



## Tom Bird

Called: 2011  
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### Practice Overview

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Tom Bird has a broad commercial practice with a focus on shipping, commodities, marine insurance, energy/offshore and aviation. He is recommended as a leading junior by The Legal 500 and Chambers UK where he is variously described as “*very responsive, personable, very good with clients*”, “*commercial*”, “*tenacious and talented*”.

Tom has represented clients in the Commercial Court, Court of Appeal and Supreme Court. He is equally at home in arbitration (including LMAA, LCIA, ICC and GAFTA). His significant cases include appeals to the Supreme Court in *The DC Merwestone* – a marine insurance dispute concerning the fraudulent device doctrine – and *Stott v Thomas Cook*, the leading case on the exclusivity of the Montreal Convention. He recently acted for the shipowners in *The Alhani*, an important decision on the scope of the Hague Rules time bar.

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### What the directories say

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***"Intelligent, commercial and a nice guy too."***

(Legal 500 Asia Pacific, 2019)

***'He pays detailed attention to all issues, is good on his feet and is very approachable.'***

(Legal 500, 2019)

***'He is tenacious and talented.'***

(Legal 500, 2019)

***..."He's very responsive, personable, very good with clients, very impressive as to his obvious academic professional skills and has the rare quality of combining that with a great personality."...***

(Chambers UK 2019)

***..."He is really going places." "He is a pleasure to work with and very responsive."...***

(Chambers UK, 2018)

***..."He is very responsive and commercial in his approach, which is appreciated by clients"...***

(Legal 500, 2017)

***"Tom is a rising star. He's responsive, accessible, bright, tenacious, and user-friendly."***

***"A lawyer with a tremendous knowledge of the aviation sector, who is user friendly and exceptionally bright."***

(Chambers UK 2017)

**"Very commercial"**

(Legal 500, 2016)

**... "One to watch ... He's bright, he's user-friendly, he's accessible and he has good judgement."...**

(Chambers UK 2016)

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## Shipping & Maritime

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Tom specialises in all aspects of shipping. He has acted for broad range of international clients in disputes arising out of bills of lading, voyage charters and time charters both in the Commercial Court and in arbitration. He has extensive experience of most types of claim – including unsafe ports, unseaworthiness, piracy, deviation, off-hire disputes, bunker quality/quantity claims, early/late redelivery cases – and is familiar with most standard form charterparties. Recent cases include:

- **Deep Sea Maritime Ltd v Monjasa A/S (The Alhani)** [2018] EWHC 1495 (Comm); [2018] Bus. L.R. 1552. Acted for the shipowners in this significant decision on the application of Article III, Rule 6 of the Hague Rules. This case resolved an issue which has long been the subject of divergent views in the shipping market: whether the 12-month time limit applies to a misdelivery claim, where the shipowner has delivered the cargo to a third party without production of the bill of lading.
- **A v B** [2018] EWHC 2310 (Comm). Acted as sole counsel for the respondent in an appeal before the Commercial Court under s.69 of the Arbitration Act 1996. The appeal arose from an arbitration award in which the tribunal had found that a vessel's deviation (during which she had collided with a submerged nuclear submarine) was not permitted under the terms of a voyage charter.
- **Daewoo Shipbuilding and Marine Engineering Co Ltd v Songa Offshore Equinox Ltd (The Songa Equinox)** [2018] EWHC 538 (Comm); [2018] 1 Lloyd's Rep. 443. Led by Simon Rainey QC, Tom acted for the respondent in a dispute arising from the construction of four semi-submersible drilling rigs. This decision set out the practice of the Court to problems arising from the 28-day time limit provisions in the Arbitration Act 1996.
- **LMAA Arbitrations** (2018). Led by John Russell QC, Tom acted for cargo interests in a series of arbitrations arising from the hijacking of a vessel by Somali pirates in 2011.
- **LMAA Arbitration** (2018). Acting for the shipowners in a GA dispute arising from an engine room fire that resulted in the vessel being a constructive total loss.
- **LMAA Arbitration** (2017). Acted for charterers in 3-day arbitration arising from time charterparty, terminated after the vessel, a gas tanker, failed an inspection by Libyan Port State Control.
- **The Ross Revenge** [2017] EWHC 787 (Admlty); [2017] 2 Lloyd's Rep. 288. Acted for the claimant, who sought a declaration that he was the legal owner of the vessel *Ross Revenge* and was entitled to be registered as such under the Merchant Shipping Act 1995. The vessel had been built in 1960 as a fishing trawler but in April 1981 she was converted to act as a "pirate" radio station. Between August 1983 and November 1990 she was used as a base for "Radio Caroline" and "Radio Monique".
- **LMAA Arbitration** (2017). Acting for bunker suppliers in bunker quality dispute; owners claim off-spec bunkers caused engine failure.
- **LMAA Arbitration** (2017). Acting for national oil company in multiple references arising out of long-term time

charters (quantum exceeding USD 25 million).

