



Ben Gardner

Called: 2010

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Ben has a busy commercial practice, focusing on international arbitration, energy, shipping and commodities. He is the only barrister recognised by both Chambers & Partners and Legal 500 as a leading junior across each of these fields. Recent comments include *"very clever and a very good advocate"*, *"an amazing, commercially minded barrister"*, *"excellent on his feet"*, *"has an exceptional understanding of both the business and legal aspects of a case"*, *"excellent attention to detail and commercial awareness and incredibly quick-thinking on his feet"*, *"an excellent barrister, who is precise, commercial and practical in his focus and forceful and effective in his arguments"*.

Ben often appears in Court at all levels, both as sole counsel and as part of a team. Recent cases include:

- ***The Miracle Hope*** litigation (2020 – 2022): Ben acted with Robert Thomas KC for the intermediate charterers in a series of urgent applications for a mandatory injunction requiring security of US\$76m to secure release of a vessel from arrest in Singapore. He also acted for the intermediate charterers at the commercial court trial in 2022.
- ***JTI Polska v Jakubowski*** [2021] EWHC 1465 (Comm): Ben acts with Stewart Buckingham KC for the claimants on an appeal to the Supreme Court in 2023 concerning the CMR Convention and the recoverability of excise duty by cargo interests.
- ***Weco Projects ApS v Loro Piana (The My Song)*** [2021] 2 All E.R. (Comm) 383: Ben appeared with Nigel Jacobs KC for the defendant, an Italian businessman and yachtsman whose €27 million superyacht had been lost during carriage by sea, in his challenge to the English Court's jurisdiction on the grounds that the defendant was a consumer.
- ***Natixis SA v Marex Financial*** [2019] Lloyd's Rep. 431: Ben appeared with Luke Parsons KC for the cargo underwriters in a multi-party, US\$30m dispute relating to metal trading fraud. The claim against underwriters focused principally on the non-disclosure defence under the Insurance Act 2015. The claim against the underwriters settled on day 9 of the 16 day trial, with judgment handed down on the surviving claims in October 2019.
- ***Engelhart v Lloyd's Syndicate 1221*** [2018] 2 Lloyd's Rep. 24 (Comm): Ben appeared with Luke Parsons KC for the successful underwriters in a cargo insurance claim, where the assured claimed losses resulting from a fraud relating to the sale of copper ingots. The judgment is important in affirming the rule that an insurance policy on goods will not cover paper losses without express wording to that effect.
- ***Seatrade v Hakan (The Aconcagua Bay)*** [2018] 2 Lloyd's Rep. 381, with Nevil Phillips: Ben acted for the shipowners in a successful arbitration appeal on the meaning of the words "always accessible" in a charterparty. The Court determined that the clause required a vessel to be able both to enter and leave the port.
- ***Fulton v Globalia (The New Flamenco)*** [2017] 1 WLR 2581 (SC), with Simon Croall KC: Ben acted for the Respondents on the appeal to the Supreme Court an important judgment on the scope of mitigation in the law of damages, relating to whether the benefit of selling a cruise ship two years early is an act of mitigation.
- ***Versloot Dredging v HDI Gerling*** (The DC Merwestone) [2017] AC 1 (SC), with Colin Edelman KC: an important insurance case in which the Supreme Court overturned settled authority and held that there is no defence of fraudulent device in an insurance policy. Ben also acted in the trial and in the Court of Appeal.
- ***Yemgas v Superior Pescadores (The Superior Pescadores)*** [2016] All ER (Comm) 104 (CA), with David Goldstone KC: a leading authority on the interpretation of paramount clauses and the meaning of 'Hague Rules as enacted'

in bills of lading and charterparties.

- *South West SHA v Bay Island Voyages (The Celtic Pioneer)*[2015] Lloyd's Rep. 652 (CA), with Simon Kverndal QC, in which the Court of Appeal determined the nature of the limitation period under the Athens Convention on Carriage of Passengers by Sea.

Much of Ben's practice takes place under the auspices of international arbitration and he is regularly instructed as sole and junior counsel in arbitration. Ben works often under ICC, LCIA, LMAA, HKIAC, SIAC and UNCITRAL Rules, and commodities trade bodies including GAFTA, FOSFA, RSA and SAL in particular. Examples of current arbitration work include:

- An ICC gas supply dispute in the various jurisdictions worth more than US\$30 billion, with Simon Rainey KC.
- A US\$100 million LCIA arbitration relating to the sale of several steel mills, with Paul Downes KC.
- A US\$50 million HKIAC dispute relating to the sale of LNG, with James Willan KC.
- Two RSA arbitrations worth over US\$15 million as sole counsel, concerning a 1 million tonne sugar sale contract.

