



## Sir Stephen Tomlinson

Call: 1974

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## Practice Profile

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A former Head of Chambers, Sir Stephen Tomlinson was in practice as a barrister at 7 King's Bench Walk from 1975 until 2000, appointed a Queen's Counsel in 1988.

In 2000 he was appointed a High Court Judge in the Queen's Bench Division where he sat principally in the Commercial Court. In 2010 he was appointed a Lord Justice of Appeal.

At the Bar, Sir Stephen practised in all the major areas of commercial law and international trade, particularly in the fields of shipping, marine insurance, oil and gas exploration, production and trading, commodity trading, international sale of goods, non-marine insurance and reinsurance, banking and professional negligence.

Sir Stephen appeared regularly as Counsel in arbitrations heard in the City of London. In his later career at the Bar he sat regularly as arbitrator in major international commercial disputes, and was the first arbitrator appointed under the auspices of the Electricity Arbitration Association to deal with disputes in the newly privatised electricity generating and supply industry.

As a first-instance judge Sir Stephen heard a wide range of commercial disputes in the Commercial Court, but he also sat in the other civil jurisdictions of the Queen's Bench Division, where the work was sufficiently diverse to include a dispute over the provenance of an egg-clock attributed to Carl Fabergé. He also presided over criminal trials in the Crown Court.

In the Court of Appeal since 2010 his work has covered the full breadth of the Court's civil jurisdiction.

Sir Stephen retired from the Court of Appeal in January 2017 and now accepts appointment as arbitrator.

Reported judgments which he has delivered in the commercial field include the following.

## Shipping & Transport

### Judgments delivered:

- ***MSC Mediterranean Shipping Co SA v Cottonex Anstalt*** [2016] EWCA Civ 789; [2016] 2 Lloyd's Rep 494; Repudiation by frustrating delay in performance – inability of innocent party to press for further performance.
- ***Yemgas FZCO v Superior Pescadores SA Panama*** [2016] EWCA Civ 101; [2016] 1 Lloyd's Rep 561; Clause Paramount, incorporation of Hague-Visby Rules.
- ***Owners of the Stolt Kestrel v Owners of the Niyazi S*** [2015] EWCA Civ 1035; [2016] 1 Lloyd's Rep 125; Procedure in Admiralty actions in rem and in personam.
- ***South West SHA v Bay Island Voyages*** [2015] EWCA Civ 708; [2016] QB 503; Ambit of Athens Convention – whether time bar extinctive or procedural.
- ***EDF & Man Sugar Ltd v Unicargo Transportgesellschaft GmbH, "The Ladytramp"*** [2013] EWCA Civ 1449; [2014] 1 Lloyd's Rep 412; Meaning of mechanical breakdown in laytime exception.
- ***Minerva Navigation Inc v Oceana Shipping AG, "The Athena"*** [2013] EWCA Civ 1273; [2013] 2 Lloyd's Rep 673; Meaning of time lost in the off-hire clause in the New York Produce Exchange form of time charterparty.
- ***Dry Bulk Handy Holding Inc v Fayette International Holding Ltd (The Bulk Chile)*** [2013] EWCA Civ 184; [2013] 1 WLR 3440; Interception of freight payable under bill of lading.
- ***Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd*** [2012] EWCA Civ 265; [2012] 1 WLR 3674; Formation of contract of guarantee ancillary to charterparty – proper law of claim for breach of warranty of authority.
- ***Great Eastern Shipping Co Ltd v Far East Chartering Ltd*** [2012] EWCA Civ 180; [2012] 1 Lloyd's Rep 637; Delivery of cargo without production of bill of lading against letter of indemnity.
- ***National Shipping Co of Saudi Arabia v BP Oil Supply Co*** [2011] EWCA Civ 1127; [2012] 1 Lloyd's Rep 18; Whether demurrage claim compromised.
- ***Bunge SA v ADM do Brasil Ltda (The Darya Radhe)*** [2009] EWHC 845 (Comm); [2009] 2 Lloyd's Rep 175; Liability for dangerous cargo.
- ***IMT Shipping & Chartering GmbH v Chansung Shipping Co Ltd (The Zenovia)*** [2009] EWHC 739 (Comm); [2009] 2 Lloyd's Rep 139; Time charter – whether redelivery notice given “without prejudice” generated a promissory estoppel.
- ***Select Commodities Ltd v Valdo SA (The Florida)*** [2006] EWHC 1137; [2007] 1 Lloyd's Rep 1; Voyage charterparty – discharge impossible through illegality.

