



Simon Rainey QC

Called: 1982 Silk: 2000
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Practice Overview

Simon Rainey QC is one of the best-known and most highly regarded practitioners at the Commercial Bar with a high reputation for his intellect, advocacy skills, commercial pragmatism and commitment to client care. He has established a broad commercial advisory and advocacy practice spanning substantial commercial contractual disputes, international trade and commodities, shipping and maritime law in all its aspects, energy and natural resources and insurance and reinsurance. He appears in the Commercial Court and Court of Appeal and also the Supreme Court. He has extensive experience of arbitration, regularly appearing before all of the main domestic and international arbitral bodies and trade associations. He particularly relishes complicated legal disputes and also cross-examination, especially in cases involving heavy expert evidence, of both technical disciplines and foreign law. He is well-known as a cheerful and easy to work with team player who rolls his sleeves up in long and complex trials and arbitrations.

He is frequently appointed as arbitrator (LCIA, ICC, LMAA, SIAC, UNCITRAL and ad hoc, sitting both sole and as co-arbitrator) and has given expert evidence of English law to courts in several countries. He also sits as a Recorder in the Crown Court and as a Deputy High Court Judge (Queen's Bench and Commercial Court).

He has been cited for many years as a Leading Silk in the areas of Shipping, Commodities, Commercial Litigation and Dispute Resolution, International Arbitration, Energy and Natural Resources, and Insurance and Reinsurance by Chambers & Partners and/or Legal 500. He is also recognised as one of the [Top 10 Maritime Lawyers of 2017](#) by *Lloyds List* for the second time running. Simon was shortlisted for Shipping Silk of the Year at the Chambers & Partners Bar Awards 2018 and is shortlisted for both International Arbitration Silk of the Year and Shipping Silk of the Year at the Legal 500 UK awards 2019.

What the directories say

'Absolutely charming and probably the best cross-examiner I've ever seen.'
(Legal 500 2019)

'A class act who's proved himself to be a stellar performer; he's fighting at the top of his game.'
(Legal 500 2019)

'One of the best commodities barristers – diligent and responsive, he is an excellent example of the modern QC.'
(Legal 500 2019)

'A senior QC with gravitas and an ability to provide crystal clear advice that gets to the bottom line.'
(Legal 500 2019)

'He is a gift to the Bar – he can always think a few steps ahead and understands both the legal and commercial perspectives.'

(Legal 500 2019)

'A first-choice QC for the very complicated cases.'

(Legal 500 2019)

"A fantastically intelligent and tactically astute barrister who is immensely erudite."

(Chambers UK 2019)

"A pleasure to work with. Fantastically intelligent and tactically astute." ... "Personable and intellectually brilliant. He has the ability to sift through numerous documents and turn arguments into razor-sharp points that get straight to the core issues."

(Chambers UK 2019)

"Simon is just brilliant at conveying the meaning of agreements and making complex things simple and persuasive." ... "He's a very fluent advocate and a very good cross-examiner."

(Chambers UK 2019)

"a very fluent advocate" who "is fiendishly bright and always has the answer"

(Who's Who Legal, 2018)

"has the ability to calm the most troubled of water" ... "highly experienced and knowledgeable"

(Who's Who Legal, 2018)

"...One of the best shipping silks around. He thinks very quickly on his feet, has fantastic analytical skills and is capable of communicating complex issues with ease. Furthermore, he is lovely to work with...."

(Chambers UK, 2018)

"He has strong credentials in the oil trading field, combined with an agile mind, and is not afraid to push the boundaries of the law." "Exceptional for really complex energy cases," his particular skill lies in reducing the complicated to the elegantly simple."

(Chambers UK, 2018)

"A delight to work with, he's authoritative and someone whom the tribunal will listen to." "He has a very good, polished style of advocacy and is very persuasive."

(Chambers UK, 2018)

"He provides prompt, very practical advice, and clients love him"

(Legal 500, 2017)

"A mixture of brilliance and brevity, his written submissions are like poetry"

(Legal 500, 2017)

"An absolute star, who is commercial, bright and always provides clear advice."

(Legal 500, 2017)

"Clearly now one of the top commercial silks and a delight to work with."

(Legal 500, 2017)

"Very impressive and focused - he thinks fast on his feet. He is fantastic both on the technical law and also as an advocate. He is easy to work with and charming, and remains calm and collected under pressure"; He is stellar. He has the brain the size of a planet"
(Chambers UK, 2017)

"An extremely accomplished advocate"; "He has always been first-class. He has a specialism in international trade and delivers top-quality work"
(Chambers UK, 2017)

"Exceptionally bright, he has a really wonderful mind. He is commercial and upfront"; "He is slick friendly and someone who really gets to the heart of any given matter"
(Chambers UK, 2017)

"He's quite outstandig as he is meticulous and just never misses an argument. He's always one step ahead of everybody"
(Chambers UK, 2017)

"...an outstanding counsel, who is intellectually superb but also commercially aware..."
(Legal 500, 2016)

"...very friendly, diligent and responsive..."; "...he is highly approachable, easy to work with and he does things right the first time..."
Chambers UK 2016)

"...very concise and insightful. He impresses with his mastery of the brief..."; "...exceptionally gifted, he has the strong confidence of his clients, and is an excellent presenter of complex material..."
(Chambers UK 2016)

"...a towering intellect, he ranks among the very top QCs and is at the top of his game..."
(Legal 500 2015)

"...a strong player" who "doesn't sit on the fence. He takes a view and justifies it with ease..."
(Chambers UK 2015)

"...he is one of those super silk guys who has judges eating out of his hands." "He has the gift of going straight to the problem..."
(Chambers UK 2015)

"...very intellectually rigorous, he provides clear and accessible advice. He is also extremely knowledgeable in offshore matters..."
(Chambers UK 2015)

"...a first-class brain; he listens to and respects clients' concerns, and his advocacy is very effective, concise and clear..."
(Legal 500, 2014)

"A star, who has great analytical ability and great advocacy skills."
(Legal 500, 2014)

"Simon is very commercial, and a fantastic cross-examiner who writes brilliant skeletons." "His ability to craft arguments is really something everybody could learn from."
(Chambers UK, 2014)

"...he is very commercial, a fantastic cross-examiner and has achieved fantastic results." "He has an encyclopaedic knowledge of the law..."

