



Terence Mowschenson QC

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Clerks' Details

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Qualifications and Appointments

- LLb (Hons) BCL (Hons) FCI Arb
- Deputy high court judge (Chancery and Administrative Court)
- Part-time judge of the Financial Conduct Authority Tribunal
- Part-time Judge of the Pension Regulator Tribunal
- Qualified mediator – 2002
- Fellow of the Chartered Institute of Arbitrators
- Fellow of the Australian Centre for International Commercial Arbitration

**“One of the grandees of the
Chancery Commercial Bar”**

Chambers UK, 2018

Memberships

- Barristers' Benevolent Association (Chairman)
- Chancery Bar Association
- Commercial Bar Association
- International Bar Association
- International Chamber of Commerce
- London Court of International Arbitration
- Fellow of the Chartered Institute of Arbitrators
- Fellow of the Australian Centre for International Arbitration

Practice Overview

Terence is ranked as a leading silk in the directories for chancery commercial, commercial dispute resolution, banking and finance, financial services, insolvency, company and offshore.

The 2018 edition of Chambers UK describes Terence as *"one of the grandees of the Chancery Commercial Bar"* and goes on to say that he has *"fantastic judgement"*, is *"absolutely brilliant in court"*, and *"a lawyer who exudes extraordinary authority"*. In the 2017 edition of The Legal 500 UK, he is hailed as *"a standout individual"*, *"a fantastic cross-examiner"* and a silk who has *"a detailed knowledge of many areas of law"*.

Much of his work is international in nature and he has a well-deserved reputation for his international expertise, acting and advising in the UK and in many offshore jurisdictions and arbitral tribunals. In particular, he has an extensive experience advising on the laws of and/or appearing in the BVI, Bahamas, Bermuda, BVI, Cayman Islands, Gibraltar, and the Isle of Man. His pre-eminence in multi-jurisdictional disputes involves him in strategy, interim remedies such as freezing injunctions, conflicts of law, and asset tracing and recovery.

He has renowned experience in areas relating to:

- Banking and finance
- Company law (including shareholders agreements and disputes, stock exchange trading and broking)
- Commercial disputes
- Financing arrangements structured investment products
- Hedge funds
- Cross-border insolvency
- Fraud, asset tracing and recovery
- Partnership and joint ventures
- Professional liability
- Trust disputes



Commercial

Terence has extensive experience in business and commercial matters and a substantial part of his practice involves giving advice in relation to commercial, company and banking matters under English law and that of a number of jurisdictions including the BVI, Bahamas, Bermuda, BVI, Cayman Islands, Gibraltar, and the Isle of Man.

Matters include:

- Lehman Bros International Europe Ltd where he acted for the liquidator in relation to obtaining the court sanction to distribute US \$19bn of assets.
- Acting for ABC Company in *ABC Company (SPV) v J & Co* involving an application by an investor in a split portfolio company which had suspended redemptions of a minority of its portfolios to wind up the company.
- Singer and Friedlander Investment (IOM) Limited where acted for the liquidator in seeking directions as to the application of client money held by the bank in breach of client money rules.
- *Madoff Securities International Ltd v Raven* and others where he acted for Mrs Kohn in successfully challenging the jurisdiction of the Commercial Court to hear a claim by the New York Madoff entity for the recovery of US \$60m in commissions paid to Mrs Kohn.
- *DE Shaw Oculus Portfolios LLC v Orient* – Express Hotels Limited where he appeared in the High Court in Bermuda on behalf of Orient Express Hotels Limited and successfully argued that it was lawful under the laws of Bermuda for a publicly-quoted company to be controlled by its own wholly owned subsidiary.
- *R v V* [2008] All ER (d) 111 successfully appearing for the successful party in the Commercial Court in the arbitration in a matter raising issues as to the enforceability of an award on public interest grounds.
- Appeared for a consortium of banks in *HSH Cayman v ABN Amro* in the Court of Appeal and High Court in the Cayman Island seeking to recover US \$600m.
- He appeared twice for Herald Fund SPC in relation to contested winding up petitions presented by the Madoff trustee in bankruptcy presented in the Cayman Islands.
- Acting on behalf of Caprikat in *Tullow Oil v Caprikat Ltd* before the commercial court in the BVI and successfully defending its rights to hydrocarbons in the BVI.
- Acting as an expert witness on Bermuda company law on behalf of Sea Containers in arbitration between GE Capital Containers v Sea Containers where his evidence was accepted.
- Acting for Calyon (the former Credit Agricole) in *Michailidis v Calyon* which has been heard twice in the Gibraltar Court of Appeal, once in the Privy Council, on an issue as to the effect of a foreign judgment and is due to be heard in the Privy Council in the latter half of 2014 on the issue as to when a bank has notice of a third-party claim to monies deposited with it and the relationship of anti-money regulations laundering regulations and notice of third party claims.
- Acting for Wardour in *Wadour v Nekrich* in the Supreme Court in Gibraltar. Wardour (a subsidiary of Rosneft) is claiming the proceeds of sale of consignments of oil allegedly diverted by Nekrich and Sagredos.
- Acted in *Derby v Weldon* (for the 3rd to 11th Defendants) a matter which involved 115 interlocutory applications before settling three months into the trial



Banking and finance

Banking and finance disputes form a significant part of Terence's commercial practice and he is ranking as a leading silk in this practice area in The Legal 500. Chambers & Partners also recognises Terence's expertise in its most recent UK and Global guides, saying that he has "*fantastic judgement*", is "*absolutely brilliant in court*", and is "*a lawyer who exudes extraordinary authority*". The publication also goes on to say he is "*a popular and much-admired chancery silk, who has undertaken a range of banking, finance, company and insolvency cases worldwide*".

