

Thomas Leary

CALL: 2012

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Overview

Tom practices commercial litigation and international arbitration, including civil fraud, banking and finance, energy and mining, land-based and offshore construction, shipping, commodities, insolvency, tech/IT and insurance.

Tom also undertakes government work and public law disputes, having been appointed to the Welsh Government B Panel of Junior Counsel (Public Law) and to the Attorney General's C Panel. He was previously the Judicial Assistant to Lord Mance at the UK Supreme Court.

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Education

- Kaplan Law School: Bar Professional Training Course (2012)
- University of Toronto: LLM (2010–2011)
- Leiden University: European and public international law studies abroad (2008–2009)
- University of Oxford, Christ Church: BA (Hons) in Law with Law Studies in Europe (2006–2010)

Academic awards

- Jonathan Brock Memorial Essay Competition (Runner-Up) Prize (2017)
- Walter Wigglesworth Scholarship, Lincoln's Inn (2013)
- Canadian Rhodes Scholars Foundation Scholarship (2010–2011)

Publications

- 'Access to justice in the 21st century: how can it be maximised?', winner of the Jonathan Brock Memorial Essay Competition (Runner-Up) Prize 2017.
- 'Non-Disputing Parties and Human Rights in Investor-State Arbitration: *Bernhard von Pezold v Republic of Zimbabwe*' (case comment) (2017) 18(5–6) *Journal of World Investment & Trade* 1062.
- 'The Insurer's Obligations of Good Faith and the Insurance Act 2015' in *The Modern Law of Marine Insurance: Volume 4* (Informa Law 2015) (co-author).

Professional memberships

- Advocates for International Development
- Bar Human Rights Committee
- Bar Pro Bono Unit
- Commercial Bar Association
- Commercial Fraud Lawyers Association
- Environmental Law Foundation
- ICC
- London Common Law and Commercial Bar Association

- Lord Mansfield Scholarship, Lincoln's Inn (2010)
- Hardwicke Entrance Scholarship, Lincoln's Inn (2010)
- John V Lovitt Prize for Jurisprudence, Christ Church, University of Oxford (2008)
- Lovells Scholarship, Christ Church, University of Oxford (2007-2010)
- Slaughter and May Prize for Constitutional Law, University of Oxford (2007)

- LCIAYoung International Arbitration Group
- London Shipping Law Centre
- The Honourable Society of Lincoln's Inn
- Young Fraud Lawyers Association
- Young SIAC

Lectures / talks

- 'Ship sale and purchase pitfalls'
- 'Good faith obligations in commercial contracts'
- 'Entire agreement and no variation clauses: where are we now?'
- 'Recent developments in force majeure'
- 'Contractual damages: life since *The Golden Victory*'

Example cases

- *LB Holdings Intermediate 2 Ltd and others*: acted for the joint administrators of one of the Lehman Brothers companies in the multi-billion pound "Waterfall III" insolvency litigation (with Stephen Atherton QC and Tony Beswetherick).
- *Company v State*: acted for a Caribbean company in a US\$200 million six-week arbitration against a Caribbean state for breach of a fish-farming development agreement, expropriation of concessions, breaches of lease and defamation (with John Passmore QC).
- *UAE company v Iranian national*: acted to secure a £23 million worldwide freezing order in support of a DIFC-LCIA arbitration for breach of a share purchase agreement, fraudulent misrepresentation and deceit (with Duncan Matthews QC and Harris Bor).
- *South Korean company v Chinese company*: acted as sole counsel in a one-week US\$1 million commodities arbitration involving extensive cross-examination and issues of sub-agency and jurisdiction.
- *Spanish Owners v Danish Charterers*: acted in a US\$8 million claim for damage to a vessel and loss of hire caused by an explosion of gas released from a dangerous cargo of offshore drilling mud (with Timothy Hill QC).
- *Romanian Bank v Turkish national*: acted in enforcement proceedings, including obtaining worldwide freezing orders and permission to serve out, in respect of complex frauds and attempts to evade a Romanian judgment debt of US\$133 million (with Philip Riches).
- *Shipowner v Insurer*: acted for owners in respect of a US\$20 million claim under an ITC policy following a collision with a naval vessel.
- *Builder v Employer*: acted for a Malaysian construction company in a multi-million dispute with its employer in the AIAC, arising under a FIDIC contract for extensive groundworks (with Murray Pickering QC).
- *R (ClientEarth (No3)) v (1) Secretary of State for Environment, Food And Rural Affairs (2) Secretary of State for Transport and (3) Welsh Ministers* [2018] EWHC 315 (Admin): acted for the Welsh Ministers in an application by ClientEarth for extended liberty to apply in respect of the Welsh Air Quality Plan, that sought to bypass the normal permission stage for judicial review.
- *Indian national v Secretary of State for the Home Department*: acting for the Secretary of State in a statutory appeal by an Indian national to the First-Tier Tribunal under s 82(1) Nationality, Immigration and Asylum Act 2002, concerning Articles 3, 6 and 8 ECHR and asylum (with Julie Anderson).

