



## Ben Gardner

Called: 2010

[ben.gardner@quadrantchambers.com](mailto:ben.gardner@quadrantchambers.com)

---

## Practice Overview

---

Ben has a busy commercial practice, focussing on shipping, commodities and international trade, energy, insurance and conflict of laws. He was shortlisted for '**Shipping Junior of the Year**' at the 2018 Chambers Bar Awards and he is consistently ranked as a leading junior by Chambers & Partners and the Legal 500 for his shipping and commodities work. Recent comments include "**very clever and a very good advocate**", "**very smart and focuses immediately on the issues**", "**an excellent barrister, who is precise, commercial and practical in his focus and forceful and effective in his arguments**", "**thorough, diligent and very personable**", "**incredibly fast at turning work around**" and "**mature beyond his years**".

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

- **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.
- **Seatrade v Hakan (The Aconcagua Bay)** [2018] EWHC 654 (Comm), 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.
- **Stemcor UK v Global Steel Holdings** (Commercial Court, 2018): Ben acted for the successful claimant creditors in their claim for US\$165m against the guarantors of a coke manufacturer.
- **Fulton v Globalia (The New Flamenco)** [2017] 1 WLR 2581 (SC), with [Simon Croall QC](#): 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.
- **Containerships Denizcilik v Shipowners' Mutual (The Yusuf Cepnioglu)** (SC) (2017), with Chriag Karia QC: Ben acted for the insurers in an appeal to the Supreme Court which settled in October 2017 relating to the availability of anti-suit injunctions in support of an arbitration agreement against a direct action claimant.
- **Versloot Dredging v HDI Gerling (The DC Merwestone)** [2017] AC 1 (SC), with Colin Edelman QC: 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 QC](#): the 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](#): an key recent decision by the Court of Appeal on the scope of the Athens Convention on Carriage of Passengers by Sea and the nature of the limitation defence.
- **MOL v Salgaocar** [2015] 2 Lloyd's Rep. 518 (Commercial Court): Ben was successful at trial in obtaining judgment for US\$14m in a claim under a guarantee that raised issues of enforceability of guarantees, the interaction between claims against a debtor and guarantor, and the calculation of damages for repudiation of a long-term time charter.

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's commodities work includes arbitrations under LMAA, LCIA, HKIAC, SIAC, UNCITRAL and ICC Rules, and commodities trade bodies including GAFTA and FOSFA in particular, and also the RSA, the BCA and the FCC. Examples of recent and current arbitration work are:

- A multi-billion dollar HKIAC gas supply dispute in Hong Kong listed for 2019, with Simon Rainey QC.
- A multi-billion dollar ICC gas supply dispute in the Hague in October 2017, with [Simon Rainey QC](#).
- Two very high value rig construction disputes, one on-going and one which was settled in March 2017.
- A dispute relating to the operation of a coal and coke supply contract worth over US\$300 million in May 2017, with [Simon Rainey QC](#).
- A one-week LMAA arbitration as sole counsel in July 2017 relating to an agency agreement, worth US\$17 million.
- A one-week LCIA commodities arbitration in December 2017 as sole counsel relating to the sale of steel.
- A one-week SIAC commodities arbitration in Singapore in February 2018 as sole counsel relating to the sale of steel.

Ben regularly deals with urgent injunctions in the High Court, including successfully obtaining freezing injunctions, anti-suit injunctions and other forms of interim relief.

---

## What the directories say

---

***'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 - Shipping & Commodities)

***"Thorough, diligent and very personable. He has a great eye for detail."***

(Chambers UK, 2019 - Shipping & Commodities)

**"Very bright and easy to work with."**

(Chambers UK, 2019 - Shipping & Commodities)

**... "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 - Shipping & Commodities)

**... "An excellent barrister, who is precise, commercial and practical in his focus and forceful and effective in his arguments"...**

(The 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 - Shipping & Commodities)

**... "Very helpful, sensible and willing to get stuck in as much as required."...**

(Chambers UK, 2017 - Shipping & Commodities)

**... "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 - Shipping & Commodities)

---

## Commercial Dispute Resolution

---

Ben undertakes a wide range of commercial litigation in Court and arbitration. He has particular experience with freezing injunctions and anti-suit injunctions, and has recently worked with Simon Rainey QC on an anti-suit injunction appeal to the Court of Appeal and with Chirag Karia on an anti-suit injunction appeal to the Supreme Court.

