



serle court

Raises the bar in Chancery & Commercial

Serle Court Dubai Seminars April 2019

WHEN

Tuesday 30th April 2019
6.00 - 7.00 pm - Seminars
7.00 - 9.00 pm - Drinks reception

WHERE

The Ritz-Carlton (Salon 6)
Gate Village, DIFC





5.45 Registration

6.00 Opening remarks

Nest Investments III:

The new NPP jurisdiction presents a lot of loose ends
Rupert Reed QC

Disclosure in Arbitration:

Taking Back Control
Chris Stoner QC

Summary justice in the DIFC Court:

Towards a more robust approach
Sophia Hurst

Contempt of Court:

When, How and Why?
Gregor Hogan

6.55 Q&A

7.00 Drinks reception and canapés

Nest Investments III – the new NPP jurisdiction presents a lot of loose ends

The DIFC CA has now finally confirmed that the DIFC Courts do have a ‘necessary and proper party’ (‘NPP’) jurisdiction. For reasons previously addressed, that must be right as a matter of policy for a mature international commercial court. However, the CA had to construct that jurisdiction using RDC 20.7 relating to joinder and Art 5A(1)(e) of the JAL. Its reasoning in doing so seems to beg a whole series of *new* questions:

- Does an NPP have to be joined at some point after issue?
 - Which other procedural rules may confer jurisdiction under Art 5A(1)(e)?
 - Could RDC Parts 21 (additional claims) and 25 (interim remedies) do so?
 - How does the Court construe any rule as being ‘apt’ to confer jurisdiction?
 - Is Art 5A(1)(e) therefore a gateway of *discretionary* jurisdiction?
 - What ‘floodgates’ may have been opened by this extension?
 - On what basis will any ‘contrivance’ be an abuse of process?
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Rupert Reed QC

Rupert’s work focuses on disputes in property, commercial, banking, trusts and fraud matters. Formerly Chambers & Partners ‘Chancery Junior of the Year’, he has a strong reputation as a leading advocate in both London and Dubai, with a working knowledge of Arabic and significant experience of UAE, Saudi and Islamic law.

He has acted in many leading DIFC cases, including *Corinth*, *Bocimar*, *Vannin v Khorafi*, *DAMAC v Ward*, *WCT v Meydan*, *Sunteck*, *Orion Holdings v Al Haj*, and *FedEx v ALJT*. He has acted both as Counsel and as arbitrator in a number of significant DIAC, DIFC-LCIA and LCIA arbitrations both in Dubai and London.

Chambers Global 2019 describes Rupert as being “*Destined for great things, and clever enough to make the work look easy.*” “*He’s someone who makes sure he gets the law and facts right in advance, so that he’s totally in control in court.*”

Disclosure in Arbitration: Taking Back Control

Arbitration as a commercially driven and efficient means of dispute resolution aims and advantages often dulled by voluminous documentation and lengthy Redfern schedules. Can we take back control of the disclosure process and when is it strategically important to do so?

- Do the Prague Rules offer an opportunity to better control disclosure?
- When might it be appropriate to choose the Prague Rules over the IBA Rules on taking evidence and vice-versa for strategic advantage.
- What benefits and advantages might be derived from E-disclosure?



Christopher Stoner QC

Chris has a strong practice in the property field, including construction and development disputes. He regularly acts for major institutional clients, including the Canals and Rivers Trust and the Port of London Authority. He is also a leading sports lawyer, having advised the ICC and acted for regulators including British Swimming, the FA Premier League, the International Tennis Federation and the British Boxing Board of Control.

Much of his work is in arbitration, and The Legal 500 has commented that he is particularly good at arguing before international panels. He recently completed a high-value DIAC arbitration dealing with development rights in respect of a major Dubai development.

Ranked as leading silk in both Property and Sports Law, he has been described by Chambers & Partners as “*clever, hard-working and hugely impressive*”, “*an excellent team player, who is great with clients and really good on his feet*” and “*someone who always takes a pragmatic and practical approach*”.

Summary justice in the DIFC Court: Towards a more robust approach

Immediate judgment and its reverse can be an invaluable weapon in winning disputes quickly, saving costs or even just narrowing the issues. Recent decisions in the DIFC Courts suggest that this weapon may be even more effective, used proactively, even where there may be complex factual issues or questions of foreign law. Questions inevitably arise for the practitioner in watching these developments.

- When does going for immediate judgment impair the prospects of foreign enforcement?
- When, if ever, would you use immediate judgment to enforce foreign judgments or awards?
- Was *GFH Capital v Haigh* a one-off, and should immediate judgment ever be sought on allegations of dishonesty?
- What are the disclosure considerations and economics that inform strategy in deciding whether to apply?
- How do you avoid setting up a ‘mini-trial’?
- Can the Court proceed on the basis of ‘good examples’ - as in *Salam Advocates v Kele Contracting*?
- When is there any ‘other compelling reason for trial’?
- How may the difference in test between immediate judgment and striking-out affect the outcome?



Sophia Hurst

Sophia has a broad commercial practice with an emphasis on fraud, company, banking and financial services. With a French law degree from Paris II and recently called to the bar in the British Virgin Islands, she has a strong interest in transnational disputes.

