



International Disputes & the English Legal System

14:00 to 20:00

Friday, 12 April 2019

Grand Hotel Tien-Shan, Almaty



Law Events

International disputes and the English legal system

"An international case making its way through the English legal system"

12 April 2019

13:30 – 14:00	Welcome and Introductions	
Session 1: 14:00 – 15:10		
14:00 – 15:10	Introduction	
	Funding Disputes	<i>Ben Wells</i>
	Instructing a Barrister	<i>James Stuart & Natalia Perova</i>
	Pre-Action protocols and Alternative Dispute Resolution (ADR)	<i>Ben Wells</i>
	Jurisdiction, choice of law, interpretation and incorporation of clauses	<i>Natalia Perova</i>
	Interim Remedies / Security for Costs	<i>James Stuart</i>
	Statements of Case	<i>Natalia Perova</i>
	Disclosure	<i>Michael Fenn</i>
Session 2: 15:20 – 16:30		
15:20 – 16:30	Expert reports	<i>Doug Hall & Lilit Nagapetyan</i>
	Investigation/collecting evidence	<i>Alexander Khaki & Nikolay Smetanin</i>
	Witness statements	<i>Michael Fenn</i>
	Trial & Appeal	<i>James Stuart</i>
	Enforcement – legal issues	<i>Alexander Khaki & Nikolay Smetanin</i>
	Enforcement – factual issues	<i>James Stuart</i>
	Conclusion	
Session 3: 16:40 – 17:50		
16:40 – 17:50	Case-study	Interactive session
Conclusion: 17:50 – 18:00		
17:50 – 18:00	Concluding remarks	

Lamb Chambers – Biographies

Lamb Chambers is widely recognised as one of the leading barristers' chambers, with over 50 barristers in London specialising in commercial, property and personal injury work. We have a strong track record of success in major commercial litigation, acting for domestic and international clients across a broad range of matters. Lamb Chambers is a modern and approachable chambers with a reputation for providing high quality advice and advocacy.



James Stuart

Barrister – Lamb Chambers

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James Stuart is an English barrister, specialising in commercial dispute resolution and litigation. He is currently the Head of the Commercial Litigation Team at Lamb Chambers, Temple, London. His practice now focuses upon shareholder disputes, company and insolvency, partnerships, franchises, employment, insurance, guarantees, banking and supply of goods and services. James represents individual and corporate Claimants and Defendants, and has built up considerable experience in recent years in conducting more protracted cases, often with an international element. He regularly deals with applications for Freezing Orders and other injunctions in restrictive covenant, confidentiality and similar disputes. Recently for example, in JSC BM Bank -v- Kekhman 2018 EWHC 791 (Comm) James represented the Defendant in a 5 week Commercial Court trial involving a £200m+ claim by Bank of Moscow, including issues of commercial fraud and Russian law. James is a member of COMBAR, Employment Law Bar Association, Employment Lawyers Association, and TECBAR.



Natalia Perova

Barrister – Lamb Chambers

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Natalia is an English Law barrister at Lamb Chambers, Temple, London. She is fluent in Russian and Spanish and is happy to receive instructions on international and cross-border disputes involving international trade, financing and enforcement. Her particular interests include international litigation and dispute resolution related to commercial contracts, sale and carriage of goods, trading, investments, banking, company and shareholder disputes. Additional practice areas include public and private international law, cross-border insolvency, international civil fraud and enforcement, trusts, asset-tracing and recovery. She has extensive experience including appearing in higher courts and the Court of Appeal in her own right. She has excellent client care skills and regularly deals with clients from diverse backgrounds. Her previous academic experience enables her to excel in dealing with complex legal issues. With her PhD in International Law and multi-language skills, Natalia is well placed to deal with complex cases having an international element. Natalia has rights of audience and can appear before the AIFC Court.

Pinsent Masons – Biographies

Pinsent Masons is a full-service international law firm with over 420 Partners and more than 1,500 lawyers. We are headquartered in London and in addition to our Kazakhstan and Former Soviet Union practice we operate in all three UK jurisdictions and have a network of eight UK offices. We also have offices in France and Germany, two centres in the Middle East, two centres in Australia, four in Asia Pacific and an office in Johannesburg, supported by strong working links and relationships in the Americas. Connectivity across our 22 offices is key and we work seamlessly across all our locations, offering clients advice where they need it.



Michael Fenn

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Michael is a Partner in the Pinsent Masons Litigation and International Arbitration Team in London. Michael trained and qualified at Nabarro Nathanson before joining the boutique law firm Reid Minty LLP as a partner. Michael subsequently joined McGrigors LLP (which merged with Pinsent Masons LP in 2012) as a partner in 2008. Michael has a wide experience of litigation and disputes. These range from multi-million dollar multi-jurisdictional fraud claims through to banking disputes, shareholders disputes, wrongful trading actions, actions for and against directors, shipping claims, defamation, breach of contract, tort, insolvency and shipping claims.

