

XXIV Old Buildings

London Commercial Litigation Conference 2017



Thursday 22nd June 2017

**Saddlers' Hall, 40 Gutter Lane,
London, EC2V 6BR**

**14:00-17:30 (registration from 13:00)
Followed by drinks and canapés**

2.5 CPD hours

**Includes documentation,
refreshments and evening drinks**

XXIV Old Buildings, London Commercial Litigation Conference
22nd June 2017



This year we focus on a variety of issues from across the landscape of commercial litigation with a view to delivering both interesting talks and real practical benefit to attending commercial litigators. The afternoon will conclude with a panel discussion of some of the most significant commercial cases in London at the moment.

13:00 – 1&00

Welcome Coffee and Registration

14:00 – 14:10

Introduction from Chambers Director - Sue Medder



Chairman's Introduction - Stuart Adair

14:10 – 14:40

Going after the Guv'nor - Stuart Adair and Hugh Miall review the various common law and statutory causes of action that shareholders may pursue against company directors, the circumstances in which each is appropriate and recent developments in the law relating to such causes of action.



14:40 – 15:00

Shares - Compulsory purchase on death? - Helen Galley will explain the problems which can arise, including issues surrounding deemed disposals or transfer notices, in cases where a shareholder in a private company dies leaving his shares to a third party by will or on intestacy, in cases where there is either a shareholders' agreement containing pre-emption rights or the articles contain similar rights.



15:00 – 15:30

Missing the Wood for the trees? And is there confusion about exclusion? - Sarah Bayliss and Edward Cumming (who appeared as sole counsel before the Supreme Court in *Wood v Capita Insurance Services* [2017] 2 WLR 1095, the new leading authority on contractual interpretation) examine recent trends in the courts' approach to contractual interpretation and the role of exclusion clauses and consider their practical consequences for future disputes.



15:30 - 15:45

Part 36 – more pitfalls for the unwary! - Richard Ritchie reviews recent case law in relation to the amendment and withdrawal of Part 36 offers and the making of a new offer.



15:45 - 16:05

Coffee Break

16:05 - 16:25

No Loss, No Gain, No Claim? The principles and practice relating to "gain-based"

damages - Elizabeth Weaver analyses the recent case law on recovering damages for breach of contract where a claimant cannot prove loss; how far do the principles extend?



16:25 - 16:55

Impliars? Implied representations in commercial cases: the lie of the law - Adam Cloherty and Timothy Sherwin consider the burgeoning law on implied and fraudulent misrepresentations. How do you make, rely on, and falsify an implied representation? In looking for the answers, Adam and Timothy will be focusing on LIBOR rigging and derivatives mis-selling claims, such as the recent *PAG v RBS* test case; as well as examining financial transactions claims more generally, such as the *UBS v KWL* matter currently before the Court of Appeal.



16:55 - 17:25

Panel Discussion - Michael Black QC, Stephen Cogley QC and Edward Cumming as panelists and Stuart Adair as moderator

Senior members of Chambers discuss and answer questions in relation to some of the most important and substantial commercial litigation of the last few years.



17:25 - 17:30

Closing

17:30 - 19:00

Drinks and Canapés

Speakers' Biographies

Sue Medder Sue is the Chambers Director at XXIV Old Buildings and joined in June 2014 from international law firm Withers LLP, where she was a partner. Sue is primarily responsible for client care at XXIV and works with members and the clerking team to develop client relationships and ensure a continuing level of excellence in service. Sue also sits on XXIV's management committee and is closely involved in the strategic growth of chambers. Sue has from her previous practice a keen interest in international legal markets which she uses to assist in growing XXIV Old Buildings' established international practice.

Michael Black QC Michael has been an international disputes lawyer for nearly 40 years specialising in international arbitration and offshore litigation both as Advocate and Arbitrator. The guides have described him as *"a superb and seasoned professional"* and refer to his *"extensive experience in commercial litigation and arbitration disputes related to the construction, energy and funds sectors ... sources consider him a "great name" in London and internationally"*. In the court-room his *"amazing eye for detail"* and *"brilliant legal mind"* are said to be a *"deadly combination"* and *"his cross-examinations are something to behold"*.

His practice is truly global spanning Africa, the Middle East, India and the Far East. He divides his time equally between acting as counsel and arbitrator mostly under ICC, LCIA, LMAA, DIAC and UNCITRAL rules as well as under ad hoc procedures.