In the BVI, she acted recently in the Commercial Court and Court of Appeal on fraud claims for damages of around USD 1 billion between two entities controlled by prominent Russian businessmen. In London, she assisted on a successful appeal to the Court of Appeal in *Ras al Khaimah v Bestfort LLP* [2016] EWCA Civ 1099, now a leading case on the test in obtaining security for costs against a non-resident claimant. She was also instructed in the Lehman Brothers Waterfall III proceedings and a major UNCITRAL arbitration in the oil and gas sector, and is currently acting in the *Yukos Finance litigation*, one of The Lawyer’s Top 20 Cases of 2019.

She is particularly interested in issues of jurisdiction and conflict of laws.

Contempt of Court: When, How and Why?

There has been a recent trend in the DIFC for parties to threaten committals for contempt in respect of breaches that are minor or concern only procedural directions. Given the very serious and criminal nature of such allegations, what explains this trend and has it gone too far?

- What are the limits to the DIFC Courts' jurisdiction to punish for contempt?
- Has that jurisdiction become long(er)-arm after *VIH Dubai Palm Jumeriah Ltd v Assas Opco Ltd*?
- Is the breach of an "unless" order proper grounds for an application?
- Does the applicant need to prove a specific state of mind on the part of the alleged contemnor?
- What is the proper process to be followed on a committal application?
- What defensive strategies are available in resisting committal?
- Can an application or the threat of one itself be abusive?



Gregor Hogan

Gregor has a broad commercial Chancery practice, with a particular interest in commercial litigation, civil fraud and cases with an offshore element. He is currently instructed on a multi-billion-dollar claim arising out of an environmental disaster in South America with complex jurisdiction and choice of law issues. He is also working on a substantial company law dispute.

In 2018, Gregor spent a seven-month secondment at Withers LLP in London, working on complex and high-value trust and estate disputes involving the Channel Islands, Cayman and the BVI. Gregor maintains an active interest in developments in DIFC law and that of the wider region.

Serle Court is a leading Commercial Chancery chambers in London. Its members received some 47 recommendations in different areas of practice in Chambers Global 2018.

It has been consistently rated by Chambers Global and Chambers UK Bar in Band 1 for each of Commercial Chancery, Traditional Chancery, Civil Fraud, and Partnership. It also has significant expertise and international standing in the property, banking and trusts fields. Serle Court also has a substantial UAE practice focused on DIFC Court work and commercial arbitration. Members regularly act in leading commercial, banking and property disputes in the DIFC Courts, as well as on related freezing injunction and anti-suit injunction applications.

Members of Chambers have acted and appeared in a number of leading DIFC cases including in the last couple of years: the long running *Al Mojil v Proviti* [2015] DIFC CFI 020; [2016] DIFC CA 003 following the leading decisions of the CFI and CA in recognising and exercising their jurisdiction over the dispute; *FedEx v Abdul Latif Jameel Transportation Co Ltd* [2018] DIFC CFI 038; *Sharma & Ors v Sheikh Khaled al Nuaimi* [2018] DIFC CFI 022; *SBM Bank (Mauritius) Ltd v Renish Petrochem & Ors* [2018] DIFC CFI 054; Cassation No. 5/2018; *Orion Holdings*

Overseas Ltd & Ors v Mohammad Abu al Haj & Ors [2015] DIFC CFI 033; *KBC Aldini Capital Ltd v Baazov & Ors* [2017] DIFC CFI 002; *Sunteck Lifestyles Ltd v Al Tamimi & Anor* [2017] DIFC CFI 048; *Grand Valley General Trading LLC v GGICO Sunteck Ltd* [2018] DIFC CFI 044. Counsel from Serle Court have also been instructed on and appointed by leading firms in Dubai and London in a number of DIAC, DIFC-LCIA, and ICC arbitrations, seated in Dubai, London and Paris.



CLERK IN ATTENDANCE

Daniel Wheeler Senior Clerk

Dan has been at Serle Court since it was founded in 2000 out of the merger of two leading Commercial and Chancery sets. In 2018 he was promoted to be one of two Senior Clerks. He has special responsibility for Chambers' Middle East practice and regularly visits Dubai. He is involved day-to-day in managing barristers' diaries, developing their practices, negotiating fees, listing hearings and advising clients as to the expertise and experience of barristers. The Legal 500 and Chambers UK Bar recognise Dan's particular "responsiveness and willingness to accommodate complicated requests" and that he "always recommends a barrister suitable for the job and generally makes life easier".



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Don't just take our word for it...



*“Serle Court has also established itself as **one of the leading ADR sets**, with an impressively large number of highly regarded mediators and arbitrators, as well as many members with **extensive experience** of appearing in such ADR forums.”*

*“offers a variety of skill sets that others can't provide, and houses **some of the biggest names at the Bar**”*

*“**excellent as a whole**, and indeed pre-eminent in offshore work, with a large number of highly competent counsel”*

*“one of the **very best commercial chancery sets**, and one of the few that genuinely competes in both traditional chancery and commercial litigation”*



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