England and Wales
A world jurisdiction of choice
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Foreword: Law Society President Simon Davis

For some years now, the competition to be the forum of choice for the resolution of legal disputes has been fierce. The uncertainties caused by Brexit have added further complexity to this. But – regardless of how Brexit plays out – there are some absolute certainties that will continue and are at the heart of England and Wales’ success as a jurisdiction.

The benefits of choosing English law have not changed. It is flexible, allowing businesses and individuals to tailor bespoke agreements to fit their specific needs, offering commercial freedom.

It is transparent, with parties not having to worry that local courts will fetter their ability to exercise contractual rights.

English will remain the international language for business.

Our common law is familiar to the English-speaking nations around the world, from the United States to India, Canada to Hong Kong, Australia to Singapore. It is familiar to those from civil jurisdictions who have used it in their contracts and know it works.

The judges of England and Wales will still be of the highest calibre, experienced in dealing with commercial disputes that have an international dimension. Our courts will remain thorough and reliable, frequently chosen for their neutrality and their fair and proportionate procedures.

Our world class solicitors and barristers will be here working as part of an open global community to resolve modern day disputes, many of which have a cross-border element.

London will still be a highly respected home for arbitration with world class arbitrators, legal advisers and arbitration organisations whose awards are enforced effectively around the world.

All these certainties remain. Even before the current EU structures were in place, England and Wales showed itself to be an open jurisdiction recognising the choice of laws and enforcing the judgments of others.

I am full of optimism that England and Wales will continue to flourish as a global legal centre of choice.

Simon Davis
President
Summary

England and Wales is a leading global centre for legal services and English law is renowned for its commercial compatibility. This document outlines the benefits of the English law, the strength of our courts and judicial system, our world class legal profession and our highly respected arbitration system. These benefits will continue for years to come.

English law

English law has numerous benefits and is a popular choice for international business because it is flexible, predictable and stable.

Based on the principle of freedom of contract, English law allows businesses and individuals to tailor bespoke agreements to fit their specific needs, offering commercial flexibility, and as a common law system, English law can arguably evolve more quickly than statute-based law. This allows the system to adapt to current business practices and behaviours, as well as new areas of commerce and technology, as demanded in a modern society.

Based on the doctrine of precedent, English law also helps commercial parties predict an outcome of a legal dispute with a greater level of certainty. English law is also very stable – stretching back hundreds of years and based on well-established principles, the benefits of English law will continue for years to come.

English contract law is based on English common law, which, outside the regulatory context, is largely unaffected by EU law. In addition, the EU regime on applicable law in contracts in cross border situations, the Rome I Regulation, will continue to apply both in the EU and in the UK after Brexit.

The court system in England and Wales

Our judiciary and court system are highly respected around the world.

Our judges are high calibre, with an international reputation for independence, intellectual rigour and commercial expertise. They are particularly experienced in resolving commercial disputes, especially those with an international focus – our judges are known and respected for their understanding of the complexities of the modern commercial world.

English and Welsh judgments have a worldwide reputation for quality and are often highly persuasive in courts in other jurisdictions.

Our civil court system is thorough, efficient, reliable and renowned for its fair and proportionate procedures. The court system strikes a balance between ensuring key evidence is available and avoiding disproportionate cost with its disclosure available, filters out unmeritorious and weak claims, and allows evidence from foreign jurisdictions in the form of witnesses – or in some cases, documents.
Wider benefits

We have a world class legal profession which is strengthened by the international community of lawyers that operate here. The presence of foreign lawyers and law firms in the English and Welsh legal market has increased the access to, and transfer of, international legal expertise and experience across a range of fields. All client discussions with a solicitor or barrister are subject to confidentiality and covered by legal privilege, which means they can't be revealed without the express permission of the client.

London is also a leading centre for arbitration. We have a clear legislative framework, as well as world class arbitrators, legal advisers and arbitration organisations.

The interplay between these factors allows for a system well-suited to the legal needs of international businesses. The strengths of English law, of the jurisdiction of England and Wales, and of the judiciary and lawyers who operate there will remain for a long time.
Introduction

The legal sector of England and Wales is one of the UK’s greatest exports. It is home to some of the best law firms in the world, globally renowned courts and a wealth of legal talent. England and Wales has the largest legal services market in Europe, second only to the US globally. Home to more than 200 foreign law firms from around 40 jurisdictions, employing 329,000 people, it is the preeminent global legal centre. Its universities and law schools attract talent from around the world.