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, share purchase agreements, the sale of goods and the supply of services, breach of trust/equitable wrongs.

Illustrative cases include:

- **The New Flamenco** [2017] 1 WLR 2581 (SC). Ben appeared with Simon Croall QC on an important Supreme Court appeal on the nature of mitigation in the law of damages.
- **Versloot Dredging v HDI Gerling** [2017] AC 1 (SC). Ben appeared with Colin Edelman QC in a Supreme Court appeal on the fraudulent device defence in insurance contracts.
- **Mitsui OSK Lines v Salgaocar Mining Industries Pte Ltd** [2015] 2 Lloyd's Rep. 518 (Eder J). Ben acted for the claimant shipowner in a Commercial Court trial of its claim for US\$14m under a guarantee of a long-term time charter.
- **Evergreen Marine v Fast Shipping** [2014] EWHC 4893 (Leggatt J): Ben acted for the successful applicant for an anti-suit injunction. The Judge held that interim proceedings in support of an arbitration agreement must be

brought in the English Court if the application could sensibly be in this jurisdiction

- **Bikam OOD v Adria Cable Sarl** [2013] EWHC 1985 (Poplewell J) (with Chirag Karia QC): a three-week Commercial Court trial of a claim for the purchase price of a satellite television company, focussing on the alleged breach of the sellers' subscriber warranty. Ben acted for the successful sellers.
- **Bank of Baroda v Sandhu** Successfully represented the claimant bank in a Commercial Court trial of its claim to enforce a US\$1.4m Hong Kong judgment based on a director's guarantee.
- **Bankhaus Wolborn v China Construction Bank** [2012] EWHC 3285 (Comm) (with David Goldstone QC): a jurisdiction challenge raising issues of illegality under foreign law.

---

## Shipping & Maritime

---

### 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. Currently, he acts for the charterers in **The New Flamenco** [2017] 1 WLR 2581 (SC), with Simon Croall QC, both in the Supreme Court and in the on-going arbitration in relation to the assessment of damages following repudiation of a time charter. He advises on repudiation issues and obtained judgment for US\$14m under a guarantee in respect of a charterer's repudiation of a long-term time charter in **Mitsui OSK Lines v Salgaocar Mining Industries Pte Ltd** [2015] 2 Lloyd's Rep. 518 (Eder J). The claim raised issues relating to the enforceability of guarantees and the proper assessment of damages where a long-term time charter is wrongfully repudiated.

Ben works regularly in cargo claims, from initial advices through to final hearings. He has recently acted for the successfully respondent in a US\$7m arbitration relating to cargo liquefaction and has particular experience of container instability and fire cases. He acted for the defendant in a Commercial Court trial of a cargo claim in **JP Klausen v MSC (The Sky Jupiter)** [2013] EWHC 3254 (Comm).

### 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.

---

## International Trade & Commodities

---

Commodities and international trade is a core practice area for Ben. Ben does a lot of soft commodities work

including particularly arbitrations under the auspices of commodities trade bodies including GAFTA, FOSFA, RSA, BCA and the FCC. He has a particular focus on GAFTA and FOSFA work and has acted on more than 50 GAFTA and FOSFA arbitrations.

Ben also regularly handles sale of goods disputes relating to other commodities including particularly steel and its raw materials and oil. 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 one-week arbitration in 2017 about sale of steel cargoes as sole counsel and 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.

---

## Insurance & Reinsurance

---

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 Edment 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.
- A dispute relating to the construction of a cargo insurance policy in relation to goods that were never shipped, led by Luke Parsons Q.C.
- A dispute relating to the construction of a hull and machinery policy excluding 'machinery damage', led by Luke Parsons Q.C.
- A claim against the P&I insurers of a salvaged vessel under the Bunkers Convention.
- A dispute relating to a fraudulent payment authority under an H&M policy.
- **The Tramontane** (Commercial Court): Ben successfully obtained negative declaratory relief on behalf of insurers of the vessel in relation to a collision in France against third party claimants claiming directly under French statute.
- **Chubb v Fortis** (with Peter MacDonald Eggers Q.C.): A claim by a reinsured in relation to German customs liability recoverable under a goods in transit policy raising questions about the proper construction of a follow clause. The claim was amicably settled before trial.