- **LMAA Arbitration** (2017). Acting for charterers in voyage charter for carriage of fishmeal cargo from Iceland to Chile. Vessel's last cargo was lead concentrates. Issue as to whether she was fit to carry the fishmeal.
- **Limitation Claim** (2017). Advice regarding 1976 Limitation Convention where vessel's anchor caused damage to subsea cables.
- **LMAA Arbitration** (2017). Advice regarding recoverability of hedging / paper losses as damages for breach of voyage charter in circumstances where charterers had made a profit on the physical trade.
- **LMAA Arbitration** (2017). Acting for buyers of bulk carrier, following sellers' refusal to perform SPA; obtained freezing injunction.
- **Carlos Soto SAU v AP Moller-Maersk A/S** [2015] 1 Lloyd's Rep. 537. Acted for claimant in Commercial Court trial arising out of damage to a consignment of frozen swordfish.
- **Proton Energy Group SA v Orlen Lietuva** [2014] 1 Lloyd's Rep. 100. Acted for the successful sellers in a Commercial Court trial arising out of a contract for the sale of crude oil.

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## International Trade & Commodities

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Commodities disputes form a substantial part of Tom's practice. He has acted for clients before a wide range of arbitral bodies (including ICC, LMAA and LCIA) and trade association tribunals (including GAFTA, FOSFA, and the LMA), as well as the Commercial Court. He has acted for traders, insurers and exporters, and has particular experience in sugar, grain, oil, LPG and metals. Recent cases include:

- **LMAA Arbitration** (2018). Acted for owners of cargo of soyabeans damaged after the vessel on which it was carried was hijacked by pirates.
- **ICC Arbitration** (2018). Acting as sole counsel for global commodity trader in a claim arising from shipments of iron ore.
- **The Parnaso** (2017). Acting as sole counsel for global commodities trader in dispute concerning contamination of FO380. Issues include measure of loss (availability of market) and recoverability of damages for storage and hedging (backwardation) losses.
- **LMAA Arbitration** (2017). Acting for global agriculture business regarding liquidated damages provision in sale contract for sugar.
- **ADM Asia-Pacific Trading v Anhui BBKA International Freight Co** (2017). Instructed to provide English law opinion for use in foreign proceedings regarding enforceability of contract for sale of US DDGS.
- **London Metal Exchange Arbitration** (2017). Acting for sellers in disputes arising out of contracts for sale of nickel; claim for c. USD 3 million.
- **FOSFA Arbitration** (2016). Acted with John Russell QC for sellers in dispute arising out of the sale of 66,000

mt of soybeans.

- **Gasoil Futures Contracts** (2016). Advice regarding gasoil futures contracts – counterparty closed out positions after margin calls went unheeded
- **Carlos Soto SAU v AP Moller-Maersk A/S** [2015] 1 Lloyd's Rep. 537. Acted for claimant in Commercial Court trial arising out of damage to a consignment of frozen swordfish.

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## Shipbuilding

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Tom has experience in a broad range of shipbuilding cases, ranging from warranty claims to complex delay and disruption disputes.

- LMAA Arbitration (2017). Acting for the yard in claim by the buyer under a newbuild contract for post-panamax container vessel.
- LMAA Arbitration (2016). Acted with Lionel Persey QC for the buyers in arbitration concerning disputes, including delay and disruption claims, arising out of the construction of a 6th generation semi-submersible with a contract value in the order of USD 600 million.
- LMAA Arbitration. Acted for the buyers in a claim for damages of more than €2 million arising out of the construction and sale of a custom-designed fast-sailing yacht.

