

RACHEAL MULDOON

CALL: 2015



OVERVIEW

Racheal is a dynamic member of Chambers with an impressively diverse commercial practice.

The common thread running through is the provision of comprehensive targeted advice and representation on the purchase, sale, management, and recovery of high value assets, from high value 'flat' and digital art and cultural antiquities, to cryptoassets (i.e. cryptocurrency and non-fungible tokens or 'NFTs').

Racheal is an expert at the intersection of new and emerging technologies (e.g. artificial intelligence or 'AI', DAOs and the Metaverse) and the law both domestically and internationally across:

- Analytics
- Artificial intelligence
- Central Bank Digital Currencies (CBDCs)
- Cryptoassets (including cryptocurrencies and non-fungible tokens, or 'NFTs')
- Cyber security
- Data protection
- 'Deepfakes' and their IP implications
- Data base rights
- Distributed ledger technology (DLT), including the legalities of establishing private permissioned blockchains
- Generative AI applications
- Initial coin offerings of digital currencies
- Internet of things (IoT)
- Quantum computing
- Ransomware attacks following data exfiltration
- Smart contract programming

- Software disputes

Racheal is an internationally recognised leading practitioner in the field of cryptoassets. Some of her career highlights to date include:

- Representing a client in the FTX cryptocurrency exchange insolvency.
- Securing the World's first injunction to freeze misappropriated NFTs in *Osbourne v Persons Unknown*.
- Obtaining an order for service by NFT – a first in England and Wales and only the second in the World.
- Being instructed by Dr Craig Wright in his passing off claim against Coinbase and Kraken in the single highest-value intellectual property cryptoasset claim to date.
- Advising a leading international auction house on its first NFT auction.

Racheal also has a thriving art and cultural property practice for which her expertise has been recognised by her inclusion in the Professional Advisors to the Art Market (PAIAM) directory.

EXPERTISE

CRYPTOASSETS

Cryptoasset Litigation

Racheal is a leading junior widely recognised both nationally and internationally for her civil fraud practice, particularly in the field of cryptoasset recovery. She regularly appears before the High Court of England and Wales (KBD, ChD and Commercial Court Divisions) to recover misappropriated cryptocurrency and NFTs by way of interim injunctions, worldwide and domestic freezing orders, disclosure orders (under the Norwich Pharmacal and Banker's Trust jurisdictions) and ancillary permissions for service out of the jurisdiction by alternative means, including NFT.

This work is multi-jurisdictional in nature given that the defendants are commonly 'persons unknown', corporates and cryptoasset market participants, including exchanges and marketplaces, often located internationally. Racheal is therefore familiar with the legal frameworks in place in Cayman, the Seychelles, BVI, Mauritius, the Maldives, the United States, Singapore, and Dubai, and well versed in liaising with local solicitors and counsel to seek enforcement of domestic orders.

Racheal advises widely on cryptoasset group legal and representative actions (known in other jurisdictions as class actions). This includes preliminary and formal written advice on composition, relevant causes of action (including those founded in consumer rights and competition law), prospects of success and other matters going to ATE insurance and funding more generally. She has done so on the basis of competition law and consumer rights-based claims in relation to cryptoassets and cryptoasset firm services.

Racheal co-authored the COMBAR and Chancery Bar's Joint Response to the Law Commission's Consultation on Digital Assets in November 2022. Further, Racheal is a British Blockchain Association (BBA) expert advisor. As a BBA advisor, Racheal represents the UK in prestigious blockchain and metaverse focused events and

advises the UK Government on its blockchain and cryptoassets policies.

Non-Contentious Advisory

Racheal's non-contentious cryptoasset practice predominantly consists of providing:

- contractual, consumer law, intellectual property, regulatory taxonomy, data protection and tax advice on NFT 'drops' (i.e. launches) and initial coin offerings (ICOs) for new cryptocurrency tokens;
- advice on and assisting with the drafting of smart contracts to govern cryptoassets working alongside coders;
- advising on the implication of Central Bank Digital Currency (CBDCs) ICOs; and
- regulatory advice on how her clients can best place themselves to secure Part 4A FSMA permissions from the UK's financial regulator, the Financial Conduct Authority (FCA), to carry on cryptoasset activity in the UK, drawing on her in-house experience as an FCA associate while seconded in 2018.

