

Issues arising in the life-cycle of a dispute

CONFERENCE
PROGRAMME



Thursday 21 June 2018
13:00 - 17:30

Followed by drinks and canapés
Saddlers' Hall, 40 Gutter Lane, EC2V 6BR

XXIV
BARRISTERS' CHAMBERS

Issues arising in the life-cycle of a dispute: some current topics, thoughts and tips

Members of XXIV Old Buildings consider some current "Hot Topics" and issues that may arise in arbitral and court proceedings. Using a contract that gives one party discretionary powers as a template, we discuss these issues at the point that they may arise as the dispute progresses from inception through to enforcement, referring to some of the latest cases in these areas. The event will conclude with a Panel Q&A session involving 6 of chambers silks.



13:00 – 13:35 **Coffee and Registration**

13:35 – 13:45 **Introduction and opening** – Sue Medder, Chambers' Director and Stephen Cogley QC, Chair.



13:45 – 14:10 **Contractual Discretions: Use and Abuse** – Tom Montagu-Smith QC and Alina Gerasimenko consider the latest thinking on contracts giving a party discretionary powers.



14:10 – 14:35 **But Can You Claim?** – Steven Thompson QC and Hugh Miall address identification of non-contracting Claimants under the Contracts (Rights of Third Parties) Act 1999.



14:35 – 15:00 **Current Issues in Arbitration** – Michael Black QC and Kira King look at some current hot issues if the dispute is arbitrated.



15:00 – 15:25 **Corruption in Investor State Arbitration** – Edward Knight and Tom Stewart Coats consider investor corruption and its impact when arbitrating under ICSID.



15:25 – 15:45 **Coffee Break**

15:45 – 16:10 **Using the Financial Services and Markets Act Defensively** – Often used as a sword in financial and regulatory disputes, Oliver Assersohn and Ben Waistell consider the overlooked potential to use this Act as a shield.



16:10 – 16:35 **On a frolic of their own? When can you attribute the fraud of an agent to his or her principal?** – Edward Cumming QC and Sarah Bayliss examine recent Court of Appeal decisions and offer practical tips when considering the responsibility of third parties for the acts of a fraudster.



16:35 – 17:00 **Piercing the corporate veil to enforce your judgment or award** – Nicole Langlois and Andrew Holden conclude the Talks by looking at the latest from the courts on getting behind the corporate structure for enforcement purposes.



17:00 – 17:30 **Panel Session** – Chaired by Stephen Cogley QC.



Alan Steinfeld QC, Michael Black QC, Steven Thompson QC, Tom Montagu-Smith QC and Edward Cumming QC consider questions from the floor and share some thoughts on the issues raised in the afternoon's Talks.



17:30

Drinks and Canapés

Speakers' Biographies

Sue Medder

Sue is Chambers' Director at XXIV Old Buildings and is responsible for client care. Sue 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.

Alan Steinfeld QC

"Star of the Bar" Alan Steinfeld QC is recognised in the legal directories for his impressive expertise in commercial and traditional chancery, commercial litigation and fraud, company, partnership, insolvency and business restructuring, private client including in particular international trusts, professional negligence and pensions. A CEDR qualified mediator, he also has extensive experience in international arbitrations, both as a popular and experienced arbitrator as well as advocate.

Alan appears in not only all the UK courts including the Privy Council, but also regularly advises and appears in the Cayman Islands, Channel Islands, the BVI, the Bahamas, Bermuda, Gibraltar, the Isle of Man and Hong Kong.

The legal directories rightly identify him as "a brilliant strategist and a truly insightful barrister". Clients comment on the fact that he is "superior in terms of intellect and very good on his feet" and that "he is a silky advocate and very much on top of things". They also refer to the fact that "he's extremely bright and commands the respect of the court".

Michael Black QC

Michael has been an international disputes lawyer for over 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, SCMA, 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 Global ICC Commission and the Task Force on Emergency Arbitrators. He is a founding member of 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).

