

BENJAMIN PHELPS

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Practice Overview

Ben practises across the full range of chambers' core areas with a particular emphasis on private international law, travel and jurisdiction, commercial and employment litigation.

Ben's practice has a substantial international element, and he is regularly instructed in high profile cases. He is junior counsel in the appeal to the Supreme Court in *Brownlie v FS Cairo*: the leading case on the Court's jurisdiction to hear tort claims against foreign defendants, and also on the pleading and proof of foreign law (led by Marie Louise Kinsler QC, Howard Palmer QC and Alistair Mackenzie). He is also junior counsel in the appeal to the Supreme Court in *Roberts v MOD* concerning choice of law for contribution claims and whether the Civil Liability (Contribution) Act 1978 is an overriding provision of the forum (led by Charles Dougherty QC, permission awaited).

Ben is experienced in the PD6B rules of jurisdiction and *forum conveniens*, the Lugano Convention, and in both contractual and non-contractual choice of law. He has a particular interest in the nature, and location of financial damage. He assisted Marie Louise Kinsler QC (the National Rapporteur) in writing the UK's report for the European Commission reviewing the operation of Rome II.

Ben's commercial practice is diverse. Recent work includes acting with Nikki Singla QC in relation to various mandatory injunctions in a £17 million run off dispute following the termination of membership to a consortium. Ben also acts and advises as sole counsel in commercial matters. Highlights include acting for the defendant in *Gallagher v Hallows Associates* (HHJ Jarman QC, 2020) in its successful challenge to jurisdiction in a professional negligence case, and advising an insurer in relation to state and diplomatic immunity.



Practice areas

Private International Law
Commercial Dispute Resolution
Travel and Jurisdiction
Employment
Property Damage
Insurance
Sport
Clinical Negligence
Personal Injury

Qualifications

BA (Hons)

BPTC

Education

Jesus College, Cambridge
University of Law

Awards

LJ Holker Scholarship (Gray's Inn)
Russel Vick Award (Jesus College)
Scholarship of the College (Jesus College)



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Ben has a busy employment practice representing employees and employers across a range of employment litigation including unfair dismissal, discrimination and whistleblowing claims. He has recently successfully defended discrimination claims at final hearings, advised on the operation of the unambiguous impropriety exception to without prejudice privilege and represented an employer arguing against a purposive interpretation of section 44 ERA 1996. He also has experience of commercial employment disputes and in particular obtaining injunctive relief.

Prior to coming to chambers Ben studied Law at Jesus College, Cambridge where he graduated with a first. In particular, he achieved firsts in Private International Law/ Conflict of Laws and Employment Law.

Private International Law

Ben has a busy private international law practice, whether that be challenging jurisdiction, determining/ applying the applicable law, or appearing before international Courts. Ben has experience of the PD6B gateways for service out of jurisdiction, Rome I, Rome II, the Brussels I Regulation (Recast), the Lugano Convention, the Montreal Convention, the Athens Convention, the Package Travel Regulation and *forum conveniens* and *forum non conveniens*. Ben also has experience of intra UK jurisdiction and applicable law disputes.

Ben regularly writes and speaks on conflict of laws issues. He assisted Marie Louise Kinsler QC (the National Rapporteur) in writing the UK's review of Rome II for the European Commission.

Recent highlights of Ben's private international law practice include:

Brownlie v FS Cairo (2021, Supreme Court) – landmark case concerning the scope of the tort gateway for service out of the jurisdiction and the requirement to plead and prove foreign law (junior counsel to Marie Louise Kinsler QC and Alistair Mackenzie).

Roberts v MOD (2021, Supreme Court, permission awaited) – choice of law in contribution claims and in particular whether the Civil Liability (Contribution) Act 1978 has overriding/ mandatory/ extraterritorial effect such as to apply to a contribution claim governed by German law (led by Charles Dougherty QC).

Peacock v HHI (2019 – ongoing) – challenging jurisdiction on behalf of a South Korean domiciled defendant. Raising questions of the scope of the tort gateway following *Brownlie*, the application of the necessary or proper

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party gateway, *forum conveniens* and recent case law on challenging extensions of time (led by Marie Louise Kinsler QC).

X v X (2020) – challenge to service out of the jurisdiction. Points taken on the necessary or proper party gateway and *forum conveniens*. Case turned on the relevance of subsequent events or subsequent information, after permission to serve out had been granted, to the gateway and to *forum conveniens*. In particular considering the remarks of Hoffman J in *ICS v Guerin* and Andrews J in *Gunn v Diaz* (assisting leading counsel).

X v X (2019) – question of applicable law in a high value breach of contract claim by a prominent sports team (assisting leading counsel). The argument as to which law applied could provide a complete defence to a claim in excess of £5 million.

Bhatti (2019 – 2020) – trial on a preliminary issue of habitual residence under the Rome II Regulation scheduled for early 2020 (assisting Marie Louise Kinsler QC and Alistair Mackenzie). Settled.

X v X (2019) – advising on jurisdiction and applicable law in an intra UK multi-million claim for damages following severe injuries suffered by a child (assisting Marie Louise Kinsler QC).

Sullivan v TCA (November 2019) – case before the Supreme Court of Gibraltar with Benjamin Browne QC. Claim valued circa £15 million.

Travel

Ben has a busy travel practice. For cases where jurisdiction and/ or applicable law were disputed please see the Private International Law section above. Ben regularly appears and advises in cases arising from accidents abroad where the application of foreign law is necessary to determine limitation, liability and quantum. Ben also regularly appears in cases under the Package Travel Regulations.