(Chambers UK, 2014)

"...a ferociously intelligent, calm advocate who is imbued with great authority." He is "fast approaching super silk level," and such are his abilities that sources believe "he can go into bat confidently against anyone at the Commercial Bar."

(Chambers UK, 2013)

"...leading commodities and dry shipping expert, [he] has drawn on his broader commercial experience to develop a notable international arbitration practice. Sources note that he is "hard-working, diligent and rapier-like in cross-examination..."

(Chambers UK, 2013)

"...an "excellent advocate," who has developed a thriving energy practice. He regularly acts on major disputes involving complex legal and technical issues..."

(Chambers UK, 2013)

"...the "client-friendly" Simon Rainey QC wins the admiration of instructing solicitors as a result of his "ability to synthesise complex areas of law into digestible pieces with absolute clarity and sophistication..."

(Chambers UK, 2013)

Simon Rainey QC is "probably the premier QC in London for sugar matters"

(Legal 500, 2013)

"Simon Rainey QC is "excellent on his feet, and his written advice is clear and to the point""

(Legal 500, 2013)

"...heralded as "a super silk" due to the strength of his shipping and commodities practice. Peers rave about his "assured way of dealing with the court" and his "incisive ability to distil complex arguments into something more simple..."

(Chambers UK, 2012)

"...has established a sterling practice in general commercial litigation alongside his formidable reputation for shipping and commodities work..."

(Chambers UK, 2012)

"Simon Rainey QC is a "first rate advocate""

(Legal 500, 2012)

"the "eminent" Simon Rainey QC"" who "makes life easy for a solicitor""

(Legal 500, 2012)

"...there can be fewer more celebrated shipping silks than Simon Rainey QC. He is famous throughout the market for being "an excellent practitioner who is particularly adept at extremely complicated and technical matters." His qualities make him many a firm's "first choice on most things shipping and trade-related," and he maintains a thriving practice..."

(Chambers UK, 2011)

"Thoroughness and intellectual clout"...none .. possess these qualities more so than the "extremely wise and charming" Simon Rainey QC. Rainey's supreme technical intellect has earned him the moniker "Brainy Rainey," and led to his appearance in a number of key matters."
(Chambers UK, 2011)

"...top class in all respects: team leadership, knowledge, advocacy and drafting and he is a delight to work with..."
(Legal 500, 2011)

"...is "brilliant on his feet, with the amazing ability to assimilate extremely complicated matters and present them in a way that instantly explains the real issues...""
(Legal 500, 2010)

"Quadrant Chambers' "absolutely superb" Simon Rainey QC is "to the point, very persuasive, and very effective"
(Legal 500 2010)

Commercial Dispute Resolution

Simon Rainey's extensive commercial litigation practice developed with his expansion into this field from shipping and commodities, where he has long been an acknowledged market leader. He regularly handles substantial and high value commercial disputes arising out of widely differing commercial contracts and contexts, usually with an international aspect and often involving pre-emptive applications such as worldwide freezing orders or anti-suit injunctions and complex issues relating to jurisdiction, conflicts of law and enforcement (: see e.g. **Archer Daniels Midland v Tarif Akhras** [2014] EWHC 1392 (Comm). Many of his cases concern commercial fraud (see separate section).

He was heavily involved in the long running Antonio Gramsci litigation (in which led a Quadrant Chambers team) concerning a massive alleged fraud by the management of Latvian state owned companies and, in particular, by a number of leading Latvian politicians. The cases led to a number of hard fought jurisdiction hearings and a consideration of entirely new principles of 'piercing the corporate veil', developed by him and successfully advanced for the first time in this case. The issue of nature and effect of lifting the corporate veil and the 'Gramsci Point' has given rise to a rash of copycat cases and differing views in the Commercial Court and Chancery Division and its relevance from the jurisdictional point of view is currently the subject of an appeal to the Supreme Court in *VTB v Nutritek*.

A selection of some recent matters shows the variety of high-value commercial litigation cases handled by Simon Rainey.

See also International Arbitration for many examples of commercial disputes in this context.

- **Archer Daniels Midland v Tarif Akhras** [2014] EWHC 1392 (Comm). Representing ADM (the US giant and one of the world's biggest grain traders) in dispute with Akhras, a highly placed member of President Assad's family regarding importation of grain into Syria over many years and a highly complex network of trading companies employed by him. Obtained worldwide freezing injunction against him for US\$ 80M and subsequent committal.
- **Antonio Gramsci Shipping Corp v Recoletos Ltd and Lembergs** [2012] EWHC 1887 (Comm): Represented the Claimants in the application to Mr Lembergs (one of the Latvian politicians alleged to have been involved as "controlling mind") of the jurisdictional result achieved against another such politician (Mr Stepanovs) reported at [2011] 1 LI Rep 647 (see below). Application of the "Gramsci Point" on piercing the veil and independent

argument on Article 23 of the EU Judgments Regulation. The issue of nature and effect of lifting the corporate veil and its relevance from the jurisdictional point of view is currently on appeal to the Supreme Court.

