

Joshua Folkard

CALL: 2013 (ENGLAND AND WALES); 2020 (BRITISH VIRGIN ISLANDS)

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Overview

Josh is listed as a leading junior in five practice areas and described by the directories as “everything you would want in a commercial junior”, “outstandingly bright” and “impressive on his feet”. He has a broad litigation and arbitration practice including civil fraud and asset tracing, commodities, insurance and professional negligence. Josh has acted for clients in the automotive, energy, finance & private equity, infrastructure, IT, M&A, mining, medical, property development and shareholder/joint venture spheres.

Josh has a particular specialism in private international law/the conflict of laws and is regularly instructed in international and cross-border disputes. Alongside full-time practice, Josh teaches International Commercial Litigation and Conflict of Laws at University College London. He has published widely on issues of jurisdiction and enforcement, most recently in Hart Publishing’s *Landmark Cases in Private International Law*.

Education

- University of Oxford, Merton College: BCL, Distinction (2014)
- University of Oxford, University College: BA in Jurisprudence, First Class and Joint Top First (2012)

Publications

- Co-author of ‘*Godard v Gray and Schibsby v Westenholz (1870)*’ in *Landmark Cases in Private International Law* (Hart, May 2023).
- Co-author of chapter in *State of Arbitration: Essays in Honour of Professor George Bermann* (January 2022) on suspension of awards by the court of the seat.
- Co-author of ‘Good Arguable Case’ chapter in *Challenging Private Law: Lord Sumption on the Supreme Court* (Hart, 2020).
- Author of ‘Jurisdiction in insurance matters and the “weaker party”’ in *The Cambridge Law Journal* (2020) 79(3) CLJ 427.

Professional memberships

- 2021 – Mentor for *Mentoring the Market*, an insurance scheme run jointly by Markel and DAC Beachcroft.
- 2020–2023 – London Court of International Arbitration’s Young International Arbitration Group: Regional Representative for Europe.

- 2017 – Commercial Bar Association India Sub-Committee.

Lectures / talks

- ‘The Spread of Hornet’s Nest Notifications – How to Avoid Getting Stung’ British Insurance Law Association (25 June 2019).

Josh frequently delivers talks and training to clients on jurisdiction and conflict of laws issues.

Conflicts, jurisdiction and enforcement

Josh is a specialist in private international law/the conflict of laws. He is regularly instructed in cases concerning service out, the pleading and proving of foreign law and the recognition and enforcement of judgments/arbitral awards (including against states).

Josh’s recent cases include:

- LM-2023-000106 *Galliani and others v Sartori and others*: Sole counsel in claims against Uruguayan and BVI Defendants worth over €2.5 million relating to investments in South American infrastructure projects. Josh advised on jurisdiction and applicable law, as well as working on the service out application and draft Particulars of Claim.
- FJ 56/23 *Contarina S.p.A. v China Taiping Insurance UK Co. Ltd.* and FJ170/22 & FJ171/22 *Invitalia S.p.A. v China Taiping Insurance UK Co. Ltd.*: Sole instructions resisting the enforcement of Italian judgments under the Brussels I scheme against a Chinese insurer, post-end of the Brexit transition/implementation period.
- *Boettcher v XIO (UK) LLP and others* CL-2021-000556: Sole counsel in €5 million Part 11 jurisdiction challenge, raising the issue of whether the claims raise serious issues to be tried under the German law of limitation. Josh was involved in an attempt to agree the content of foreign law pursuant to the guidance given by the Supreme Court in *Brownlie II*.
- Advice on recognition and enforcement in England of Russian expropriatory decree.
- Advising on Letters of Request made under the Hague Evidence Convention (1970 Convention on the taking of evidence abroad in civil or commercial matters).
- *Nissan Motor Co. Limited v Ghosn and others* BVIHCV(COM) 2019/0121: Successfully resisted Mr Ghosn’s reverse summary judgment/strike out application on the basis that Japanese law applied to Nissan’s and its Middle East distributor’s claims and that under Japanese law the claims were bound to fail.
- Instructed to advise on the recognition and enforcement of onshore Dubai judgments before the English Courts.
- *Ming and others v JFM Ming and others* BVIHC(COM) 2014 /53 & 2022/22: Pleaded out Hong Kong law in relation to: (i) issues of duties owed by directors to group companies; (ii) limitation; and (iii) the levying of HK estate duty.
- Acting as private international law consultant in substantial proceedings in the Family Division.
- *Barrowfen Properties Limited v Patel and others* [2021] EWHC 2055 (Ch) & [2022] EWHC 1601: Successfully resisted attempt to have Malaysian Court judgments recognised and enforced in England as judgments *in rem*.
- *Premier Cruises Limited v DLA Piper Rus Limited and others* [2021] EWHC 151 (Comm); [2021] 1 Lloyd’s Rep 511: Junior counsel in application for case management stay by related party to arbitration agreement, raising the effect of *Owusu v Jackson*.
- *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan and others* BVIHCOMAP2021/0014: Instructed in appeal to Eastern Caribbean Court of Appeal relating to the first ever attempt to enforce an ICSID Award in the BVI, raising important sovereign immunity issues.
- Junior counsel in jurisdiction challenge to GAFTA Tribunal.
- *Shulman and others v Ivanyushchenko and others* [2020] EWHC 2669 (Comm): Jurisdiction challenge relating to fraud