He is an internationally acknowledged expert on civil procedure. In England he served 4 years on Lord Woolf's Civil Procedure Rule Committee and a further 4 years on the Civil Justice Council. He was the principal draughtsman of the DIFC Court Rules and Arbitration Law. He has assisted in the draughtsmanship of arbitration rules in the BVI and Morocco and is currently working with Tom Montagu-Smith QC and Robert Avis on the court and arbitration laws and rules for the new Astana Financial Centre.

He is a member of ICC UK National Committee, the ICC Commission Task Force on Emergency Arbitrators and the Court of the Casablanca International Mediation and Arbitration Centre. He was for nearly 20 years a deputy judge of the TCC and latterly a deputy high court judge (QDB). He is a visiting professor at Manchester University and a Visiting Scholar at National Chengchi University, Taiwan.

Stephen Cogley QC Stephen has consistently been ranked in Chambers Guide to the Legal Profession as a leading Barrister in the field of Commercial Law as well as Chambers Global and The Legal 500. He is known as a determined and tenacious advocate, particularly well-suited to large commercial disputes that span different disciplines, where he combines his skills as an advocate and lawyer with a direct, no-nonsense approach to problem solving. Having crossed over from modern chancery –joint ventures, shareholder disputes and insolvency, to commercial, insurance and shipping work, his practise in silk successfully encompasses all these areas as well as banking and finance. He is also well known for his work for big owner managed businesses, and high net worth individuals in commercial matters. He is often instructed in large disputes that involve both chancery/insolvency and commercial issues. Many of his cases involve international aspects and he frequently works with teams of lawyers from other jurisdictions in cases that typically commence with anti-suit injunctions, freezing injunctions and other forms of interim relief. He is leading the 4 counsel team in the recently publicised £1B claim against Barclays in relation to the sale of a book of credit cards infected with miss-sold PBP, and one of the representative Defendants in the Volkswagen emissions group litigation, currently numbering 50,000 claimants.

Richard Ritchie Richard is an *"extremely well regarded"* litigator who regularly appears in courts and arbitrations and before tribunals and other professional bodies. Recommended by the legal directories for both company and insolvency, he is also known for his expertise in partnership, business disputes and civil fraud. *"Technically gifted and tactically excellent"* he has experience of appearing before domestic courts at all levels including the House of Lords (3 times) and also of international jurisdictions including the Middle East, Cayman Islands, BVI and Isle of Man.

Elizabeth Weaver Elizabeth is recognised in the directories as a *"well-regarded barrister for commercial Chancery cases"* who is *"excellent both on paperwork and on her feet"*, Elizabeth's practice covers litigation and arbitration of all types of business disputes including shareholder litigation, claims against directors, joint venture disputes. Described as *"robust and tenacious"*, she also has considerable experience in dealing with applications for interim remedies and conflicts of law issues.

Helen Galley Helen is recommended in Legal 500 2015 for private client trusts and probate on the basis of her *"very, very fine legal brain"* and also recommended in the Citywealth Leaders List 2015 as a Prominent Contentious Trusts Barrister. Helen has a particular interest and wide experience in trust issues, including hostile claims against trust assets, offshore trusts, constructive trusts relating to freehold property, cases which raise issues of conflict of laws and undue influence. Helen has acted in many contentious and non-contentious probate cases including claims in the Court of Protection. She has extensive experience of claims pursuant to the Inheritance (Provision for Family and Dependents) Act 1975. She also prepares trusts deeds and ancillary documentation, wills and post-death deeds of variation for Inheritance Tax planning purposes. Helen also has wide experience of chancery commercial matters including mis-selling of interest rate hedging products, company restructuring and partnership. She has extensive expertise in real property disputes and commercial landlord and tenant issues.

Stuart Adair Stuart has a successful litigation practice, which focuses on commercial litigation, company law, insolvency, fraud and international arbitration. He is recommended by both Chambers & Partners and Legal 500, *inter alia*, for his work in the area of contentious company litigation and has particular expertise in relation to shareholder disputes and claims against directors, where his forensic and cross-examination skills prove particularly effective. Legal 500 states that he is *"a pleasure to work with and particularly skilled in cross-examination"*, whilst Chambers & Partners describes him as *"a truly excellent junior for offshore commercial litigation and company disputes"*.