London in particular has firmly established its position as a world-leading legal and financial centre. The co-location and clustering of banking, insurance, technology, fund management and other financial services underpins the capital’s position as a major centre for international legal services and a natural destination to conduct international business. English is also the language of commercial transactions and global business.

International businesses now have more choice than ever when selecting a preferred applicable contract law. This vital choice has far-reaching ramifications for companies, as it dictates the procedures and legal systems under which to resolve any resulting disputes.

This document outlines the many benefits of choosing English law and England and Wales as a jurisdiction in which to resolve disputes, whether through our court system or by way of arbitration in London.

Legal certainty, highly competent judges, world class lawyers and other legal professionals, a business-friendly approach...These are just some of the many reasons why English law and English courts enjoy a very high degree of trust and respect in the international business community. Therefore, choosing English law and courts in international business transactions means, for me, one less point to negotiate with my counterparts.

Beste Aygün, Nestlé Legal (Turkish qualified)
The historical ties that exist between England and the rest of the common law world forge a link that will be difficult to break. This history gives a familiarity and comfort with the methodology of English law to lawyers from the common law world and their clients. This, combined with the excellent reputation the English judicial system has developed over the years, makes England a destination of choice for dispute resolution.

Dr Babatunde Ajibade, SJA Ajibade & Co (Nigerian qualified)

Why we use the term ‘English law’ and not ‘English and Welsh law’

In this report we use the term ‘English law’ rather than ‘English and Welsh law’, for the following reasons. References to ‘English law’ are to the substantive law which typically govern contractual and non-contractual obligations within England and Wales. Although Welsh law does exist autonomously of English law (made up of legislation generated by the National Assembly for Wales, a devolved and elected authority), these laws essentially govern only local issues within Wales, rather than wider legal rules (such as the laws of contract). England and Wales share a unified legal system and the judiciary within Wales applies English law. By contrast Scotland and Northern Ireland are distinct legal jurisdictions applying autonomous regimes of substantive law.
Chapter 1: English law

Why choose English law?
Flexible, predictable and stable

English law is a popular choice for business and its benefits will continue for years to come. When international businesses are negotiating agreements and making transactions worth billions, they need a reliable law acceptable to both parties under which to operate. This is often English law.

Using English law has many benefits which make it the ideal law for businesses across the globe, regardless of language or legal history. It is flexible, predictable, and stable.

It has formed the foundation of many legal systems across the world for hundreds of years. These ‘common law’ concepts have also been adopted into the domestic laws of many other jurisdictions such as Canada, Australia, New Zealand, Uganda, Hong Kong and Cyprus.

English contract law is flexible

English contract law or English law allows businesses and individuals to tailor bespoke agreements to fit their specific needs, offering commercial flexibility.

English law adopts a ‘freedom of contract’ approach to contractual relationships between commercial parties. The starting point is always that parties are bound by the terms of their agreement. From its origins, English law has been a commercially minded system and the focus of the courts is always on what the parties have agreed.

Freedom of contract is attractive to commercial parties for a number of reasons, including:

- parties are bound by the terms of their agreement
- businesses and individuals can tailor bespoke agreements to fit their specific needs
- parties can agree the proportion of benefits which may accrue to either party.

Contract law is a single system without different rules for different types of contract, with limited exceptions. This allows and encourages commercial flexibility and innovation without needing to categorise the type of obligation in question to determine specific default or other applicable legal consequences.

As a common law system, English law can arguably evolve more quickly than statute-based law. This allows the system to adapt to current business practices and behaviours, as well as new areas of commerce and technology, as demanded in a modern society.
**Case study: The role of English law in key global business sectors**

English law is the preferred law of choice in important global business sectors. For example, it is predominantly used in the oil industry, particularly in petroleum contracts, even where there is little or no connection with England and Wales. English law is seen as “the lingua franca governing petroleum transactions, and the increased global demand for new sources of oil and gas.” It is effective in covering all the technical aspects that set petroleum contracts apart, including interest and commodity contracts spanning across financing, management, sale, purchase and exchange of petroleum assets and interests. Recent case law on good faith and relational contracts, fiduciary duties and consequential loss recognitions has been helpful to clarify the duties of the sector’s parties in international transactions.