What the directories say

- *"A brilliant all-rounder and one of the best juniors, he is responsive, methodical and incisive, providing clarity of thought."*(Legal 500, 2024)
- *"Ben is an persuasive, nimble and incisive advocate. His professional and calm manner always make him a pleasure to work with."*(Legal 500, 2024)
- *"Extremely clever and excellent on cases requiring intellect and thoughtfulness, yet user-friendly."*(Legal 500, 2024)
- *"He's very clever, quick and gives clear advice on difficult issues."*(Chambers UK, 2024)
- *"He's very knowledgeable, practical and responsive."*(Chambers UK, 2023)
- *"He is extremely astute, committed and good in working as part of a team."*(Chambers UK, 2023)
- *"He's very clever, quick and gives clear advice on difficult issues."*(Chambers UK, 2023)
- *"He's very good and gets a lot of instructions."*(Chambers UK, 2023)
- *"Ben is an amazing, commercially-minded barrister."*(Chambers UK, 2023)
- *"Ben is very practical and user-friendly."*(Chambers UK, 2023)
- *"Highly intelligent, diligent, user-friendly, and a really nice guy."*(Legal 500, 2023)
- *"Excellent on his feet, very quick thinking and calm, gets stuck in with the documents, has a feel for tactics and how an arbitrator will view something."*(Legal 500, 2023)
- *"He shows excellent attention to detail and commercial awareness, and is incredibly quick-thinking on his feet, taking unexpected twists in his stride."*(Legal 500, 2023)
- *"He has a fantastic reputation and he is extremely popular with clients and leaders. He has a lot of experience in heavyweight international arbitration."*(Chambers UK, 2022)
- *"Ben is exceptional. He is super bright, very commercial and quick to understand client needs."*(Chambers UK, 2022)
- *"A trusted and always outstanding member of the team on the largest and most complex commercial arbitrations, and a joy to work with."*(Legal 500, 2022)
- *"Down to earth and easy to work with, he gets fully immersed in the details without losing sight of the bigger picture commercially."*(Legal 500, 2022)
- *"Thorough, well-researched and provides well-written, reliable advice. He has a sound grip on the commercial issues of any given matter."*(Legal 500, 2022)
- *"He's an excellent lawyer who inspires confidence in his clients."*(Chambers UK, 2021)
- *"Ben offers good advice and is very eloquent and clear in his advocacy."*(Chambers UK, 2021)
- *"He is very responsive and thorough, a real team player."*(Chambers UK, 2021)

- *"He produces high quality written work."*(Legal 500, 2021)
- *"An extremely polite and proactive barrister who understands clients' needs."*(Legal 500, 2021)
- *"He is reassuringly confident on difficult legal points."*(Legal 500, 2021)
- *"He's fast, accurate and has an exceptional understanding of both the business and legal aspects of a case."*(Chambers UK, 2020)
- *"Very user-friendly, bright and prompt to respond."*(Chambers UK, 2020)
- *"He's easy to work with and respected by clients."*(Chambers UK, 2020)
- *"A very capable junior with an exceptional understanding of both the commercial and legal aspects of a case."*(Legal 500, 2020)
- *"Quickly processes a high level of technical detail and works extremely hard."*(Legal 500, 2020)
- *"He provides prompt, concise, practical advice."*(Legal 500, 2020)
- *"He is very smart and focuses immediately on the issues."*(Legal 500, 2019)
- *"An excellent barrister – commercial, practical, precise and always quick to respond."*(Legal 500, 2019)
- *"He is incredibly fast at turning work around and the work is without fail of the highest standard."*(Chambers UK, 2019)
- *"Thorough, diligent and very personable. He has a great eye for detail."*(Chambers UK, 2019)
- *"Very bright and easy to work with."*(Chambers UK, 2019)
- *... "A super-bright guy who is very accessible and easy to work with." ... "Very clever and a very good advocate. He's mature beyond his years." ...* (Chambers UK, 2018)
- *... "An excellent barrister, who is precise, commercial and practical in his focus and forceful and effective in his arguments" ...* (Legal 500, 2017)
- *... "A "very impressive" junior with a broad practice covering commodities, shipping matters as well as insurance and conflict of laws." ...* (Chambers UK, 2017)
- *... "Very helpful, sensible and willing to get stuck in as much as required." ...* (Chambers UK, 2017)
- *... "He is a great junior counsel and very user-friendly. He is solution driven, helps you make a decision and is very personable." ...* (Chambers UK, 2017)

Commercial Dispute Resolution

Ben undertakes a wide range of commercial litigation in Court and arbitration. He has particular experience with freezing injunctions, anti-suit injunctions and applications to put up security.