- **Antonio Gramsci Shipping Corp v Reoletos Ltd and Stepanovs** [2011] 1 Lloyd's Rep 647: This ground-breaking decision concerned the scope and application of the Brussels Regulation in the context of lifting the corporate veil. Successfully argued for a new extension of *Gilford v Horne*, *Trustor v Smallbone* etc principles to make the controlling mind behind a company's fraudulent contract party to the contract and its jurisdiction clause.
- **Energy Venture Partners v. Malabu Oil & Gas** [2012] EWHC 853 (Comm) and [2011] EWHC 2215 (Comm). Representing JP Morgan Chase in dispute worth US\$1.3 Billion (making it one of the biggest Commercial Court cases of all times in money value terms) arising out of a dispute between parties to an agreement relating to oil prospecting licences in Nigeria. Acted for J P Morgan in this complex and high value litigation. The sum of US\$1.3 billion was paid into an account with the bank, held to the order of the Federal Government of Nigeria. The case raised major issues of principle in relation to freezing orders and the position of third party banks and the effect of sovereign immunity. The case was described by Steel J as "extraordinary" and one which the Court approached with "a long spoon".
- **Government of Sudan v Republic of South Sudan and ors** (2012) representing the government of the newly formed Republic of South Sudan in the well publicised disputes with North Sudan arising out of competing oil ownership and pipeline transit fee claims, leading to various claims by third parties: see e.g. *Chambal Fertilizers v Trafigura Pte*, *Governments of Sudan and Republic of South Sudan* (2012), Eder J, and Court of Appeal (unreported). The case raised major issues of principle the effect of sovereign immunity on ex parte orders and similar procedures for determining title.
- **Vitol SA v Sterling Oil** [2013] EWHC 3108 (Comm): Represented Sterling (one of the biggest exporters of Nigerian crude oil) in dispute over alleged breach of long term supply and development contract. The case raised issues as to the efficacy (or otherwise) of a standard form Entire Agreement Clause in a major trade house's terms in relation to alleged collateral contracts: a point of general importance to claimants seeking summary judgment.
- **Star Reefers Inc. v JFC Group** [2012] EWHC 1803 (Comm); [2012] All ER (D) 50 (Aug), [2012] NLJR 1077: Represented the claimant in worldwide freezing injunction dispute arising out of massive default on a series of contracts by Russia's largest fruit multi-national, JFC Group Co. Ltd ("JFC") of St Petersburg (owned by Mr Vladimir Kekhman known as the "Russian banana king"). Established important new scope of application of freezing injunction to directors and extra-territorial scope of UK contempt proceedings.
- **Georgian Copper v J.S.C. Madneuli** (2012): Representing the former Georgian state owned copper producing combine in dispute (one of the biggest copper producers in the world) involving an alleged long term supply contract for copper and copper concentrate products. Raised issues of illegality, fraud and validity of contract in a claim made for US\$ 75,000,000 and complicated questions of the interaction of Georgian law, Swiss law and English law and conflicts of law principles and jurisdiction.

Shipping & Maritime

Dry Shipping

One of the leading silks at the shipping bar, specialising in all aspects of dry shipping and charterparty disputes, with particular emphasis in recent years on complex cases involving all of the main large casualties arising out of dangerous cargo incidents, representing variously owners and charterers, and safe port disputes as well as appeals to the Commercial Court, Court of Appeal and House of Lords on the major dry shipping cases raising major points of principle. He is consistently singled out, and has been over many years, in both *Legal 500* and

Chambers UK as one of the leading practitioners in shipping, being ranked in the elite first division of shipping silks, and noted for his considerable legal abilities as well as his litigation and cross-examination skills.

Current trends in his practice are safe port cases such as the "Ocean Victory"; dangerous cargo cases in which he has long specialised (e.g. involving the IMDG Code and the BC Code and from the "DG Harmony" and the "Contship France" to the "Hanjin Pennsylvania" and **The "Aconcagua" (Compania Sud Americana De Vapores SA v. Sinochem Tianjin Import & Export Corporation** [2011] 1 Lloyd's Rep. 683; charterparty liabilities arising out of major casualties such as the "MSC Napoli" (where he represented cargo interests) the "Rena", the "Hoegh Osaka"; the many cases following the Lehman collapse and the credit crunch both in terms of charterparty cancellation and terminations of shipbuilding contracts, especially newbuildings and proposed newbuildings from Chinese yards (see also under Energy, Construction and Shipbuilding); and in numerous cases following of the collapse of OW Bunkers in 2014.

He is a highly regarded adviser and advocate in Hague and Hague-Visby Rules cases and has appeared in all of the leading recent cases on the Rules from the Commercial Court to the House of Lords (these are listed separately below). He is currently a member of the Consultative Committee established by the Department for Transport to consider the impact of the Rotterdam Rules in the United Kingdom.

He is the author of the leading work on towage and offshore service contracts and charterparties, now in its third edition: "The Law of Tug and Tow and Offshore Contracts" (2012, Informa and a frequent writer and speaker on maritime and commodity law subjects.

A selection of some recent and current matters demonstrates the typical breadth of the shipping cases handled by Simon Rainey.

- **The Global Santosh** [2014] 2 Lloyd's Rep 103 (CA); (2015) Supreme Court: Representing the Appellant time charterers Cargill International SA in the Supreme Court appeal from the Court of Appeal's decision on the scope of responsibility for delegates under standard forms of time charterparty.
- Representing time charterers in respect of the loss of the bulk carrier "**Bulk Jupiter**" in January 2015: allegations of cargo liquefaction (bauxite).
- Representing Owners of the "**Maersk Seoul**" in respect of the major casualty due to explosion of cargo off Oman in July 2015
- Representing cargo interests in the major grounding casualty of the "**Hoegh Osaka**" in Southampton Water in January 2015.
- Representing a leading owning company in respect of shipbuilding issues for a large fleet of new generation tankers.
- Representing the time charterers of the "**Amsterdam Bridge**", in a dispute arising out of the explosion and fire on board the in September 2012 vessel due to a dangerous cargo of calcium hypochlorite which was misdeclared by Chinese shippers.
- **Owners of the Ship 'ASTIPALAI' v Owners of the Ship 'HANJIN SHENZEN'** [2014] EWHC 210 (Admlty) the Admiralty Court outlined the correct approach following Simon's previous Court of Appeal case. THE VICKY I, to the quantification of loss of profits claims arising out of a collision at sea. Large collision case in Singapore Straits
- **Dalmare SpA v Union Shipping (The "UNION POWER")** [2013] 1 Lloyd's Rep 509; representing the buyers in the landmark decision ending, in buyers' favour, years of controversy and debate as to whether the standard

Sale of Goods Act 1979 implied terms as to quality etc are implied into the standard Norwegian Saleform 93 contract for the sale and purchase of second hand ships or are sufficiently excluded on the basis that the sale is on 'as is' terms and that this term is capable of excluding such statutory implied terms for the purposes of sect. 55(2) of the 1979 Act.

