



Nicholas Macklam

Call: 2013

Barrister

CONTACT

Email
nmacklam@radcliffechambers.com

Email Clerk
clerks@radcliffechambers.com

Telephone
020 7831 0081

ADDRESS

11 New Square
Lincoln's Inn
London WC2A 3QB

DX: 319 London
Telephone: 020 7831 0081
Fax: +44 (0)20 7405 2560

Nicholas Macklam has a busy advisory and litigation practice which covers the full range of Chambers' practice areas, with a particular focus on tax litigation, private client (wills & estates, trusts and related issues), pensions, insolvency and commercial disputes, and real estate. He is regularly instructed to represent clients in the High Court, the County Court and specialist tribunals and regulatory panels. In 2017 he was appointed to HM Attorney General's C Panel of Counsel to the Crown.

TAX

Nick has significant experience of contentious tax work. He has experience of acting in tribunals and courts of all levels, including the Supreme Court. He is currently instructed by HMRC in relation to its high value and complex Ingenious litigation (led by Malcolm Gammie CBE QC; amount at stake c. £1bn) and he acted for HMRC in the successful Icebreaker litigation (led by Jonathan Davey QC; amount at stake c. £336m). Nick also has expertise in advising on tax matters as they apply to his other core practice areas, such as inheritance tax and capital gains tax.

Representative work includes:

Supreme Court:

- *Tinkler v HMRC* [2021] UKSC 39 - estoppel in the context of an enquiry - appeal concerning whether a taxpayer was estopped by convention from denying the validity of an enquiry (led by Malcolm Gammie CBE QC and Michael Jones QC)

Court of Appeal:

- *Ingenious Games LLP and ors v HMRC* [2021] EWCA Civ 1180 - alleged deductible trading expenditure - appeal concerning when limited liability partnerships are carrying on a trade with a view to profit (led by Malcolm Gammie CBE QC and Jonathan Davey QC)
- *Higgins v HMRC* [2019] EWCA Civ 1860 - capital gains tax - appeal concerning when a taxpayer's "period of ownership" begins in the context of principal private residence relief from CGT (led by Christopher Stone)

Upper Tribunal (Tax and Chancery Chamber):

- *London Luton Hotel BPR Property Fund LLP v HMRC* [2021] UKUT 147 (TCC) – capital allowances – appeal concerning whether expenditure qualifies for business premises renovation allowances (led by Jonathan Davey QC)
- *Ingenious Games LLP and ors v HMRC* [2019] UKUT 226 (TCC) – alleged deductible trading expenditure – a £1 billion appeal concerning the correct commercial and tax analysis of the activities of various LLPs involved in the film and games industries (led by Malcolm Gammie CBE QC and Jonathan Davey QC)
- *Emblaze Mobility Solutions Ltd v HMRC* [2018] UKUT 373 (TCC) – VAT – appeal in respect of an award of interest under section 84(8) of the Value Added Tax Act 1994 (led by Philip Moser QC)
- *Seven Individuals v HMRC* [2017] UKUT 0132 (TCC) – income tax and loss relief – appeal in relation to a joint reference made to the First-tier Tribunal in accordance with s.28ZA of the Taxes Management Act 1970 by HMRC and a number of individuals who invested in a tax scheme (led by Jonathan Davey QC)
- *Bastionspark LLP and others v HMRC* [2016] UKUT 0425 (TCC) – costs – appeal concerning an award of costs made by the First-tier Tribunal (Tax) following litigation relating to amendments made to partnership tax returns (led by Jonathan Davey QC)
- *Acornwood LLP and others v HMRC* [2016] UKUT 0361 (TCC) – alleged deductible trading expenditure – appeal concerning the proper tax treatment of payments made by “Icebreaker” LLPs involved in the creative industries where the amount at stake is c. £336 million (led by Jonathan Davey QC)
- *Ingenious Games LLP and others v HMRC* [2015] UKUT 0105 (TCC) – case management – appeal in relation to, among other things, the circumstances in which notice of allegations of dishonesty or discreditable conduct is required to be given to witnesses prior to cross-examination (led by Malcolm Gammie CBE QC)

First-tier Tribunal (Tax Chamber):