---

## Shipbuilding

---

Ben has substantial experience in this key area of Chambers' work. In particular, he has been involved in ship repair, pipeline and drill construction claims. Ben recently acted on a semi-submersible rig construction arbitration worth several hundred million dollars, which involves substantial technical issues as well as issues about the

construction of the standard form contract and issues of misrepresentation. This case settled shortly before a hearing in March 2017. Ben was instructed on another large scale rig construction dispute in November 2017.

---

## Energy & Natural Resources

---

Ben has a busy energy practice. He has been heavily involved in a multi-billion dollar ICC arbitration in the Hague relating to a long-term gas supply contract with Simon Rainey Q.C. in 2017 and he has worked extensively on two large semi-sub rig disputes in the last two years. Ben's energy practice also embraces disputes relating to supply, finance and storage, including an arbitration relating to an off-take agreement in an LCIA arbitration in May 2017.

---

## Insolvency & Restructuring

---

Ben deals with a range of Chancery work including corporate and individual insolvency, professional negligence, trusts and fraud. Most recently, he has acted on cases involving cheque fraud, advised on the scope of solicitors' professional indemnity insurance and advised on the impact of insolvency in the shipping context.

---

## Professional Negligence

---

Ben acts for claimants and defendants in a variety of professional negligence areas. Ben is currently instructed on solicitors' and barristers' negligence cases and a construction case involving the collapse of a residential property. He also has experience of coverage disputes under liability insurance policies.

---

## Banking & Financial Services

---

Ben regularly accepts instructions from major banks in a broad range of commercial and consumer matters. He has acted for banks in a series of payment protection insurance disputes and in a number of banking fraud (e.g. cheque and credit card fraud) matters. He also has experience of cases involving ship finance, recently appearing with [David Goldstone QC](#) in **Bankhaus Wolbern & Vision 93 v China Construction Bank** [2012] EWHC 3285 (Comm), a refund guarantee dispute.

---

## 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. Illustrative cases include:

An ICC arbitration in the Hague with Simon Rainey QC relating to the sale of gas worth over US\$10 billion;

A US\$460m LCIA commodities arbitration with [Simon Rainey QC](#) relating to a long-term coke sales contract;

LMAA arbitrations, including a recent successful defence in a claim based on dangerously liquefying cargo, with [Robert Thomas QC](#);

GAFTA and FOSFA and other trade body arbitration disputes relating to quality, detention, sanctions and other

matters;

Court proceedings in support of arbitration, including an anti-suit injunction appeal with Simon Rainey Q.C. and **Evergreen Marine v Fast Shipping** [2014] EWHC 4893 (Leggatt J): Ben acted for the successful applicant for an anti-suit injunction. The Judge held that interim proceedings in support of an arbitration agreement must be brought in the English Court if the application could sensibly be in this jurisdiction.

---

## Conflicts of Law

---

Much of Ben's practice involves foreign parties and often raises questions of applicable law and jurisdiction. Ben has a strong academic interest in the area, having studied conflict of laws at Harvard. He regularly advises on conflicts of laws and is currently instructed on conflicts issues in charterparty, bill of lading, guarantee, CMR and insurance disputes. He is very familiar with anti-suit injunction issues, having obtained a number of these injunctions and worked on appeals to the Court of Appeal and the Supreme Court on anti-suit injunction cases ( **The Kishore** and **The Yusuf Cepnioglu**, both of which settled shortly before the hearing).

**Bankhaus Wolbern & Vision 93 v China Construction Bank** [2012] EWHC 3285 (Comm) Appearing with David Goldstone QC for the successful respondents in a dispute about the scope of forum non conveniens and case management stays where performance is said to be illegal pursuant to a foreign law.

---

## CMR

---

Ben is regularly instructed to act in CMR and other road carriage and multi-modal transport matters at the drafting, advisory and trial stages. Most recently, he obtained judgment for the claimant in *Philip Morris Products SA v Smidl SRO* in November 2017 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 Scholarship Middle Temple 2009-2010

## Memberships

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

## Publications

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

**Ben Gardner**  
ben.gardner@quadrantchambers.com



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)