Hague and Hague-Visby Rules cases:

- **Serena Navigation v Dera Establishment (The "Limnos")** [2008] 2 Ll. Rep. 166: the first reported case on the meaning of the shipowner's limit for cargo damage under Article IV, Rule 5(a) of the Hague-Visby Rules: has provoked much published debate; settled before Court of Appeal 2009.
- **CSAV v Hamburg Schiffahrtsgesellschaft** [2006] 2 Ll. Rep 6, Commercial Court appeal from on Art IV Rule 2a of the Hague Rules and the application of the "Imvros".
- **The "Jordan II" (Jindal Iron and Steel Co Ltd and Others v Islamic Solidarity Shipping Company)** [2005] 1 Lloyd's Rep 57 (House of Lords); [2003] 2 Lloyd's Rep 87 (Court of Appeal and First Instance) The three Courts reviewed various aspects of the law on cargo claims, including the construction of "FIOS" clauses in Charterparties and Bill of Lading Contracts, and the extent to which the Hague Convention abrogates freedom of contract.
- **MacWilliam v Mediterranean Shipping Company ("The "Rafaela S")** [2005] 2 AC 423 (HL) the leading case on the status of 'straight' bills of lading made out to a named consignee without the addition of the words 'to order' or the purposes of the Hague-Visby Rules.

Wet Shipping

Simon Rainey is regularly instructed in disputes which fall within the Admiralty jurisdiction of the High Court. His practice concentrates particularly on collisions at sea, problems arising under towage and offshore contracts (on which he is the author of the acknowledged leading text "Tug and Tow and Offshore Contracts" (3rd Edn, 2012, Informa), claims arising out of oil or other pollution incidents (following his involvement in the "Sea Empress" casualty for the IOPF) and investigations into the competence of seafarers and pilotage matters.

He appeared in the only recent leading case on the assessment of collision damages, The "Front Ace" / "Vicky I" in the Court of Appeal. He was asked to speak on the Arrest Convention 1952 at the Belgian Maritime Law Association's seminar "The Arrest Convention - 60 years on" in Antwerp in May 2012 and has made a special study of "what is a ship?" (paper published at [2013] LMCLQ 145) 2013). He is a contributor to "Pollution at Sea: Law and Liability" (ed. Prof Baris Soyer, 2012, Informa).

Examples from Simon Rainey's "wet" shipping practice

Collision:

- The **"FRONT VANGUARD"** and the **"ANNA PC"**: representing leading tanker owners Front Ace in a complex collision / putting by arbitration concerning errors in navigation in a Suez Canal convoy, leading to a major casualty and oil pollution. The case led to an interim award on an important question of the recovery of pure economic loss and the so-called "Greystoke Castle" exception in shipping cases.
- **Owners of the Ship 'ASTIPALAI' v Owners of the Ship 'HANJIN SHENZEN'** [2014] EWHC 210 (Admlty) the Admiralty Court outlined the correct approach following Simon's previous Court of Appeal case. THE VICKY I, to the quantification of loss of profits claims arising out of a collision at sea. Large collision case in Singapore Straits

- The **"BALTIC ACE"** and the **"CORVUS J"** : representing owners of the Baltic Ace in respect of collision which sank the Corvus J off the Netherlands. Appeared in Manx Court on Corvus J's application to stay the Baltic Ace's limitation action (including for wreck removal costs) in favour of Dutch competing limitation action (excluding such costs).
- The **"RED JASMINE"** and **"FLYING PHANTOM"** Representing the owners of the vessel "Red Jasmine" in claim arising out of the collision with the tug "Flying Phantom" on the River Clyde, involving loss of tug and death of four crewmen with competing actions and HSE prosecutions. Allied safe port questions in charterparty context of safety of River Clyde.
- **"Western Neptune"**: advising in relation to collision damages in respect of collision affecting seismic streamer arrays, see also The "Western Neptune" [2010] 1 Lloyd's Rep. 158.
- **"Kaminesan"/"Hyundai 105"** (representing the "Mamitsa" in respect of alleged liability for collision in Singapore Strait leading to loss of the "Hyundai 105").

See also:

- **"The Front Ace" and "Vicky I"** [2008] 2 Ll. Rep. 45 (Court of Appeal: the leading case considering damages rules in collision cases and the older cases such as The "Argentino").
- **"Tricolor"/"Kariba"**: giving evidence to US Court on English collision law in the US collision action relating to the English Channel casualty.
- **"Marchioness"/"Bowbelle"**: represented the owners of the "Bowbelle" from the initial collision to the Marchioness Inquiry.

Towage:

- The "RED JASMINE" and "FLYING PHANTOM" (2012 -2014): representing the owners of the vessel "Red Jasmine" in claim under towage contract on UK Standard Conditions arising out of the collision with the tug "Flying Phantom" on the River Clyde, leading to sinking of the tug and death of four crewmen. Issues as to proper construction of Clause 4.
- Numerous advices and arbitrations under the Towcon, Towhire and Supplytime forms. See for a reported example of a section 69 appeal: S.E.A. Servizi Ecologici Affosamenti SRL v Mulicieros Servicios Lda [2007] EWHC 2639 (Comm).

Pollution:

- The **"Jambo"** representing and advising Maritime and Coastguard Agency in pollution incident in English Channel.
- The **"levoli Sun"** representing and advising Maritime and Coastguard Agency in pollution incident in English Channel.
- The **"Sea Empress"** represented the International Oil Pollution Fund in its action against Milford Haven Harbour Authority arising out of the "Sea Empress" casualty.

Pilotage:

- Advised and represented **Associated British Ports** in its restructuring of pilotage on the River Humber and in its long-running dispute with the Humber Pilots and defence of their various claims including that for misfeasance in public office.

International Trade & Commodities

Simon Rainey is one of the most highly regarded and leading practitioners in commodity work, and his practice covers all aspects of international trade and commodities / futures, including oil trading, metals and all forms of soft commodities. He has acted for all of the world's big trade houses including ED&F Man; Tate and Lyle; Glencore; Archer Daniels Midland, Bunge, Cargill and ICOF both in arbitration before specialist tribunals (FOSFA, GAFTA, RSA; SAL) and in Court on Arbitration Act challenges to awards. He handles a large number of GAFTA and FOSFA arbitrations, and has been involved in many of the section 69 Arbitration Act appeals from (and other challenges to) such GAFTA and FOSFA awards. He successfully represented Bunge SA in the recent landmark section 69 appeal before the Supreme Court, *Bunge SA v Nidera BV* [2015] UKSC 49 on the GAFTA Default Clause and the application of *The Golden Victory* to damages in sale of goods cases.