General commercial

- A six-week US\$200m+ arbitration claim for breach of a development agreement, expropriation of concessions, breaches of lease and defamation (led by John Passmore QC).

- Enforcement proceedings for a Romanian bank following complex international frauds amounting to US\$133m+ (led by Philip Riches).
- High Court claim for payment under a referral agreement following the successful marketing and sale of a building for Euros 490m+ (as sole counsel).
- High Court claim of US\$9m+ for breach of a hotel management agreement (as sole counsel).
- Advising a debt-cancellation charity on the potential illegality of major bank loans (amounting to US\$1.8b+) to State-backed African companies.
- Acting for Joint Liquidators in a £7m+ claim against a co-surety under a facility agreement and a guarantee and indemnity (led by Blair Leahy).
- Application for worldwide freezing orders in support of an arbitration concerning a US\$12m credit facility (led by Michael Ashcroft QC).
- Application for worldwide freezing orders in support of an arbitration concerning an investment fund facility (led by Tim Hill QC).
- High Court claim of US\$1.6m+ for breach of a design services agreement for the development and sale of residential properties (as sole counsel).
- Share-purchase dispute of US\$2m+ concerning payments out of an escrow account (as sole counsel).
- High Court claim for £800,000 concerning an alleged multi-stage boiler room fraud involving the sale of “fancy” coloured diamonds (as sole counsel).
- Acting for an international platform for ticketing services in respect of a claim for breach of a contract for the implementation and configuration of financial accounting software (as sole counsel).
- Acting for a company in respect a dispute over rights of access to an online trading platform for transportation services (as sole counsel).
- Acting for a national provider of telecommunication services in relation to potential claims under several telemetry agreements.
- Acting for a corporate client in relation to termination of a contract for the provision of internet marketing services (as sole counsel).
- Acting for a customer in relation to a dispute over the sale and resizing of an engagement ring.
- Acting for brokers in relation to a substantial claim for commission arising from the sale of a superyacht.
- *Jetivia SA v Biltta (UK) Ltd* [2015] UKSC 23: concerning whether the illegality defence bars claims by a company against its directors for breach of their duties and whether section 213 of the Insolvency Act 1986 has extra-territorial effect (as a Judicial Assistant to Lord Mance).
- *Bunge SA v Nidera BV* [2015] UKSC 43: concerning the construction and application of the GAFTA Default Clause and the application of *The Golden Victory* [2007] 2 AC 353 (as a Judicial Assistant to Lord Mance).

Arbitration and related applications

- One-week commodities arbitration in Singapore concerning a US\$1m+ commodities dispute raising complex issues of sub-agency and jurisdiction (as sole counsel).
- KLRCA arbitration concerning an RM37m+ dispute under a lump-sum FIDIC contract for earthworks in Malaysia (led by Murray Pickering QC).
- UNCITRAL Arbitration in a US\$300m+ dispute under a drilling services contract (led by Duncan Matthews QC and Edward Ho).
- Six-week ad hoc arbitration concerning a US\$200m+ claim against a Caribbean state for breach of a development agreement, expropriation of concessions, breaches of lease and defamation (led by John Passmore QC).
- LMAA arbitration concerning a US\$3.5m+ claim under an MOA for the sale of a vessel, giving rise to issues of construction, misrepresentations and rectification.
- LMAA arbitration concerning US\$7m+ of damage to a chemical tanker following an explosion during line blowing (led by Tim Hill QC).
- LCIA arbitration arising out of a dispute under an LLP agreement.
- SCMA arbitration concerning alleged short delivery of bundles of electrolytic copper.
- Application for worldwide freezing orders in support of an arbitration concerning a US\$12m credit facility and in support

of an LCIA Award (led by Michael Ashcroft QC).