Most of Ben's cases have a cross-border element, and he deals with jurisdiction and applicable law disputes on a regular basis, including providing advice to foreign courts on English law issues.

Ben's general commercial practice includes banking and guarantees, fraud, professional negligence and disputes under share sale agreements.

Shipping

Dry Shipping

Dry shipping is one of Ben's core practice areas. Much of his work involves bill of lading and charterparty disputes.

Ben is familiar with charterparty cases of all stripes. He acted for the charterers in *The New Flamenco* [2017] 1 WLR 2581 (SC), with Simon Croall QC, an important case on the assessment of damages following repudiation of a time charter, and is currently acting for the intermediate charterer in two related claims arising out of the misdelivery of a cargo of US\$76 million of crude oil in *The Miracle Hope* [2020] EWHC 805 (Comm), [2020] EWHC 995, [2020] EWHC

Ben also deals with the full spectrum of bill of lading disputes, including issues relating to dangerous cargo, fraudulent bills of lading, title to sue and all manner of cargo damage issues. He acted for the carriers in *The Superior Pescadores* [2016] All ER (Comm) 104 (CA), with David Goldstone QC, in which the Court of Appeal explained the meaning of the words 'Hague Rules as enacted' in a standard form bill of lading.

Wet Shipping

Ben's practice encompasses general average, arrest, collision and salvage matters. He acted for salvors in proceedings against a vessel and her P&I insurers in the Admiralty Court, including claims under the Bunkers Convention.

He is currently instructed as sole counsel in a variety of collision, GA and salvage cases worth several million dollars. Ben frequently advises on arrests and conflict of law issues in this area and has experience of limitation claims and constituting limitation funds.

In *South West SHA v Bay Island Voyages* [2015] EWCA Civ 708 (CA). Ben acted with Simon Kverndal QC for the shipowners in relation to a claim for personal injury under the Athens Convention on Carriage of Passengers by Sea. This is the leading authority on the scope of the Convention.

Commodities & International Trade

Commodities and international trade work are a core part of Ben's practice. Ben does a lot of soft commodities work including particularly arbitrations under the auspices of commodities trade bodies. He has acted on more than 50 GAFTA and FOSFA arbitrations, and is very familiar with sugar disputes under the RSA and SAL rules.

Ben also regularly handles sale of goods disputes relating to other commodities including particularly steel and its raw materials and oil and gas. He is acting in a variety of on-going Court and arbitration cases (including under LCIA, SIAC, HKIAC and LMAA rules) relating to international trade disputes, including a 3-day arbitration in 2019 and a one-week LCIA arbitration in 2017 about sale of steel cargoes as sole counsel, a US\$300m LCIA commodities arbitration relating to coke (with Simon Rainey QC) in May 2017, and multi-million dollar steel sale disputes in London in December 2017 under LCIA Rules and in Singapore in February 2018 under SIAC Rules. Ben currently acts on a number of other natural resource cases, including a dispute relating to the sale of an aluminium smelter.

Energy

Ben has a busy energy practice encompassing a wide range of upstream, downstream and offshore construction disputes. His recent work includes:

- An LCIA arbitration to be heard in 2022 relating to the failure to drill an exploration well under a farmout agreement, with Luke Parsons QC.
- A long-running ICC arbitration in London, Paris and the Hague with Simon Rainey QC worth over US\$30 billion relating to a Middle Eastern gas supply contract for a 25-year period.
- A very high value Hong Kong arbitration in 2019 on behalf of several Oil Majors relating to a long-term LNG supply contract, with Simon Rainey QC, which settled shortly before the hearing.
- Several arbitrations relating to the construction of 6th generation semi-submersible drilling rigs with Caroline Pounds.
- A High Court claim for over £10 million relating to the supply of into-plane refuelling services across UK airports, which settled in 2020.

Insurance

Ben is regularly instructed to advise and act in insurance and reinsurance matters in his own right and with leading counsel.