Sarah Bayliss Sarah is noted as *"very commercial as well as pragmatic"* and *"a good tactician with a sharp mind for complex issues"*. Sarah's commercial practice centres around banking and financial disputes, fraud, company and insolvency. Legal 500 rates her as a leading insolvency junior describing her work as *"technically fantastic"*. In addition to her English clients, Sarah acts for clients in a number of jurisdictions including the Cayman Islands, the BVI, Jersey, Guernsey, the Isle of Man, Gibraltar and the DIFC. Recent matters include a claim before the High Court in Gibraltar for alleged investment mis-selling, proceedings for special administration of an investment bank, a dispute in a joint venture to produce a West End show, a fraud claim involving the sale of film, television and music rights, issues about the ownership of property arising on restoration of a BVI company to the register and several disputes concerning substantial family businesses in England and the Far East.

Adam Cloherty *"Extraordinarily intelligent"* and *"extremely responsive"*, Adam has a broad international commercial litigation and arbitration practice. His recent work includes *Property Alliance Group v Royal Bank of Scotland* (the LIBOR test case currently on appeal) and *Akers v Samba* in the Supreme Court (on the interaction of the Insolvency Act and Saudi Arabian assets). Other reported cases include *Jet2.com v Blackpool Airport* (the leading case on 'best endeavours' clauses) and *Emmott v Michael Wilson & Partners* (the leading case on confidentiality in arbitration). Adam is recommended in the major legal directories, where it is noted that he is *"very punchy, clear and tough-minded"* with *"an ability beyond his years of experience"*.

Edward Cumming Said by Chambers & Partners to be *"a lion in court"*, Edward has wide-ranging expertise in commercial litigation, including proceedings raising complex contractual issues, banking and financial services disputes, civil fraud claims and matters with a company or insolvency dimension. Edward prides himself on being both a *"formidable advocate and excellent with clients"* and in the past year, as well as being named *"Chancery Junior of the Year"* at the Chambers & Partners UK Bar Awards, he has appeared as sole counsel before the Supreme Court in *Wood v Capita Insurance Services* [2017] UKSC 24, now the leading authority on contractual interpretation, and represented the Libyan Investment Authority (LIA) at the 2-month trial of *LIA v Goldman Sachs* [2016] EWHC 2530 (Ch) (as well as in relation to the pending appeal) and in *LIA v Société Générale & ors*, which settled on the eve of a 3½-month trial with SocGen apologising and announcing it had agreed to pay more than \$1 billion to the LIA.

Recognised as a leading junior by Chambers & Partners in no fewer than 5 separate practice areas, and by Legal 500 in no fewer than 6 separate practice areas, he is said to show *"maturity beyond his years"* as well as being described as *"[f]erociously hard-working, but always a delight to deal with"* and *"a solicitor's dream"*.

Hugh Miall Hugh has an international commercial litigation practice with a particular emphasis on multi-jurisdictional civil fraud and asset recovery claims, commercial and business disputes, company and insolvency actions. He is frequently instructed in high-value complex matters, both in Courts and arbitrations, many of which include offshore and other international elements. He is sought after for his robust and clear advocacy, for his practical and engaging manner outside court and for his straightforward and astute advice. Hugh's recent and ongoing work includes successfully striking out claims brought by Societe Generale worth US\$½Bn in a gold bullion supply dispute for failure to serve, delay and abuse of process; acting for over 100 investors in a complex multi-jurisdictional fraud and asset-recovery claim; acting in LCIA arbitration proceedings concerning a US\$750m shareholder dispute in relation to international oil companies. He has significant experience of bringing and defending claims against directors in various types of proceedings, and recently acted for offshore directors in a claim brought by liquidators of Jersey companies for €34m.

Timothy Sherwin Timothy already has a broad international commercial-chancery practice. His recent work include appearing in *Libyan Investment Authority v Goldman Sachs International* [2016] EWHC 2530 (Ch), one of the largest and most complex banking trials to have come before the English courts in recent years. He was also instructed in *Libyan Investment Authority v Societe Generale & ors*, which settled very shortly before a 14 week trial with SocGen apologizing to the claimant. Timothy is experienced in dealing with aviation, banking, commercial, company, fraud, insolvency and trusts litigation. Very many of his cases are international in nature. Timothy is comfortable working on his own cases, as well as being instructed as part of a team.