claims brought in relation to a joint venture to develop a logistics hub in Odessa against defendants said to have been domiciled/resident in Monaco, Russia and Ukraine.

- *SIB v Proskauer Rose* ANUHCVP 2018/0011: Instructed in Appeal heard by Eastern Caribbean Court of Appeal from Antiguan Court's decision to refuse permission to serve New York law firm out of Antigua and Barbuda, in relation to collapse of a massive Ponzi scheme.
- Jurisdictional advice in relation to failure of Asian art gallery to return loaned works to Europe.
- Successfully resisting anti-suit injunction to prevent deposition of witnesses in the United States under 28 USC 1782 parallel to English arbitral proceedings.
- Successfully resisting section 32/67 Arbitration Act 1996 applications, raising questions as to correct application of the *Fiona Trust* principle in cases with multiple jurisdiction/arbitration clauses.
- Advice on jurisdiction, in particular Article 25 of the Brussels I (Recast) Regulation, in relation to a dispute over design work for a superyacht.

Alongside full-time practice, Josh teaches International Commercial Litigation and Conflict of Laws at University College London and has published extensively in those areas, including in a *estschrift* for Lord Sumption and Hart Publishing's *Landmark Cases in Private International Law*. He also sits on the Expert Panel for the Law Commission's law reform project: 'Digital assets: which law, which court?'

Civil fraud and asset tracing

Josh is a leading civil fraud junior. He has acted in numerous litigation and arbitration cases concerning fraud or alleged fraud, including in the automotive, commodities, financial services, private equity and property development industries. Josh's on-going or recent cases include:

- LM-2023-000106 *Galliani and others v Sartori and others*: Sole counsel in €2.5 million civil fraud claims relating to the purchase and subsequent sale of shares in the infrastructure sector.
- *Nissan Motor Co. Limited v Ghosn and others* BVIHCV(COM) 2019/0121: Instructed in claim concerning the alleged misappropriation of company funds by Mr Carlos Ghosn. Recently successfully resisted application by defendants for strike out/reverse summary judgment and lifting of freezing injunction over yacht said to have been purchased with those funds.
- Advising on *Norwich Pharmacal* relief in respect of planned civil fraud allegations.
- *Boettcher v XIO (UK) LLP and others* CL-2021-000556: Sole instruction for PRC domiciled/resident defendant in €5 million Part 11 jurisdiction challenge concerning alleged fraudulent misrepresentations.
- *Ming and others v JFM Ming and others* BVIHC(COM) 2014 /53 & 2022/22: Quantification in unfair prejudice proceedings relating to a holding company for Hong Kong real estate, raising HK\$ multi-million allegations of misappropriation of company assets.
- Instructed in winding up petition in the Cayman Islands in respect of breakdown of a Chinese partnership, including resisting allegations that a judgment was obtained by fraud on the Court.
- LCIA Arbitration concerning alleged fraudulent misrepresentations relating to a settlement deed.
- *Barrowfen Properties Limited v Patel and others* [2021] EWHC 2055 (Ch) & [2022] EWHC 1601: Junior counsel in three-week civil fraud trial in the Chancery Division concerning allegations of forgery, fraudulent misstatement, breach of fiduciary duty, unlawful means conspiracy and dishonest assistance.
- *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan and others* BVIHCMAP2021/0014: Responding to defence of alleged corruption of public officials in relation to first ever attempt to enforce an ICSID Award in the BVI.
- *Shulman and others v Ivanyushchenko and others* [2020] EWHC 2669 (Comm): Junior counsel for fraud claims brought in relation to a joint venture to develop a logistics hub in Odessa against a former Deputy (MP) of the Ukrainian Parliament.
- Conjoined LCIA and ICC arbitrations relating to alleged corruption in the Indian fertiliser market.
- *SIB v Proskauer Rose* ANUHCVP 2018/0011: Instructed in Appeal heard by Eastern Caribbean Court of Appeal from Antiguan Court's decision on jurisdiction challenge arising from the collapse of a bank run by Mr Allen Stanford as a massive Ponzi scheme.

Josh has recently been appointed to the Expert Panel for the Law Commission's law reform project: 'Digital assets: which law, which court?', looking in particular at the applicable law rules in relation to crypto and other digital assets.

Commodities, energy and infrastructure

Josh is ranked as a leading junior by The Legal 500 in commodities and has recently acted in several energy/infrastructure cases arising from measures arising from the Russian invasion of Ukraine. His on-going or recent cases include:

- BL-2022-002009 *H&P Advisory Limited v Barrick Gold (Holdings) Limited*: Defending Barrick from claim by investment bank for allegedly agreed fee, alternatively *quantum meruit*, arising from merger of mining companies Barrick and Randgold.
- Advice on effect of Russian decrees on contracts concerning large oil and gas project.
- Advice on effect of 'reverse' Russian sanctions on LNG sales contracts.
- Junior counsel in jurisdiction challenge to GAFTA Tribunal in relation to sale of Durum wheat.
- *Alegrow SA v Yayla Agro Gida San Ve Nak AS* [2020] EWHC 1845 (Comm); [2021] 1 Lloyd's Rep 565: Instructed in resistance of (i) section 69 challenge to GAFTA Appeal Award; and (ii) application to suspend the Award in England following advance of enforcement proceedings in Switzerland.

Company and insolvency/restructuring

Josh has acted on numerous company and insolvency matters, in particular in the British Virgin Islands and Cayman Islands. His recent cases include:

- FSD Cause No. 108 of 2022 (IKJ) *In the Matter of Global Cord Blood Corporation*: Instructed in application for joinder/intervention in Cayman Islands winding up petition to seek strike out/stay of the petition on the basis of abuse of process.
- *Ming and others v JFM Ming and others* BVIHC(COM) 2014 /53 & 2022/22: Instructed in quantum phase of BVI unfair prejudice proceedings.
- Instructed by Joint Liquidators of Stanford International Bank to serve out claims on behalf of the Estate, arising from the collapse of one of the world's largest Ponzi schemes.

International arbitration

Josh has been instructed in arbitrations under a variety of institutional rules, as well as *ad hoc* insurance arbitration. He also appears regularly (both led and as sole counsel) in court applications relating to the entire lifespan of arbitrations, from the appointment of arbitrators under section 18 of the Arbitration Act 1996 to section 67 and 69 challenges to awards.