He is particularly known for his expertise in sugar trades and sugar futures and he has had considerable experience in biofuel quality disputes. He has handled virtually all of the major sugar arbitrations in the last ten years (: "probably the premier QC in London for sugar matters": *Legal 500* 2013), including all of the long running ones arising out of the biggest ever physical delivery of sugar from the futures market in May 2007 raising complex issues of law concerning interpretation of Liffe No. 5 Sugar Contract. He is regularly instructed in all manner of disputes ranging from alleged unlawful means conspiracy by one major sugar trade house against another to the problems caused by containerised sugar shipments used for drugs smuggling. He is a regular speaker at commodity events and at Sugar Association and Refined Sugar Association seminars.

A selection of some recent and current matters illustrates the types of case on commodities and international trade work which Simon Rainey typically handles.

- Representing a major US trade house in dispute over US grain cargoes with string contracts and involving problems for cargoes afloat on insolvency of carrying vessels owners.
- Representing a major sugar trader in RSA arbitration on alleged liability of FOB seller of containerised sugar parcels from Brazil where the containers were used by drug smugglers as receptacles for international cocaine smuggling.
- Representing one of the world's biggest mineral producers and exporters in dispute with a leading world commodity house, involving specialised ore long term supply contract.
- **Bunge SA v Nidera BV** [2015] UKSC 49. Brought in after the Court of Appeal to challenge decisions of GAFTA Board of Appeal, Hamblen J. and Court of Appeal on meaning of the standard GAFTA Default Clause. The Supreme Court overturned the previous rulings, holding that the Clause does not oust the ordinary compensatory principle in damages. The Court also applied the decision in *The Golden Victory* to single sales contracts (dispelling academic and judicial doubts on this point) and strongly affirmed *The Golden Victory*, rejecting the Buyers' argument that the same should be reversed.
- **ED&F Man v Tate & Lyle Sugar** (2015) Represented T&L in Commercial Court dispute with ED&F Man involving a long term raw sugar supply agreement and joint venture between major sugar trade houses as to the setting up of a major new sugar refinery in Italy in which Man allege that Tate & Lyle acted as part of an

unlawful means conspiracy to convert a cargo of sugar worth US\$25M and to cause loss to Man.

- **Stemcor UK Ltd v Global Steel Holdings Ltd and Pramod Mittal** [2015] EWHC 363 (Comm) Representing Stemcor in dispute with purchaser of coking coal under long term supply contracts.
- **Nidera BV v Venus International Free Zone for Trading** [2014] EWHC 2013 (Comm). Represented Nidera, in Commercial Court appeal from GAFTA award on the GAFTA standard form "Extension of Delivery" clause in dispute arising out of the Ukrainian embargo on exports of corn and grain. The dispute was worth US\$ 15m. The issue of law raised was of major importance to all GAFTA contracts and to FOSFA contracts which have a similar clause.
- **Transition Feeds v Itochu, Transition Feeds v ICOF** (2013-2015). Represented Transition, a specialist palm oil subsidiary of the ED & F Man Group in a case involving major questions of principle for CIF and Ex Tank Contracts and the effect of piracy on feed grade goods bound for animal consumption and raising critical issues on the concept of 'good merchantable quality' in FOSFA contracts. Obtained remission of four separate FOSFA arbitration awards on these and other issues on section 68 Arbitration Act challenge for 'serious irregularity' [2013] EWHC 3629 (Comm).
- **Great Elephant Corp. v. Trafigura Beheer BV, Trafigura v Vitol Asia, Vitol SA and China Offshore Oil ("The Crudesky")** [2014] 1 Lloyd's Rep. 1: representing exporter of Nigerian crude oil; case raises issue whether governmental detention and fine following loading of oil in breach of regulations amounted to force majeure/restraint of princes and/or novus actus interveniens; multi party dispute arising out of alleged breach of Nigerian law in loading of crude oil cargoes under a "string" contract. Important questions of principle as to the liability of an FOB seller for acts of sellers down the "string" and tackled some undecided questions under the warranty of good title under sect 11 of Sale of Goods Act 1979 and INCOTERMS.

Energy & Natural Resources

Simon Rainey has developed a strong reputation in the fields of energy and natural resources and offshore construction as well as the shipping related field of shipbuilding contracts.

In the **energy** sector, he regularly advises and appears in relation to disputes relating to drilling and exploration projects, both in terms of construction and infrastructure issues and, particularly, in relation to casualties due to failures of equipment or negligent operation and the allocation of responsibility in complex factual and technical situations in the light of equally complex forms of "knock-for-knock" provisions. He handled one of the biggest drilling contract and oil field exploration cases to come to the Commercial Court and the Court of Appeal in recent years, representing the Russian state gas company, Gazprom ("known for his impressive work on high-value technical cases such as Seadrill Management Services Ltd v OAO Gazprom, concerning the exploration of the Bay of Bengal gas and oil field." (Chambers UK, 2012)). He has considered problems arising in most of the offshore fields worldwide from, e.g., the North Sea to the Korle Lagoon, West Africa; the Manati e Golfino field Brazil to the South Akcakoca Turkish Black Sea field and the Erawan and Platong Thai fields to the new blocks in the Bay of Bengal. He is in continuous demand for cases at the cutting edge of energy technology: wind farms, new generation oil rigs and "gas-to-liquid" technology are recent examples.

He handles a broad variety of production and transportation and processing agreement matters (and his expertise is such that he is asked to carry out expert determinations) and his oil trading commodity background makes him in demand for contract disputes relating to energy products and energy generation.

He is the author of the leading text on marine offshore contracts and the "bible" for offshore operators and their legal departments: "The Law of Tug and Tow and Offshore Contracts" (now in its third edition, 2012, Informa) and he is a frequent speaker to industry, particularly on the problems thrown up by knock-for-knock regimes.