Illustrative cases include:

- ***Versloot Dredging v HDI Gerling, The DC Merwestone*** [2016] 3 W.L.R. 543 (SC) (with Nigel Jacobs Q.C. and Colin Edelman Q.C.): A claim by shipowners on their hull and machinery policy following the partial flooding of the "DC Merwestone". The underwriters raised defences relating to insured perils, fortuity and peril of seas as well as fraudulent presentation of the claim, on which they were ultimately successful at trial. Ben acted for the underwriters at trial, on appeal to the Court of Appeal and to the Supreme Court. Ultimately, the Supreme Court rejected the existence of the fraudulent device defence, in a groundbreaking judgment.
- ***Natixis SA v Marex Financial*** [2019] 2 Lloyds Rep 431: Ben appeared with Luke Parsons QC for the cargo underwriters in a multi-party, US\$30m dispute relating to metal trading fraud. The claim against underwriters focused principally on the non-disclosure defence under the Insurance Act 2015. The claim against the underwriters focused principally on the non-disclosure defence under the Insurance Act 2015. The claim against the underwriters settled on day 9 of the 16 day trial, with judgment handed down on the surviving claims in October 2019.
- ***Engelhart v Lloyd's Syndicate 1221*** [2018] 2 Lloyd's Rep. 24 (Comm): Ben appeared with Luke Parsons QC for the successful underwriters in a cargo insurance claim, where the assured claimed losses resulting from a fraud relating to the sale of copper ingots. The judgment is important in affirming the rule that an insurance policy on goods will not cover paper losses without express wording to that effect.

International Arbitration

Much of Ben's practice takes place under the auspices of international arbitration and he is regularly instructed as sole and junior counsel in arbitration on all manner of commercial disputes. He is familiar with a wide range of rules in various jurisdictions, including ICC, LCIA, LMAA, SIAC, HKIAC and UNCITRAL arbitrations in London, Paris, the Hague, Geneva, Singapore and Hong Kong. These arbitrations frequently address foreign law, and Ben has worked on cases applying Iranian, Saudi Arabian, French, Swiss and other governing laws.

Jurisdictional Disputes and Conflicts of Laws

Much of Ben's practice involves foreign parties and often raises questions of applicable law and jurisdiction. Ben regularly advises on conflicts of laws issues across a range of commercial areas and has a strong academic interest in the area, having studied conflict of laws at Harvard. He is also very familiar with anti-suit and anti-arbitration injunctions, having obtained a number of these injunctions and worked on appeals to the Court of Appeal and the Supreme Court.

CMR

Ben is regularly instructed to act in CMR and other road carriage and multi-modal transport matters. He obtained judgment for the claimant in ***Philip Morris Products SA v Smidl SRO*** [2017] 11 WLUK 430 on the question of whether ***Buchanan v Babco*** remains good law.

Academic

B.A. in Law, Cambridge (Double First, ranked 1st in Part I of Tripos); LL.M., Cambridge (First Class, ranked 2nd in the University); LL.M., Harvard Law School; B.V.C., BPP Law School (Outstanding).

Awards

Prizes

Vaughan Bevan Prize Emmanuel College Cambridge 2006 ; Clifford Chance David Gottlieb Prize Cambridge University 2006 ; Rodwell Prize Emmanuel College Cambridge 2007 ; Mancini Prize Harvard Law School 2009 ; Certificate of Honour Middle Temple 2010

Scholarships

Porter Scholarship Emmanuel College Cambridge 2006-2007 ; Bachelor Scholarship Emmanuel College Cambridge 2007-2008 ; Rebecca Flower Scholarship Cambridge University Cambridge 2007-2008 ; Research Scholarship A.H.R.C. 2007-2008 ; Herchel Smith Harvard Scholarship Emmanuel College Cambridge 2008-2009 ; Queen Mother

Ranking



Publications

Curaçao, the Netherlands Antilles and the Kingdom: A look through the Constitutional Prism, Ben Gardner and Jeremias Prassl

Submitted as a paper at Harvard Law School under the supervision of Professor Gráinne de Burca (2009)

Published by VanEps Kunneman VanDoorne, Willemstad, Curaçao (2009)

Delivered as a paper at the University of Groningen (2009)

Memberships

COMBAR; Chancery Bar Association; TECBAR; ICC Young Arbitrators Forum, LCIA Young International Arbitration Group.