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**Case Study: Cross-border Merger and Acquisition (M&A) Transactions**

English law underpins many of the world’s largest and high-profile cross-border private M&A transactions:

- English law is a widely chosen governing law for business transactions worldwide, even those that do not have any geographic connection with the UK.

- Parties to international contracts and cross-border transactions often choose the law of England and Wales as the governing law of the agreement because of its commercial flexibility.

- International parties also value the certainty of judicial interpretation offered by an English law contract.

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English Law is highly predictable

English law helps commercial parties predict the outcome of a legal dispute with a greater level of certainty.

a) Common law works on the principle of precedent

English law has developed from a combination of statute and common law. Common law is established and developed through written opinions of judges delivered at the end of judicial proceedings. These opinions, known as judgments, are binding on the future decisions of lower courts. This is known as the doctrine of judicial precedent. A court’s decision binds future decisions of the same type of court on similar points of law. It also binds all of its direct, lower courts until there is another authoritative statement of the law, by the legislature or a higher court.

As a result of the huge breadth of English case law, guidance is offered to parties on an array of issues, contextualised to the particular fact patterns and intricacies of the relevant case.

A history of similar cases not only allows litigants to reasonably predict the outcome of their case, but be confident of seeing the resultant judgment reliably enforced.

b) Contracts governed by English law are interpreted objectively

Contracts governed by English law are interpreted by reference to the objective meaning of the words in the contract, without generally questioning the fairness of the agreement between the parties or their subjective expectations. Whatever is in the contract will generally be given effect, subject to some basic principles of contract.

The law regulates the fairness of how the contract is formed, for example in relation to remedies for misrepresentation, but is less concerned than other systems with the fairness of the obligations in the contract. If parties strike a bad commercial bargain then, absent some extraneous factor, they will be held to that contract.

English law also does not have an implied or statutory good faith requirement in most contexts, unlike a number of civil jurisdictions and other common law jurisdictions. The parties can express for good faith provisions to be inserted, and these will be respected by the courts. This is left to the parties to decide, apart from in very limited cases where it can be implied.

These factors allow for predictability in the way a contract will be interpreted and enforced by the courts. This predictability can allow disputes to be avoided or resolved without court proceedings, as the contract will be clear and self-standing in prescribing the parties’ respective rights and obligations.

This means that commercial parties can predict with a high degree of certainty whether a proposed course of action is likely to be lawful or unlawful.
English law is accepted by financial markets

English law has a proven track record of being accepted and used by financial markets. English law has been involved in financial transactions for over 200 years and commercial parties are often familiar to international parties. The volume of case law on commercial and financial transactions allowed English law to become predictable.

One of the most hard-fought decisions in the case of the bankruptcy of Greece in 2012 was whether the new bonds issued by Greece in exchange for its old bonds would be governed by English law, which is what the bondholders wanted, or by one of the 17 eurozone systems of law, which is what Greece and the eurozone wants. A legal memorandum produced at the time on behalf of the bondholders set two tests which were essential to the then structure of the deal – whether the jurisdiction had a trust and whether it had protective case law on an IMF Agreement article allowing countries to escape their obligations by enacting exchange controls. Only English law passed both tests. None of the 17 passed both tests – some passed one but not the other, and some did not pass both. Germany and Luxembourg, for example, did not pass either. So in that case English law was agreed by all parties to be the most suitable for the deal. English law was used also for other intergovernmental financial contracts with Greece from EU countries, including an EU commission bond issue.

Philip Wood QC CBE²

² Why English Law?, Philip Wood QC OBE, Butterworths Journal of International Banking and Financial Law, July/August 2019
English is the language of international business

English is one of the most widely spoken languages in the world. It is spoken at a useful level by some 1.75 billion people worldwide, meaning one in four people speak it.\(^3\)

English is also the language of international business and financial markets which has made English law a natural choice for those conducting business in English.

It is therefore natural and convenient that many contracts are negotiated and drafted in English. This makes the documentation, and any court proceedings, easily accessible for commercial parties, reducing transaction costs.

It allows those in the transaction to know their rights clearly and be able to rely on the large and accessible literature on international finance.

\(^3\) Global Business Speaks English, Tsedal Neeley, Havard Business Review, May 2012
https://hbr.org/2012/05/global-business-speaks-english
The impact of Brexit

At the time of writing, concerns have been expressed regarding the potential impact of Brexit on selecting English law.