Some recent or current matters:

- Representing oil major in Nigerian Arbitration Act arbitration re-determination of tract participation in relation to Nigerian fields.
- Representing state-owned oil exploration company in relation to boundary disputes and contractual issues involving exploration in Far East in UNCITRAL arbitration.
- Representing leading North Sea operator in dispute concerning reconstruction of an FPSO.
- Representing insurers in relation to major casualty of the jack-up drilling rig "Perro Negro" involved in the Gambian subsea pipeline.
- Represented oil major in relation in dispute over alleged breach of long term supply and development contract for new generation Nigerian crude oil.
- Representing one of the leaders in wind farm construction, in dispute with major offshore construction company in dispute relating to a punch through of an offshore installation unit operating in the construction of the Robin Rigg offshore wind farm field. One of the first cases involving a UK wind farm and the subsea geology requirements for wind turbine monopoles and who bears responsibility for seabed faults.
- Representing a substantial offshore operator in Singapore/Far East in relation to dispute concerning damage to a major Far East country's oil pipeline during a major construction project extending the field. Claims in excess of US\$500M which are sought to be passed on under standard forms of offshore contracts.
- Represented one of the world's largest operator of "Gas to Liquid" plants recovering hydrocarbon fuel products from natural gas in dispute with manufacturer of the patented technology for synthesis gas.
- Represented the Russian state gas company, Gazprom, in a US\$ 80 million claim and counterclaim long running dispute against one of the leading drilling rig operators, Seadrill, in relation to the exploration of the Bay of Bengal gas and oil field. The dispute involved complex legal and factual issues including geotechnical issues relating to an alleged "punch through" of a mobile drilling rig unit hired by Gazprom. See **Seadrill v. OAO Gazprom** [2010] 1 Lloyd's Rep. 543 and [2011] 1 All E.R. (Comm) 1077: the Commercial Court and Court of Appeal's decisions are of considerable importance, for the interpretation of the IDDCO form and for the correct approach to mutual indemnity or "knock-for-knock" clauses.

Shipbuilding

His shipbuilding expertise has led to regular instruction in rig and offshore construction matters, (starting in 2000 on taking silk with the massive "Maersk Vinlander" dispute between Global and Triton) and an example of which is his recently handling for Grupo R of a major dispute with the leading Korean yard Daewoo over the building of Grupo R's sixth generation semisubmersible drilling rig "La Muralla IV".

In the area of **shipbuilding**, Simon Rainey is constantly in demand, whether for builder or buyer, and has been heavily engaged over the last few years with the consequences of the credit crunch for the heavy book of orders placed in the boom times as well as with quality and guarantee issues, for example, in relation to the VALE BEIJING, in connection with the casualty affecting the first of the new "Valemax" super sized bulk carriers "VALE BEIJING" on her maiden voyage. He also handles superyacht construction cases, recently instructed in relation a dispute concerning the "richest woman in the world's" superyacht.

Some recent or current matters:

- Representing Rowan Companies Inc in dispute concerning the building of the Rowan Gorilla III rig.
- Represented leading owning company in relation to design problem dispute affecting order for fleet of new tankers from leading shipbuilder.
- Represented Grupo R in relation to a dispute concerning an US\$ 800 million new generation oil drilling rig "LA MURALLA IV", one of the biggest new rigs in the world. Novel and complex technical issues of interest to the drilling industry and interpretation of specification for such rigs.
- Represented European buyers in arbitration concerning three shipbuilding contracts with a leading Korean yard totalling US\$ 400 M. Complex questions under standard form shipbuilding contract and what defines what constitutes "steel-cutting" for the purposes of the standard form.
- Represented Reederei Claus-Peter Offen, "one of the world's largest suppliers of modern container ship tonnage", in its well-publicised dispute with another of the world's largest ship operators, CMA CGM in a US\$250M dispute over three shipbuilding contracts involving the Korean yard Samsung.
- Represented Chinese / Korean builders in arbitration concerning the building of eight sister ship chemical tankers and interpretation of acceptability of minor defects applied to alleged cumulative defects.
- And numerous other instances of the same.

Reported cases of shipbuilding arbitration appeals under sect. 69 of the Arbitration Act 1996:

- **Ravennavi SpA v New Century Shipbuilding Company Ltd** [2007] 2 Lloyd's Rep. 24. Representing shipbuilders. Contract - Option agreement entitling buyers to acquire two additional tankers on terms of earlier shipbuilding contract containing "entire agreement" clause - Clause 4(ii) of option agreement entitling buyers to earlier delivery in certain circumstances - Buyers exercising option - Buyers contending sellers in breach of clause 4(ii) - Whether clause 4(ii) survived exercise of option.
- **Covington Marine Corp v Xiamen Shipbuilding** [2006] 1 Lloyd's Rep 745: LCIA US\$ 80 M multi vessel shipbuilding dispute. Represented Buyers in arbitration and on successful appeal to Commercial Court. Arbitration - Shipbuilding - Claims by buyers for repudiation of contracts by builders - Builders denying that binding contracts entered into - Arbitrators ruling that contracts automatically rescinded by reason of conditions not being met - Buyers' claim dismissed - Appeal under Arbitration Act 1996, section 69 - Whether arbitrators correct.

Civil Fraud

Simon Rainey's extensive commercial practice involves a steady diet of high profile and high value commercial fraud cases, typically involving heavy interlocutory stages centred around pre-emptive strike applications such as worldwide freezing injunctions and anti-suit and other injunctive relief.

Of particular note, he has recently been heavily involved in the Antonio Gramsci litigation (in which he Simon leads Robert Thomas QC and Natalie Moore also from Quadrant Chambers) concerning a massive alleged fraud by the management of Latvian state owned companies and, in particular, by a number of leading Latvian politicians. The cases have led to a number of hard fought jurisdiction hearings and a consideration of entirely new principles of "piercing the corporate veil", developed by him and successfully advanced for the first time in this case. The issue

of nature and effect of lifting the corporate veil and the "Gramsci Point" has given rise to a rash of copycat cases and differing views in the Commercial Court and Chancery Division and its relevance from the jurisdictional point of view is currently the subject of an appeal to the Supreme Court in VTB v Nutritek.

