

Commercial Litigation Conference

Fraud, Fairness and Futility in a Commercial World

18 April 2024
Lincoln's Inn, London



**“Able to handle complex
and sophisticated matters
with ease”**

Chambers and Partners

Conference chair's welcome

It is my pleasure to welcome you to our annual Commercial Litigation Conference taking place at The Ashworth Centre in Lincoln's Inn, London.

We are delighted to have such a distinguished group of legal professionals gathered here today and our speakers look forward to sharing their knowledge and insight into the latest developments in commercial litigation.

This year's conference is entitled "Fraud, fairness and futility in a commercial world" and comprises four talks and one panel discussion from 14 of our members considering how to deal with those hard-fought but common company, shareholder, financial services and fraud disputes in litigation and arbitration.

Our commercial litigation members are busier than ever with barristers in the coming months involved as advocates and experts across commercial matters in the Court of Appeal, Supreme Court and Privy Council.

Members are excited to be invited to work on publications in this practice area, such as authoring forthcoming practitioner's textbooks on financial services regulation and financial services in the DIFC and a company law practitioners' text.

I would like to thank you for taking the time to join us here today. We hope you find this conference informative, engaging and productive.

Steven Thompson KC



Commercial Litigation Services

The members of XXIV Old Buildings provide specialist legal advice and advocacy in a wide range of commercial litigation sectors concerning domestic and international disputes for individuals, companies, corporations and institutions.

We are frequently instructed in high-value, complex commercial litigation, especially civil fraud, asset tracing, banking and finance.

Many members are called to the Bars of various offshore and foreign jurisdictions, and regularly appear in others under special admissions, as well as in international arbitrations. Our understanding of the nuances of the various common law court systems ensure that we are adept in dealing with not just domestic but also complex cross-border disputes. We pride ourselves on our capacity for working hard with solicitors and lawyers both here and abroad to find effective and efficient strategic solutions and the best possible outcomes for our clients.

Members of XXIV Old Buildings are also instructed in a wide range of commercial chancery matters involving elements of professional negligence, trusts and partnership law, drawing on the set's established strengths in these areas.

The strength of the whole set at XXIV Old Buildings means we are uniquely placed in our ability to provide teams of counsel for advisory and advocacy services in disputes that cross several areas of the Commercial and Chancery Bar.

**It is clear they're one of
the leading sets in this
area**

Chambers and Partners



Our specialisms

- Aviation
- Banking & Financial Services
- Civil fraud, Asset Tracing, Recovery & Investigations
- Company Law
- Contractual disputes
- Crypto and Digital Assets
- Cultural heritage/art law disputes
- Insolvency and Restructuring
- International and Offshore
- Partnership and Joint Ventures
- Private Client, Trust & Wealth Disputes
- Shareholder agreements

Notable cases

Members of XXIV Old Buildings have appeared in some of the most important cases in the UK and abroad in recent years, including in the Court of Appeal, Supreme Court and Privy Council.

- Minsheng Vocational Education Company Limited v Leed Education Holding Limited & Ors CICA (Civil) Appeal No. 19 of 2022
- Humphrey v Bennett [2023] EWCA Civ 1433
- Invest Bank v El-Husseini [2023] EWCA Civ 555
- Day v Forex Capital Markets Ltd [2023] EWHC 1349 (Comm)
- Shop Direct Finance Co Ltd v Official Receiver [2022] EWHC 1355 (Comm)
- Optimares SpA v Qatar Airways Group QCSC [2022] EWHC 2461 (Comm)
- United States Bankruptcy Court S.D.N.Y. In the Matter of: JPA NO. 111 CO., LTD. and JPA NO. 48 CO., LTD.
- Public Institution for Social Security v Al-Rajaan and others [2022] EWCA Civ 29

Fraud, fairness and futility in a commercial world

Programme and speakers

- 14:00 - 14:20 Registration
- 14:20 - 14:30 Chair's opening remarks
Steven Thompson KC
- 14:30 - 15:00 Unfair prejudice and derivative proceedings: tactical considerations
Steven Reed, Timothy Sherwin and Harry Samuels
- 15:00 - 15:30 The Great Escape: How far can interpretation be used to escape contractual obligations in complex or unexpected circumstances?
Edward Cumming KC, Ben Waistell and Niamh Davis
- 15:30 - 15:50 Check Your Privilege
Sarah Bayliss and Tim Koch
- 15:50 - 16:20 Refreshment break
- 16:20 - 16:40 What's the matter?
Bajul Shah and Erin Hitchens
- 16:40 - 17:10 Solutions in financial services litigation: a different perspective
Adam Cloherty KC, Oliver Assersohn KC, Bethanie Chambers and Rachel Carver
- 17:30 - 17:45 Q&A / Chair's closing remarks
Steven Thompson KC
- 17:45 - 21:00 Drink and canapé reception