- Energy arbitration claim of £2m+ concerning the charter of a jack-up barge for off-shore borehole drilling.
- Application for worldwide freezing orders in support of an arbitration concerning an investment fund facility (led by Tim Hill QC).
- Arbitration concerning damage to a chemical tanker following overpressurisation of the cargo tanks during loading (assisting Charles Kimmins QC and Thomas Corby).
- Five-week arbitration concerning a US\$500m+ dispute arising out of the construction and delivery of semi-submersible drilling rigs from Chinese to Brazilian interests (as a pupil).
- ICSID and ICC arbitrations involving the Governments of Pakistan and Balochistan and concerning a dispute about a joint venture agreement for the exploration of minerals (as a pupil).
- *Assuranceforeningen Gard Gjensidig v The International Oil Pollution Compensation Fund 1971* [2014] 2 Lloyd's Rep 219: concerning a freezing order in support of claims arising out of an oil spill in Venezuela (as a pupil).

Banking and finance

- Acting for a Romanian bank in enforcement proceedings, including obtaining worldwide freezing orders and permission to serve out, in respect of complex frauds and attempts to evade a Romanian judgment debt of US\$133m+ (led by Philip Riches).
- Acting for Joint Liquidators in a £7m+ claim against a co-surety under a facility agreements and a guarantee and indemnity (led by Blair Leahy).
- Waterfall III insolvency litigation (led by Stephen Atherton QC and Tony Beswetherick).
- Application for worldwide freezing orders in support of an arbitration concerning a US\$12m credit facility and in support of an LCIA Award (led by Michael Ashcroft QC).
- Advising on the potential illegality of major bank loans (amounting to US\$1.8b+) to State-backed African companies.
- Application for worldwide freezing orders in support of an arbitration concerning an investment fund facility (led by Tim Hill QC).
- Drafting submissions for an international bank in a High Court dispute arising out of a revolving loan and overdraft facility.
- Advising Joint Liquidators in respect of preferences and transactions alleged to have been made at an undervalue.
- *Crédit Agricole Corporation and Investment Bank v Papadimitriou* [2015] UKPC 13: concerning the test of constructive knowledge for the purposes of determining whether a bank is a bona fide purchaser of assets without notice of a prior interest (as a Judicial Assistant to Lord Mance).

Shipping, commodities and international trade

- One-week commodities arbitration in Singapore concerning a US\$1m+ commodities dispute raising complex issues of sub-agency and jurisdiction (as sole counsel).
- SCMA arbitration concerning alleged short delivery of bundles of electrolytic copper.
- LMAA arbitration concerning a US\$3.5m+ claim under an MOA for the sale of a vessel, giving rise to issues of construction, misrepresentations and rectification.
- LMAA arbitration concerning damage to a chemical tanker following an explosion during line blowing (led by Tim Hill QC)
- LMAA arbitration concerning a dispute over the supply of corrosive bunkers in Russia (led by Thomas Raphael QC).
- Application for worldwide freezing orders in support of an arbitration concerning a US\$12m credit facility for the purchase of goods (led by Michael Ashcroft QC).
- £2m+ energy arbitration concerning the charter of a jack-up barge for off-shore borehole drilling.
- Advising cargo interests in respect of a US\$14m+ dispute over a consignment of steel coils following the hijacking and release of the vessel and raising issues of jurisdiction and sub-bailment (with David Lewis QC).
- Arbitration concerning damage to a chemical tanker following overpressurisation of the cargo tanks during loading (assisting Charles Kimmins QC and Thomas Corby).
- Acting for the defendant in a US\$22m+ FOSFA arbitration arising out of an alleged failure to complete loading or accept cargo.

- Claim for contribution arising out of a fatality during life-boat testing (led by Malcom Jarvis).
- Advising brokers on interim measures in relation to a substantial claim for commission arising from the sale of a superyacht.
- *British America Tobacco Denmark A/S and others v Kazemir Transport BV; British America Tobacco Switzerland SA v H Essers Security Logistics BV and another* [2015] UKSC 65: concerning the jurisdiction of the English court in relation to successive carriers under the CMR Convention 1958 (as a Judicial Assistant to Lord Mance).
- *Bunge SA v Nidera BV* [2015] UKSC 43: concerning the construction and application of the GAFTA Default Clause and the application of *The Golden Victory* [2007] 2 AC 353 (as a Judicial Assistant to Lord Mance).
- *Bunge SA v Nibulon Trading BV* [2014] 1 Lloyd's Rep 393: concerning the relationship between the discretions of first-tier tribunals and boards of appeal to admit claims that are time barred under the GAFTA arbitration rules (as a pupil).

