

Benjamin Phelps

Call 2017



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Ben is ranked as a *Rising Star* (Legal 500 2024) and *Up and Coming* (Chambers & Partners 2024).

Ben's practice focuses on private international law: jurisdiction and applicable law, group litigation, and commercial and employment litigation.

Ben's recent work includes:

- **Brownlie v FS Cairo** [2021] UKSC 45: (Supreme Court) the leading case on the Court's jurisdiction to hear tort claims against foreign defendants, and the pleading and proof of foreign law (led by Marie Louise Kinsler KC, Howard Palmer KC and Alistair Mackenzie, instructed by Kennedys).
- **Roberts v MOD** [2022] UKSC 29: (Supreme Court) 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 KC, instructed by DAC Beachcroft).
- **TICL v Partner Re** [2023] EWHC 3243 (Comm): (Commercial Court and Court of Appeal) parallel s9 Arbitration Act 1996 application and application for a final anti-suit injunction in the context of a high value reinsurance dispute. Permission to appeal to the Court of Appeal granted. (led by Tim Killen, instructed by Reed Smith).
- **Ford NOx Emissions Litigation**: (KBD) acting for Ford in respect of a large group claim concerning NOx emissions and diesel engines. GLO made in December 2023. Pan-NOx emissions hearing before the President of the KBD, Cockerill J, Constable J and Senior Master Cook on 8 December 2023 [2023] EWHC 3173 (KB). Led by Neil Moody KC and Sonia Nolten KC, and leading Kate Legh, instructed by Hogan Lovells.
- **TICL v GIC** (2023): (Commercial Court) interim anti-suit relief obtained on an urgent basis in the context of a reinsurance dispute. Judgment on return date awaited. (led by Tim Killen, instructed by Reed Smith).

- **Product liability dispute** (2023): acting for an insurer in respect of a large loss caused by a product. Questions of applicable law. (Sole counsel, instructed by Simmons and Simmons)
- **2021 London Floods**: acting for the major insurers in commercial insurance disputes valued at more than £100m (led by Neil Moody KC and George Hilton, instructed by Kennedys)

Ben teaches jurisdiction and choice of law at Cambridge University. Ben has recently assisted with the writing of the latest edition of Dicey, Morris and Collins on the Conflict of Laws. Ben is a contributing author to Landmark Cases in Private International Law. He co-authored with Marie Louise Kinsler KC (the National Rapporteur) the UK's report for the European Commission reviewing the operation of Rome II.

Ben has a busy employment practice representing employees and employers across a range of employment litigation including unfair dismissal, discrimination and whistleblowing claims. He regularly acts in preliminary and final hearings. He also has experience of commercial employment disputes and in particular obtaining injunctive relief.

Ben is the case digest editor of Bloomsbury's Journal of Professional Negligence.

Expertise

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, and *forum 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 KC (the National Rapporteur) in writing the UK's review of Rome II for the European Commission.

Notable Private International Law cases

Brownlie v FS Cairo [2021] UKSC 45

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 KC, Howard Palmer KC and Alistair Mackenzie).

Roberts v MOD [2022] UKSC 29

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 KC).

TICL v Partner Re [2023] EWHC 3243 (Comm):

(Commercial Court and Court of Appeal) s9 Arbitration Act 1996 application and application for a final anti-suit injunction in the context of a high value reinsurance dispute. Permission to appeal to the Court of Appeal granted. (led by Tim Killen, instructed by Reed Smith).

TICL v GIC (2023):

(Commercial Court) Interim anti-suit relief obtained on an urgent basis in the context of a reinsurance dispute. Judgment on return date awaited. (led by Tim Killen, instructed by Reed Smith).

X v Y (2022)

Advising as sole counsel on the law applicable to a contribution claim following the Supreme Court's judgment in Roberts v MOD. The claim concerned a high-value product liability dispute.

X v Y (2022)

Advising on the question of applicable law in relation to a contribution claim between insurers in a situation of cumulative insurance provided in respect of an energy installation. The case raised issues of characterisation of the claim for the purposes of the applicable law framework, identifying the law applicable to insurance contracts and the role of overriding or mandatory provisions of the forum (led by Marie Louise Kinsler KC).

X v Y (2022)

Advising on jurisdiction, applicable law and an exclusion clause in relation to a fire started in a defective machine supplied by the defendant. Sole counsel.

McEvoy v Various (2022 - 2023)

Claim against fifteen defendants arising out of an accident in Nigeria. Questions of applicable law and duty of care under Nigerian law.

Tyers v Cameron and others (2021)

Jurisdiction challenge on behalf of a Delaware company raising various issues including the scope of the necessary or proper party gateway and forum conveniens (led by Marie Louise Kinsler KC).

X v Y (2021)

Advising on jurisdiction and in particular the scope of the tort gateway for contribution claims in a £multimillion product liability claim (led by Neil Moody KC and Isabel Barter).

Peacock v HHI (2019 – 2023)

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

X v Y (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 Y (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 KC and Alistair Mackenzie). Settled.

X v Y (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 KC).

Sullivan v TCA (November 2019 – ongoing)

Case before the Supreme Court of Gibraltar with Benjamin Browne KC. Claim valued circa £15 million.

