

From Sea to Sir

DIFC Courts officially open for business this month. So *The Brief* catches up with the Courts' head man, the Right Honourable Sir Anthony Evans QC, an internationally esteemed jurist and a former member of the UK's senior courts. He's a mean sailor too

Dubai International Financial Centre Courts (DIFC) opens for business this month under the guidance of its Chief Justice, the Right Honourable Sir Anthony Evans QC. The DIFC is unique in that it's probably the first example where a state has set aside its normal civil and commercial rules so that an alien system – the English common law – applies instead. Other Gulf States like Qatar are now following Dubai's lead.

But, to be a success, transplanted legal systems need independent courts. And independent courts need independent judges. And that's why the DIFC sought out internationally renowned jurist Sir Anthony Evans as its Chief Justice and Michael Hwang QC as its Deputy Chief Justice.

"It is essential that the judges appointed to the DIFC Courts are of the highest possible calibre. His Highness, Sheikh Maktoum Bin Rashid Al Maktoum, Ruler of Dubai, has without doubt, appointed two men of the very highest standing within the international legal community and, critically, companies establishing themselves at the DIFC can rest assured that the DIFC Courts will be independent, credible and effective," declared Dr Omar Bin Sulaiman, Director General of the DIFC Authority, upon the appointment of the two judges by the Ruler of Dubai in April 2005.

Setting up a whole new legal system and court takes time – two years from appointment as Chief Justice to officially opening the doors. "I'm thrilled. We've had the most extraordinary backing from the DFSA and the DIFCA," enthuses Sir Anthony.

Expansion plans are in mind too – the Courts now have two judges and numbers will be expanded to four, then eight and, as the Courts

get busier, up to 10, so that there will always be a judge in residence. The aim is to have judges from around the common-law world and, in the meantime, the Court Registrar is resident. Two cases have been heard at the time of writing, and the Courts have been sitting on a quarterly basis to give progress reports. A purpose-built courtroom has been fitted out in a traditional style – dark wood panelling, lots of leather.

There are several smaller, lighter chambers for private hearings and arbitrations together with modern technology. Sir Anthony tells of a chat by video-conference between himself and the Mayor of London, Ken Livingstone, who had stopped by the Courts while Sir Anthony was in London. Sir Anthony has also sat in a hearing that took place in Dubai even though he was physically in London at the time. "We're very proud of our facilities," he tells *The Brief*.

The aim of the Courts, Sir Anthony says, is to start with the common law and continue its development appropriate to the resolution of commercial disputes in a modern international financial centre. Key to that success will be high standards, integrity and trust. Sir Anthony explains that, in some extreme cases, practitioners are not entirely trustworthy. "Sometimes people get an undeserved reputation and sometimes it's all too deserved. Sometimes you get the feeling that people have not lived up to what they promised," he says.

A register of practitioners is maintained by DIFC Courts and the only requirement for registration is that the lawyer should be registered and qualified in their home country.

And Sir Anthony has these words for all who appear before him:

"Above all, make sure you do your job properly, make sure you don't risk your

ENFORCING AWARDS

Enforcing a judgment by the DIFC Courts within the DIFC area should be pretty easy. But enforcement outside the DIFC could be a little tricky. Local lawyers and businessmen say that enforcing judgments in the various Arab states can be difficult, sometimes impossible. And there's not much point spending time, money and effort to get an award that can't be enforced.

But Sir Anthony provides reassurance.

"It's all dealt with in the law," he explains. "Enforcement of this court's awards takes place through the local courts through their own enforcement procedure. We can fast track without going through the regular processes. The Dubai Courts have an executive judge responsible for enforcement, which is short-circuited by DIFC law – if it is the genuine judgment of the DIFC Courts then he will not have any discretion as to its enforcement."

A DIFC Courts judgment can be enforced in any of the seven Emirates and then throughout the Gulf Co-operation Council countries once it has been converted into a Dubai Courts judgment. And, going further abroad, that award can be enforced in any country with which the UAE has a mutual recognition judicial agreement.

But beware. Judgments of the DIFC Courts are in English but the Dubai Courts work in Arabic. Translation of judgments is an issue – Sir Anthony admits there is an "interface problem." Parties will need to have an Arabic language copy of DIFC Courts judgments if, for example, they want an urgent injunction.

So here's a top tip: make sure there is a good Arabic language translator on hand. Be aware that the phrase 'legal translator' only means that a person is legally allowed to translate. It does not mean that he can translate legal documents to a high quality standard.



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[the law] what I'd do as
long as I could earn a living”

reputation for integrity either with the Courts of your opponents. Standards will vary from around the world, but there isn't a system in the world in which advocates are not expected to be trustworthy. And the assumption here is that their relationship with the Courts will be founded on trust and integrity. I regard it as important that a bond of trust should grow between the judges and the advocates who appear before them,” he asserts.

Sir Anthony became involved with the Courts through a personal approach in 2004 by Michael Blair QC, a London barrister, who was involved in the original planning of the DIFC. The inclusion of a judicial authority in the centre was planned right from the start.