A selection of some recent matters shows the range of commercial fraud cases handled by Simon Rainey.

Antonio Gramsci Shipping Corp v Recoletos Ltd and Lembergs [2012] EWHC 1887 (Comm): Represented the Claimants in the application to Mr Lembergs (one of the Latvian politicians alleged to have been involved as "controlling mind") of the jurisdictional result achieved against another such politician (Mr Stepanovs) reported at [2011] 1 LI Rep 647 (see below). Application of the "Gramsci Point" on piercing the veil and independent argument on Article 23 of the EU Judgments Regulation. The issue of nature and effect of lifting the corporate veil and its relevance from the jurisdictional point of view is currently on appeal to the Supreme Court.

Antonio Gramsci Shipping Corp v Recoletos Ltd and Stepanovs [2011] 1 Lloyd's Rep 647: This ground-breaking decision concerned the scope and application of the Brussels Regulation in the context of lifting the corporate veil. Successfully argued for a new extension of *Gilford v Horne*, *Trustor v Smallbone* etc principles to make the controlling mind behind a company's fraudulent contract party to the contract and its jurisdiction clause.

Energy Venture Partners v. Malabu Oil & Gas [2012] EWHC 853 (Comm) and [2011] EWHC 2215 (Comm). Representing JP Morgan Chase in dispute worth US\$1.3 Billion (making it one of the biggest Commercial Court cases of all times in money value terms) arising out of a dispute between parties to an agreement relating to oil prospecting licences in Nigeria. Acted for J P Morgan in this complex and high value litigation The sum of US\$1.3 billion was paid into an account with the bank, held to the order of the Federal Government of Nigeria. The case raised major issues of principle in relation to freezing orders and the position of third party banks and the effect of sovereign immunity.. The case was described by Steel J as "extraordinary" and one which the Court approached with "a long spoon".

Georgian Copper v J.S.C. Madneuli (2013): Representing the former Georgian state owned copper producing combine in dispute (one of the biggest copper producers in the world) involving an alleged long term supply contract for copper and copper concentrate products. Raised issues of illegality, fraud and validity of contract in a claim made for US\$ 75,000,000 and complicated questions of the interaction of Georgian law, Swiss law and English law and conflicts of law principles and jurisdiction.

International Arbitration

Simon Rainey appears frequently as advocate in arbitrations under the rules of the International Chamber of Commerce; the London Court of International Arbitration and other arbitration tribunals under other rules (such as UNCITRAL) in relation to all manner of trading and financial disputes.

He is also regularly appointed as arbitrator by the ICC, LCIA, SIAC and under UNCITRAL Rules and under wide variety of ad hoc appointments.

A selection of recent and continuing arbitrations and Commercial Court related arbitration applications shows the range and diversity of his work in this field.

- UNCITRAL arbitration representing US interests in materials and equipment supply contract dispute with leading open cast mining company.
- NIGERIAN arbitration (seat London) representing oil major in tract determination dispute.

- SIAC ICC/ AD HOC ICC / Swiss arbitration involving a claim for US\$ 806 Million arising out of contract for provision of complex mining technology to world's largest potash mine in Russia.
- LCIA: arbitration relating to long term supply contract for mining and supply of coal in Far East.
- ICC : arbitration relating to construction of airport facilities in the Middle east state and supply of materials for the construction project. (Claims in excess of US\$ 25,000,000).
- ICC: arbitration relating to disputes over an automated control system controlling a metal smelting and processing plant raising issues as to lis pendens in relation to rival court proceedings and jurisdiction.
- LCIA: arbitration relating to disputes under alumina ore supply contract. (Claims circa US\$ 30,000,000).
- AD HOC: arbitration relating to claims arising out of Venezuelan nationalisation decrees affecting oil pipelines and effect on performance of joint venture agreements by non-Venezuelan entities. Parallel proceedings in London in respect of arbitration claims relating to competing arbitrations brought by joint venturers (Claims indicated to be in region of US\$ 900,000,000).
- ICC: arbitration relating to claims arising between co-venturers in respect of construction / large scale infrastructure project in a Gulf state. Issues as to recognition and enforcement of award and competing seats (Paris / London). (Claims in excess of US\$ 20,000,000)
- LCIA : arbitration in respect of claims under shareholders' agreement for breaches in relation to purchase of strategic stake in major world bank and for losses sustained as a result of the Lehman Brothers collapse. (Claim in excess of US\$ 1 billion).
- UNCITRAL: arbitration relating to claims against one of the world's biggest commodities and food processing giants arising out of a joint venture for the construction and operation of crushing plant and export terminal in ex Soviet Union. (Claim in excess of US\$ 150,000,000).
- LCIA: arbitration concerning aviation licensing dispute between two major "flag" carriers involving breaches in handling a long-term license and revenue collecting agency agreement. (Claim in excess of £70,000,000).
- ICC (2010): arbitration concerning long term supply contract for supply of aviation spirit by ex Soviet Union supplier involving interim relief to prevent U.S. proceedings and issues of foreign law. (Claims circa US\$ 15,000,000)
- ICC: arbitration relating to supply contract for South American iron ore under contract governed by UNIDROIT / UN CISG and involving issues of force majeure and subjective understanding of contract terms and correct approach under UNIDROIT and CISG.

Insurance & Reinsurance

Simon has a depth of experience across most of the industry sectors, with particular expertise in complex treaty disputes dating back to the long running SAIL v Farex / Farex v St Paul saga and major marine insurance claims. He has made a particular study of aggregation provisions both as advocate and arbitrator, grappling with difficult problems such as civil disorder in multiple incidents (advising in Mann v Lexington) and similar issues in the operation of war perils (representing insurers in Kuwait Airways v Kuwait Insurance Co). He was part of the team for the assured in the mammoth Glencore v Alpina litigation in 2003-2005 arising out of the theft and conversion of oil at the Metro floating storage with claims in excess of US\$300 million. He has advised in many of the recent

piracy cases and represented insurers in the recent Venezuelan confiscation case *Atlas-Navios Navegacao v Navigators Insurance (The B Atlantic)* [2014] EWHC 4133 (Comm). He regularly advises P&I Clubs on coverage and Rules issues.