Matters include:

- (1) *Irene Michailidis* (2) *Jonathan Guy Phillips v Credit Agricole Indosuez*:
Acted for Credit Agricole in the High Court, Court of Appeal and Privy Council in relation to whether Credit Agricole had constructive knowledge that monies credited to an account with the bank were the proceeds of a stolen art collection.
- *Picard v Banque J Safra (Suisse) SA and Banque Safra (Gibraltar)*:
High-profile long-running banking litigation. Acted for and advised Bank Safra in relation to complex financial mis-selling banking and insolvency issues arising out of the collapse of Bernard L Madoff Investment Securities LLC.
- Acted for a major shareholder in a long-running arbitration concerning ultimate control and ownership of a substantial bank in the Ukraine.
- Retained by a well-known bank in relation to claims made against it for acting in breach of its fiduciary duties.
- Acted in the Cayman Islands for a group of banks led by ABN Amro against JC Flowers to recover \$800 million in complex debt structures. Successfully avoiding an attempt to push the company into chapter 11, and ultimately led to a winding up in Cayman.
- *Crimpfil v Barclays*: acted against Barclays in an action over substantial losses incurred through the wrongful withdrawal of an overdraft facility
- Advised in relation to the liability of various banks in respect of the conduct of banking facilities to an insolvent law firm.
- Acted on a complex high-value financial mis-selling of swap contracts (case settled).
- Frequently advises banks and borrowers on the interpretation of banking facilities and security.
- Acted for the liquidator of Lehman Brothers on the application to repay £19 Billion to various creditors in the absence of documentation showing which creditor was entitled to it.

Professional Liability

Terence has advised on and acted in numerous matters involving professional liability for and against accountants, lawyers, directors, and professional trustees and fiduciaries.

Matters include:

- *Anglo Group of Companies v Peter Willers*
- *Langstone Leisure v Pannone*
- *ITS v Hassans*
- *ITS v Line Trust*
- *Acting for leading counsel in Re Harris & Cartwright and Hains Watt v Thornhill QC*



Trusts, Tax, Probate and Estates

Terence has acted in numerous matters involving breach of trust, disputes as to the validity or existence of a trust or the use of trust concepts in a commercial context.

Recent Matters include:

- Re Lehman Bros Europe Limited where he acted for the liquidator in relation to obtaining the court sanction to distribute \$19bn of assets in circumstances where there was uncertainty as to the identity of the beneficiaries.
- Singer and Friedlander Investment (IoM) Limited where he acted for the liquidator in seeking directions as to the application of client money held in breach of client money rules.
- Acting on a compromise and settlement of the affairs of one of the wealthiest families in North America sanctioned by the High Court in Bermuda.
- Acting for members of a family in litigation over the affairs of a settlement in the Bahamas.
- Acting for the 1st Defendant in *Michael Goodman v Mina Goodman*, Re the Estate of Everard Goodman Deceased [2013] WLR (D) 197 establishing that S 50 of the Administration of Justice Act 1985 applied to executors who had not been granted probate.

International Arbitration

Terence is a highly experienced arbitrator, as evidenced in 2017 and 2018 alone by his current involvement in two substantial arbitrations under the Rules of the Dubai International Arbitration Centre. In these cases he is one of three arbitrators on the panel, examining issues arising out of the corporate law of the United Arab Emirates.

He is a member of the ICC and LCIA and a Fellow of the Chartered Institute of Arbitrators and the Australian Centre for International Commercial Arbitration. He is also a panel member of the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

In addition to his sought-after arbitrator experience, Terence has appeared as counsel in numerous arbitrations, and amongst other arbitral rules, he has acted under the rules of the ICC, UNCITRAL, CEPANI, LCIA and Chartered Institute of Arbitrators.

Furthermore, he has sat in the Chancery Division as a deputy High Court Judge dealing an array of commercial matters, including those involving significant corporate and insolvency issues, and is also a chairman of the Financial Reporting Council Tribunal, which investigates accountants' conduct (amongst other matters) following an insolvency of a company.

In addition to the above, further arbitrator and counsel experience includes:

- Shareholder disputes.
- Manufacturing and supply contracts.
- The construction of gas liquefaction facilities in the Middle East.
- Ownership of the largest bank in a country formerly part of the old Soviet Union.
- Disputes over the mis-selling of securities.
- A dispute between online gaming companies over the right to conduct gaming over the internet.
- A dispute between developers of a new town and housing estate over the distribution of land in the development scheme.
- A dispute over ownership of a brokerage company.
- He has also appeared in the Commercial Court in relation to the enforceability of an award on public interest grounds where he acted for the successful party in *R v V* [2008] All ER (d) 111.