Stephen Cogley QC

Stephen is identified as “one of the new breed of client-friendly and client-committed silks” who is “able to find and develop arguments that others at the commercial Bar cannot” and as “the go-to guy for high-net worth individuals.” He has consistently been ranked in *Chambers Guide to the Legal Profession* as a leading Barrister in the field of Commercial Law (15 consecutive years) as well as *Chambers Global* and *Legal 500* and in other practice areas. Described by *Legal 500* as “Commercial, bright, approachable and savvy” Chambers notes “His advocacy is absolutely superb and his understanding and mastery of the brief is peerless. Not only that, he is also commercial and talks the client’s language. A notable commercial litigator”.

He specialises in multi-disciplinary and multi-jurisdictional cases, particularly involving fraud, complex legal issues and tough cross-examination of witnesses and experts. This skill-set has led to his practice spanning all commercial, fiduciary and trade sectors from energy, oil and gas, banking, financial services, shipping, aviation and insurance. He is frequently involved in shareholder disputes, fraud and asset tracing/recovery (particularly involving breach of fiduciary duty), sale and purchase and complex banking derivative disputes.

Praised by clients for his work ethic and recognised as a tenacious advocate, he is particularly well-suited to large disputes that span different disciplines, where he combines his skills as an advocate with a direct, commercially-minded and pragmatic approach to problem solving, representing individuals, SMEs, corporations, global organisations and blue chip companies. He also has an established reputation acting for high net worth individuals and their structures in commercial disputes.

Steven Thompson QC

Steven has a commercial chancery practice with a particular emphasis on aviation disputes, insolvency matters, company / joint venture disputes and civil fraud actions. Steven’s scientific training before he came to the Bar give him a particular advantage in dealing with complex financial transactions and technical expert issues.

He regularly appears in the Chancery and Commercial courts in London as well as overseas. Steven has particular experience in the British Virgin Islands where he lived for a period in 2000 whilst on secondment to a local law firm. He was called to the Bar of Supreme Court of the Eastern Caribbean that year and has since appeared in the BVI in various disputes. He is also appears regularly in courts in the Cayman Islands and in the Dubai International Financial Centre. Steven is also regularly instructed on international arbitrations and associated Court hearings, in the Far East, the Caribbean and Dubai as well as in London.

Steven has served on the International Committee of the Bar Council of England and Wales since 2009 and is currently a Vice-Chair of that Committee. He chairs the Bar China Interest Group. He is also Bar Council representative on the Brexit Law Committee.

Tom Montagu-Smith QC

Tom practices in a broad range of commercial disputes in court and arbitration. Most of his work has an international dimension. He is recommended in the guides as a leading silk in international arbitration, construction, and for both commercial and construction disputes in the UAE. He has appeared in some of the leading cases in the DIFC Courts, including *Pearl Petroleum v Kurdistan Regional Government* (2017), a USD2bn claim to enforce an arbitration award involving issues of state immunity. His work in London includes claims to enforce judgments and arbitration awards, fraud, construction and general commercial disputes. He appeared in *Watson v Watchfinder* (2017), one of a series of recent cases in which the “Braganza duty” has been developed.

Edward Cumming QC

One of the youngest QCs ever to be appointed, Edward – said by *Chambers & Partners* to be “a lion in court” –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 recent professional highlights include appearing as sole counsel before the *Supreme Court in Wood v Capita Insurance Services* [2017] AC 1173, now the leading authority on contractual interpretation, representing the Libyan Investment Authority (LIA) at the 2-month trial of *LIA v Goldman Sachs* [2016] EWHC 2530 (Ch) 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, in the past year, and being named “Chancery Junior of the Year” 2016-17 at the *Chambers & Partners UK Bar Awards*.

Recommended by *Chambers & Partners* (2018) as a ‘New Silk’ in no fewer than 6 separate practice areas, and by *Legal 500* (2017) in 8 separate practice areas, he is said to show “maturity beyond his years” and to be a “formidable opponent”, whilst also being “ferociously hard-working, but always a delight to deal with” and “a solicitor’s dream”.