Josh recently published a chapter in Professor Bermann's *festschrift* on the ability to suspend English arbitral Awards at the court of the seat in order to prevent enforcement abroad. Josh's current and recent cases include:

- Advising on an application for: (i) permission to enforce an English award; and (ii) judgment to be entered in terms of the Award under section 66 of the Arbitration Act 1996.
- CL-2022-000545 *Eternity Sky Investments Limited v Mrs Xiaomin Zhang*: Instructions to set aside the recognition/enforcement of a Hong Kong arbitral Award under the New York Convention on the basis that the arbitration/applicable law clause breached UK statutory consumer legislation.
- ICC Arbitration (Vienna-seated) concerning disputes under an SPA.
- LCIA Arbitration concerning alleged fraudulent misrepresentations relating to a settlement deed.
- *Premier Cruises Limited v DLA Piper Rus Limited and others* [2021] EWHC 151 (Comm); [2021] 1 Lloyd's Rep 511: Junior counsel in application for: (i) stay under section 9 of the Arbitration Act 1996; and (ii) case management stay by related party to arbitration agreement.
- *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan and others* BVIHCOMAP2021/0014: Instructed in appeal to Eastern Caribbean Court of Appeal relating to the first ever attempt to enforce an ICSID Award in the BVI.
- *Alegrow SA v Yayla Agro Gida San Ve Nak AS* [2020] EWHC 1845 (Comm); [2021] 1 Lloyd's Rep 565: Instructed in resistance of (i) challenge to GAFTA Appeal Award under section 69 of the Arbitration Act; and (ii) application to suspend the Award in England following advance of enforcement proceedings in Switzerland.
- Acted in application for appointment of an arbitrator following breakdown of the appointment mechanism.
- *Ad hoc* insurance arbitration concerning large volume of After-The-Event insurance policies written on behalf of an

insurer.

- Conjoined LCIA and ICC arbitrations relating to alleged corruption in the Indian fertiliser market.
- Instructed in several FA Rule K football arbitrations between: (i) player and agent; and (ii) player and club.
- Successfully bringing section 68 Arbitration Act application relating to Award in the IT sector.

Josh also gained significant experience of Indian commercial arbitration from his work as Tribunal Secretary to the Hon'ble Mr Justice Deepak Verma and sits on the Commercial Bar Association India Sub-Committee.

Insurance

Josh is ranked as a leading junior by the Legal 500 in insurance and acts in both insurance litigation and arbitration. He has published on jurisdiction issues arising in the marine insurance context. Josh's current and recent cases include:

- CL-2023-000417 *Delta Portfolio Property LLP v Property Insurance Initiatives Ltd.*: Defending multi-million pound claims arising from the alleged failure to place appropriate business interruption insurance relating to COVID-19 losses.
- Advising on dispute under reinsurance contract concerning book of bonds issued in European country.
- ICC (Vienna-seated) arbitration concerning breach of warranty insurance relating to an SPA.
- FJ 56/23 *Contarina S.p.A. v China Taiping Insurance UK Co. Ltd.*: Sole instructions to advise in respect of the enforceability in England of Italian judgments made in respect of insurance bonds issued by a Chinese insurer.
- FJ170/22 & FJ171/22 *Invitalia S.p.A. v China Taiping Insurance UK Co. Ltd.*: Appeared as sole counsel in reinsurance case resisting the enforcement of Italian judgments under the Brussels I scheme.
- *Euro Pools v Royal and Sun Alliance* [2019] EWCA Civ 808; [2020] 2 All ER (Comm) 40: The first appellate authority for ten years to deal with notifications to claims-made policies, in particular so-called 'hornet's nest' or 'can of worms' notifications. Josh has spoken widely on the decision in *Euro Pools* and its impact, in particular to the British Insurance Law Association.
- Josh has advised on numerous notification issues post-*Euro Pools*, including:
 - Advising on the effect of the decision on the scope of a notification made under an accountant's professional indemnity insurance policy.
 - Advising on an architect's PI policy, including in relation to declinature and avoidance under the Insurance Act 2015.
- Junior counsel in *ad hoc* insurance arbitration concerning large volume of ATE policies written on behalf of an insurer.
- Advising on applicable law of insurance policy, in battle between English and Scottish law.
- Led in two-week trial of property insurance claim, raising issues of misrepresentation/non-disclosure and insurable interest.

