



## Michael Proctor

Called: 2013

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Michael undertakes a broad range of commercial work with a focus on shipping, aviation, commercial litigation and international arbitration.

He has represented clients in the High Court and in many LMAA and LCIA arbitrations. Michael's recent cases include:

- **LCIA Arbitration:** c. €200M dispute concerning the refurbishment / reconstruction of an FPSO. Shipyard claiming for substantial items of work allegedly outside the scope of contract specifications and prolongation. Owners of the FPSO counterclaimed for defective workmanship, failure to complete contract scope of work and delay.
- **LMAA Arbitration:** Representing charterers and cargo interests in a claim for off-hire, additional discharging expenses, damage to shore tanks and damage to cargo resulting from solidification / water contamination of bitumen cargo. Issues included unseaworthiness in relation to the vessel's cargo heating, pumping and forced air systems and owners' failure to take reasonable care of and properly discharge the cargo.
- **LMAA Arbitration:** Representing shipbuilders in claim for buyer's repudiation of a shipbuilding contract by virtue of the latter's failure to make payment of instalments when due. Issues related to whether the contractual conditions for payment were satisfied at the time of acceptance of repudiation.
- **The Arundel Castle** [2017] 2 All E.R. (Comm) 1033; [2017] 1 Lloyd's Rep. 370: Michael appeared as sole counsel for the charterers in this s.69 Arbitration Appeal, which concerned the meaning of the term "port limits" in a charterparty within the context of a demurrage dispute. The charterers successfully argued that purported tender of NOR was invalid, as the vessel was not within port limits at the time of tender (as required by the charterparty).
- **LCIA arbitration:** US\$15million claim for breach of contract, conversion and unlawful means conspiracy arising from the alleged unlawful removal and disposal of a cargo of diesel and gasoline from a bonded terminal in Ukraine.
- **LMAA Arbitration:** Owners seeking an indemnity for cargo claims, compensation for damage to the vessel and loss of hire, alleging that the charterers had over-pressurised the vessel's cargo tanks during a nitrogen line displacement. The charterers alleged that the over-pressurisation was caused by the vessel's negligence in managing the line clearance.
- **LMAA Arbitration:** Claim concerning a charterers' liability to pay additional hire and damages as a result of loading dangerous wet iron ore cargo. The issues concerned whether the cargo was in fact dangerous and whether the vessel was seaworthy in respect of her bilge pumping system.

Michael was awarded the Lincoln's Inn Award for Outstanding Achievement in the BPTC, 2013; the Ede and Ravenscroft Award for Academic Excellence, 2011; Stone Chambers Mooting Competition Winner, 2010.

Michael is a contributor to the LexisNexis Encyclopaedia of Forms and Precedents (EF&P) and has assisted in updating the 4th Edition of Margo: Aviation Insurance, a leading practitioner text in this field.

Michael has undertaken secondments to a leading shipping law firm and a specialist insurance firm.

What the directories say

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- *"An exceptionally talented and astute barrister with expertise beyond his years. He is excellent on his feet and argues cases with clarity and persuasion in both written and oral submissions."* (Legal 500, 2022)
- *"Recommended for his excellent written and oral advocacy and his ability to provide clear, concise and well-reasoned advice."* (Legal 500, 2021)

## Shipping

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Michael has been instructed in a broad range of shipping disputes and has experience in respect of both court and arbitration proceedings. He has worked on claims involving issues concerning unpaid hire, off-hire periods, laytime and demurrage, speed underperformance and fuel overconsumption, discharge and delivery of cargo, cargo claims, letters of indemnity, owners' liens, withdrawal, repudiation and early redelivery, vessel disbursements, ship sale and purchase, ship building, and illegality and public policy. Illustrative examples include:

- **LMAA Arbitration:** Representing charterers and cargo interests in a claim for off-hire, additional discharging expenses, damage to shore tanks and damage to cargo resulting from solidification / water contamination of bitumen cargo. Issues included unseaworthiness in relation to the vessel's cargo heating, pumping and forced air systems and owners' failure to take reasonable care of and properly discharge the Cargo.
- **LMAA Arbitration:** Representing charterers in a claim against owners concerning marine growth / bottom fouling, resulting in substantial speed underperformance / fuel overconsumption during the relevant voyage. Owners allege that no such claim can be brought in law, due to the absence of charterparty defined good weather as set out in the performance warranty. Charterers assert that they are entitled to bring a claim outside the scope of the warranty for breach of owners' obligations relating to the condition of the ship on delivery and/or owners' maintenance obligations. This reference involves complicated issues concerning the correct approach to quantifying a charterers' loss for underperformance in circumstances where the performance warranty cannot be relied on due to the absence of charterparty defined good weather.
- **LMAA Arbitration:** Representing shipbuilders in claim for buyer's repudiation of a shipbuilding contract by virtue of the latter's failure to make payment of instalments when due. Issues concerned whether the contractual conditions for payment were satisfied at the time of acceptance of repudiation. Led by James M Turner QC.
- **The Arundel Castle** [2017] 2 All E.R. (Comm) 1033; [2017] 1 Lloyd's Rep. 370: Michael appeared as sole counsel for the charterers in this s.69 Arbitration Appeal, which concerned the meaning of the term "port limits" in a charterparty within the context of a demurrage dispute. The charterers successfully argued that purported tender of NOR was invalid, as the vessel was not within port limits at the time of tender (as required by the charterparty).
- **LMAA Arbitration:** Combined arbitration claim for demurrage in respect of multiple tanker vessels.
- **LMAA Arbitration:** claim by the owners, seeking an indemnity for cargo claims, compensation for damage to the vessel and loss of hire, alleging that the port authority (for whose actions the charterers were responsible) had over-pressurised the vessel's cargo tanks during a nitrogen line displacement. The charterers alleged that the over-pressurisation resulted from the vessel's negligence in managing the line clearance.
- **LMAA Arbitration:** claim concerning the charterers' liability to pay additional hire and damages as a result of loading dangerous wet iron ore cargo. The principal issues concerned whether the iron ore cargo was in fact dangerous and whether the vessel was seaworthy in respect of her bilge pumping system. Michael was instructed as junior counsel, led by Michael Davey QC.
- **LMAA Arbitration:** four-day arbitration hearing regarding a quantum dispute arising from a charterers' failure to perform a 10 year contract of affreightment, valued by the owners at \$4.5million. Led by Nigel Cooper QC.
- Acting on a Yemenis' port authority's claim against a contractor for repudiation of an agreement involving the provision of tug services at port. The principal issue was whether the contract was frustrated as a result of terrorist attacks on the port. Led by Simon Rainey QC.

## International Arbitration

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Michael has acted in many arbitrations, particularly within the dry shipping arena. Examples include:

- Acting as junior counsel in c. €200M LCIA Arbitration dispute concerning the refurbishment / reconstruction of an FPSO. Shipyard claiming for substantial items of work allegedly outside the scope of contract specifications and prolongation. Owners of the FPSO counterclaiming for defective workmanship, failure to complete contract scope of work and delay. Led by Luke Parsons QC.
- Appearing as junior counsel in a four day arbitration hearing regarding a quantum dispute arising from a charterers' failure to perform a 10 year contract of affreightment, valued by the owners at \$4.5million. Led by Nigel Cooper QC.

- Acting in an LMAA Arbitration claim for underperformance and overconsumption arising from the owners' attempted conversion of bunkers by use of a 'magic pipe' and fabrication of vessel's logs.
- Acting in a buyer's claim against a builder pursuant to a warranty of workmanship and material, in respect of cracks in a tanker vessel's hull, leading to loss and contamination of cargo.
- Acting in an LMAA Arbitration claim for vessel underperformance pursuant to an alleged "all-weather" warranty of performance.
- An LMAA Arbitration considering whether the charterers liable for alleged late redelivery of vessel in circumstances where the charterparty provided an estimated redelivery date, given without guarantee.
- An LMAA Arbitration concerning a vessel detained at port due to Customs impounding goods on-board. The owners claimed against the charterers for demurrage / breach of obligation to load safe / lawful cargo.

## Commodities & International Trade

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Michael has acted and advised on matters concerning various issues regarding the international sale of commodities.

As an illustrative example, Michael appeared in an LCIA Arbitration concerning a claim for breach of contract, conversion and unlawful means conspiracy in respect of the alleged theft of a cargo of diesel and gasoline from a bonded terminal in Ukraine. This reference involved complex issues concerning the construction of passing of title and pre-payment provisions in sale of goods contracts and required intricate factual analysis regarding alleged fraudulent documents created for the purpose of transferring title to the cargo.

