



DAVID DAVIES

Born 1979

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Practice

- Commercial Litigation
- Commodity Disputes
- Construction & Engineering
- Employment Law
- Fraud
- Injunctions & Arrests
- Insurance and Reinsurance
- International Commercial Arbitration
- Oil & Gas
- Shipping

David Davies has a broadly based commercial practice focusing in particular on the areas of general commercial litigation, commercial fraud, shipping and commodities, insurance and international arbitration.

He has considerable recent experience of complex fraud litigation having recently completed the 24-week Fiona Trust trial in the Commercial Court in addition to acting in two subsequent major commercial fraud actions in the Chancery Division (Jenington International Inc & ors v. Kanat Assaubayev & ors and Cadogan Petroleum Plc & ors v. Mark Tolley & ors).

He has been recommended by the Legal 500 in the fields of International Commercial Arbitration (2008 Edition) and Commercial Litigation (2009 & 2011 Editions). He was one of only ten junior barristers under 10 years call recommended at the London Bar in the field of Commercial Litigation in the 2009 Edition, where he was described as *"very popular with clients"* and as giving *"very commercial advice"*. In the 2011 Edition, he is described as a *"remarkable combination of a Rolls Royce technical lawyer, soft people skills and judgment far beyond his call"*.

He is also recommended as an "up and coming" junior in the field of Commercial Dispute Resolution in the 2011 and 2012 Editions of Chambers & Partners which comments that *"he has already developed a broad-based commercial practice and recently impressed many people with his work on the Fiona Trust litigation"* and that he is a *"top pick"* who has *"remained particularly busy of late advising on large-scale fraud litigation"*.

Career	2004	Call: Gray's Inn
Education	2003	BVC (Very Competent), BPP Law School
	2002	BCL (Distinction), Jesus College, Oxford University
	2002	BA (First Class Hons) (Jurisprudence), Jesus College, Oxford University. Distinction in Moderations.
Awards	2003	Atkin Scholar of Grays Inn
	2002	Sankey Scholar, Jesus College, Oxford University
	2002	Bedingfield Scholar of Grays Inn
	2002	Winner of Oxford Law Society Mooting Competition
	2001	Postgraduate study funding, Arts and Humanities Research Board
	2000	Wellson Prize for best performance by a college law student, Jesus College, Oxford University
	1999	Meyricke Scholar, Jesus College, Oxford University
Lectures	2002	Tutor in the Law of Evidence, King's College London
	--03	
	2006	LLM Module in International Commercial Arbitration, London School of Economics

International Commercial Arbitration

This is one of David's principal practice areas. He regularly acts in all types of international arbitrations under the rules of the ICC, LCIA, UNCITRAL and the LMAA. Major international arbitrations with which he has been involved include:

- Representing a major European shipping company in arbitration proceedings concerned with the construction of two ultra-harsh environment jack-up drilling rigs in the Far East.
- Representing (with David Mildon Q.C.) two East African shareholders in long running LCIA proceedings against the majority interests in a private consortium which won the bid to run the privatised railways of Kenya and Uganda. The shareholders successfully established that they had been wrongly excluded from the consortium and were entitled to participate as shareholders. Part of the decision was challenged in the Commercial Court: see Sheltam Rail Company (Proprietary) Ltd v. Mirambo Holdings Ltd [2008] 2 Lloyd's Rep 195.
- Acting (with Jeffrey Gruder Q.C.) for a well-known UK clothing retailer in an arbitration against a supplier in connection with a major long term supply contract.
- Representing (with Graham Dunning Q.C.) a European State in an ICC arbitration against a defence company concerned with a high value contract for the supply of satellite surveillance services.
- Representing (with Clive Freedman Q.C) a major mining company in an LCIA arbitration concerning contracts entered into by the former management in circumstances where they were alleged to have had an undisclosed interest in the counter-party.
- Representing a metals trader in a dispute in relation to several sales contracts (arbitration pursuant to the Rules of

the London Minor Metals Trade Association).

Investment treaty experience includes advising in connection with potential ICSID proceedings relating to a failed energy project in Eastern Europe and assisting in the preparation of expert evidence on English law for the purposes of ICSID proceedings relating to a significant Caribbean oil concession.

David also has experience of arbitration related applications to the Commercial Court. He acted as sole counsel in STX Pan Ocean Co Ltd v. Ugland Bulk Transport AS [2008] 1 Lloyd's Rep 86, an appeal from an award under section 69 of the Arbitration Act 1996 and with Graham Dunning Q.C. in Islamic Republic of Iran Shipping Lines v. Caspian Shipping Company, resisting applications under sections 67, 68 and 69 of the Act.

