ltd* [2007] All ER (D) 14 (Comm Ct) and *London Bus Services Ltd v Tramtrack Croydon Limited* [2006] EWCA Civ 1743 (CA) – two actions for declaratory relief about the interpretation of the 99-year PFI for the Croydon Tramlink.
- *Russell Grant Ltd v Scott Equipment Company* [2005] EWCA Civ 156; (2005) 149 S.J.L.B. 266 (CA) – an appeal in a case concerning the sale of machinery.

## Banking and financial services

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- *Deutsche Trustee v Bangkok Land* (2016-7) – a dispute about payment under corporate bonds involving issues of limitation of actions.
- The RBS Rights Issue Litigation (*Greenwood v Goodwin and others*) – the claim in respect of RBS's £12bn rights issue of April 2008. Issues resolved so far included key procedural questions as to the management of group litigation. Judgments from hearings at which Thomas Raphael appeared include *Greenwood v Goodwin* [2014] EWHC 227; [2014] EWHC 227; and *Greenwood v Goodwin* [2014] 609.
- *Cukurova Finance International Ltd v Alfa Telecom Turkey Ltd* [2013] UKPC 25 – a major dispute about the control of a Turkish mobile telephone company, involving anti-suit injunction and relief from forfeiture against loan transactions.
- *Cassa di Risparmio della Repubblica di San Marino SpA v Barclays Bank Plc* [2011] EWHC 484 – a major trial in respect of the alleged mis-selling of 700m euros worth of structured notes linked to CDO2s.

## Shipping

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- *Clearlake Shipping v Xiang Da* (The Chang Hang Guang Rong) [2019] EWHC 2284 (Comm) – an anti-suit injunction to restrain proceedings in Singapore in a charterparty case.
- *Contract of Affreightment Arbitration* [2018] – an arbitration concerning contractual interpretation in relation to a large scale contract of affreightment.
- *Charterparty arbitration* (2017) – a recent charterparty arbitration raising significant issues about implied indemnities and liens.
- *OW Bunkers* [2015 – 2016] – Thomas Raphael QC has been recently involved in a number of arbitrations, and high court cases, in the ongoing OW Bunkers litigation.
- *Superyacht arbitration* (2013) – a major arbitration about the sale of a superyacht.
- *BP Oil International v Target Shipping Ltd* [2012] 2 Lloyds Rep 245; [2013] 1 Lloyds Rep 561 – a claim as to the interpretation of the freight provisions in a voyage charterparty.
- *Transpetrol Maritime Services v SJB (Marine Energy) BV* [2012] 1 Lloyds Rep 564 (CA) – a claim in relation to oil major warranties in a voyage charterparty.
- *Acergy Shipping Ltd v Société Bretonne de Reparation Navale SAS* [2012] 1 All ER (Comm) 369 – a 30m euro claim arising out of a contract for ship repair.
- *Ulisses Shipping Corporation v Fal Shipping Co. Ltd (The "Greek Fighter")* [2006] 2 CLC 497 (Comm Ct) – a claim by the owners of a vessel against her charterers after she was confiscated by the UAE authorities.
- *Front Carriers Limited v Atlantic & Orient Shipping Corp (The "Double Happiness")* [2007] 1 Lloyd's Rep 131 (Comm Ct) – the trial of a claim for a declaration that an arbitration tribunal had jurisdiction.
- *P&O Nedlloyd Limited and another v M&M Miltitzer & Munch International Holding* [2003] 1 Lloyd's Rep 503 (Comm Ct) – the trial of a claim for mis-delivery of cargo.

## Commodities

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- *A v B* [2018] 1 All ER Comm 509 – section 69 and section 68 challenges to an arbitration award.

- *Rotenberg v Sucafina SA* [2011] EWHC 901; [2012] 2 Lloyd's Rep 54 (CA) – an arbitration application concerning the operation of the rules of the Coffee Trade Federation.
- *P Kruecken v Agrital Import Export SRL* (Comm Ct, 04 May 2011) – a dispute concerning the terms on which the Court could dismiss an arbitration appeal under section 67 of the Arbitration Act 1996.

## Insurance

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- *A marine insurance arbitration (2015-2016)* – a marine insurance arbitration involving transborder litigation in the Federated States of Micronesia.
- *CNA Insurance Co. Ltd v Office Depot International (UK) Ltd* [2005] Lloyd's Rep IR 658 (Comm Ct) – an application for an anti-suit injunction to restrain proceedings before the courts of Florida.
- *HIH Casualty and General Insurance Ltd v AXA Corporate Solutions* [2002] Lloyd's Rep IR 237 – a film finance reinsurance dispute.

## Competition

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- *Unwired Planet v Huawei* (2017-2020) and *Conversant v Huawei* (2018-), including *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWHC 2831 (Pat) and *Conversant Wireless v Huawei Technologies* [2018] EWHC 2549: Major FRAND litigation turning on issues of competition law.
- *Tesco Stores Ltd v Office of Fair Trading* [2012] CAT 31 – acting for the OFT before the Competition Appeal Tribunal resisting Tesco's appeal against the OFT's finding that Tesco had unlawfully participated in a cartel to raise the price of cheese in 2002/2003.
- *Applications by British Airways plc, British Midland Airways and EasyJet Airline Company Limited* in respect of the route London-Cairo/Alexandria (CAA, SCAC 1/10) – hearing before the Civil Aviation Authority on the allocation of route frequencies.
- *Easyjet v Liverpool Airport Plc* – a case concerning restrictive clauses preventing Easyjet from flying from Manchester Airport.

## Recommendations

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His high level of legal analysis really stands out. [Chambers UK Bar 2021](#)

Well-regarded for his work in cross-jurisdictional matters. [The Legal 500 UK Bar 2021](#)

He is really thorough and is very good on his feet. [Chambers UK Bar 2021](#)

He's exceptionally clever, well prepared and persuasive in court, and someone whose written work is outstanding. [Chambers UK Bar 2020](#)

A very innovative thinker who is adept at tackling difficult problems. [The Legal 500 UK Bar 2020](#)

Extremely knowledgeable about jurisdictional matters and good on his feet. [Chambers UK Bar 2020](#)

Produces masterful opinions. [Chambers UK Bar 2019](#)

First-rate in the field of conflicts of laws issues and anti-suit injunctions, he is a great advocate. [Chambers UK Bar 2019](#)

He is a great advocate. [Chambers UK Bar 2018](#)