- *Lochurst LLP v HMRC* [2021] UKFTT 231 (TC) – income tax and loss relief – determination of amendments required to partnership return following the determination of the “lead case” under rule 18 of the Tribunal Rules (led by Jonathan Davey QC)
- *Jupiter Asset Management Group Ltd v HMRC* [2021] UKFTT 96 (TC) – VAT – appeal in respect of an open market value direction given under para 1 of Schedule 6 to the Value Added Tax Act 1994 in relation to supplies of management services between VAT groups (led by Michael Jones QC)
- *Unistar Trading Ltd (in liquidation) and anor v HMRC* [2020] UKFTT 191 (TC) – VAT – application for interest under section 84(8) of the Value Added Tax Act 1994 (led by James Puzey)
- *London Luton Hotel BPR Property Fund LLP v HMRC* [2019] UKFTT 212 (TC) – capital allowances – appeal concerning whether expenditure qualifies for business premises renovation allowances (led by Jonathan Davey QC)
- *Martin v HMRC* [2017] UKFTT 0488 (TC) – procedure – contested application for a closure notice (led by Jonathan Davey QC)
- *Ingenious Games LLP and others v HMRC* [2016] UKFTT 0521 (TC) – alleged deductible trading expenditure – appeal in a £1 billion dispute concerning the correct commercial and tax analysis of the activities of various LLPs involved in the film and games industries (led by Malcolm Gammie CBE QC)

Advisory:

- Advising on potential CGT implications of exercising powers to postpone a trust’s vesting date
- Advising on the appropriate form of settlement of a dispute between

beneficiaries of a deceased's estate in connection with potential liability to inheritance tax and capital gains tax

PRIVATE CLIENT

Wills & Estates

Nick has considerable experience of advising on, and appearing in court in relation to, disputes involving wills and estates, including claims on the Inheritance (Provision for Family and Dependants) Act 1975. He welcomes instructions in this area.

Representative experience includes:

- Representing claimants and defendants to claims under the Inheritance (Provision for Family and Dependants) Act 1975
- Advising on the appropriate form of settlement of a dispute between beneficiaries of a deceased's estate so as to minimise liability to inheritance tax and capital gains tax
- Advising beneficiaries of a deceased's estate in relation to a claim of devastavit (a wasting of the estate's assets)
- Advising on the manner with which certain will trusts may be brought to an end and the basis on which certain assets ought to be valued
- Advising personal representatives on the proper construction of a will and how the estate assets fall to be distributed.

Trusts

Nick has considerable experience of trusts law and he welcomes instructions in this area. Prior to qualifying as a barrister, he spent three years at the Law Commission where he worked on the project leading to the enactment of the Trusts (Capital and Income) Act 2013. His work encompasses both contentious and non-contentious matters.

Representative experience includes:

- Representing the Claimant in Part 8 proceedings in relation to the administration of a trust (the case settled prior to trial)
- Advising on a claim for occupation rent brought in respect of the occupation of property by a beneficiary allegedly to the exclusion of others
- Drafting a deed of appointment to appoint trust assets to a beneficiary
- Advising on the appropriate form of settlement of a dispute between beneficiaries of a deceased's estate so as to minimise liability to inheritance tax and capital gains tax
- Advising on trustees' obligations when distributing amongst beneficiaries funds held within various trusts, including whether the trustees could take steps to safeguard certain funds
- Representing the Claimant at trial in relation to a claim for breach of trust against a family member who had misapplied trust assets
Settling a defence to a claim for an account of a fiduciary's dealings with certain monies.

Court of Protection

Nick has experience of advising and appearing on Court of Protection (property and affairs) matters.

Nick's experience includes advising and representing the applicant (deputy) in relation to an application for approval of payments made out of P's funds and advising on the appointment of a deputy for P's property and affairs.

PENSIONS

Nick has particular expertise in the field of pensions in the regulatory context, with considerable experience of advising the Pensions Regulator on a range of matters.

He is a member of the Association of Pension Lawyers.

Representative instructions include:

- *The Pensions Regulator v Various Targets* – Acting as sole counsel for the Pensions Regulator in relation to the use of the Regulator’s moral hazard powers
- *The Pensions Regulator v Payae Ltd and others* [2018] EWHC 36 (Ch) – Acting for the Regulator in a £13.7 million pension scam case concerning the use of the Regulator’s powers under section 16 of the Pensions Act 2004 to claim restitution in respect of occupational pension scheme assets which had been misused or misappropriated (by Jonathan Hilliard QC)
- *The Pensions Regulator v Target* (Determinations Panel) – Representing the Regulator as sole counsel in a hearing before the Determinations Panel of the Pensions Regulator considering whether to prohibit a person from acting as a trustee of trust-based pension schemes and whether to appoint an independent trustee of a pension scheme
- *The Pensions Regulator v Strathmore Medical Practice* [2018] UKUT 104 (AAC) – Successfully representing the Regulator as sole counsel in an appeal to the Upper Tribunal in respect of a decision by the First-tier Tribunal to revoke a fixed penalty notice issued by the Regulator
- *Re a Scheme*– Acting for the Pensions Regulator (as sole counsel) in relation to the use of the Regulator’s powers relating to the administration of a scheme
- *Hill v The Pensions Regulator* [2016] UKUT 0480 (TCC) – Successfully resisting as sole counsel a referral to the Upper Tribunal of a decision of the Regulator’s Determinations Panel.