## Admiralty

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**LMAA Arbitration** (2015): Michael acted as junior counsel in this three day trial hearing, led by Nigel Jacobs QC. This matter concerned the collision of two large ore carriers and raised issues on the application of the COLREGs, in particular the interpretation and interplay of Rules 2 (Responsibility) and 15 (Crossing situation) and the application of Rules 5 (Look-out) and 6 (Safe speed).

## Aviation & Travel

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Michael has worked on a number of aviation related disputes concerning aircraft acquisition and finance, passenger and cargo claims under the Montreal Convention, aviation insurance and "power by hour" agreements.

He has assisted in updating the 4th Edition of Margo: Aviation Insurance, a leading practitioner text in this field.

## Chancery Commercial

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Michael has advised on matters concerning the validity of share transfers, mortgages over shares, running accounts, breach of fiduciary duties and unlawful preferential treatment of creditors

- ***Greenwood Capital Europe Ltd v. Obar Camden Holdings Limited***(2016): Acting on a claim by a proposed purchaser in respect of the vendors' withdrawal from an alleged joint venture agreement involving the purchase of 50% shares in the defendant company. Issues concerned whether the parties had entered into a joint venture agreement and whether the defendant had a duty to inform the claimant that it could not proceed with the transaction

## Commercial Dispute Resolution

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Michael has been involved with claims and arbitrations concerning breach and wrongful termination of distribution agreements, tortious conspiracy and theft of confidential information, performance guarantees, agency agreements, letters of indemnity and construction disputes.

## Insurance

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Michael has acted in respect of marine insurance and non-marine insurance claims. He has experience dealing with issues involving coverage disputes, nondisclosure, misrepresentation, breach of the duty of utmost good faith and insurable interests.

A recent example includes an arbitration claim on a policy in respect of the loss of a pharmaceutical plant in Iraq resulting from a terrorist attack. Insurers rejected the claim, alleging that the insured was aware of (and failed to disclose) that an attack was imminent on the date of the policy.

## Fraud

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Michael has been involved with claims concerning tracing and following, fraudulent misappropriation of funds, fraudulently inflated solicitor fees and fraudulent documents created for the purpose of transferring title to product.

- **Alpha Rocks Solicitors v. Benjamin Alade (2016)** is an illustrative example. Michael appeared in the High Court in this matter, which involved a solicitors' claim for unpaid fees that was dismissed on the basis that the solicitors were found to have embarked upon a dishonest plan to claim fees to which they knew they were not entitled. This case also involved post-trial issues of enforcement of cost Orders against the solicitor firm.
- **LCIA Arbitration (2016)** is a further example. This was a claim for breach of contract, conversion and unlawful means conspiracy in respect of the alleged theft of a cargo of diesel and gasoline from a bonded terminal in Ukraine. This reference required intricate factual analysis in respect of alleged fraudulent documents created for the purpose of transferring title to the cargo.

## Banking

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Michael has frequently appeared in court acting on behalf of mortgagee banks in possession claims. Cases include:

- **Royal Bank of Scotland Plc v Garlick**(2015): Michael acted for the claimant bank in an application to strike out the Defendant's defence to a claim for possession under a Mortgage.
- **HSBC t/a First Direct v Moosun**(2015): Michael appeared for the mortgagee bank in the High Court Chancery Division, resisting the mortgagor's applications to set aside a warrant for possession.
- **Giritharan v National Westminster Bank Plc**(2014): Michael appeared in court on behalf of the defendant bank, seeking to strike out the Claimant's claim. The claimant alleged that the defendant had acted negligently, fraudulently and in breach of contract in respect of its administration of the claimant's commercial loan and current accounts.

## Academic

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L.L.B. (First Class Honours).

B.C.L. Hertford College, Oxford (Distinction).

B.P.T.C. College of Law (Outstanding).

## Awards

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Lincoln's Inn Award for Outstanding Achievement in the BPTC, 2013; University of Oxford Law Faculty Prize for Best Exam Paper on Comparative and European Corporate Law, 2012; Ede and Ravenscroft Award for Academic Excellence, 2011; Stone Chambers Mooting Competition Winner, 2010.

## Memberships

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