

# Rupert Hamilton

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## Overview

Rupert has a varied practice covering all aspects of commercial law. He has experience across Chambers' key areas of expertise including shipping and international trade, arbitration, company and insolvency disputes, and private international law.

He is regularly instructed to advise and to represent parties both in litigation and in arbitration proceedings. Rupert is often instructed as sole counsel and has appeared unled in the Commercial Court and Court of Appeal. He is also led by silks and senior juniors on high-value, complex cases.

Rupert prides himself on being responsive to clients' needs and a team player. He goes out of his way to make himself available for clients and ensure that their expectations can be met.

Before coming to the Bar, Rupert read science at university and then spent three years working in investment banking as a corporate finance analyst. He is good with figures and with difficult technical or scientific issues, and particularly enjoys dealing with expert evidence.

## Awards/prizes/scholarships

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- Certificate of Honour, Middle Temple (2010)
- Harmsworth Entrance Exhibition, Middle Temple (2009)
- Queen Mother Scholarship, Middle Temple (2009)
- Scholar of Corpus Christi College (2003)

## Publications

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- Practice note on 'Commercial fraud: Bribery' (Practical Law) (joint author).

## Professional memberships

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- Commercial Bar Association

## Education

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- BPP Law School, London: Bar Vocational Course, Outstanding (2010)
- City, University of London: Graduate Diploma in Law, Distinction (2009)
- University of Oxford, Corpus Christi College: BA in Physics and Philosophy, First Class (2005).

## Examples of cases

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- *Unicorn Investment Holdings and others/Re Smith*: instructed to advise the liquidators of several British Virgin Islands companies that hold assets which are the subject of multiple competing proprietary claims, including by the Serious Fraud Office on the basis that certain assets are alleged to belong to a convicted fraudster (led by Martin Pascoe QC and Blair Leahy).
- Instructed by shipowners in a series of LMAA arbitrations with a total value in excess of US\$30 million involving claims for unpaid hire and other sums due under a number of charterparties (led by Philip Edey QC).
- *Dainford Navigation v PDVSA* [2017] 2 Lloyd's Rep 409: junior counsel for owners on a s 44 application for sale of a cargo subject to arrest and lien as security for a claim against charterers (led by Michael Coburn QC).
- Acted for the seller of a cargo of hot briquetted iron (HBI) defending an LCIA arbitration claim for damage said to have been caused to the purchaser's electric arc furnace by the HBI allegedly failing to meet the contract specification (led by Philip Edey QC).
- *Primeo Fund v HSBC Securities Services (Luxembourg)* Cayman Islands Grand Court, 23 August 2017: complex claim worth approximately US\$2 billion brought by insolvent investment fund against its custodian and administrator following discovery that it had been a victim of the infamous Ponzi scheme operated by Bernard Madoff (while on secondment).
- Acted for the respondents to an unfair prejudice petition issued following a catastrophic breakdown in relations between shareholders who had wildly different views as to the value of the petitioner's shareholding (led by Blair Leahy). Played a critical role in achieving settlement at mediation.
- Instructed by an unsuccessful respondent, who was subject to an LMAA arbitration award for over US\$45 million, on a unique application to the Court of Appeal challenging a High Court judge's refusal to grant leave to appeal on an application made under s 69 Arbitration Act (led by David Joseph QC).

## Shipping and commodities

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Rupert has a busy shipping and international trade practice and is frequently instructed by shipowners, charterers, cargo interests, buyers, sellers and others besides in relation to all manner of disputes falling within these spheres. As well as undertaking many cases as sole counsel, he is regularly instructed as a junior to silks in Chambers in relation to high value and complex matters.

Significant cases, and examples of other recent instructions include:

- Instructed by shipowners in a series of arbitrations with a total value in excess of US\$30m, involving claims for unpaid hire and other sums due under a number of charterparties (led by Philip Edey QC).
- *Dainford Navigation v PDVSA* [2017] 2 Lloyd's Rep. 409 - junior counsel for owners on a s.44 application for sale of a cargo subject to arrest and lien as security for a claim against charterers (led by Michael Coburn QC).
- Acted for the seller of a cargo of hot briquetted iron (HBI) defending a claim for damage said to have been caused to the purchaser's electric arc furnace (EAF) by the HBI allegedly failing to meet the contract specification (led by Philip Edey QC).
- Acted for charterers of several of LPG tanker vessels in a case concerning the Iranian sanctions regime and whether Charterers were entitled to trade the vessels to Iran, including issues relating to arrangements for payment of hire in US dollars (led by Tim Young QC).
- Acted for charterers in a claim involving the name and hull number of a newbuilding vessel being altered/concealed shortly before her delivery from the shipyard, giving rise to questions over whether charterers were obliged to accept delivery of the vessel whose identity had been changed (led by Michael Ashcroft QC). Settled before application for leave to appeal against the arbitration award was finally determined.
- *San Evans Maritime v Aigaion Insurance Co* [2014] 2 Lloyd's Rep 265 - appeared for the successful claimant in a dispute concerning the meaning and effect of a "follow clause" in a marine insurance policy following grounding of a vessel (led by Michael Ashcroft QC).
- *The "Astra"* [2013] 2 All E.R. (Comm) 689 - formerly a leading case on the controversial question of whether prompt payment of hire is a condition of a charterparty (assisting Josephine Davies).
- *Yilport Konteyner Terminali v Buxcliff* [2013] 1 Lloyd's Rep. 378 - appeared for the successful claimant port operator in a claim for port charges for discharging cargo from a holed vessel (led by David Lewis QC).