COMMERCIAL

Commercial disputes

Nick advises and appears in court on a wide range of matters involving commercial disputes.

Representative matters include:

- *Emblaze Mobility Solutions Ltd v HMRC* [2018] UKUT 373 (TCC) – Acting for HMRC in an appeal to the UT in respect of an award of interest under section 84(8) of the Value Added Tax Act 1994 (led by Philip Moser QC)
- *Acornwood LLP and others v HMRC* [2016] UKUT 0361 (TCC) – Acting in a c. £336 million appeal to the Upper Tribunal (Tax and Chancery Chamber) concerning the proper commercial analysis and tax treatment of payments made by “Icebreaker” LLPs involved in the creative industries (led by Jonathan Davey QC)
- *Ingenious Games LLP and others v HMRC* [2016] UKFTT 0521 (TC) – Acting in a £1 billion dispute before the First-tier Tribunal (Tax) concerning the correct commercial and tax analysis of the activities of various LLPs involved in the film and games industries (led by Malcolm Gammie CBE QC)
- Advising and settling particulars of claim in relation to a dispute arising out of a contract for the supply of satellite distribution services
- Advising on a dispute relating to a guarantee which, among other things, raised issues of rectification
- Advising on a dispute relating to allegedly defective works carried out to a commercial property
- Advising on quantum of a claim for procuring or inducing breach of contract, including consideration of claims relating to loss of a chance and an account of profits.

Partnership and Joint Ventures

Nick has experience of advising on partnership issues. He has a particular familiarity with LLPs and their taxation, having been involved in various complex

and high value tax avoidance cases involving claims for sideways loss relief in relation to losses purportedly incurred by LLPs.

Representative instructions include:

- *Acornwood LLP and others v HMRC* [2016] UKUT 0361 (TCC) – Acting in an appeal to the Upper Tribunal (Tax and Chancery Chamber) concerning the proper tax treatment of payments made by “Icebreaker” LLPs involved in the creative industries where the amount at stake is c. £336 million (led by Jonathan Davey QC)
- *Ingenious Games LLP and others v HMRC* [2016] UKFTT 0521 (TC) – Acting in a £1 billion dispute before the First-tier Tribunal (Tax) concerning the correct commercial and tax analysis of the activities of various LLPs involved in the film and games industries (led by Malcolm Gammie CBE QC)

REAL ESTATE

Nick has considerable experience in real property matters, including landlord and tenant. Prior to qualifying as a barrister, he spent three years at the Law Commission where he worked on a wide range of property law projects, including reviews on the law of easements, the Electronic Communications Code, and rights to light. He has also written a number of published articles on property law matters and the interaction of private law and human rights law in this context.

Representative instructions include:

- Advising and preparing a Defence to a claim for unpaid rent which raised issues of the proper due date for rent when no date is specified in the lease
- Appearing at a number of private rental possession proceedings (and advising on such proceedings)
- Representing the defendant at a trial for an injunction requiring inspection of hotel premises
- Advising on and preparing Particulars of Claim for the forfeiture of commercial leases.

RESTRUCTURING AND INSOLVENCY

Insolvency

Nick has considerable experience of appearing in court and advising on a wide range of corporate and personal insolvency matters. He welcomes instructions in this area of practice.

Representative instructions include:

- Representing the defendants at trial in the County Court on an application by liquidators for relief in respect of transactions at an undervalue and misfeasance by company directors (and representing the defendants in the subsequent appeal to the High Court in relation to the same matter)
- Appearing for petitioning creditors and companies at the hearing of numerous winding up petitions
- Appearing for petitioning creditors and debtors at the hearing of numerous bankruptcy petitions
- Advising on whether unpaid solicitors’ fees are a liquidated debt for the purposes of insolvency proceedings
- Advising and appearing on a variety of applications to set aside statutory demands.

Company

Nick has experience of advising on a range of company law matters and appearing at trials and hearings on behalf of companies and company directors. He welcomes instructions in this practice area.

Representative instructions include:

- Appearing at trial on behalf of the defendants which concerned, among other things, alleged breaches of directors' duties (and subsequently appearing on appeal in the same matter)
- Advising on an inter-company dispute involving a management company which held the freehold to a large residential property in Kensington
- Appearing at a hearing concerning a claim for rectification of a company's register of members
- Advising on an application to restore a company to the register
- Appearing on applications to extend time for the registration of a charge.