To download any of the material from today's conference please use the QR code or contact events@xxiv.co.uk



Unfair prejudice and derivative proceedings: tactical considerations

The Companies Act 2006 significantly expanded the scope of traditional shareholder remedies, with many questions about the precise limits of the post-codification rules still being determined today. In this panel, Steven Reed, Timothy Sherwin and Harry Samuels look at unfair prejudice petitions and derivative proceedings, and discuss some practical and tactical considerations for litigators emerging out of the recent case law.

Steven Reed



"I have no doubt that he will be a real star at the Bar. He is great to work with and clients love him"

Chambers & Partners

Steven has a substantial, heavyweight commercial and chancery practice and regularly appears in the Business and Property Courts dealing with everything from procedural and interim applications, including freezing injunctions, search and seize orders, interim injunctions, strike outs and disclosure issues, to multi-day trials.

Timothy Sherwin



"Very easy to deal with", "Knowledge and strategic nous well beyond his years."

Chambers and Partners

Timothy is regularly instructed in commercial cases as part of his busy commercial-Chancery practice. Much of the litigation in which Timothy is involved are commercial cases which also engage other areas of his practice, such as insolvency, trusts, company and partnership law, banking law or fraud. Timothy is very comfortable dealing with such multi-faceted cases.



Harry Samuels

"A superstar in the making"
Partner, Tier 1 Legal 500 Firm

Harry is at home with commercial disputes across all sectors, with particular expertise in company law, civil fraud and asset tracing. His recent experience includes a major commercial arbitration and subsequent High Court appeal, advising on a potential group action arising from the mis-selling of derivative products, and acting in a claim worth eight figures concerning good faith clauses in a public contract.

As a supervisor in company law at the University of Cambridge, and as an editor of the forthcoming edition of a major company law practitioners' text, Harry is particularly comfortable with shareholder and corporate disputes. He recently appeared in the Court of Appeal in *Humphrey v Bennett* [2023] EWCA Civ 1433, is presently instructed on another major multi-jurisdictional derivative claim, and has advised on issues arising out of multiple acquisitions.

The Great Escape: How far can interpretation be used to escape contractual obligations in complex or unexpected circumstances?

In a constantly evolving and increasingly dramatic and uncertain international commercial environment, how do commercial parties address their agreements coming up against illegality, impossibility, impracticality or futility? Edward Cumming KC, Ben Waistell, and Niamh Davis discuss a variety of available approaches and the escape routes they may (or may not) provide.



Edward Cumming KC

*“The perfect modern barrister” and “just one of the best around”, Edward has acted in some of the most significant and highest-profile commercial, private wealth and asset recovery litigation of recent years. With particular experience in relation to issues of contractual interpretation, having appeared in the leading Supreme Court authority of *Wood v Capita Insurance Services Ltd* [2017] AC 1173, he is recognised as “expertly combining a chancery and commercial law practice” and, reflecting this, he is recommended as a leading KC in nine separate categories in the latest Chambers & Partners, and eight separate categories in the latest Legal 500. The directories, which have long recognised Edward as a “lion in court”, describe him as “just an amazing individual” and “a very smooth advocate, who is persuasive, articulate and nimble on his feet”. He can “charm and persuade, but will fight tenaciously when the need arises; he is utterly fearless” as well as being “wonderfully talented, very nice and someone with a brain the size of a planet. His energy and ability to grab a case in nanoseconds are astonishing”.*

Ben Waistell



Commercial litigation forms the heart of Ben's practice, which encompasses a broad range of industry sectors and practice areas, in particular he has experience in civil fraud and asset recovery exercises, commercial litigation (including aviation, telecoms, international sale of goods, and energy), shareholder and partnership disputes, international arbitration, and financial services. Ben is regularly instructed to act or advise in relation to complex issues of contractual interpretation, and he is frequently instructed as sole counsel against far more senior opponents.