Tom regularly drafts submissions for and appears in arbitrations under the LMAA, GAFTA, FOSFA and LCIA terms in respect of a broad range of shipping and commodities disputes, including:

- Charterparty disputes
- Bill of lading disputes
- Seaworthiness
- Demurrage
- Unsafe ports
- Dangerous cargo
- Bunker disputes
- Performance disputes

Company and insolvency

- Acting for the Liquidator of a Romanian bank in enforcement proceedings, including obtaining worldwide freezing orders in respect of complex frauds and attempts to evade a Romanian judgment debt of US\$133m+ (led by Philip Riches).
- Acting for Joint Liquidators in a £7m+ claim against a co-surety under a facility agreements and a guarantee and indemnity (led by Blair Leahy).
- Acting as junior counsel in the Waterfall III litigation, arising from an application for directions in the Lehman Brothers insolvency and raising issues of contributory rights, fiduciary duties and recharge liabilities (led by Stephen Atherton QC and Tony Beswetherick).
- Advising a Trustee in Bankruptcy on the merits of an appeal and a contribution claim of £11m+ arising out of alleged breaches of fiduciary duty by a company director.
- Advising Joint Liquidators in respect of preferences and transactions alleged to have been made at an undervalue.
- *Trustees of the Olympic Airlines SA Pension and Life Assurance Scheme v Olympic Airlines SA* [2015] UKSC 27: concerning the meaning of "establishment" in EU Regulation 1346/2000 on Insolvency Proceedings (as a Judicial Assistant to Lord Mance).
- *Jetivia SA v Biltta (UK) Ltd* [2015] UKSC 23: concerning whether the illegality defence bars claims by a company against its directors for breach of their duties and whether section 213 of the Insolvency Act 1986 has extra-territorial effect (as a Judicial Assistant to Lord Mance).

Tom regularly appears in the High Court and county courts to make insolvency applications related to (or seeking):

- Administration orders
- Statutory demands
- Rectification of the register or extensions of time
- Winding-up petitions
- Bankruptcy petitions
- Extending and ending administrations

Civil fraud and asset tracing

- Acting for a Romanian bank in enforcement proceedings, including obtaining worldwide freezing orders and permission to serve out, in respect of complex frauds and attempts to evade a Romanian judgment debt of US\$133m+ (led by Philip Riches).
- Acting for a billionaire in relation to a receivership order and proceedings in the Turks and Caicos for the recovery of assets, which raise allegations of fraud and breach of fiduciary duty.
- Advising a Trustee in Bankruptcy on the merits of an appeal and a contribution claim of £11m+ arising out of alleged breaches of fiduciary duty by a company director.
- £800,000 High Court claim concerning an alleged multi-stage boiler room fraud involving the sale of “fancy” coloured diamonds.
- Application for worldwide freezing orders in support of an arbitration concerning a US\$12m credit facility and in support of an LCIA Award (led by Michael Ashcroft QC).
- Advising in relation to fraudulent overbilling for the laying of fibre ducting.
- Application for worldwide freezing orders in support of an arbitration concerning an investment fund facility (led by Tim Hill QC).
- Advising in relation to fraudulent overbilling for the laying of fibre ducting.
- Advising Joint Liquidators in respect of preferences and transactions alleged to have been made at an undervalue.
- Advising on the potential illegality of major bank loans (amounting to US\$1.8b+) to State-backed African companies.
- Advising on the liability of an international charity to its institutional funders for potential fraud by its foreign partners.

Energy and natural resources

- Acting as sole counsel for the claimant in an on-going £2m+ energy arbitration concerning the charter of a jack-up barge for off-shore borehole drilling.
- Acting as junior counsel for major national oil company in a US\$300+ million UNCITRAL Arbitration in a dispute under a drilling services contract (led by Duncan Matthews QC and Edward Ho).
- Six-week arbitration concerning a US\$200m+ claim against a Caribbean state for breach of a development agreement, expropriation of concessions, breaches of lease and defamation (led by John Passmore QC).
- Five-week arbitration concerning a US\$500m+ dispute arising out of the construction and delivery of semi-submersible drilling rigs from Chinese to Brazilian interests (as a pupil).
- ICSID and ICC arbitrations involving the Governments of Pakistan and Balochistan and concerning a dispute about a joint venture agreement for the exploration of minerals (as a pupil).
- *Assuranceforeningen Gard Gjensidig v The International Oil Pollution Compensation Fund 1971* [2014] 2 Lloyd’s Rep 219: concerning a freezing order in support of claims arising out of an oil spill in Venezuela (as a pupil).

Insurance and reinsurance

Tom co-authored a chapter on *The Insurer’s Obligations of Good Faith and the Insurance Act 2015*, in *The Modern Law of Marine Insurance: Volume 4* and his experience of insurance disputes includes:

- Acting for an assured shipowner in respect of a US\$20m+ claim under an ITC policy, following a collision in which a naval vessel sank.
- Acting for vessel mortgagees in respect of a US\$19m+ claim under a Mortgagees Interest Insurance (MII) policy.
- Acting for an assured in respect of claims under a buildings insurance policy for alternative accommodation following water damage.
- Acting for an assured in respect of claims under a buildings insurance policy for storm and flood damage to flats, including loss of rent and roof repairs.