Racheal is one of the leading worldwide authorities on the sale, acquisition, and recovery of NFTs. She is frequently called upon to advise in collectors, art galleries, auctions houses, artists, and corporates behind global brands on all legal aspects of NFT drops, including:

- the taxonomy of tokens (i.e. whether the NFTs constitute regulated or unregulated tokens);
- anti-money laundering (AML), counter-terrorist financing (CTF) and sanctions compliance;
- promotional considerations;
- Gambling Act considerations; and
- Intellectual Property licensing.

Further, Racheal has drafted term texts and text templates to inform the programming for smart contracts, as well as advised on the redrafting of associated website terms and conditions and wider policies so as not to expose her clients to contractual and consumer rights challenges.

Notable Reported Cases

Osbourne v (1) Person Unknown (2) Ozone Networks Inc [2022] EWHC 1021 (Comm)

World first reported case establishing a good arguable case that NFTs are legal property, distinct from what they represent (e.g. a digital work of art), capable of being held on constructive trust and frozen by way of injunctive relief. Racheal secured an urgent injunction to freeze stolen NFTs and a Banker's Trust disclosure order enforceable against the World's largest cryptocurrency marketplace, OpenSea, headquartered in New York.

The matter is ongoing, see here for some press coverage:

- [Pinsent Masons](#)
- [Mishcon de Reya](#)
- [Lexology](#)

- **Boodle Hatfield**
- **Eversheds**
- **RPC**

D'Aloia v (1) Persons Unknown (2) Binance and Others [2022] EWHC 1723 (Ch)

A widely reported landmark judgment being (i) the first reported contested cryptoasset recovery case (ii) providing for service of legal documents by NFT; and (iii) finding a good arguable case of constructive trustee liability of exchanges to the claimant as a victim of fraud at the hands of persons unknown.

Secured an urgent cryptocurrency injunction freezing stablecoin (i.e. USDT and USDC), and both Norwich Pharmacal and Banker's Trust disclosure orders enforceable against fraudulent persons unknown and five global cryptocurrency exchanges, (including the largest cryptocurrency in the World, Binance). Permission also secured to serve proceedings by way of a NFT airdrop to wallets utilised by the fraudulent persons unknown for the first time in England and Wales, and for service out of the jurisdiction in Cayman, Seychelles, BVI and Thailand.

The matter is ongoing. See here for some press coverage:

- **TIME Magazine**
- **Forbes**
- **The Times**
- **Bloomberg**
- **Law Gazette**
- **New Law Journal**

CIVIL FRAUD

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INSOLVENCY & ASSET RECOVERY

Racheal accepts instructions from creditors, liquidators, and others in the context of multibillion and multimillion pound corporate insolvencies. She has been instructed in the leading cryptoasset exchange insolvencies to date, including by an institutional client overseas connected to the November 2022 insolvency of cryptocurrency exchange, FTX.

Prior to this, Racheal was instructed by Grant Thornton in connection with the insolvency of cryptocurrency exchange, Cryptopia; one of the first cryptocurrency exchange insolvencies.

Racheal is therefore one of the best placed juniors at the International Bar to advise parties the nuances of recovery in multi-jurisdictional insolvency proceedings, including where US Chapter 11 proceedings are afoot.

BANKING & FINANCIAL SERVICES

Racheal accepts instructions from firms to advise on obtaining FCA regulatory approval in the UK.

Her advisory work includes drafting regulatory taxonomy advices for review by insurers, funders, and others (i.e. with respect to whether tokens and activities in relation to them – including promotional activities - are regulated or unregulated and associated next steps). This work also encompasses reviewing whitepapers and advising on associated matters such as consumer rights and data protection.

Racheal's financial regulatory practice started in 2017 when she was seconded to the FCA. During her time there, Racheal was appointed as an Associate within the Enforcement and Market Oversight Team (Retail 3) and the Criminal Prosecution Team. Racheal independently drafted the FCA's internal practice manual on Prosecuting Corporates, with a strong focus on anti-money laundering, sanctions and counter terrorist financing compliance, POCA. Further, Racheal managed a team of six associates and steered a £60M regulatory investigation concerning the provision of defined benefit pension transfer advice as the Principal Investigator.

MEDIA & ENTERTAINMENT

Art and Cultural Property Law

Racheal has been recognised as "one to watch" in the field of art and cultural property law.

