

Henry Byam-Cook

CALL: 2000

✉ enquiries@twentyessex.com

☎ +44 (0)20 7842 1200



Overview

Henry practises in a range of commercial disputes, including shipping, energy and natural resources, IT and telecoms, banking, fraud, and insurance. He has extensive experience of jurisdictional disputes and interim applications (including injunctive relief), together with acting in trials, often in disputes with a complex, technical dimension and extensive cross-examination.

He regularly appears in the English High Court (Commercial Court, Technology and Construction Court, and Chancery Division) and has also appeared in the Supreme Court and Court of Appeal. Henry frequently represents clients as sole counsel, but also has considerable experience working as part of a larger team. He was recently appointed a QC and will be sworn in on 16 March 2020.

Henry has a strong arbitration practice. He represents clients in all forms of international arbitration – ad hoc, institutional and trade arbitrations. In addition, he has considerable experience of applications to court in support of arbitral proceedings, appeals against arbitration awards, jurisdiction challenges and points relating to arbitration law. He accepts appointments to sit as an arbitrator.

Henry was the winner of ‘Shipping Junior of the Year’ at the Chambers Bar Awards 2018.

[Privacy notice](#)

Publications

- ‘Could the English Courts Give Judgments in Bitcoin?’ *Computers & Law* (August/September 2018) (co-author).

Professional memberships

- LMAA: Supporting Member
- Commercial Bar Association
- Society for Computers and Law
- London Common Law and Commercial Bar Association
- Fraud Lawyers Association

Lectures/talks

Henry frequently delivers talks to clients. Recent topics include:

- ‘Jurisdiction Issues in Arbitrations’
- ‘The Insurance Act 2015 – a new regime’
- ‘Enforcement in an arbitration context’
- ‘Privilege under English law’
- ‘Arbitrator independence and challenges to arbitrators’

Education

- Inns of Court School of Law, London: Bar Vocational Course (2000)
- City University, London: Diploma in Law
- University of Oxford, Lincoln College: Classics (1998)

Example cases

- *Medsted Associates v Canaccord Genuity Wealth* [2019] EWCA Civ 83, [2019] 1 WLR 4481: acted for successful appellant on its appeal concerning the imposition of fiduciary duties on an introducing broker, the scope of the defence of informed consent, and whether a breach of fiduciary duty engaged the doctrine of illegality (Commercial Court, Court of Appeal).
- *Bank of Baroda v Nawany* [2017] 2 All ER (Comm) 763: jurisdictional dispute arising from suite of documents for US\$18 million loan facility, considering the interaction between Indian and English proceedings and their effect on the parties' unilaterally non-exclusive jurisdiction clause.
- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- ICC arbitration: acted for buyers of components for an industrial plant following the sellers' refusal to perform on the basis that the contract was unenforceable for illegality.
- *Nippon Yusen Kubishika Kaisha v Golden Strait Corp (The Golden Victory)* [2007] 2 AC 353: acted for successful appellants in leading case on the assessment of damages for repudiatory breach by charterer of long term time charter (Commercial Court, Court of Appeal and House of Lords).
- *Cresse Navigation v Office Nationale de l'Electricite* [2015] QB 366: acted alone in the Court of Appeal for successful respondents upholding an anti-suit injunction; appeal focused on the extent to which the court could manipulate the words of the bill of lading when deciding whether or not a jurisdiction clause had been incorporated into a bill of lading.
- *SAP (UK) Ltd v Diageo Great Britain Ltd* [2017] EWHC 189 (TCC): represented SAP in a claim for £54 million for usage of SAP's ERP software in excess of licence by Diageo - the leading case on indirect use or access of software.
- LCIA arbitration: acted alone for respondent software provider in arbitration proceedings which culminated in a nine-day hearing of disputes related to the installation of an automated warehouse system in Moscow.

Commercial dispute resolution

- *Medsted Associates v Canaccord Genuity Wealth* [2019] EWCA Civ 83, [2019] 1 WLR 4481: acted for successful appellant on its appeal concerning the imposition of fiduciary duties on an introducing broker, the scope of the defence of informed consent, and whether a breach of fiduciary duty engaged the doctrine of illegality (Commercial Court, Court of Appeal).
- *Bank of Baroda v Nawany* [2017] 2 All E.R. (Comm) 763: jurisdictional dispute arising from suite of loan documents for US\$18 million facility - considered the inter-action between Indian and English proceedings and their effect on the parties' unilaterally non-exclusive jurisdiction clause (Commercial Court).
- *Mirador International LLC v MF Global UK Limited* [2012] EWCA Civ 1662: appeal as to whether financial institution obliged to pay commission under an introducing broker agreement in respect of F/X, CFD and futures and options trading of a client introduced before the introducing broker had been incorporated (Court of Appeal).
- *WS Tankship II BV v The Kwangju Bank Ltd and others* [2012] C.I.L.L. 3155 - 2 week trial determining whether defendant banks were liable under a series of refund guarantees issued in connection with a shipbuilding contract. Considered questions of rectification, estoppel, non-disclosure and variation. Also whether a SWIFT confirmation amounted to signature for purposes of The Statute of Frauds (Commercial Court).
- *Nippon Yusen Kubishika Kaisha v Golden Strait Corp (The "Golden Victory")* [2007] 2 AC 353: assessment of damages for repudiatory breach by charterer of long term time charter - claim based on market rate for vessel at date of breach - entitlement of court to look at events occurring between date of breach and trial as part of its assessment (Commercial Court, Court of Appeal and House of Lords).
- *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] Bus LR 726: addresses the circumstances in which a claimant may recover damages assessed by reference to the cost of reinstating damaged chattels when that amount is higher than the diminution in their sale value and, in particular, what a claimant must prove in such circumstances. In