- Instructed by shipowners defending a claim for damages arising out of alleged mis-description of a container ship and counterclaiming for damages for early redelivery of the vessel (led by Michael Coburn QC). Claim settled.
- Instructed by a shipyard on a claim by the insurers of the purchaser of the vessel following an engine failure shortly after delivery which resulted in significant salvage costs.
- Instructed by shipowners claiming damages for repudiation of a time charter and early redelivery outside the redelivery range.
- Acting for the purchaser of steel billets in a claim against a seller for failure to deliver goods.
- Instructed by charterers on a claim arising out of delays resulting from stevedores' refusal to discharge on grounds that vessel's gear did not comply with local safety regulations.
- *Primerose Shipping v Seoul Guarantee Insurance Company (unreported)* – appeared for guarantors on a successful application to set aside a default judgment for over US\$6m in a claim concerning a refund guarantee on a shipbuilding contract (led by Michael Ashcroft QC).

## Arbitration

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Arbitrations account for a large part of Rupert's practice, and he is regularly instructed at all stages, from advising on potential claims, drafting claim or defence submissions, advising in relation to all aspects of evidence, through to drafting written submissions and attending oral hearings. He is also regularly instructed on applications to Court in support of arbitration proceedings, including applications for leave to appeal against arbitration awards under s.69 of the Arbitration Act.

Rupert has appeared unled in both the Commercial Court and Court of Appeal on such applications, although he is also frequently led by prominent silks in Chambers on high-value arbitrations, or those which involve difficult technical issues. In recent months, he has been involved in a substantial series of arbitrations worth more than \$30m, and also in an application made to Court in support of arbitration proceedings in order to obtain an order for sale of cargo on board a vessel. He was also recently involved in a practically unique application for leave to pursue an unsuccessful application for leave to appeal (made under s.69 of the Arbitration Act) to the Court of Appeal.

Significant cases, and examples of other recent instructions include:

- LMAA Arbitration – Instructed by claimants in a series of document-heavy and factually-intricate arbitrations with a total combined value in excess of US\$30m (led by Philip Edey QC).
- *Dainford Navigation v PDVSA* [2017] 2 Lloyd's Rep. 409 – Instructed by claimants on a s.44 application brought in support of arbitration proceedings for sale of a cargo subject to arrest and lien as security for a claim against charterers (led by Michael Coburn QC).
- S.69 Application – Instructed by an unsuccessful respondent, who was subject to an award for over \$45m, on a unique application to the Court of Appeal challenging a High Court judge's refusal of leave to appeal on an application made under s.69 of the Arbitration Act (led by David Joseph QC). The case settled before the application was heard by the Court of Appeal.
- *Frontier Agriculture v Bratt Brothers* [2015] 2 Lloyd's Rep. 500 (CA) – an application to enforce an award under section 66 of the Arbitration Act which turned on questions concerning whether the respondent had participated in the arbitration, and on whether the respondent had adduced sufficient evidence to call into question the existence of the arbitration agreement.
- S.69 Application – Instructed by an unsuccessful respondent, who was subject to an arbitration award for more than €20m, arising out of a contract for the construction and purchase of a megayacht, on an application for leave to appeal under s.69 of the Arbitration Act (led by Michael Ashcroft QC).
- *Al Nasr Co for Coke & Chemicals v Fairdeal Supplies* [2013] EWHC 3131 (Comm) – Successfully resisted a section 69 appeal from an arbitration award in dispute concerning failure to supply a cargo of coal.
- *The "Astra"* [2013] 2 All E.R. (Comm) 689 – Instructed on the successful application for leave to appeal under section 69 of the Arbitration Act; assisted Josephine Davies on the appeal hearing, which led to the controversial (now overruled) decision by Flaux J concerning whether prompt payment of hire is a condition of a charterparty.
- LCIA Arbitration – Application to an arbitral tribunal for an anti-suit injunction to restrain respondent from pursuing court proceedings outside the jurisdiction.
- LMAA Arbitration – Acted for charterers seeking a declaration as to whether BIMCO sanctions clause permitted them to use the chartered vessel to trade to Iran (led by Tim Young QC).
- LCIA Arbitration – Instructed by the respondent to a claim for damages in relation to a cargo which was alleged to have been off-specification (led by Philip Edey QC).