While acting as Senior Counsel at The British Museum, Racheal advised the General Counsel in relation to all aspects of the Museum's work, including on loans, insurance, tax, intellectual property, data protection and corporate governance, corporate sponsorship, and has drafted and negotiated various commercial and public agreements.

Racheal has advised international auction houses with regards to their terms and conditions of sale and consignment agreements. For this, she has drawn on both her (i) expertise in auction house liabilities and best practices and (ii) unique insight into blockchain technology, smart contract formation and programming, and how this interacts with current international legal frameworks. Her advice has culminated in the successful sale of NFTs of multimillion pound digital and 'flat' artworks both in London and US salerooms.

Outside of cryptoassets, Racheal advises her international art gallery clients on the regulatory taxonomy of fractionalised artwork offerings and assist them with applying for Part 4A FSMA permissions from the FCA to offer shares and other securities for sale in the UK.

Racheal is a co-author of Butterworths Lexis Nexis' 'The Encyclopaedia of FORMS AND PRECEDENTS (5th ed.)' July 2022, having contributed in particular to commentary and forms concerning compliance with the Fifth Anti-Money Laundering Directive for Art Market Participants.

Racheal is regularly invited to speak to art world clients, including at the TEFAF Maastricht Art Business Conference 2023, The Royal Academy of Arts, The Institute for Art and Law and The National Gallery.

Racheal has advised widely on the regulation of the imports, exports, and sale of endangered species, including on the Convention on International Trade in Endangered Species 1973 (CITES), Council Regulation EC/338/97 (the Regulation) and the Ivory Act 2018. This has culminated in the reported case of **Arabian Oud Company Ltd v The Director of Border Revenue** [2022] UKFTT 00127 (TC) where Racheal successfully defended Border Revenue's seizure of illegally imported agarwood (a protected species) by renowned luxury Middle Eastern perfumier, Arabian Oud Company.

The majority of Racheal's art and cultural property matters are resolved outside of court. An example of Racheal's art and cultural property law related reported matters is: **Arabian Oud Company Ltd v The Director of Border Revenue [2022] UKFTT 00127 (TC)**

Racheal acted for UK Border Force in the First Tier Tax Tribunal in an appeal brought by luxury Middle Eastern perfumier, Arabian Oud Company, with a retail store opposite Selfridges on London's Oxford Street. Arabian Oud Company had imported goods, including agarwood products, (which are protected under CITES), from Saudi Arabia to the UK. Border Force seized the goods as liable to forfeiture as they had been imported contrary to the Regulation. The Tribunal refused the appeal finding that the decision to refuse to restore goods was not unreasonable for the purposes of section 16(4) Finance Act 1994.

Defamation

Racheal appears for her UHNW and HNW individual and corporate clients in a range of defamation claims. She is experienced in drafting urgent letters of claim requiring removal and/or retractions of offending statements, compensation and written apologies, amongst other remedies and thereafter representing clients in litigation before the High Court.

INTELLECTUAL PROPERTY

Racheal has been advising on intellectual property matters since she was Senior Legal Counsel at the British Museum in 2018. Since then, she has:

- specialised in the drafting of intellectual property licences in respect of NFTs for incorporation in the associated smart contracts;
- advised on the intellectual property law implications of the tokenisation of high value art collections for artists, their estates and collectors.

Racheal also has an active contentious intellectual property practice. For instance, Racheal has been instructed by Dr Craig Wright (who claims to be the creator of Bitcoin) in his passing off claim against cryptocurrency exchanges, Coinbase and Kraken, before the High Court's Intellectual Property List in the single largest intellectual property cryptoasset related litigation in the World with a quantum in the many billions of Pounds.

TECHNOLOGY

DIRECTORY QUOTES

"Worked closely alongside Racheal on some very difficult and complex cases and she has been a real asset."

Chambers UK Bar Cryptoassets (2022)

MEMBERSHIPS

- American Bar Association (ILS) Art and Cultural Property Steering Committee Member
- British Blockchain Association Advisor
- CAPVISION expert
- Chancery Bar Association
- COMBAR
- International Bar Association
- Professional Advisors to the Art Market (PAIAM)
- Society for Computers and Law
- Art Lawyers Association

AWARDS

Agha Abdur-Rashid Niazi Prize, University College London (2015)

Queen Mother's Major Scholar, The Honourable Society of the Middle Temple (2014)

4x4 BPTC Advocacy Award, BPP Law School (2014)