

## **Sir Bernard Rix**

### **Arbitrator and mediator**

Bernard Rix is a recently retired Lord Justice of Appeal with twenty years experience in the Commercial Court and the Court of Appeal, who now accepts appointments as an arbitrator and mediator, based at chambers at 20 Essex Street. He is a member of the HKIAC Panel of Arbitrators and has been appointed to the Cayman Islands Court of Appeal. In addition, he has recently been appointed as Professor of International Commercial Law at Queen Mary, University of London

His university education was at New College, Oxford and Harvard Law School. He was called to the Bar by the Inner Temple in 1970 and practised in commercial chambers at 3 Essex Court. He was appointed Queen's Counsel in 1981.

In 1993 he was appointed to the High Court and sat predominately in the Commercial Court of which he was judge in charge in 1998-99. In that year he was responsible for introducing to the Commercial Court the Woolf Reforms to civil procedure law (the CPR) and for redrafting the Commercial Court's Guide and Practice Directions. In 2000 he was appointed to the Court of Appeal, from which he retired in May 2013.

At the Bar he specialised in international commercial and arbitral disputes as a barrister and latterly as an arbitrator, and also appeared in the courts of Singapore and Hong Kong. He was counsel in *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509, the eponymous origin of the "Mareva injunction", now called a freezing order; in *I Congreso del Partido* [1983] 1 AC 244 (HL) which introduced the commercial exception to English law's previous absolute doctrine of sovereign immunity; and in *Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd* [1992] 1 QB 656 (CA, affirmed in the House of Lords) concerning the operation of the arbitration clause in the contract for construction of the Channel Tunnel.

In the Commercial Court, his judgments include *The Angelic Grace* [1994] 1 Lloyd's Rep 168, upheld by the Court of Appeal [1995] 1 Lloyd's Rep 87, which is the modern origin of the anti-suit injunction for breach of an arbitration clause or an exclusive jurisdiction clause.

As a member of the Court of Appeal, he has delivered a wide range of judgments on arbitration, aviation, banking, insurance and reinsurance, private and public international law, oil and gas, sale of goods and shipping disputes. They include significant judgments such as *Dallah v. Government of Pakistan* [2010] Bus LR 384 on international enforcement of arbitration awards (upheld by the Supreme Court), *Kuwait Airways v. Iraqi Airways (Nos 4 and 5)* [2002] 2 AC 883 (parts 22-35 and 43-54 of the Court of Appeal judgment, upheld by the House of Lords) on international law, and *R (Al-Skeini) v. Secretary of State for Defence* [2007] QB 140 (upheld by the House of Lords) on the jurisdictional scope of the European Convention of Human Rights, and *Yukos v. Rosneft (No 2)* [2013] 1 All ER (Comm) 327, on the act of state doctrine.

Other positions held now or in the past include:

FCIArb 1999

Chairman of COMBAR 1992-93

Treasurer of the Inner Temple 2005

Honorary Fellow, New College, Oxford

Honorary Fellow, Queen Mary's, University of London

President, Harvard Law School Association of the UK 2002-

Chairman, Advisory Council, Centre for Commercial Law Studies, QMUL 2003-

Trustee, BIICL (British Institute of International and Comparative Law) 2003-2012

President of BILA (British Insurance Law Association) 2007

Director, London Philharmonic Orchestra 1986-

Leading cases in which Sir Bernard was counsel at the Bar include:

- *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (CA) (the origin of the "Mareva injunction", now the freezing order)
- *The Nema, BTP Tioxide Ltd v. Pioneer Shipping SA* [1982] AC 724 (HL) (the leading case on arbitration appeals under the new Arbitration Acts 1979 and 1996)
- *I Congreso del Partido* [1983] 1 AC 244 (HL) (which confirmed the doctrine of the commercial exception to the English law's previous absolute doctrine of sovereign immunity)

- *Gill & Duffus Inc v. Berger and Co Inc* [1984] AC 382 (HL) (concerning certification clauses in international sale of goods contracts)
- *Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd* [1992] 1 QB 656 (CA, affirmed in HL) (concerning the operation of the arbitration clause in the contract for the building of the Channel Tunnel)

In the Commercial Court his judgments include:

- *Hill v. Mercantile and General Reinsurance Co plc* (1993, where his first instance judgment on the “follow the fortunes” clause in reinsurance was restored by the House of Lords, [1996] 1 WLR 1239)
- *The Angelic Grace, Aggeliki Charis Compania Maritima SA v. Pagnan SpA* [1994] 1 Lloyd’s Rep 168 (affirmed by the Court of Appeal [1995] 1 Lloyd’s Rep 87, the modern origins of the anti-suit injunction for breach of an arbitration clause or of an exclusive jurisdiction clause)
- *Kuwait Airways Corp v. Iraqi Airways Co* [1996] 1 Lloyd’s Rep 664 (deciding whether the conversion by Iraq of Kuwait’s civil air fleet was one or several events: see also [1997] 2 Lloyd’s Rep 687 (CA) and [1999] 1 Lloyd’s Rep 803 (HL))
- *Royal Boskalis Westminster NV v. Mountain* [1997] LRLR 523 (a leading decision on many aspects of marine insurance in the context of the trapping of a dredging fleet in Iraq)
- *The Laconian Confidence, Andre & Cie SA v. Quest Shpiping (Rotterdam) BV* [1997] 1 Lloyd’s Rep 139 (the leading modern authority on off-hire clauses)
- *Credit Suisse First Boston (Europe) Ltd v. MLC (Bermuda) Ltd* [1999] 1 Lloyd’s Rep 767 (an early derivatives dispute)
- *Dubai Aluminium Co Ltd v. Salaam* [1999] 1 Lloyd’s Rep 415 (concerning financial fraud against Dubai’s aluminium

plant business: see also [2000] 2 Lloyd's Rep 168 (CA) and [2003] 2 AC 366 (HL))

In the Court of Appeal his judgments include:

#### *Arbitration*

- *Internaut Shipping GmbH v. Fercometal SARL* [2003] EWCA Civ 812, [2003] 2 All ER (Comm) 760 (concerning the identification of parties to a charterparty and to an arbitration clause)
- *Dallah Estate & Tourism Holding Co v. Ministry of Religious Affairs of the Government of Pakistan* [2009] EWCA Civ 755, [2010] Bus LR 384 (concerning the enforcement of a French award in England, see also [2010] UKSC 46 [2011] 1 AC 763)
- *AES Ust-Kamenogorsk Hydropower Plant LLP v. Ust-Kamenogorsk Hydropower Plant JSC* [2011] EWCA Civ 647, [2012] Bus LR 336 (concerning the court's power to grant an anti-suit injunction and the arbitrators' powers of kompetenz-kompetenz)

#### *Aviation*

- *Gesner Investments Ltd v. Bombardier Inc* [2011] EWCA Civ 1118 (concerning interpretation of an aircraft sale contract)
- *Driver v. Air India* [2011] EWCA Civ 986, [2011] 1 RLR 992 (concerning employment)
- *Global 5000 Ltd v. Wadhawan* [2012] EWCA Civ 13, [2012] 2 All ER (Comm) 18 (concerning an alleged guarantee of an aircraft sale agreement, and service out of the jurisdiction)

#### *Banking*

- *Abou Rahmah v. Abacha* [2006] EWCA Civ 1492, [2007] 2 All ER (Comm) 445 (concerning a bank's potential liability for a fraudulently account)
- *Barbados Trust Co Ltd v. Bank of Zambia* [2007] EWCA Civ 148, [2007] 2 All ER (Comm) 445 (concerning non-assignability clauses in loan notes)
- *Socimer International Bank Ltd v. Standard Bank London Ltd (No 2)* [2008] EWCA Civ 116, [2008] Bus LR 1304 (concerning valuation of a portfolio, and banking discretion)
- *Haugesund Kommune v. Depfa ACS Bank* [2011] EWCA Civ 33, [2012] 1 All ER (Comm) 65 (concerning a solicitor's liability for negligent advice to a lender)
- *ING Bank NV v. Ros Roca SA* [2011] EWCA Civ 353, [2012] Bus LR 266 (concerning the interpretation of an investment banking contract, and estoppel)
- *Rubenstein v. HSBC plc* [2012] EWCA Civ 1184, [2013] 1 All ER (Comm) 915 (concerning a private customer's claim arising from negligent advice about investing safely)

### *Construction*

- *Stocznia Gdanska SA v. Latvian Shipping Co (No 3)* [2002] EWCA Civ 889, [2002] 2 All ER (Comm) 768 (concerning the repudiation of shipbuilding contracts, and economic torts)
- *Geldof Metaalconstructie NV v. Simon Carves Ltd* [2010] EWCA Civ 667, [2011] 1 Lloyd's Rep 517 (concerning the doctrine of set off)

### *Evidence and procedure*

- *Savings & Investment Bank Ltd v. Fincken* [2003] EWCA Civ 1630, [2004] 1 WLR 667 (concerning problems of without prejudice meetings and late amendments)

- *C v. D* [2011] EWCA Civ 646, [2012] 1 WLR 1962 (concerning offers to settle)