Public law and human rights

Tom regularly undertakes public law and human rights work, including pro bono work through the Bar Pro Unit and A4ID. He was appointed to the Welsh Government B Panel of Junior Counsel (Public Law) in 2017. His recent work includes:

- Representing the Welsh Ministers for the consequential hearing in *R (ClientEarth) (No3) v (1) Secretary of State for Environment, Food And Rural Affairs (2) The Secretary of State for Transport and (3) Welsh Ministers* [2018] EWHC 315 (Admin), successfully resisting an extended liberty to apply order which would have by-passed the normal permission stage for subsequent judicial reviews (and was granted, exceptionally, against the Secretaries of State).
- Acting for an international NGO in relation to ongoing proceedings arising out of the Bhopal gas disaster in India in 1984, considered to be the world's worst industrial disaster.
- Acting for an international NGO in drafting communications to the UN Committee on the Elimination of Discrimination Against Women concerning sexual violence in South Sudan (with Monica Feria-Tinta).
- Acting for Latin American market traders at a Public Inquiry concerning a Compulsory Purchase Order pursuant to a controversial £60m+ redevelopment in Tottenham and raising issues of cultural, property and children's rights (with Monica Feria-Tinta and Alistair Wooder).
- Assisting the Commonwealth Secretariat in creating a Legal Knowledge Exchange Portal for countries throughout the Commonwealth.
- Advising on the potential illegality of major bank loans (amounting to US\$1.8b+) to State-backed African companies.
- Advising on the potential liability of an international charity to its institutional funders for potential fraud by its foreign partners.

Tom's experience of international and domestic public law and human rights, during his time as the Judicial Assistant to Lord Mance, includes:

- *United States of America v Nolan* [2015] UKSC 63: concerning whether the collective redundancy consulting and information obligations imposed by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, implementing the EU Collective Redundancies Directive, applied to the redundancies resulting from the jure imperii decision of the United States to close a US Army watercraft repair facility at Hythe.
- *R (on the application of Bancoult No 2) v Secretary of State for Foreign and Commonwealth Affairs* [2016] UKSC 35: concerning whether the judgment of the House of Lords in *R (on the application of Bancoult No 2) v Secretary of State for Foreign and Commonwealth Affairs* should be set aside on the alleged ground of material non-disclosure by the respondent and, if so, whether the appellant should be permitted to adduce fresh evidence at the rehearing of the appeal.
- *Keyu and others v Secretary of State for Foreign and Commonwealth Affairs and others* [2015] UKSC 69: concerning whether there is a legal duty (under the ECHR or customary international law) to hold a public inquiry into the historic killing of unarmed civilians by a patrol of Scots Guards in Batang Kali, Malaysia. A further issue was whether the UK continued to have legal responsibility for the actions of the Scots Guards following Malaysian independence in 1957.
- *In the matter of an application by JR38 for Judicial Review (Northern Ireland)* [2015] UKSC 42: concerning the Article 8 implications of publishing photos from which children suspected of criminal activity could be identified.
- *R (on the application of Evans) and another v Attorney General* [2015] UKSC 21: concerning correspondence between The Prince of Wales and government ministers and the legality of using the power under section 53 of the Freedom of Information Act to override tribunal decisions.
- *Pham v Secretary of State for the Home Department* [2015] UKSC 19: concerning statelessness and an order depriving the appellant of his British citizenship.
- *R (on the application of Catt) v Commissioner of Police of the Metropolis and another; R (on the application of T) v Commissioner of Police of the Metropolis* [2015] UKSC 9: joined appeals concerning the power to retain personal data for police purposes under Article 8 ECHR.
- *R (on the application of Rotherham MBC and others) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 6: concerning a challenge to the distribution of funds provided from EU Structural Funds and the public sector equality duty.
- *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill: Reference by the Counsel General for Wales* [2015] UKSC 3: concerning whether the Welsh Assembly would, under the Government of Wales Act 2006, have legislative competence to enact the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill.

Recommendations

Really impressive [Partner, City firm](#)

Your advocacy was absolutely first class and really made a big difference with the Judge [Partner, City firm](#)

Tom was really well prepared and I think he put the case forwards as well as we could hope for [In-house client](#)

We all enjoy working with him [Partner, City firm](#)