- ***Pentonville Shipping Ltd v Transfield Shipping Inc (The Jonny K)*** [2006] EWHC 134 (Comm); [2006] 1 Lloyd's Rep 666; Whether charterers responsible for orders given by port authorities.
- ***Portolana Compania Naviera Ltd v Vitol SA Inc (The Afraparl)*** [2003] EWHC 1904 (Comm); [2003] 2 Lloyd's Rep 671; Whether breakdown of equipment within demurrage exception in the Asbatankvoy charterparty.

## Marine Insurance

### Judgments delivered:

- ***Dornoch Ltd v Westminster International BV (The Fairway)*** [2009] EWHC 1782 (Admiralty); [2009] 2 Lloyd's Rep 420; [2009] EWHC 889 (Admiralty); [2009] 2 Lloyd's Rep 191; Constructive total loss, abandonment and notice of abandonment, subrogation, conflict of laws.
- ***Kastor Navigation Co Ltd v AGF MAT (The Kastor Too)*** [2002] EWHC 2601 (Comm); [2003] 1 Lloyd's Rep 296; Effect of constructive total loss by fire followed by actual total loss by sinking – abandonment and notice of abandonment.

## Shipbuilding

### Judgments delivered:

- ***Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA*** [2013] EWCA Civ 1679; [2014] 1 Lloyd's Rep 273; Shipbuilding contract, performance guarantee.

## Ship Sale

### Judgments delivered:

- ***Griffon Shipping LLC v Firodi Shipping Ltd (The Griffon)*** [2013] EWCA Civ 1567; [2014] 1 Lloyd's Rep 471; Effect of default clause in Norwegian Sale Form.

## Aviation

### Judgments delivered:

- ***ACG Acquisition XX LLC v Olympic Airlines SA (In Liquidation)*** [2013] EWCA Civ 369; [2013] 1 Lloyd's Rep 658; Aircraft leasing – effect of conclusive proof clause.
- ***Pindell Ltd v AirAsia Bhd*** [2010] EWHC 2516 (Comm); [2011] 2 All ER (Comm) 396; Measure of contractual indemnity and damages for breach.

## Insurance & Reinsurance

## Judgments delivered:

- ***WR Berkley Insurance (Europe) Ltd & Aspen Insurance UK Ltd v Teal Assurance Company Ltd*** [2017] EWCA Civ 25; Professional indemnity insurance, ascertainment of loss.
- ***Standard Life Assurance Ltd v Ace European Group*** [2012] EWCA Civ 1713; [2013] Lloyd's Rep IR 415; Whether principle of apportionment has any place in liability insurance.
- ***Teal Assurance Co Ltd v WR Berkley Insurance (Europe) Ltd*** [2011] EWCA Civ 1570; [2012] Lloyd's Rep IR 315; Ascertainment of loss and ordering of claims in professional indemnity insurance.
- ***Flexsys America LP v XL Insurance Co Ltd*** [2009] EWHC 1115 (Comm); [2010] Lloyd's Rep IR 132; Product liability - drop down clause.
- ***Youell v La Reunion Aeriennne*** [2008] EWHC 2493 (Comm); [2009] Lloyd's Rep IR 405; Co-insurance.
- ***Kamidian v Wareham Holt*** [2008] EWHC 1483 (Comm); [2009] Lloyd's Rep IR 242; Whether an egg-clock was a creation of Carl Fabergé, insurable interests, damage to goods and depreciation.
- ***Standard Life Assurance Ltd v Oak Dedicated Ltd*** [2008] EWHC 222 (Comm); [2008] Lloyd's Rep IR 552; Aggregation of claims.
- ***Outokumpu Stainless Ltd v AXA Global Risks (UK) Ltd*** [2007] EWHC 2555 (Comm); [2008] Lloyd's Rep IR 147; Property insurance - ambit of exclusion for loss arising from radiation.
- ***IF P&C Insurance Ltd (Publ) v Silversea Cruises Ltd*** [2003] EWHC 473 (Comm); [2004] Lloyd's Rep IR 217; Business Interruption insurance - whether loss caused by terrorist activity - aggregation.