Nicole Langlois

Nicole is one of only a handful of barristers practising at the Bar in London who is dual qualified to practice both in England and in Jersey. She qualified as an Advocate of the Royal Court of Jersey in 1998, having begun her legal career with a magic circle City firm. She was called to the English Bar in 2008.

Nicole has a flourishing international practice and is regularly instructed in cases which have a multi-jurisdictional aspect. Her recent and on-going cases involve jurisdictions as diverse as Jersey, Guernsey, BVI, Hong Kong and New York. Her main areas of specialisation are trust and company disputes, commercial contractual disputes and fraud and asset tracing. She is often instructed to provide expert evidence on Jersey law in foreign proceedings.

Nicole is recommended in Chambers & Partners 2017 for "Offshore" work and described in the 2016 edition of *Legal 500* as the "go-to person for issues involving Jersey law."

Edward Knight

Edward has particular skill in dealing with fraud cases and financial issues, having formerly qualified as a chartered accountant in 1995. His expertise enables him to approach matters with an understanding of the practical realities of business and is applicable to a wide range of commercial disputes.

In addition to appearing in the High Court, the Court of Appeal and the Supreme Court, Edward has appeared in the High Court in Anguilla, the Eastern Caribbean Court of Appeal and the Privy Council and in the DIFC Courts in Dubai. He has also been involved in litigation in other off-shore jurisdictions and in Africa.

Edward has considerable experience in arbitration and the enforcement of arbitral awards. He acted in *IPCO v NNPC* [2017] UKSC 16, the leading case on enforcement, from first instance to the Supreme Court and, among other arbitrations, has appeared in the Permanent Court of Arbitration in the Hague and a recent ICSID Investor-State arbitration in Paris, both in claims relating to the expropriation of foreign investments by state organs.

Legal 500 recommends Edward for commercial litigation, fraud, insolvency and professional negligence calling him "very bright", "with a keen eye for detail and ... able to marshal a morass of evidence" and "a formidable cross-examiner".

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 BVI, Bermuda and the Cayman Islands, the Channel Islands, Gibraltar and the DIFC. Recent matters include a substantial multi-jurisdictional dispute involving allegations of malpractice against a major international bank, a fraud claim involving the sale of film, television and music rights, a dispute concerning the re-structuring of a busy firm of architects and several disputes concerning substantial family businesses in England and the Near and Far East.

Oliver Assersohn

Oliver Assersohn is a commercial/Chancery and regulatory barrister specialising in banking and financial services and is recommended by the foremost independent legal directories for financial services. A substantial element of Oliver's work has a banking or financial services angle to it and he has acted for institutions, funds, family offices and individuals. In addition to an analysis of the contractual, equitable and common-law position Oliver is able to bring to bear his detailed knowledge of the Financial Services and Markets Act (2000), the regulatory regime more generally and the impact of the FCA rules on a civil claim. Oliver has also undertaken a broad range of non-financial services related commercial or Chancery cases for negligence and breach of contract as well as being instructed in insolvency claims, interlocutory applications and jurisdictional issues with particular experience of *forum non conveniens* issues.

Andrew Holden

Andrew enjoys a busy commercial chancery practice. He has extensive experience acting in complex commercial disputes, both in the UK and in other courts and tribunals, and which includes fraud, asset tracing, and national and cross-border enforcement work. He also maintains a thriving trusts practice.

Chambers UK Bar 2018 describes Andrew as "incredibly bright and reassuring for clients", and as "imaginative, tenacious and clever" with a "lovely crystalline mind...A wonderful junior who is very good on his feet". Recent cases of note include *Ras Al Khaimah Investment Authority v Bestfort* [2017] EWCA Civ 1014, in which Andrew assisted one of the United Arab Emirates to secure free-standing freezing injunctions in support of complex fraud litigation in the Republic of Georgia, and the ongoing case of *Akhmedova v Akhmedov* [2018] DIFC CFI 11; [2018] EWFC 23 (Fam), a multi-jurisdictional commercial asset-tracing and enforcement exercise arising out of the largest divorce award ever made by the English court.