However, the benefits of English law and courts will continue regardless of the UK’s departure from the EU for a number of reasons.

First of all, English contract law is based on English common law, which, outside the regulatory context, is largely unaffected by EU law.

Secondly, the EU regime on applicable law in contracts in cross-border situations, the Rome I Regulation, will continue to apply both in the EU and in the UK.

Essentially, Rome I promotes the principle of party autonomy and the parties’ contractual choice of law in commercial contracts will be upheld by the courts in EU Member States, subject to limited exceptions. The chosen law can be an EU member state law or a non-EU state law. Therefore, the choice of English law will continue to be upheld by EU courts on the same basis by EU member state courts, regardless of the UK’s departure from the EU.

The UK has also taken steps to incorporate Rome I into UK domestic law upon Brexit so it will continue to take a consistent approach.

Steps have also been taken to provide greater certainty about the recognition of English jurisdiction clauses and the enforcement of English judgments post-Brexit. This is when the UK will not be party to existing cross-border EU regimes on cross-border recognition and enforcement of judgments:

- The UK has taken the necessary steps to ratify the Hague Convention on the Choice of Court Agreements in its own right on Brexit. Under the Hague Convention, exclusive jurisdiction clauses in favour of the courts of contracting states and resulting judgments will be recognised by other Contracting States. This currently includes the EU, Mexico, Singapore and Montenegro.

- Although there are certain exclusions, after Brexit if parties include an exclusive English jurisdiction clause in their contracts, such a clause and any resulting judgment will generally be recognised in other Contracting States under the Hague Convention, including the EU.4

4 As of September 2019, the UK has also signalled its intention to accede to the Lugano Convention, which provides for recognition and enforcement of judgments for both EU and EFTA states. However, such accession requires the consent of existing members of the Lugano Convention.
I find English law valuable because it provides a very flexible environment in which to transact the large cross-border deals which I frequently work on. It’s very pragmatic, it’s flexible, it lacks rigidity unlike some other jurisdictions – and it’s very user friendly.

Graeme Sloane, Morrison Foerster (Dual qualified England & Wales, Scotland)

Generally speaking, English law provides a high degree of certainty... Whilst English law is quite complicated and has some complexity... that also means there is a certain level of certainty or transparency for the users’ contracts... Users can trust and rely on how the terms of contracts in English law operate.

Ryuchi Nozaki, Atsumi & Sakai Europe Limited (Japan qualified)

English law is one of the default choices as the governing law for contracts in Asia and worldwide because it is rightly seen to provide a reliably and commercially sensible framework, and English courts are seen to be a genuinely neutral forum for resolution of disputes.

Julian Copeman, Partner, Herbert Smith Freehills, London (dual qualified England & Wales, Hong Kong)

English law has been developing over hundreds of years and continues to be developed by judges... it is not possible for other systems of law to suddenly create 250 years of jurisprudence.

Scott Hopkins, Skadden (England & Wales qualified)
Chapter 2: The Court System in England and Wales

Why choose the English and Welsh court system?

A worldwide reputation for quality

English and Welsh justice is state of the art. Our judges are high calibre, with an international reputation for independence, intellectual rigour and commercial expertise. Our civil court system is thorough, efficient, reliable and renowned for its fair and proportionate procedures.

The judiciary

Judicial impartiality, experience and skill

Judicial independence is a key constitutional principle. Judges decide cases according to their own judgment of the issues, free from outside influence and government control. For this reason, the judiciary in England and Wales is known for its impartiality, experience and skill, and is respected throughout the world for how it manages complex cases. It also analyses and determines legal issues.

The judges of England and Wales are mainly recruited from the ranks of senior legal practitioners, usually with several decades of experience at the highest levels of practice. This is in contrast to the profession being a career judiciary. Judicial appointments are made by the Judicial Appointments Commission (JAC) which is an independent non-departmental public body. The JAC ensures that the selection of candidates for judicial office is free from any political involvement.

As a jurisdiction, England is frequently recognised for its transparency and respect for the rule of law. In the World Justice Project Rule of Law Index 2019, the UK was ranked number 12 out of 126 countries and jurisdictions.5

To further maintain the highest quality of judiciary, the English and Welsh court system is structured to allow for specialist judges and courts. This includes the Commercial Court, which is used to handling cases with an international dimension, often involving multiple parties and different applicable laws.