Current cases include:

- Acting on behalf of Aeroflot in the Commercial Court in London in respect of a multi-million dollar fraud claim
- A multi-million dollar ICC arbitration for a Russian Corporation arising out of a series of supply and distribution agreements in the Middle East
- A multi-million dollar English High Court case for a Swiss investment bank in respect of an alleged fraud
- Acting for an English investment company in Judicial Review proceedings against the Financial Ombudsman Service



Ben Wells

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Ben Wells is an Associate in the Litigation Team at Pinsent Masons. Thanks to his Russian-language capabilities, much of Ben's work is focused on Russian-speaking clients who he advises on shareholder and contractual disputes in arbitration and in the English courts. Ben has been involved in reporting on the developments on unexplained wealth orders to the legal press in English and Russian language publications. Ben is the founder of RusFor (the Russian Speaking Legal Professionals' Forum), a group that hosts conferences, seminars, panel discussions and networking events for its professional members. Ben regularly writes articles in English and Russian which have been published on the CIS Arbitration Forum and the Russian Arbitration Association as well as having featured in articles for the Law Society of England and Wales. Ben is also a frequent speaker at conferences held in Kazakhstan, Ukraine and Russia.

Smith & Williamson– Biographies

Smith & Williamson is a financial and professional services firm with 12 offices and over 1,700 people located across the UK, Ireland and Jersey. Our business uniquely combines a UK top ten accountancy practice* with a significant investment management business. We are a member of Nexia International, a global network of independent accounting firms. With 600 offices in over 100 countries, Nexia International links us with major cities around the world.

*Latest survey by Accountancy Age magazine



Doug Hall

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Doug has extensive experience of complex and high value commercial disputes spanning over 28 years. He acts as an Expert Witness and adviser in a diverse range of disputes, with damages of up to hundreds of millions. Doug has given evidence in the High Court and before Arbitral Tribunals on numerous occasions and has contributed to the successful resolution of disputes by informal settlement negotiations and mediations. He has expertise in acting in cases involving parties from Russia and the CIS, with cases include acting as an expert witness in a \$1.5bn shareholder dispute between Russian parties over a nickel mine in Siberia, acting as an expert in two cases related to a shopping centre in Moscow and providing expert advice in an English High Court case over an oligarch dispute in Russia involving a natural resources business.



Lilit Nagapetyan

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Lilit is a Senior in Smith & Williamson's Forensic Services department, which is comprised of accountants, investigators and computer forensic professionals. Lilit is a qualified chartered accountant with several years of experience in the financial industry. Prior to joining Smith & Williamson, Lilit worked at PwC in London, where she split her time between London Top Tier Assurance work (focusing on the auditing of FTSE 100 companies) and Forensic Advisory work (investigations & disputes).

Lilit is experienced in a range of forensic accounting cases, including commercial dispute resolution, commercial valuations; international arbitration and fraud and financial crime. Lilit is also a Russian-qualified lawyer (Lomonosov Moscow State University), and her prior experience includes working for the largest law firm in Russia, Egorov, Puginsky, Afanasiev & Partners. Lilit is fluent in Russian and French.

CSI Group – Biographies

CSI Group was established in 2013 by a team of professional fraud investigators who possess an in-depth knowledge of forensic science and a proven experience spanning all aspects of fraud & compliance. Our consultants are subject matter international experts in the areas of corporate investigations, forensic accounting, digital forensics, criminology, profiling, corporate and business intelligence, risk management, cyber security, IT management and software development. The major capabilities of CSI Group are to provide exclusive and bespoke anti-fraud solutions and qualitative forensic support to the clients requiring professional advice. By entrusting our expertise, and by working hand-in-hand with your businesses key stakeholders, CSI Group guarantee to provide your organization an unbiased, independent and bespoke assessment in all the above key operational areas, within pre-agreed timeframes.



Alexander Khaki

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Alexander has over 10 years' experience in such areas as enhanced integrity due diligence, asset tracing and recovery, fraud risk management, anti-money laundering, data protection, bribery and corruption, FCPA, UK BA & Security. He has managed over 100 international asset tracing and cross-border investigative assignments related to Russia, CIS, Central and Eastern Europe, UK, US, North Africa, Middle East, Southeast Asia and Latin America.

Alexander is currently counselling local and international law firms, major corporates, financial institutions and family offices on different matters of corporate intelligence, cross-border investigations and international asset tracing. Alexander also advises management boards of various international organisations on anti-bribery and anti-corruption compliance matters.

Alexander is a recognized international compliance lecturer and an Associate Member of Association of Certified Fraud Examiners (ACFE).