Niamh Davis



Niamh commercial litigation experience encompasses a wide range of contractual and general business disputes. In particular, she has experience in civil fraud, shareholder disputes, commercial litigation including aviation and sale of goods, and insolvency matters. Recent matters she has been involved in have required the consideration of complex question of jurisdiction and private international law issues

Check Your Privilege

Sarah Bayliss and Tim Koch review recent cases on privilege including the decision on the 'iniquity exception' by the Court of Appeal in *Al Sadeq v Dechert* [2024] EWCA Civ 28.

Sarah Bayliss



Sarah is a commercial and modern chancery specialist who takes a particular interest in complex offshore and banking disputes, fraud, company/commercial and insolvency cases. She is recognised in the directories as a leading junior in banking and offshore litigation. Legal 500 describes her as '*a user-friendly and measured junior, with an assured grasp of both the law and the practicalities of a case. She inspires real confidence in her clients and instructing solicitors*'. Sarah has extensive experience of high value offshore disputes in jurisdictions including Bermuda, the Cayman Islands, the BVI, the Channel Islands, the Isle of Man and Gibraltar.

Tim Koch



Tim is developing his practice in all of Chambers' core areas, including in commercial disputes, civil fraud, company, insolvency, art and cultural property, offshore, and trust litigation. He holds undergraduate and postgraduate degrees in law at the University of Oxford, graduating with a Distinction from the BCL in 2020. Prior to commencing pupillage, Tim worked as a Research Assistant at the Law Commission of England and Wales, where he contributed to the Digital Assets Project (on crypto assets).

What's the matter?

Bajul Shah and Erin Hitchens investigate the scope of section 9 of the Arbitration Act following the decision of the Supreme Court in *Mozambique v Prinvest* [2023] UKSC 32

Bajul Shah



"He has a very measured advocacy style and has an incredibly good calming influence. That sort of calm, measured style he has cuts through the nonsense."

Chambers & Partners High Net Worth

Bajul has a broad commercial practice covering aviation, arbitration, commercial litigation, civil fraud, company and partnership disputes, insolvency, and jurisdiction disputes. Bajul is currently acting for Qatar Airways in its dispute with Airbus and his other recent commercial cases include *Melford v Digby* (partnership dispute, judgments on costs of interim injunctions and on jurisdiction challenge over a counterclaim), *Sodzawiczny v McNally* (civil fraud, and enforcement of arbitration award relating to foreign property), and *Coward v Ambrosiadou* (jurisdiction dispute). Bajul has been recommended for a number of years in aviation, civil fraud, commercial litigation, Chancery (Commercial), and offshore work by Legal 500 and Chambers & Partners



Erin Hitchens

"Tenacious, hard-working, user-friendly and good intellect, allied to sound legal judgement and commerciality"

The Legal 500

Erin is instructed on a wide range of commercial and fraud disputes and regularly appears as sole counsel and as part of a team in the High Court in trials, case management hearings and interlocutory applications including summary judgment, applications for injunctions and enforcement orders. Recent cases include *Gasl Ireland Leasing A-1 Ltd v Spicejet Ltd*, *Bhabra v Suri* and *Nas Air Co v Genesis Ireland Aviation Trading 3 Ltd*. Erin is recommended in both Chambers and Partners and Legal 500 for aviation disputes.

Solutions in financial services litigation: a different perspective

Adam Cloherty KC, Oliver Assersohn KC, Bethanie Chambers and Rachel Carver will discuss valuable lines of attack and defence in financial services litigation including Part 8 declarations, judicial review challenges and applications to the Upper Tribunal for interim relief and much more.

Adam Cloherty KC



*"Extraordinarily intelligent [and] extremely responsive",
"outstanding" and "an absolute star"
Chambers & Partners and Legal 500*

Adam is widely experienced in commercial disputes, being sought out for (among other things) his ability "to digest volumes of contractual and procedural documentation quickly in order to produce clear, insightful and practical advice" and as a "top notch advocate" who is "great on his feet and on paper".



Oliver Assersohn KC

Oliver Assersohn KC is a leading financial services and commercial barrister. Oliver is called to the Bar of England and Wales and a registered DIFC (Part II) practitioner. The independent legal directories for 2024 include the following:

- Oliver is "incredibly intelligent and has a particularly effective written style. He is a real team player and can be depended on in high-stakes litigation" (Commercial Litigation, Legal 500 2024);
- Oliver "brings commerciality as well as excellent analytical skills to the team" (Banking and Finance, Legal 500 2024);
- Oliver is "client friendly" and "often in the high-profile, reported cases" (Financial Services, Chambers & Partners 2024); and
- Oliver is a "go-to counsel for financial services regulatory matters" (Financial Services Regulation, Legal 500, 2024).