Ben was invited to speak at the 2020 ABTA annual conference. He spoke on the impact of *Griffiths v TUI* on travel sickness claims and the future of travel law in light of Covid.

Some recent examples of Ben's travel practice include:

Clark v ACM IARD SA (2020 – ongoing) – skiing accident governed by French law. In particular dispute as to appropriate expert evidence, the differences between French and English expert evidence and the effect of *Griffiths v TUI*.

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Wright v Euroins (2020 – ongoing) – RTA, Romanian law. Substantial dispute on the Romanian law evidence.

Loring v Reale (2020 – ongoing) – sole counsel, accident in Spain with limitation, liability and quantum all in dispute.

Bonage v Pacifica (2019 – ongoing) – sole counsel, injury sustained in a French hotel.

Bagshaw and another v TUI (HHJ Jarman QC, 2019) – acted for the successful claimants in this Package Travel Regulations claim in which all claimants beat their Part 36 offers. The case concerned the application of Reg 15(2)(c) i.e. events beyond the control of the defendant, and the evidence that was required to make good the defence.

Commercial

Ben has a flourishing and diverse commercial practice acting for Claimants and Defendants in a broad range of disputes, both led and unled. Highlights include:

X v X (2020) – mandatory injunctions in a £17million run off dispute (led by Nikki Singla QC).

X v X (2020 – ongoing) – advising as sole counsel on issues of state and diplomatic immunity in a claim valued in excess of £1million.

Stressline v Mannix (2020 – ongoing) – dispute arising out an allegedly phantom security guard.

Malden v Patel (2020 – ongoing) – dispute arising out of an alleged breach of a share purchase agreement.

Gallagher v Hallows Associates (2019 – 2020) – sole counsel for the defendant in its successful challenge to jurisdiction in a high value professional negligence action before HHJ Jarman QC.

X v X (2019) – advising a charity on breach of fiduciary duty, breach of contract and potential injunctive relief.

X v X (2019) – advising a party who successfully obtained declaratory relief following Part 8 proceedings on enforcement of declaratory relief.

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In the matter of X (a company) (2019) – advising a shareholder on an unfair prejudice petition raising issues of lawful act economic duress following *Times Travel UK Ltd* [2019] EWCA Civ 824.

Hyperama Plc [2018] EWHC 3484 (QB) – successfully obtained a doorstep delivery up order in the context of alleged theft of confidential information by employees (assisting Stuart Benzie and Will Clerk).

Employment

Ben has a broad employment practice, advising and representing both employers and employees in a wide range of disputes. He has experience in particular of unfair dismissal, discrimination, whistleblowing and breach of restrictive covenants. Particular highlights include:

Pawlicka v Gregory Park Holdings (2020) – Question of whether a purposive construction of s44 ERA 1996 was possible in the wake of *R (on the application of the Independent Workers' Union of Great Britain)*.

KO v Essex (2019-2020) – successful defence of race discrimination allegations at final hearing.

DH v F Ltd (2020) – whether an associative indirect disability discrimination claim could be read into the Equality Act. Settled.

Insuratelu v Essex (2019-2020) – successful defence of race discrimination allegations at final hearing.

X v X (2019) – Representing an employee with a highly peripatetic working life in a claim for unfair dismissal.

X v X (2019 –2020) – Representing an employee in a disability discrimination claim against a large tech company in the context of complicated mental health problems. Settled at JSM.

Hyperama Plc [2018] EWHC 3484 (QB) – successfully obtained a doorstep delivery up order in the context of alleged theft of confidential information by employees (assisting Stuart Benzie and Will Clerk).

Clinical Negligence

Ben regularly advises, drafts and appears for NHS Trusts and private hospitals in clinical negligence cases, often including multiple experts and cases in excess of £1m. A recent case involved advising in a case concerning

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the likely effects of a complex cocktail of drugs on a patient sectioned under the Mental Health Act. Ben also acts on behalf of Claimants.

Insurance & Reinsurance

Ben has recently completed two secondments at international law firms where he worked on a range of coverage issues in relation to property damage work. Ben has a particular interest in non-party costs orders against Insurers having recently delivered talks on the same with Howard Palmer QC.

Ben has recently advised an Insurer in a professional negligence claim valued at circa £500,000 in a complex case involving contesting jurisdiction over invalid service and the effect of an Insured's bankruptcy in a case outside the scope of the Third Parties (Right Against Insurers) Act 2010.

Property Damage

Ben regularly advises, drafts and appears in property damage cases. Ben has particular experience of tree subsidence cases, the New Roads and Street Works Act and fire damage.

Ben was instructed in a high value bridge damage case, led by Isabel Hitching QC.

Ben assisted Neil Moody QC and Daniel Crowley in preparation for a 4 week trial in the TCC following extensive property damage and loss of profits occasioned by a warehouse fire started in the 2011 London Riots.

Professional Negligence

Ben acts for both Claimants and Defendants in professional negligence claims. He represented the successful defendant in *Gallagher v Hallows Associates* (HHJ Jarman QC, 2020) in their challenge to jurisdiction which disposed of a circa £500,000 solicitor's negligence claim.

Sport

Ben accepts instructions from players, clubs and regulatory authorities. Ben deploys his expertise in contract, tort, employment and the conflict of laws in the Sport law context.

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Ben recently assisted leading counsel in advising on applicable law in the context of a claim by a high-profile sport's team for breach of contract (claim valued at circa £5 million).