English and Welsh judgments have a worldwide reputation for quality and are often highly persuasive in courts in other jurisdictions.

Introduction to the Business and Property Courts in England and Wales

The Business and Property Courts located in London are collectively described as the Business and Property Courts of England and Wales. These courts decide specialist business and other civil dispute resolution, as well as business cases in England and Wales, whether domestic or international.

The work of the Business and Property Courts is divided and listed into the following courts or lists:

- The Commercial Court – sale of goods, insurance and reinsurance, business acquisition disputes
- The Business List
- The Admiralty Court
- The Commercial Circuit Court – previously the Mercantile Court
- The Technology and Construction Court
- The Financial List – banking and financial markets
- The Insolvency List
- The Companies List
- The Competition List
- The Intellectual Property List – including the Patents Court and Intellectual Property and Enterprise Court
- The Property, Trusts and Probate List – cases in Chancery
- The Revenue List
International cases at the Business and Property Courts

The Business and Property Courts have a strong international focus. In December 2018 to March 2019, counting only cases issued in London’s Business and Property Court, there were:

- **2,759 Business cases**, 210 of which had at least one party registered outside the UK so considered international
- **841 Commercial Court cases**, 631 of which were international
- **157 Admiralty Court cases**, 52 of which were international
- **40 Patents Court cases**, 32 of which were international
- **39 Competition List cases**, 22 of which were international

Case management by judges ensures efficient progress of cases

The court is under a duty to actively manage cases and judges seek to monitor cases and progress through to trial.

Case management by the court includes:

- defining the issues in dispute
- fixing timetables
- dealing with as many aspects of the case as possible on the same occasion
- controlling costs
- disposing of cases summarily where they disclose no case or defence
- dealing with the case without the parties having to attend court
- giving directions to ensure that the trial of a case proceeds quickly and efficiently.

The court expects the parties to co-operate with each other in the procedural steps.

Court procedures

English and Welsh disclosure of documents obligations seek to achieve a balance between ensuring key evidence is disclosed whilst avoiding disproportionate cost

Court procedure rules require that the parties should have access to all relevant, non-privileged documents, including those of their adversary. Often referred to as a cards on the table approach, this gives parties the advantage of access to the documentation necessary to evaluate the strengths and weaknesses of their case in advance of the trial. In certain circumstances, the court rules allow for pre-action disclosure, where a party wishes to see documents held by a potential defendant in order to decide whether or not to issue proceedings. The rules also provide for potential disclosure by non-parties when proceedings are underway.

The disclosure rules in England and Wales take a midway course between the US, which has more challenging and wide-ranging disclosure obligations, and civil law jurisdictions which often have little or no right to disclosure.

Summary judgment is available

The availability of summary judgment and early strike outs of unmeritorious claims means that where there is no real prospect of a defence succeeding or there is a weak claim, these proceedings can be disposed of quickly at an early stage without expensive and lengthy proceedings. The prospect of an early resolution of proceedings promotes efficiency and is highly attractive to litigants.
Evidence from foreign jurisdictions is available

Witnesses, and sometimes documents, in foreign jurisdictions may also be called in evidence before the English and Welsh courts via letters of request. A letter of request is a request to a court in another jurisdiction to take evidence and transmit that evidence to the requesting court. As such, a party to the English and Welsh proceedings may apply to the English and Welsh court to issue a letter of request to the relevant foreign court so that an unwilling witness can be examined.

Cross-examination of witnesses

Cross-examination of factual witnesses, and of expert witnesses, can be a crucial tool in testing an opponent’s case and is not available in many other jurisdictions. Together with effective disclosure documents, it enables all the key issues to be presented and the evidence relating to them to be properly tested.

English and Welsh courts offer quick interim injunctions and a range of remedies for international cases

English and Welsh courts can grant urgent relief through a range of interim injunctions including:

- asset freezing injunctions, including on a worldwide basis
- search and seizure orders to obtain and preserve evidence
- prohibitory injunctions preventing a party acting
- mandatory injunctions forcing a party to act.

In urgent cases, an order can be obtained very quickly and, in appropriate cases, without initial notice to the other party. The judgments of English courts have a good record of local enforcement globally. By contrast, US judgments have a poor record for international recognition, owing in part to the jury system and punitive damages.

Cross-border disputes can be tried in English and Welsh courts whatever the governing law

Parties may agree to select England and Wales as the jurisdiction in which to resolve their dispute whatever the law governing their dispute. English courts are experienced in hearing evidence of foreign law and deciding issues in accordance with that law.