David recently acted, along with Ricky Diwan, for the beneficiaries of a major ICC Award (US\$65 million) in an enforcement action against the national power company of Tanzania (Dowans Holding SA v. Tanzania Electric Supply Co Ltd [2011] EWHC 1957 (Comm)) in which the Court considered the impact of a challenge to the award in the courts of the seat of the arbitration on enforcement in England & Wales pursuant to the New York Convention.

David was one of a very small number of junior barristers recommended in this area in the 2008 Edition of the Legal 500 where he was described as "fantastic".

**Commercial
Litigation (including
Commercial Fraud)**

Commercial litigation is one of David's core practice areas and he has considerable experience of drafting pleadings and advising in relation to interlocutory applications in addition to advocacy and acting as junior counsel in major trials.

He also has considerable recent experience of extremely large-scale commercial litigation, having represented (along with Steven Berry Q.C. and Nathan Pillow) the principal defendant in the well-known Fiona Trust litigation. A 24-week trial before Andrew Smith J was completed in March 2010 (Fiona Trust & Holdings Corp & ors v. Yuri Privalov & ors [2010] EWHC 3199 (Comm)). This claim, which was for several hundred million dollars, revolved around the alleged corruption of the former Director General and President of the two largest Russian state-owned shipping companies. It involved allegations of fraud and bribery spanning a 4-year period and giving rise to complex choice of law issues.

As a result of his participation in this trial, David has considerable knowledge of the English law of secret commissions and bribery (and regularly gives talks on this topic to City law firms). David was also instructed in Chancery Division proceedings where a Defendant accused of accepting bribes obtained summary judgment dismissing proprietary claims over the alleged bribe monies on the basis of Sinclair v. Versailles (see Cadogan Petroleum Plc & ors v. Mark Tolley & ors [2011] EWHC 2286 (Ch) – led by Richard Millett Q.C.)

He also acted, along with Clive Freedman Q.C., on a US\$450 million fraud claim in the Chancery Division (Jenington & ors v. Assaubayev & ors). This case involved an alleged fraud by the

controlling shareholders of a major Kazakh gold mining company and a claim for fraudulent misrepresentation relating to the acquisition of that company by Russia's largest gold mining group in August 2009.

Further examples of Commercial Court work include:

- Acting with David Foxton Q.C. in Sea Emerald v. Prominvestbank [2008] EWHC 1979 (Comm), a multi-million dollar claim under a refund guarantee issued by a Ukrainian bank which raised issues of apparent and actual authority under English and Ukrainian law.
- United Insurance Brokers v. Marsh. Representing (with Stephen Houseman) insurance brokers UIB in a case against a rival insurance broker in connection with a "team move" and the alleged poaching of clients and business. The case settled immediately prior to the start of a two-week trial before Steel J.

David also acted (with Anthony Trace Q.C.) in Queen's Bench Division trial for a German bank that had suffered extensive losses as a result of a fraudulent scheme to sell non-existent tickets for the Beijing Olympics 2008.

David has also acted in several high profile cases concerning alleged wrongdoing by senior employees. He has particular experience of claims to protect employer confidential information, injunctive relief in relation to threatened breaches of covenant and claims for breach of fiduciary duty and whistle blowing. Examples include:

- Hanco ATM Systems v. Cashbox ATM Systems [2007] EWHC 1599 (Ch). Acting (with Andrew Hochhauser Q.C.) in a multi-million pound Chancery Division claim against a former sales director of a company involving allegations of breaches of contract and fiduciary duty.
- ITI Energy v. Dogru (with Charles Ciumei). Proceedings in the Chancery Division raising issues of breach of fiduciary duty and misuse of confidential information by a company director who had developed an advanced technology for the generation of electricity from organic waste.
- Lewis Findlay v. Cantor Index Limited. Instructed by Cantor Index (along with Andrew Hochhauser Q.C. and Charles Ciumei) to defend the major whistle-blowing claim brought against it by its former Managing Director Lewis Findlay. The case settled shortly before the commencement of a five-week trial in the Employment Tribunal.

David has also been instructed in several county court trials, particularly in relation to commodities and sale of goods (including high value consumer goods). Notable examples include acting for a European subsidiary of a major US chemical corporation in a two-day trial relating to the sale of a consignment of aluminium and bringing claims in negligence and under the Consumer Protection Act 1987 against an English manufacturer of luxury cars.

