



James Drake QC

Silk: 2011 | Call: 1998

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“Attention to detail and incisive analysis makes him an excellent choice for complex arbitration work”

The Legal 500

Practice Profile

James Drake QC is an experienced advocate and arbitrator specialising in international commercial law, and is qualified in London, New York and Australia. He is also a qualified accountant, and therefore has a deep understanding of the commercial dimensions of legal disputes.

As counsel, he specialises in all areas of commercial law, in court and in arbitration, with particular emphasis: commercial fraud; commodities; distributorship/ franchise; insurance and reinsurance; international trade; partnership; sport; and all related interlocutory and jurisdictional issues. He has appeared in courts and before arbitral tribunals in London, Sydney, New York, BVI, Antigua and Bermuda and maintains rights of audience in these jurisdictions. Recent examples include: acting for the claimants in the long-running commercial fraud dispute in the Commercial Court, ***Orb A.R.L. v Ruhan***; acting for Venezuela in a long-running commercial (and commercial fraud) dispute across various jurisdictions (involving arbitrations in New York, Miami, Zurich, London).

As arbitrator, James is a member of the London Court of International Arbitration, a Fellow of the Chartered Institute of Arbitrators (CI Arb) and of the Australian Centre for International Commercial Arbitration (ACICA), and a chartered arbitrator and has extensive experience in both domestic and international arbitrations (whether as sole or co-arbitrator or chairman) under the auspices of the LCIA, the ICC and the CI Arb, and in ad hoc arbitrations. James is also a member of various panels of arbitrators, including the CI Arb’s Presidential Panel, ACICA, ARIAS (UK), AMTAC, AIAC. He is also a member of the Court of Arbitration for Sport (Lausanne) panel of arbitrators and a panel member of Sports Resolutions UK. Recent appointments include: sole arbitrator in a complex dispute between hedge fund partners (ad hoc); sole arbitrator in a dispute concerning an aviation accident and its consequences (CI Arb); co-arbitrator in a commercial dispute between an oil company and a sovereign state (ICC, subject to New York law).

James practised extensively in the US (New York) and in Australia (Sydney and Adelaide) before coming to the Bar. He was a partner in Owen & Davis LLP (New York), since merged with Norton Rose, and an associate in the international firm of Baker & McKenzie (in their Sydney and New York offices).

Before the law, James also undertook an accounting degree and worked with KPMG (on the audit side). As a consequence, he has, unusually for the Bar, no fear of the mechanics of business and the commercial dimensions of legal disputes.

James is a visiting lecturer at the University of Adelaide Law School, teaching International Commercial Arbitration.

Aviation

Selected cases:

- ***Celestial Aviation v Andalus Linea Aereas***: James acted for the owners of two aircraft leased to the defendant, a regional airline based in Malaga, Spain in a dispute with the lessees; injunctive relief; difficult questions as to the role of the English court in support of foreign proceedings under s25 of the Civil Jurisdiction and Judgments Act 1982.
- ***B v A***: James acted for the buyer of a jet aircraft in a dispute with the manufacturers and sellers as to the termination of the sale and purchase agreement. The matter was subject to ICC arbitration in London. The matter concerned the proper construction of the purchase agreement, including in particular the ability of manufacturers/ sellers to retain purchase price instalments. The dispute was settled (favourably) before the hearing.
- ***Mohamed v Dassault Aviation SA*** : James acted for the buyer of a Falcon jet aircraft against the manufacturers, Dassault Aviation SA, the French aircraft manufacturer, in relation to the repudiation of the agreement. James has also represented British Airways with respect to a number of matters concerning their insurance and reinsurance programme.