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 and maintaining this strike out on appeal; obtaining judgment for over 100 investors in a complex multi-jurisdictional fraud and asset-recovery claim and acting and advising in relation to the ensuing tracing proceedings; acting in LCIA arbitration proceedings concerning a US\$750m shareholder dispute in relation to international oil companies; defending claims for breach of confidence; shareholder disputes and claims against directors, both domestic and international and including in the context of insolvency proceedings.

Kira King

Kira has a broad commercial practice with particular experience of civil fraud, insolvency, banking and company and general commercial litigation. Kira is an experienced advocate who frequently appears in the High Court and has experience of both trial and appellate advocacy. Kira is particularly experienced in applications for pre-emptive and interim relief and as a sole advocate has successfully obtained and responded to high value freezing orders both within the jurisdiction and offshore. Kira has substantial offshore experience having been called to Bar of the Eastern Caribbean Supreme Court (BVI) and the Gibraltar Bar (on an ad-hoc basis) and has been instructed on cases in the Cayman Islands, Dubai, Gibraltar, Guernsey, Jersey and the BVI.

Kira's recent experience includes the case of *Reef European Value Added Fund I LP v Deutsche Alternative Asset Management (UK) Limited* where she was instructed by Allen & Overy LLP on a claim for damages of at least €158 million by an investment fund against its investment manager for breach of contract and/or negligence in relation to a decision to cause the fund to invest in a German real estate transaction.

Kira is currently instructed on a high value dispute in the Commercial Division against an insurance broker where it is alleged that the insurance broker negligently failed to obtain an insurance policy which covered employee theft, a company dispute in the BVI and a substantial insolvency dispute in the Chancery Division about the valuation of a debt by the liquidators in a liquidation.

Tom Stewart Coats

Tom has a broad commercial practice in both litigation and arbitration. His experience includes general commercial disputes (often involving conflicts of law and jurisdiction), aviation, company and shareholder disputes, and banking and financial services litigation.

Tom previously practised at a firm specialising in investment treaty and commercial arbitration and retains a practice in commercial arbitration involving state entities, investor-state arbitration, and public international law.

Current and recent cases include acting: for a North African state in an investment treaty arbitration arising out of two large infrastructure projects; for a US financial institution in a US\$1billion claim against a UK bank; for a South American state in ICSID award enforcement proceedings in England; for a company seeking to enforce a US\$650 million foreign judgment against an African state; for a US company in DIFC-LCIA arbitration proceedings against a Pakistani company and related court applications (involving issues of Virginia, DIFC and UAE law); and as a tribunal secretary in a large commercial arbitration seated in India.

Alina Gerasimenko

Alina joined Chambers in 2017 and is developing a broad commercial chancery practice. Alongside regular instructions in the English courts, she has both domestic and international experience of commercial litigation, insolvency matters and trust disputes. Alina has recently assisted in the *Akhmedova* case in the DIFC and is currently undertaking a secondment at Collyer Bristow to assist on four connected LIBOR manipulation claims. As a native Russian speaker, Alina has had experience of and welcomes instructions with a Russian or CIS element.

Ben Waistell

Ben joined Chambers in 2017 and is developing a broad commercial practice encompassing commercial litigation, civil fraud, company and insolvency matters, and financial services. He regularly appears both led and unled in the English Courts and has experience of the major arbitral rules and institutions. During pupillage, the majority of Ben's work had an international element and he has particular interests in issues of private international law and investment disputes.

He has experience of assisting in heavyweight commercial work as well as running his own smaller commercial disputes in the county court. Ben's recent work includes acting as a junior on a 2-week fraud trial in the Circuit Commercial Court, advising on potential civil claims arising from breaches of financial services regulations, and several small claims relating to guarantees and sales of goods. He is currently instructed as a junior on a substantial international sale of goods dispute in the Commercial Court.