“I felt that I was lucky to be approached,” explains Sir Anthony. “I had not long retired from the Court of Appeal [one of England's senior courts] and I'd spend most of my time in the Commercial Court. I was the only person at the time available with that experience. The chance to get involved here was very exciting – it's a unique chance to build a court. For me it was a chance to establish the common law in a modern and international environment. For someone's who's practised in London you're very conscious that commercial law plays a part in commercial life. The exciting part is to apply those same laws in an entirely modern international context,” he explains.

At age 18, Sir Anthony, or Anthony Evans as he then was, started his career at sea. He had to do national service (two years of compulsory military service, now abandoned by the UK) and, happily for him, was able to choose to serve with the Royal Naval Reserve (RNR) – Britain's auxiliary naval forces. “Happily”, because he'd always been interested in the sea and had been part of his school's sea-cadet force. Serving with the RNR gave him a great opportunity to get a bit of sea-going experience. But there was a deeper reason for going to sea, one that would shape the other major area of his working life. Sir Anthony was following his father. “I grew up with it as my father was in the Navy. I felt an affinity with it,” he says simply.

Anthony Evans trained as an ordinary seaman for six months, became a Midshipman (an uncommissioned officer rank above enlisted

men and below Sub-Lieutenant) and served on the wartime cruiser HMS Derbyshire in his first year. In the second year he served on a minesweeper with three officers and 11 crewmembers. "One was able to enjoy one's time on a small ship," Sir Anthony tells *The Brief*, adding that he particularly enjoyed navigation and watch-keeping. He also learnt a great deal, and not just technical skills. Meeting people from different walks of life was the major learning experience, he says.

Sir Anthony signed up for voluntary service at the end of his national service and did something like two weeks a year plus extra weekends. And that's how he became a Lieutenant Commander (equivalent to a Major in land forces). Sea-going was a fun, if slightly terrifying, experience. "There were some occasions of rough weather off Scotland and the Norwegian coast. In the course of that time, I visited nearly every country on the Atlantic seaboard from Morocco to Norway. That's the whole coastline," he recalls.

After his sea-going days, university study called. There was only one possible career choice for the young ex-sailor. It had to be the law. And for the same reason that he chose the sea over any other form of military service. He was following his father's lead. "My father was a barrister and a judge. So I grew up with it. I became progressively interested in it. And I had no doubt that's what I'd do as long as I could earn a living," he says.

St John's College, Cambridge, called and he took his first degree in 1957, qualifying at the bar a year later.

He did the first half of his pupillage (a year-long practical training period) with the current Lord Howe, travelling between Wales and London, witnessing major criminal trials on the Welsh circuits.

But a life-changing decision between two future ways loomed. One way involved general practice – helping people through everyday legal problems and representing them in the local courts. For Sir Anthony, that meant he could have stayed in his native Wales. The other way involved shipping and commercial practice with important cases in the glamour of the city. There was no place in that life for Wales.

He chose to leave. With his general commercial outlook and his sea-going experience, a shipping and commercial practice was the only choice. But there was one link to home. "I was attached to the South Wales Division of the Royal Naval Reserve. It gave me a link with Wales, which I wouldn't have kept. That's more of an emotional link now," he explains.



Sir Anthony took up the second half of his pupillage with Michael Kerr, whose work was mostly in London. About 13 years followed as a junior barrister working in criminal and commercial practice. It was the commercial side that he enjoyed owing to the nature of the work and its intellectual appeal.

Shipping was especially interesting because it was at the forefront of English commercial law. Many of the key commercial concepts in today's English common law, like 'frustration' and 'fundamental breach', originate from shipping disputes that were escalated all the way to the House of Lords (England's most senior court). Working on both criminal and commercial cases

gave Sir Anthony an overview of the different styles of advocacy and revealed to him the secret of all advocacy: try to be aware who it is that you are trying to impress. Trying to persuade 12 ordinary jurors is different to trying to persuade a judge. His other top tip is to remember who the witness is. A shy, frightened grandmother who is trying her best to give evidence requires different questioning techniques to a brazen crook that lies from beginning to end.

Sir Anthony's final tip is to 'know your judge'. "If a judge is thoroughly familiar with the law, it is a mistake to teach him elementary principles. Then there are distinguished judges who don't have extensive commercial experience who will

SNAPSHOT

Name

The Right Honourable Sir Anthony Evans QC

The title 'Right Honourable' is an honorific granted to various classes of person in the United Kingdom. Sir Anthony bears the title owing to his previous position as a Lord Justice of Appeal. That conferred membership of the Judicial Committee of the Privy Council, which is one of the highest courts in the UK and the Commonwealth (a loose confederation of nations once part, with the exception of Mozambique, of the British Empire).