English and Welsh courts deter weak or speculative claims through the costs rules of ‘loser pays’

The losing party in a civil case in England and Wales generally has to pay the winning party’s reasonable costs, not necessarily 100% of the costs. If the parties cannot agree on a figure, the court decides what is fair.

There are limitations to the right to appeal an English and Welsh judgment

Generally, there is no automatic right to appeal first instance decisions, so a permission to appeal is required. This means commercial parties are likely to obtain a final decision in a relatively short period. Further, appeals in England and Wales are only on questions of law, so an appeal is not simply a second trial.
English justice is transparent

There is a strong principle of open justice. Courts are open to the public and decisions can be found online and appear on legal databases. Very few cases are permitted to continue in private.

England is an established centre for appropriately settling cases out of court

Where necessary, English courts recognise the benefits of mediation and other forms of Alternative Dispute Resolution (ADR) in helping parties to settle cases outside the court process. Even after litigation has commenced, there are a number of stages when the court can stay proceedings to enable the parties to mediate.

Mediation confidentiality means that even if parties fail to reach an agreement and the court process is reactivated, the content of the mediation meetings generally cannot be disclosed to the judge.

England has a well-established body of high quality mediators. The majority of mediators have been accredited by at least one of the main mediation providers, who also offer training. A mediator who is a member of a regulated body, such as the Solicitors Regulation Authority or the Bar Standards Board, will be subject to their professional codes of conduct which ensure required standards are met.

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The judiciary are renowned for their absolute integrity and independence, and that’s extremely important.

Philip Wood QC, formerly of Allen and Overy

The key advantage for the judicial system mainly is the time. The efficiency, the time... it’s unbelievably good.

Vitoria Nabas, Nabas International Lawyers (Brazil, Portugal and England and Wales qualified)
Case study: A modern approach to shipping cases in the Admiralty Court

The Admiralty Court, as well as the Commercial Court, deals with a wide range of international shipping cases. It has a reputation for ease of access, speed and flexibility in the arrest, release and sale of vessels. It is innovative and modern in its approach. One recent development, for example, provides for special fast tracking where vessels that collide both have voyage data recorders, allowing early disclosure and inspection of that data. This is already leading to swift and cost-effective settlement of disputes.


Case study: English courts resolve international technology and intellectual property disputes

The Intellectual Property List and the English appeal courts provide a robust forum for deciding cutting edge international intellectual property disputes. For example, the UK Supreme Court recently adjudicated a dispute between Internet Service Providers (ISPs) and some well-known luxury goods brands. The brands obtained an injunction against the ISPs requiring them to block access to specified websites which were advertising and selling counterfeit copies of the brands’ goods. The court had to deal sensibly with the vital question of who should pay for the costs of complying with the resulting website-blocking order. This was a landmark decision and an example of how the English courts deals with novel issues and where the law has to break new ground.

**Case study: Fast and cost-effective dispute resolution options**

Over recent years the Business and Property Courts piloted a Shorter Trials Scheme which became permanent in October 2018. The scheme streamlines the trial process, with cases brought to trial within 10 months and heard within four days. It can be used for a broad range of cases and is not limited to low value claims. In one recent case, a dispute about the construction of a receivables financing contract was heard within eight months of the issue of the claim. It was decided within one day and damages of over $68m were awarded. The scheme only applies where both parties consent, giving them a new option for resolving issues between themselves more quickly and at less expense before the English courts.


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**Case study: Insurance law**

The English courts have long been used to settling international insurance and reinsurance disputes. One reason for this is the courts’ pragmatic approach. For example, in one recent international case, a UK court heard a dispute where the reinsurance policy documents were genuinely unavailable despite extensive searches being made. The court allowed secondary evidence to be adduced to prove that the reinsurance existed.

Case study: Banking and financial services disputes

The structure of the English courts allows experts to hear cases and for robust appeal processes, promoting legal certainty. The Financial List is one example of a specialist English court that hears cases requiring expertise in the financial markets or which raise issues of general importance to the financial markets. Recent cases heard or in progress in the Financial List have included:

- the interpretation of standard form documents or terms in market wide use
- market behaviour
- complex financial instruments and derivatives
- financial structuring
- sovereign debt
- emissions trading
- interest rate benchmarks
- Islamic finance.