## Conflict of Laws

### Judgments delivered:

- ***Iraqi Civilian Litigation v Ministry of Defence*** [2015] EWCA CIV 1241; [2016] 1 WLR 1290; Limitation period applicable to claim brought under foreign law.
- ***Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd*** [2012] EWCA Civ 265; [2012] 1 WLR 3674; Formation of contract of guarantee ancillary to charterparty - proper law of claim for breach of warranty of authority.
- ***Alliance Bank JSC v Aquanta Corporation*** [2012] EWCA Civ 1588; [2013] 1 Lloyd's Rep 175; Conflict of laws - choice of law governing collateral contract.
- ***Base Metal Trading Ltd v Shamurin*** [2003] EWHC 2419 (Comm); [2004] 1 All ER (Comm) 159; Conflict of laws,

contract of employment, company incorporation.

- ***Société Eram Shipping Co Ltd v Compagnie Internationale de Navigation*** [2001] 2 Lloyd's Rep 394; Conflict of Laws, civil procedure, double jeopardy, foreign jurisdictions, Garnishee orders.

## International Arbitration

### Judgments delivered:

- ***Union Marine Classification Services v Comoros*** [2016] EWCA Civ 239; [2016] 2 Lloyd's Rep 193; Power of arbitrator to correct award under section 57 Arbitration Act 1996.
- ***Rainstorm Pictures Inc v Lombard-Knight*** [2014] EWCA Civ 356; [2014] 2 Lloyd's Rep 74; Enforcement of award under New York Convention.
- ***MRI Trading AG v Erdenet Mining Corp LLC*** [2013] EWCA Civ 156; [2013] 1 Lloyd's Rep 638; Arbitration award, breach of contract, certainty.
- ***Gater Assets Ltd v Nak Naftogaz Ukrainiy*** [2008] EWHC 237 (Comm); [2008] 1 Lloyd's Rep 479; Enforcement of award under New York Convention, fraud, misrepresentation, public policy.
- ***Vertex Data Science Ltd v Powergen Retail Ltd*** [2006] EWHC 1340 (Comm); [2006] Lloyd's Rep 591; Arbitrators' powers and duties; contracts for services; interim injunctions and termination.

## Sale of Goods

### Judgments delivered:

- ***Sapporo Breweries Ltd v Lupofresh Ltd*** [2013] EWCA Civ 948; [2013] 2 Lloyd's Rep 444; Sale of goods, conflict of laws, anticipatory breach, applicable law, economic duress, intimidation.
- ***Britvic Soft Drinks Ltd v Messer UK Ltd*** [2002] 1 Lloyd's Rep 20; Sale of goods, health hazards, carcinogens, implied terms as to satisfactory quality and fitness for purpose.

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## Education

Born 1952

King's School Worcester 1963-1970; King's Scholar.

Worcester College, Oxford 1970-1973. Open scholarship in History to read Law.

First class degree in Jurisprudence 1973.

University of Oxford Eldon Law Scholar 1974.

Pupillage at 7 King's Bench Walk 1974-1975.

Lecturer in Law, Worcester College Oxford 1975-1976.

Practised at 7 King's Bench Walk 1975-2000, Head of Chambers 1995-2000.

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## **Appointments**

Called to the Bar, Inner Temple, 1974.

Queen's Counsel 1988.

Assistant Recorder 1993, Recorder 1995.

Bencher of Inner Temple 1991.

High Court Judge 2000. Queen's Bench Division sitting principally in the Commercial Court.

Judge-in-Charge of the Commercial Court 2003-2004.

Chairman of the Association of Average Adjusters 2009.

Lord Justice of Appeal 2010.

Privy Counsellor 2011.

Treasurer of the Inner Temple 2014, in which capacity Sir Stephen took part in the celebrations at the Library of Congress, Washington, to mark the 800th anniversary of Magna Carta, and delivered an address at the US Supreme Court.

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## **General Information**

Member of the Garrick Club and the MCC.

Keen opera, concert and theatre goer, gardener, walker, cricket-watcher and retired cricketer and skier.