Interim relief

Josh is frequently instructed to obtain interim relief in support of both litigation and arbitration proceedings, as sole counsel as well as led. He also lectures on: (i) freezing injunctions; and (ii) parallel proceedings and anti-suit injunctions on UCL's International Commercial Litigation and Conflict of Laws courses. Josh's recent cases include:

- Junior Counsel in security for costs application in BL-2022-002009 *H&P Advisory Limited v Barrick Gold (Holdings) Limited*.
- Junior counsel in *Nissan Motor Co. Limited v Ghosn and others* BVIHCV(COM) 2019/0121, in which a freezing injunction over BVI-registered yacht was obtained and successfully defended.
- As sole counsel, arguing injunction application in the High Court to restrain previous employee of a firm working for a competitor.
- Advised on use of interim injunction to secure artwork by a famous contemporary artist which had not been delivered.
- Successfully resisting anti-suit injunction to prevent deposition of witnesses in the United States under 28 USC 1782 parallel to English arbitral proceedings.
- Drafting application and witness evidence for worldwide freezing injunction in support of enforcement of London arbitral award in civil fraud case.

Offshore

Josh is called to the Bar of the British Virgin Islands and appears regularly in the BVI Commercial Division and Eastern Caribbean Court of Appeal. He has also attended hearings in Antigua and St Kitts. Josh has particular experience of jurisdiction/service out cases under the Eastern Caribbean CPR. His on-going or recent cases include:

- FSD Cause No. 108 of 2022 (IKJ) *In the Matter of Global Cord Blood Corporation*: Instructed in application for joinder/intervention in Cayman Islands winding up petition in respect of breakdown of a Chinese partnership, involving litigation/arbitration in the PRC, BVI and United States.
- *Nissan Motor Co. Limited v Ghosn and others* BVIHCV(COM) 2019/0121: Instructed in claim concerning the alleged misappropriation of company funds by Mr Carlos Ghosn. Recently successfully resisted application by defendants for strike out/reverse summary judgment and lifting of freezing injunction over a yacht said to have been purchased with those funds.
- *Ming and others v JFM Ming and others* BVIHC(COM) 2014 /53 & 2022/22: Quantification in unfair prejudice proceedings relating to a holding company for Hong Kong real estate, raising HK\$ multi-million allegations of misappropriation of company assets.
- *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan and others* BVIHCOMAP2021/0014: Instructed in appeal to Eastern Caribbean Court of Appeal relating to the first ever attempt to enforce an ICSID Award in the BVI, raising important sovereign immunity issues.
- *SIB v Proskauer Rose* ANUHC VAP 2018/0011: Instructed in Appeal heard by Eastern Caribbean Court of Appeal from Antiguan Court's decision to refuse permission to serve New York law firm out of Antigua and Barbuda, in relation to collapse of massive Ponzi scheme.

Professional negligence

- CL-2023-000417 *Delta Portfolio Property LLP v Property Insurance Initiatives Ltd.*: Defending insurance brokers from claim that they failed to place suitable business interruption insurance, allegedly giving rise to multi-million pound COVID-19 losses.
- *Habilis Healthcare Limited and others v EMW Law LLP and others* [2021] EWHC 2804 (QB): As sole counsel, obtained (and defended at two levels of appeal) strike out of £3 million negligence claim against a barrister.
- Sole counsel in over £1 million claim arising from negligent advice relating to portfolio of contracts concerning commercial property deal.
- G10CL316 *Wai Fan Cheung v Hop Sum Liu v Acorn Limited*: Sole counsel in four-day trial successfully defending estate agents from claims of breach of warranty and negligent misrepresentation.
- BL-2020-000737 *First Investment Group Corporation & First Engineering Group v Dallas*: Junior counsel defending solicitor from allegations of conflict of interest and breach of fiduciary duty brought by Libyan and St Vincent companies.
- *Barrowfen Properties Limited v Patel and others* [2021] EWHC 2055 (Ch) & [2022] EWHC 1601: Junior counsel in three-week Chancery Division trial concerning allegations of negligence and breach of fiduciary duty.
- As sole counsel:
 - Obtained strike out/reverse summary judgment of negligence allegations against criminal barrister.
 - Obtained strike out/summary judgment of fees claim against criminal silk.