English law remains a leading choice of law for many financial contracts. Derivative contracts for example are very commonly English law governed, benefiting from a very well-developed and stable judicial approach. In one recent international case, the Court of Appeal confirmed that express agreement to jurisdiction in standard derivative documentation will readily be upheld.

Chapter 3: A high quality legal profession

A high quality legal profession, benefiting the globe

Our solicitors and barristers are of high quality, playing a vital part in upholding the rule of law and the proper administration of justice.

There are over 190,000 solicitors of England and Wales. The profession has an established network of offices across the country through over 9,000 firms, providing an infrastructure of 12,400 offices as well as a wider presence across the globe.

A solicitor is responsible for helping to identify a legal problem, advising their client on the best solution, often resolving problems without the need for any court involvement and if resolution efforts fail, conducting advocacy in some circumstances. The Law Society is the professional body for solicitors in England and Wales.

Barristers are a separate part of the legal profession specialising in advocacy, particularly in trials, given the strong oral tradition of our system. Barristers have their own professional body, called the Bar Council of England and Wales.

Discussions with your solicitor or barrister are subject to confidentiality and covered by legal privilege

In England and Wales, legal professional privilege protects communications between a solicitor or barrister and his or her clients from being revealed without the permission of the client.

Legal professional privilege is a long-standing common law right, existing in England and Wales for over 400 years. It is one of the highest rights recognised by English law and is firmly established as a human right that everyone is unquestionably entitled to, protecting clients’ privacy. It is also vigorously protected by the judiciary as a vital protection for the rule of law and access to justice.
The benefits of an open legal services market

In England and Wales, foreign lawyers are able to provide temporary services without obstruction and can establish a more permanent presence with relative ease.

An open legal services market facilitates cross-border trade and makes doing international business easier. Nearly all international commercial transactions require the services of lawyers from two or more jurisdictions. Such services are provided most effectively and efficiently where foreign and local lawyers can work seamlessly together.

The presence of foreign lawyers and law firms in the English and Welsh legal market has increased the access to, and transfer of, international legal expertise and experience across a range of fields. It contributes to the progression and sophistication of the local legal market and increases the competition and attractiveness of doing business.

The Law Society of England and Wales strongly believes that our fully open legal market has helped make the UK the global legal centre it is today. It is home to legal professionals from nearly 100 jurisdictions and is a base for over 200 foreign law firms. Our open market has helped to turn the jurisdiction into a global leader, with a total value to the economy of almost £28 billion.\(^6\)

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*The legal quality that I get in London... I find it difficult for any other country to match.*

**Abhijit Mukhopadhyay, Hinduja Group (India qualified)**

*The English legal profession seems to have consistently drawn more than its fair share of the best and the brightest – and that no doubt contributes to a legal tradition that is uniquely rich.*

**Jeff Golden (USA) Honorary Master of the Bench, Middle Temple**
Chapter 4: Arbitration in London

Why choose London for arbitration?

London is a leading centre for arbitration. We have a clear legislative framework, as well as world class arbitrators, legal advisers and arbitration organisations.

The Arbitration Act 1996 provides a valuable framework for arbitration

Arbitration falls somewhere between litigation, as it is an adjudicatory process, and alternative dispute resolution, as it is privately agreed rather than state ordered. It is particularly appropriate for disputes arising out of complex transactions with highly technical content as the parties can appoint arbitrators who have considerable experience of the dispute subject matter. It is commonly used in the insurance, construction, engineering, oil, gas and shipping industries. It is increasingly used in banking and financial services.

The Arbitration Act 1996 provides a framework where no other rules are specified in the arbitration agreement and provides a mechanism for the enforcement of arbitration awards in the UK. A key benefit of arbitration within England is the supervisory jurisdiction the English courts hold in support of arbitration proceedings. Parties are able to seek recourse from the English courts via an arbitration claim, although courts are only permitted to intervene in arbitration proceedings to the extent permitted by the Arbitration Act 1996. The English courts have significant experience in exercising this inherent supervisory jurisdiction in relation to arbitration proceedings.

Arbitration awards where London is the seat of arbitration can be more easily enforced abroad

The UK is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. There are 159 member countries and the Convention provides a robust mechanism for enforcing arbitral awards in courts worldwide.