Commercial

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

Notable Commercial cases

Emissions Litigation (2021-ongoing)

Acting for Ford in respect of a large group claim concerning NOx emissions and diesel engines. GLO made in _____

December 2023 following hearing in November 2023. Pan-NOx emissions hearing before the President of the KBD, Cockerill J, Constable J and Senior Master Cook on 8 December 2023 [2023] EWHC 3173 (KB). Led by Neil Moody KC, Sonia Nolten KC, and leading Kate Legh, instructed by Hogan Lovells.

Reinsurance dispute (2023-ongoing)

Multiple sets of parallel proceedings, anti-suit relief and s9 Arbitration Act 1996 application (led by Tim Killen).

2021 London Floods (2021-ongoing)

Acting for the major insurers in commercial insurance disputes valued at more than £100m (led by Neil Moody KC and George Hilton).

SKS & Another v Pope & Another (2021)

Defending a claim for rescission of a settlement agreement in the Chancery Division.

X v X (2020)

Mandatory injunctions in a £17million run off dispute (led by Nikki Singla KC).

X v X (2020)

Advising as sole counsel on issues of state and diplomatic immunity in a claim valued in excess of £1million.

Stressline v Mannix (2020)

Dispute arising out an allegedly phantom security guard.

Malden v Patel (2020)

Dispute arising out of an alleged breach of a share purchase agreement.

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.

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.

Notable Employment cases

X v Y (2021 – ongoing)

Acting for a claimant in a complex disability discrimination and unfair dismissal claim concerning allegations of duress, and inappropriate contact with a child (9 day trial in 2023).

DC v A & Others (2022-ongoing)

Acting for the third respondent in a whistleblowing claim. Trial listed for 10 days in October 2023. The case had previously been to the EAT – the judgment featured the memorable phrase: “you can’t decide whether a claim has reasonable prospects of success if you don’t know what it is”.

AEM v DI (2021-2022)

Disability discrimination claim tried over 4 days in May 2022.

BP v GPH (2020-ongoing)

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). Appeal to be heard by EAT in February 2023.

X v Y (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).

Property Damage

Ben regularly advises, drafts and appears in property damage cases.

Notable Property Damage cases

Olcott v DTS and PPS (2021 – 2023) (TCC)

Claim in respect of an escape of water said to have been caused by the defendants' failure to draw attention to a fault in a system of pumped drainage. Ben appears as sole counsel against a KC. Claim compromised shortly before 5 day listing in early 2023.

NCD v K and others (2021 – ongoing) (TCC)

£multimillion claim against multiple defendants arising out of the failure to install a non-return valve/ system of pumped drainage in a high value development (led by Neil Moody KC).

2021 London Floods (2021 – ongoing)

Acting for the major insurers in commercial insurance disputes valued at more than £100m (led by Neil Moody KC and George Hilton).

B v R (2021 – ongoing)

Substantial fire claim.

X v Y (2022 – ongoing)

Advising on jurisdiction, applicable law and an exclusion clause in relation to a fire started in a defective machine supplied by the defendant.

X v Y (2022 – ongoing)

Substantial claim arising out of an escape of oil.

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.

Notable Travel cases

Clark v ACM IARD SA (2020-2021)

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*.

Wright v Euroins (2020)

RTA, Romanian law. Substantial dispute on the Romanian law evidence.

Loring v Reale (2020)

Sole counsel, accident in Spain with limitation, liability and quantum all in dispute.

Bonage v Pacifica (2019-2020)

Sole counsel, injury sustained in a French hotel.

Bagshaw & Another v TUI (HHJ Jarman KC) (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.

Product Liability

Ben advises, drafts and appears in product liability cases. Recent instructions range from an exploding e-cigarette to a £multimillion fire said to have been caused by a defect.

Ben is junior counsel to Neil Moody KC acting for acting for a leading car manufacturer in a large group claim involving emissions and diesel engines.

Ben also acts as junior counsel to Neil Moody KC and Isabel Bater in a £multimillion product liability claim in which it is alleged a fire arose from a frozen drinks machine.

Ben regularly speaks on issues of jurisdiction and applicable in relation to product liability cases.

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 KC, 2020) in their challenge to jurisdiction which disposed of a circa £500,000 solicitor's negligence claim.

Ben is case digest editor of the Professional Negligence of Bloomsbury's Journal of Professional Negligence.

Insurance

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 KC.

Ben advised and acted for an Insurer in a professional negligence claim 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.

Significant Cases

Brownlie v FS Cairo [2021] UKSC 45

Roberts v MOD [2022] UKSC 29

Ford Emissions Litigation [2023] EWHC 3173 (KB)

TICL v Partner Re [2023] EWHC 3243 (Comm)

Awards

- LJ Holker Scholarship, Gray's Inn
- Russel Vick Award, Jesus College
- Scholarship of the College, Jesus College

Education

- BPTC, University of Law
- BA (Hons), Jesus College, Cambridge

Recommendations

“He has excellent knowledge of the applicable principles and regulations. He has very strong advocacy skills and commercial awareness.”

Chambers UK 2024

“Ben is an excellent lawyer. He is absolutely on top of his brief. He considers the whole case, and is strategic in considering how best to serve the client’s interests.”

Legal 500 2024

“Benjamin is technically excellent, very responsive and always prepared to go the extra mile.”

“His advice is clear and commercially focused.”

Chambers UK 2023