He advises generally on a broad range of commercial issues including commercial agency, banking (both business and retail), guarantees and distribution agreements.

Injunctions and Arrests

David has been involved in several injunction applications, including in particular High Court injunctions to restrain breaches of Director's service agreements and to protect confidential information. This experience includes acting in a dispute between City institutions in relation to confidential information arising out of a bespoke financial product and obtaining a freezing injunction against a defendant who had been involved in the sale of non-existent tickets for the Beijing Olympics (see above).

Recent experience includes acting with Clive Freedman Q.C. and Paul McGrath in obtaining a worldwide freezing injunction for US\$500 million in the Chancery Division along with permission to enforce that injunction outside the jurisdiction in accordance with the Dadourian guidelines, Norwich Pharmacal disclosure orders and a search order in respect of 3 premises in London. David was also instructed in numerous consequential hearings arising out of this injunction, including a successful application to cross-examine certain of the defendants in relation to their asset disclosure (Jenington International Inc & ors v. Kanat Assaubayev & ors [2010] EWHC 2351 (Ch))

Insurance and Reinsurance

David has experience of Lloyd's market related claims including broker's negligence and political risk insurance. He has also advised on a range of non-Lloyd's insurance matters, including advising in relation to whether the situation in Iraq in mid-2004 amounted to a "civil war" for the purposes of a life insurance policy.

David was instructed (with Mark Templeman Q.C.) in Lexington Insurance Company v. Multinacional de Seguros S.A. [2008] EWHC 1170 (Comm), proceedings relating to the reinsurance in the Lloyd's market of certain Venezuelan risks. The case involved questions in relation to waiver of the reinsured's obligation to cooperate in the settlement of claims and of Venezuelan law.

Oil & Gas

David has developed considerable experience in the oil & gas sector, particularly in relation to the construction of offshore infrastructure including rigs and subsea pipelines. He also recently acted for a North African state oil company in relation to a dispute concerning contaminated aviation fuel.

Shipping and Commodities

David has a substantial practice in this area, typically in the form of LMAA arbitration work. Notable examples include:

- Acting with Steven Berry Q.C. in an arbitration concerning charterer's right to rely on a charterparty cancellation clause.
- Acting with Graham Dunning Q.C. in an arbitration concerned with the right to utilise a specialist offshore construction vessel.
- An LMAA arbitration with Simon Bryan Q.C. concerned with a charterparty oil majors approval clause and the operation

of the SIRE database.

STX Pan Ocean Co Ltd v. Ugland Bulk Transport AS [2008] 1 Lloyd's Rep 86 concerns the owners' right to claim damages for breach of a safe port warranty where a vessel suffers ice damage en route to or from a named port.

He also has experience of GAFTA and FOSFA commodities arbitrations (including futures/hedging) and has advised and drafted submissions on numerous charterparty disputes. Such work includes acting directly for P&I clubs.

Sports Law

David represented a licensed player's agent in a dispute with a Premiership Football Club and has experience of issues arising from Football Association arbitration.

Member

Commercial Bar Association (COMBAR)
London Common Law and Commercial Bar Association
Young International Arbitration Group

Reported/Publicly Available Cases

Hanco ATM Systems v. Cashbox ATM Systems [2007] EWHC 1599 (Ch)

STX Pan Ocean Co Ltd v. Ugland Bulk Transport AS [2008] 1 Lloyd's Rep 86

Lexington Insurance Company v. Multinacional de Seguros S.A. [2008] EWHC 1170 (Comm)

Sea Emerald v. Prominvestbank [2008] EWHC 1979 (Comm)

Sheltam Rail Company (Proprietary) Ltd v. Mirambo Holdings Ltd [2008] 2 Lloyd's Rep 195

Fiona Trust & Holding Corp & ors v. Yuri Privalov & ors [2010] EWHC 3199 (Comm)

Jenington International Inc & ors v. Kanat Assaubayev & ors [2010] EWHC 2351 (Ch)

Fiona Trust & Holding Corp & ors v. Yuri Privalov & ors [2011] EWHC 644 (Comm) (costs and other consequential issues)

Fiona Trust & Holding Corp & ors v. Yuri Privalov & ors [2011] EWHC 715 (Comm) (permission to appeal)

Dowans Holding SA v. Tanzania Electric Supply Co Ltd [2011] EWHC 1957 (Comm)

Cadogan Petroleum Plc & ors v. Mark Tolley & ors [2011] EWHC 2286 (Ch)

If you require further information please contact clerksroom@essexcourt.net