He is regularly called upon given his knowledge and expertise in insurance law to act as an expert witness on English insurance law in foreign proceedings. He is co-author (with Guy Blackwood QC and David Walsh of Quadrant Chambers) of the forthcoming edition of *Chalmers on the Marine Insurance Act* and has lectured at BILA on the new changes to insurance law.

Examples of recent cases

- **Atlas-Navios Navegacao v Navigators Insurance (The B Atlantic)** [2014] EWHC 4133 (Comm). Venezuelan confiscation and political interference; total loss.
- Representing P&I club in relation to coverage issues under Rules and under the International group pooling agreement in relation to major casualty involving jack-up rig in West Africa.
- Representing major reinsurers in defence of claim for indemnity in respect of the constructive total loss of vessel due to piracy attack in the Red Sea.
- Representing war risk insurers in defence of claim under reinsurance policy relating to ransom payments for hijacked vessel.
- Representing major insurers in dispute as to liabilities arising out of construction project of waste-to-energy plant. Involves questions on the standard forms of *Erection "All Risks"*, *Public Liability and Delay in Start Up Insurance Policy* and the operation of the commonly used 50/50 clause.
- Representing the claimant assured in a "Bermuda Form" arbitration concerning US public liability insurance contract dispute.
- Providing expert evidence on English insurance law before the Dutch Supreme Court (opposing Jonathan Gilman QC) concerning the assignability of insurance policies in English law.

Selection of leading reported cases:

- **Atlas-Navios Navegacao v Navigators Insurance (The B Atlantic)** [2014] EWHC 4133 (Comm).
- **Glencore International AG v. Alpina Insurance Co. Ltd** [2004] 1 Lloyd's Rep. 111: claims under trader's worldwide marine insurance policy arising out of the loss through theft and fraud of about \$300 million of oil in floating storage: nature of an open cover.
- **Chris O' Kane (Syndicate 2020) v. Jonathan Jones (Syndicate 329) and others (The 'Martin P')** [2004] 1 Lloyd's Rep. 389 - leading case on double insurance; also considers insurable interest, authority of agents, contribution, avoidance, mistake.
- **The Mercandian Continent** [2001] 2 Lloyd's Rep. 563 (CA) - leading case on the post contractual duty of utmost good faith.

Aviation & Travel

As part of his very wide commercial practice, Simon Rainey is called upon to advise and act in respect of contractual disputes connected with the world of aviation and with commercial contracts in the aviation field.

A recent example is an arbitration concerning an aviation licensing dispute between two major "flag" carriers involving breaches in handling a long-term license and revenue collecting agency agreement, involving the correct construction of the contractual framework agreed between them and the payment obligations under the contract, in the light of aviation ticketing and revenue accounting practices. The case also raised the issue of the imposition of fiduciary duties on the airline processing the revenues of the other. (Claim in excess of £70,000,000). Simon led an aviation team from Quadrant Chambers.

Academic

BA (Cantab.) (1st Class Hons., Law) 1980, MA 1984; Licence en Droit Européen (Bruxelles) (Plus grande distinction) 1982.

Awards

Exhibitioner (Corpus Christi College, Cantab). Squire scholarships (Cantab); Lazard scholarship (Corpus Christi College); Wiener-Anspach scholarship (Cantab - Bruxelles); Denning Scholar; Scarman Scholar, Ver Heyden, Buchanan and Lord Morton of Henryton Prizes (Lincoln's Inn).

Publications

- *"The Law of Tug and Tow"* (1st Edn 1996, LLP; 2nd Edn 2002, LLP); *"The Law of Tug and Tow and Offshore Contracts"* (3rd Edn, 2012, Informa).
- *"Manual of International Maritime Law; II: Shipping Law"* (IMO Institute of International Maritime Law ; OUP vol II. due 2016: ed Prof M Attard, Chapter author: "The Law of Towage")
- *"Ship Building, Sale and Finance"* (2015, Informa, ed Prof Baris Soyer, chapter author on ship sale and purchase)
- *"Offshore Contracts and Liabilities"* (2014, Informa ed. Prof Baris Soyer, chapter author on mutual indemnity clauses in offshore contracts
- *"Carriage of Goods by Sea, Land and Air"* (2013, Informa, ed Prof Baris Soyer, chapter author on piracy and charterparties)
- *"Pollution at Sea: Law and Liability"* (2012, Informa, ed. Prof Baris Soyer; chapter author on public nuisance).
- *"The Carriage of Goods at Sea under the Rotterdam Rules"* (2010, Lloyd's List, ed Prof Rhidian Thomas; chapter author on interpretation of international conventions).
- *"The Evolving Law of Voyage"* (Prof Rhidian Thomas; chapter author on laytime and demurrage).
- *"Ship Sale and Purchase"* ed. Goldrein and Turner (2nd Edn 1992 LLP ; 3rd Edn 1998 LLP, chapter author on shipbuilding contracts).

- "*The Maritime Laws of Anglophone and Francophone West Africa*" (1985) UNCTAD / MINCONMAR.
- Various published articles in the Lloyd's Maritime and Commercial Law quarterly and elsewhere.

Appointments

Recorder (Crown Court), 2000; Recorder (County Court), 2004
Deputy High Court Judge (2008).
Visiting Fellow of Institute of International Trade and Shipping Law, University of Swansea (2010).
Honorary Professor in the College of Business, Economics and Law, University of Swansea (2013)
Fellow of the Chartered Institute of Arbitrators (2013)

Languages

French (fluent); Italian (passive)

Memberships

Commercial Bar Association (COMBAR)
London Maritime Arbitrators' Association (Supporting Member)
London Common Law and Commercial Bar Association (LCLCBA)
London Court of International Arbitration
Singapore Chamber of Maritime Arbitration (Panel)

Pro Bono

Member Bar Pro Bono Unit
See e.g. *Leonard v Byrt* [2008] EWCA (Civ) 20.

Interests

Skiing, walking, military and naval history, chamber music, print-collecting.