Born June 1934

Age 72

From Cardiff, Wales

Married To Caroline

Family Two daughters, one son and eight grandchildren

Professional History

Private practice

2000 National and international arbitrator at Essex Court Chambers (current)

1971 Appointed as Queen's Counsel (granted senior status within the UK Bar)

1958 – 1984 Practised as a barrister in commercial and maritime law. General experience in the criminal courts. International practice – Singapore, Hong Kong and the USA among others
1958 Called to the bar

Public Appointments

2005 Appointed as Chief Justice of the DIFC Court (current)

2003 Justice of the Court of Appeal for Bermuda (current)

2000-04 President of the Data Protection Tribunal National Security Appeals Panel

1992 Lord Justice of Appeal in the Court of Appeal (a senior position in the judiciary of England & Wales). Retired in 2000

1990-92 Judge in charge of the Commercial Court

1989-92 Deputy Chairman Boundary Commission for Wales

1986-88 Presiding Judge (Wales & Chester Circuit)

1984 High Court Judge

1972 Recorder of the Crown Court (a part-time criminal law judge)

1969-92 Deputy Chairman Boundary Commission for Wales

1986-88 Presiding Judge (Wales & Chester Circuit)

Other Experience

1969 Retired as a Lieutenant-Commander

1952-54 Served in the Royal Naval Reserve as a Midshipman (an uncommissioned officer – ranking above enlisted men and below Sub-Lieutenant). Sir Anthony continued sea-going for many years after the end of his service

Education

At St John's College Cambridge

1960 Master of the Arts

1958 Master's degree in Law

1957 First degree, Bachelor of Arts

Hobbies Enjoys sailing "as much as possible."

want you to start at the beginning. Although I can't ever remember being upset that counsel treated me as a moron!" he laughs.

And then there was the time that Sir Anthony found himself on the wrong side of legal questioning.

A trip to the witness box of the Supreme Court of Louisiana beckoned during a fortnight's holiday with his wife, Caroline, in New Orleans, USA.

"I appeared as an expert witness on English law. On the whole, it's terrifying. It was an interesting experience although short and undistinguished," he quips.

Sir Anthony's next big step came in 1971 when he 'took silk'. It's how barristers in England are 'promoted'. The phrase comes from the gown that the newly elevated barrister wears – which is made out of silk. At the back of the gown is a small pocket. In the old days, clients of the barrister would pay fees by dropping money into the purse as the barrister was forbidden from asking for money. These days, that pocket is more likely to be filled with bits of fluff and, possibly, the odd half-chewed, boiled sweet.

Taking silk also means that the lawyer can put 'QC' for 'Queen's Counsel' after his name. In those days, silks were appointed by the Lord Chancellor (the most senior judge in the English and Welsh system). The lucky lawyer received a letter bearing news of his good fortune. "It's a wonderful feeling in that it's a sense of professional recognition," Sir Anthony recalls.

Elevation to silk brings its own traumas. The big challenge is in establishing his name. "One is worried as to whether one can get any work as a silk and support one's wife and family. There's no doubt, and my wife would bear me out, there are times when you have to put your work first. And you have to strike a balance and put your wife and family first. And you are up against the older, experienced silks. So there is nervousness about the competition. As a new silk, you are conscious about how new you are. You walk into court wondering if you're meant to be there," Sir Anthony recalls.

Sir Anthony first became involved with the Gulf states owing to a territorial dispute. Sharjah and Umm Al Quwain both claimed the island of Abu Musa, which was also claimed by Iran. Sharjah gave an oil concession to Buttes Gas and Umm Al Quwain to Occidental. Both companies claimed an exclusive right to drill and the question arose: which state had concession rights? It proved academic. Iran was worried about the leftist and communist sentiment then sweeping through the Arab

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states. "We need them [the islands of Tunb and Abu Musa]; we shall have them; no power on earth shall stop us. If Abu Musa and the Tunbs fall into the wrong hands, they could be of great nuisance value," the Shah of Iran declared in an interview with *The Guardian*, an English newspaper. Toward the end of 1971, Iran invaded. Seven people died and the population of the islands fled.

The improbable result was a slander action by one oil company manager against another. The case began in 1970 and lasted 14 years, until the House of Lords ruled that UK courts couldn't settle the action. "I started in the case as a junior and ended as one of the two silks," he tells *The Brief*. "I learned a lot about international law and was lucky enough to learn a lot about the Gulf States," he adds.

In the year before he became a judge, Sir Anthony was involved in an arbitration over a refinery explosion in Qatar. He also advised the Government of Dubai on widening and dredging the Creek. "On that occasion I was presented to Sheikh Mohammed, who's now the Ruler of Dubai," Sir Anthony recalls.

The next step was to the bench. He became a judge. In those days, it was assumed that lawyers would want to become judges and it was thought odd if a judgeship was turned down. Lawyers were asked to go and see the Lord Chancellor to be given the good news. "I was very pleased, obviously. Partly because of my father. He was a junior barrister with a very large practice in South Wales. He became a County Court Judge in 1956," Sir Anthony says.

His judicial career continued apace with appointments to senior forums, like the Court of Appeal of England and Wales between 1992 and 2000, and the Court of Appeal for Bermuda from 2003, which is a current position. And he's now the Chief Justice of Dubai's DIFC Courts. During our interview, we pop into the courtroom to take some photos with Sir Anthony wearing his judicial robe, "Look, no wigs!" he jokes. And that's the Right Honourable, and very human, Sir Anthony Evans, QC. ●

CONTRIBUTOR

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