Nikolay Smetanin

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Nikolay is the Forensic and Compliance Director in the Moscow office of the CSI Group. Nikolay has joined the CSI Group in 2014 after several years of successful forensic practice within one of the leading BIG 4 firms.

The major areas of his expertise are: forensic accounting reviews, fraud risk reviews and investigations, forensic due diligence, compliance audits (including FCPA, UK BA and SAPIN II reviews), disputes and litigation support. Nikolay participated in a number of investigations and asset tracing assignments in Russia, CIS, Europe, Central and South East Asia. Currently Nikolay is involved in several international disputes where he is responsible for cross-border investigative and asset tracing activities.

Scenario

An international case in the English legal system

1. Party A, a company based in England concluded a contract with Party B, based in Kazakhstan, for the delivery of an advanced industrial heat exchanger to Party B by 1 November 2018. The piece of machinery is a critical component in the vacuum distillation process needed to produce and supply titanium sponge to their main Customer C.
2. Customer C relies on the supply of titanium sponge by Party B (which is a new producer in the market) every week. Without the supply of titanium sponge, their production of light weight, fuel efficient components for use in aerospace applications is effectively stopped. Customer C relies on their suppliers to deliver titanium sponge according to strict timetables and only contracts with suppliers which are able to deliver under this condition.
3. If Party B's operating heat exchanger breaks or gets blocked, it has a contract with Party A to send them a substitute or substituted parts of it within three days. If one distillation unit fails, Party B uses a second one and moves the entire production of titanium sponge to the second unit, whilst waiting for the delivery of a new heat exchanger from Party A.
4. Party A informed Party B that, as per the contract, the heat exchanger was going to be delivered by 1 November 2018. The new heat exchanger was not received by Party B on 1 November 2018, nor the week after. Party A did not respond to their calls or emails. Given the strain on the second piece of machinery of the entire production of titanium sponge, it also broke down on 10 November 2018.
5. Party B tried to find substitute parts but could not do so due to the limited availability of specialist equipment on the market. As a result, they only managed to restart production on 20 November 2018. By that time, it had been unable to deliver the essential titanium sponge to Customer C for 10 days.
6. After Party B failed to deliver the titanium for 10 days, due to an onerous contract between Party B and Customer C, Customer C terminated that contract and Party B lost its main customer. Whilst Party B could continue supplying some of the titanium sponge to their peripheral customers, their sales dropped dramatically (by 40 % in the first month). Party B was unable to secure another comparable customer and it is unclear whether it can find a similar one in future.
7. When Party A finally replied, it said that it had not received any calls or emails from Party B and the machinery should have been with Party B on 1 November 2018. They provided the receipt that the machinery had been delivered and received. That receipt appears to hold somebody's signature but it is unclear who signed it, whether it was somebody in Party B or somebody external. The delivery address does not appear on the receipt either.
8. Party B, after making all necessary inquiries internally, is adamant that no machinery was delivered from Party A on 1 November 2018 or thereafter. They decide to instruct lawyers to make a claim against Party A for breach of contract.
9. The contract itself does not provide for a dispute resolution clause, but refers to the terms and conditions of Party A. No terms and conditions have been received by Party B. When lawyers for Party B requested those terms and conditions from Party A, after some

delay, the terms and conditions have been provided, which included the statement that any disputes between Party A and any other party should be resolved in London courts.

10. Following the receipt of terms and conditions, Party B started proceedings in the High Court of England and Wales by issuing and serving a Claim Form and Particulars of Claim.

11. Party A filed a Defence denying the breach of contract and relying on the receipt as evidence of delivery and acceptance. Despite requests from Party B to disclose anything known about the identity of the person signing the delivery receipt, Party A has refused to cooperate. Following the directions order and the deadline for disclosure having passed, Party A produced a list of documents, none of which seems to be relevant to the receipt. No documents related to the dispatch of the machinery have been produced. This makes Party B even more suspicious about the validity of the receipt.

12. When the witness statements were filed by the parties, it transpired that an employee of Party A, who gave a witness statement, confirmed that the machinery was dispatched and that they received a receipt in the form provided to Party B from the carrier. Again no documents related to carriage have been produced with the witness statement. However, closer to the trial date when the bundles were to be produced, Party A informed Party B that they would like to rely on the documents of carriage at the trial.

13. At the trial, the Judge found in favour of Party B. However, Party A did not pay the amount ordered in the judgment. When Party B decided to start the enforcement process in England, it transpired that Party A no longer had any assets in the UK. A well-known English newspaper published an article suggesting that the ultimate beneficial owner of Party A, who resides in the UK, is trying to hide the assets of Company A in a different jurisdiction.

****Disclaimer: please note that the above scenario is completely fictitious and any resemblance to the real situation is a mere coincidence.***

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