- LCIA Arbitration – Acted for the operator of an electric arc furnace (EAF) claiming damages for losses caused by reduced productivity resulting from the respondent’s failure to deliver raw materials. Claim settled.
- SIAC Arbitration – Claim for misrepresentation and breach of warranty arising out of a contract for the sale of shares in a company operating a consumer goods business (led by Duncan Matthews QC). Claim Settled.
- LCIA Arbitration – Instructed by a claimant seeking to recover damages for failure to deliver goods.
- LMAA Arbitration – Acting for the respondent to a claim relating to damage and salvage costs following failure of a vessel’s engine.
- LMAA Arbitration – acting for a shipowner claiming loss of bargain damages for repudiation of a charterparty.

## Company and insolvency

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Rupert has worked on a broad range of disputes between shareholders, companies and/or their directors, often in the context of claims by insolvent companies against former officers. He has been instructed as junior counsel on several large and complex matters, and in 2016 he spent six months in the Cayman Islands on secondment to Mourant Ozannes, where he was part of the team working on Primeo Fund’s \$2bn claim against HSBC subsidiaries.

- Unicorn Investment Holdings and others – instructed (with Martin Pascoe QC and Blair Leahy) to advise the liquidators of several BVI companies which are the holding companies for a larger corporate group. Numerous issues arise out of the fact that certain assets held by the group formerly belonged to a convicted fraudster and there are numerous parties claiming to be shareholders and/or the rightful owners of assets held by the group. The matter has involved an application by the liquidators to the BVI Court for Berkeley Applegate relief. The case also concerns issues arising out of the fact that the fraudster is subject to a restraint order and confiscation order under the Criminal Justice Act.
- Primeo Fund v HSBC Securities Services (Luxembourg) (Cayman Islands Grand Court, 23 August 2017) – complex claim worth approximately US\$2bn brought by insolvent investment fund against its custodian and administrator following discovery that it had been a victim of the infamous Ponzi scheme operated by Bernard Madoff (while on secondment to Mourant Ozannes’ Cayman Islands office). The claim involved difficult questions relating to reflective loss, as well as various interlocutory issues concerning the powers and obligations of the fund’s liquidators.
- Richards v Vivendi [2017] B.P.I.R. 1390 – Instructed by a petitioning creditor to resist an application under s.265 of the Insolvency Act to annul a bankruptcy order (assisting Blair Leahy).
- Bergen Bunkers – Instructed by the insolvency estate of Bergen Bunkers (the Norwegian subsidiary of the OW Bunkers Group) on an application for recognition of Norwegian insolvency proceedings under the Cross Border Insolvency Regulations, and subsequently to advise in relation to the recognition order and management of claims against debtors.
- Unfair prejudice petition – Instructed (led by Blair Leahy) to defend a petition issued following a catastrophic breakdown in relations between shareholders. The case involved difficult questions over valuation, and was complicated by the parties’ wildly different views as to the value of the business. Settled at mediation.
- Instructed by the defendant to a claim brought by a former director and shareholder for alleged breach of conduct following his removal from office for alleged gross misconduct. Settled at mediation.
- Advised (with Stephen Atherton QC) on jurisdiction issues under the Lugano Convention arising out of insolvency of a party to a contract.
- Instructed (led by Stephen Atherton QC) on a claim against the former directors, the administrator and the manager of an insolvent Isle of Man fund which had been the victim of a suspected fraud involving investment in US life insurance policies.
- Instructed (led by Blair Leahy) on a complex claim by an insolvent investment fund arising out of a fraud by its founders and directors in which over £200m was stolen. The matter involved significant forensic accounting evidence, complex issues in relation to the assessment of damages, and potential claims against the fraudulent directors, non-executive directors, auditors and solicitors.

## Private international law

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Most of the matters which Rupert deals with involve parties and assets based in multiple jurisdictions and thus commonly give rise to issues concerning jurisdiction and applicable law.

## Other commercial

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Virtually all of the matters on which Rupert is instructed are commercial disputes, and he advises on all manner of issues including contractual relationships between parties as well as tort or other claims arising out of business relationships or in commercial contexts.

Some examples include:

- *Primeo Fund v Securities Services (Luxembourg)* (Cayman Islands Grand Court, 23 August 2017) – complex claim worth approximately US\$2bn raising issues concerning the duties and obligations of the administrator and custodian of an investment fund which was a victim of the infamous Ponzi scheme operated by Bernard Madoff (while on secondment to Mourant Ozannes' Cayman office).
- SIAC Arbitration – Claim by a party which had purchased of 55% of the shares in a company against the sellers for misrepresentations and breach of warranty relating to under performance of the company and misconduct by the company's officers (led by Duncan Matthews QC). Claim settled.
- Advising nationwide consumer business on stopping suspected poaching of customers and staff by former franchisee and potential springboard relief.
- Advising a bank in relation to a proposed new factoring product (i.e. involving the purchase of accounts receivable from clients).
- Advising the owners of a golf club on their on-going obligations to members following the proposed sale of the club.