Commercial Fraud

James has been involved in a number of commercial fraud cases in recent years. By way of recent example:

- ***Commodities & Minerals Enterprise Ltd (Zurich/ BVI) v C.V.G. Ferrominera Orinoco C.A. (Venezuela)***. This was a USD350m dispute involving arbitrations taking place in (a) New York, (b) Miami, (c) Zurich, and (d) London under the auspices of various arbitral institutions (ICC, LCIA, SMA). James was counsel for a state-owned Venezuelan entity responsible for the production and sale of iron ore in Venezuela. The claimant company brought a claim against Venezuela, which was defended on various grounds including fraud and corruption on the part of the claimant and representatives of the Venezuelan government.
- ***Orb v Ruhan & Ors***. This was a complex and high value (£250m) multi-party commercial fraud dispute. James was leading counsel, instructed by a team led by Sean Upson at Stewarts. Principal dispute compromised before trial. There

was a raft of interlocutory skirmishes, including various applications for freezing injunctions, unless orders, and *Norwich Pharmacal* and related relief in respect of criminal wrongdoing: see eg 2015 EWHC 830 (26.2.16) before Cooke J; 2015 EWHC 830 (15.4.16) before Popplewell J; and [2016] EWHC 361 before Popplewell J.

Commercial Disputes

Selected cases:

- ***United Agencies Limited SA & Anor v Globe Marine Services Co.*** James acted in this matter for UAL, a subsidiary of MSC SA, the shipping giant based in Geneva. This was a boardroom dispute concerning MSC's joint venture partner in Saudi Arabia. The Saudi joint venture partner sued seeking to set aside certain changes to the corporate structure (and voting rights) and to force the sale of the underlying shares in breach of an arbitration agreement and a share sale agreement subject to English law. Settled after the arbitral hearing but before award.
- ***Orb A.R.L. v Ruhan***: This was a complex and high value (£250m) multi-party commercial fraud dispute. James was leading counsel, instructed by a team led by Sean Upson at Stewarts. Principal dispute compromised before trial. There was a raft of interlocutory skirmishes, including various applications for freezing injunctions, unless orders, and *Norwich Pharmacal* and related relief in respect of criminal wrongdoing: see eg 2015 EWHC 830 (26.2.16) before Cooke J; 2015 EWHC 830 (15.4.16) before Popplewell J; and [2016] EWHC 361 before Popplewell J.
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- James represented a New Zealand corporate in the context of acquiring an commodities trading business based in the US (oil / gasoline futures). James was part of the multi-disciplined team put together to conduct the due diligence of the trading business and the individuals concerned.
- ***A v Z***: James represented an options trader against a high street brokerage house for claims that the house unlawfully closed down the put options positions for failure to pay margin. The matter involves the proper construction of the terms and conditions and the proper measure of damages in contract and conversion.
- ***Icon SE LLC v SE Shipping Lines Pte Limited***: James represented the defendant shipowners in a dispute with lenders pursuant to the terms of a loan facility in respect of the purchase of newbuild vessels. The matter concerned the proper construction of the loan facility and the tit-for-tat allegations of repudiation.
- ***Jennington International Inc & Ors v Assabauev & Ors Insurers v Solicitors*** (Chancery: Vos J): James

represented one of the defendants (sellers) in this complex \$450 million dispute as to the sale of a Kazakh gold mine. He appeared before Vos J on a number of thorny interlocutory applications including (a) whether a party should be subjected to medical examination in order to test his failure to adhere to court orders and (b) the disclosure of CCTV footage.

- ***Michael Wilson & Partners, Limited v John Emmott***: James represented the claimant law firm in long-running proceedings on claims for the dishonest breach of fiduciary duty by members of the firm by, amongst other things, the illicit diversion of corporate opportunities. Proceedings in London, Sydney, BVI.

Insurance & Reinsurance

James has acted in a wide range of insurance and reinsurance cases.

Cases include:

- ***X v Y***. This matter concerned the collapse of a North Sea pipeline, causing substantial property damage to the pipeline (and leaking hydrocarbons) and significant business interruption losses. The total claim was circa USD500m. James acted for the claimant insured. The policy was governed by New York law. The insurers declined the claim on various grounds, including (a) that it was excluded on the proper construction of the policy terms and (b) the loss would have happened in any event. After a contested hearing, the tribunal found in favour of the insured in all respects.
- ***British Amateur Gymnastics Association v Zurich Insurance and Brit Insurance & Ors***. James represented the British Amateur Gymnastics Association. A member of a local club in Northern Ireland sustained serious (neck) injury in a calisthenics accident at the club. Insurers declined cover. The Association sought declarations of cover from insurers, and a claim over against their brokers. There followed a dispute about whether or not a claim had been made, by whom and under which policy; and as to the professional conduct of the insurance brokers. The matter was settled on the eve of trial for a complete recovery for the insured.
- ***Starlight Shipping Company v Allianz Marine & Aviation Versicherungs AG & Ors***, [2011] EWHC 3381 (Comm); see also [2012] EWCA Civ 1714; [2014] EWCA Civ 1010; and [2013] UKSC 70. James, leading Emma Hilliard, argued the matter in the Commercial Court for the owners of The Alexandros T, which was lost at sea in May 2006 with significant loss of life. Shipowners commenced various claims in Greece which the defendants alleged were in breach of the jurisdiction agreements set forth in various earlier settlement agreements. An important decision on the proper construction of jurisdiction clauses and on the operation of Articles 27 and 28 of the 2001 Regulation.
- ***Cotesworth & Co Limited***. James represented the members of two Lloyd's syndicates in a claim under the Lloyd's Members' Compensation Scheme for losses sustained by reason of the fraud and dishonesty on the part of the underwriting agents. Successful settlement for the members.
- ***In the Matter of Sampo Japan Insurance Inc*** (Chancery): James represented the French aircraft and space insurers

in relation to an application by their reinsurers (Sompo) to the Chancery Court under Part VII of the Financial Services & Markets Act 2000 for the Court's approval of the proposed transfer by their business to a UK subsidiary of Berkshire Hathaway.

- In 2005, James was seconded to the Financial Services Authority's Enforcement Division, where he advised on and participated in the enforcement of insurance and reinsurance related matters. He now advises a number of clients in relation to FSA's regulatory requirements for the carrying on of insurance / reinsurance business and FSA matters generally.

International Arbitration

James has had extensive recent experience in commercial arbitrations of all shapes and sizes.

Selected cases:

- ***United Agencies Limited SA & Anor v Globe Marine Services Co.*** James acted in this matter for UAL, a subsidiary of MSC SA, the shipping giant based in Geneva. This was a boardroom dispute concerning MSC's joint venture partner in Saudi Arabia. The Saudi joint venture partner sued seeking to set aside certain changes to the corporate structure (and voting rights) and to force the sale of the underlying shares in breach of an arbitration agreement and a share sale agreement subject to English law. Settled after the arbitral hearing but before award.
- ***X v Y***: This matter concerned the collapse of a North Sea pipeline, causing substantial property damage to the pipeline (and leaking hydrocarbons) and significant business interruption losses. The total claim was circa USD500m. James acted for the claimant insured in a London arbitration under LCIA Rules. The policy was governed by New York law. The insurers declined the claim on various grounds, including (a) that it was excluded on the proper construction of the policy terms and (b) the loss would have happened in any event. The tribunal found in favour of the insured in all respects.

International Trade

James acts in a variety of international trade disputes, which are ordinarily matters for arbitration. A typical example is ***Hudson v Stellar*** [2010] EWHC 2985, Hamblen J, LMAA arbitration and related proceedings in London. James acted for the US shipowners against Dubai charterers for failure to perform COA and ancillary guarantee obligations (with Statute of Frauds).

Sport

James has been involved in an array of sports-related disputes over the years. By way of example, he represented the Surf Life Saving Club of Australia against Kellogg's in relation to the rights for "Iron Man". More recently, he also represented the British Amateur Gymnastics Association of the UK in a commercial dispute with its insurers in relation to the severe

injury of one of its members.

James has been appointed to the panel of arbitrators for the Court of Arbitration for Sport and is also a panel member of Sports Resolution in the UK.

Education

University of South Australia: BA (1980) University of Adelaide: LL.B (Hons) (1985) Columbia University of New York: LL.M (1991)

Appointments

James is a member of the London Court of International Arbitration, a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Australian Centre for International Arbitration, and a Chartered Arbitrator. James is also a panellist on the KLRCA panel of arbitrators, ARIAS (UK), and AMTAC. James accepts arbitral appointments, and is regularly appointed (as sole arbitrator, chairman, or co-arbitrator) in both domestic and international arbitrations (current examples include ICC, LCIA, CIArb and ad hoc). James is also a member of the Court of Arbitration for Sport (Lausanne) panel of arbitrators and a panel member of Sports Resolutions UK.

Directories

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