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## Insurance & Reinsurance

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Tom specialises in insurance and reinsurance law. Having spent time on secondment at a leading London insurer and reinsurer, he has both knowledge of the market and experience of most classes of (re)insurance (including marine, property, professional indemnity, aviation and commercial combined). Recent cases include:

- **Versloot Dredging BV v HDI Gerling Industrie Versicherung AG (The DC Merwestone)** [2016] UKSC 45; [2017] A.C. 1. A marine insurance dispute raising issues as to the meaning of 'perils of the sea' and the fortuity requirement, the effect of the Inchmaree clause, and the fraudulent device doctrine. Tom acted for the owners in the Commercial Court, Court of Appeal and Supreme Court.
- **Atlasnavios-Navegacao LDA v Navigators Insurance Co Ltd (The B Atlantic)**. Tom acted for the underwriters (with Guy Blackwood QC and Simon Rainey QC) defending a \$20 million claim for the CTL of a vessel under a policy of war risks insurance (the vessel was detained in Venezuela after 132 kg of cocaine were found attached to her hull).

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## Aviation & Travel

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Tom has acted as sole and junior counsel in a wide range of aviation disputes. In Chambers UK he is praised as a "lawyer with a tremendous knowledge of the aviation sector, who is user friendly and exceptionally bright". Tom has been instructed in a number of cases of significance to the aviation industry. He has also advised and acted for airlines in passenger claims brought under Regulation (EC) No 261/2004, Regulation (EC) No 1107/2006 and the Montreal Convention (particularly where the disputes raise matters of general principle), as well as issues arising under: the Air Navigation Order 2009; the Equality Act 2010; and the ATOL Regulations.

Illustrative cases include:

- **Jefferies and Penlington (Inquest)** (2018) This inquest arose from the death of Nicolas Jefferies and Scott Penlington, who both died when the microlight in which they were travelling crashed in Wales in September 2016. Both suffered multiple blunt injuries after the microlight span out of control and crashed in a field. Tom acted as sole counsel for the insurers of the late pilot, Mr Jefferies, at the 3-day inquest, as part of which he cross-examined the Air Accident Investigation Branch (AAIB) on their findings in relation to the cause of the accident.
- **Tonkinson v Cavaciuti and others** (2018). Acting for defendant in claim arising from fatal accident involving a microlight.
- **Morpeth v National Police Air Service** (2018). Acted for defendant in claim concerning alleged vibration damage from helicopter.
- **Stott v Thomas Cook Tour Operators Ltd** [2014] AC 1347. Tom and John Kimbell QC acted for the successful airline in an appeal to the Supreme Court concerning the exclusivity of the Montreal Convention and its relation to European law and human rights.
- **Huzar v Jet2.com Ltd** [2014] 4 All ER 587. Tom acted with Rob Lawson QC for the appellant airline. The issue in the appeal was whether a delay caused by an unexpected, unforeseen and unforeseeable technical problem can ever amount to an extraordinary circumstance for the purposes of article 5(3) of Regulation (EC) No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights.
- **Dempsey v Sylmar Aviation & Services Ltd** (2015, Technology & Construction Court). Claim arising out of work carried out to a Cessna 152 to obtain certificate of airworthiness.

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## Commercial Dispute Resolution

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Tom has experience across a wide range of commercial disputes. Recent instructions include:

- **PHP Tobacco v British American Tobacco** (Caribbean) (2017). Acting for the claimant in Commercial Court proceedings arising out of the sale and distribution of cigarettes in Martinique and Guadeloupe.
- **Honda Motor Europe v AB Skandiatransport** (2015). Acting as sole counsel for claimant in a case arising out of a contract for the storage of cars at the applicant's facility in Sweden.
- **Purits v National Commodity Operators SA** (2015). Acted for claimant in a claim under a series of loan agreements and a guarantee.
- **Proton Energy Group SA v Orlen Lietuva** [2014] 1 Lloyd's Rep. 100. Acted for the successful sellers in a Commercial Court trial arising out of a contract for the sale of crude oil.

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## Insolvency & Restructuring

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Tom has been instructed in a range of insolvency and cross-border insolvency matters (his work has included advising on whether the English courts have jurisdiction to make bankruptcy orders against foreign nationals). Tom is familiar with the Cross Border Insolvency Regulations 2006 and has advised extensively in issues arising out of the bankruptcies of Hanjin Shipping and OW Bunker.

### Academic

MA (Cantab) Theology, Starred Double First  
GDL (City University), Commendation  
BPTC (City University), Outstanding

### Awards

Barstow Scholar, City University (2011).  
Astbury Scholar, Middle Temple (2010 and 2011).  
Theological Studies Prize, Cambridge (2009).  
Bateman Scholar, Trinity Hall, Cambridge (2009).

### Memberships

COMBAR.  
LCLCBA.  
FRU.