### *Insurance and Reinsurance*

- *HIH Casualty & General Insurance Ltd v. New Hampshire Co* [2001] 2 Lloyd's Rep 161 (concerning the interpretation of a film finance insurance policy)
- *HIH Casualty & General Insurance Ltd v. Chase Manhattan Bank* [2001] EWCA Civ 1250, [2001] 2 Lloyd's Rep 483 (concerning film finance insurance and whether there can be an exception for an agent's fraud, see also [2003] UKHL 6, [2003] 2 Lloyd's Rep 61)
- *Scott v. Copenhagen Reinsurance Co* [2003] EWCA Civ 688, [2003] 2 All ER (Comm) 190 (concerning the loss of a British Airways jet in Iraq during Desert Storm, was it part of one or more events?)
- *Drake Insurance plc v. Provident Insurance plc* [2003] EWCA Civ 1834, [2004] QB 601 (concerning the right to avoid, and double insurance)
- *Kastor Navigation Co Ltd v. AGF MAT* [2004] EWCA Civ 926, [2005] 2 All ER (Comm) 720 (concerning the commercial total loss of a ship)
- *Kosmar Villa Holidays plc v. Trustees of Syndicate 1243* [2008] EWCA Civ 147, [2008] Bus LR 931 (concerning waiver of conditions precedent)
- *HLB Kidsons v. Lloyd's Underwriters* [2008] EWCA Civ 1206, [2009] Bus LR 759 (concerning "claims made" professional indemnity and liability insurance)
- *Masefield SG v. Amlin Corporate Member Ltd* [2011] EWCA Civ 24, [2011] Bus LR 1082 (concerning the legality of an insurance claim for the cost of a pirate ransom)

### *International law, public and private*

- *Andrea Merzario Ltd v. Internationale Spedition Leitner Gesellschaft GmbH* [2001] EWCA Civ 61, [2001] 1 All ER (Comm) 883 (concerning *lis alibi pendens* under CMR)
- *Glencore Interantional AG v. Exter Shipping Ltd* [2002] EWCA Civ 528, [2002] 2 All ER (Comm) 1 (concerning anti-suit injunctions)
- *Kuwait Airways Corp v. Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 (Parts 22-35 and 43-54 of the Court of Appeal judgment, concerning the conversion of Kuwait's civil air fleet during Iraq's invasion of Kuwait, upheld by House of Lords)
- *R (Al-Skeini) v. Secretary of State for Defence* [2004] EWHC 2911 (Admin), [2007] QB 140 (DC) (concerning the international jurisdictional scope of the European Convention of Human Rights and the Human Rights Act 1998, upheld in the House of Lords [2007] UKHL 26, [2008] AC 153, but see also *Al-Skeini v. UK* (ECtHR, (2011) 53 EHRR 589)
- *FKI Engineering Ltd v. Stribog Ltd* [2011] EWCA Civ 622, [2011] Bus LR 1410 (concerning *lis alibi pendens* under Judgment Regulation)
- *SK (Zimbabwe) v. Secretary of State for the Home Department* [2012] EWCA Civ 807, [2012] 1 WLR 2809
- *Yukos Capital SARL v. OJSC Rosneft Oil Co (No 2)* [2012] EWCA Civ 855, [2013] 1 All ER Comm) 327 (concerning the act of state doctrine, and enforcement of awards)

### *Oil and Gas*

- *Mamidoil-Jetoil Greek Petroleum Co Ltd v. Okta Crude Oil Refinery (No 1)* [2001] EWCA Civ 406, [2001] 2 Lloyd's Rep 76 (concerning the certainty of long-term contracts which allow for future agreement of terms)

- *Petromec Inc v. Petroleo Brasileiro SA (Petrobras)* [2013] EWCA Civ 150 (concerning the interpretation of an oil platform specification)

### *Shipping*

- *The Starsin, Homburg Houtimport BV v. Agrosin Private Ltd* [2001] EWCA Civ 56, [2001] 1 All ER (Comm) 455 (concerning the interpretation of a bill of lading and identity of a carrier: dissenting judgment in the Court of Appeal upheld in House of Lords, [2003] UKHL 12, [2004] 1 AC 715)
- *McWilliam Co Inc v. Mediterranean Shipping Co Ltd* [2003] EWCA Civ 556, [2004] QB 702 (concerning the interpretation of the Hague Rules and effect of “straight” bills of lading, upheld in House of Lords [2005] UKHL 11, [2005] 2 AC 423)
- *The Sea Angel, Edwinton Commercial Corpn v. Tsavliris Russ (Worldwide Salvage & Towage) Ltd* [2007] EWCA Civ 547, [2007] 2 All ER (Comm) 634 (concerning the alleged frustration of a time charter)
- *The Achilleas, Transfield Shipping Inc v. Mercator Shipping Inc* [2007] EWCA Civ 901, [2008] 1 All ER (Comm) 685 (concerning late redelivery of a time chartered vessel, controversially overturned in the House of Lords [2008] UKHL 48, [2009] AC 61)

### *Sale of Goods*

- *The Kriti Palm, AIC Ltd v. ITS Testing Services (UK) Ltd* [2006] EWCA Civ 1601, [2007] 1 All ER (Comm) 667 (concerning certification clauses, alleged fraud, and limitation of actions)
- *KG Bominflot v. Petroplus Marketing AG* [2010] EWCA Civ 1145, [2011] 2 All ER (Comm) 522 (concerning an oil shipment which was certified sound but arrived out of specification)