London provides a neutral forum in which to determine disputes between non-English parties

London is often chosen as the seat of arbitration for disputes between parties of different nationalities because it is perceived as being a neutral forum within which to resolve international disputes. It is common for the parties to each nominate one arbitrator and for the nominees to select a chairman of a nationality different from that of the parties.

Arbitration in London is confidential and informal

Arbitration is particularly appropriate where the parties wish to have their disputes resolved privately, thus maintaining the confidentiality of sensitive commercial information, rather than it being in the public arena.
London has an international reputation for experienced and expert arbitrators to resolve international disputes

London is renowned for its choice of specialist and experienced arbitrators. Many will be members of, or trained by, the Chartered Institute of Arbitrators, an internationally recognised body that provides high quality training for arbitrators. Many arbitrators will be highly skilled members of the legal profession. Others will be technical experts in industry. It is also possible to appoint Commercial Court judges as arbitrators, gaining the benefit of their knowledge and experience in adjudicating in disputes, without the need to go through a formal court process.

London has a range of highly respected arbitration organisations and high-quality facilities to support arbitration

These organisations provide an effective framework of rules under which disputes can be resolved and they also provide hearing facilities. Consequently, other facilities needed to support arbitration, such as interpreters and transcribers, are readily available.

The most eminent of these is the London Court of International Arbitration (LCIA) which is one of the longest established international institutions for commercial dispute resolution. It is also one of the most modern and forward-looking.

Although based in London, the LCIA is a thoroughly international institution, providing efficient, flexible and impartial administration of dispute resolution proceedings for all parties, regardless of their location, and under any system of law.

Its operation and outlook are geared to ensuring that the parties may have complete confidence in its international credentials and its impartiality.

The LCIA arbitration rules are universally applicable. They offer a combination of the best features of the civil and common law systems, including in particular:

- maximum flexibility for parties and tribunals to agree on procedural matters
- speed and efficiency in the appointment of arbitrators, including expedited procedures
- means of reducing delays and counteracting delaying tactics
- tribunals’ power to decide on their own jurisdiction
- a range of interim and conservatory measures
- tribunals’ power to order security for claims and for costs
- special powers for joinder of third parties
- fast-track option
- waiver of right of appeal
- costs computed without regard to the amounts in dispute
- staged deposits – parties are not required to pay for the whole arbitration in advance.
The long-term benefits of our arbitration system

The benefits of our arbitration system will continue for years to come, regardless of the UK’s departure from the European Union. This is because arbitration is covered under the New York Convention, which is completely separate from our membership of the European Union.

“Using the London arbitration [system] is much more reliable and efficient... The parties involved, the arbitrators, the barristers, solicitors...were highly qualified and experienced [in] dealing with [a] case. This would not be found in other parts of the world.

Vitoria Nabas, Nabas International Lawyers (Brazil, Portugal and England and Wales qualified)

Case study:
Why choose arbitration under the LCIA Rules?

The LCIA is one of the world’s leading international institutions for commercial dispute resolution and has helped countless parties to resolve disputes in the 125 years since it was founded. At present, our casework team oversees some 300 new arbitrations each year.

The LCIA Arbitration Rules provide a robust yet flexible framework for resolving disputes through arbitration. The LCIA provides access to the most eminent and experienced arbitrators, mediators, and experts, with diverse backgrounds, from a variety of jurisdictions, and with the widest range of expertise.

In order to ensure cost-effective services, the LCIA’s administrative charges and the fees charged by the arbitrators it appoints are not based on the value of the dispute. Instead, a fixed registration fee is payable with the Request for Arbitration, and the arbitrators and LCIA apply hourly rates for services.

Key source: https://www.lcia.org/
Case study: Intellectual Property

A particularly attractive feature to international businesses of the English and Welsh legal system is our deep Intellectual Property (IP) expertise.

England and Wales is home to world-leading IP legal professionals and specialists, renowned for their protection and enforcement of valuable IP rights and who can support international businesses to maximise the value of IP portfolios around the globe.

Home to the widely respected Intellectual Property Office, businesses can expect a timely response to IP right applications. Many international trade mark registrations are based on an original UK right.

England and Wales also offer a versatile network of courts and gives a choice of litigation routes. Through the UK’s Intellectual Property Enterprise Court (IPEC), and its specialist judges, businesses can gain enforceable decisions quickly and at a low cost.

The US Chamber of Commerce ranked the UK as the world leader for IP enforcement in its most recent 2016 Index.