Public international law

Josh has worked on the following public international law cases:

- Advising on the public international law effect of confiscation of a foreigner's property in the context of a Russian decree.
- *Tethyan Copper Company PTY Limited v Islamic Republic of Pakistan and others* BVIHCOMAP2021/0014: Instructed in appeal to Eastern Caribbean Court of Appeal relating to the first ever attempt to enforce an ICSID Award in the BVI, raising important sovereign immunity issues.
- (As Tribunal Secretary:) The 'Italian Marines'/'Enrica Lexie' case between India and Italy.

Josh has taught international investment arbitration on University College London's LLM International Arbitration course.

Sports law

Josh has appeared in numerous claims concerning sports clubs and sportsmen & women, in particular in the football arena. He also accepts Direct Access and/or *pro bono* instructions to act in doping and selection cases. Josh's current or recent cases include:

- Junior counsel in:
 - FA Rule K football arbitration between player and agent.
 - FA Rule K football arbitration between player and club.
- *Fawaz Al-Hasawi v Nottingham Forest Football Club Limited* [2019] EWHC 1287 (Ch): Junior counsel in week-long Chancery Division trial concerning proper construction of SPA and loan documentation relating to sale of Nottingham Forest FC.
- Acting *pro bono* for amateur cyclist accused of EPO doping violation.
- Acting *pro bono* as athlete's representative on panel selection for Winter Olympic Games, resulting in urgent arbitration to resolve selection challenge.

Art law

- Jurisdictional advice concerning failure of Asian art gallery to return loaned artworks to Europe.
- Drafting Particulars of Claim in respect of failure to deliver work by well-known contemporary artist.
- Advice on claim arising from failure to authenticate work by well-known contemporary artist.

Recommendations

Joshua is highly skilled at legal research and writing. He works at a blazing speed and always produces superbly well-written and coherently constructed work. [The Legal 500 UK Bar 2024](#)

His written work is of a consistently exceptional standard. He is inordinately careful and leaves no consideration unaddressed in his analysis of a matter. [The Legal 500 UK Bar 2024](#)

An exceptionally talented junior with exceptional drafting and analytical skills. Easy to work with and always available. [The Legal 500 UK Bar 2024](#)

Joshua is very responsive and thorough and is a pleasure to deal with. He adds commercial and practical input to his technical knowledge. [The Legal 500 UK Bar 2024](#)

A strong intellect and also easy to work with, Joshua provides decisive and concise advice. [The Legal 500 UK Bar 2024](#)

Joshua is outstandingly bright, with impressive intellectual rigour which really shows in his pleadings, advice and submissions. [The Legal 500 UK Bar 2023](#)

He is particularly recommended for cases with an international dimension, especially those involving complex jurisdictional and conflict of law points. However, he also has broad experience of insurance and reinsurance disputes, and a deep knowledge of the law in this field. [The Legal 500 UK Bar 2023](#)

Josh is very user friendly and analytical. He is also very good with clients and fits into the team seamlessly. [The Legal Caribbean](#), [The English Bar Offshore 2023](#)

Very responsive and insightful; excellent research and analysis skills. [The Legal 500 UK Bar 2023](#)

He has an excellent understanding of complex legal issues, his written work is of a consistently exceptional standard. [The Legal 500 UK Bar 2023](#)

A pleasure to work with, a very capable and skilled advocate, and extremely bright. [The Legal 500 UK Bar 2022](#)

Very hard working and thorough, excellent draughtsman and great at producing comprehensive and relevant legal research. [The Legal 500 UK Bar 2022](#)

Everything you would want in a commercial junior. [The Legal 500 UK Bar 2021](#)

Impressive on his feet. I would highly recommend him. [The Legal 500 UK Bar 2021](#)

Thorough and approachable. [The Legal 500 UK Bar 2021](#)