addition, the judgment considers the period in respect of which interest should be awarded in such cases and the recoverability of staff costs (Court of Appeal).

Arbitration

- LCIA arbitration: acted alone for respondent software provider in arbitration proceedings which culminated in a nine-day hearing of disputes related to the installation of an automated warehouse system in Moscow.
- Ad hoc arbitration: five-day hearing of disputes arising from the termination of a commercial agency for the sale of electronic components; issues concerning fraudulent misrepresentation, and the assessment of compensation under EU directive.
- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- ICC arbitration: acted for buyers of components for an industrial plant following the sellers' refusal to perform on the basis that the contract was unenforceable for illegality (accusations that the plant sought to exploit technology obtained by industrial espionage).
- *Navios International Inc v Sangamon Transportation Group* [2012] 1 Lloyd's Rep 493: the first case to consider the scope of the Court's jurisdiction to order a tribunal to give further reasons under the [Arbitration Act 1996 s.70\(4\)](#). Hamblen J held that it was not appropriate for the court to exercise its discretion to order an arbitral tribunal to state the reasons for its award for the purposes of an appeal where what the applicant sought was the opportunity to present further evidence and seek further findings from the tribunal, which evidence and findings were not considered necessary at the time of the arbitration.

Shipping

- *Glencore Energy UK Limited v OMV Supply & Trading Limited* [2018] 2 Lloyd's Rep 223: case concerned a contract for the sale of crude oil and gave rise to a number of novel legal arguments relating to time spent waiting by the vessel during the voyage (Commercial Court).
- *Caresse Navigation v Office Nationale de l'Electricite* [2015] QB 366: acted alone in the Court of Appeal in relation to an anti-suit injunction – appeal focused on whether or not a jurisdiction clause had been incorporated into a bill of lading from a voyage charter and the extent to which the Court could manipulate the words of the bill of lading to effect the incorporation (Court of Appeal).
- *National Shipping Company of Saudi Arabia v BP Oil Supply Company (The "Abqaiq")* [2012] 1 Lloyd's Rep 18 – acted alone on a two-day hearing before Court of Appeal against Tim Young QC – issue concerned whether a demurrage claim was precluded by reason of a settlement agreement or a contractual time bar in the BPVoy form.
- *ENE Kos 1 v Petroleo Brasileiro SA (The "Kos")* [2012] 2 A.C. 164 – owner's claim for remuneration for the period after vessel withdrawn for non-payment of hire and recoverability of the costs of putting up security for a claim as legal costs in a subsequent court action (Commercial Court, Court of Appeal and Supreme Court).
- *Navios International Inc v Sangamon Transportation Group (No. 2)* [2012] 2 Lloyd's Rep 354: section 69 arbitration appeal considering the meaning and effect of the BIMCO standard clause dealing with US Gross Transportation Tax, a tax levied by the US Government on hire and freight earned by owners and disponent owners on voyages to and from the USA (Commercial Court).
- *Nippon Yusen Kubishika Kaisha v Golden Strait Corp (The "Golden Victory")* [2007] 2 AC 353: assessment of damages for repudiatory breach by charterer of long term time charter – claim based on market rate for vessel at date of breach – entitlement of court to look at events occurring between date of breach and trial as part of its assessment (Commercial Court, Court of Appeal and House of Lords).

Commodities and international trade

- *Glencore Energy UK Limited v OMV Supply & Trading Limited* [2018] 2 Lloyd's Rep 223: case concerned a contract for the sale of crude oil and gave rise to a number of novel legal arguments relating to time spent waiting by the vessel during the voyage (Commercial Court).
- *RG Grain Trade v Feed Factors* [2011] 2 Lloyd's Rep 432: appeal concerning a provision in the contract addressing which inspection certificate was to be final as between the parties and a standard form clause in GAFTA contract 119 (a clause not considered in any previous decision). Hamblen J's judgment casts light on the provisions of the GAFTA sampling rules (Form 124) and also GAFTA 119 – two contract forms in wide use in the commodities market (Commercial Court).