Bethanie Chambers



Bethanie regularly acts both international and domestic commercial disputes, with a particular emphasis on civil fraud, contractual disputes, company law and aviation. Most recently she has been instructed on a multi-jurisdictional civil fraud matter, involving, amongst other things, allegations of breach of trust, knowing receipt, dishonest assistance and conspiracy. She also regularly deals with jurisdiction and proper law challenges, and interlocutory applications for injunctive relief.

Prior to coming to the Bar, Bethanie was a judicial assistant to Lord Justice McCombe and Lady Justice Carr in the Court of Appeal. She assisted in the case of *Dargamo Holdings Limited v Avonwick Holdings Ltd* [2021] EWCA Civ 1149 in which the Court addressed the interaction between the law of contract and the law of unjust enrichment as well as the operation of the ‘failure of basis’ ground of restitution.

Rachel Carver



Described as “a star” by a client, Rachel has a broad commercial chancery practice across the full spectrum of Chambers’ practice areas. Her interests include company law and commercial dispute resolution. Clients comment that Rachel is “[s]uch a help and a pleasure to have in the team”. She is also comfortable acting as sole counsel and welcomes instructions in any of her areas of expertise. Rachel’s recent commercial litigation experience has included a number of contractual disputes involving debt, damages and rectification claims.

Conference Chair



Steven Thompson KC

"Steven is an exceptional advocate who argues the most difficult cases very persuasively, pitching his submissions at exactly the right level for the judge and delivering excellent results every time. He has proved himself in highly complex cases at both first instance and appellate level."

The Legal 500 2024

Steven has a commercial chancery practice with a particular emphasis on civil fraud actions, company/joint venture disputes and aviation disputes. He has been instructed in some of the largest civil fraud cases of recent years, both in London and overseas and is always working on a steady stream of aviation disputes.

Steven regularly appears in courts in London, the BVI and Dubai International Financial Centre and has also advised, appeared and assisted in major disputes in Bermuda, the Cayman Islands, Jersey, Guernsey, the Isle of Man, Gibraltar, the Turks & Caicos Islands and Hong Kong.

Members

- Elspeth Talbot Rice KC (1990, 2008)
- Alan Steinfeld KC (1968,1987)
- Michael Black KC (1978,1995)
- Stephen Moverley Smith KC (1985, 2002)
- Francis Tregear KC (1980, 2003)
- David Brownbill KC (1989, 2008)
- Steven Thompson KC (1996, 2015)
- Lyndsey de Mestre KC (1999, 2018)
- Edward Cumming KC (2006, 2018)
- Adam Cloherty KC (2005, 2023)
- Oliver Assersohn KC (2003, 2024)
- Professor Graham Virgo KC (Hon) (1989, 2017)

“Top-quality set with ability across the board, good strength in depth and a user-friendly approach”

The Legal 500



- Michael King (1971)
- Elizabeth Weaver (1982)
- Helen Galley (1987)
- Ian Meakin (1991)
- Arshad Ghaffar (1991)
- Marcus Staff (1994)
- Stuart Adair (1995)
- Alexander Pelling (1995)
- Bajul Shah (1996)
- Jessica Hughes (1997)
- Nicole Langlois (2008)
- Edward Knight (1999)
- Sarah Bayliss (2002)
- Steven Reed (2005)
- Erin Hitchens (2006)
- Andrew Holden (2007)
- Owen Curry (2009)
- Daniel Warents (2009)
- Hugh Miall (2009)
- Heather Murphy (2009)
- Timothy Sherwin (2014)
- Tom Stewart Coats (2014)
- Ben Waistell (2015)
- James Bradford (2016)
- James Fennemore (2017)
- Catherine Hartson (2018)
- Alex Peplow (2019)
- Jessica Lavelle (2019)
- Charles Strachan (2019)
- Harry Samuels (2020)
- Bethanie Chambers (2019)
- Rachel Carver (2021)
- James Kane (2021)
- Niamh Davis (2022)
- Tim Koch (2022)

Notes



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**The clerks are without
exception responsive
and diligent.**

The Legal 500



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If you need to contact the team for any assistance outside office hours, please call Paul Horsfield on 07927 571 897, Perry Brown on 07732 682 351 or James Ladbrook on 07590 494 330.



We offer bespoke in-house training on a variety of commercial litigation topics. To discuss your requirements in further detail, please contact the clerks on events@xxiv.co.uk.

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**Heavy hitting leading counsels
and very bright and
knowledgeable juniors**

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