PROFESSIONAL LIABILITY

Nick has experience of advising on a range of professional liability matters. He welcomes instructions in this area.

Representative experience include:

- Preparing particulars of claim in respect of a professional negligence claim against a firm of solicitors arising out of a claim for an account
- Advising on the potential liability of a solicitor in relation to a conveyancing transaction
- Advising on the potential liability of an estate agent and a solicitor in relation to various matters arising out of the administration of a deceased's estate, including the sale of property
- Preparing particulars of claim in relation to a *White v Jones* claim against a solicitor on behalf of disappointed beneficiaries.

CHARITIES

Nick has experience of advising on a range of matters concerning charities.

Representative instructions include:

- Appearing for the Charity Commission at a hearing in the High Court
- Advising a charity on its entitlement to relief from business rates pursuant to section 43 of the Local Government Finance Act 1988
- Advising a charity on the nature of the duties owed by volunteers who collected donations on its behalf and the nature of "charity proceedings" requiring Charity Commission authorisation
- Settling particulars of claim on behalf of a charity in respect of alleged misuse / misappropriation of a charity's assets.

During pupillage Nick shadowed Robert Pearce QC and Joshua Winfield at the hearing of *Marwaha v Singh* [2013] EWCA Civ 1878 in the Court of Appeal.

SPEAKING AND PUBLICATIONS

Nick is a contributing author to LexisNexis online publications.

QUALIFICATIONS

- 2006 – 2009: LLB (First Class), University of Reading
- 2009 – 2010: BCL, St Hugh's College, Oxford
- 2011 – 2013: BPTC (Outstanding), The University of Law
- 2015: Judicial Assistant to the Court of Appeal (Lord Justice Longmore)
- 2017 – present: Junior Counsel to the Crown (HM Attorney General's C Panel)

Prior to coming to the Bar, Nick spent three years working as a research assistant at the Law Commission. During that time he worked on law reform projects on the law of easements, covenants and profits à prendre, the Electronic Communications Code, and rights of light. The role involved drafting consultation

papers and reports, legal research and policy formulation. He also assisted the Ministry of Justice with the passage through Parliament of the Trusts (Capital and Income) Act 2013.

Nick has authored and contributed to a number of published articles and notes on property, trust and human rights law. He has presented papers on these topics at conferences and seminars throughout the country. Whilst working at the Law Commission Nick gave tutorials on land law at the University of Reading (2010 – 2011).

Nick was called to the Bar by Lincoln's Inn in 2013 and has benefited from several of the Inn's scholarships and prizes, including a Lord Denning Scholarship, a Hardwicke Entrance Award, a Buchanan Prize and a Wolfson Scholarship.

Nick was awarded prizes for coming top of his year in land law and equity & trusts as an undergraduate. He also received a prize for his general examination performance. Whilst at Oxford Nick received the highest mark in his year for his advanced property and trusts paper.

In 2015 Nick was seconded to the Court of Appeal as a judicial assistant for two judicial terms, where he was assigned to Lord Justice Longmore. During this time he worked on a number of important appeals, including:

- *Wellesley Partners LLP v Withers LLP* [2015] EWCA Civ 1146 – a leading case on the principles governing remoteness in cases of concurrent liability in contract and tort
- *NRAM Plc v McAdam* [2015] EWCA Civ 751 – the proper construction of loan agreements entered into by Northern Rock PLC with approximately 41,000 borrowers which were not regulated by the Consumer Credit Act 1974 but had been documented as if they were
- *Swynson Ltd v Lowick Rose LLP* [2015] EWCA Civ 629 – application of the principle of *res inter alios acta* (or collateral loss), unjust enrichment and transferred loss
- *Reed Employment Plc v HMRC* [2015] EWCA Civ 805 – appeal concerning whether payments made by Reed to its temporary employees were taxable earnings in the hands of the employees and therefore liable for PAYE and National Insurance Contributions
- *Salt v Stratstone Limited t/a Stratstone Cadillac Newcastle* [2015] EWCA Civ 745 – the correct approach to rescission of a contract for misrepresentation, including consideration of when damages in lieu of rescission may be awarded under section 2(2) of the Misrepresentation Act 1967
- *Hoyl Group Limited v Cromer Town Council* [2015] EWCA Civ 782 – a proprietary estoppel case which considered, among other things, whether the party alleged to be estopped must have actual knowledge of the other party's mistaken belief in order for an estoppel claim to succeed

MEMBERSHIPS

Lincoln's Inn, Chancery Bar Association, Association of Pension Lawyers, Revenue Bar Association, Denning Society

POLICIES AND OTHER DOCUMENTS

Read Nicholas' [Privacy Notice](#), [Data Protection Policy](#) and [Disposal Policy](#).