Energy and natural resources

- LCIA-DIFC arbitration: successfully acted for buyers in a dispute arising out of their termination of contracts for the construction of two oil drilling platforms.
- London arbitration: acted for owners of LNG carrier after engine breakdown which disrupted the trading schedule of the major energy company which had chartered the vessel for carriage of parcels under its long-term LNG purchase contracts.
- ICC arbitration: acted for buyers of components for an industrial plant following the sellers' refusal to perform on the basis that the contract was unenforceable for illegality (accusations that the plant sought to exploit technology obtained by industrial espionage).
- Ad hoc arbitration: acted for successful claimant in ten-day arbitration concerning financing contracts for an offshore dynamic positioning vessel. Case raised numerous technical issues concerning vessel's specialized equipment.

Private international law

- *Bank of Baroda v Nawany* [2017] 2 All E.R. (Comm) 763: jurisdictional dispute arising from suite of loan documents for US\$18 million facility in respect of a ship purchase – considered the inter-action between Indian and English proceedings and their effect on the parties' unilaterally non-exclusive jurisdiction clause (Commercial Court).
- *Caresse Navigation v Office Nationale de l'Electricite* [2015] QB 366: acted alone in the Court of Appeal in relation to an anti-suit injunction – appeal focused on whether or not a jurisdiction clause had been incorporated into a bill of lading from a voyage charter and the extent to which the Court could manipulate the words of the bill of lading to effect the incorporation (Court of Appeal).
- *Polskie Ratownictwo Okretowe v Rallo Vito & C. SNC* [2010] 1 Lloyd's Rep 384: jurisdictional challenge dealing with Article 23 of the Brussels Regulation and issues over the incorporation of a standard form contract into a fixture recap (Commercial Court).

Information technology

- *SAP (UK) Limited v Diageo Great Britain Limited* [2017] EWHC 189 (TCC): represented SAP in a claim for £54 million for usage of SAP's ERP software in excess of licence by Diageo – the leading case on indirect use or access of software (four-day liability trial in TCC).
- LCIA arbitration: acted alone for respondent software provider in arbitration proceedings which culminated in a nine-day hearing of disputes related to the installation of an automated warehouse system in Moscow.
- *T-Systems Ltd v EE*: represented T-Systems against Everything Everywhere in an £80 million IT services dispute regarding the migration and management of Orange and EE's legacy IT infrastructure.
- *Atos Consulting Ltd v Avis Europe Plc*: dispute over the termination of a master services agreement for the pan European implementation of an ERP financial software package and Shared Service Centre. Case raised issues of fraudulent misrepresentation and expert points relating to repudiation (9 week trial in TCC which settled during hearing).
- *Peregrine Systems Ltd v Steria Ltd* [2004] All ER (D) 447 (Feb) – helpdesk outsourcing – software development and implementation contract – termination clause and common law termination – misrepresentation – meaning of "remediable" breach – documentation and training requirements – ITIL compliance – construction of Claimant's Part 36 offer letter (eight-day trial in Technology and Construction Court and two-day appeal in Court of Appeal).

Insurance

- Ad hoc arbitration: represented Lloyd's Syndicate on its professional negligence claim worth in excess of €60 million against its coverholder under a sequence of binding authority agreements in relation to the latter's poor performance of its claims handling role.
- *Navigators Insurance Company v Marwan Shipping and Trading Company LLC*: case concerning a Protection & Indemnity insurance policy – insurers seeking to avoid liability relying on grounds of breach of warranty, misrepresentation and non-disclosure (Commercial Court).

Recommendations

He has a very sharp mind and a refreshingly modern approach. He is cool, calm, collected and an absolute pleasure to work with. Henry's written advice and pleadings are always spot on. [Chambers UK Bar 2020](#)

Not only is he phenomenally intelligent and hardworking, he is also a delight to work with. [The Legal 500 UK Bar 2020](#)

He is very down to earth and good at getting down to the complex issues. He also shows real enthusiasm and is a subject matter expert. [Chambers UK Bar 2020](#)

An outstanding senior junior who is a part of a go-to team. [The Legal 500 Asia Pacific 2020: The English Bar](#)

Bright, thorough, and has a keen eye for the essential legal and commercial points in a matter. [The Legal 500 UK Bar 2020](#)

He is universally considered to be first rate. His written advocacy is second to none and his oral advocacy is superb. [Chambers UK Bar 2020](#)

An excellent all-round counsel who is very good on his feet. [The Legal 500 UK Bar 2018](#)

He knows how to win cases. His written drafts are extraordinarily persuasive. [Chambers UK Bar 2019](#)

Incredibly bright and user-friendly. [Chambers UK Bar 2018](#)

He's fantastic. He drafts in a way that is utterly compelling and convincing. His advocacy is firm but effective. He's an enormous help on cases because he gets to the bottom very quickly and can provide invaluable advice on how to win. [Chambers UK Bar 2017](#)